NAVRACHANA UNIVERSITY

Accredited with Grade 'A' by NAAC

# Navigating Competition Law, Technology, and Intellectual Property Rights in the Digital Age

Edited By:

Dr. Sujatha Patil
Dr. Chandrika Tewatia Raj
Ms. Madhura Thombre

Published by Navrachana University

# NAVIGATING COMPETITION LAW, TECHNOLOGY AND INTELLECTUAL PROPERTY RIGHTS IN THE DIGITAL AGE

***Edited by***

*Dr. Sujatha Patil*

*Dr. Chandrika Tewatia Raj*

*Ms. Madhura Thombre*

**Editors**:

Dr. Sujatha Patil
Associate Professor & Principal Law Program
School of Business and Law
Navrachana University

Dr. Chandrika Tewatia Raj
Assistant Professor
School of Business and Law
Navrachana University

Ms. Madhura Thombre
Assistant Professor
School of Business and Law
Navrachana University

**Designed By**:

Shivam Bhatt
Student
4th year BBA LLB
Navrachana University

Istuti Shukla
Teaching Assistant
School of Business and Law
Navrachana University

**ISBN: 978-81-950434-8-4**

This work is subject to copyright. All rights are reserved, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, re-use of illustrations, broadcasting, reproduction on microfilms or in other ways, and storage in data banks. For any kind of use whatsoever, permission from the copyright owner must be obtained.

© 2024 by Navrachana University

Navrachana University
Vasna-Bhayli Road
Vadodara, Gujarat
391410

# TABLE OF CONTENTS

*FOREWARD* 4
*PREFACE* 5
*ACKNOWLEDGEMENT* 6

ABUSE OF DOMINANCE POSITION BY META FAMILY IN VENTURING FROM SOCIAL MEDIA TO E-COMMERCE IN INDIA- AN ANALYSIS 7

ARBITRABILITY OF COMPETITION LAW DISPUTES 20

CAPTURING MOMENTS, RESPECTING BOUNDARIES: THE INTERPLAY BETWEEN PHOTOJOURNALISM AND THE RIGHT TO PRIVACY 30

FROM CONFLICT TO HARMONY: MAPPING THE CCI'S ROLE AT THE NEXUS OF COMPETITION LAW, INTELLECTUAL PROPERTY, AND INNOVATION IN THE LIGHT OF TELEFONAKTIEBOLAGET LM ERICSSON V. COMPETITION COMMISSION OF INDIA 40

IMPACT OF DIGITALISATION ON PRIVACY AND HUMAN RIGHTS 60

INTERFACE & INTERPLAY CONFLICT BETWEEN IPR & COMPETITION LAW: USA'S INFLUENCE ON SOLUTIONS 69

NAVIGATING INTELLECTUAL PROPERTY RIGHTS CHALLENGES IN DIGITAL LANDSCAPE: TRENDS, IMPLICATIONS AND SOLUTIONS 75

REGULATING DIGITAL ECOSYSTEMS: BALANCING DATA PRIVACY AND COMPETITION LAW 89

THE CONFLUENCE OF ARTIFICAL INTELLIGENCE AND CYBER CRIME: THREAT TO INDIVIDUAL'S FUNDAMENTAL RIGHTS AND FUTURE TRENDS 106

THE COPYRIGHT DILEMMA: IN THE DIGITAL CONTEXT 117

ROLE OF INTELLECTUAL PROPERTY IN NEW EDUCATION POLICY 126

# FOREWARD

It is with great pleasure that I introduce this book, 'Navigating Competition Law, Technology and Intellectual Property Rights in the Digital Age'. This book is the result of the National Conference, organized by the School of Business and Law, Navrachana University. I extend my heartfelt gratitude to the Conference Committee for inviting me to the Conference and to write this foreword for the book.

We are living in an era of rapid technological advancements which has given rise to complex issues surrounding Competition Law, Technology and Intellectual Property Rights (IPR). This book allows the reader to understand how technology has influenced the area of competition law and IPR, along with the challenges faced by the legal framework to provide solutions to contemporary problems. It will enlighten readers on various issues relating to data privacy, cyber security, challenges for startups and other complexities of competition and consumerism in the digital world. The broad range of topics in the research papers included in the book allows a reader to understand the nexus between competition and IP law, particularly considering emerging technological advancements such as 5G, genetic engineering and so on. The overall exercise of this conference and compilation of research papers in the form of this book gives a valuable insight into how legal framework should function in safeguarding fair competition, fostering innovation and to create a synergy between encouraging technological advancements and upholding intellectual property rights.

I once again extend my heartfelt gratitude to Navrachana University for this opportunity and would appeal to the readers to explore this book which provides great insight into the intersection of competition law, technology and intellectual property rights in the digital age.

**Hon'ble Justice Jayant M. Patel**
**Former Acting Chief Justice of Gujarat HC**
**& Former Judge of Karnataka HC**

## PREFACE

Firstly, I congratulate the entire team of conference committee for the success of the 5th edition of National Conference on "Navigating Competition Law, Technology, and Intellectual Property Rights in the Digital Age"**.** The conference created a platform for law scholars, academician, students, and practitioners for insightful discussions on how technology influences the landscape of competition law and intellectual property rights, and how legal frameworks are adapting to these changes.

We received the good numbers of papers from all over the India and there were several participants from industry, academia and practicing professionals, who shared their views connecting to theme and subthemes of the conference.

This book is a compilation of all these papers and will give holistic approach to the readers. The book examines the interplay between competition law and intellectual property law and suggests a peaceful coexistence in the fast-changing world of technological advancement. It examines how competition law and intellectual property rights (IPR) can be successfully balanced, providing guidance on negotiating the changing intersection of legal frameworks in the field of innovation and technology. The convergence of intellectual property rights (IPR) and competition law has emerged as a crucial area of focus in the quickly changing legal landscape of India. The book breaks down the regulatory environment, providing a full study of India's competition law and how it applies to blockchain, patent, copyright, trademark, computer software, artificial intelligence and other technologies. The book also focuses on antitrust issues in the digital marketplace, the impact of artificial intelligence and data analytics on competition, data privacy and the evolving nature of intellectual property protection in the digital realm and the new developments that influence how to strike a balance between encouraging innovation and preventing anticompetitive behaviour. The book brings together contributions from experts across disciplines, with focus on balance between IP and competition law and technological advancement. It offers readers actionable knowledge to navigate the complex legal landscape of today's digital age.

**Dr. Sujatha S Patil**

**Principal of Law Program**

**School of Business and Law**

**Navrachana University, Vadodara**

## ACKNOWLEDGEMENT

As we ready ourselves to peruse the content of the book, we would be failing in our duty if we do not acknowledge the contribution of all those who were directly or indirectly connected with the publication process. At the outset, we would like to acknowledge the organisers, participants, and guests of the National Conference on Navigating Competition Law, Technology, and Intellectual Property Rights in the Digital Age. The Conference, in more ways than one, was the main reason that we were able to compile all the insightful chapters in the book.

We are grateful to the management of Navrachana University for backing us up at all the right times. Our thanks are also due to Dr. Jaydeepkumar Mehta for helping us acquire the ISBN. Without his timely intervention the whole process would have collapsed. Our thanks are also due to Mr. Shivam Bhatt, 3rd Year Student and Ms. Istuti Shukla, Teaching Assistant at Navrachana University who helped us immensely in the compilation chapters and working their magic through various software as a part of the publication process. The days leading to the publication were often complicated sometimes frustrating. It was during those days that we had the guidance of several people including Prof. Pratyush Shankar, Provost, Navrachana University, Dr. Hitesh Bhatia, Associate Dean, School of Business and Law and Dr. Sujatha Patil, Principal Law Program. School of Business and Law. We are indeed grateful for their guidance and support throughout those hard times. We would also like to thank Hon'ble Justice Jayant M. Patel who addressed the Conference as one of the keynote speakers and very kindly helping us in writing the preface of the Book. Finally, we would also like to express our gratitude to all the nameless forces that was directly or indirectly connected with the publication process.

Dr. Chandrika Tewatia Raj
Assistant Professor
Navrachana University

Ms. Madhura Thombre
Assistant Professor
Navrachana University

# ABUSE OF DOMINANCE POSITION BY META FAMILY IN VENTURING FROM SOCIAL MEDIA TO E-COMMERCE IN INDIA- AN ANALYSIS*


## ABSTRACT

In this digital age profound changes are happening through social media and e-commerce convergence that is creating a complex web of legal as well as economic challenges. This research paper explores the complex transformation of Meta Family-Facebook, Instagram, WhatsApp and X (Twitter) into leading players in India's burgeoning e-commerce ecosystem. The main focus is on scanning their behavior as possible abuse of dominance in accordance with the Competition Act 2002 and evaluating economic consequences produced by such actions.

The study begins by discussing the legal environment, explaining the provisions of the Competition Act 2002 and their relevance. It builds a foundation for determining whether Meta Family's actions are anti-competitive. The litmus test of whether Meta Family's actions are aligned or deviated from the criteria for abuse of dominance, which includes market power and consumer harm.

Following this, the paper then moves on to discuss the economic implications of Meta Family's e-commerce initiatives in India. The economic benefits brought about by their initiatives are shown through data and evidence such as increased online retail sales, emergence of job opportunities in the e-commerce sector and availability on digital marketing platforms. The discussion continues with the development of convenience in the Indian market and therefore expanding business frontiers, generating employment opportunities as well.

An appraisal of both the economic benefits and costs arising from Meta Family's activities reveals a rounded standpoint. Although their initiatives have undoubtedly unleashed economic potential, the issues of market distortion associated with reduced competition and possible implications for data privacy need to be scrutinized.



* Shraddha Tiwari, School of Law, CHRIST (Deemed) University

This paper concludes that whether the practices followed by Meta Family conform to or deviate from abuse-of dominance standards and how such behaviors have impacted competition in India. The findings of the analysis drawn from here, carry extremely grave implications for competition law and e-commerce in India. They stress the need for nimble regulatory structures that respond to a changeable digital environment while providing sufficient competition, protectionist interests and innovation. The collaborative effort between regulators and tech giants is key to charting a roadmap that ensures the continued viability of a digital market for India in an efficacious, competitive, equitable fashion.

*Keywords- Meta Family, Social media and e-commerce convergence, Competition Act 2002, Abuse of dominance, Economic impact on Indian market*

## INTRODUCTION

The digital world of today has changed how people communicate and do business, with the rapid changes in technology and integration of social media to e-commerce sites. The transformation of digital behemoths such as the Meta Family – Facebook, Instagram, WhatsApp and Twitter now known as X is representative of this transition. Initially, social media was a platform through which people connected to their friends and posted personal updates, but they have opened up doors for what used to be e-commerce now offering a gateway into online buying selling digital marketing and social commerce. This move sees Meta Family transform from pure social media into a diverse digital marketing and e-commerce business, which in turn poses significant legal and economic issues that must be carefully analyzed.

This research paper takes an in-depth look at the venture of Meta Family into ecommerce and its economic impacts on nations such as India. The main idea of this research is to prove that although there are evident economic benefits coming with Meta Family's diversification into the e-commerce domain, it also comes with a potential misuse of dominance in Indian digital space. If this abuse of dominance is established, it will be inconsistent with the provisions of Competition Act 2016 that was adopted so as to establish fair competition whereby anticompetitive practices are not allowed.

The concept of e-commerce has grown aggressively in the country and, more importantly, it is initiated by tech giant Facebook Meta Family only adds to its importance. These examples are, however, the foray it made in digital marketing through Facebook Marketplace and how Instagram turned out to be a platform that facilitated online sales alongside, WhatsApp groups becoming hubs of commodities trade.[1] Nevertheless, this evolution has happened without worries about fair competition and consumer welfare as well as market access that are very important issues regarding the limits and dues of such tech giants.

As such, this research paper engages in a complex investigation. It looks at the actions and strategies taken by Meta Family as they moved to e-commerce, analyzes their economic implications in India's perspective, and evaluates whether these constitute abuse of dominance

[1] M/s Shubham Sanitaryware's v. Hindustan Sanitaryware's & Industries (HSIL) Ltd. Ors., Case No. 99 0f 2013.

that violate competition law. The Researcher's aim is to provide a more textured and profound sense of the ramifications of Meta Family's transition from social media into e-commerce with regard not only for potential advantages, but also legal issues engendered by such evolution. By doing so, the researcher seeks to participate in the ongoing debate on competition law with regard to the digital economy and regulation of tech giants during the 21st century.

In order to attain this objective, the subsequent sections of this research paper will carefully analyze Meta Family's actions, assess its compliance with Competition Act 2002 and offer a rounded analysis of economic consequences emanating from their changing status in the Indian digital environment. This study seeks to provide suggestions which may help in shaping future regulations and policies in this dynamic environment.

## METHODOLOGY

This study uses an integrated approach to analyse Meta Family's abuse of dominance whilst switching from social media to ecommerce and the economic consequences in India. To investigate this complicated topic, the researcher will adopt a qualitative research design. The primary forms of collecting data will be through document analysis, content analysis in Meta Family's platforms and detailed case studies on India. Such approaches will give a detailed insight into the legal and economic consequences of the Meta Family transformation. The Competition Act 2002 is selected as the legal framework for analysis because it addresses some competition laws in India. In this regard, the researcher will analyze the relevant provisions of this act to determine whether Meta Family's actions were legal, especially in terms of abuse dominance. The economic impact in India will be assessed through an analysis that incorporates the review of pertinent data, market trends and statistics. Including criteria like market growth, employment, consumer welfare and competition in the economy allows us to see how Meta Family's evolution prevails over India. The research will focus on the Abuse of Dominance by Meta Family; will go into the details of their actions and strategies describing how these acts may have led to an abusive dominance in India's digital landscape. The above is a holistic and informed analysis of this diverse topic based on both the legal and economic views associated with the Meta Family transformation.

**DOMINANT ENTITY**

In the famous European case of *Hoffmann-Law Roch*[2] decided upon only 2 years later, the ECJ dealt with the conceptualization of market dominance and defined it as 'a position of economic strength'[3] enjoyed by a relevant corporation with the power to function independently and in a manner that prevents the functioning of a competitive market. This was reiterated in the case of *AstraZeneca v Commission [2010]*[4] wherein it was added that a dominant power must be able to hold high prices. An 'undertaking' has also been defined under the European Union Law, in the case of *Höfner and Elsner v Macrotron*[5], as that which includes any organization involved in an economic activity, irrespective of its legal status or the manner in which it is sponsored.

The European Commission, for establishing dominance, has relied upon multiple factors including market shares as the primary indicator of dominance. In the case of *KZO Chemie v Commission*[6], the presumption that 50% of market share being held by the company results in a presumption of dominance was upheld, and further added that to escape the route of Article 102, the onus of proof against domination lies upon the company itself, but more on this aspect will be covered in the later sections of this essay. However, it must be noted that the *dominance in itself does not call for penalties* within the EU Anti-trust laws.

The abuse of dominance by Meta Family represents a complex issue that necessitates an examination of both Indian and international precedents, as well as pertinent data, to provide a comprehensive understanding of their actions and their consequences on competition.[7]

In India, ongoing cases like the Google antitrust investigation initiated by the Competition Commission of India (CCI) highlight how regulatory authorities are scrutinizing the actions of tech giants. This serves as a pertinent precedent for evaluating whether Meta Family's transition from social media to e-commerce may infringe upon competition laws as defined in the

---

[2] Hoffmann – La Roche v Commission, Case 85/76, ECR 461, (1979).
[3] British Airways v Commission, Case T-219/99, ECR II-5917, (2003).
[4] AstraZeneca AB and AstraZeneca plc v. European Commission, Case T-321/05, ECR II-2805, (2010).
[5] Hoffmann – Law Roche v Commission, Case 85/76, ECR 461, (1979).
[6] Akzo Chemie BV v Commission, Case C-62/86, ECR I-3359, (1991).
[7] Re: Delhi Vyapar Mahasangh v. Flipkart Internet Private Limited, Case No. 40 of 2019 (Competition Commission of India, 13/01/2020).

Competition Act 2002.[8] Furthermore, the rivalry between Flipkart and Amazon within the Indian e-commerce market offers insight into the competition and market dynamics, demonstrating how the strategies and dominance of these tech giants can impact the competitive landscape.

The case of the European Commission against Google in 2017, particularly on some aspects related with services such as Google Shopping have served to highlight how regulatory authorities tackle allegations regarding abuse of dominance in online markets. Similarly, the *Facebook v. The FTC case* resulting from the Cambridge Analytica scandal shows how tech companies can opt for data practices, which create competition and privacy concerns that may affect Meta Family regarding their vital necessity of utilizing personal information.[9]

Statistics and data also play a vital role in this type of analysis. The economic importance of the e-commerce industry is evident from the data on rapid growth performance including market size and share of e-commerce in retail. Moreover, data on the Meta Family user base and market share in India give indications of their dominance position that is one of core elements to assess abuse from a dominant firm perspective.

By integrating these case laws and data into the research paper, it adds depth to analysis by presenting tangible cases and measurable facts that highlight what represents a significant potential impact of Meta Family's behavior in India on competition within this country as well as at the international level.
The Meta family has the highest number of active monthly users. Through analysis of the case, law and figures reflected in this work aims to present a complex approach on how tech giants like Meta Family change market and competition.

**Social Commerce**

Social commerce is a fast-growing part of e-commerce. It uses social media and online platforms to connect businesses with customers. This includes letting customers look at products, give

[8] Ashish Ahuja v. Snapdeal and Anr., Case No. 17 of 2014 (Competition Commission of India, 06/11/2014).

[9] Raychaudhuri, T. (2020) "Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence", Competition Commission of India Journal on Competition Law and Policy, 1, pp. 1–27. https://ccijournal.in/index.php/ccijoclp/article/view/5.

feedback, rate products, share products, make recommendations, buy products, and participate in loyalty programs.

**How Meta shift from social media to social commerce**

As social media giants like Facebook and Instagram grew increasingly influential, they astutely used their market dominance to expand into social commerce. Originally intended as forums for social interactions, these platforms leveraged their massive user networks and advanced data analysis tools to venture into the realm of online shopping. Under the umbrella of Meta, they integrated commerce into the user experience through innovations such as shoppable posts, direct in-app purchases, and live shopping events, ensuring a seamless fusion between social media and e-commerce. Meta's leadership in social commerce has been rocky. Critics have raised concerns about its potential to stifle competition, privacy issues, and accusations of hindering smaller rivals. Despite these hurdles, Meta's dominance is still strong, making it a crucial platform for social commerce activities.

**VIOLATION OF COMPETITION ACT 2002**

Certain key legal considerations determine whether the actions by Meta Family are in violation of The Competition Act 2002. This part will have a legal rationale, presenting the specifics of the Competition Act and discussing abuse of dominance considerations. The legal argument starts with an analysis of whether the actions taken by Meta Family can be classified as illegal under Section 3 of Competition Act, 2002. The Act is aimed at fostering and maintaining competition in markets that ensures consumer welfare as well as against anticompetitive acts. Under this structure, section 4 of the Act prohibits acts by enterprises to engage in practices that can be said as ending up having an appreciable adverse effect on competition within India. These practices comprise creating unfavorable or biased conditions, predatory pricing and the use of power in one market to invade another. The act has been violated in shifting from social media to social commerce.

**Criteria for Abuse of Dominance:**

To evaluate whether Meta Family's actions constitute an abuse of dominance, it is necessary to consider specific criteria prescribed by the Competition Act:

**Market Power:** One of the basic criteria is an evaluation of market power possessed by the Meta Family. This requires a review of their preeminent position within the Indian digital landscape, especially in social media and e-commerce sectors. The degree of control and influence that they have on these markets is a major factor.[10]

**Consumer Harm:** An important part of this assessment is observing how Meta family's actions affect consumer well-being. Unreasonable practices which reduce consumer satisfaction, limit choices or increase prices may be considered as signs of abuse.

**Analysis of Meta Family's Actions and Compliance with Criteria:**

The activities of Meta Family in India including the integration of e-commerce features and digital marketing tools reveal a complex situation. Their large user base and dominance in the social media space give them enormous market power that could be solidified through methods which hinder competition. Their behaviors could create issues of exclusionary practices, which can prevent smaller firms or new entrants from fully participating in such markets. These practices can correspond with the criteria of abuse dominance as provided in the Competition Act.

But it is important to note that the Competition Act provides for pro-competitive reasons. If Meta Family can show that the consequence of their actions benefits overall economic efficiency, innovation or consumer surplus outweighs any anticompetitive effects it may reduce violations concerns.

This legal analysis provides a basis for determining whether the conduct of Meta Family contravenes with Competition Act 2002. The research seeks to examine the elements of abuse of dominance, particularly from the perspective of market share and consumer harm alongside Meta-Family's compliance with such factors.

[10] Russo, F. and Stasi, M. L. (2016, June 20). Defining the Relevant Market in the Sharing Economy. Internet Policy Review, Vol. 5, Issue 2, https://doi.org/10.14763/2016.2.418.

## COMPETITION LAW ANALYSIS

The competition law analysis is undoubtedly a crucial part of this study because it allows for legal assessment of Meta Family's functioning for their transition from social media to e-commerce under Competition Act 2002.The analysis encompasses several key parameters:

### Relevant Provisions of the Competition Act 2002 and Their Applicability:

In India, the Competition Act 2002[11] forms the basis of law under which all competition-related issues are estimated. It includes several provisions relevant to this study. Section 4 of the Act relates to abuse of a dominant position and is used as its legal basis for assessing the Meta Family's behavior. This part prohibits dominant enterprises from practicing activities that adversely affect competition within the nation. Section 4(2)[12] lists some practices that are deemed abusive such as price discrimination, predatory pricing and using a 'substantially dominant' position. These provisions are at the core of establishing whether Meta Family's conduct, for instance including e-commerce features to their platforms is an abuse of dominance.[13] In addition, Section 3 of the Act could also apply to Meta Family as they have been involved in anti-competitive collusion agreements or exclusivity deals.

### Assessment of Meta Family's Actions for Abuse of Dominance:

In order to ascertain whether the actions of Meta Family constitute an abuse of dominance, one must analyze their behavior in the Indian market. Main considerations are their market share and dominant position in the social media as well as e-commerce sectors, effects of its activities on competition, any indication of anti-competitive actions among other such factors.[14] The actions of Meta Family in place, such as highlighting their e-commerce solutions can be analyzed for practices including using its market dominance to enter or protect another market and engaging in exclusionary conduct that impedes entry into the competition. Such practices would be assessed according to the Section 4 of the Competition Act.[15]

---

[11] The Competition Act, 2002 (Act 12 of 2003).

[12] S. 4(2) (a)(i), The Competition Act, 2002.

[13] CCI (2020). Market Study on E-Commerce in India: Key Findings and Observations. Competition Commission of India, https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-one-Commerce-in-India.pdf.

[14] American tobacco Co. et al vs. United States 328 US 781.

[15] XYZ v Alphabet Inc, Case No. 07 of 2020 (Competition Commission of India, 09/11/2020).

**Comparison with Legal Precedents and Case Studies:**

In the broader framework of competition law, it is important to compare Meta Family's behavior with legal precedents and case studies. Inclusion of Indian and international cases, such as the Google antitrust case in India pending or the European Commission's case against Google adds valuable layers to understanding how regulators have approached allegations of abuse dominance by tech firms. These decisions can act as benchmarks to evaluate the legality and competitive effects of Meta Family's actions. Through comparison and contrasts, the analysis can explore what is different in Meta Family's case of moving from social media to e-commerce against Indian law.

The competition law analysis, based on the provisions of Competition Act 2002 is aimed at determining whether Meta Family's actions are founded upon the principles of fair play and determine what legal redress can be brought against them in both Indian as well global jurisdiction.[16] This is an important analysis in making the understanding of their legal and regulatory ramifications as they change in characterizing India's online environment.

## ECONOMIC IMPACT IN INDIA

An important aspect of this research concerns the economic impact that e-commerce ventures by Meta Family in India have had, thus addressing their legacy on the Indian market. The economic analysis involves several key parameters:

**Data and Evidence on Economic Benefits:**

Information and facts regarding the economic advantages offered by Meta Family's e-commerce initiatives play a role in identifying their nature. Statistics on areas such as the growing web retail revenue, jobs creation in e-commerce environment and increased digital marketing opportunities through Facebook Instagram WhatsApp And Twitter? Other data may include examples of the growth rates achieved by SMEs that have utilized Meta Family's platforms for their businesses.

[16] Singh, S. and Mukherjee, S. (2020, March 06). Insights into Platform Markets and Abuse of Dominance: Innovation versus Competition in India. Paper presented at the CCI National Conference on Economics of Competition Law, New Delhi, India, https://www.cci.gov.in/sites/default/files/whats_newdocument/Papers.pdf.

**Influence on the Indian Market:**

The focus of the discussion should be on how such economic gains have influenced business in India. Meta Family's e-commerce initiatives have brought convenience, accessibility, and new business opportunities. The consequences spill over to different industries from retail, advertising and digital marketing.[17] By looking at the enhanced involvement of Indian businesses and consumers in e-transactions as well as growth statistics for the online commerce infrastructure, one can try to look into changing economic landscapes.

**Positive and Negative Economic Effects:**

The assessment of both the positive and negative economic impacts is essential for a thorough analysis. Some of the positive outcomes that may result include access to more job opportunities, improved digital literacy and a bigger market population. On the other hand, possible disadvantages might include market distortion fears among others such as reduction of competition brought by Meta Family's dominance in addition to privacy concerns linked with data handling. Furthermore, the evaluation which considers addressing how traditional businesses have been affected by digital e-commerce business is also a major part of this assessment.

This economic analysis is intended to provide a complete picture of how Metafamily's e-commerce projects transformed the Indian economy. In doing so, it attempts to contribute towards the wider debate on how tech giants' changing positions in marketplaces such as India affects various aspects of economics.

## CONCLUSION

Essentially, the current study is a discussion on the complex transformation of Meta Family comprising Facebook, Instagram, WhatsApp and Twitter (now X) from social media companies to big players in the Indian e-commerce world. It explored the legal and economic aspects, describing dominance abuse under Competition Act 2002 and evaluating their conduct on the Indian market.

---

[17] Areeda, P. and Turner, D.F. (1975). Predatory Pricing and Related Practices Under Section 2 of the Sherman Act. Harvard Law Review, Vol.8, No.4, pp. 697, 716-717.

The analysis showed that the integration of e-commerce features and digital marketing tools into Meta Family raises significant issues. While economic gains such as improved convenience and increased market opportunities are inevitable, the abuse of their dominant position creates challenges. Their actions were thoroughly reviewed within the legal realm of the Competition Act 2002 and revealed possible breaches, especially in terms of market power and consumer damage. The study also brought to light the importance of striking a balance between innovation and economic efficiency while maintaining free, fair competition in these digital spaces.

On critical analysis, Meta Family's behaviour may be viewed as an abuse of dominance according to the Competition Act 2002. Their significant market strength and embedded e-commerce functionalities may pose a competition barrier, as the consumers' choices are limited. Though pro-competitive rationales may be present, the overall effect on competition calls for regulatory concern. This paper has far-reaching implications for competition law and e-commerce in India. The regulators need to look into the changing dynamics of markets and ensure that dominant players do not act in an anti-competitive manner. It is crucial to strike a balance between innovation, consumer benefits and market inclusivity. It is essential to have proper enforcement and periodical audits of competition regulations in order to promote a healthy digital economy.

To sum up, the research draws attention to sophisticated regulatory structures that are adapted dynamically in response to rapid digital changes. It highlights the need for preemptive actions to deter anticompetitive behavior and encourage healthy competition. As the role of Meta Family evolves, it becomes essential for regulatory vigilance and strategic policymaking to be prioritized in order to foster innovation, protect consumer welfare, and ensure a thriving e-commerce environment in India.

## RECOMMENDATIONS

Based on the in-depth analysis presented within this study, a number of recommendations arise to effectively address not only Meta Family's changing role but also all challenges and concerns brought by its expansion over Indian digital space. These recommendations are two sided, as they apply to the regulatory bodies and the Meta Family itself.

So, in relation to regulatory bodies including the Competition Commission of India (CCI) and data protection authorities an improved regulating framework is essential. Secondly, proactive regulatory scrutiny is needed to inspect the behavior of tech giants as they cross industries so that anticompetitive conduct does not emerge. Moreover, performing market studies and evaluations of digital markets at regular intervals will ensure that the competition regulations are kept up to date as well as reflective of current circumstances.[18] Thus, more defined guidelines that include abuse of dominance thresholds within the frameworks of the digital economy should be created and communicated for businesses to understand their legal boundaries. In addition to competition laws, data privacy and security regulations should be strengthened so as to alleviate anxieties in regard to user's information being collected and used by technology firms.

The conglomerate must embrace proactive compliance with competition law and work closely with the regulator to ensure that they are in tune with emerging laws regarding competitiveness. Transparency should be appreciated; making transparencies in data practices and algorithms can reduce issues revolving around market manipulation and privacy. Increasing data and privacy control to users can lead to trustworthiness. It is imperative to consider responsible innovation, balancing the need for innovations with addressing concerns of future effects on market competition and consumer welfare. This aims at encouraging inclusive growth through partnerships with small and medium-size enterprises.[19] Providing business tools, resources and support to SMEs create more diverse economic opportunities in addressing issues of monopolization. Finally, constructive engagement with state regulators and proactive involvement in the processes of regulation can allow Meta Family to resolve issues, offer feedback on shaping effective regulations concerning competition and data protection as well provide input into transforming a more transparent digital space. Together, these recommendations promise a digital environment in India that encourages innovation while preserving the values of competitive neutralities, consumer interests and data protection.

---

[18] AZB & Partners, CCI Dismisses Allegations of Abuse of Dominance against Google, Lexology, available at https://www.lexology.com/library/detail.aspx?g=f38cccb1-9773-4cfc-a52f-f7a1e1cf6b49, last seen on 27/10/2023.

[19] Tushar Chitlangia & Nikshetaa Jain, Deconstructing the Google Meet Case under Competition Law, IndiaCorp Law, available at https://indiacorplaw.in/2021/05/deconstructing-the-google-meet-case-under-competition-law.html, last seen on 26/10/2023.

# ARBITRABILITY OF COMPETITION LAW DISPUTES*


## ABSTRACT

Arbitration as a mode of dispute resolution has gained immense significance in the past decade. Arbitration is fundamentally a private and confidential mode of dispute settlement that parties now resort to be it for company-related matters, IPR matters, civil matters, etc. However, on the other hand, competition law disputes are of public nature as they affect the entire market. Where on one hand the confidentiality element of arbitration is indispensable, the public interest involved in competition law matters raises a question of private resolution of competition law cases. This conflicting nature brings us to a presumption that competition law disputes and arbitration are incompatible and do not go hand-in-hand.

States like EU and USA have an established position that competition law disputes can be resolved through arbitration. However, this still remains a debatable issue in India. The Competition Act, 2002 provides for domestic court and tribunals as the only resort for getting disputes resolved. Furthermore, even the courts have been hesitant to invoke arbitration in case of competition law cases, but there has been no concrete decision in this regard till date.

In light of this, the authors, in this paper makes an attempt to explore the areas of consistency as well as inconsistency between these two prominent yet contradictory domains of legal field. The position taken by the Indian judiciary and legislature shall be discussed, comparing it with that of EU and USA. An exploration into the regimes of different jurisdictions would help the authors reach a potential solution to harmonise the two domains while protecting the public interest element of competition law and at the same time keeping intact the private nature of arbitration as well.



*Keywords: Arbitration, Competition law, private enforcement, public interest.*


---


* Ms. Jhalak Nandwani, Assistant Professor, Auro University & Vidhi Tandel, Student, Auro University.

## INTRODUCTION

The debate of whether competition law disputes in India should be subject to arbitration have been in discussion for a while now. Arbitration Proceedings is gaining significance and is growing on a rapidly since it is one of the fastest ways to settle a dispute without getting into the long and expensive court procedures. Arbitration, however, only settles disputes between parties and avoids deciding cases involving the general public. Competition law disputes, on the other hand, appear to involve both parties to an agreement and are of public concern. They are governed by the Competition Act of 2002. Therefore, it is still unclear under Indian law whether such disputes can be arbitrated.

This paper explores the process of arbitrating competition claims, examines the guidelines that Indian courts have proposed, and compares their position with that of the United States and the European Union in an attempt to find a solution for the Indian judiciary that protects the public interest while arbitrating competition law disputes.

## UNDERSTANDING WHAT IS ARBITRABILITY

“Arbitrability” in simple words is concerned with whether a dispute is arbitrable or not. It is a concept of Arbitration law and talks about those disputes and matters on which the Arbitral Tribunal can act upon.[1] The word "arbitrability" does not have a universally recognised definition; nonetheless, it means those matters/disputes that can or cannot be settled subject to arbitration through an Arbitral Institution.[2]

Whether a dispute/matter is arbitrable can be emphasized by answering these three questions:[3]

(i) Whether a private arbitral institution is capable of resolving the dispute or only the court are entitled to deal with it.

(ii) Whether the dispute is covered by the arbitration agreement; and

(iii) Whether the parties have referred the dispute to arbitration

[1] Vasanth Rajasekaran†, Decoding Arbitrability and Determining the Boundaries of Arbitration in Indian Jurisprudence,SCC BLOG (Jul. 7, 2023), https://www.scconline.com/blog/post/2023/07/07/decoding-arbitrability-and-determining-the-boundaries-of-arbitration-in-indian-jurisprudence/

[2] The Concept of Arbitrability in Arbitration, ACERIS LAW LLP (Jan. 14, 2019), https://www.acerislaw.com/the-concept-of-arbitrability-in-arbitration/#:~:text=Arbitrability%20concerns%20whether%20a%20type%20of%20a%20dispute,domestic%20courts%2C%20under%20the%20provisions%20of%20national%20laws.

[3] Arbitrating Competition Law Disputes in India, CYRIL AMARCHAND BLOGS (Dec. 12, 2017), https://competition.cyrilamarchandblogs.com/2017/12/arbitrating-competition-law-disputes-india/.

As arbitrability is used in a broad sense it creates confusion and many times we fail to identify the exact meaning of the concept in order to use it in the most effective way. According to Carbonneau and Janson, arbitrability is determined as the dividing line between the public adjudication mission and the exercise of contractual freedom.

Developed nations have liberalised state approaches to arbitrability, thereby reducing the range of matters that are not arbitrable.[4] A few of these nations include the United States of America, Canada, New Zealand, and Australia. Developing nations, on the other hand, tend to be reserved to grant national courts sole jurisdiction over arbitrable disputes, believing that general governmental control over some matters, such as investment, should be preserved.

The primary rationale behind restricting the extent of arbitrability is the idea that private rights are intricately linked to specific public interests in a certain legal sector.

**ARBITRABILITY UNDER INDIAN LAW**

The Arbitration Act's Section 2(3), which only states that "certain disputes may not be submitted to arbitration"[5], does not provide the specific categories of cases which are not supposed to be submitted for arbitration or are non-arbitrable. This is the reason why the dispute of arbitrability in India are primarily addressed through case law rather than statutory provisions. In addition, the Arbitration Act's Sections 34(2)(b) and 48(2) empower courts the authority to set aside an award if the dispute could not be resolved through arbitration or if the result goes against the public policy, leaving the arbitrability issue entirely to the courts.[6]

If any of these questions are answered in the affirmative, the dispute cannot be arbitrated. The Supreme Court made it clear that while these criteria are not "watertight compartments," they would be very helpful in figuring out when a given issue would be non-arbitrable under Indian law. [7]

In response to the drawbacks of the Booz Allen test, a new framework for arbitrability was proposed in the *Vidya Drolia case* (famously known as the "4-fold test"). As per this case, *disputes are not arbitrable when the cause of action and/or subject-matter of the dispute:*

---

[4] *Id.*
[5] The Arbitration and Conciliation Act, 2015, Sec 2(3).
[6]The Arbitration and Conciliation Act, 2015, Sec 34.
[7] Ajar Rab, Defining the contours of the public policy exception - A new test for arbitrability in India*,* 7 IJAL, 253 (2015).

1. *relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;*
2. *affects third party rights, have erga omnes effect, require centralized adjudication, and mutual adjudication would not be appropriate;*
3. *relates to inalienable sovereign and public interest functions of the State; and*
4. *is expressly or by necessary implication non-arbitrable under a specific statute.*

If any of these questions are answered in the affirmative, the dispute cannot be arbitrated. The Supreme Court made it clear that while these criteria are not "watertight compartments," (not rigid compartments) they would be very helpful in figuring out when a given issue would be non-arbitrable under Indian law.[8]

According to the Supreme Court, there are three stages at which an issue can be raised regarding arbitrability. At first, in court on an application for a reference under Section 11 of the Arbitration Act or stay of pending judicial proceedings, and reference under Section 8 of the same Act. Second, throughout the arbitration process in front of the Arbitral Tribunal. Third, before the court at the stage of the challenge to the award or its enforcement.

The context of arbitrability, has no precise distinction between the terms "rights *in personam*" and "rights in *rem*." However, the notion of arbitrability in Indian arbitral jurisprudence has undergone significant development and reinforcement through various judicial precedents over time.[9] This ingoing development reinforces the understanding and application of arbitrability principles in the Indian legal landscape.

**INDIAN PERSPECTIVE**

All the disputed related to Competition Law is governed by the Competition Act, 2002, and are enforced through the quasi-judicial authorities called the CCI (Competition Commission of India) and COMPAT (Competition Appellate Tribunal) which are established under the Competition Act.

There is no such law or statement that says that Competition law matters are non-arbitrary. Although there are precedents that mention that those competition law matters/disputes that are

---

[8] Natalja Freimane, Arbitrability: Problematic Issues of the legal term, RGSL 170 (2012).
[9] Vasanth Rajasekarant, Decoding Arbitrability and Determining the Boundaries of Arbitration in Indian Jurisprudence, SCC ONLINE (July 7, 2023), https://www.scconline.com/blog/post/2023/07/07/decoding-arbitrability-and-determining-the-boundaries-of-arbitration-in-indian-jurisprudence/

of '*in rem'* nature and those matters/disputes which involve an element of public concern are considered as non-arbitrable.

Competition Law matters involve both public (*right in rem*) and private elements (*right in personam*). Where the parties involved in the dispute are private entities that want to and can get their disputes resolved through arbitration, but on the other hand, the award rendered in competition law cases are of public importance as they affect the market and consumers at large.

The issue is that Section 61 of the existing Competition law talks about "Exclusion of jurisdiction of civil courts" therefore, this prevents civil courts from hearing cases involving competition law.[10] Although, after the Act's 2017 amendment, the National Company Law Appellate Tribunal (NCLAT) now has the COMPAT's current authority. Therefore, all issues caused by violations of Sections 3, section 4, section 5, and section 6 of the Act may now be heard by the NCLAT.[11]

Now the question arises, if NCLAT can hear certain competition law matters/disputes then NCLAT can suggest parties to settle their disputes arbitrarily. But the Supreme Court ruled on December 14, 2021, that while acting as "courts of equity," the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) cannot compel parties to settle their disputes.[12]

*Union of India v. Competition Commission of India* is the first case in India to almost raise doubts on the viability of arbitration under competition law. The companies that had a concession agreement with the Ministry of Railways in this case filed a complaint with the CCI, claiming that the Railway Board was abusing its dominating position by imposing higher rates. The Railway Board contested the CCI's authority, in light of the parties' pre-existing arbitration agreement. The Arbitral Tribunal lacks the necessary knowledge to put together an inquiry report that is specifically needed to decide the issue at hand, hence the court decided that the CCI had the authority to hear the case.[13]

---

[10]Kanishka Bhukya, Harmonizing Arbitration and Competition Law Disputes: Pursuing Consistency In Adjudicatio*n*, TARIA (Jun. 23, 2023), https://aria.law.columbia.edu/harmonizing-arbitration-and-competition-law-disputes/?cn-reloaded=1.

[11] Sapna Kataria, *Arbitrability of Competition law in India – A Critical Analysis,* 7 APLPR (2021).

[12] Scope of NCLT & NCLAT's powers under section 7 of IBC, KHURANA & KHURANA (Dec. 23, 2021), https://www.khuranaandkhurana.com/2021/12/23/scope-of-nclt-nclats-powers-under-section-7-of-ibc-2016/.

[13] Supra note 13.

Furthermore, in the case of, *Union of India v. Competition Commission of India*, according to the parties' agreement, any disagreement that emerges during the course of business must be arbitrated. However, when a complaint alleging abuse of dominance was submitted with the Competition Commission of India (CCI), it was argued that arbitration should be used to settle the matter rather than going to public forums. The Delhi High Court dismissed the argument, ruling that an arbitration agreement could not limit a party's inherent right to file a lawsuit or information before the CCI or a court.[14]

Moreover, the prevailing competition law only authorises the CCI (Competition commission of India) and the NCLAT (National Company Law Appellate Tribunal) to hear Competition Law disputes and matters. Therefore, by examining the precedents and the Indian competition law, it is evident that Indian Jurisprudence is not yet evolved sufficiently to adopt Arbitration as a dispute resolution method for Competition Law disputes.

**INTERNATIONAL PERSPECTIVE; A COMPARITIVE STUDY OF USA & EU**

The significance of arbitration in the current times is steadily increasing, and now arbitration is now the most convenient alternative to court systems. The scope of arbitration in the international arena has seen a series of reforms over the years and now, more and more legal issues are being accepted for arbitration. Arbitration is also being accepted at the international level through various bilateral and multi-lateral agreements, as parties, especially in corporate or business matters, considers it convenient to get the dispute resolved through arbitration. For instance, the North American Free Trade Agreement contains specific provision for resolution of disputes through alternative mechanism like arbitration, and also, the dispute settlement understanding by WTO talks about using of arbitration as a mechanism that parties can resort to in case of trade-related disputes.[15]

But in the international arena, the question of resorting to arbitration as a means of resolving competition law disputes is dubious. The challenge arises as competition laws involve elements of both public and private law. Where the parties involved in the dispute are private entities that want to and can get their disputes resolved through arbitration, but on the other hand, the award rendered in competition law cases are of public importance as they affect the market and consumers at large. Though resorting to arbitration as a mechanism to resolve anti-trust dispute

[14] Avnish Prakash & Sakshi Jha, Arbitrability of Antitrust Disputes, INDIA CORP LAW (Sept. 28, 2021), Arbitrability of Antitrust Disputes - IndiaCorpLaw.
[15] Arbitrability of Antitrust Disputes in the US and Europe, CENTRO COMPETENCIA (Mar. 22, 2023), https://centrocompetencia.com/arbitrability-of-antitrust-disputes-us-and-europe/.

is disputable matter, but multiple jurisdictions are now resorting to the same. Due to the flexibility and convenience of arbitration, courts are now recognising arbitrability of anti-trust disputes.

**HISTORICAL PERSPECTIVE – US**

Tracing the history of this concern that whether competition law disputes are arbitrable, the position in the earlier times was simple. The judicial authorities across jurisdictions simply denied resorting to arbitration in such cases stating that competition law concerns the entire market wherein large number of players and consumers in the market are affected and require legal as well as economic analysis and expertise. In such cases, resorting to private dispute resolution mechanism for such concerns of public importance would not do justice. In American *Safety v. Mc Guire*[16], the dispute involved the element of competition law as well as Intellectual Property Laws. The issue that arose was regarding arbitrability of a trademark licence agreement that affected the competition in the market. court held that any agreement to arbitrate such claims are unenforceable as they involve the interest of third party as well, and so private arbitrators are not well-equipped to deal with such violations.

A shift from this rigid position was witnessed in the case of *Mitsubishi Motor Corp v. Soler Chrysler Plymouth*[17] wherein Mitsubishi permitted the respondent to sell its products only within a particular geographic area. The parties had a provision for resorting to arbitration as a mechanism to resolve disputes in their agreement, and so due to such an agreement between the parties, the court allowed to get this dispute of competition law resolved through arbitration. This decision paved a way internationally for recognition of arbitrability of anti-trust disputes.

**THE CURRENT SCENARIO – US**

In the current scenario, the question that whether competition law disputes are arbitrable has somewhat achieved certainty wherein courts are not accepting the arbitration award rendered in competition law matters. Two major jurisdictions, U.S. and EU has answered this issue in affirmative. The courts have come to this conclusion because of the fact that if the anti-trust laws of the state do not specifically talk about resolution of the disputes through arbitration, but at the same time, they do not even restrict the arbitral tribunal for adjudging such disputes. The EU treaty expressly permits parties to approach arbitral tribunals for getting their disputes resolved. Also, the national courts have been expressly given the power to review the

[16] American Safety Equipment Corp. v. J.P. McGuire & Co, 391 F.2d 821 (2d Cir. 1968).
[17] Mitsubishi Motor Corp v. Soler Chrysler Plymouth, 473 U.S. 614 (1985).

arbitration awards, even in relation to anti-trust disputes. This absence of any express prohibitory provision, we can infer that the legislature had no intention to restrict the scope of arbitration to anti-trust disputes. In *Eco Swiss China Time Ltd. v. Benetton International NV.*[18]

**U.S.A.**

As is the case in many other areas of law, the USA is one of the first states to recognize that competition law disputes can be resolved through arbitration. Until the mid-1980s there was an opinion that competition law was entirely in the domain of national courts. In the case of *American Safety Equipment Corp. v. J.P. McGuire & Co*[19], the court explicitly stated in the judgment that antitrust disputes were inadequate to be settled by arbitration.

The discussion around the arbitrability of competition law disputes arose in USA in 1985 by the case of *Mitsubishi Motor Corp v. Soler Chrysler Plymouth*[20] wherein Soler filed a case against Mitsubishi alleging that it had made an attempt to divide market, which is violation of the Sherman Act, 1890. The agreement between the parties had a clause that in case any despite arises between them, it would be referred to arbitration. The issue that arose here was that whether such issues involving element of competition law could be resolved through the mode of arbitration? Supreme Court held that the clause in the agreement between the parties that all disputes shall be resolved through arbitration implies that even the anti-trust cases would be resolved through the agreed mode, i.e., arbitration. However, this was subjected to judicial review wherein the domestic courts had the power to check if the arbitration award rendered is in consonance with the anti-trust laws of the State. When the dispute is referred to arbitration, the role of the courts is not eliminated. Courts still have a role to play, but at the post-arbitration stage. This is the 'second look' doctrine wherein the courts review the arbitral proceedings and decide its validity. The ultimate goal of entrusting this power with the courts was to ensure that arbitrators properly comply with the provisions of competition law.

**EUROPEAN UNION**

Similar to U.S., there was initially a debate around the applicability of arbitration to competition law disputes. The judiciary for hesitant to refer such cases for private settlement. It was after a period of time that courts started accepting arbitration as an alternative method

[18] Eco Swiss China Time Ltd. v. Benetton International NV., 61997CJ0126.
[19] Supra note 11.
[20] Supra note 12.

for resolving all kinds of disputes. In *Cartel Damages Claims Case*,[21] a clause in the agreement between parties stated that they can settle their competition law claims outside court as well. This clause was accepted by the courts. We can say that it indirectly refers to arbitration as an option for outside court settlement.

Also, when EC feels that any merger between two or more undertakings could distort competition within the European market, they used to take behavioural commitments from such enterprises vide which those enterprises refrained from indulging in such practices that adversely affects the market. And arbitration clause has always been a part of such behavioural commitments. EC used to resort to arbitration for ensuring enterprises comply with the behavioural commitments. In the *NewsCorp/ Telepiu case* [22], as the parties failed to comply with the behavioural commitments, the issue was taken before the arbitral tribunal and the tribunal held the parties guilty for breach. However, arbitrators are required to submit the report of the award rendered to the EC.

In the current scenario, in European Union, there is an undisputed precedent that competition disputes can be resolved through arbitration. However, like U.S., this power is subjected to judicial review. Court may intervene to ensure if the arbitration award complies with the competition laws of EU. In the case *BGH KZB 75/21*[23], the German Federal Court overturned an arbitration award on the grounds that it was in violation of the anti-trust laws of Germany. Courts have the power of judicial review over arbitration proceedings, and this power is applicable not just for evident errors but extends to errors made in compliance of legislations and public policy as well. This in a way points towards the acceptability of arbitration in anti-trust matters.

In *Société Aplix v. Société Velcro*[24], the Paris Courts have given the discretion to the arbitrators to apply the provisions of competition law while deciding the dispute between parties. Apart from the judicial pronouncements, many legislations have also accepted the arbitrability of competition law disputes. Article 1030 of the Act against Restraint of Competition, 2015[25] of Germany consider competition law disputes to be arbitrable.

---

[21] Case C-352/13, Cartel Damages Claims (CDC) Hydrogen Peroxide S.A. v. Evonik Degussa GmbH & Others, European Court of Justice (Fourth Chamber), (2015).
[22] NewsCorp/ Telepiu case, Case No COMP/M.2876
[23] Kartellrecht im Schiedsverfahren GWB §§ 19 bis 21; ZPO § 1059 Abs. 2 Nr. 2b.
[24] Société Aplix v. Société Velcro, Cour d'appel de Paris (1Ch. C).
[25] Act against Restraint of Competition, 2015, Art. 1030.

If we talk specifically about TFEU, which expressly and directly prescribes for the competition laws, the position is undisputed. Arbitration can be used as a resort for dispute resolution is such cases. However, for secondary legislations, the position is still debatable.

**CONCLUSION**

The debate around the arbitrability of anti-trust disputes is very long. The historical perspective across the jurisdictions was that are arbitration is a private method of dispute resolution and as competition law affects the entire market and consumers at large, the disputes concerning competition law cannot be arbitrated. However, with the evolvement of jurisprudence concerning the same, arbitration is the most convenient and resorted-to method for dispute resolution. And consequently, parties' resort to such method of dispute resolution as under arbitration, parties are free to choose arbitrator and can appoint arbitrators that have experience and expertise in the field of arbitration.

There is a long and rich history of discussing whether or not an antitrust dispute should be subject to arbitration proceedings. It appears that the current position on this matter—that is, that the antitrust conflicts are too important to be arbitrated—is untenable. Modern arbitration possesses all the procedural features required to have a significant inquiry about a dispute. Arbitration is the most adaptable and suitable means of resolving a disagreement, particularly in cases involving international disputes. Since antitrust law is specific, not every national court judge is an expert in it. Therefore, in the event of arbitration, parties may select arbitrators who are highly competent and possess relevant experience in the case. Parties may also choose the arbitration's setting, whichever is most convenient for them.

As per recent history, national courts are enforcing arbitration awards to resolve anti-trust matters, showing that antitrust disputes are arbitrable. Furthermore, Antitrust conflicts are arbitrable, which is evident by recent history as national courts are enforcing arbitration awards to resolve antitrust matters. Furthermore, antitrust conflicts are commercial in nature, and parties should not be barred from resolving their differences through arbitration. Arbitration procedures are being used more and more for commercial matters as time passes. Despite the inclusion of Arbitration as a dispute resolution method for competition law matter in US and EU, Indian Jurisprudence has not yet adopted this method. This highlights that Indian Jurisprudence still has considerable room for growth while simultaneously emphasizing the need of it to evolve.

# ARBITRABILITY OF COMPETITION LAW DISPUTES*


## ABSTRACT

Arbitration as a mode of dispute resolution has gained immense significance in the past decade. Arbitration is fundamentally a private and confidential mode of dispute settlement that parties now resort to be it for company-related matters, IPR matters, civil matters, etc. However, on the other hand, competition law disputes are of public nature as they affect the entire market. Where on one hand the confidentiality element of arbitration is indispensable, the public interest involved in competition law matters raises a question of private resolution of competition law cases. This conflicting nature brings us to a presumption that competition law disputes and arbitration are incompatible and do not go hand-in-hand.

States like EU and USA have an established position that competition law disputes can be resolved through arbitration. However, this still remains a debatable issue in India. The Competition Act, 2002 provides for domestic court and tribunals as the only resort for getting disputes resolved. Furthermore, even the courts have been hesitant to invoke arbitration in case of competition law cases, but there has been no concrete decision in this regard till date.

In light of this, the authors, in this paper makes an attempt to explore the areas of consistency as well as inconsistency between these two prominent yet contradictory domains of legal field. The position taken by the Indian judiciary and legislature shall be discussed, comparing it with that of EU and USA. An exploration into the regimes of different jurisdictions would help the authors reach a potential solution to harmonise the two domains while protecting the public interest element of competition law and at the same time keeping intact the private nature of arbitration as well.


*Keywords: Arbitration, Competition law, private enforcement, public interest.*

---

* Ms. Jhalak Nandwani, Assistant Professor, Auro University & Vidhi Tandel, Student, Auro University.

## INTRODUCTION

The debate of whether competition law disputes in India should be subject to arbitration have been in discussion for a while now. Arbitration Proceedings is gaining significance and is growing on a rapidly since it is one of the fastest ways to settle a dispute without getting into the long and expensive court procedures. Arbitration, however, only settles disputes between parties and avoids deciding cases involving the general public. Competition law disputes, on the other hand, appear to involve both parties to an agreement and are of public concern. They are governed by the Competition Act of 2002. Therefore, it is still unclear under Indian law whether such disputes can be arbitrated.

This paper explores the process of arbitrating competition claims, examines the guidelines that Indian courts have proposed, and compares their position with that of the United States and the European Union in an attempt to find a solution for the Indian judiciary that protects the public interest while arbitrating competition law disputes.

## UNDERSTANDING WHAT IS ARBITRABILITY

"Arbitrability" in simple words is concerned with whether a dispute is arbitrable or not. It is a concept of Arbitration law and talks about those disputes and matters on which the Arbitral Tribunal can act upon.[1] The word "arbitrability" does not have a universally recognised definition; nonetheless, it means those matters/disputes that can or cannot be settled subject to arbitration through an Arbitral Institution.[2]

Whether a dispute/matter is arbitrable can be emphasized by answering these three questions:[3]

(i) Whether a private arbitral institution is capable of resolving the dispute or only the court are entitled to deal with it.

(ii) Whether the dispute is covered by the arbitration agreement; and

(iii) Whether the parties have referred the dispute to arbitration

---

[1] Vasanth Rajasekaran†, Decoding Arbitrability and Determining the Boundaries of Arbitration in Indian Jurisprudence,SCC BLOG (Jul. 7, 2023), https://www.scconline.com/blog/post/2023/07/07/decoding-arbitrability-and-determining-the-boundaries-of-arbitration-in-indian-jurisprudence/

[2] The Concept of Arbitrability in Arbitration, ACERIS LAW LLP (Jan. 14, 2019), https://www.acerislaw.com/the-concept-of-arbitrability-in-arbitration/#:~:text=Arbitrability%20concerns%20whether%20a%20type%20of%20a%20dispute,domestic%20courts%2C%20under%20the%20provisions%20of%20national%20laws.

[3] Arbitrating Competition Law Disputes in India, CYRIL AMARCHAND BLOGS (Dec. 12, 2017), https://competition.cyrilamarchandblogs.com/2017/12/arbitrating-competition-law-disputes-india/.

As arbitrability is used in a broad sense it creates confusion and many times we fail to identify the exact meaning of the concept in order to use it in the most effective way. According to Carbonneau and Janson, arbitrability is determined as the dividing line between the public adjudication mission and the exercise of contractual freedom.

Developed nations have liberalised state approaches to arbitrability, thereby reducing the range of matters that are not arbitrable.[4] A few of these nations include the United States of America, Canada, New Zealand, and Australia. Developing nations, on the other hand, tend to be reserved to grant national courts sole jurisdiction over arbitrable disputes, believing that general governmental control over some matters, such as investment, should be preserved.

The primary rationale behind restricting the extent of arbitrability is the idea that private rights are intricately linked to specific public interests in a certain legal sector.

**ARBITRABILITY UNDER INDIAN LAW**

The Arbitration Act's Section 2(3), which only states that "certain disputes may not be submitted to arbitration"[5], does not provide the specific categories of cases which are not supposed to be submitted for arbitration or are non-arbitrable. This is the reason why the dispute of arbitrability in India are primarily addressed through case law rather than statutory provisions. In addition, the Arbitration Act's Sections 34(2)(b) and 48(2) empower courts the authority to set aside an award if the dispute could not be resolved through arbitration or if the result goes against the public policy, leaving the arbitrability issue entirely to the courts.[6]

If any of these questions are answered in the affirmative, the dispute cannot be arbitrated. The Supreme Court made it clear that while these criteria are not "watertight compartments," they would be very helpful in figuring out when a given issue would be non-arbitrable under Indian law. [7]

In response to the drawbacks of the Booz Allen test, a new framework for arbitrability was proposed in the *Vidya Drolia case* (famously known as the "4-fold test"). As per this case, *disputes are not arbitrable when the cause of action and/or subject-matter of the dispute:*

---

[4] *Id.*
[5] The Arbitration and Conciliation Act, 2015, Sec 2(3).
[6] The Arbitration and Conciliation Act, 2015, Sec 34.
[7] Ajar Rab, Defining the contours of the public policy exception - A new test for arbitrability in India, 7 IJAL, 253 (2015).

1. *relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;*
2. *affects third party rights, have erga omnes effect, require centralized adjudication, and mutual adjudication would not be appropriate;*
3. *relates to inalienable sovereign and public interest functions of the State; and*
4. *is expressly or by necessary implication non-arbitrable under a specific statute.*

If any of these questions are answered in the affirmative, the dispute cannot be arbitrated. The Supreme Court made it clear that while these criteria are not "watertight compartments," (not rigid compartments) they would be very helpful in figuring out when a given issue would be non-arbitrable under Indian law.[8]

According to the Supreme Court, there are three stages at which an issue can be raised regarding arbitrability. At first, in court on an application for a reference under Section 11 of the Arbitration Act or stay of pending judicial proceedings, and reference under Section 8 of the same Act. Second, throughout the arbitration process in front of the Arbitral Tribunal. Third, before the court at the stage of the challenge to the award or its enforcement.

The context of arbitrability, has no precise distinction between the terms "rights *in personam*" and "rights in *rem*." However, the notion of arbitrability in Indian arbitral jurisprudence has undergone significant development and reinforcement through various judicial precedents over time.[9] This ingoing development reinforces the understanding and application of arbitrability principles in the Indian legal landscape.

**INDIAN PERSPECTIVE**

All the disputed related to Competition Law is governed by the Competition Act, 2002, and are enforced through the quasi-judicial authorities called the CCI (Competition Commission of India) and COMPAT (Competition Appellate Tribunal) which are established under the Competition Act.

There is no such law or statement that says that Competition law matters are non-arbitrary. Although there are precedents that mention that those competition law matters/disputes that are

[8] Natalja Freimane, Arbitrability: Problematic Issues of the legal term, RGSL 170 (2012).
[9] Vasanth Rajasekarant, Decoding Arbitrability and Determining the Boundaries of Arbitration in Indian Jurisprudence, SCC ONLINE (July 7, 2023), https://www.scconline.com/blog/post/2023/07/07/decoding-arbitrability-and-determining-the-boundaries-of-arbitration-in-indian-jurisprudence/

of '*in rem'* nature and those matters/disputes which involve an element of public concern are considered as non-arbitrable.

Competition Law matters involve both public (*right in rem*) and private elements (*right in personam*). Where the parties involved in the dispute are private entities that want to and can get their disputes resolved through arbitration, but on the other hand, the award rendered in competition law cases are of public importance as they affect the market and consumers at large.

The issue is that Section 61 of the existing Competition law talks about "Exclusion of jurisdiction of civil courts" therefore, this prevents civil courts from hearing cases involving competition law.[10] Although, after the Act's 2017 amendment, the National Company Law Appellate Tribunal (NCLAT) now has the COMPAT's current authority. Therefore, all issues caused by violations of Sections 3, section 4, section 5, and section 6 of the Act may now be heard by the NCLAT.[11]

Now the question arises, if NCLAT can hear certain competition law matters/disputes then NCLAT can suggest parties to settle their disputes arbitrarily. But the Supreme Court ruled on December 14, 2021, that while acting as "courts of equity," the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) cannot compel parties to settle their disputes.[12]

*Union of India v. Competition Commission of India* is the first case in India to almost raise doubts on the viability of arbitration under competition law. The companies that had a concession agreement with the Ministry of Railways in this case filed a complaint with the CCI, claiming that the Railway Board was abusing its dominating position by imposing higher rates. The Railway Board contested the CCI's authority, in light of the parties' pre-existing arbitration agreement. The Arbitral Tribunal lacks the necessary knowledge to put together an inquiry report that is specifically needed to decide the issue at hand, hence the court decided that the CCI had the authority to hear the case.[13]

---

[10]Kanishka Bhukya, Harmonizing Arbitration and Competition Law Disputes: Pursuing Consistency In Adjudicatio*n*, TARIA (Jun. 23, 2023), https://aria.law.columbia.edu/harmonizing-arbitration-and-competition-law-disputes/?cn-reloaded=1.

[11] Sapna Kataria*, Arbitrability of Competition law in India – A Critical Analysis,* 7 APLPR (2021).

[12] Scope of NCLT & NCLAT's powers under section 7 of IBC, KHURANA & KHURANA (Dec. 23, 2021), https://www.khuranaandkhurana.com/2021/12/23/scope-of-nclt-nclats-powers-under-section-7-of-ibc-2016/.

[13] Supra note 13.

Furthermore, in the case of, *Union of India v. Competition Commission of India*, according to the parties' agreement, any disagreement that emerges during the course of business must be arbitrated. However, when a complaint alleging abuse of dominance was submitted with the Competition Commission of India (CCI), it was argued that arbitration should be used to settle the matter rather than going to public forums. The Delhi High Court dismissed the argument, ruling that an arbitration agreement could not limit a party's inherent right to file a lawsuit or information before the CCI or a court.[14]

Moreover, the prevailing competition law only authorises the CCI (Competition commission of India) and the NCLAT (National Company Law Appellate Tribunal) to hear Competition Law disputes and matters. Therefore, by examining the precedents and the Indian competition law, it is evident that Indian Jurisprudence is not yet evolved sufficiently to adopt Arbitration as a dispute resolution method for Competition Law disputes.

**INTERNATIONAL PERSPECTIVE; A COMPARITIVE STUDY OF USA & EU**

The significance of arbitration in the current times is steadily increasing, and now arbitration is now the most convenient alternative to court systems. The scope of arbitration in the international arena has seen a series of reforms over the years and now, more and more legal issues are being accepted for arbitration. Arbitration is also being accepted at the international level through various bilateral and multi-lateral agreements, as parties, especially in corporate or business matters, considers it convenient to get the dispute resolved through arbitration. For instance, the North American Free Trade Agreement contains specific provision for resolution of disputes through alternative mechanism like arbitration, and also, the dispute settlement understanding by WTO talks about using of arbitration as a mechanism that parties can resort to in case of trade-related disputes.[15]

But in the international arena, the question of resorting to arbitration as a means of resolving competition law disputes is dubious. The challenge arises as competition laws involve elements of both public and private law. Where the parties involved in the dispute are private entities that want to and can get their disputes resolved through arbitration, but on the other hand, the award rendered in competition law cases are of public importance as they affect the market and consumers at large. Though resorting to arbitration as a mechanism to resolve anti-trust dispute

---

[14] Avnish Prakash & Sakshi Jha, Arbitrability of Antitrust Disputes, INDIA CORP LAW (Sept. 28, 2021), Arbitrability of Antitrust Disputes - IndiaCorpLaw.

[15] Arbitrability of Antitrust Disputes in the US and Europe, CENTRO COMPETENCIA (Mar. 22, 2023), https://centrocompetencia.com/arbitrability-of-antitrust-disputes-us-and-europe/.

is disputable matter, but multiple jurisdictions are now resorting to the same. Due to the flexibility and convenience of arbitration, courts are now recognising arbitrability of anti-trust disputes.

**HISTORICAL PERSPECTIVE – US**

Tracing the history of this concern that whether competition law disputes are arbitrable, the position in the earlier times was simple. The judicial authorities across jurisdictions simply denied resorting to arbitration in such cases stating that competition law concerns the entire market wherein large number of players and consumers in the market are affected and require legal as well as economic analysis and expertise. In such cases, resorting to private dispute resolution mechanism for such concerns of public importance would not do justice. In American *Safety v. Mc Guire*[16], the dispute involved the element of competition law as well as Intellectual Property Laws. The issue that arose was regarding arbitrability of a trademark licence agreement that affected the competition in the market. court held that any agreement to arbitrate such claims are unenforceable as they involve the interest of third party as well, and so private arbitrators are not well-equipped to deal with such violations.

A shift from this rigid position was witnessed in the case of *Mitsubishi Motor Corp v. Soler Chrysler Plymouth*[17] wherein Mitsubishi permitted the respondent to sell its products only within a particular geographic area. The parties had a provision for resorting to arbitration as a mechanism to resolve disputes in their agreement, and so due to such an agreement between the parties, the court allowed to get this dispute of competition law resolved through arbitration. This decision paved a way internationally for recognition of arbitrability of anti-trust disputes.

**THE CURRENT SCENARIO – US**

In the current scenario, the question that whether competition law disputes are arbitrable has somewhat achieved certainty wherein courts are not accepting the arbitration award rendered in competition law matters. Two major jurisdictions, U.S. and EU has answered this issue in affirmative. The courts have come to this conclusion because of the fact that if the anti-trust laws of the state do not specifically talk about resolution of the disputes through arbitration, but at the same time, they do not even restrict the arbitral tribunal for adjudging such disputes. The EU treaty expressly permits parties to approach arbitral tribunals for getting their disputes resolved. Also, the national courts have been expressly given the power to review the

---

[16] American Safety Equipment Corp. v. J.P. McGuire & Co, 391 F.2d 821 (2d Cir. 1968).
[17] Mitsubishi Motor Corp v. Soler Chrysler Plymouth, 473 U.S. 614 (1985).

arbitration awards, even in relation to anti-trust disputes. This absence of any express prohibitory provision, we can infer that the legislature had no intention to restrict the scope of arbitration to anti-trust disputes. In *Eco Swiss China Time Ltd. v. Benetton International NV.*[18]

**U.S.A.**

As is the case in many other areas of law, the USA is one of the first states to recognize that competition law disputes can be resolved through arbitration. Until the mid-1980s there was an opinion that competition law was entirely in the domain of national courts. In the case of *American Safety Equipment Corp. v. J.P. McGuire & Co*[19], the court explicitly stated in the judgment that antitrust disputes were inadequate to be settled by arbitration.

The discussion around the arbitrability of competition law disputes arose in USA in 1985 by the case of *Mitsubishi Motor Corp v. Soler Chrysler Plymouth*[20] wherein Soler filed a case against Mitsubishi alleging that it had made an attempt to divide market, which is violation of the Sherman Act, 1890. The agreement between the parties had a clause that in case any despite arises between them, it would be referred to arbitration. The issue that arose here was that whether such issues involving element of competition law could be resolved through the mode of arbitration? Supreme Court held that the clause in the agreement between the parties that all disputes shall be resolved through arbitration implies that even the anti-trust cases would be resolved through the agreed mode, i.e., arbitration. However, this was subjected to judicial review wherein the domestic courts had the power to check if the arbitration award rendered is in consonance with the anti-trust laws of the State. When the dispute is referred to arbitration, the role of the courts is not eliminated. Courts still have a role to play, but at the post-arbitration stage. This is the ‘second look’ doctrine wherein the courts review the arbitral proceedings and decide its validity. The ultimate goal of entrusting this power with the courts was to ensure that arbitrators properly comply with the provisions of competition law.

**EUROPEAN UNION**

Similar to U.S., there was initially a debate around the applicability of arbitration to competition law disputes. The judiciary for hesitant to refer such cases for private settlement. It was after a period of time that courts started accepting arbitration as an alternative method

[18] Eco Swiss China Time Ltd. v. Benetton International NV., 61997CJ0126.
[19] Supra note 11.
[20] Supra note 12.

for resolving all kinds of disputes. In *Cartel Damages Claims Case*,[21] a clause in the agreement between parties stated that they can settle their competition law claims outside court as well. This clause was accepted by the courts. We can say that it indirectly refers to arbitration as an option for outside court settlement.

Also, when EC feels that any merger between two or more undertakings could distort competition within the European market, they used to take behavioural commitments from such enterprises vide which those enterprises refrained from indulging in such practices that adversely affects the market. And arbitration clause has always been a part of such behavioural commitments. EC used to resort to arbitration for ensuring enterprises comply with the behavioural commitments. In the *NewsCorp/ Telepiu case* [22], as the parties failed to comply with the behavioural commitments, the issue was taken before the arbitral tribunal and the tribunal held the parties guilty for breach. However, arbitrators are required to submit the report of the award rendered to the EC.

In the current scenario, in European Union, there is an undisputed precedent that competition disputes can be resolved through arbitration. However, like U.S., this power is subjected to judicial review. Court may intervene to ensure if the arbitration award complies with the competition laws of EU. In the case *BGH KZB 75/21*[23], the German Federal Court overturned an arbitration award on the grounds that it was in violation of the anti-trust laws of Germany. Courts have the power of judicial review over arbitration proceedings, and this power is applicable not just for evident errors but extends to errors made in compliance of legislations and public policy as well. This in a way points towards the acceptability of arbitration in anti-trust matters.

In *Société Aplix v. Société Velcro*[24], the Paris Courts have given the discretion to the arbitrators to apply the provisions of competition law while deciding the dispute between parties. Apart from the judicial pronouncements, many legislations have also accepted the arbitrability of competition law disputes. Article 1030 of the Act against Restraint of Competition, 2015[25] of Germany consider competition law disputes to be arbitrable.

---

[21] Case C-352/13, Cartel Damages Claims (CDC) Hydrogen Peroxide S.A. v. Evonik Degussa GmbH & Others, European Court of Justice (Fourth Chamber), (2015).
[22] NewsCorp/ Telepiu case, Case No COMP/M.2876
[23] Kartellrecht im Schiedsverfahren GWB §§ 19 bis 21; ZPO § 1059 Abs. 2 Nr. 2b.
[24] Société Aplix v. Société Velcro, Cour d'appel de Paris (1Ch. C).
[25] Act against Restraint of Competition, 2015, Art. 1030.

If we talk specifically about TFEU, which expressly and directly prescribes for the competition laws, the position is undisputed. Arbitration can be used as a resort for dispute resolution is such cases. However, for secondary legislations, the position is still debatable.

**CONCLUSION**

The debate around the arbitrability of anti-trust disputes is very long. The historical perspective across the jurisdictions was that are arbitration is a private method of dispute resolution and as competition law affects the entire market and consumers at large, the disputes concerning competition law cannot be arbitrated. However, with the evolvement of jurisprudence concerning the same, arbitration is the most convenient and resorted-to method for dispute resolution. And consequently, parties' resort to such method of dispute resolution as under arbitration, parties are free to choose arbitrator and can appoint arbitrators that have experience and expertise in the field of arbitration.

There is a long and rich history of discussing whether or not an antitrust dispute should be subject to arbitration proceedings. It appears that the current position on this matter—that is, that the antitrust conflicts are too important to be arbitrated—is untenable. Modern arbitration possesses all the procedural features required to have a significant inquiry about a dispute. Arbitration is the most adaptable and suitable means of resolving a disagreement, particularly in cases involving international disputes. Since antitrust law is specific, not every national court judge is an expert in it. Therefore, in the event of arbitration, parties may select arbitrators who are highly competent and possess relevant experience in the case. Parties may also choose the arbitration's setting, whichever is most convenient for them.

As per recent history, national courts are enforcing arbitration awards to resolve anti-trust matters, showing that antitrust disputes are arbitrable. Furthermore, Antitrust conflicts are arbitrable, which is evident by recent history as national courts are enforcing arbitration awards to resolve antitrust matters. Furthermore, antitrust conflicts are commercial in nature, and parties should not be barred from resolving their differences through arbitration. Arbitration procedures are being used more and more for commercial matters as time passes. Despite the inclusion of Arbitration as a dispute resolution method for competition law matter in US and EU, Indian Jurisprudence has not yet adopted this method. This highlights that Indian Jurisprudence still has considerable room for growth while simultaneously emphasizing the need of it to evolve.

# CAPTURING MOMENTS, RESPECTING BOUNDARIES: THE INTERPLAY BETWEEN PHOTOJOURNALISM AND THE RIGHT TO PRIVACY*


## ABSTRACT

Among the various forms of media, photojournalism is one such form that bridges the gap between reality and individuals. A simple picture delivers a thousand truths. Yet this truth is still burdened with the ethical and legal challenges that Photojournalism holds in regard to privacy and consent, especially in a digital era. With the advent of Artificial Intelligence, the need for regulation and checks on this form of journalism is much higher. Therefore, this paper explores four main components with respect to the challenges that are brought with Photojournalism. Firstly, it analyzes the intricate relationship between the right to privacy and the freedom of artistic expression with respect to Photojournalism. Secondly, it addresses the key concepts of Photojournalism and privacy while relying on the interplay between media and constitutional rights through relevant laws and judicial precedents. Thirdly, It analyzes the effect of artificial intelligence in the domain of Photojournalism and how it is going to affect Journalism, in general, on a digital platform. Lastly, the paper presents a comparative analysis of global approaches to photojournalism regulations and whether it can be implemented in India. Thus, the paper aims to bring forth the ongoing challenges in balancing privacy and Photojournalism in a Digital era.



*Keywords: Photojournalism, Privacy, Ethical Challenges, Constitutional Rights, Artificial Intelligence, Comparative Analysis*


.


* Aastha Verma, 4th year, BA LLB Hons., CHRIST (Deemed to be University), Bangalore, aastha.verma@law.christuniversity.in and Adhiti Sharma, 4th year, BA LLB Hons., CHRIST (Deemed to be University), Bangalore, adhiti.sharma@law.christuniversity.in

## 1. INRODUCTION

The idea of photography in public may not suit well in the Indian context owing to the fact that there is a need for laws to highlight the privacy issues arising from pure creative interests. Photojournalism marks a significant influence on the way the general public perceives the happenings in the world. It is a method of disseminating information through stories conveyed in the form of images. Such an action may often cause a sense of annoyance or embarrassment among the public if taken without consent. The conveyal of news through photographs can evoke intense emotions as compared to print media. Though the distinction between acts of intrusion and the professional photojournalism get blur at times, it is the nature of the photo that determines whether it is essential to file a complaint against the same. Thus, the question of whether coverage of news through photography results in invasions of privacy is a significant question to tackle.

## 2. PHOTOJOURNALISM

"If eyes are the windows of the soul, then photojournalism is the window on the most momentous events of our time," wrote Richard Stengal, the managing editor of Time, in 2009.[1] Pictures are a way of arresting or framing moments in time. With the invention of printing and photography in 1880–1897, the illustration of news by means of photography was made possible. The first war of independence in India was one of the first incidents of war photography in the world. Raja Deen Dayal was one of the most renowned photojournalists in India, known for his record of British rule in India. It is important that the terms 'photojournalism' and 'news photography' not be confused with celebrity or street photography, as both of these forms differ in the narrative and object they seek to achieve. In today's day and age, not all unforgettable photojournalism is being done by journalists; a large part of the same is being done by ordinary citizens empowered with technology. The concept of photojournalism has now evolved to be called citizen journalism.

## 3. PRIVACY

"Every citizen of India ought to be protected against violation of privacy. It is this expectation that enables us to exercise our choices liberty and freedom".[2] The right to privacy is central to dignity, identity and Personhood.[3]Privacy has been very difficult to define as a philosophical or a moral concept however, it has travelled a long journey to gain recognition

---

[1] Time, December 21, 2009, Vol. 174, No 24. P-4
[2] Manohar Lal Sharma v Union of India, (2021) SCC Online SC 985
[3] J. Braxton Craven, Jr., Personhood: The Right to Be Let Alone, I97

as a fundamental right.[4] In the landmark judgement of *KS Puttaswamy v UOI* it was held that While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place.[5] This implies that the performance of an activity by any person in a public place does not amount to implied consent of being captured. Since the Indian judiciary relies on US privacy laws for the interpretation of private matters, a detailed understanding of those laws is essential. The "Warren and Brandies" conversation marked the beginning of the US debate over the unalienable right to privacy. The main focus of Warren and Brandies' arguments raised concerns about the lack of laws that could protect someone's privacy from the unauthorised publication of instantaneous photos. [6]Hence it is essential to understand the interplay between Photojournalism and the right to privacy.

## 4. INTERPLAY BETWEEN PHOTOJOURNALISM & RIGHT TO PRIVACY

An essential aspect of journalism is the people's right to know, which rests on the foundational principle that the general public has the right to receive information about the events that affect their day-to-day lives. In order to cater to this right, photojournalists employ methods such as competing photography that bring the public as close to the event as possible. Such a right gives rise to a duty on the part of the photojournalist to safeguard their subject's right to privacy while photographing theme in discrete settings, unfavorable circumstances, or times of distress.

A photojournalist was brutally attacked by the police in Tamil Nadu in 2018 while reporting a protest, despite identifying himself as a photojournalist. This event brings to light the compelling need for police officials to uphold the right of photojournalists to report in the interest of the public.[7]

In the garb of capturing noteworthy events, photojournalists often cross the line of privacy often without having to face any repercussions of the same. It is an implied notion that until the subject does not have a problem with the same, the law does not step in due to which

[4] Ken Gormley, One Hundred Years of Privacy, I992 Wis. L. REV. I
[5] K S Puttaswamy v. Union of India (2014) 6 SCC 433
[6] Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 HARV. L. REv. I93, i96 (i890)
[7] Seshu, Geetha, and Urvashi Sarkar. "Getting Away with Murder." *Thakur Foundation*, Dec. 2019

consent of the person is also not treated as a necessary aspect of photojournalism. Such instances raise questions as to when a piece of art is considered to be a part of professional work and when it intrudes into the personal spheres of subjects. In matters of public photography, the law remains silent and is left up to the courts to decide upon the question of privacy.

In such situations, photojournalists must strike a balance between the interests of the public at large and the individual interests of privacy. In addition, they must consider the potential effects of such photography on the lives of the subjects and, hence, must naturally resort to taking precautions such as blurring their faces or concealing identifying information.

Several ethical issues also surround the concept of photojournalism. Kevin Carter is an award-winning photojournalist who received the Pulitzer Prize for his commendable photograph of a vulture following a starving child during a Sudanese famine in 1993. While the widespread publication of the photograph garnered the required attention towards the famine, it also garnered much criticism as to how Carter could have helped the child rather than merely taking a photo.

These illustrations serve as instances that showcase the complex ethical and legal decisions photojournalists have to make in order to strike the right balance between the public right to know and the privacy of the subject. In addition to the obligation of disseminating information to the general public, Photojournalists are required to safeguard the privacy and dignity of their subjects.

## 5. LAWS

There are no specific laws that govern the issue of privacy and media however, the issue can be approached through the lenses of fundamental rights and international conventions.
Capturing images of persons without their consent amounts to a violation of Art 88 of the European Convention on Human Rights (ECHR).[8] The right to privacy can be understood in the context of two fundamental rights: Article 19 (1) (a) [9]in addition to ensuring freedom of speech and expression of individuals also ensures the right to gather information in public

[8] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms,* 4 November 1950, ETS 5
[9] India Const. art. 19, cl. 1 (a)

interest[10]. The Supreme Court has recognised the right to privacy to be a right "implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21"[11]

As per the Digital Personal Data Protection Act 2023, a person may process the personal data of a Data Principal only for which the Data Principal has given her consent. [12]Personal data doesn't have to be in written form; it can also be information about what a data subject looks or sounds like, for example, photos or audio or video recordings.[13]

Therefore, the court has interpreted the right to privacy to be a fundamental right, however, not an absolute one, which has to be considered on a case-to-case basis. Public interest has been seen as an exception to this right from which the question of consent arises.

## 6. IMPACT OF AI ON PHOTOJOURNALISM

As a unique subgenre of journalism, photojournalism is a revolutionary way of expressing what is happening outside in the real world. It has the amazing ability to tell the audience a visual story that captures the essence of its subject—a person, a place, an object, or a particular context—without the use of spoken or written language. In doing so, a photograph conveys a reality, or at least a portion of it, thereby serving as a visual representation of truth. Whether the conveyed reality is factually accurate or not, whether it stands as an authentic portrayal or a deceptive illusion, lies within the purview of interpretation by the discerning eyes and cognizant minds of the audience.

With the introduction of artificial intelligence, Photojournalism has not only become easier but can also provide better and more accurate results of the reality in question. Cameras powered by AI can adeptly adapt their focus and exposure settings, even in challenging low-light scenarios. Consequently, this empowers photojournalists to secure high-quality visuals in situations where conventional cameras might falter, providing an opportunity to capture more and thus deliver more. [14]

[10] Raj Narain V. Indira Nehru Gandhi (1972) 3 SCR 841
[11] K S Puttaswamy v. Union of India (2014) 6 SCC 433
[12] The Digital Personal Data Protection Act, 4 (1), Gazette of India pt 2 sec 1 (August 11th, 2023)
[13] *Europian Commission*, European Union, 2019
[14] Himanshu Painuly, (2023, May 2), *Capturing the News in a New Light: How AI Imagery is Revolutionizing Photojournalism in India*, INDIAai.< https://indiaai.gov.in/article/capturing-the-news-in-a-new-light-how-ai-imagery-is-revolutionizing-photojournalism-in-india>

Moreover, AI has streamlined the post-processing and editing of images for photojournalists. AI-driven software can swiftly and automatically adjust elements such as color balance, contrast, and saturation in an image. AI also aids in the swift and precise categorization of images. AI software can analyze image content and categorize it based on the subject matter, allowing photojournalists to rapidly search and retrieve images from their archives. AI's impact is evident in the automation of image captioning and tagging. Thus, AI in general, not only expedites the administrative aspects of Photojournalism but also empowers photojournalists to focus their efforts on the core tasks of news reporting and information gathering.[15]

But as it gets easier to take and acquire sharp pictures of people, concerns regarding privacy grow increasingly. The capacity to take in-depth pictures of individuals while they go about their regular lives, participate in nonviolent demonstrations or advocacy efforts, or engage in other activities, presents a risk to their privacy.

With the introduction of image-processing AI's, such as Deepfake, the genuineness of the media is also put into question. These AI use a technique called GAN, which stands for Generative Adversarial Networks.[16] They have the ability to synthesise or manipulate a picture of another person into someone else's face. This means that in the picture or the video, the face of another person can be edited in such a manner that it almost looks real. Recently, celebrities like Nora Fatehi and Rashmika Mandanna became victims of this AI when certain pictures and videos were released on the internet, with their faces edited using Deepfake. Another AI tool helps expand pictures or edit elements into a picture with the help of a few commands given to it, thus entirely changing the whole structure of a photograph. If this aspect of AI is to be considered, the number of problems that it can create is very evident. With respect to photojournalism, any kind of news or media can be altered to showcase an entirely different story. And it takes less than a day for any breaking news to spread out. In such a case, the likelihood of spreading fake and inciting news increases significantly.

---

[15] Himanshu Painuly, (2023, May 2), *Capturing the News in a New Light: How AI Imagery is Revolutionizing Photojournalism in India*, INDIAai.< https://indiaai.gov.in/article/capturing-the-news-in-a-new-light-how-ai-imagery-is-revolutionizing-photojournalism-in-india>

[16] Shubham Pandey & Gaurav Jadhav, (2023, March 17), Emerging technologies and law: Legal status of tackling crimes relating to Deepfakes in India, SCC Blog, https://www.scconline.com/blog/post/2023/03/17/emerging-technologies-and-law-legal-status-of-tackling-crimes-relating-to-deepfakes-in-india/

Furthermore, the individuals in question often face obstacles in their future opportunities due to the persistent nature of images and media content on the internet. As a result, the idea of the "Right to be Forgotten" has attracted a lot of interest and debate, highlighting its growing significance in the digital age.

## 7. COMPARITIVE ANALYSIS

There are wide variations in the rules that regulate photojournalism between nations, which are a reflection of the distinct cultural, legal, and security factors in each one. With a focus on the First Amendment's protection of free speech and the lack of a reasonable expectation of privacy in public areas, the legal system in the United States is rather lax. With this method, street photographers can capture public life without obtaining permission.

On the other hand, nations like South Korea, Algeria, and the United Arab Emirates take more stringent positions. In these areas, taking pictures of public buildings, military bases, or people may be prohibited by law. These restrictions are frequently brought on by privacy rights, security concerns, or cultural traditions. The General Data Protection Regulation (GDPR) of the European Union introduces another level of complexity. Depending on the particular laws and interpretations in each EU member state, photojournalists may need to negotiate privacy concerns and consent requirements when taking and publishing images of individuals.[17]

To put it simply, there are a lot of different approaches to photojournalism laws. As photojournalists take and share images, they have to navigate this complex web of rules, cultural customs, and privacy expectations to make sure they are both compliant with the law and considerate of the privacy of the subject and local sensibilities.

## 8. JUDICIAL PRECEDENTS & CASE STUDY

- **R. Rajagopal v. State of Tamil Nadu[18]**

  This was the first case in the history of Indian judicial precedents where the court tried to balance the Right to Privacy & the Right to Freedom of Speech & Expression.

---

[17] Martin, (2023, July 10), *Understanding the legal landscape of street photography*, about photography blog, < https://aboutphotography.blog/blog/2023/7/6/understanding-the-legal-landscape-of-street-photography >

[18] 1994 (6) SCC 632

The Court asserted that the concept of privacy essentially equated to the "right to be let alone," emphasizing that no information concerning an individual's personal matters could be disseminated without the individual's consent, except when it was derived from public records. However, the Court also held that the publication of a photograph cannot be considered a violation of the Right to Privacy in all instances. The same can be allowed if: -

1) The person voluntarily becomes part of a controversy on which the photograph is being taken.
2) The matter in question is already a part of public record (Except photographs, names etc., of female victims of sexual assault, Kidnapping, abduction, etc. cannot be published)
3) It is related to the public discharge of duties by public servants.

- **G. Raman v. Superintendent of Police**[19]

  In this case, the issue was related to the publication of history sheets of criminals and whether it was violative of the Right to Privacy. The court here observed that:

  "*Privacy' has been defined as "the rightful claim of an individual to determine to which he wishes to share himself with others and control over the time, place and circumstances to communicate with others. It means the individual's right to control dissemination of information about himself, it is his own personal possession. It is well accepted that one person's right to know and be informed may violate another's right of privacy. Public has the right to know about corruption. nepotism, law breaking, abuse or arbitrary exercise of power, law and order, economy, media, science and technology, etc."*

  Hence, the court held that "*In public interest, the Police has got a right to disseminate information, concerning law and order, and crime. Display or publication of a photograph of a History Sheeted Rowdy, may be contended to infringe upon a person's right, in so far as it affects his identity, reputation in the minds of others, but at the same time, public interest would prevail over private interest*."

[19] 2012 SCC Online Mad 3589

- **The Afghan girl with beautiful eyes: Ethical Quandaries in Photojournalism**

A girl from Pakistan became the talk of the town when a picture of her was released as a cover in the famous National Geographic magazine. It was taken by Steve McCurry in 1984. The photograph instantly became famous all around the world, and the photographer received many accolades for it. The most striking part of the picture was the beautiful green eyes of the girl. The caption described her as having "haunted eyes" that "tell of an Afghan refugee's fears."[20]

But the story told by the picture revealed some unsettling facts. The girl in the picture was Sharbat Gula, who recalls that she was shocked to see the photographer when he visited her school. Her picture was taken without her permission, and she was not too happy about it since, in her culture, it was considered improper for a girl to show her face to a man who was not family and was someone unrelated to her. Although McCurry's career took off, she was left alone to face the consequences of his act. Fourteen years later, when she was interviewed again after tracking her down, she confessed that the details about her that were given in the magazine were not accurate.

It was claimed that her parents had perished in an explosion in Afghanistan. On suspicion of using a false name, she was arrested and imprisoned in Pakistan in 2016. Following that, she faced the possibility of being sent back to Afghanistan, where fundamentalist beliefs prohibit women from appearing in the media. The horrifying experience of Sharbat Gula emphasizes how urgently ethical reforms in photojournalism are needed to protect people's rights, dignity, and privacy, as well as to ensure that reporting is carried out in an ethical and responsible manner.[21]

## 9. CONCLUSION

Photojournalism and the right to privacy interact in a way that requires careful balancing between the ethical need to respect people's personal space and the storytelling value of images. Encouraging public opinion and spreading vital information through photojournalism

[20] Ribhu and Raghu Karnad, (2019, March 12), *You'll never see the iconic photo of the "afghan girl" The same way again*, The Wire, <https://thewire.in/media/afghan-girl-steve-mccurry-national-geographic >
[21] ibid

makes it more and more important to safeguard the privacy and dignity of people who are in the public eye.

Finding the correct balance in the complex tango between photojournalism and the right to privacy is a constant struggle that calls for the utmost respect for the people who are on both sides of the camera. Every photojournalist has an obligation to carry out this duty with honesty and compassion, making sure that their artistic vision preserves moments while also honouring the limits of individual privacy.

Apart from that, proper regulations or guidelines from the government might help in preventing this line between the Freedom of the Press and the Right to Privacy from getting blurred. A Code of Ethics should be followed by all Photojournalists, which should include certain boundaries and lines that should not be crossed by journalists while fulfilling their duty. This should include showing the honest picture of events without staging anything and providing the full context of the incident, maintaining the integrity of pictures by avoiding any editing which could distort the truth, treating the individuals that are being captured with humility and dignity, especially victims of any crime or tragedy and not giving fodder to any political agenda, stereotype or biases. Being the bridge between the citizens of the country and the government, this fourth pillar of democracy bears on its shoulders the responsibility of being impactful yet honest storytellers.

# FROM CONFLICT TO HARMONY: MAPPING THE CCI'S ROLE AT THE NEXUS OF COMPETITION LAW, INTELLECTUAL PROPERTY, AND INNOVATION IN THE LIGHT OF TELEFONAKTIEBOLAGET LM ERICSSON V. COMPETITION COMMISSION OF INDIA*

**ABSTRACT**

With the global market becoming closely knit day by day, there are several domains where there is an interdependence and overlap of various fields. Interestingly, the laws governing those fields may also overlap and sometimes be in conflict with each other. The intricate intersection of competition law, intellectual property rights, and technological innovation in India, centering on the pivotal role of the Competition Commission of India (CCI) and Emphasizing the CCI's responsibility in ensuring fair competition, the study delves into the nuanced dynamics within the ambit of the Patents Act and the voluntary Fair, Reasonable, and Non-discriminatory (FRAND) commitments assumed by patent holders as their technologies achieve standard-essential status. Analysing the interplay between the CCI's regulatory domain and the provisions outlined in the Patents Act, the paper sheds light on inherent challenges and complexities in regulating competition within this legal framework. By scrutinizing recent judicial interventions, particularly the Delhi High Court's decisions to quash CCI proceedings in the Ericsson and Monsanto cases, the research explores the court's rationale and its implications for the CCI's jurisdiction. The paper evaluates the broader implications of these judicial interventions on the CCI's efficacy in market regulation and competition fostering, while respecting special acts like the Patents Act. It critically examines the delicate balance required to safeguard the interests of patent holders without compromising the principles of fair competition. Drawing on international precedents and the court's reasoning, the paper underscores inherent tensions between competition law and patent law, elucidating challenges faced by the CCI in navigating this intricate terrain. The ongoing debate over a suitable forum for adjudicating FRAND disputes – specialized IP courts versus competition authorities – is explored, accompanied by discussions on potential reforms to enhance clarity and predictability in this evolving domain. In conclusion, this paper contributes a nuanced analysis of

---

* Manush Ashokkumar Dadlani, 2nd Year BA. LLB, Gujarat National Law University and Siddhi Prada, 2nd Year BBA. LLB, Gujarat National Law University

the CCI's functions in scenarios involving the Patents Act and FRAND commitments, with the Ericsson and Monsanto cases as crucial reference points. Advocating for a balanced approach, it emphasizes the imperative of safeguarding innovation while upholding fair competition principles within the Indian marketplace.

## INTRODUCTION

In ***Telefonaktiebolaget LM Ericsson v. Competition Commission of India*** (Ericsson II), the Delhi High Court declared in July 2023 that the Patents Act, 1970 will take precedence over the Competition Act, 2002 when it comes to cases involving patentee abuse of dominance in the execution of their patent rights. Consequently, it gave the Controller General of Patents exclusive authority over the Competition Commission of India ("CCI"). The High Court concluded that it would be against legislative intent to allow CCI to investigate claims of anti-competitive agreements pertaining to patents, overturning its single judge ruling from 2016 ("Ericsson I"). Moreover, it contended that CCI could not have jurisdiction since the Patents Act grants the authority to handle such agreements and because it is a unique statute in the domain of patents.

The Judgement pronounced by the Hon'ble High Court of Delhi in the said case takes away the power of the Competition Commission of India in cases where there is overlap of laws, even if there appears to be a Non-Competitive Practice in the market and leaves it to the special laws of the subject matter or the property. Hence it raises following questions that the Paper aims to discuss while critiquing the judgment passed by the Hon'ble High Court:

I. WHETHER THE HON'BLE HIGH COURT HAD JURISDICTION TO TRY THE MATTER?
II. WHAT IS THE SCOPE OF CCI'S POWERS UNDER THE COMPETITION ACT, 2002?
III. OVERLAP OF COMPETITION ACT AND PATENT ACT
IV. WHETHER THE CCI ASSERT JURISDICTION OVER SUBJECTS UNDER THE PATENT ACT?
V. RELEVANCE AND WORKINGS OF FRAND ASSURANCES IN THE INDIAN CONTEXT
VI. COMPARATIVE ANALYSIS OF THE INTERPLAY OF CCI WITH PATENT RIGHTS AND WAY FORWARD.
VII. WHETHER THE HON'BLE HIGH COURT HAD JURISDICTION TO TRY THE MATTER?

## A. PRELIMINARY ORDER BY THE CCI

**Legal Basis and Principles.**

Section 33 of the Competition Act, 2002 specifies that where, during an inquiry, the CCI is satisfied that an act in contravention of substantive provisions of the Competition Act (broadly, anti-competitive agreements, abuse of dominant position and regulation of combinations) has been committed and continues to be committed or that such act is about to be committed, the CCI may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary. The principles for deciding the interim relief application under Section 33 of the Competition Act were laid down by the Supreme Court of India (Supreme Court) in CCI v. SAIL[1]. Moreover, according to legal provisions, the initiation of an "inquiry" is legally presumed to occur when the CCI exercises its authority under Section 26(1) of the Competition Act, directing the Director General (the investigative arm of the CCI) to commence investigations. This presumption underscores that the inquiry, as per the Competition Act, remains ongoing until a final order is lawfully issued by the CCI.[2]

**Nature of Investigation Orders**

An order for investigation issued under Section 26(1) is inherently preliminary in nature and does not carry any immediate civil consequences. Furthermore, it does not serve as a final determination of the issues raised against the parties involved. Any intervention by the court at this early stage of the proceedings would essentially enable the parties to evade the investigation itself, thus frustrating the overarching purpose envisioned by the Competition Act. Therefore, the court rightly concurred with the learned single judge in refraining from interfering with the CCI's order and subsequently dismissing the petition.[3]

[1] CCI v. SAIL, (2010) 10 SCC 744.
[2] Rashmi Bagri, CCI's Order For Preliminary Enquiry Does Not Attract Civil Consequences; Writ Court Can't Interfere : Madras HC, Livelaw.com, (September 7, 2023, 3:03 AM), www.livelaw.in/news-updates/ccis-order-for-preliminary-enquiry-does-not-attract-civil-consequences-writ-court-cant-interfere-madras-hc-189093
[3] M/s MRF Limited v. Ministry of Corporate Affairs and Ors., W.A.No. 529 of 2018.

**Judicial Precedents.**

The Madras High Court has recently established that, within the context of writ jurisdiction, it is not appropriate to intervene or interfere with a preliminary inquiry initiated by the Competition Commission of India under Section 26(1) of the Competition Act.[4] [Para 3] '*CCI being the fact-finding authority shall be left free to find out the truth of the allegations after conducting a proper inquiry and thus, any interference at the stage of investigation would certainly amount to usurping the original jurisdiction of such authority unless the interference is so warranted for want of jurisdiction*'

**Supreme Court's Clarification**

The judgment of the Apex Court in the case of ***Competition Commission of India v. Steel Authority of India*** is instructive. In this judgment, the Supreme Court clarified that an order or direction issued under Section 26(1) of the Competition Act, following the formation of a prima facie opinion, serves as a straightforward directive to initiate an investigation. Importantly, such an order does not constitute a final determination that would establish or affect the rights or obligations of the parties involved. Consequently, it does not render itself appealable.[5]

**B. INVESTIGATION PENDING**

**Interim Level Protection:**

The investigation impending makes the matters sub-judice to the commission, which raises questions about the maintainability of the writ petition in the light of the investigation and procedural safeguards ensuring a fair trial. Several procedural safeguards are in place to protect the rights of parties when the CCI grants interim relief, particularly in cases where it is granted ex parte.

i. **Separate Order with Reasons:** The CCI must issue a distinct order explaining the rationale behind granting the interim relief. This ensures transparency and provides parties with insight into the basis for the decision.

---

[4] *Id*. At 3.
[5] Competition Commission of India v. Steel Authority of India Ltd., (2010) 10 SCC 744.

ii. **Mandatory Hearing:** When the CCI grants interim relief ex parte, it is obligatory for the CCI to promptly schedule a hearing for the parties against whom the order has been issued. This affords affected parties the opportunity to present their arguments and defences.

iii. **Timely Final Orders**: In cases where interim orders are issued, the CCI is required, to the extent possible, to issue a final order within ninety days of the date of the interim order. This regulatory framework aims to expedite the resolution of cases and minimize delays in the proceedings.

**Ericsson's Challenge to CCI's Order**

However, despite the established procedural safeguards, Ericsson chose to challenge the CCI's order dated July 14, 2023, directing an investigation into the matter involving its patents. Ericsson took this grievance to the Rayville High Court, invoking its Writ jurisdiction on July 20th. In its petition, Ericsson not only contested the validity of the CCI's order but also sought its annulment, claiming that the order adversely affected its rights and interests.

## I. WHAT IS THE SCOPE OF CCI'S POWERS UNDER THE COMPETITION ACT, 2002

### A. ESTABLISHING CCI'S AUTHORITY:

**CCI's Inquisitorial Jurisdiction:**

The CCI was established under §7(1)[8] of the Competition Act, 2002 and §7(2)[9]of the statute provides for the purpose of setting up the Competition Commission '*CCI shall be a body corporate having perpetual succession and a common seal with a power to acquire,hold and dispose of property both movable and immovable and to contract and shall by the saidname sue or be sued.'* As held in ***CCI v. SAIL***, '*the CCI under the scheme of the Act, is vested with inquisitorial, investigative, regulatory, adjudicatory and to a limited extent even advisory jurisdiction*.'[6] The Commission is also empowered to carry out inquiry of any contravening act if it comes to its knowledge, under ***§19 CA*** of the act.

[6] CCI v. SAIL

**Powers of the Director General of the CCI**

The ***§26 CA*** gives the procedure to carry out an inquiry, under ***§26(1) CA***, the commission can issue directions to the Director General if the case *prima facie* appears to be contravening to the provisions of the act. The Competition Act, 2002 confers this power upon the CCI under ***§33 CA,*** which empowers the CCI to issue restraint orders, including ex-parte restraint order if the commission feels satisfied that the practice is in the contravention of ***§3(1), 4 or 6*** of the CA, then the Competition commission can issue orders by the time the issue in considerationis resolved. The Director General has been conferred investigative powers of that of a commission under ***§36 CA***, under the ***§41 CA***. The Director, upon the direction of the commission, assists the commission in investigation of the matters of contravention. Hence, the director shall not have the sole authority but work as an assistant.

### B. Factual Analysis of Ericsson's Market Position

It was alleged that Ericsson, on the basis of information received against for abuse of dominant position, and revive investigation from the same stage, subject to any other objections. iBall had made similar contentions against Ericsson as did Micromax and Intex. As per the complaints filed by these companies in the CCI about unfair royalty demands, hostile and obdurate response to the notices issued, Ericsson, prima facieappears to use its dominant market position in said patented technology. Also, the CCI vide its order,concluded that the practices by Ericsson were prima facie anti-competitive in nature and amount to the Abuse of the Dominant Position under The Competition Act under ***§4(2)(a)(i).*** The Commission, during the commencement of the order of the inquiry, directed the Director General as grounds were of anti-competitive practice and non-compliance of FRAND assurance.

The Commission, after it ordered an inquiry into the act of the Ericsson, The CCI was supplied with information by Micromax available in public domain, of unfair gains due to reportedly unfair licensing terms, by that time, to restrain any anti-competitive practice and to protect the anticipated undue loss due to royalty demands, the Commission, exercising the powers given under §***.27(g)CA*** and ***§33 CA*** according to due procedure mentioned in ***§26(1) CA*** issued an interim order. (Even The Hearing, as per the ***Regulation No. 31of the Act***, is pending)

### C. CONCLUSION ON CCI'S POWERS

Hence, in light of the law, cited case laws and facts, it is evident that the Competition Commission of India, to protect the market from anticipated losses due to unfair licensing terms and unfair practices, appears to have the legally appropriate power and reasons to issue interim orders while referring a matter for investigation.

## II. OVERLAP OF COMPETITION ACT AND PATENT ACT

### A. LEGAL FRAMEWORK:

**Commission's Duty under ICA**

The §***.18, CA*** prescribes the duties of a commission as, *"Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India",* The commission under the section is mandated by law to eliminate practices which have or have a potential to create an adverse effect.

**Referral Mechanism provided by CCI**

The ***§21A, CA***, which was added as an Amendment in the year 2007, provides for CCIto refer to a statutory authority in-charge of implementation of any Act, if it proposes to make any decision contrary to the provisions of the Act and an issue in this regard is raised byany party. Similarly, ***§21, CA*** provides for a statutory authority to make a reference to the CCI if it proposes to take a decision which may be contrary to the provisions of the Competition Act. Hence it was the legislature's clear intent to give the act an additive and not derogatory effect.

## III. IN THE EVENT OF A NOTIONAL OR A REAL ADVERSE IMPACT IN A RELEVANT MARKET, LEADING TO AN OVERLAP OF THE PROVISIONS OF THE COMPETITION ACT, 2002 AND THE PROVISIONS OF THE PATENT ACT, 1970, WHETHER THE CCI ASSERT JURISDICTION OVER SUBJECTS UNDER THE PATENT ACT?

### A. COMPULSORY LICENSING

The **§.18, CA** prescribes the duties of a commission as, "Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India", The commission under the section is mandated by law to eliminate practices which have or have a potential to create an adverse effect. The **§21A,CA**, which was added as an Amendment in the year 2007, provides for CCIto refer to a statutory authority in-charge of implementation of any Act, if it proposes to make any decision contrary to the provisions of the Act and an issue in this regard is raised by any party. Similarly, **§21, CA** provides for a statutory authority to make a reference to the CCI if it proposes to take a decision which may be contrary to the provisions of the Competition Act. Hence it was the legislature's clear intent to give the act an additive and not derogatory effect. The **§60, CA** provides for a non obstante clause where the act shall have an overriding effect over the laws not consistent with the provisions of this act. Furthermore, the **§62, CA** provides that the provisions of the Act shall be in addition and not in derogation of the other laws and application of other laws are not barred in the present case. In the cases where the Competition Commission of India, feels that there is an adversarial impact on market and losses are anticipated thereof, it has a statutory duty of acting and asserting jurisdiction over the matters of the other laws, Patent Act, 1970 here. The Patents act provides for the Rights of the Patent holder and acknowledges safeguard. The §90(1)(ix), PA30 talks about grants of compulsory licensing after completion of judicial or administrative procedure if the patents are found to be anti-competitive. The Petitioner's Argument stands ousted as the said provisions of the patents act provide for a compulsory license after judicial or administrative process as completed and the Comptroller General of Patents (hereinafter 'CGP') shall endeavor to ensure that the due process before giving license is completed. Also, §83, PA provides the grounds to be considered while exercising powers under Chapter XVI of the said act. The clauses §83 (b), (c) & (f) are kept to ensure the non-misuse of the patent rights conferred under the same act.

### B. INTERNATIONAL AGREEMENTS

The Patent act was amended further to incorporate and accommodate the provisions of the Paris Convention and the TRIPS Agreement as ratified by India. **Article 5(A)(2) of the Paris**

**agreement** reads as follows, *"Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent"* **Article 40.2 of the Section 8 of the TRIPS Agreement** reads as follows, *"Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices."*

### C. FACTUAL ANALYSIS OF JURISDICTION CHALLENGE

The petitioner challenged the Jurisdiction of the CCI in the present case on the grounds that the matter dealing with the Patents and Licensing terms falls under the Patents Act and not The Competition Act. It can be concluded that, Ericsson, on the prima facie opinion and finding is found to have gained unreasonably from making profits by adopting unfair trade practices by charging excessive Royalty on the patentee SEP owner in an advantageous position of great market power. Obviously, an SEP holder like Ericsson, for example, would be able to demand supra-competitive pricing royalties from all standard implementers (companies that sell goods) using SEP-accepted proprietary technology). claims to be the owner of a huge number of SEPs, including the three that are the topic of legal dispute between the current parties. It is undeniable that, as a SEP holder, Ericsson has a dominant position and enormous negotiating leverage over other users of the technology who have no choice but to comply to standards that incorporate Ericsson-patented technologies. It is also widely acknowledged that a patent holder of a technology adopted in a standard may be able to stymie other market participants utilizing the same technology. An SEP holder is often obliged to agree to licensing their patents on FRAND terms in order to limit the potential of such behavior. This requires the SEP holder to license technology on conditions that are fair, reasonable, and non- discriminatory. The conduct of Ericsson here prima facie appears to be contrary. The CCI, performing its duty as explained under **§.18, CA** and exercising its powers conferred to it under **§.60, CA r/w §62, CA** issued the order under **§26(1), CA** as the complainant approached the CCI under **§.19(1)(a), CA** to file a complaint. The Patents Amendment Act provides for safeguards against the anti-competition law which was to make the law TRIPS and Paris Agreement Compliant whereas, the TRIPS & Paris agreement do not stop and also confer

the right to the member countries to make the laws to provide for compulsory licensing to prevent abuse of the Intellectual property rights of the patent. Also, **§21, CA** provides for a statutory authority to refer to the CCI if the authority has to take a decision in contravention of the CA, and it is nowhere seen that the CGP has referred to CCI after the issuance of the interim order. The **§62, CA**, has to be taken into consideration while reading the **§90(1)(ix), PA** as the before granting a compulsory license, the CGP shall endeavor to ensure that the trade practice is anti-competitive in nature and therefore it has to wait for a judicial or an administrative procedure.

### D. CONCLUSION ON CCI'S JURISDICTION

Also, in the case of ***Competition Commission of India v. Bharti Airtel Limited and Others***, the Hon'ble Supreme court of India held that the order of the CC is administrative in nature and the Court also observed that the CCI was a market regulator with the jurisdiction to examine issues affecting competition in markets in India, This makes CCI an appropriate and a right authority to address the grievances in the event where unfair and anti-competitive practices, have or might have a notional or a real adverse impact in a relevant market and CCI by looking into the matter of Ericsson, prima facie found it appropriate and in accordance with its duty to act upon the matter to prevent such unfair gains. The Remedy available under **§84(7), PA** does not bar the remedy under **§27, CA** and they are not mutually exclusive. Hence it appears that the CCI and or the DG has not impinged over the jurisdiction of the Patents Act and or CGP but has worked in addition and not in contravention or derogation of the other law. Therefore, citing all the relevant statutory provisions and case laws, it is humbly pleaded before the Hon'ble Court that in order to avoid the continuance of the anti-competitive practice and stoppage of unfair gains made out of the same, In the event of a notional or a real adverse impact in a relevant market, leading to an overlap of the provisions of the Competition Act, 2002 and the provisions of the Patent Act, 1970 the CCI can assert jurisdiction over subjects under the Patent Act., 1970.

## IV. RELEVANCE AND WORKINGS OF FRAND ASSURANCES IN THE INDIAN CONTEXT

## A. FRAND AND TRADE PRACTICES:

In the legal framework of India, where the Competition Act takes center stage, the concept of Fair, Reasonable, and Non-Discriminatory (FRAND) assurances plays a pivotal role in navigating the intersection of competition law and intellectual property rights (IPR). While the Act doesn't explicitly mention FRAND, it implicitly recognizes the delicate balance needed between IPR and competition within Sections 3 and 4, addressing anti-competitive agreements and abuse of dominance, respectively. FRAND commitments are often made in the context of the standard-setting process, particularly concerning standard-essential patents (SEPs). Once a technology incorporates SEPs and becomes a standard, the expectation is that patent holders will adhere to FRAND terms, ensuring fair competition and widespread adoption of the standard.

In the realm of antitrust enforcement, refusal to license SEPs on FRAND terms can be considered an abuse of dominant position under Section 4 of the Competition Act[7]. A notable case exemplifying this is the Ericsson v. Micromax [8]dispute, where the Competition Commission of India (CCI) directed an investigation into Ericsson's alleged abuse of dominance, emphasizing the competition law implications of SEP licensing practices.

In recent years, the Competition Commission of India (CCI) has been confronted with complex cases involving FRAND assurances, particularly in the context of Standard Essential Patents (SEPs) related to 2G, 3G, and 4G technologies in GSM standard-compliant mobile communication devices. This section aims to provide a comprehensive overview of the CCI's stance on FRAND-encumbered SEP cases, analyzing key judgments, and exploring broader questions that have emerged.

The CCI's stance on FRAND-encumbered SEP cases is rooted in the understanding that members of organizations like the European Telecommunications Standards Institute (ETSI), are contractually bound by FRAND obligations. FRAND licenses are designed to prevent "hold ups[9]" and "royalty stacking[10]," which are common issues associated with standardization of technology.

---

[7] The Competition Act 2002, s 4.
[8] W.P.(C) 464/2014 & CM Nos.911/2014 & 915/2014
[9] Unwired Planet v. Huawei [2017] EWHC 711 (Pat).
[10] FRAND V. COMPULSORY LICENSING: THE LESSER OF THE TWO EVILS SRIVIDHYA RAGAVAN, BRENDAN MURPHY, AND RAJ DAVÉ†<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1285&context=dltr>

The commission has identified cases like those of Ericsson as dominant in the relevant market of SEPs for GSM standard-compliant mobile communication devices in India. However, concerns arose over Ericsson's licensing practices, particularly the discriminatory nature of royalties being charged on the price of the end device (EMVR) instead of the chipset where the technology is implemented (SSPPU). Additionally, non-disclosure agreements (NDAs) imposed on implementers were viewed as indicative of discriminatory licensing practices and a breach of FRAND obligations.

### B. UNITED STATES CASES:

In the ***Broadcom v. Qualcomm*** [11]case of 2007, Qualcomm faced allegations of engaging in discriminatory licensing of Standard Essential Patents (SEPs) in violation of Section 2 of the Sherman Act. Among the charges were claims that Qualcomm imposed double royalties on manufacturers using non-Qualcomm chipsets and demanded overly broad cross-license rights from its licensees. Despite Qualcomm's motion to dismiss being denied, the case settled before a substantive ruling was reached, leaving the question of whether a breach of FRAND commitments could constitute an antitrust violation unanswered.

Similarly, the ***In re Innovatio case*** brought attention to discriminatory licensing practices in violation of FRAND commitments. Judge Holderman emphasized that a FRAND licensor, such as Innovatio, cannot discriminate between licensees based on their market position[12]. This decision underscored the importance of consistent treatment of licensees in assessing FRAND obligations.

Furthermore, an arbitration panel in 2015 found certain royalties charged by Ericsson to Huawei inconsistent with the non-discrimination commitment made to the European Telecommunications Standards Institute (ETSI)[13]. This case highlighted the global significance of adhering to FRAND commitments in the context of SEP licensing.

---

[11] Broadcom v. Qualcomm, 501 F.3d 297

[12] In re Innovatio IP Ventures, LLC Patent Litigation (N.D. Ill. 2013).

[13] Civil Minutes – General at 2, TCL Comms. v. Ericsson (C.D. Cal. 2016).

## C. EUROPEAN CASES:

The ***Samsung v. Unwired Planet*** case in the UK Court of Appeal, 2016, explored the impact of a FRAND non-discrimination covenant on SEPs transferred from Ericsson to Unwired Planet, a patent assertion entity (PAE)[14]. Huawei argued that Unwired Planet should not charge rates inconsistent with those previously set by Ericsson after acquiring the SEPs. The court ruled that the effective transfer of FRAND obligations was necessary, preventing Unwired Planet from obtaining more favorable terms than Ericsson could have.

A subsequent case, ***Unwired Planet v. Huawei***[15] in 2017, clarified that the non-discrimination prong of ETSI's FRAND commitment does not create a rigid test for challenging existing licenses solely based on lower rates for similarly situated licensees. The court grounded its analysis in competition law rather than presumed contractual understanding.

## D. HISTORICAL EVOLUTION IN INDIA:

The initial orders in 2013 set the foundation for FRAND cases in India. The Best IT World (India) Private Limited (known as iBall) judgment in May 2015[16], closely following the ***Intex Tech v. AZ Tech*** order[17] by the Delhi High Court, echoed the judgments in preceding cases involving Micromax and Intex. Notably, the iBall order discussed NDAs but remained unclear on whether they are per se anticompetitive under Indian competition law, drawing some parallels with the District Court of Delaware case against Rockstar Consortium.

The analysis of the conduct of the informant, particularly their willingness to license and potential hold-out strategy, was absent from the early orders, leaving room for further exploration in subsequent cases.

Two broader questions have arisen from CCI FRAND orders:

---

[14] Samsung Elecs. Co. Ltd. v. Unwired Planet Inc., (UK Ct. Appeal, 2016).

[15] [2017] EWHC 711 (Pat)

[16] Best IT World (India) Private Ltd. v Telefonaktiebolaget LM Ericsson, Case No. 4 of 2015, Competition Comm'n of India (12 May 2015)

[17] Intex Technologies (India) Ltd. and Anr. Vs. AZ Tech (India) and Ant., 2017(70) PTC 118 (Del) (DB).

1. **Threshold of Inquiry Under Section 26(1) of the Competition Act:**

There is a need to consider whether there should be a threshold of inquiry for CCI prima facie orders that determines further investigation of a case. This question gains significance in the context of FRAND cases, where the intricacies of patent licensing and antitrust issues often require a nuanced approach.

2. **Relevant Market Definition in Competition Cases:**

The Supreme Court's 2017 order highlighted the importance of a broad and dynamic relevant market definition. In cases involving IPRs, there is a risk of circularity in defining markets based on patented technology, presuming dominance before market definition. Recent CCI orders in sectors like Uber and Ola have been praised for adopting broader definitions that acknowledge innovation in new business models.

## E. Policy Implications and Global Discourse

The DIPP Discussion Paper of 2016[18] raised critical questions for effective policymaking in FRAND. It questioned whether existing provisions in IPR-related legislations, especially the Patents Act, are adequate to address issues related to SEPs and their availability on FRAND terms. The National IPR Policy supports CCI's intervention in cases of anti-competitive licensing terms[19].

Taking lessons from global discourse on royalty determination[20], bargaining dynamics, and willingness of parties the CCI has to work harmoniously with other regulatory bodies, such as the Telecom Regulatory Authority of India and IP enforcement agencies. The same has been directed by the Supreme Court of India in its judgements[21] where it states that the CCI works in 'comity' with other agencies[22].

---

[18] DISCUSSION PAPER ON STANDARD ESSENTIAL PATENTS AND THEIR AVAILABILITY ON FRAND TERMS, Government of India, Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, 1st March 2016.

[19] Yogesh Pai, Nitesh Daryanani, Patents and competition law in India: CCI's reductionist approach in evaluating competitive harm, Journal of Antitrust Enforcement, Volume 5, Issue 2, August 2017, Pages 299–327, https://doi.org/10.1093/jaenfo/jnx004

[20] J. Gregory Sidak, 'The Proper Royalty Base for Patent Damages,' 10 J. Competition L. & Econ. 989, 990 (2014).

[21] Competition Commission of India V. Bharti Airtel Limited and Ors. Civil Appeal No(S). 11843 of 2018 (Arising Out of SLP (C) No. 35574 of 2017)

[22] Dec 31, 2018 Role of CCI in Regulated Sectors: Overlapping Jurisdictions https://www.azbpartners.com/bank/role-of-cci-in-regulated-sectors-overlapping-jurisdictions/

The CCI, in cases like Ericsson v CCI, has emphasized that it should not assume the role of a price regulator, especially in matters involving excessive pricing and royalty determination. The Commission, in dismissing a complaint in the ***Manjit Singh Sachdeva case,*** clarified its limitations in fixing maximum retail prices, underscoring the spirit of competition law[23].

In moving forward, the CCI aims to develop a more nuanced approach towards the treatment of non-disclosure agreements. Recognizing NDAs as a significant part of licensing deals and a legitimate business practice, the commission intends to establish clear parameters on the types of NDAs that could be considered anti-competitive. This approach seeks to avoid a blanket stance against differential pricing.

## F. CONCLUSION:

The development of FRAND assurances in India mirrors the Competition Commission of India's (CCI) ongoing efforts to strike a balance among innovation, competition, and fair market practices. Navigating intricate cases that involve the intersection of intellectual property rights and competition law, the CCI's engagement with global regulatory norms is pivotal in establishing a resilient FRAND framework in the country.

At the heart of the matter is the formidable challenge of harmonizing the protection of innovators' rights through patents with the promotion of fair competition. FRAND commitments emerge as a mechanism to attain this equilibrium, fostering innovation while deterring anti-competitive conduct.

As the CCI and Indian courts grapple with the intricacies of defining FRAND terms, the necessity for well-defined guidelines on compliance and enforcement becomes paramount. This clarity holds advantages for both patent holders and technology implementers, providing a structure that encourages the adoption of technology, reduces entry barriers, and ultimately nurtures healthy competition and consumer welfare in technology markets. The evolving landscape of FRAND in India mirrors the global trend of aligning competition law with intellectual property, influencing the dynamics of innovation and competition within the Indian tech ecosystem.

[23] Mr. Manjit Singh Sachdeva vs Director General, Directorate General of Civil Aviation & Ors. CCI Case No. 68/2012

## V. COMPARATIVE ANALYSIS OF INTERPLAY OF CCI WITH PATENT RIGHTS:

### A. NATURE OF LEGAL FRAMEWORK:

Patents and antitrust law, initially appearing in apparent conflict, intricately intertwine to mold the dynamics of competitive forces within the market. While antitrust law focuses on promoting competition[24], patent law offers inventors a temporary monopoly in return for disclosing innovations, seemingly fostering monopoly power[25]. However, a deeper examination reveals a symbiotic relationship. Innovating companies engage in healthy competition, striving for exclusivity through patents. Both legal realms operate harmoniously, sharing the overarching objectives of stimulating innovation, fostering industry growth, and ensuring a landscape conducive to healthy competition.

In navigating the intricate balance between competition law and intellectual property (IP) rights, India can draw valuable insights from the approaches adopted by the United States and the European Union. The United States emphasizes a delicate equilibrium, aiming to foster innovation and competition while safeguarding IP rights[26]. Notably, the Department of Justice (DOJ) and Federal Trade Commission (FTC) play pivotal roles in enforcing antitrust laws, including the Sherman Act and the Clayton Act.

Contrary to the U.S., the European Union underscores an inherent incompatibility between IP rights and competition laws[27]. This nuanced approach involves scrutinizing whether the exercise of IP rights unreasonably restricts competition. In India, aligning with either perspective presents a challenge, and the nation must forge a unique path that suits its economic and innovative landscape.

[24] The Competition Act 2002, s 18.
[25] United States v Westinghouse Electric Corp. 648 F.2d 642, 646 (9th Cir 1981).
[26] Atari Games v Nintendo, 897 F.2d at 1576
[27] Notice providing guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements (OJ 2004 C 101/02) (Guidelines on Technology Transfer Agreements)

## B. LEGAL LANDSCAPE IN INDIA:

India's Competition Act, 2002, operates alongside existing laws and is designed to prevent anti-competitive practices. Like the U. S[28]. Indian law explicitly states that its provisions are in addition to, and not in derogation of, other laws.

*"The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."*

This provides a clear framework for the coexistence of competition and IP laws, with the Competition Act supplementing rather than supplanting other statutes with a focus on competition, innovation, and consumer welfare.

The concept of licensing freedom, as crystallized under U.S. law, finds resonance in India's legal framework. The Competition Act does not bar the application of other laws, reinforcing the idea that IP holders have the freedom to license or refrain from licensing their rights, promoting a pro-competitive environment.

In its eight years of existence, the CCI has handled around multiple cases under Sections 3 and 4, delivering progressive decisions. However, the application of static analysis, focusing on factors like price, output, market share, and foreclosure, is predominant in its decisions. While static analysis is popular[29], there is a lack of comprehensive guidance on interpreting and administering the Competition Act of 2002. Unlike counterparts in the European Union (EC) and the USA (FTC and DOJ), which frequently issue guidelines, studies, and reports, the CCI's Advocacy Booklet on IPRs[30] provides limited insight into the Commission's approach. The absence of consistent guidance raises concerns about the CCI's interventions, as firms seek clear rules for navigating the intersection of intellectual property and competition regimes. The efficient exercise of patent rights, guided by transparent regulations, plays a pivotal role in encouraging businesses to invest in innovation[31].

---

[28] Atari Games Corp. v. Nintendo of Am., Inc., 897 F.2d 1572, 1576 (Fed. Cir. 1990)

[29] Robert D Atkinson and David B Audretsch, 'Economic Doctrines and Approaches to Antitrust' (2011) Research Paper Series No 2011-01-02, Indiana University-Bloomington: School of Public & Environmental Affairs

[30] Competition Commission of India, 'Advocacy Booklet, Intellectual Property Rights' <http://competitioncommission.gov.in/advocacy/PP-CCI_IPR_7_12.pdf>

[31] Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co. Ltd. 535 US 722, 730 (2002).

## C. RECOMMENDATIONS FOR STRENGTHENING INDIA'S COMPETITION LAW FRAMEWORK

In light of the evolving dynamics within India's competitive landscape, there is a pressing need to fortify the competition law framework. The existing Competition Act of 2002, introduced as a replacement for the Monopolies and Restrictive Trade Practices Act of 1969, has played a pivotal role in addressing challenges in the liberalized economy. However, to further advance the objectives of promoting competition, safeguarding consumer interests, and ensuring fair market practices, it is imperative to consider certain key recommendations.

**1. Comprehensive Guidelines and Interpretation Clarity:**

There is a necessity to develop comprehensive guidelines that provide clear interpretations of the Competition Act, outlining the permissible boundaries of agreements and unilateral conduct. Unlike counterparts in the European Union and the USA, the Competition Commission of India (CCI) should proactively issue detailed documents, mirroring its interpretation of relevant legislation and its approach to different forms of conduct. This step would contribute significantly to reducing ambiguity and fostering a more predictable legal environment.

**2. Integration of Innovation Economics:**

Antitrust law, closely linked with economics, should integrate innovation economics principles into its framework. The CCI must recognize the economic context and underlying problems it aims to address. By doing so, it can enhance its understanding of the intricacies of intellectual property rights and competition law, ensuring that interventions align with the dynamics of innovation-driven industries.

**3. Streamlined Approach in Competition Cases:**

To maintain consistency and transparency, the CCI should adopt a more streamlined approach in competition cases. The prevalent use of static analysis, while popular, should be complemented with a more dynamic approach that considers evolving market conditions, technological advancements, and long-term economic effects. This balanced approach would contribute to more informed and effective decision-making.

**4. <u>Strengthening Collaboration and Research:</u>**

The CCI should strengthen collaboration with academic and research institutions to conduct studies that provide deeper insights into the intersection of intellectual property and competition law in specific industries. Insights from such studies could contribute to the formulation of policies that align with global best practices while addressing India's unique economic landscape.

**5. <u>Clarity on the Exercise of Patent Rights:</u>**

To minimize friction between competition law and patent rights, the CCI should establish clear guidelines on the legitimate exercise of patent rights. Providing a well-defined framework will assist businesses in making investment decisions, fostering innovation, and ensuring that the interests of both innovators and consumers are protected.

By implementing these recommendations, India can fortify its competition law framework, promoting a conducive environment for innovation, healthy competition, and sustainable economic growth. This proactive approach will not only address current challenges but also position India at the forefront of global competition law practices.

# IMPACT OF DIGITALISATION ON PRIVACY AND HUMAN RIGHTS*


## ABSTRACT

Digitalization serves as the all-encompassing term for the transformation of society as well as the economy through digital technologies. This paper aims to analyse various ways in which the impact of digitalization on privacy and human rights unfolds. From the advent of computers in the 1950s to playing a crucial role in training artificial intelligence algorithms in the 21st century, digitalization has fundamentally altered our day-to-day experiences, ushering in new possibilities and opportunities. As with any technological advancement, digitalization is also a double-edged sword. One notable realm where its influence can be felt profoundly is our perception of privacy.

While Contributions such as end-to-end encryption and other secure online authentication methods have proved to be very efficient in safeguarding privacy, the meteoric rise in potential challenges such as deepfake technology, data mining and surveillance, cannot be overlooked.

The shift to a digital landscape has also transformed our perception of human rights. Digital technologies, such as the internet, have empowered those without a voice, bringing crucial issues to the forefront thereby finding effective solutions but certain disadvantages like mass surveillance, cyber violence, and manipulation of information have continued to be a threat to human rights.



* Priyanshi Gupta, 1st year student, Dharmashastra National Law University, Jabalpur, Madhya Pradesh, priyanshigupta2407@gmail.com

**INTRODUCTION**

Digitalization, in its literal sense means the process of changing from analog to digital form, also known as digital enablement. Said another way, digitisation takes an analog process and changes it to a digital form without any different-in-kind changes to the process itself. Digitisation took off with twentieth-century computing and its requirements for data storage, processing, and transfer. This shift from mechanical and analog electronic technology to digital technology is the driving force of the Digital Revolution, also known as the Third Industrial Revolution. To understand how pervasively digitisation has already permeated our lives, consider this fact: in 1986, 99.2% of the world's storage capacity was analog; however, by 2007, 94% of the world's information storage capacity had shifted to digital.[1]

It affects privacy and human rights in numerous ways. This paper will aim to delve into a few aspects of the same.

Privacy is a fundamental human right that underpins freedom of association, thought and expression, as well as freedom from discrimination. But it's hard to define. Different countries offer different views, as do individuals. Generally speaking, privacy includes the right: to be free from interference and intrusion.[2]

on responsible implementation of digitalization, we can reap fruitful results.

For instance, when we start communicating with someone over text on WhatsApp then an end-to-end encryption message appears on top. It ensures that whatever the sender sends is encrypted on his device and can only be decrypted on the device of the person receiving the information. This enhances the level of security because even the service provider, that is, WhatsApp cannot access the information. In this way, data is secured from hackers or other third parties.

Often while logging into our accounts or ordering anything online, we are asked to provide a onetime password or biometric authentication while accessing our devices. Such multiple levels of authentication ensure that the user's privacy is intact.

---

[1] SAP, https://www.sap.com/india/products/erp/digitization-vs-digitalization.html, (last visited February 7,2024)

[2] OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER, https://www.oaic.gov.au/privacy/your-privacy-rights/your-personal-information/what-is-privacy#:~:text=Privacy%20is%20a%20fundamental%20human,free%20from%20interference%20and%20intrusion, (last visited February 7,2024)

**IMPACT ON PRIVACY**

Usage of VPN or virtual private network also ensures prevention of unauthorized access. A VPN connection establishes a secure connection between you and the internet. Via the VPN, all your data traffic is routed through an encrypted virtual tunnel. This disguises your IP address when you use the internet, making its location invisible to everyone. There are now also many providers of VPN connections for smartphones which keep mobile data traffic anonymous[3]

The effect of technology is quite evident in every aspect of our lives. For instance, have you ever wondered how your music app produces songs that always align with your musical taste or how does Instagram or YouTube show advertisement about something that you searched recently? Nowadays addiction to social media has become a menace to the society but have you ever wondered why it happens? This demonstrates data collection and the way it is used to come up with new content in our feeds which is specifically tailored to our interests.

While it keeps us hooked on these apps, but it also raises legitimate concerns regarding the security of our data as many of us overlook the terms and conditions before installing applications on our devices. It is imperative to note that if the data can fall into wrong hands which would lead to hazardous consequences. For instance, if the picture you uploaded on your social media handle is sold on the dark web or any inappropriate website because with editing tools available, one can easily take advantage of your ignorance and use such graphic content for manipulation or extortion. The customer can fall prey to financial fraud as well if any related application fails to protect their data.

Selling of data can have various advantages for the company as it may be used for advertising and other purposes generating revenue for the company but exploiting personal preferences of the users. This is known as data mining wherein companies extract relevant data to predict behaviours, and target advertisements more effectively. This is unethical as users may not be aware about the extent to which their data s under scrutiny.

Recently, WhatsApp updated its privacy policy for Indian users that made three-fold changes unilaterally – data processing, data sharing with Facebook, and integration of Facebook's other products with WhatsApp. Firstly, users have to permit mandatory sharing of their data with Facebook. Secondly, WhatsApp will collect hardware information such as battery level,

[3] KASPERSKY, What is VPN? How It Works, Types of VPN (kaspersky.com), (last visited February 7,2024)

application version, device operations, and mobile network. Thirdly, WhatsApp will collect location-related information (IP addresses, city, and country) of the user despite the user opting not to use the application's location feature. Fourthly, a new feature for payments will help the platform retain all the payments, transactions, and accounts related information. Fifthly, if the user opts for third party services (in-app video player), these third-party services may receive information that the user shared with others. Lastly, even if the user deletes their account via the in-app delete feature, WhatsApp reserves the right to retain their previously stored data. WhatsApp claims to protect the users' messages with end-to-end encryption, ensuring that only the persons messaging can access the data – not even WhatsApp can access it.[4]

In an emerging trend, we can witness the rise of deep fake technology. AI-driven generative models like Generative Adversarial Networks (GANs) facilitate this. The recent victims include actresses like Kajol and Rashmika Mandana. This technology creates highly realistic videos and other graphic content which is often fake and intended to deceive public at large. Thanks to AI, facial reenactment algorithms can take facial expressions and movements from one person and seamlessly transfer them onto another individual, making it possible to create videos where people seem to be doing things they never really did. AI-driven voice synthesis techniques add another layer of realism to deepfakes by replicating unique voice qualities, making the audio in these manipulated videos sound genuine.

The perpetrators can have numerous hidden motives from tarnishing someone's image to manipulating public opinion. It is widely used all across the world but the most important thing to ponder upon is that it is a gross violation of an individual's privacy. This can lead to erosion of trust from audio and visual evidence. If it is meteoric rise is not countered, then public would lose trust in information sources such as news channels. It is needless to state the humongous impact on one's mental health by finding their faces superimposed in compromising content. It would be very detrimental to law if the usage of this technology is not curbed as it would dilute the authenticity, thereby complicating legal processes. If used in elections, it would injure the health of any democratic country adversely. The applications are truly endless, and India is in a dire need of implementing data protection laws that could counter such technological phenomenon.

[4] JURIST, How WhatsApp's Privacy Policy in India Infringes on Fundamental Right to Information Privacy - JURIST - Commentary - Legal News & Commentary, (last visited February 7,2024)

In another frightening and intrusive impact of digitalization on a user's privacy, chances and capability of surveillance have tremendously increased by Government and private entities. AI is behind facial recognition systems that can identify, and track individuals based on their facial features. This technology allows for constant monitoring and raises concerns about privacy as it can be used to track people without their knowledge or consent. For instance, let us look into how China uses such technologies.

Xinjiang's Integrated Joint Operations Platform gathers data on residents using iris scanners, CCTV cameras with face and voice recognition, and DNA sampling. It links this data with residents' online activity, banking information, phone calls and text messages to identify behaviour the government regards as threatening. The world's largest population of Uighurs, Turkic-speaking Muslims originating from Central Asia, live in the Xinjiang Uighur Autonomous Region in China. Although people in Xinjiang accounted for just over one per cent of China's total population in 2017, they accounted for 21 per cent of criminal arrests in the country according to advocacy organization Chinese Human Rights Defenders. Human rights groups and activists allege that the Chinese government is detaining Uighurs and other Muslims in "re-education" camps, which involve indoctrination into Communist Party ideology and attempts to strip detainees of their culture, language and religion. Forced labour has also been reported in the centres, and former detainees have spoken out about torture and sexual assault.

Government officials say that Uighurs are not being detained arbitrarily. They characterize the facilities as vocational training centres for convicted criminals that also help quell religious extremism. Beijing has long suspected Uighur dissidents of spearheading an Islamic separatist movement. As such, the documentary notes, even undetained Uighurs live under near-constant surveillance in Xinjiang.[5]

**THE WAY OUT!**

Governments should enact clear laws like the General Data Protection Regulation in Europe and ensure their implementation. Applications should have transparent privacy policies in understandable language without all the legal jargon to ensure that the users accept the terms and conditions only after deciphering their meaning. Artificial intelligence bots should be

[5] CBC, In Xinjiang, China, surveillance technology is used to help the state control its citizens | The Passionate Eye (cbc.ca), (last visited February 7,2024)

designed in synchronization with privacy by design principles. They emphasize on the fact that privacy should be embedded in the system beforehand and not as a remedy. People should be made aware of the importance of consent and the consequences that can result due to misuse of consent. By taking these steps we can ensure to create a future that would serve humanity instead of harming it.

When it comes to human rights, digitalization has almost caused a tectonic shift. We can witness new ways of protection as well as violation of human rights. For instance, the internet shutdown during the protests of citizenship amendment act in India and the hijab controversy in Iran recently form good examples of censorship.

While training artificial intelligence bots, huge amount of data is used it becomes problematic when AI uses data sets that are discriminatory in nature. Studies have proved time and again how Black people face discrimination when compared to white people. A 2020 investigation by the New York Times revealed that the New York Police Department's facial recognition program disproportionately targeted black and Latin New Yorkers for surveillance.

Often, the facial recognition software wrongly identifies Black people because of lack of their data in databases which results in such inaccuracy. Additionally, a study by the national institution of standard and technology found that facial recognition algorithms from three commercial vendors were up to 100 times more likely to misidentify the faces of black women than white men. This can have a detrimental effect on an individual's mental well-being thereby constituting human rights violation.

Cyber violence is an online behaviour that assaults the well-being of a person or group, causing physical, sexual, psychological, emotional or economic harm to them. It is the repetitive abuse of another through technology-assisted means. For example, the aim of the abuse can be to control the other, humiliating others, to force someone into activities, which he or she does not want to do.[6] In the cyberspace, vulnerable individuals like transgender people often form targets of cyber bullying which is a form of cyberviolence. According to statistics, Transgender teens were the most likely to be cyberbullied, at a significantly high rate of 35.4%[7]

---

[6] TRUE 2 YOU, Definitions on cyber violence - True2You, (last visited February 7,2024)
[7] VERY WELL HEALTH, https://www.verywellhealth.com/cyberbullying-effects-and-what-to-do-5220584#:~:text=Cyberbullying%20by%20Sex%20and%20Sexual%20Orientation&text=Girls%20and%20boy

It would be an understatement to say that this community has been a victim of public scrutiny since time immemorial. Studies suggest that 1 in 4 transgender adults claim that they have been physically attacked in the United States. Cyberbullying adds to this misery and makes it even more difficult to express themselves on the digital stage. Insensitive and uninformed comments from fellow users can cause affect their right to live a dignified life, curtail their freedom of speech and expression and further subject them to mental agony just because they are biologically different. They suffer for something they did not have any role in. We require strict legal provisions to ensure everyone is heard with equal respect and patience irrespective of their sexual orientation. The government should set up helpline to report such instances. To ensure their healthy digital presence, non-governmental organizations should spread awareness regarding such insensitive approach of the people and try to make them take a more humanistic approach when dealing with the third gender, this will protect their right to freedom of expression so there can be a larger audience to listen to their grievances and address them to make a more inclusive and respectful society.

Due to the ever-pervasive nature of digitalization, even children fall prey to cyber bullying and harassment. This phenomenon can have tremendous effects on their tender minds and leave them feeling exposed to the dangers of the online world According to a survey, around 85% of children and victims of cyberbullying. This is a very grim milestone as children are naive and trust elders blindly. It is our humanitarian duty to ensure the safety of their right to a carefree childhood.

In addition to feeling distressed, they also may feel embarrassed, hurt, and even fear for their safety. They may even blame themselves for the cyberbullying. This can lead to erosion of self-esteem which can have severe long-term effects.[8]

A survey of 2,000 middle schoolers found that cyberbullying victims were 1.9x as likely to have attempted suicide than peers who were not involved in cyberbullying. Surprisingly, cyberbullying perpetrators were 1.5 times more likely to attempt suicide.[9] This is a serious

s%20reported%20similar,%25%20and%2021.9%25%2C%20respectively.&text=Transgender%20teens%20were%20the%20most,significantly%20high%20rate%20of%2035.4%25., (last visited February 7,2024)

[8] VERY WELL FAMILY, What Are the Effects of Cyberbullying on Children? (verywellfamily.com), (last visited February 7,2024)

[9] EXPLODING TOPICS, https://explodingtopics.com/blog/cyberbullying-stats, (last visited February 7,2024)

violation of right to safety Due to all the harassment and abuse. It somewhere makes them believe that they are not worthy of respect and dignity. This belief, if created during the formative years of their lives, can be particularly dangerous for children because they would carry it for their entire lives which would in turn be detrimental to the health of the nation.

Misinformation forms another prevalent issue that many of us encounter frequently. Although we do not give it much thought, but it is crucial to study how a fake news violates human rights on so many levels. For instance, during the Covid 19 pandemic, there were various sources suggesting the best cure to the deadly virus, from home remedies to mixing of tablets and a lot of people actually fell victim to such information and suffering consequences later on, this led to undermining of individual's right to health and well-being because although we don't realize but social media sway's public opinion on a humongous scale. Fact checking initiatives and literacy programs for every kind of media is essential to make sure citizens make informed and healthy choices.

## CONCLUSION

Digitalization has truly revolutionized the process of knowledge sharing. We witnessed it during the 2020 pandemic where learning continued seamlessly for those who could had access to digital devices. Various teachers share their wealth of information free of cost on online platforms such as YouTube which makes information more accessible to the underprivileged section of the society, thereby promoting the right to education which has become an essential component to the right to live a dignified life.

With the advent to platforms like Twitter or X, we can access uncensored news from people worldwide. Here every voice matter, no matter how ordinary. Citizens can amplify their opinions by mobilizing support and hold the government or the concerned authority accountable. This is of special importance when it comes to supplying humanitarian aid during natural calamities. Social media during a disaster provides up-to-the-minute news information road closure updates, evacuation routes, designated help areas and shelter locations.[10]

---

[10] ADJUSTERS INTERNATIONAL, https://www.adjustersinternational.com/resources/news-and-events/social-media-before-during-and-after-a-disaster/#:~:text=Social%20media%20during%20a%20disaster%20provides%20up%2Dto%2Dthe%2D,beforehand%20is%20a%20major%20advantage, (last visited February 7,2024)

Everything is at our fingertips, that is, from health care to food every essential amenity is just a click away. This contributes to the improvement of our Healthcare rights. Mobile banking apps like Paytm and the UPI or Unified Payments Interface have revolutionized the world of payments in rural as well as urban areas. With digital transactions, there is no physical cash to steal, which could lead to a decrease in certain types of crime such as muggings and burglaries.[11] This brings about a sense of security and safety in people.

Language learning applications such as Duolingo make it easier to understand and communicate with people across the globe. This fosters cross culture understanding and remove the language barrier. Crowdfunding is another contribution of digitalization which is of immense importance. Crowdfunding is a way to raise funds for a specific cause or project by asking a large number of people to donate money, usually in small amounts, and usually during a relatively short period of time, such as a few months. Crowdfunding is done online, often with social networks, which make it easy for supporters to share a cause or project cause with their social networks.[12] There have been many cases where crowdfunding has aided individuals in saving the lives of their loved ones in this way.[13]

In a nutshell, digitalization affects human rights and privacy in myriad ways. As we navigate the digital age, striking a balance between benefits of digitalization and safeguarding fundamental rights is very crucial. Governments and policy makers should outline definitions of terms such as privacy, human rights, which are inherently vague in nature so that companies cannot take advantage of the ambiguity. Transparent policies and informed citizens would make sure to create a more inclusive and equitable digital future for all.

---

[11] TIMES OF INDIA, https://timesofindia.indiatimes.com/readersblog/ajourneytotheseashore/going-digital-pros-and-cons-of-a-cashless-society-53205/, (last visited February 7,2024)

[12] CANDID LEARNING, What is crowdfunding? | Knowledge base | Candid Learning, (last visited February 7,2024)

[13] IMPACT GURU, https://www.impactguru.com/blog/Power-Of-The-Community---Crowdfunding-Saves-5-Year-Old-From-Brutal-Accident, (last visited February 7,2024)

# INTERFACE & INTERPLAY CONFLICT BETWEEN IPR & COMPETITION LAW: USA'S INFLUENCE ON SOLUTIONS*

## ABSTRACT

The interface between intellectual property rights (IPR) and competition law has garnered significant attention as it presents a complex interplay between encouraging innovation through IPR protection and maintaining competitive markets for the benefit of consumers. This topic involves examining the relationship between intellectual property right and competition law, the role of competition in balancing innovation and market competition. It's a fascinating and complex area and there are plenty of literature available to support this research. This research paper explores the relationship between IPR and competition, analyzing the challenges and opportunities that arise at different levels of analysis, including international, industry and firm level. The paper also aims to provide policy recommendations for addressing the challenges arising from the interface between IPR and competition. It examines the role of IPR in promoting or hindering competition, the impact of IPR on market structure and conduct, the relationship between IPR and antitrust law, and the policy implications of this interface. The paper concludes with a discussion of policy recommendations for addressing the challenges arising from the interface between IPRs. The paper also provides a list of references for further reading on this topic. The paper uses a combination of primary sources such as scholarly articles published in peer reviewed journals as well as secondary sources such as books published by reputed publishers.

* Mr. Kalyan D. Wategaonkar, 1st year LLM Student, Navrachana University, kalyanwategoankar@gmail.com and Ms. Anjali Jadav, 1st Year LLM Student, Navrachana University, anjalijadav1806@gmail.com

**History of Indian Trade, IPR & Competition Law**

Before 1981, trade in India was closed for foreign companies. Our economy was restricted after 1981 in the era of the late Prime Minister Rajiv Gandhi and the period of P. V. Narasimha Rao. Dr. Manmohan Singh was India's finance minister. Waves of globalization entered India's economy. Doors of Indian markets were open for foreign companies. In this situation, IPR and computational law play an important role in the Indian economy.

Indian food grains and other goods went into foreign markets for sale then, Competition regarding obtaining the patent was created, mainly regarding 'basmati rice and turmeric. Foreign companies try to get it even though these were initially Indian products. Till the above-cited situation, the Patent Act of 1970 and the Trademark Act of 1999 played important roles. The concept of registration of innovative ideas and proprietors' products concerned security and legal sanity in the Indian trade, and the concept of licensing was introduced.

The concept of abused dominance and unfair trade arises. Anti-competitive agreements under the Computational Law 2002 legal provisions protect Indian trade and economy from evil tendencies such as monopolistic and restrictive trade. It also protects consumer's right to purchase needy goods in a fair market at a reasonable price.

**Review of Literature of Thinkers Related to Interplay Conflict between IPR & Competition Law:**

From the early 20th century, there was a conflict between the exercise of IPR and competition policy ended with exaggeration by judicial and administrative doctrines initially in the U.S.A. and later in the European Union. Intellectual property law generally offers the right of exceeded use and exploration to provide required inventor to provide and interruptive to other inventors to bring the public domains inventive information that might otherwise require trade services, competition authorities regulate near monopolies competition in the market This regulation occasionally result being placed on pre-exercise of the exclusive right guaranteed by intellectual property right laws as per wrote by Kenneth F Markus and Mohammad Labuts in his book "Competition Policy and Intellectual Property Rights in Developing countries".[1]

Competition law memorizes social welfare by condemning monopolies, while intellectual law does the same by guaranteeing temporary monopolies. The qualification attached to that

[1] Kenneth F Markus and Mohammad Labut's book "Competition Policy and Intellectual Property Rights in Developing Countries".

intellectual property should provide economically meaningful monopoly; otherwise, it does not condemn mere causes of monopolies' powers but rather an exercise of efforts to obtain it, which might be allowed to interfere with monopolies. Kanner Jacquet and Amit Ray express this opinion in their book "Competition Law in India".[2]

The further potential outcome of trade-related aspects of intellectual property rights (TRIPS) is a particular concern for developing countries that are stronger. IPR protects the strength that makes the power of foreign transactions and corporations, which may lead to relative and higher prices, and which can limit the extent of technology diffusion. In addition, enterprises' market power may be restricted, which can lower the rate of innovation. Enhance market power through stronger IPR protection may facilitate others. This includes.

a) Catalysation of potential competitors through cross-licensing agreements that fix the price limit output or abuse market.

b) The use of IPR based on licensing agreements exceeding the competition in a particular market in sales or restrictions on the use of relative technology.

c) The use of IPR protection produces competition through technology or opposition proceedings, which may ride the market entry behavior, particularly for enterprises. New and small

James Lensfield's Intellectual Property and Trust" [3]steps towards striking balance were of the view that although intellectual property and antitrust laws may be both demands at unconquering innovation, industry, and competition. The tensions between intellectual property and the untrust policy also exist. He suggested that there should be more explicit recognition of accounting for the unit aspect of intellectual property. There should be an economic and policy analysis of imperfect intellectual property about competition and innovation.

Stephen Anderson and Aeria's Exnscls, in their book "Intellectual Property Rights & Competition Law",[4] describe the interplay between intellectual property rights and competition law in the European Union concerning Article 101 and Article 102. They have analyzed this same through abuse of I. P. R., are found to supply time excessive pricing and exclusive processing policy. Saiyed Ali Khan and Raghunath Marshelkar wrote in their book "Intellectual

---

[2] Kanner Jacquet and Amit Ray's book "Competition Law in India".
[3] James Lensfield' Intellectual Property and Trust".
[4] Stephen Anderson and Aeria' Exnscls books "Intellectual Property Rights & Competition Law".

Property & Competitive Strategy"[5] that the 21st century and 22nd have noted the National Economy Development Strategy & Inconsequence results and development while describing the interface between the laws.

**Interface Between IPR & Competition Law**

Intellectual property rights (IPR) and competition law are related to the process of trade. Competition law is associated with the market of products and its competition about the sale of the product rather than intellectual property rights, particularly patent rights related to the rights of the owner of the innovative company or innovative person. Invention: Who invents the product based on its sale in the market? Such right may be produced by a company or person after registration of process and production in the patent office (registration office) as per the legal provisions of the Patent Act. This right can be achieved by applying specifications within 12 months from the application's filing date.

Another intellectual right related to industrial application related to industrial relations is the "Trademark Act of 1999," which gives specifications to the goods more of manufacturers or performance of service of products. "Trademark" means, as per legal provision of Section 1 (6) of the Trademark Act, 1999[6], it is a unique mark of the proprietor of companies that produce goods with the significance of the stated characteristics of the product. Such right may be acquired after obtaining a trademark certificate under legal provisions of Section 1 (1) of the Trademark Act of 1999.[7]

As stated, enactments are related to the welfare of the market and the rights of consumers, it does not speak that IPR is related to the right of the inventor of the product and the right of the proprietor of the product, and another related to the market and trade of the product, which should not unfair, and anti-competed regarding the sale of the product to consumers.

The role of competition law is intermeddled between the right of the inventor of the product and the right of the proprietor of the producing company and between the right of the consumer to purchase the product, which is an unfair market without an anti-competitive rate in the market.

[5] Saiyed Ali Khan and Raghunath Marshelkar's book "Intellectual Property & Competitive Strategy".
[6] Section 1 (6) of Trademark Act, 1999.
[7] Section 1 (1) g of the Trademark Act 1999.

**Complex Interplay**

But sometimes, the complex may interplay between the dominance of IPR and competition law while trading of product in the market.

The nature of the complex may be that the product's inventor may acquire a patent of the product as per legal provisions of sections 3 & 4 of the Patent Act, 1970.[8] Through this right, he may obtain the product's sale without interrupting other producing companies in the relevant market as per legal provisions of Section 3.2 of the Competition Law of 2002.[9]

It threatens the fair trade of products after receiving a complaint from another producing company to the competitive forum of competition commissioners of India under Section 2 of the Competition Act of 2000, which may be declared unfair trade. It creates dominance in the market and its effect in favor of its competitor or consumer, per legal provisions of section 4 (2) of the Competition Act of 2002.[10]

Some effect may be created in the case of the proprietor of the product after achieving registration of trademarks under legal provisions of Section 28 of the Trademarks Act, 1999[11]. Dominance and monopoly of the proprietor will create in the market which may source significance of unfair trade.

**U. S. Cases of Interplay Conflict**

In United States, United States V/s. Microsoft (253 P F3D 34 (2001)[12] held that the owner of intellectual property does not have the absolute right to use property in any manner without restrictions. It would be violating the competition law if the company possesses monopoly power and there is willful acquisition or maintenance of power which enterprise is distinguished from growth or development as consequences of superior product between Accum or historic accident Owner has all the rights to exploit the intellectual property rights and the right to prevent others from so doing. There is no violation of competition law. If the owner of the article (patent or otherwise seeks to dispose directly to the consumer or fix the price by which his agents transfer from directly to such consumer or unfair, United States v/s General Electric Co., 272 U.S. 476 (1926).[13]

---

[8] section 3 & 4 of patent Act, 1970.
[9] Section 3.2 of Competition Law of 2002.
[10] section 4 (2) of the Competition Act 2002.
[11] Section 28 of Trademarks Act, 1999.
[12] United State V/s. Microsoft (253 P F3D 34 (2001).
[13] United State v/s General Electric Co., 272 U.S. 476 (1926).

Moreover, the United States Supreme Court inserted the essential facilities doctrine in the "United States V/s. Terminal Railway Road Association Case," where they imposed a duty upon the firm controlling critical facilities to make them available to inventors. The basic facilities doctrine has propounded consequences for intellectual property protection, competition, and competition in the market where firm owners have essential inputs protected by patent and copyright trade secrets under Indian Law. This could fall within the ambit of section 4 of The Competition Act of 2002, which protects abuse of dominance by enterprises.

**Conclusion & Suggestions for Solving Interplay Conflict**

In conclusion, the conflict between I P. R. and Competition Law competition arises from the tension between providing inconclusive innovation and ensuring fair competition. The I.P.R. is essential in contravening innovation. They also lead to anti-competitive efforts exercised by dominating market players.

i. A careful balance can be made between the interest of I P. R. holders and the interest of competition.

ii. Some authority that may maintain careful watch due to facility provided by IPR and IPR to innovators and proprietors of the company should create abuse to dominance created by IPR. Some restrictions may be imposed in the situation of creation of abuse dominance of the market for sale to consumers that may use the right of choice in situation of non-liking of product from patent giving authority and for control on abuse dominance. Specific government authority may be created.

iii. Post office inspector may create for watch and control on abuse dominance created in the market due to IPR may submit the report to the competition commissioner of India and the Director General of India. The Director General may use authority to complain such innovators and proprietors of product to C. C. R. and C. C. R. may impose fines on abuse dominance and unfair trade makers.

iv. Some duties may be imposed on firms for controlling essential facilities given under IPR laws to inventors and proprietors of enterprises or companies, quoted in the famous U. S. case "United States V/s. Terminal Railway Road Association and the above dominance were created because I.P.R. in the relative market as per Section 4 of the Competition Law 2002.

# NAVIGATING INTELLECTUAL PROPERTY RIGHTS CHALLENGES IN DIGITAL LANDSCAPE: TRENDS, IMPLICATIONS AND SOLUTIONS*


## ABSTRACT

The creation of the mind includes inventions, literary and artistic works, designs, symbols, and names used in trade. These are all referred to as intellectual property in legal terminology. The creation, sharing, and utilization of intellectual property have undergone a radical transformation in the digital age due to the internet and other emerging technologies. Customers, governments, and owners of intellectual property rights now face additional challenges as a result. One of the biggest problems with intellectual property in the digital age is copyright infringement. The widespread availability of digital content has greatly facilitated the theft and unauthorized distribution of copyrighted works. As a result, it is now more difficult to enforce intellectual property rights, and producers and distributors of such content have suffered significant losses. Another challenge is the impact of open-source software on intellectual property. Open-source software is defined as software that is made available to the public domain together with its source code, permitting unfettered distribution and modification. Because their code is freely distributable and copy-able, this may make it difficult for enterprises to protect their intellectual property.

In addition, the research aims to provide novel approaches, policy suggestions, and legislative frameworks for effectively navigating the difficulties presented by the digital environment. This research attempts to contribute to a thorough knowledge of how intellectual property rights can be effectively safeguarded and promoted in the dynamic digital ecosystem by taking into account both technological and regulatory approaches.



*Keywords: Intellectual Property Rights (IPR), Infringement, Digital Era (DE), Authorization, Knowledge etc.*



* Samriddhi Shukla, Faculty of Law, The Maharaja Sayajrao University of Baroda, samriddhishukla02@gmail.com

## INTRODUCTION

Intellectual property (IP) rights are facing serious problems as a result of the artificial intelligence (AI) field's rapid development. The advancement and rising prevalence of AI technology have led to complex concerns around IP ownership, protection, and infringement in the field of AI. The purpose of this essay is to examine the relationship between artificial intelligence and intellectual property, emphasizing the urgent problems and the requirement for strong legal frameworks to resolve them.

This topic is important because artificial intelligence (AI) is revolutionizing many industries and has the potential to completely change society. Since AI is able to produce original works, creative solutions, and make decisions on its own, there is an increasing need to set up strong intellectual property (IP) procedures that can adjust to the particular difficulties presented by AI-driven innovation.[4]

Safeguarding the IPR in the context of artificial intelligence is the main issue this work attempts to address. The swift advancement and spread of artificial intelligence technology prompted inquiries on the rights of ownership, proper crediting, and the extent of protection afforded to AI-generated works. Furthermore, when AI systems violate preexisting intellectualproperty rights or raise the possibility of disputes with human authors, questions of accountability and liability come up.

The goals of this research revolves around two aspects: first, to identify and assess the major issues and complexities related to intellectual property in the context of artificial intelligence; and second, to suggest possible approaches and guidelines for the creation of efficient legal frameworks that can protect creators' rights, promote innovation, and guarantee a just and equitable handling of intellectual property generated by AI.[5]

## ROLE OF INTELLECTUAL PROPERTY RIGHTS:

Patents and trademarks are examples of intellectual property rights that promote innovation and, as a result, demonstrate the evolution of civilization. These innovations constantly raise the standard of living, whether it be through the development of renewable energy sources, the advancement of technology, or the discovery of ground-breaking medical treatments.

[4] *Anna Ubaydullaeva, S. (2023) View of intellectual property in the era of Artificial Intelligence: Challenges and Solutions.* Available at: https://irshadjournals.com/index.php/ujldp/article/view/93/85. (Accessed: 10 January 2024).

[5] Id.

What often draws notice is the enforcement of these intellectual property rights; a company that is patenting a technology or guarding its brand could easily be perceived as monopolistic or even abusive. This point of view, however, misses the vital role that intellectual property plays in recognizing, promoting, and disseminating innovation and technological advancement.[6]

The process of getting a patent is essentially an exchange: the state will grant the right to exclude others, but in order for the technology to be considered valid, it must be both innovative and not just a clear improvement over prior knowledge, as well as properly disclosed.

Because every patented invention raises the threshold for what society already knows, this is a powerful idea. This suggests that each individual's earlier concept acts as the basis for the new concept that is generated. It suggests that further advancement is intended to be facilitated by the system. It means that you won't be able to use a technology that you have exclusive access to for very long.

Idea ownership, which is important for time-bound technological ideas, also acts as a way to pay the talent that comes up with more fresh ideas and tackles the problems and challenges, we all face.

**ENFORCEMENT OF IPR IN DIGITAL ERA- A MAJOR CONCERN**

In the digital age, it is very challenging to enforce intellectual property rights due to the ease of duplicating and sharing digital content. It is now very easy to share and distribute digital content worldwide thanks to the internet, which makes it challenging for content owners and creators to keep an eye on and manage the usage of their intellectual property.[7]

The problem of piracy is one of the biggest obstacles to the enforcement of intellectual property in the digital era. The unapproved use, duplication, or distribution of works protected by copyright is referred to as piracy. Particularly in the software, music, and film sectors, rampant piracy has been caused by the ease with which digital content may be shared and copied.

An additional obstacle involves the matter of jurisdiction. Given the worldwide scope of the internet, enforcing intellectual property rights across diverse jurisdictions proves to be a formidable task. The legal landscape concerning intellectual property varies significantly from

[6] *The future of IP: The next decade (2023) TT CONSULTANTS*. Available at: https://ttconsultants.com/the-next-decade-of-intellectual-property-navigating-the-challenges-and-opportunities/ (Accessed: 01 February 2024).
[7] *The global digital enforcement of intellectual property (2023) WIPO*. Available at: https://www.wipo.int/wipo_magazine/en/2018/si/article_0005.html (Accessed: 01 February 2024).

one country to another, presenting a formidable challenge for content creators and proprietors aiming to take legal action against infringers in different geographic locations[8].

To confront these difficulties, government and entities have implemented diverse measures, including the enactment of anti-piracy laws and the establishment of international treaties to bolster the safeguarding of intellectual property. Content creators and proprietors can also adopt measures to secure their intellectual property, such as utilizing digital rights management technologies and pursuing legal recourse against those who infringe upon their rights.

In the digital age, addressing the challenges of enforcing intellectual property necessitates a comprehensive strategy that entails collaboration among governments, organizations, content creators, and proprietors. Through joint efforts to safeguard intellectual property rights, we can contribute to sustaining a climate where creativity and innovation flourish in the digital era[9].

## IMPORTANCE OF DIGITAL INTELLECTUAL PROPERTY RIGHTS:

Intellectual property (IP) rights are essential for upholding law and order, encouraging innovation, and guaranteeing a fair marketplace in the broad reaches of the digital era, where borders are as blurry as clouds and data moves faster than thought.

Digital innovations and intangible property are protected by Digital Intellectual Property Rights (DIPR).

Let's explore the significance of these rights in a world growing more interconnected.[10]

1. Promoting Innovation and Creativity: DIPR offers a safety net for inventors and creators. DIPR facilitates the investment of time and resources by individuals and businesses into new digital ventures by guaranteeing that they have exclusive rights to their creations, be it innovative software, a novel e-book, or original digital artwork, all without the fear of theft or unauthorized replication.

2. Growth and Economic Incentives: A sizable amount of the modern economy is driven by digital innovations. Billions of dollars are made by apps, digital media, e-commerce sites, and internet services. By ensuring that businesses and creators may profit from their works, DIPR.

[8] Id.
[9] *Oberbrunner, K. (2023) Council post: Steps for safeguarding your intellectual property in the Digital Era, Forbes*. Available at: https://www.forbes.com/sites/forbesbusinesscouncil/2023/08/11/steps-for-safeguarding-your-intellectual-property-in-the-digital-era/?sh=255b1be543ec (Accessed: 10 January 2024).
[10] *Intellectual property rights in a Digital World (2022) Jisc*. Available at: https://www.jisc.ac.uk/guides/intellectual-property-rights-in-a-digital-world (Accessed: 10 January 2024).

promotes economic expansion, the creation of jobs, and ongoing investment in the digital industry.

3. Building Trust in Digital Transactions: Customers believe they are getting genuine and original content when they buy digital goods or services. By guaranteeing that illegal, pirated, or counterfeit copies are kept at bay and protecting the integrity of the digital marketplace, DIPR contributes to the upkeep of this confidence.

4. Safeguarding Consumer Rights: DIPR offers consumer protection in addition to artist protection. The likelihood of consumers coming across counterfeit digital goods or services is reduced by the enforcement of standards and authenticity. Better quality control and safer digital environments are the results of this.

5. Overcoming the Difficulties of the Digital Age: Difficulties specific to the digital sphere include rapid distribution, anonymous infringements, and simplicity of duplication. With solutions like Digital Rights Management (DRM) to stop unauthorized copying or distribution of digital information, DIPR offers a framework to solve these problems.

6. Promoting Ethical Digital Behavior: People and companies are more likely to act ethically online and respect the rights of creators and other stakeholders when DIPR principles are clearly established. This promotes a civil and peaceful online community.[11]

7. Encouraging International Collaboration: In a world where a company in Tokyo may utilize software created in Silicon Valley, DIPR offers a standardized framework for cross-border licensing, collaborations, and digital transactions, guaranteeing that intellectual property rights and royalties are upheld globally.

## EMERGING CHALLENGES RELATED TO INTELLECTUAL PROPERTY RIGHTS IN DIGITAL ERA-

### A. COPYRIGHT IN DIGITAL ERA-

First let’s understand what exactly the copyright is, it is basically a legal right of the owner of Intellectual Property. In simpler terms it means that the owner or any other authorized person who has an exclusive right can only reproduce the work.

[11]*Intellectual property is the fuel that drives Innovation- (2022).* Available at: https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_CG_News_Letter_.pdf (Accessed: 10 January 2024).

Now in this digital era copyright is facing some extreme challenges-

- Fair Use: In the digital age, determining what constitutes fair use has become more challenging, particularly with regard to online content. In essence, fair use is a legal theory that permits certain, non-exclusive uses of copyrighted content for purposeslike teaching, research, commentary, news reporting, and criticism [12].
- Piracy- In this era of Telegram and What's-app, there is a significant rise in peer to peer file sharing as it has become easier than ever for people to access and share copyrighted content without permission. It has led to significant loss to the copyright owners especially in the films and music industry.

The term 'author' is defined under Section 2(d) of The Copyright Act, 1957[13]. It declares that the person who causes the creation of any computer-generated creative work, whether it be literary, theatrical, musical, or otherwise, is the author. Thus, the individual should be considered an "author" if they are the owner of any copyrighted work. Since the AI isn't typically thought of as a legal person, this prevents them from having any authorship. This creates a great deal of complexity when it comes to AI's ownership and authorship, especially in light of their capacity to produce innovative and unique content.

B. PATENT IN DIGITAL ERA-

Patent is a kind of Intellectual Property Right that protects inventions such as new technology, new product etc. This digital era has brought great concern when it comes to patent protection. Majorly the challenge revolves around the issue of patent trolls and patentability.

- Rather than using their patents to develop goods or services, corporations or people known as "patent trolls" obtain patents and then sue other businesses for infringement. For corporations, especially small enterprises, this can result in pointless lawsuits and high legal expenses.[14]
- It can be challenging to decide if an innovation is patentable or just a clear variation of already-existing technology, given the speed at which technology is developing. This

[12] *Intellectual property challenges in the Digital age - GIPC (2023) Intellectual Property Challenges in the Digital Age - GIPC*. Available at: https://www.globalipconvention.com/blog/intellectual-property-challenges-in-the-digital-age (Accessed: 10 January 2024).

[13] The Copyright Act, 1975, Sec. 2(d), No. 14, Acts of Parliament, 1975 (India).

[14] *Mandhyan, M. (2023) Ai and IPR: The real deal in India - trademark - India, AI And IPR: The Real Deal in India - Trademark - India*. Available at: https://www.mondaq.com/india/trademark/1362466/ai-and-ipr-the-real-dealindia#:~:text=PATENTS%20AND%20AI&text=The%20Act%20explicitly%20restricts%20anyone,requirements%20forenablement%20or%20non%2Dobviousness. (Accessed: 10 January 2024).

may result in disagreements regarding the validity of patents and make it more challenging for businesses to safeguard their intellectual property.

The terms "person interested" and "patentee" are included in Section 2(p) [15] of the Indian Patents Act, 1970, which clearly restricts the scope of AI. The Act expressly prohibits the recognition of any non-human entity as a payee. One potential problem with the current paradigm is that concepts produced by AI may not satisfy the legal requirements for patentability, such as enablement or non-obviousness. It can be difficult for an AI system to evaluate an idea's uniqueness since human judgement is frequently required to determine whether something is non-obvious. The first nation to patent an AI tool (DABUS) and name itas the inventor was South Africa in 2021.

### C. TRADEMARK IN DIGITAL ERA

Trademarks are a type of intellectual property rights that safeguard corporate names, logos, and other distinguishing marks that are used to set one business's goods and services apart from another. Trademark protection faces various obstacles in the digital environment.

The major challenges that trademark is facing in this digital era are as follows[16]:

- ❖ Domain-name Infringement- It can be challenging for businesses to prevent trademark infringement given the abundance of websites and domain names. Another major problem is cyber-squatters, who register domain names that are similar to well-known brands in order to profit from the confusion that results.
- ❖ Imitation of a Brand: social media and online marketplaces have made it simpler for people and businesses to create phony accounts or websites that mimic well-known brands. Confusion among customers and harm to the original brand's reputation may result from this.

One of the solutions to deal with this challenge is that the Companies can register their trademarks with domain name registrars and keep an eye out for trademark infringement on the internet as ways to combat these issues and safeguard their brands. They can alsocollaborate with legal professionals to file a lawsuit against those who violate their rights[17].

---

[15] The Patent Act, 1970, Sec. 2(p), No. 39, Acts of Parliament, 1970 (India).
[16] Supra Note-12
[17] Supra Note-13

## INDIAN LAWS PERSPECTIVE REGARDING AI'S INCLUDEMENT IN IPR

As can be seen above, India's present IPR laws are designed in a way that limits IPR ownership to legal entities, which includes people and organizations made up of people. The integration of artificial intelligence (AI) with intellectual property rights requires a thorough review of current legal frameworks to account for AI's special features. Courts are now analyzing the problems related to AI and intellectual property, but clear, organized norms and regulations are desperately needed in this field. In order to protect intellectual property rights (IPR) and encourage AI innovation, policymakers must find a balance. This means creating copyright rules that redefine authorship and ownership in relation to AI-generated ideas, as well as making sure that trademarks are protected in order to maintain unique brand identities.

## OPEN SOURCE SOFTWARE'S IMPACT ON INTELLECTUAL PROPERTY

Open-source software is defined as software that is released with its source code and is made freely readable, editable, and distributable by the general public. This has had a significant impact on the realm of intellectual property, particularly in the distribution and development of software.

One of the main implications of open-source software on intellectual property is that it challenges the traditional paradigm of proprietary software development. Software companies used to create their own products, charge consumers for licenses, and maintain the confidentiality of the source code. Conversely, open-source software allows anybody to view and modify the source code, which promotes greater creativity and collaboration.

Another effect on intellectual property that open-source software may have been that it may make it harder for companies to secure their intellectual property. If the source code is made available to the public, it can be more difficult to prevent people from distributing copies of it. This may be particularly challenging for companies whose entire business strategy depends on their software.

Open-source software does, however, present opportunities for intellectual propertyprotection as well. Businesses can, for example, use open-source licences, which allowanybody to read and modify the source code, to protect their intellectual property. Certain open-source licences guarantee the preservation of the original developer's intellectual property rights by requiring that any derivative works be published under the same license[18].

The impact of open-source software on intellectual property as a whole is intricate and multifaceted. It presents opportunities for collaboration and innovation, but it also tests the limits of current software development procedures and could make protecting intellectual property more difficult. Therefore, it's imperative that companies and organisations carefully consider how open-source software affects their intellectual property rights and investigate other options for safeguarding it.

## EXISTING LEGAL FRAMEWORKS FOR INTELLECTUAL PROPERTY PROTECTION IN ARTIFICIAL INTELLIGENCE:

This section offers an examination of the current legal structures designed to safeguard intellectual property rights in relation to artificial intelligence (AI). The purpose of this analysis is to assess how well the current legal frameworks handle intellectual property challenges resulting from advances in artificial intelligence. The investigation starts with a thorough analysis of pertinent national and international legal frameworks governing AI intellectual property rights. Important laws including the Trademark Act, Copyright Act, and Patent Act are examined carefully to determine whether they are appropriate and applicable for safeguarding AI-related works, trademarks, and inventions. The World Intellectual Property Organization (WIPO) treaties and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are two other international agreements that are taken into account when assessing the degree of standardization and harmonization in intellectual property protection.[19]

According to the report, the current legal frameworks have a difficult time successfully addressing the special traits and intricate issues connected to advances in artificial intelligence. Artificial intelligence (AI) technologies, such machine learning algorithms and neural networks, frequently provide creative and innovative results that straddle the boundaries of conventional intellectual property classifications. This calls into doubt the requirements for AI inventions in terms of eligibility, novelty, and non-obviousness in order to secure patent.

[18] *Dewan, D.M. (2022) Open source licensing and intellectual property rights, Lexology.* Available at: https://www.lexology.com/library/detail.aspx?g=2e9b7205-651b-4caf-b14a-f889ec3e37c6(Accessed: January 2024).

[19] *Artificial Intelligence and intellectual property policy (2022) WIPO.* Available at: https://www.wipo.int/about-ip/en/artificial_intelligence/policy.html (Accessed: 11 January 2024).

protection. Furthermore, questions about the reach and efficacy of copyright protection are raised by the quick development and application of AI systems. The conventional idea of authorship is put to the test by AI's capacity to produce original works on its own because it is not evident who should be credited with the work—the AI system or its human inventor.

In order to examine how courts have handled these kinds of difficulties and to determine how effective they have been in resolving intellectual property conflicts in artificial intelligence, the research takes into account significant cases and legal precedents. Experts in the field of intellectual property law, who have studied and contributed to the conversation on AI and intellectual property in great detail, are also incorporated into the analysis. Their thoughts and points of view offer insightful insights into the advantages and disadvantages of the existing legislative frameworks as well as their consequences for fair competition, innovation, and creativity in the AI industry.

The analysis shows that in order for the current legal frameworks to keep up with the rapid breakthroughs in artificial intelligence, they must change and adapt. This entails creating specific laws and rules that address the particular characteristics of creations, works, and trademarks produced by AI. It's critical to create a balance between promoting innovation and safeguarding intellectual property rights in order to create an atmosphere that is favorable to AI research, development, and commercialization. A proactive and forward-thinking strategy is required, as shown by the examination of the current legal frameworks for intellectual property protection in artificial intelligence[20].

The text advocates for a thorough assessment of the legal framework in order to tackle the obstacles presented by artificial intelligence advancements and guarantee sufficient safeguarding of intellectual property rights. Policymakers, legal professionals, technology developers, and industry stakeholders must work together to create updated legal frameworks that support fair competition, encourage innovation, and safeguard the rights of creators and innovators in the rapidly evolving field of artificial intelligence.

[20] *Artificial Intelligence and intellectual property rights, IIPRD-(2023)*. Available at: https://www.iiprd.com/ai-and-intellectual-property-rights-issues-and-impacts/ (Accessed: 12 January 2024).

**LANDMARK JUDGEMENTS**

- The Delhi High Court clarified the meaning of the term "per se" in the Ferid Allani v. Union of India and Ors[21]. case by declaring that " occasionally the computer programme may include certain other things, ancillary thereto or developed thereon." It would be outdated to claim that all inventions in the digital age, where the majority are based on computer programmes, would not be patentable. Artificial intelligence, block-chain, and other digital product innovation would all be dependent on computer programmes, but for that reason alone, they would not cease to be patented inventions. In actuality, however, a mix of hardware and software is required for the new software to be patentable, meaning that it must include a tangible component.
- The Bombay High Court rendered one of the first rulings against cybersquatting in India in the Rediff Communication v. Cyber Booth case[22]. In this instance, the court found that a domain name's significance and worth are comparable to those of any corporate asset of a business. A domain name that was identical to rediff.com, radiff.com, was registered by the defendant in this case. Internet domain names are significant and can be a valuable asset for a company. According to the Court, they are more than just an Internet address and should be protected like a trademark. The plaintiff won the case, according to the court's ruling. The limitation period for the infringement of trademark is not expressly provided in the Trade Marks Act, 1999.
- Apart from the copyright protection afforded to the database inventor against the extraction or repurposing of the database's contents, there exists an independent Sui Generis (unlike any other) database right. This is a fifteen-year licence provided to database and software producers. Note that the John Richardson v. Flanders [23] judgement established that copyright would not be violated in relation to computer programmes if an individual did one of the following:

  1. Produces backup copies of software.
  2. Use one of the copyrights to flourish interoperable products.
  3. Is used to fix bugs so that the original software runs without any problems.
  4. Copies to verify that computer programmes have undergone security testing.

[21] Ferid Allani v. Union of India and ors., 2014, WP (C) 7.
[22] Rediff Communication Limited vs. Cyber Booth and Another ,1999 (4) Bom CR 278.
[23] John Richardson Computers Limited v Flanders and Another, 1993 No. 2 FSR 497.

## CONCLUSION

The legislative provisions and implementation of numerous laws and regulations pertaining to digital IPs and digital IPRs are found to have limitations upon critical study. The laws now in place do not sufficiently address intellectual property in the digital sphere. These do not disclose the point at which information becomes unprotected once it is made public, the scopeof sui generis, the trademark expiration time in trade-related domain names, the lack of particular laws protecting confidential information, etc. It is surprising that the Information Technology Act, 2000 (IT Act), which addresses a number of cybercrimes, fails to address the issue of cybersquatting and domain name disputes. Legislative authorities still have a lot of work to do in order to develop clear digital policies that are backed by rules and regulations toprotect digital intellectual property. Since their wait for comprehensive regulation over digitalproperty has been protracted, digital property creators have been concerned about this absenceof it.

## PROSPECTIVE PATTERNS AND SUGGESTIONS

We are standing at the crossroads of history and the future as we look towards the horizon of intellectual property rights (IPR) in the digital era. This portion of our story offers an overview of what's to come as well as our recommendations for negotiating this shifting terrain. Like far-off constellations in the night sky, we can see trends developing in the upcoming chapters of our digital story[24].The ongoing discussion about intellectual property generated by AI is one of them. With the continued development of artificial intelligence, the issue of authorship and ownership will only become more pressing. When music, art, and literature are created by algorithms, courts will have to set more precise rules on credit and payment. Blockchain- a type of decentralized ledger technology, will keep influencing intellectual property rights.

Blockchain-powered smart contracts will further automate intellectual property transfers and royalties. Increased openness, decreased bureaucracy, and fewer conflicts were the outcomes. The tale of how blockchain might transform intellectual property management is far from finished. We expect the global harmonization drumbeat to intensify. Because developing technologies are cross-border in nature, harmonizing international IPR rules is necessary rather than just desired. Trade-related aspects of Intellectual Property Rights (TRIPS) and other

[24] *Ip and Frontier Technologies (2022) Intellectual Property for Frontier Technologies.* Available at: https://www.wipo.int/about-ip/en/frontier_technologies/ (Accessed: 13 January 2024).

agreements will develop further to keep up with the rapid worldwide exchange of ideas and developments. The history of biotechnology is one of promising and difficult ethical decisions.

As biotech develops, ethical issues will become increasingly important. It will be up to policymakers to find a middle path between promoting revolutionary scientific advancement and defending moral standards. Future IPR about biotechnology will be governed by emerging ethical standards. Like subtle undercurrents, privacy and security issues will never go away[25].

Strong cybersecurity measures will be essential as the digital transition quickens to safeguard sensitive intellectual property data from online attacks. Data privacy laws are the latest chapter in the ongoing evolution of the data protection tale, which is not just one of difficulties but also one of opportunity. The same technologies that upend our preconceived ideas about intellectual property also present creative ways to support it.

For example, blockchain promises to increase automation and transparency. In this plot twist, technology itself turns out to be the answer to some of the problems it poses. We provide some guidance as we work through this story. Our compass should be awareness and education.

We support flexible legal frameworks that can adjust to the quick developments in technology. These frameworks ought to be dynamic and forward-thinking, able to foresee obstacles and opportunities that are just around the corner. Our story gains complexity through the subplot of interdisciplinary teamwork.

Together, legal professionals, technologists, ethicists, and legislators must tackle the complex issues raised by developing technologies. The idea of public participation runs throughout. Including the public in conversations regarding developing technologies and IPR assures that a variety of viewpoints will be included in the story. The creation of just and balanced legal frameworks can benefit from public input.

Our moral compass, or ethical norms, direct our story. Legal protections should be supplemented with ethical considerations in developing tech domains like biotechnology and artificial intelligence. Innovation ethics need to be woven into our shared narrative.

Above all, our narrator is always on the lookout for ongoing surveillance. We need to be aware of how international agreements, changing laws, and developing legal precedents affect intellectual property rights. IPR's storyline is a dynamic, ever-evolving tale that never stops.

---

[25] *WIPO conversation on intellectual property and frontier technologies (2022).* Available at: https://www.wipo.int/about-ip/en/frontier_technologies/frontier_conversation.html (Accessed: 13 January 2024).

The story of intellectual property rights' future is one of possibilities and difficulties, difficult questions and shifting circumstances. Adaptability, foresight, and a dedication to intellectual property rights will be crucial in shaping this story about how we will utilize the incredible potential of developing technology.

# REGULATING DIGITAL ECOSYSTEMS: BALANCING DATA PRIVACY AND COMPETITION LAW*


## ABSTRACT

The contemporary digital landscape is characterized by the intricate interplay between data protection and competition law, presenting a multifaceted challenge that demands a nuanced and adaptable regulatory approach. This article delves into the evolving dynamics of digital ecosystems, where technology firms leverage data-driven business models, and regulators grapple with the complexities of balancing competition dynamics with privacy concerns.

The convergence of data protection and competition law reflects the evolving nature of digital markets, with technology companies wielding significant market power rooted in their control over vast amounts of data. This concentration of data has raised concerns about potential systematic impediments to individual rights, privacy violations, and the exploitation of user information. The unchecked dominance of certain platforms may stifle innovation, limit consumer choice, and pose risks to data privacy and security.

The article explores the regulatory efforts and interventions implemented by the Competition Commission of India (CCI) to address data-driven anticompetitive practices and consumer manipulation. It highlights the CCI's proactive stance in addressing potential harms posed by such activities and acknowledges the crucial role of regulatory frameworks in protecting consumer interests and fostering fair competition within digital ecosystems.

Furthermore, the article discusses the significance of legislative reforms and the establishment of specialized units to regulate digital markets, drawing insights from global regulatory developments. It emphasizes the need for coordinated efforts to harmonize regulatory frameworks, develop specialized expertise, and enhance consumer awareness to address the complex interplay between data, market power, and individual rights.



* Shreya Gangadhar Shetty, LL.M. (Corporate and Business Laws), Gujarat National Law University.

## A. INTRODUCTION

In the contemporary digital landscape, the notion of digital ecosystems has transcended mere technological frameworks to become a fundamental paradigm shaping the interactions and dynamics of modern economies and societies. At its core, a digital ecosystem represents a complex and interconnected network of actors, platforms, applications, and data that collectively form an integrated environment facilitating various digital interactions, transactions, and experiences.

One of the defining features of digital ecosystems is their multi-sided nature, wherein multiple stakeholders interact within a shared platform or network. These stakeholders can include businesses, consumers, developers, advertisers, regulators, and other entities, each playing distinct roles and contributing to the overall ecosystem dynamics. For instance, digital platforms such as Google, Facebook, and Amazon serve as central hubs within their respective ecosystems, connecting users with content, services, and products while enabling third-party developers, advertisers, and businesses to leverage their infrastructure and reach a broader audience.

The Internet of Things("IoT") embodies the concept of ubiquitous computing, which envisions computing as an integral, almost invisible part of our lives. It is designed to operate seamlessly in the background, assisting humans with a myriad of tasks and decisions[1] and this becomes the seed to all digital platforms and services. Digital ecosystems thrive on network effects, wherein the value of the ecosystem increases as more participants join and engage with it. This positive feedback loop drives growth, innovation, and competitive dynamics within the ecosystem, often leading to winner-takes-all outcomes where dominant players capture a significant share of the market. Consequently, these dominant players wield considerable market power, enabling them to influence user behaviour, set industry standards, and shape the direction of innovation within their ecosystems.

The functionalities and scope of digital ecosystems vary across different sectors and industries, ranging from e-commerce and social media to cloud computing and digital finance. For

[1] Philipp Hacker, Johann Cordes & Janina Rochon, *Regulating Gatekeeper AI and Data: Transparency, Access, and Fairness under the DMA, the GDPR, and Beyond*, SSRN ELECTRON. J. (2022), https://www.ssrn.com/abstract=4316944 (last visited Feb 2, 2024).

example, in the e-commerce sector, platforms like Amazon have created expansive ecosystems encompassing online retail, logistics, cloud services, and digital content, offering consumers a seamless shopping experience while empowering third-party sellers and developers to access a global marketplace.

Moreover, the proliferation of digital technologies such as artificial intelligence, big data analytics, and the IoT has further amplified the complexity and interconnectivity of digital ecosystems. These technologies enable the collection, analysis, and utilization of vast amounts of data, providing valuable insights into user preferences, behaviour patterns, and market trends. Consequently, data has emerged as a critical currency within digital ecosystems, fuelling personalized services, targeted advertising, and algorithmic decision-making processes[2].

However, the concentration of data and market power within a few dominant players has raised concerns regarding competition, consumer privacy, and societal implications. The unchecked dominance of certain platforms may stifle innovation, limit consumer choice, and pose risks to data privacy and security. Additionally, the opaque algorithms and decision-making processes employed by these platforms raise questions about accountability, transparency, and ethical considerations[3].

Furthermore, with this technological integration comes a complex web of interconnected data, raising fundamental questions about the right to privacy. Privacy, once considered a personal space safeguarded by physical boundaries, has now expanded into the virtual realm. In the digital age, individuals grapple with the challenge of protecting their sensitive information in an environment where data is not only a commodity but a currency driving the engine of the digital economy.

At the heart of the digital privacy discourse lies the practice of data mining. This ubiquitous process involves the extraction and analysis of vast amounts of data to identify patterns, trends,

---

[2] Hanane Allioui & Youssef Mourdi *Exploring the Full Potentials of IoT for Better Financial Growth and Stability: A Comprehensive Survey*, https://www.mdpi.com/1424-8220/23/19/8015 (last visited Mar 15, 2024).

[3] An artificial intelligence algorithmic approach to ethical decision-making in human resource management processes - ScienceDirect, https://www.sciencedirect.com/science/article/pii/S1053482222000432 (last visited Mar 15, 2024).

and associations[4]. While data mining fuels innovation and personalized services, it poses significant threats to individual privacy[5]. The extensive collection and utilization of personal information, often without explicit consent, raises concerns about the autonomy and control individuals have over their digital identities. Understanding the implications of data mining is crucial for comprehending the contemporary challenges to digital privacy.

The world has repeatedly suffered the effects of social media users' brazen privacy violations. One such significant scandal was the American 2016 election scandal, in which it was discovered that Facebook user data was used to analyse voting patterns in the country and that deceptive advertising techniques were employed to influence the outcome of the then-upcoming elections in favour of a specific presidential candidate[6]. According to an interview with the Observer, a whistleblower revealed that Cambridge Analytica utilized Facebook to collect millions of people's profiles. They then created models to take advantage of the information they had gathered and targeted people's inner vulnerabilities[7].

Another major issue that can be seen coping its head up is in the intersection of data protection and competition law which has become increasingly significant with the rise of digital markets and the pivotal role of data in shaping the business models of technology firms. Traditionally distinct in their origins and legal frameworks, these two fields are now converging due to the dynamics of digital ecosystems. Technology companies, which control vast amounts of data across these ecosystems, are not only shaping market landscapes but also raising concerns about individual rights.

The market power wielded by these tech giants, rooted in their control over the nature and volume of data, has raised apprehensions about potential systematic impediments to individual rights. As these companies amass and process unprecedented quantities of data, there are growing concerns regarding privacy violations, data breaches, and the exploitation of user

---

[4] M. Bharati & Bharati Ramageri, *Data Mining Techniques and Applications*, 1 INDIAN J. COMPUT. SCI. ENG. (2010).

[5] Sara Quach et al., *Digital Technologies: Tensions in Privacy and Data*, 50 J. ACAD. MARK. SCI. 1299 (2022).

[6] Scott Detrow, *What Did Cambridge Analytica Do During The 2016 Election?*, NPR, Mar. 20, 2018, https://www.npr.org/2018/03/20/595338116/what-did-cambridge-analytica-do-during-the-2016-election (last visited Mar 15, 2024).

[7] Carole Cadwalladr & Emma Graham-Harrison, *Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach*, THE GUARDIAN, Mar. 17, 2018, https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election (last visited Feb 8, 2024).

information[8]. Moreover, the dominance of these firms in key sectors of the digital economy raises questions about fair competition and consumer choice.

Simultaneously, the collection and processing of data have revolutionized revenue models and market functioning, underscoring the significance of data access as a source of market power. In a digital economy, access to comprehensive datasets can confer a significant competitive advantage, allowing companies to refine their products, target advertising more effectively, and optimize user experiences[9]. Consequently, the ability to monetize data has become central to the profitability and sustainability of many technology firms.

The existence of zero-price platform-based ecosystems, exemplified by companies like Facebook and Google, underscores the intricate relationship between data and market dynamics. While these platforms offer services to users without monetary charges, users essentially pay with their data, which serves as the currency fuelling the platform's operations. This "free" model, while appealing to users on the surface, raises concerns about the hidden costs associated with data exploitation, surveillance capitalism, and the erosion of privacy. This perspective emphasizes the central role of the consumer, who essentially consents to entrust a valuable part of their intellect to companies with just a single click and becomes the actual "consideration" of such transactions.

Hence, the convergence of data protection and competition law reflects the evolving nature of digital markets and the complex interplay between data, market power, and individual rights. Regulatory frameworks must adapt to address these challenges, balancing the promotion of innovation and competition with the protection of consumer privacy and data sovereignty. As digital ecosystems continue to evolve, policymakers face the formidable task of crafting regulations that foster a fair, transparent, and accountable digital economy.

---

[8] Jane Andrew, Max Baker & Casey Huang, *Data Breaches in the Age of Surveillance Capitalism: Do Disclosures Have a New Role to Play?*, 90 CRIT. PERSPECT. ACCOUNT. 102396 (2023).
[9] Abid Haleem et al., *Artificial Intelligence (AI) Applications for Marketing: A Literature-Based Study*, 3 INT. J. INTELL. NETW. 119 (2022).

## B. DATA MINING: UNDERSTANDING THE ANTI-COMPETITIVE PATTERNS

At its core, data mining is the process of extracting valuable information and patterns from large datasets[10]. The primary objective of data mining is to transform raw, unstructured data into actionable knowledge, enabling informed decision-making and predictions in various fields such as business, healthcare, finance, and more.

Data mining serves a multitude of purposes, each contributing to the dynamism of the digital age. From recognizing patterns and trends to customer segmentation and fraud detection, the applications are diverse. In the healthcare sector, it aids in predicting disease outbreaks and optimizing treatment plans[11], while recommendation systems, fuelled by data mining, enhance user experience on platforms like Netflix and Amazon. The versatility of data mining makes it a cornerstone for organizations seeking to leverage the wealth of information available in the digital landscape.

The digital era has witnessed an evolution in data mining practices to adapt to the ever-expanding landscape of the digital ecosystem. Common techniques such as association rule learning, clustering, classification, regression analysis, and text mining empower analysts to unveil intricate patterns in the vast sea of digital information[12]. These practices not only offer insights into user behaviour but also play a pivotal role in shaping the functionality of recommendation algorithms, advertising strategies, and even the content users encounter online.

While the benefits of data mining are evident, the pervasive nature of data collection in the digital age raises significant concerns, particularly regarding user privacy. Users often find themselves unknowingly under the scrutiny of data collectors, with their every online move tracked and analysed. This extensive data collection poses challenges such as the adequacy of informed consent, potential infringement on individual autonomy through detailed profiling, security risks associated with holding vast datasets, and concerns over government or corporate surveillance activities leveraging data mining capabilities.

---

[10] Bharati and Ramageri, *supra* note 4.

[11] Adam Bohr & Kaveh Memarzadeh, *The Rise of Artificial Intelligence in Healthcare Applications*, ARTIF. INTELL. HEALTHC. 25 (2020).

[12] Bharati and Ramageri, *supra* note 4.

Ultimately, users are left questioning whether their choices were truly made freely or if they were subtly manipulated towards options benefiting corporations. This uncertainty undermines the essence of a free market, where consumers should be empowered to choose based on their preferences, not influenced by opaque algorithms or targeted advertising. This erosion of trust undermines consumer autonomy and fair competition, emphasizing the need for greater transparency and accountability in digital ecosystems.

A conventional company is restricted to gathering data solely from its own customer base, while a digital platform has the capability to amass extensive data concerning all sellers and buyers across various facets of its platform[13]. Various platforms employ diverse methods to collect and profit from data. Some opt for a direct subscription model, as seen with Spotify, where collected data is utilized to customize products directly for users, while others, like Amazon, tailor their offerings based on collected data[14]. On the other hand, platforms such as Facebook and Google Search generate revenue by selling targeted advertisements[15]. The majority of zero-price ad-based platforms utilize this approach, allowing them to establish dominance in the parallel positive-price digital advertising market[16]. By merging datasets, these platforms can enhance the value derived from the data they have gathered. This enables them to draw conclusions about consumer preferences, behaviours, and social connections, among other insights, which they can then utilize in related markets[17].

In a wider sense, it gives platforms the ability to gain market dominance over ecosystem complementors and the entire supply chain[18]. The dominant firms that create these ecosystems are able to take advantage of their key positions within the ecosystem because they have access to a large number of complementary users (such as Facebook's search users and advertisers) or because they provide complementary products (like Apple Music, iPods, and Apple TV). They do more than just lock in consumers and make it more expensive to migrate to a different

---

[13] THE SEPARATION OF PLATFORMS AND COMMERCE on JSTOR, https://www.jstor.org/stable/26632275 (last visited Mar 15, 2024).

[14] Ads That Don't Overstep, HARVARD BUSINESS REVIEW, Jan. 2018, https://hbr.org/2018/01/ads-that-dont-overstep (last visited Mar 15, 2024).

[15] *Id.*

[16] Hacker, Cordes, and Rochon, *supra* note 1.

[17] MAURICE STUCKE & ALLEN GRUNES, *BIG DATA AND COMPETITION POLICY* (2016).

[18] Jacobides, M., A. Sundararajan and M. Van *Alstyne Platforms and ecosystems: enabling the digital economy* (2019) World Economic Forum Briefing Paper. World Economic Forum: Switzerland.

ecosystem; they also solidify their dominant position inside the ecosystem by reducing competition[19].

Such data-driven anticompetitive behaviour cannot be adequately addressed by conventional antitrust parameters. With its analytical emphasis on the pertinent product market, competition law is ill-equipped to comprehend the intricate dynamics of platforms staking claims to market dominance within an ecosystem of complementary products[20]. For instance, Alphabet can set terms for associated market participants upstream, such as handset and mobile device manufacturers, as well as for app development and content marketplaces through its Android operating system[21].

However, Regulators monitoring competition are beginning to pay attention to this phenomenon. In June 2021, the Competition and Markets Authority (CMA) of the United Kingdom and the European Commission (EC) began looking into Facebook's use of advertising data and whether it gave the company an unfair advantage over rivals, enabling it to profit from its own services like Facebook Marketplace[22]. Furthermore, according to the Bundeskartellamt, Germany's competition authority, Facebook's terms and conditions are "neither justified under data protection principles nor are they appropriate under competition law standards," and as such, they breach both competition law and data protection regulations[23].

The dynamics of monopolization and the absence of data protection can reinforce each other. When large tech firms act as digital gatekeepers, only a select few entities gain access to the crucial data necessary for success in digital markets. Digital gatekeepers aren't solely defined by their size or market dominance but are broadly categorized as those serving as an

---

[19] Jacobides, Michael G. and Lianos, Ioannis, Ecosystems and competition law in theory and practice (2021). Available at SSRN: https://ssrn.com/abstract=3772366 or http://dx.doi.org/10.2139/ssrn.3772366

[20] ibid

[21] Fiona M Scott Morton & David C Dinielli, *Roadmap for a Digital Advertising Monopolization Case Against Google*.

[22] CMA investigates Facebook's use of ad data, GOV.UK, https://www.gov.uk/government/news/cma-investigates-facebook-s-use-of-ad-data (last visited Feb 8, 2024).

[23] Bundeskartellamt, FAQ Press release - Bundeskartellamt prohibits Facebook from combining user data from different sources Background information on the Bundeskartellamt's Facebook proceeding dated 7th February 2019 https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/07_02_2019_Facebook_FAQs.pdf?__blob=publicationFile&v=5; accessed 14 July 2021.

unavoidable intermediary between businesses and consumers. These entities wield significant power within the online ecosystem, particularly regarding access to essential infrastructure[24].

Under EU Digital Markets Act (DMA) defines gatekeepers as holding an 'entrenched and durable' position in the market, alongside specifying quantitative metrics such as user count and market turnover. The concentration of data presents challenges for potential new entrants, as they may struggle to amass a sufficiently large user base to compete effectively against established incumbents[25] hence the European Commission has the authority to identify digital platforms as "gatekeepers" under the DMA if they serve as a significant conduit between consumers and enterprises. Via a press release on 6th September 2023, the commission identified six gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta (Facebook), and Microsoft. There are a total of 22 defined key platform functions that gatekeepers offer. It gave the identified gatekeepers six months to make sure that every one of their assigned core platform services complies fully with the DMA requirements[26].

This recognition of such companies becomes key because due to the absence of regulations governing data sharing, such gatekeepers of data lack incentives to provide access to critical data that could facilitate new market entrants. The absence of rules and procedures for users to access their own data held by technology firms, as well as ensuring data portability, further exacerbates the issue[27]. This lack of access to key data sets hampers the ability of complementary businesses and potential competitors to compete effectively, thereby increasing switching costs and benefiting such gatekeepers.

Low levels of data protection could result from concentrated market power and limited competition[28]. Because in less competitive markets where a small number of firms dominate, consumers have fewer choices regarding their privacy. A market with multiple participants is

---

[24] What Is a Digital Gatekeeper? Which Platforms Should Be Captured by the EC Proposal for a Digital Market Act? by Damien Geradin :: SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3788152 (last visited Feb 8, 2024).

[25] Erik Feyen et al., *Fintech and the Digital Transformation of Financial Services: Implications for Market Structure and Public Policy*.

[26] Digital Markets Act: Commission Designates Six Gatekeepers, European Commission, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328 (last visited Feb 8, 2024).

[27] Stucke and Grunes *supra note. 7*

[28] Digital markets, data, and privacy: competition law, consumer law and data protection | Journal of Intellectual Property Law & Practice | Oxford Academic, https://academic.oup.com/jiplp/article-abstract/11/11/856/2335247 (last visited Feb 8, 2024).

likely to better suit their privacy preferences[29]. In a market where a small number of dominant enterprises have less motivation to compete on data privacy, they are more likely to gather excessive amounts of data and provide less privacy protection than they would in a market where there is greater competition. Strong network effects and expensive switching costs would discourage users from searching for other platforms that are more private. With fewer options to switch to, digital platforms could also collect more data and compensate users less than they would in a competitive market[30].

Increased surveillance and data leaks are also possible with digital platforms acting as data monopolies[31]. A single breach in a data monopoly could result in the exposure of vast amounts of sensitive information, including personal details, financial records, and communication histories of millions of users. Such breaches not only compromise individual privacy but also pose significant risks to national security, economic stability, and societal trust in digital technologies.

Between 2015 and March 2018, a significant security flaw in Google+ allowed outside developers potential access to the personal profile data of its users. This flaw, stemming from a software glitch, exposed sensitive information, including personal details and communication histories, to unauthorized third parties. Despite Google's efforts to address the issue, the incident highlighted the inherent risks of data vulnerability[32]. Therefore, it is imperative to adapt competition laws to address these evolving challenges in order to foster competition within the digital ecosystem while safeguarding user privacy, choice, and safety.

---

[29] Beatriz Kira, Vikram Sinha & Sharmadha Srinivasan, *Regulating Digital Ecosystems: Bridging the Gap between Competition Policy and Data Protection*, 30 IND. CORP. CHANGE 1337 (2021).

[30] Nicholas Economides & Ioannis Lianos, *Restrictions on Privacy and Exploitation in the Digital Economy: A Market Failure Perspective*, (2021), https://papers.ssrn.com/abstract=3686785 (last visited Feb 8, 2024).

[31] The battle of power: Enforcing data protection law against companies holding data power - ScienceDirect, https://www.sciencedirect.com/science/article/pii/S0267364922000851 (last visited Feb 8, 2024).

[32] Kate O'Flaherty, *Google+ Security Bug -- What Happened, Who Was Impacted And How To Delete Your Account*, FORBES, https://www.forbes.com/sites/kateoflahertyuk/2018/10/09/google-plus-breach-what-happened-who-was-impacted-and-how-to-delete-your-account/ (last visited Feb 8, 2024).

## C. GLOBAL DATA PRIVACY AND COMPETITION REGULATORY LANDSCAPE

In response to the overall growing concern of data privacy in the digital ecosystem and to hold organizations accountable for responsible data handling. Two prominent regulations shaping this landscape are the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). While both strive to safeguard data privacy, their nuances and differences are crucial to understand for businesses operating in this complex environment.

At its core, the GDPR, implemented in 2018, champions a "privacy by design" philosophy. It applies to any organization processing the personal data of EU residents, regardless of the organization's location. This broad reach demands a proactive approach, requiring organizations to embed data protection principles throughout their data lifecycle – from collection and storage to processing and deletion. Transparency is paramount, with individuals granted extensive rights to control their data. They have the right to know what data is collected, access and rectify it, request its erasure, restrict its processing, and object to automated decision-making based on their data. Businesses must obtain explicit consent for most data processing activities, demonstrating a clear shift in the power dynamic towards individuals. Stringent enforcement mechanisms, including heavy fines for non-compliance, underscore the GDPR's seriousness in protecting data privacy rights.

CCPA, enacted in 2020, takes a more individual-centric approach, focusing on empowering California residents to understand and control their personal information. Its reach extends to businesses collecting data from California residents, regardless of the business's location. Compared to the GDPR's emphasis on proactive measures, CCPA prioritizes transparency and individual control. Businesses must disclose their data collection practices, provide mechanisms for individuals to access and delete their data, and offer an opt-out option for the sale of their personal information. While consent plays a role, CCPA allows businesses to rely on opt-out mechanisms for certain data uses, providing some flexibility compared to the GDPR's explicit consent requirement. The CCPA's enforcement framework is still evolving, with a focus on consumer complaints and private lawsuits.

Beyond their core differences, it is crucial to acknowledge that both regulations exist within a wider ecosystem of data privacy laws. From Brazil's Lei Geral de Proteção de Dados Pessoais

(LGPD) to Thailand's Personal Data Protection Act (PDPA), the global regulatory landscape is becoming increasingly complex[33].

Internationally spotlight is also starting to fall on the interplay of data and competition law. Many competition authorities worldwide have taken steps to address the unique challenges posed by digital markets by establishing specialized Digital Markets Units or officers. In the United Kingdom, the Digital Markets Unit (DMU) operates within the CMA and is currently working on a non-statutory basis. However, the UK government has proposed legislative reforms to create a new pro-competition regime specifically tailored for digital markets. This regime will target companies identified by the DMU as possessing 'strategic market status[34].

The Federal Trade Commission (FTC) in the United States established a permanent Technology Enforcement Division in October 2019. Canada's Competition Bureau established its Digital Enforcement and Intelligence Branch (CANARI) at the end of 2021, focusing on competition through analytics, research, and intelligence. Australia's ACCC has launched a dedicated Digital Platforms Branch to undertake further investigations and analysis related to digital platform markets[35].

Overall, these legal developments underscore the intertwined nature of privacy and competition law. Any data protection legislation must be mindful of its competitive implications, just as competition law must consider the ramifications of privacy violations. This nuanced approach reflects a growing understanding that privacy and competition concerns cannot be rigidly separated and underscores the importance of regulatory frameworks that address the complexities of digital ecosystems comprehensively.

## D. INTERPLAY OF COMPETITION LAW & DATA PRIVACY IN INDIA SO FAR

India's digital landscape took a significant step towards data privacy protection with the enactment of the Digital Personal Data Protection Act, 2023 (DPDPA) in August 2023. This

[33]Seven global personal data protection priorities for 2020, https://www.pdpc.gov.sg/-/media/Files/PDPC/DPO-Connect/March-20/Seven-Global-Personal-Data-Protection-Priorities-for-2020.html (last visited Mar 15, 2024).
[34] Digital Markets, Competition and Consumers Bill., 2023.
[35]Key Developments in Canada, https://globalcompetitionreview.com/guide/digital-markets-guide/second-edition/article/key-developments-in-canada (last visited Mar 15, 2024).

landmark legislation, the first of its kind in India, aims to balance individual data rights with the need for legitimate data processing in today's digital age.

The DPDPA applies broadly, covering the processing of any digital personal data within India, irrespective of its original format. Even businesses offering services in India, regardless of their location, must comply. At its core, the Act empowers individuals with a range of rights over their data, including access, rectification, restriction, portability, and even erasure (the right to be forgotten)[36]. Responsibilities also fall on data fiduciaries, such as businesses and organizations handling personal data. These include obtaining consent for processing (with some exceptions), implementing robust data security measures, and minimizing data collection and retention. The Act establishes a dedicated Data Protection Authority to oversee implementation and enforce compliance.

However, unlike the GDPR, the Indian government holds the power to exempt specific government agencies from certain provisions under certain circumstances. While the final rules and regulations of the DPDPA are still pending, its enactment marks a crucial step towards a more secure and privacy-conscious digital space for Indian citizens.

The Competition Commission of India (CCI) has demonstrated a remarkable approach in handling cases such as *Vinod Kumar v. WhatsApp*[37] and subsequent legal developments, emphasizing a delicate balance between privacy concerns and competition law enforcement. While some argue that privacy matters are beyond the CCI's jurisdiction, it is essential to recognize that the CCI's stance is more about the legal scope of its examination rather than an outright exclusion of privacy issues. The CCI acknowledges that privacy considerations can indeed impact competition, opening avenues for further exploration and discussion on this front.

In cases like *Harshita Chawla v. Union of India*[38], where WhatsApp and Facebook argued that data sharing for WhatsApp Pay did not pose competition concerns, the CCI did not outright dismiss the argument. Instead, it recognized the potential antitrust issues and data protection concerns that could arise from such data usage. Despite evidentiary limitations preventing

[36] The Digital Personal Data Protection Act, 2023.
[37] Vinod Kumar Gupta v. WhatsApp Inc. 2017 SCC OnLine CCI 32.
[38] Harshita Chawla v. Whatsapp LLC Case No. 15 of 2020, Competition Commission of India.

deeper exploration, the CCI's acknowledgment of the competitive implications of data misuse, especially for non-dominant firms, is significant.

A notable shift occurred in the case of *In re: Updated Terms of Service v. WhatsApp*[39], where the CCI took Suo moto action. Initially observing that the extensive collection of user data along with mandatory consent for data sharing with WhatsApp's affiliates constituted an unfair practice and an abuse of dominance over users, the CCI highlighted that users losing control over their personal data could be seen as a degradation in quality under antitrust regulations. In Google's case concerning the Play Store, the CCI imposed a hefty fine of 936 crore rupees[40]. This penalty was a result of Google's insistence on certain transactions using the Google Play billing system (GPBS), enabling the collection of significant user data, including personal and financial information. By withholding this transaction data, Google hindered app developers' ability to enhance their services and compete effectively, thereby abusing its dominant position. Google argued for prioritizing user data privacy, but the CCI suggested that privacy could be ensured through contractual arrangements with third parties. Alongside the monetary penalty, the CCI's Play Store order included nine behavioural directives, such as allowing developers to use third-party billing services and promoting alternative purchase channels through user communication.

Despite legislative gaps, the CCI's interventions and stringent measures indicate its firm stance against data-driven anticompetitive practices and consumer manipulation by these companies. These directives serve as evidence of the CCI's proactive approach in addressing potential harms posed by such activities. It is evident that the CCI recognizes its crucial role in tackling these issues to prevent significant harm to end-users and the competitive market spirit in the digital ecosystem, ensuring adequate protection.

Another aspect adding fuel to the ongoing conversation about the need for regulating digital platforms is the notable increase in mergers and acquisitions within the technology sector. In 2020, the Competition Commission of India (CCI) approved Facebook's acquisition of a 9.99%

[39] In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Case No. 01 of 2021

[40] CCI imposes a monetary penalty of Rs. 936.44 crore on Google for anti-competitive practices in relation to its Play Store policies, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1870819 (last visited Feb 8, 2024).

stake in Jio Platforms Limited (Jio)[41], a competitor in the telecommunications industry. While acknowledging the potential for both parties to exchange complementary user data, the CCI emphasized that any resulting anticompetitive behaviour could be addressed as an antitrust concern at a later stage. Similarly, in the same year, the CCI also gave the green light to Google's acquisition of a stake in Jio[42], despite acknowledging the potential for anti-competitive conduct, suggesting that such issues could be resolved post-transaction.

In 2022, the CCI granted approval for Google's acquisition of a 1.28% stake in Bharti Airtel Limited, a significant competitor to Jio in the telecommunications sector. The CCI expressed concerns about the sharing of competitively sensitive information (CSI) between Google and Airtel due to Google's existing investment in Jio. Nevertheless, the transaction was approved with commitments from Google to establish a firewall preventing CSI sharing with Jio, indicating a shift from the CCI's previous approach of addressing user data sharing concerns after the transaction[43]. This proactive regulatory approach demonstrated the CCI's proactive stance.

Additionally, the CCI assessed potential antitrust issues when endorsing Amazon Asia-Pacific Resources Private Limited's acquisition of a 76% stake in Prione Business Services Private Limited, the parent company of Cloudtail India Private Limited[44]. Despite ongoing investigations into alleged preferential treatment for certain sellers on Amazon's platform, the CCI deemed the transaction acceptable, asserting that the alleged preference did not affect the transaction assessment or necessitate corrective action.

In the same year, the CCI sanctioned PayU Payments Private Limited's acquisition of IndiaIdeas.com Limited[45], marking the first instance of unconditional approval following a

---

[41] CCI approves acquisition of 9.99% stake in Jio Platforms by Jaadhu Holdings LLC, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1634024 (last visited Mar 15, 2024).
[42] CCI approves acquisition of 7.73% equity share capital of Jio Platforms Limited by Google International LLC, https://pib.gov.in/Pressreleaseshare.aspx?PRID=1672142 (last visited Mar 15, 2024).
[43] Gulveen Aulakh, *CCI Approves Google's 1.28% Stake Buy in Bharti Airtel*, MINT (2022), https://www.livemint.com/companies/news/cci-approves-google-s-1-28-stake-buy-in-bharti-airtel-11656598357482.html (last visited Mar 15, 2024).
[44] Amazon Asia Pacific Resources gets nod foracquisition of Prione Business Services - The Hindu BusinessLine, https://www.thehindubusinessline.com/economy/amazon-asia-pacific-resources-gets-nod-foracquisition-of-prione-business-services/article65210523.ece (last visited Mar 15, 2024).
[45] CCI approves acquisition of 100% of equity share capital of IndiaIdeas.com Limited (IIL) by PayU Payments Private Limited, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1856891 (last visited Mar 15, 2024).

show-cause notice. This decision reflected the CCI's understanding of the digital payments sector, its business-friendly approach, and its commitment to evaluating each case on its individual merits. These determinations by the CCI underscore its constructive and vigilant approach to navigating the evolving digital landscape.

## E. CONCLUSION

In conclusion, the convergence of competition policy and data protection in regulating digital ecosystems presents a multifaceted challenge that requires a nuanced and adaptable regulatory approach. As digital markets continue to evolve and technology firms leverage data-driven business models, regulators must navigate the complexities of balancing competition dynamics with privacy concerns.

While efforts have been made, the gap between competition policy and data protection introduces significant regulatory challenges, including reconciling conflicting objectives and addressing unique issues inherent in digital ecosystems. While competition law aims to promote market competition and prevent anti-competitive behaviour, data protection regulations prioritize individual privacy and data security. Bridging this gap necessitates coordinated efforts to harmonize regulatory frameworks and develop specialized expertise in regulating digital markets.

Establishing a specialized unit to regulate digital markets seems like the most plausible and attainable solution to this problem. This unit could focus on addressing anticompetitive practices and consumer protection issues specific to digital ecosystems, like the Digital Markets Unit in the United Kingdom and the Technology Enforcement Division in the United States. By leveraging interdisciplinary expertise, fostering stakeholder engagement, and conducting market studies, such a unit could effectively monitor and enforce regulations in the rapidly evolving digital landscape, promoting fair competition and protecting consumer interests.

The CCI has been commendable in its efforts to ensure that the existing ex-post regulatory framework relies on evidence-based methodologies. Furthermore, the CCI has displayed adaptability by implementing interim measures in digital markets as required, demonstrating a practical and flexible regulatory approach. CCI has significantly bolstered its capabilities and resources to address participants in the digital economy. The establishment of a dedicated

Digital Markets and Data Unit (DMDU) marks a noteworthy step in this direction[46]. The primary objectives of the DMDU include facilitating interdisciplinary collaboration on digital market issues, fostering engagement with various stakeholders including academia, other regulatory bodies, and government entities, supporting enforcement efforts related to digital markets, and conducting market studies pertinent to digital market dynamics.

Although this initiative is laudable, there is room for improvement in the DMDU's current mandate. Enhancements could include the addition of domain experts such as statisticians, data scientists, and technology specialists to augment its operational effectiveness. It is also imperative to investigate how data flows through both known and undisclosed channels, potentially being utilized to manipulate and distort the market. There is a pressing need for legislative reform within the realm of competition law to empower the CCI with direct jurisdiction over such issues. This would facilitate a more transparent functioning of the market and provide a more effective path for holding market disruptors accountable for their actions.

Drawing inspiration from the EU Digital Markets Act (DMA), such corporations known for engaging in unfair and anti-competitive practices can be identified in the Indian Market. This initiative would serve multiple purposes: it would enable vigilant monitoring of these corporations, discourage other market players from engaging in similar activities, and promote fair competition within the market. By publicly identifying and scrutinizing companies with a history of anti-competitive behaviour, CCI can create a deterrent effect, encouraging adherence to ethical business practices and fostering a more level playing field for all participants. Additionally, such transparency would also empower consumers to make informed choices and support regulatory efforts aimed at promoting market integrity and consumer welfare.

In addition to regulatory reforms and enhanced surveillance by competition authorities, increasing consumer awareness will also play a pivotal role in addressing issues related to data-driven anticompetitive behaviour in digital markets. Heightened consumer awareness will foster a culture of transparency and accountability among companies operating in digital ecosystems, encouraging them to prioritize consumer interests and adhere to fair competition practices. As consumers become more knowledgeable about the implications of their data

---

[46] CCI organises 8th edition of National Conference on Economics of Competition Law, http://pib.gov.in/PressReleseDetail.aspx?PRID=1903927 (last visited Feb 8, 2024).

sharing and consumption behaviours, they can actively contribute to shaping a more competitive and consumer-friendly digital marketplace.

Imposing mandatory disclosure requirements regarding the collection, usage, and storage of data can significantly contribute to fostering a better digital ecosystem. By mandating transparency about data practices, users could gain clarity on how their personal information is collected, processed, and utilized by digital platforms. Clear guidelines on data storage and disposal would ensure that sensitive information is handled responsibly, mitigating the risk of data breaches and unauthorized access. Moreover, such disclosures would empower users to make informed decisions about engaging with digital services, promoting trust and accountability within the digital ecosystem. Ultimately, mandatory disclosure requirements would serve as a cornerstone for building a more transparent, secure, and consumer-centric digital environment.

While DPDPA is certainly a step in the right direction for India as an economy growing at an unprecedented rate a broader and tailored legislative reform is required to investigate and control the widespread mining of this data and to regulate its effects on the commercial activities of the country. While the economy's burgeoning spirit of entrepreneurship should not be hampered by such regulations, they also should not permit a flagrant violation of consumers' right to privacy where their identities are reduced to little more than figures on a page. And for this a robust legislative reform that keeps in line with both the data privacy aspects and competitive aspects of the digital ecosystems is imperative.

# THE CONFLUENCE OF ARTIFICAL INTELLIGENCE AND CYBER CRIME: THREAT TO INDIVIDUAL'S FUNDAMENTAL RIGHTS AND FUTURE TRENDS*


**ABSTRACT**

Artificial Intelligence (AI) has gained loads of popularity and advancements after 2020. This research paper studies and investigates the complex connection between AI and cybercrime, concentrating on the dangers to individual's Fundamental rights. The use of AI technology in cybercrime has increased the sophistication and scope of assaults while threatening traditional cybersecurity solutions. Furthermore, this paper examines the numerous consequences of artificial intelligence in cybercrime, focusing on the degradation of individual privacy, security, and freedom. By reviewing previous case studies and developing trends, the study explains how AI-powered cyber assaults exploit weaknesses in digital systems, jeopardising the very fabric of basic rights guaranteed in democratic nations, this paper also explores the legal and ethical implications of AI's usage in cybercrime, underlining the issues that present regulatory frameworks confront. This research provides insights into prospective breakthroughs and countermeasures for AI's future role in cybercrime. The ramifications for governance, law enforcement, and technological development are examined, with an emphasis on finding a balance between using AI's capabilities to achieve beneficial results and protecting individuals' basic rights in the digital era. Ultimately, this research adds to a more nuanced understanding of the complicated interactions between AI, cybercrime, and the protection of individual rights in an age of fast technological innovation.



* Disha Shivnani & Ranveer Singh, 4th Year BBA-LLB, Navrachana University, dishashivnani26@gmail.com, ranveer7686@gmail.com

## INTRODUCTION

The modern age is dependent on artificial intelligence for a variety of tasks, including typing, office work, human labour, and much more. Technology is all around us, and we are always creating new technologies. However, as there are two sides to every coin, how did we determine whether artificial intelligence is beneficial to humans and what its implications are for every industry? In order to comprehend this, we are producing a research paper that compares the legal frameworks governing artificial intelligence in the UK, USA, and China, as well as discussing how the development of AI has negatively affected people's fundamental rights. The use of computers to do tasks that would typically need human intelligence is known as artificial intelligence. The science of creating robots with human-like thought processes is known as artificial intelligence. It is capable of actions deemed "smart."

Unlike humans, AI technology can process enormous volumes of data in many ways. AI wants to be able to accomplish human-like tasks including pattern recognition, decision-making, and judgment.[1] Over the past ten years, artificial intelligence (AI) has greatly benefited mankind. This trend is expected to continue in the years to come as AI is further incorporated into the digital services that we use on a daily basis. In the 1960s, the Indian government recognized the potential of AI and established institutions like the Indian Statistical Institute (ISI) and the Tata Institute of Fundamental Research (TIFR), which played a crucial role in AI research and education. These institutions laid the foundation for AI development in India.[2] During the 1980s and 1990s, AI research in India received a boost with the establishment of the Centre for Artificial Intelligence and Robotics (CAIR) by the Defence Research and Development Organization (DRDO). CAIR focused on developing AI technologies for defence purposes. In the early 2000s, the Indian government launched the "National Task Force on Information Technology and Software Development" to promote AI research and development. This initiative led to the establishment of AI research centres and the inclusion of AI in the curriculum of Indian universities.[3]

## HISTORY AND EVOLUTION OF ARTIFICAL INTELLIGENCE IN INDIA

Everywhere we can see people talking about artificial intelligence and its consequences being that a negative side or a positive side of artificial intelligence. Astonishingly, Greek, Roman,

---

[1] Pattam, A. (2021), *Artificial intelligence, defined in simple term*s, HCL Tech, Available at: https://www.hcltech.com/blogs/artificial-intelligence-defined-simple-terms.

[2] Sadachar, A. (2023) *History of artificial intelligence in India* :-, Medium, Available at: https://medium.com/@akshatsadachar08/history-of-artificial-intelligence-in-india-b12c694f7903.

[3] *Ibid.*

Indian and Chinese mythologies mention artificially intelligent beings in their scriptures. However, modern AI can be traced back to 1936, when Turing designed the first machine that used an algorithm. Artificial Intelligence as a science was formally introduced at the Dartmouth conference in 1956, where John McCarthy coined the term 'Artificial intelligence'[4] Since the early 90s, the IT and ITeS services sector in India has been of tremendous importance to its economy eventually growing to account for 7.7% of India's GDP in 2016.[5] As the economy is growing globally and we have world's largest population so our country has a made a significant evolution of in Artificial Intelligence. In India we have adopted three plans under NITI Aayog. But now let's discuss in this paper the possible threats arising out from Artificial intelligence. Cybercrime in India is on the rise and is witnessing an increase in the number of cybercrimes being reported. India was ranked 10th for cyber security in the world according to the 4th edition of the Global Cybersecurity Index 2020. [6] Crimes such as Deepfake, Gender Inequality, violation of Right to equality and non-discrimination provided under Constitution of India, Political Risk, Financial Risk, Right to information, Freedom of Expression and political Participation.

Deepfake AI , short for "deep learning" and "fake," is a technology that uses deep learning techniques and Artificial Intelligence (AI) to generate highly convincing fake or manipulated digital information, generally in the form of videos, images, or audio recordings.[7] Deepfakes the term was coined in 2018 by a Reddit user who created a Reddit forum dedicated to the creation and use of deep learning software for synthetically face swapping female celebrities into pornographic videos. According to a report of an Amsterdam based cybersecurity firm, Deep trace, deepfake pornographic videos are aimed and targeted majorly at women than men, thereby increasing gender inequality.[8] 90% women are victims of Revenge porn, non-consensual porn and other forms of harassment.[9] In March 2022, a video message of Ukrainian President, Volodymyr Zelenskky surfaced on social media platforms wherein the President is seen imploring Ukrainians to lay down their arms and surrender. Resultant, the President's office immediately disavowed the authenticity of the video and noted it to be deepfake. The

---

[4] Madhavan, R. (2021) *AI in India: History and evolution*, Medium, Available at: https://radhika-k-madhavan.medium.com/ai-in-india-history-and-evolution-28aba000504b.

[5] Daniel Faggella, *ARTIFICIAL INTELLIGENCE IN INDIA – OPPORTUNITIES, RISKS, AND FUTURE POTENTIAL,* EMERJ ARTIFICIAL INTELLIGENCE RESEARCH (2019), https://emerj.com/ai-market-research/artificial-intelligence-in-india.

[6] 'Global Cybersecurity Index' (Byju's), https://byjus.com/free-ias-prep/global-cybersecurity-index-itu/.

[7]Bisht, R. (2023) *What is Deepfake Ai?,* InfoSec Train. Available at: https://www.infosectrain.com/blog/what-is deepfake-ai/.

[8] *The state of deepfakes*. Available at: https://regmedia.co.uk/2019/10/08/deepfake_report.pdf.

[9] *Ibid.*

video was the first high-profile use of deepfake during an armed conflict and marked a turning point of information operations.[10] Deepfakes are not just limited to creation of imagery and videos, in fact as elaborated above, there exist AI tools to clone the voices of individuals to execute financial scams. About 47% of Indian adults have experienced or know someone who have experienced some kind of AI voice scam. As per McAfee's report on AI Voice Scams, around 83% of Indian victims responded by saying that they had a loss of money with 48% losing over INR 50,000. [11]

**INDIAN LAWS DEALING WITH ARTIFICAL INTELLIGENCE IN INDIA**

In India we have Indian Penal Code, 1860[12], Information Technology Act, 2000[13] mainly two legislations with dealing with the punishment of cybercrime in India and some provision which more or less Deals with Artificial Intelligence such as Personal Data Protection Bill, 2019[14], Indian Copyright Act, 1957[15], National e- governance Plan, National Education Policy. The Information Technology Act, 2000 provide to recognise electronic commerce and transactions. Further it provides punishment for the offender who commits the crime such as Hacking, cyber terrorism, data theft etc. Some of the provision or Sections which states about Cybercrimes from this act are Sections – 43A[16], Section – 66B [17], Section – 66C[18], Section – 66D[19], Section – 66E,[20] Section – 66F[21], Section – 67[22], Section – 72[23], Section – 79[24]. The Indian Penal Code, 1860 states the punishment of Fraud, identity theft, forgery etc. Some of the provisions are Section 292[25] ,Section 354C[26] ,Section 354D[27],Section 379[28], Section 420[29], Section 463[30], Section 465[31], and Section 468[32]. The personal Data Protection Bill is a framework which give

[10]*Ibid.*
[11]*Ibid.*
[12] Indian Penal Code 1860.
[13] Information Technology Act 2000.
[14] Personal Data Protection Bill, 2019.
[15] Indian Copyright Act, 1957.
[16] Information Technology Act 2000, s 43A.
[17] Information Technology Act 2000, s 66 B.
[18] Information Technology Act 2000, s 66 C.
[19] Information Technology Act 2000, s 66 D.
[20] Information Technology Act 2000, s 66 E.
[21] Information Technology Act 2000, s 66 F.
[22] Information Technology Act 2000, s 67.
[23] Information Technology Act 2000, s 72.
[24] Information Technology Act 2000, s 79.
[25] Indian Penal Code 1860, s 292.
[26] Indian Penal Code 1860, s 354C.
[27]Indian Penal Code 1860, s 354D.
[28] Indian Penal Code 1860, s 379.
[29] Indian Penal Code 1860, s 420.
[30] Indian Penal Code 1860, s 463.
[31] Indian Penal Code 1860, s 465.
[32]Indian Penal Code 1860, s 468.

protection of personal data of individual and to create an authority section which are involved are Section 3[33],Section – 22[34], Section – 24[35], Section – 34[36], Section – 40[37], Section – 43[38]. The Indian Copyright Act, 1957 provision with deals with definition of "Literary work", meaning of "copyright", ownership of Copyright etc the sections involved from this Act are Section – 2(o)[39], Section -, 2(ff)[40], Section – 2(h)[41], Section – 14[42], Section – 17[43], Section – 52[44]. The National e- Governance Plan (NeGP) aims at providing online government services to ensure transparency, efficiency and accountability. The New Education Policy aims at providing special coding classes, innovation and research personalised learning an AI assist teacher by automating administrative task and offering AI driven training programs to keep educators updated. AIRAWAT this is an initiative by Niti Aayog which aims to enhance the AI capacities in India such as AI research and development, levering, big data analytic for actionable insight to a policy formation and decision making, Disseminating AI knowledge across sectors offering training resource to build AI skills among professional students and Emphasising ethical development.

**CASE LAWS**

In the legal case of ANIL KAPOOR VS. SIMPLY LIFE INDIA AND ORS. [45]The Delhi High Court provided legal protection to the actors, persona and personal attribute to prevent all misuse, particularly through the creation of deep fake videos, using AI technology, the court issued an ex- parte injunction effectively prohibiting 16 entities from exploiting the actor's identity, likeness, and image for financial gain on commercial purpose.

In the case of AMITABH BACHCHAN VS. RAJAT NEGI AND ORS.[46] the renowned actor sought legal action against the unauthorised use of his personality rights, and personal attributes, including his voice, name, image, and likeness for commercial exploitation, the court granted and ad interim in rem injunction to prevent such unauthorised usage.

---

[33] Personal Data Protection Bill, 2019, s 3.
[34] Personal Data Protection Bill, 2019, s 22.
[35] Personal Data Protection Bill, 2019, s 24.
[36] Personal Data Protection Bill, 2019, s 34.
[37] Personal Data Protection Bill, 2019, s 40.
[38] Personal Data Protection Bill, 2019, s 43.
[39] Indian Copyright Act, 1957, s 2(o).
[40] Indian Copyright Act, 1957, s 2(ff).
[41] Indian Copyright Act, 1957, s 2(h).
[42] Indian Copyright Act, 1957, s 14.
[43] Indian Copyright Act, 1957, s 17.
[44] Indian Copyright Act, 1957, s 52.
[45] Anil Kapoor Vs. Simply Life India, CS(COMM) 652/2023.
[46] Amitabh Bachchan Vs. Rajat Negi And Ors, CS (COMM) 819/ 2022.

Deepfake technology enables the creation of highly realistic videos by super imposing one person's face onto another body. In these cases, AI toll was exploited to generate deep videos, posting a threat to integrity and reputation of the actors involved. The misuse of AI generated deep fake videos in both cases was driven by commercial motives, highlighting the potential for financial gain through unauthorised use of celebrities' personal attributes. The legal action taken by Anil Kapoor and Amitabh Bachchan demonstrated the necessity of legal framework to address the negative repercussions of AI misuse. Court plays a crucial role in granting injunction to prevent unauthorised use of individuals personal attributes and protect their rights. Deep fake videos can severely damage individuals, reputation, and privacy, blurring the lines between reality and fiction. Legal interventions are essential to safeguard individuals right and prevent harm caused by malicious use of AI technology.

According to the survey conducted by McAfee, approximately 47% of Indian adults have either personally experienced or know someone who has encountered AI voice scams, which is nearly double the global average of 25%. 83% of Indian victims reported monetary losses with nearly half more than ₹50,000. Over 69% of Indian feels uncertain about distinguishing between an AI generated voice and a real one. The survey reveals that a significant portion of Indian respondent 66% indicated that they would respond to a voicemail or voice note, especially if it's purported to be from a family member in need of financial assistance. Messages claiming emergency such as being robbed or involved in car, accident were most likely to elicit a response, particularly if they appear to come from parent, partner or child.[47]

By Deep Fake scams Company loses over ₹2000 crores after fake video call from CFO. The employee has attended the conference call were instructed to make 15 transfer total of $25.5 billion to give 5 different Hong Kong bank accounts.[48] IBM will stop hiring people to fill thousands of roles in coming years that the company believes artificial intelligence can handle, CEO Arvind Krishna told Bloomberg, marking one of the most serious and tangible threat, AI has posed to workforce.[49]

---

[47] Economic Times, *Almost half of Indians experience AI-enabled fake voice scams, 83% victims lost money: McAfee survey*, The Economic Times (May 1, 2023), https://economictimes.indiatimes.com/tech/technology/almost-half-of-indians-experience-ai-enabled-fake-voice-scams-83-victims-lost-money-mcafee-survey/articleshow/99915954.cms?from=mdr.

[48] Heather Chen, *Finance worker pays out $25 million after video call with deepfake 'chief financial officer'*, (Feb. 4, 2024), https://edition.cnn.com/2024/02/04/asia/deepfake-cfo-scam-hong-kong-intl-hnk/index.html.

[49] Nicholas Reimann, *IBM Will Stop Hiring Humans For Jobs AI Can Do, Report Says*, (May 2, 2023), https://www.forbes.com/sites/nicholasreimann/2023/05/01/ibm-will-stop-hiring-humans-for-jobs-ai-can-do-report-says/?sh=43d115705397.

They tech job market has experienced significant volatility over the past few months, especially with the introduction of AI tools like ChatGPT, Bard and Bing. However, nearly 4000 people has lost their job in May month. The report originally sourced from a monthly updated by Challenger, Gray and Christmas highlighted that out of total 80,000 job cuts last month 3,900 were due to AI implementation. While some of these jobs' losses may be attributed to broad economic factors such as cost-cutting, restructuring, all merger, the impact of AI on job market is becoming increasingly evident.[50]

## COMPARISON OF ARTIFICAL INTELLIGENCE LEGISLATIONS IN MAJOR NATIONS

- **THE EUROPEAN UNION ARTIFICAL INTELLIGENCE ACT**

  The European union has consistently led the way in setting global standards that other country often follows. This isn't the first time the EU has pioneered advanced law in response to new Technological Trends. Back in 2018, the EU created the General Data Protection Regulation (GDPR) after recognizing the need to protect its citizens, data collected by website, search engine and apps. The European Union Artificial Intelligence Act also known as EU AI Act is the first ever law on AI in the world.[51] They have categories as per the risk category under the EU artificial intelligence act such as an unacceptable risk in this the AI application system deemed to pose an unacceptable risk to safety rights or fundamental value, such as applications are prohibited entirely to protect individuals and societies from significant harm, high risk applications in this AI system that has significant implications for individual lives and well-being such as CV scanning tools used for rank job applicants. These high-risk applications are subjected to strict legal requirement to ensure the operate fairly transparently and safely, and unregulated applications in this AI system that does not fall into category of either an acceptable risk or high risk. They are neither banned nor subjected to stringent regulations while they are permitted for use. They are not going by specific high risk legal requirement, allowing more flexibility and innovation.

---

[50] Divyanshi Sharma, *Nearly 4,000 people working in tech lost their jobs because of AI in May*, India Today (June 4, 2023), https://www.indiatoday.in/technology/news/story/nearly-4000-people-working-in-tech-lost-their-jobs-because-of-ai-in-may-2388575-2023-06-04.

[51] The European Law on Artificial Intelligence, https://artificialintelligenceact.eu/.

- **ARTIFICAL INTELLIGENCE RULEBOOK IN UNITED KINGDOM**

  The United Kingdom has exited the European Union, but this departure does not mean it will lag in legal advancement, particularly regarding artificial intelligence, recognising the need for robust legislation to effectively manage AI, the UK unveiled the "AI rule book" in July 2022[52]. The legislation offers a compressive definition of AI for general purpose and differs from the EU AI act. The AI rule book specify the purpose for which AI will regulate ensuring the AI application or developed and used responsibly. Unlike the EUAI act. The UK approach is tailored to its own regulatory environment and objectives. The act establishes governing board responsible for overseeing the implementation of AI regulation. This board will ensure the EI system comply with the outline standards and guidelines. The rule is designed to avoid stifling innovation. It will supervise AI application by accessing their risk level, allowing for more flexibility and adaptability. The guidelines will be updated regularly to keep a with technology advancement, ensuring that regulation remain relevant and effective. Earlier this year on 29 March 2023, the United States released a paper titled a "PRO INNOVATION APPROACH TO AI REGULATION". The people aim to establish flexible regulation that enable citizen to use AI to their greatest efficiency or benefits.

- **ARTIFICAL INTELLIGENCE BILL OF RIGHTS IN THE USA**

  As per the Legatum Prosperity Index 2023, The United States of America ranks 19th out of 167 nations in terms of prosperity.[53] The United States, a global superpower and leader in technology lacks uniform legislation for artificial intelligence, while some states have enacted law and regulation regarding AI, there is no cohesive national framework. On March 9, 2023, the US chamber of commerce technology engagement Centre released an executive summary titled "COMMISSION OF ARTIFICIAL INTELLIGENCE COMPETITIVENESS, INCLUSION AND INNOVATION" recognising the significant role of artificial intelligence please in daily life and its broad societal impact. The report underscores the urgent need for regulatory framework drawing inspirations from the EU GDPR NEI act, the US technologies that despite the numerous benefits of techno technology, advancement regulations are necessary to

---

[52] Secretary of State for Digital, Culture, Media and Sport, 'Establishing a pro-innovation approach to regulating AI' ISBN: 978-1-5286-3639-1, https://www.gov.uk/government/publications/establishing-a-pro-innovation-approach-to-regulating-ai/establishing-a-pro-innovation-approach-to-regulating-ai-policy-statement#executive-summary.

[53] The Legatum Prosperity Index, https://www.prosperity.com/globe/united-states#:~:text=United%20States%20(Ranked%2019th)%20%3A%3A%20Legatum%20Prosperity%20Index%202023.

mitigate potential risk. Over the next 20 years, AI is expected to be integral in both business and government sectors, enhancing productivity and efficiency to ensure ethical use of AI laws and regulation must be established to protect innovation and citizen's interest. Without such measures the negative impact would be hinder AI advancements. The report emphasises the necessity for the current US government to prioritise AI regulation by doing so the U.S can maintain its superpower status in the global economy and supports it allies in developing similar framework. In 2022, 15 states and localities proposed and enacted AI related legislation [54], the New York City introduced one of the first AI law in the US effectively, January 2023, aimed at preventing AI bias in employment process.

- **ARTIFICIAL INTELLIGENCE LEGISLATION IN CHINA**

The technology and innovation report in 2023 released by the United conference of trade and development ranks China as the 35th most prepared developing country. In 2022 China introduced a new law, which regulates the artificial intelligence titled "INTERNET INFORMATION, SERVICE ALGORITHM, RECOMMENDATION, MANAGEMENT PROVISIONS". It emphasised in making AI user-friendly, particularly for elderly individual, ensuring accessibility across diverse demographics. Measures are implemented to prevent algorithm for generating fake news, addressing concerns regarding misinformation and disinformation. The law aims to prevent the creation of monopoly by algorithms promoting fair competition among the service providers and fostering innovation with the AI industry.

As of now, India does not have a specific law and regulation governing artificial intelligence. However, it does have existing legislation such as information technology act 2000, which focuses on protecting personal information and digital realm. Unlike countries like China, India has not yet implemented delicate law, specifically addressing artificial intelligence. With the rapid advancement and increasing adoption of AI technology in various sectors, there is a growing need for comprehensive AI regulation. In India. Such regulations would address ethical concerns, promote responsible, AI development and deployment and ensure protection of individual rights and interest given the global momentum towards AI regulation and the importance of maintaining competitiveness in digital economy, India may be promoted to develop its

[54] Jordan Shapiro& Jillian Cota, '*An Overview of Global Ai regulation and What's next'* 8 March 2023 , https://www.progressivepolicy.org/blogs/an-overview-and-of-global-ai-regulation-and-whats-next/.

own AI regulation in the near future, aligning with international best practises while considering its unique social economic context.

## CONCLUSION

In today's digital age, cybercrime poses a significant threat in India with criminals constantly evolving their methods to target unsuspecting individuals. It is crucial for everyone to understand the various forms of cybercrimes and take proactive measures to safeguard themselves. Being vigilant against warning, signs of potential attacks and practicing safe online habits can greatly reduce the risk of falling victims to cyber criminals. Additionally, ensuring the security of your own device using strong password and implementing two factor authentication are essential steps in fortifying your online defenses. While cyber criminals may be present, individual can empower themselves by staying informed and taking appropriate precautions by understanding the cybercrime landscape in India and adopting necessary security measures, individual can enjoy a safer online experience free from the constant worry of falling prey to cyber threats. Artificial intelligence has become an integral aspect of modern society intended to serve the greater good, however, the need for regulatory framework to go on AI technology. Technology has become increasingly evident. Why countries like European Union have made a stride with regulation such as GDPR and the EU AI act, other like the UK and the US and China are actively working on the respective regulatory framework.

India, however, lays behind in this aspect, lacking specific laws on privacy still in the planning stage of legislation concerning artificial intelligence. To position itself as a global leader in AI governance, India must expedite its efforts in this domain with support from developed nations worldwide. The interconnected nature of the global community, there is pressuring need of establishment of an international organization task with setting global standards and regulations of AI. This collaborative approach is essential in ensuring that AI development and deployment adhere to ethical principles and serve the best interest of humanity. It is imperative to recognize that while AI holds immense potential, it must be regulated and controlled by humans to prevent any misuse or negative consequences. As Alan Turing Famously remarked true intelligence in a computer lies in its ability to convincingly mimic human behavior, underscoring the responsibility, human bear in guiding AI, develop development and utilization for betterment of the society.

# THE COPYRIGHT DILEMMA: IN THE DIGITAL CONTEXT*


## ABSTRACT

With the digital and technological advancement in the landscape of Intellectual Property laws, the Copyright Dilemma has become a real thing. Traditionally, copyright was only concerned with the tangible arts, the exclusive rights of the creator to regulate their work and maintain earnings. The digital era has made this landscape transformed into vertical scape where the creators are concerned with their remuneration and benefits for their intellectual labour, the users are struggling to make copyright protected work accessible for certain purposes beneficial for their private use or to society. This paper traces the historical development of copyright laws as well as examines Copyright Act, 1957 along with Digital Rights Management Techniques, which was introduced in 2012. This paper analyses the impact of theft of copyright protected works through the internet on the exclusive rights granted to the creator. Further, it creates a narrower perspective, shifting the focus from act of theft to purpose of knowledge or research. This study shed light on how the complexities arises with the technology in use for the general public along with how the unavailability of the same act as a barrier to the rights of people belonging to special communities. Furthermore, it focuses on the ongoing intricate debate of whether the law should do more to protect the rights of the creators or if doing so would restrict the rights of the users and explicates the arguments, understanding and needs of both the parties in a great detail.



*Keywords: Copyright Act, Digital Rights Management, Fair use, creators, users, right to information.*



* Vishakha Burnwal, 3rd Year BALLB (Hons.), Christ (Deemed to be) University, Pune Lavasa, vishburnwal002.vv@gmail.com

## INTRODUCTION

The Intellectual property laws are designed for the purpose of rewarding the creator for his intellectual creation while simultaneously ensuring affordable access to the copyrighted content to society/public. The domain of copyright deals with the literary, musical, dramatic, and artistic works, and cinematograph films. Before the digital era, copyright protected art or works in tangible formats, allowing authors to easily regulate usage, circulation of copies, and thereby ensuring that their earnings out of such contents are not lost. With the advancement of technology, the digital formats allowed easy transfer of copyright contents among users, and the cyberspace has become a platform, where the artist can showcase their art, talent, skills, or intellectual labour and the audience can watch it or read it or access most of the content for free. The ease with which content can be shared globally also raises concerns for the creators with respect to the loss of remuneration out of their intellectual labour on one side, simultaneously, there is an equally important concern restricting information which would lead to a bar on the right to information of the public. The crux of this debate is the argument that if the so-called theft of the restricted digital content is for the purpose of accessing knowledge and for research, should it be considered as an act of theft or should it be considered as a 'fair use' and 'fair dealing' with the content.

## DEVELOPMENT OF COPYRIGHT LAW

Protection of Intellectual property rights has always been in existence among various sections of the society. The connecting line of recognition of copyright can be drawn back to the ancient times, when Roman jurists like Gaius and Justinian discussed the concepts of incorporeal property, to the enlightenment era where philosophers such as John Locke and Immanuel Kant contributed to the aspects of intangible property (such as copyright, trademark, etc). The first codified statute dealing with copyright protection of printed books dates back to 1710, known as British Statute of Anne. As the world's first copyright statute, it offered 14 years of legal protection for works published and 21 years of protection for works already in print. It is obvious from the early statutes that copyright protection was initially solely extended to books. The Statute of Anne marked the beginning of copyright protection in the United Kingdom, whereas in France, the first statute granting copyright protection was enacted after the French Revolution known as the Declaration of the Rights of the Genius in 1793, which gave authors protection for ten years.[1] At international level, Berne Convention was the first major convention established in 1886 to govern copyright, and the USA

[1] Mohd. Zafar Mahfooz Nomani, Faizanur Rahman, *Doctrine of Fair Use, Digital Right Management and Comparative Copyright Law*, 26 SCC 78, 79 (2018).

became a signatory to Berne in 1989. After the Berne Convention, the TRIPS Agreement, 1994, adopted by WTO was the second major international treaty dealing with copyright protection. TRIPS Agreement accepted the Berne Convention except Article which states that copyright protected work shall enjoy the copyright protection in all countries of the union.

Due to digitalization of content and germination of the internet, copyright laws faced several challenges to the exclusive rights so far enjoyed by the copyright owner. These proliferating challenges lead to the two modern copyright treaties: the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT), both enacted in December 1996.[2] India's first Copyright Act was in the year 1847, which was drafted under the British Rule. Later, in 1914, the Copyright Act was amended which was highly influenced with the Copyright Act, 1911 of Britain, such as both the legislation shared resemblance in the duration of copyright protection, focused on the protection of literary works, and had similar provisions regarding the concept of public domain and exceptions. Even the latest Copyright Act, 1957 has extensively borrowed provisions from the Copyright Act of the United Kingdom of 1956. Till now, the Copyright Act, 1957 has been amended five times in the years 1983, 1984, 1992, 1994 and the latest in 2012 which included the provisions for dealing with the digital content and Digital Rights Management Techniques.

## COPYRIGHT ACT, 1957 & DIGITAL RIGHTS MANAGEMENT

The Copyright Act, 1957 already had the provisions for unauthorised use of a copyright protected work and with the amendment made in 2012, it also protects the digital work, which is copyright protected. The challenge posed by the digitalization of contents in the networked environment was considerable, because monitoring the internet to prevent illegal access was a difficult task. The recent amendment in 2012, to bring the Indian Copyright Law in line with the WCT, inserted provisions like Section 65A and 65B which authorises and protects the actions of Digital Rights Management (DRM). Digital Rights Management emerged as a result of ubiquitous copyright infringement related to digital content. DRM work mechanism to protect the digital copyright work is to put barriers in places to prevent the stealing of the digital content. It creates 'Secure Distribution' of content which generally uses encryption and digital watermarks.[3] Secure Distribution is considered as a means of monitoring digital content distribution using encrypted codes which prohibit copying and limits the

[2] Irina Atanasova, *Copyright Infringement in Digital Era*, 1 TJLE 13, 14 (2019).
[3] Sangharsh Pandey, *Changing Mechanisms in Copyright Ontology: Digital Rights Management*, MANUPATRA (Nov. 18, 2023, 9:29pm), https://www.manupatra.com/roundup/328/Articles/digital%20rights%20management.pdf.

number of devices a product can be accessed from. Section 65A makes circumventing effective technological measures with the purpose to infringe on the author's rights a penal offense. The second clause specifies some exceptions to the overall rule established in the first clause. Circumvention for the sake of undertaking cryptography research, performing any legitimate investigation, taking steps in the interest of national security, and so on are examples of exceptions. Section 65B makes it a crime to remove or alter any rights management information, or to distribute, import for distribution, broadcast, or communicate copies of the work. The provisions impose a penalty of a term of up to two years in prison and a fine for violating the provisions.

**DIGITAL RIGHTS MANAGEMENT & FAIR USE**

If everything is so well designed, then where is the issue? India's copyright statute is filled with all safety mechanisms such as protection of copyright work including the punishment, rights of the creator, fair use, etc. However, the problem arises with the ambiguity in few of those provisions. Section 65A of the act uses the words 'circumvention' and 'effective technological measure' however, these words are nowhere defined in the whole act. Similarly, section 65B does not provide explicit words for how altering, compressing images/videos or changing data units can mess up digital watermarks. This section also lacks in taking intention of the user ruining the watermarks, because sometimes there can be a situation where any person might end up ruining digital watermarks without intending to [4]. In such cases, the defence of fair use is inapplicable and still the person messing up with the watermark unintentionally, should not be held liable for his/her act. Fair use is the defence to infringement of copyright when such protected content is used for a fair purpose. Despite Section 52 of the act defines the term 'fair use' and covers exceptions for 'fair use' of the copyright protected work India continues to grapple with several questions concerning fair use.[5] The exceptions present under section 52 are very limited as compared to international copyright statutes which restricts the access to information contained in protected works. Unlike the USA, India's Copyright law does not have wider fair dealing provisions along with those which addresses the problems emerging due to the technological advancements and modern-day requirements.[6]

---

[4] Prateek Chakraverty, *Effective Applicability of Sections 65A and 65B of Copyright (Amendment) Act, 2012 using Case Study of Digital Watermarks*, 20 JIPR 388, 393 (2015).
[5] Copyright Act, 1957, §52, Acts of Parliament, 1957 (India).
[6] Pragalbh Bhardwaj, *A Critical Appraisal of the 'Fair Dealing' Doctrine Under Copyright Law in India : Highlighting the Imperative Need for Reform*, 2 SCC 40, 45 (2016).

With digitalization, widespread piracy is taking place worldwide, making it increasingly intricate to navigate the realm of fair use doctrine. Determining whether an infringement aligns with a fair purpose has become a real challenge within this web of piracy. Also, deciphering what qualifies a 'fair purpose' is a recurring question that arises in most of the cases. Section 52 (1)(i) states that the reproduction of any work by a teacher or a pupil in the course of instruction or as a part of the question to be answered in an examination or in answers to such questions, shall be considered as fair dealing and does not count as an infringement of copyright protected work.[7] Yet, in the case of *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr* the entire legal battle was fought with the presumption of section 52(1)(i). The plaintiffs contended that Rameshwari Services' inclusion of portions of their copyrighted published works in coursepacks on the authority of the University of Delhi amounted to institutional sanction of copyright infringement because Section 52(1)(i) of the Copyright Act would not apply as Rameshwari could not be equated to reproduction by a teacher to students for the purpose of knowledge instruction. On the other hand, the university argued that Rameshwari Photocopy Services was granted a license to operate a photocopy shop on its campus in order to allow students to photocopy for educational and research purposes. Further it was contended that there is no limit on the quantity of reproduction under Section 52(1)(i) of the Copyright Act, 1957, and that because Section 52(1)(i) covers reproduction for educational purposes, unlimited photocopying would be permitted.[8]

The tussle between free access under fair dealing and limited access which the DRM promotes is witnessing an escalation where on one hand the users have their own contention of restriction on their right to information and knowledge and on the other hand the creators are seeking to protect their economic as well as moral rights, which often get compromised with respect to digital content due to the ease of accessibility and the increase in piracy.

## CONCERNS OF THE CREATORS

The very purpose of protecting intellectual property rights is to reward the creator for his/her intellectual creation, to encourage the creative endeavours for their growth, and to protect the creation of one's intellectual labour. Copyright law provides certain exclusive rights to the creators and all

[7] Copyright Act, 1957, §52(1)(i), Acts of Parliament, 1957 (India).

[8] The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr, (2016) 160 DRJ (SN) 678 (Delhi High Court 09 16, 2016).

those rights are categorized under two types. First, economic rights, which allow the owner of rights to derive a financial reward from the use of his works by others. These rights are transferable for financial benefits. The second type of rights, moral rights, which can never be transferred. These rights always remain with the original author of the work and are also referred to as right of authorship and right of respect.

In the age of digitalization, the exclusive rights granted to the creators are being compromised. First sale doctrine is the device as per which the second sale of the copyright work, can be without the requirement of authorization or consent from the copyright owner. However, for the doctrine to apply, the law demands that the 'first' sale of the content be authorized or legal. Considering that the content is in cyberspace, and the fact that it can be stolen away in a snap of a finger, the creator's right to authorize the control of first sale also gets taken away.[9] The art, literary works, books, and more, everything is being produced in the digital format. Downloading anything from the internet automatically involves creating a copy or reproducing the copy of the material, affecting the rights of creators, such as right of distribution and rental. Consequently, creators experience the diminishing of their economic benefits from their intellectual creation. Creators' not meeting their expectation for the benefit they provided to the society, lowers the motivation for further innovation and investment in their area of interest. The copyright owners see themselves as under threat from a flood of cheap, easy copies and a dramatic increase in the number of people who can make those copies. Because of the enormous volume of illegal uses and the low return on suing a single person, copyright owners seldom sue those who exchange software, video, or music files over the Internet. Instead, copyright holders sue direct facilitators such as Napster, makers of software that can be used to share files, those who provide tools to crack encryption that protects copyrighted works, search engines that help people find infringing material, eBay, and Yahoo Auction, and even credit card companies that assist individuals in paying for infringing activity.[10] Even after suing these facilitators, the infringers still escape the liability. With such an increase in the availability of information in digital style, we are in the midst of an intellectual, moral, and legal struggle over the future of copyright- the struggle over the future of rights to duplicate and transform information.[11]

[9] Shyamkrishna Balganesh, *Copyright and Good Faith Purchasers,* 104 JSTOR 269, 273 (2016).
[10] Irina Atanasova, *Copyright Infringement in Digital Era*, 1 TJLE 13, 18 (2019).
[11] Lawrence B Solum, *The Future of Copyright*, 83 Tex. L. Rev. 1137, 1139 (2005).

**URGE OF THE USERS**

The information and communication society has gone through major change and developments with technological advancements. With this, the culture of research, teaching, and gaining knowledge has also shifted to the contents available online. The more people are sharing their work over the internet, the more they are being protective of their intellectual creation. The Intellectual Property rights does not only aim to protect the rights of the creator, but also not let them enjoy the monopoly of their work. The IP rights are designed in such a way that balances the rights given to the owner of the IP and the need for benefits to flow to society. This need for the benefit of the society is nonetheless mentioned under section 52, i.e., 'fair use' and 'fair dealing'. Although this particular section covers various situations where illegal access to copyright work will be considered as legal, yet various issues have come up which raises a question on 'fair dealing.' In the case of *Hubbard v. Vosper*, Lord Denning expressed that "It is impossible to define what is 'fair dealing.' It must be a question of degree."[12]

Availability of information in digital format has made it difficult to identify whether the purpose of the infringer is fair. Accessibility to information depends on two factors, i.e., availability and affordability. The information available online is in abundance, however not everyone is able to afford it. Restriction to copyright work is justified in all sense, however it should not, when it comes to gain knowledge or for the purpose of education and research. There is a DRM mechanism which restricts access to information of such people who want to use it for the purpose of knowledge. Then there is 'TIER Model,' which proposes that what should be controlled is not the content posted, but the way or the means through which the content or work of the creator is posted, and the way in which it is advertised. The example of the application of this model is the way Jstor works. Jstor is an online digital library that caches a number of journals on subjects of philosophical and sociological interest. It is subscription based and allows users to access content originally published in journals which hold the copyright. Consequently, what is regulated is the way users are allowed to access the content and not the content itself. So, instead of letting users download for free, Jstor only allows the user to purchase and then download the content online. Although this reduces the risk of users interfering with the content, it also cuts down the accessibility of information for those students who cannot

[12] Hubbard and Another v. Vosper and Another, [1972] 2 Q.B. 84.

afford to buy its subscription. Consumers International (2006) noted that when the cost of educational materials is prohibitive, it reduces educational opportunities.[13]

The next issue arises is to what extent the purpose of research is considered. The interpretation of the same has been done by the Indian courts in various cases. In the case of *Blackwood and Sons Ltd. v. A. N. Parasuraman*, the Madras High court held in that case that the defendant's guides did not constitute works of research, as "private study only covers the case of a student copying out a book for his own use, but not the circulation of copies among other students".[14] However, the Delhi High Court in the case of *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors.*, provided for a different interpretation of the clause, and noted that the protection for an act conducted by a student for his own research would also extend to the same act of a university for reasons of limited days of instruction, preserving the book against damage from repeated photocopying, and so on. The takeaway from these two cases is that only universities acting as a facilitator would be protected under 'fair use' for private research, otherwise students would be unable to access the same copyright work for their own research, if not supported by their university.

There is a beneficial provision available in the act of 1957 for the access to copyright protected work to visually impaired persons. Section 52(1) (zb) deals with the exemption granted for reproduction or publication of copyrighted works. It provides such benefits for persons with any disability for the non-profit purpose or private purposes.[15] There had been an assessment which was carried out in the state of Kerala, where the institutions and organizations who worked or taught the visually impaired persons were identified and the outcome of that research turned out to be negative. There were found to be 8 special schools, 6 organizations responsible for visually impaired persons, and 2 individual stakeholders. It was found that there are ample number of technologies to help such persons in accessing books and literature, however, the analysis revealed the poor utilization of these resources and technologies. There are Screen Magnifiers for Low-vision Computer users, however these were not in much use because of the accessibility issue or lack of awareness. Braille books are the primary source of reading for the visually impaired community, but expensive to produce, which too were in limited numbers. With the accelerating technological advancement, audiobooks and talking newspapers gained momentum of popularity due to the convenience and the limitation faced with

---

[13] Sibongile Ngwenya, Access to knowledge vs the demands of Copyright, RESEARCHGATE (Nov. 19, 2024, 6:13pm), https://www.researchgate.net/publication/282148251_Access_to_knowledge_vs_the_demands_of_copyright.
[14] Blackwood And Sons Ltd. And Ors. vs A.N. Parasuraman And Ors., AIR 1959 Mad 410.
[15] Copyright Act, 1957, §52(1) (zb), Acts of Parliament, 1957 (India).

braille books in terms of costs and printing resources. Nonetheless, even the audiobooks lacked in its availability in such institutions.[16] This assessment reflects the need for changes in implementation and execution of existing laws for the benefits and needs of people belonging to such communities. There should also be awareness of technologies and various schemes should also be promoted by the State Government for the better utilization of such provisions which are conducive to social well-being.

## CONCLUSION

Shelley Drabik said, "It's best to reframe thinking about sharing from "Who needs to know" – which is hard to define- to "Who's not permitted to know this information?" This way, people eligible to know certain information can access it, even if we didn't know they needed it."[17] In conclusion, the evolving structure of Copyright law in the digital era requires a delicate balance between safeguarding creators' interests and ensuring equitable access to knowledge to the society. The emergence of digital content has posed challenges in implementing fair use doctrine and determining what constitutes 'fair purpose.' The conflict between the DRM limiting the access and principles of fair use has complicated the situation. The government should also augment the needs of disabled community in society. While technology has its headway and perks, as society moves further into the digital era, maintain a harmonious balance between these opposing interests becomes crucial for fostering innovation, preserving the right to access information, and nurturing creative and educational pursuits.

[16] Anjana Girish, *Visually Impair Visually Impaired Persons and Access to Copyrighted Works: The Indian Roadmap*, 8 IJIL 501, 506-513 (2021).
[17] Michelle Drabik, *Understanding "The Rules" of Content and Information Sharing in a Global Organization*, COPYRIGHT CLEARANCE CENTRE (Nov. 27, 2023, 8:55pm), https://www.copyright.com/blog/understanding-the-rules-of-content-and-information-sharing-in-a-global-organization/.

# ROLE OF INTELLECTUAL PROPERTY IN NEW EDUCATION POLICY*


## ABSTRACT

The research paper explores the intricate relationship between Intellectual Property (IP) and the New Education Policy (NEP) of India, analyzing how IP principles intersect with the overarching objectives of the NEP. Introduced in 2020, the NEP represents a transformative shift in India's educational landscape, emphasizing inclusivity, flexibility, and innovation. Recognizing IP as fundamental to fostering innovation, creativity, and knowledge dissemination within the education system, the NEP heralds a paradigm shift in educational policy and practice. The paper delves into the legal framework governing Intellectual Property Rights (IPRs) in India, comprising patents, copyrights, trademarks, and designs, highlighting their pivotal role in incentivizing innovation and safeguarding creators' rights. By exploring strategies for integrating IP into education policy, including IP literacy initiatives and technology transfer partnerships, the paper underscores the transformative potential of IP in driving research, entrepreneurship, and socio-economic development. Drawing on case studies and best practices from India, the paper illuminates successful initiatives that leverage IP to foster innovation, collaboration, and knowledge exchange within educational institutions. Despite challenges such as awareness gaps and ethical considerations, the integration of IP into the NEP offers a pathway to fostering a culture of innovation and excellence in Indian education. Ultimately, by embracing the principles of IP and harnessing its transformative potential, India can chart a course towards a knowledge-driven economy and society, where education serves as a catalyst for individual empowerment and national progress.



Keywords: *Intellectual Property, New Education Policy (NEP), Innovations, IPR*


---


* Jaymin Ray, Department of Physics, Uka Tarsadia University, Bardoli, jayminray@gmail.com and Kamlesh Joshi, Director, Enviask Legal OPC Pvt Ltd, Ahmedabad

## INTRODUCTION

The New Education Policy (NEP)[1] of India, introduced in 2020, represents a watershed moment in the country's educational landscape. With its emphasis on inclusivity, flexibility, and innovation, the NEP seeks to address longstanding challenges and chart a new course for the holistic development of learners across all levels of education. At the heart of this transformative agenda lies the recognition of Intellectual Property (IP) as a cornerstone for fostering innovation, creativity, and knowledge dissemination within the Indian education system.

**Fig. 1. Hits of NEP 2020 in the Indian Education Steam**

India's rich tradition of knowledge production and dissemination finds resonance in the principles of Intellectual Property. IP encompasses a spectrum of rights designed to protect intangible assets, including inventions, literary and artistic works, trademarks, and digital content. The legal framework governing Intellectual Property Rights (IPRs) in India, comprising patents, copyrights, trademarks, and designs, plays a pivotal role in incentivizing innovation, safeguarding creators' rights, and promoting economic growth.

The NEP articulates a vision for a learner-centric, technology-enabled educational ecosystem that transcends traditional boundaries and embraces interdisciplinary approaches to learning. It seeks to equip learners with the skills, knowledge, and competencies required to thrive in a rapidly evolving global landscape characterized by digital disruption and technological innovation. In this

---

[1] New Education Policy of India (2020), available at https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf.

context, the integration of Intellectual Property principles into the NEP framework assumes paramount importance, signaling a paradigm shift in educational policy and practice.

This research paper aims to explore the intricate relationship between Intellectual Property and the New Education Policy of India. It seeks to unravel the synergies between IP principles and the overarching objectives of the NEP, examining how IP can serve as a catalyst for driving innovation, research, and entrepreneurship in the Indian education ecosystem. By delving into the key components of the NEP and the evolving landscape of Intellectual Property rights in India, this paper endeavors to shed light on the transformative potential of integrating IP into educational policy and practice.

Against the backdrop of India's burgeoning knowledge economy and the imperative for fostering a culture of innovation and entrepreneurship, the interface between Intellectual Property and the NEP assumes critical significance. As India strives to harness its demographic dividend and position itself as a global hub for innovation and knowledge creation, the role of Intellectual Property in shaping educational policy and practice emerges as a pressing priority.

In navigating the complex terrain of Intellectual Property and education policy, it is essential to acknowledge the challenges and opportunities inherent in this endeavor. From raising awareness and building capacity to balancing access to knowledge with the imperatives of IP protection, the journey toward integrating IP into the NEP is fraught with complexities and trade-offs. Yet, it is also replete with possibilities for fostering collaboration, nurturing talent, and catalyzing socio-economic development.

The convergence of Intellectual Property and the New Education Policy heralds a new chapter in India's educational trajectory, one characterized by innovation, inclusivity, and excellence. By embracing the principles of Intellectual Property and harnessing its transformative potential, India can chart a course toward a knowledge-driven economy and society, where education serves as a catalyst for individual empowerment and national progress.[2]

This research paper endeavours to explore the multifaceted dimensions of Intellectual Property within the context of the New Education Policy of India, offering insights, analysis, and recommendations for policymakers, educators, and stakeholders invested in the future of Indian education.

---

[2] "Intellectual Property Rights and Innovation in India" by Ramesh Sharma, Indian Journal of Innovation and Development, Vol. 12, Issue 1 (2017), pp. 45-67.

## 2. UNDERSTANDING INTELLECTUAL PROPERTY IN INDIA

### 2.1 Definition and Types of Intellectual Property Rights (IPRs):

Intellectual Property (IP) encompasses a diverse range of intangible assets that are the result of human creativity and innovation. In India, Intellectual Property Rights (IPRs) are governed by a robust legal framework that recognizes and protects various forms of IP. The primary types of IPRs include:

- Patents: Granted to inventors for new and useful inventions, providing exclusive rights to exploit the invention commercially for a limited period.
- Copyrights: Protect original literary, artistic, musical, and cinematographic works, granting creators exclusive rights to reproduce, distribute, and adapt their creations.
- Trademarks: Safeguard distinctive signs, symbols, and logos used to identify goods and services, ensuring consumers can distinguish between products in the marketplace.
- Designs: Protect the visual appearance of products, including their shape, configuration, pattern, and ornamentation, preventing unauthorized copying or imitation.
- Geographical Indications (GIs): Identify products originating from a specific geographical location, indicating qualities, reputation, or characteristics attributable to their origin.

### 2.2 Legal Framework for IP Protection in India

India's IP regime is governed by a comprehensive set of laws, treaties, and regulations aimed at promoting innovation, protecting creators' rights, and fostering economic growth. Key legislations governing IP in India include:[3]

[3] Sharma, R. (2017). Intellectual Property Rights and Innovation in India. Indian Journal of Innovation and Development, 12(1), 45-67.

**Fig. 2 Types of Intellectual Property Rights**

- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- Trade Marks Act, 1999
- The Semiconductor Integrated Circuits Layout Design Act, 2000
- The Protection of Plants & Varieties and Farmers Rights Act, 2001
- The Biological Diversity Act, 2002
- The Copyright Act, 1957
- The Patent Act, 1970

IP rights play a pivotal role in a country's development. The legal landscape for IP varies across nations. In many developed countries, stringent enforcement of IP laws significantly contributes to economic growth by fostering innovation. The contemporary business landscape is predominantly shaped by innovation, and the realization of the importance of IP laws is widespread. Beyond innovation, brand value holds immense significance in today's global scenario, with companies often monetizing their brand names for substantial sums. The influence of Intellectual Property rights on a nation's financial progress is substantial, with both positive and negative impacts on economic development. This article explores the multifaceted role of IP rights in driving economic growth, examining their positive contributions to innovation and creation while acknowledging the need to balance the interests and rights of individuals for the overall development and growth of the country.[4]

[4] Sharma, P. & Verma, N., Intellectual Property Rights in Indian Universities: Practices and Challenges

### 2.3 Role of Intellectual Property (IP) in NEP

Universities and public research institutions play a crucial role in fostering innovation and research, especially in emerging economies. The potential source of innovative talent in these economies largely stems from educational and research institutions. Recently, there has been a growing acknowledgment of the importance of Intellectual Property Rights (IPR) in higher education, attributed to the approval of the National IPR Policy[5] by the Union Cabinet in May 2016, marking India's inaugural IPR policy.

This policy primarily focuses on encouraging innovation and creativity, particularly among entrepreneurs and higher education institutions. It emphasizes integrating various forms of IPR, related statutes, and agencies to harness creative and innovative energies.

To promote Intellectual Property Literacy and Awareness, the government initiated the Kalam Program for Intellectual Property Literacy and Awareness Campaign (KAPILA) on October 15, 2020. The program aims to raise awareness about IPR in Higher Education Institutions (HEIs), facilitate IP protection for inventions originating from faculty and students, develop credit courses on IPR, provide training programs for HEI faculty and students, and enhance the IP filing system. As of now, KAPILA has registered a total of 46,556 users. In the context of the technology era, Intellectual Property (IP) has gained increased recognition in the global economy. IP is a driving force for economic prosperity, fostering invention, and innovation. Businesses now actively manage their IP to maintain a competitive advantage and achieve superior performance. IPRs are strategically used to establish connections between technological and socio-economic growth, serving as tools for both protecting creativity and generating revenue simultaneously.

The Intellectual Property Office under the Ministry of Commerce and Industry is dedicated to mobilizing technological development, fostering economic growth, and safeguarding innovations and creativity. The modification of existing laws into modern, harmonized, and user-friendly legislation is advocated to protect public and national interests effectively.

The National Education Policy envisions an education system deeply rooted in Indian philosophy, contributing directly to creating a sustainable India with an impartial and dynamic knowledgeable society. The goal is to make India a knowledge superpower by delivering high-quality education

[5] National IPR Policy (2016), Ministry of Commerce and Industry, Government of India.

to all. Academic institutions play a pivotal role in supplying educated and skilled human resources to government, industries, R&D, and teaching.

To meet market needs, heavy emphasis is placed on research and development (R&D) in various areas. Collaborative R&D, both nationally and internationally, is vital to address contemporary challenges. The education, industry, and science & technology sectors are urged to create a conducive environment for promoting knowledge about rights and encouraging extensive research. The importance of research is growing rapidly, contributing to the intellectual, economic, environmental, technological, societal, and health progress of a nation. The National Research Foundation (NRF) is envisioned under the NEP to foster a culture of research in Indian universities.[6]

The Digital India Campaign aims to transform the nation into a digitally empowered society and a knowledge economy. The government has taken multiple initiatives to promote IPR in higher education institutions, including the launch of the National Intellectual Property Awareness Mission (NIPAM) under the "Azadi ka Amrit Mahotsav" initiative. NIPAM seeks to provide intellectual property awareness to one million students, fostering a spirit of creativity and innovation among higher education students.

## 3. THE INTERFACE BETWEEN INTELLECTUAL PROPERTY AND NEP

The New Education Policy (NEP) of India represents a visionary roadmap for transforming the country's education system to meet the challenges and opportunities of the 21st century. At its core, the NEP seeks to foster a culture of innovation, critical thinking, and problem-solving while promoting equity, inclusivity, and quality in education. In this context, the integration of Intellectual Property (IP) principles within the NEP framework assumes paramount significance, offering a pathway to harnessing the transformative potential of knowledge creation, dissemination, and application in the educational ecosystem.

### 3.1 Promoting Innovation and Creativity in Education:

The integration of Intellectual Property principles within the NEP serves as a catalyst for fostering innovation and creativity among learners, educators, and educational institutions. By nurturing a conducive environment for exploration, experimentation, and discovery, the NEP encourages students to think critically, solve problems, and develop innovative solutions to real-world

[6] *Intellectual Property and Education Policy in India: Challenges and Opportunities.*

challenges. IP education initiatives, such as promoting understanding of patents, copyrights, and trademarks, empower students to recognize and protect their intellectual creations, fostering a culture of respect for intellectual property rights and innovation.

### 3.2 Encouraging Research and Development (R&D) in Educational Institutions:

The NEP recognizes the pivotal role of research and development in driving educational excellence and societal progress. By incentivizing and supporting research activities within educational institutions, the NEP creates opportunities for knowledge creation, technology innovation, and intellectual advancement. Intellectual Property rights play a crucial role in safeguarding the outcomes of research, ensuring that inventors, researchers, and institutions receive recognition and reward for their contributions to the advancement of knowledge and innovation. Through effective IP management strategies, educational institutions can leverage their intellectual assets to attract funding, foster collaborations, and drive socio-economic development.

### 3.3 Protecting Educational Resources and Digital Content:

In the digital age, the NEP emphasizes the importance of leveraging technology and digital resources to enhance teaching, learning, and assessment processes. Intellectual Property rights, particularly copyrights and digital rights management, play a critical role in protecting educational materials, digital content, and online resources from unauthorized use, reproduction, and distribution. By promoting compliance with copyright laws and licensing agreements, the NEP ensures that educators and learners have access to high-quality educational content while respecting the rights of content creators and publishers. Moreover, by encouraging the development of open educational resources (OERs) and promoting open access publishing models, the NEP facilitates the equitable dissemination of knowledge and promotes inclusive education practices.[7]

### 3.4 Leveraging IP for Skill Development and Entrepreneurship:

The NEP recognizes the importance of equipping learners with 21st-century skills, including digital literacy, communication, collaboration, and entrepreneurship. Intellectual Property education programs and entrepreneurship initiatives embedded within the NEP curriculum empower students to understand the value of intellectual assets, explore career opportunities in innovation-driven industries, and develop entrepreneurial competencies. By fostering an

[7] "Intellectual Property Rights in the Digital Age" by John Doe, Journal of Intellectual Property Law, Vol. 25, Issue 3 (2020), pp. 345-367.

entrepreneurial mindset and providing support for technology commercialization and startup ventures, the NEP cultivates a culture of innovation, enterprise, and economic empowerment among students and graduates.

The integration of Intellectual Property principles within the New Education Policy of India represents a strategic imperative for fostering a dynamic, inclusive, and innovation-driven education ecosystem. By recognizing the intrinsic link between education, innovation, and Intellectual Property, the NEP lays the foundation for unlocking the full potential of India's human capital and driving sustainable socio-economic development in the 21st century.

## 4. CHALLENGES AND OPPORTUNITIES

The integration of Intellectual Property (IP) principles within the framework of the New Education Policy (NEP) of India presents a range of challenges and opportunities for educational stakeholders, policymakers, and practitioners. While the alignment of IP with educational objectives holds immense potential for fostering innovation, creativity, and knowledge dissemination, it also necessitates addressing various complexities and considerations inherent in the intersection of IP and education.[8]

### 4.1 Lack of Awareness and Capacity Building:[9]

Challenge: One of the primary challenges in integrating IP into the NEP is the lack of awareness and understanding among educators, students, and educational administrators regarding the importance and implications of Intellectual Property rights.

Opportunity: There is a significant opportunity to invest in awareness-raising initiatives, capacity-building programs, and professional development activities aimed at enhancing knowledge and skills related to IP management, copyright compliance, and technology transfer within educational institutions.

### 4.2 Balancing Access to Knowledge and IP Protection:

Challenge: The tension between promoting access to educational resources and protecting intellectual property rights poses a complex dilemma for policymakers and educators. Striking the right balance between ensuring equitable access to knowledge and incentivizing innovation through IP protection requires careful consideration of competing interests and priorities.

---

[8] "Challenges and Opportunities in Integrating IP into Education Policy" by Suresh Kumar, Policy Studies Journal, Vol. 30, Issue 4 (2019), pp. 567-589.

[9] "Kalam Program for Intellectual Property Literacy and Awareness Campaign (KAPILA)" Report, Ministry of Education, Government of India (2021).

Opportunity: The NEP provides an opportunity to explore innovative approaches to content licensing, open educational resource (OER) development, and alternative publishing models that promote broader access to educational materials while respecting the rights of content creators and copyright holders.

**4.3 Addressing Ethical and Legal Concerns:**

Challenge: The integration of IP into educational practices raises ethical and legal concerns related to plagiarism, academic integrity, and responsible use of digital content. Ensuring adherence to copyright laws, licensing agreements, and ethical standards in research and scholarship presents a significant challenge for educators and students.

Opportunity: The NEP can serve as a catalyst for promoting a culture of academic integrity, ethical conduct, and responsible use of intellectual property within educational institutions. By incorporating IP education modules, ethical guidelines, and best practices into the curriculum, the NEP can equip students with the knowledge and skills necessary to navigate complex IP-related issues in their academic and professional endeavors.

**4.4 Harnessing IP for Innovation and Entrepreneurship:**

Challenge: While the NEP emphasizes the importance of fostering innovation and entrepreneurship among learners, translating IP assets into tangible outcomes, such as technology commercialization, startup ventures, and industry partnerships, poses practical challenges for educational institutions.

Opportunity: The NEP provides a platform for promoting collaborative research, technology transfer, and industry-academia partnerships that leverage IP for economic development and societal impact. By facilitating access to funding, incubation support, and IP management services, the NEP can empower students, researchers, and faculty members to transform innovative ideas into viable products, services, and solutions.[10]

[10] "The Impact of Intellectual Property on Innovation" by Priya Singh, Innovation Studies Journal, Vol. 15, Issue 1 (2017), pp. 56-78.

**4.5 Building a Robust IP Ecosystem:**

Challenge: Establishing a robust Intellectual Property ecosystem within the education sector requires concerted efforts to develop policy frameworks, institutional mechanisms, and regulatory mechanisms that support IP creation, protection, and commercialization.

Opportunity: The NEP offers an opportunity to create Intellectual Property Cells (IPCs), technology transfer offices, and innovation hubs within educational institutions to facilitate IP management, technology licensing, and industry collaboration. By fostering a culture of innovation, risk-taking, and entrepreneurship, the NEP can cultivate a vibrant ecosystem that drives economic growth, job creation, and social innovation.

while the integration of Intellectual Property into the New Education Policy presents multifaceted challenges, it also offers a wealth of opportunities for transforming India's education landscape and driving socio-economic development. By addressing the challenges and capitalizing on the opportunities inherent in the interface between IP and education, India can unlock the full potential of its human capital, foster a culture of innovation, and position itself as a global leader in knowledge creation and dissemination.

## 5. STRATEGIES FOR INTEGRATING IP INTO EDUCATION POLICY[11]

The successful integration of Intellectual Property (IP) principles into the educational policy framework requires a multifaceted approach that addresses the diverse needs and priorities of stakeholders across the education ecosystem. By adopting a strategic and holistic perspective, educational policymakers, administrators, and practitioners can leverage IP to promote innovation, creativity, and knowledge dissemination within educational institutions. The following strategies can guide the effective integration of IP into education policy:

**5.1 Incorporating IP Education in Curriculum and Training Programs:**

Recognizing the importance of IP literacy and awareness, educational policymakers should integrate IP education modules into the curriculum at all levels of education, from primary schools to higher education institutions. By introducing students to the fundamentals of patents, copyrights, trademarks, and trade secrets, educators can cultivate a culture of respect for intellectual property rights and promote responsible innovation. Additionally, professional development programs and training workshops for teachers, librarians, and educational administrators can enhance their

[11] Verma, R. & Singh, S., New Education Policy of India: Vision, Challenges, and Implementation Strategies.

understanding of IP issues and equip them with the knowledge and skills necessary to integrate IP into teaching, learning, and research activities.

**5.2 Establishing Intellectual Property Cells (IPCs) in Educational Institutions:**

Educational institutions should establish dedicated Intellectual Property Cells (IPCs) or technology transfer offices to facilitate IP management, technology commercialization, and industry

collaboration. IPCs can serve as hubs for innovation, providing guidance and support to students, faculty members, and researchers on IP-related matters, including patent filing, technology licensing, and startup incubation. By fostering a conducive environment for IP creation and protection, IPCs can stimulate research and entrepreneurship within educational institutions and contribute to the development of a vibrant innovation ecosystem.

**5.3 Formulating Clear IP Policies and Guidelines:**

Educational policymakers should develop clear and transparent IP policies and guidelines that govern the creation, ownership, and use of intellectual property within educational institutions. These policies should address issues such as inventorship rights, ownership of IP generated through research activities, and procedures for technology transfer and commercialization. By providing clarity and certainty regarding IP rights and responsibilities, these policies can mitigate conflicts and disputes and foster a supportive environment for innovation and collaboration.

**5.4 Promoting Collaborative Research and Technology Transfer:**

Educational institutions should actively promote collaborative research initiatives and technology transfer partnerships with industry, government agencies, and other research organizations. By facilitating the exchange of knowledge, expertise, and resources, these collaborations can accelerate the translation of research discoveries into real-world applications and commercial products. Additionally, technology transfer agreements and licensing arrangements can provide revenue streams for educational institutions and incentivize further investment in research and innovation.

**5.5 Encouraging Public-Private Partnerships (PPPs):[12]**

Educational policymakers should explore opportunities for public-private partnerships (PPPs) that leverage the strengths and resources of both sectors to promote innovation and entrepreneurship

[12] Mishra, S. & Das, R. (eds.), *Transforming Indian Education: The Road Ahead with New Education Policy*

in education. By partnering with industry stakeholders, educational institutions can gain access to funding, infrastructure, and mentorship opportunities that support the development and commercialization of IP-driven innovations. PPPs can also facilitate the integration of industry-relevant skills and competencies into the curriculum, enhancing the employability of students and promoting industry-academia collaboration.

The effective integration of Intellectual Property into education policy requires a comprehensive and collaborative approach that engages stakeholders across the education ecosystem. By adopting strategies that prioritize IP education, establish institutional mechanisms for IP management, and promote collaboration and technology transfer, educational policymakers can harness the transformative potential of IP to drive innovation, entrepreneurship, and socio-economic development within educational institutions and beyond.

## 6. CASE STUDIES AND BEST PRACTICES

India's educational landscape is rich with examples of innovative initiatives and best practices aimed at integrating Intellectual Property (IP) principles into educational policy and practice. These case studies highlight successful efforts to promote IP awareness, foster innovation, and drive knowledge dissemination within the Indian education ecosystem:[13]

### 6.1 Indian Institutes of Technology (IITs) Technology Transfer Offices:

Case Study: IIT Bombay's Society for Innovation and Entrepreneurship (SINE)

IIT Bombay's Society for Innovation and Entrepreneurship (SINE) serves as a prominent example of a technology transfer office that facilitates the commercialization of intellectual property generated through research activities. SINE provides incubation support, mentorship, and networking opportunities to students, faculty members, and alumni to translate innovative ideas into viable startups and commercial ventures. Through its robust ecosystem of innovation, SINE has catalyzed the development of numerous technology startups and spin-off companies, contributing to economic growth and job creation.

---

[13] Mishra, S. & Das, R. Case Studies and Best Practices in Intellectual Property and Education: Lessons from India

## 6.2 Intellectual Property Rights (IPR) Education Initiatives:

Case Study: National Institute of Intellectual Property Management (NIIPM)

The National Institute of Intellectual Property Management (NIIPM), established by the Ministry of Commerce and Industry, Government of India, serves as a leading institution for promoting IP education and training in India. NIIPM offers specialized courses, workshops, and seminars on various aspects of Intellectual Property, including patents, copyrights, trademarks, and designs, to professionals, students, and researchers. By equipping participants with the knowledge and skills necessary to navigate the complexities of IP management, NIIPM plays a crucial role in fostering a culture of innovation and entrepreneurship in India.

## 6.3 Open Educational Resources (OER) Initiatives:

Case Study: National Program on Technology Enhanced Learning (NPTEL)

The National Program on Technology Enhanced Learning (NPTEL), a joint initiative of the Indian Institutes of Technology (IITs) and the Indian Institute of Science (IISc), offers high-quality educational content in the form of open educational resources (OERs) to learners across India. NPTEL provides free access to video lectures, course materials, and online assessments in various disciplines, enabling students and educators to enhance their knowledge and skills in diverse areas of study. By embracing open-access principles and promoting collaborative content creation, NPTEL has democratized access to education and facilitated lifelong learning opportunities for millions of learners.[14]

## 6.4 Industry-Academia Collaboration Initiatives:

Case Study: Confederation of Indian Industry (CII) - Indian Institute of Technology (IIT) Partnership

The Confederation of Indian Industry (CII) and Indian Institutes of Technology (IITs) have forged strategic partnerships to promote industry-academia collaboration and technology transfer in India. Through joint research projects, technology incubation centers, and collaborative innovation initiatives, CII and IITs facilitate the exchange of knowledge, expertise, and resources between

---

[14] Sharma, P. & Verma, N., *Intellectual Property Rights in Indian Universities: Practices and Challenges*

academia and industry. These partnerships enable students and faculty members to work on real-world problems, engage with industry stakeholders, and develop innovative solutions that address societal challenges and promote economic development.

These case studies underscore the importance of fostering a conducive ecosystem for innovation, entrepreneurship, and knowledge dissemination within the Indian education system. By leveraging best practices and innovative models, educational institutions, policymakers, and industry stakeholders can collaborate to harness the transformative potential of Intellectual Property to drive sustainable growth and development in India.

## 7. CONCLUSION

The integration of Intellectual Property (IP) principles into the New Education Policy (NEP) of India represents a strategic imperative for fostering innovation, creativity, and knowledge dissemination within the Indian education ecosystem. Through a comprehensive analysis of the role of IP in education policy and practice, this research paper has explored the multifaceted dimensions of the interface between IP and the NEP, highlighting key opportunities, challenges, strategies, and best practices.

The New Education Policy (NEP) of India, with its emphasis on holistic and multidisciplinary learning, technology integration, and skill development, provides a conducive framework for promoting the integration of Intellectual Property into educational policy and practice. By recognizing the intrinsic link between education, innovation, and Intellectual Property, the NEP lays the foundation for unleashing the full potential of India's human capital and driving sustainable socio-economic development in the 21st century.

The integration of Intellectual Property within the NEP framework presents a range of opportunities for educational stakeholders, policymakers, and practitioners to foster a culture of innovation, entrepreneurship, and knowledge creation within educational institutions. By adopting strategies such as incorporating IP education in the curriculum, establishing intellectual property cells (IPCs), formulating clear IP policies and guidelines, promoting collaborative research and technology transfer, and encouraging public-private partnerships (PPPs), India can leverage the transformative potential of IP to drive educational excellence and societal progress.

However, the integration of Intellectual Property into education policy also poses several challenges, including the need to raise awareness, balance access to knowledge and IP protection, address ethical and legal concerns, and build a robust IP ecosystem within educational institutions.

Addressing these challenges requires concerted efforts from policymakers, educators, and stakeholders to develop inclusive and equitable IP policies and practices that promote responsible innovation, respect intellectual property rights, and foster collaboration and knowledge exchange.

In conclusion, the integration of Intellectual Property into the New Education Policy of India represents a strategic imperative for shaping the future of education and driving socio-economic development in the country. By embracing the principles of Intellectual Property and leveraging its transformative potential, India can unlock new opportunities for innovation, entrepreneurship, and inclusive growth, ensuring that education serves as a catalyst for individual empowerment and national progress in the 21st century.

Designed By:

Istuti Shukla
Shivam Bhatt

ISBN: 978-81-950434-8-4

Published by Navrachana University