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REIMAGINING INDIAN JUSTICE: A BLUEPRINT FOR TRANSFORMATION

N K Gupta
Founder & Managing Partner

The Indian judiciary, like a majestic banyan tree with its sprawling branches, stands as a pillar of democracy. **Yet, like any ancient marvel, it faces the whispers of time, demanding introspection and renewal.** Reforming this complex system requires a multifaceted approach, a tapestry woven with bold ideas and meticulous execution.

The Indian Constitution, in its very first words, yearns for "economic, social and political justice" for all its citizens. Access to justice, through a robust legal system, is fundamental to any thriving nation. When India's Constitution came into being in 1950, resolving legal disputes solely meant court proceedings within a unified structure of courts and laws. This uniformity was evident in areas like criminal law, civil procedures, contracts, and inheritance.

The Indian judicial system boasts a clear hierarchy. At the pinnacle stands the Supreme Court of India, the ultimate arbiter of justice. Each state, or group of states, has its own High Court, followed by a network of subordinate courts. These lower courts, further divided into judicial districts, are headed by District and Sessions Judges. Beneath them lie courts of civil jurisdiction with varying names across states. The criminal judiciary mirrors this structure, with Chief Judicial Magistrates and Judicial Magistrates presiding over different levels.

A Dedicated Loom: The Need for a Specialized Body

Just assume a dedicated Body constituted by the Government, a think tank pulsating with the sole purpose of revitalizing the judicial ecosystem. This body, a catalyst for change, could:

- Unravel the Knots: Conduct in-depth studies to diagnose the system's ailments – overflowing case files, creaking infrastructure, and procedural labyrinths.
- Craft Solutions: Stitch together a tapestry of reforms, advocating for increased judges, tech-driven courts, and streamlined procedures.
- Monitor the Pulse: Track the reforms' progress, ensuring they translate from blueprints to reality, not gathering dust in bureaucratic attics.
- Evolve with Time: Continuously assess the impact of reforms, fine-tuning them like a sculptor refining his masterpiece.

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Beyond Numbers: Weaving Transparency and Inclusivity
While increasing judges is crucial, imagine a judiciary bathed in the sunshine of transparency. Court proceedings livestreamed, judgments readily accessible, and performance metrics laid bare for public scrutiny. This, along with active stakeholder participation – judges, lawyers, and citizens alike – would weave a fabric of trust and accountability.

Modern Threads: Technology's Transformative Touch
Think of virtual courtrooms, where distance melts away, and justice transcends physical boundaries. E-filing systems could replace mountains of paper, while AI-powered research assistants could free judges from tedious tasks. Modernizing infrastructure, embracing technology, isn't just about speed; it's about weaving accessibility and inclusivity into the very fabric of the judicial system.

Fast-tracking Existing Reforms: Unlocking Bottlenecks
Several transformative initiatives are already underway – alternative dispute resolution mechanisms, judicial reforms recommended by expert committees, and legal awareness campaigns. The need is to prioritize, to fast-track these existing reforms, ensuring they blossom into tangible improvements, not remain mere proposals gathering cobwebs.

Empowering Every Thread: Legal Education and Timely Appointments
Imagine a society where citizens, empowered by legal knowledge, navigate the courts with confidence. Robust legal education programs, readily available legal aid, could be the threads that strengthen the fabric of access to justice. Additionally, filling judicial vacancies promptly would ensure a system that functions at full capacity, delivering timely verdicts.

Reforming the Indian judiciary is not just about technical fixes; it's about reimagining the very concept of justice. It's about weaving a system that is efficient, transparent, and accessible to all. By embracing bold ideas, prioritizing existing reforms, and empowering every stakeholder, we can transform this ancient banyan tree into a beacon of hope, dispensing justice in its purest form, for generations to come.

Remember, this is just a starting point. The journey to judicial reform is long, but with collective will and unwavering commitment, we can weave a brighter future for Indian justice.

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A 1,000-YEAR-OLD LEGAL SYSTEM NOW EMBRACES THE FUTURE

Prem Chandra Vaish
Senior Mentor

England's venerable legal system, steeped in centuries of tradition (think wigs and robes!), has taken a tentative step into the 21st century by allowing judges to use artificial intelligence (AI) to assist in writing legal opinions. This cautious green light, issued in December 2023 by the Courts and Tribunals Judiciary, comes with a caveat: AI can help with the writing, but it's strictly off-limits for research or legal analysis due to concerns about the technology's potential to generate misleading, inaccurate, or biased information.

"Judges do not need to shy away from the careful use of AI," stated Master of the Rolls Geoffrey Vos, Judge in England and Wales.

A Measured Approach in the Face of AI's Disruptive Potential

This measured approach reflects the legal profession's inherent conservatism in the face of rapidly evolving technologies like AI. While some legal futurists envision AI replacing lawyers, selecting jurors, or even making final decisions in cases, the English judiciary's stance is one of cautious experimentation.

"There's a heated public debate right now about whether and how to regulate AI," observed Ryan Abbott, a law professor at the University of Surrey and author of "The Reasonable Robot: Artificial Intelligence and the Law."

"AI and the judiciary is a particularly sensitive area, and there's a strong desire to keep human judges in the loop," Abbott continued. "So, I expect AI to disrupt the judicial system more slowly than other sectors, and we'll likely proceed with greater caution here."

Why is Artificial intelligence becoming an inseparable part of judicial systems around the globe?

Artificial intelligence (AI) is rapidly finding its way into the judicial systems of many countries around the globe. This is due to several factors, including:

- **Increased efficiency:** AI can automate many of the time-consuming tasks that judges and lawyers must currently do manually, such as researching case law and identifying relevant precedents. This can free up human professionals to focus on more complex tasks, such as writing opinions and hearing arguments.

- Reduced costs: AI can help to reduce the costs of litigation by automating tasks that are currently done by expensive human labor. For example, AI can be used to generate transcripts of court proceedings, which can save a significant amount of time and money.
- Improved accuracy: AI can help to improve the accuracy of judicial decisions by providing judges with access to a vast amount of data and information. For example, AI can be used to analyze large datasets of past cases to identify patterns and trends that can help judges to make more informed decisions.

One example of how AI is being used in the judicial system is in the Netherlands. The Dutch courts have developed a system called "Rechtspraak AI" that is used to automate several tasks, such as researching case law and identifying relevant precedents. Rechtspraak AI is able to complete these tasks more quickly and accurately than human lawyers.

Another example is in China, where the courts are using AI to help them to resolve disputes more quickly. The Chinese courts have developed a system called "Smart Courts" that uses AI to automate tasks such as scheduling hearings and issuing rulings. Smart Courts can resolve disputes up to 70% faster than traditional courts.

England and Wales Take the Lead on AI, But Not Alone

Legal experts commended the English judiciary for proactively addressing the use of AI in legal proceedings. This guidance is expected to be influential for courts around the world grappling with the potential and pitfalls of this transformative technology.

While England and Wales may be at the forefront of court systems issuing AI guidance, they're not the first movers. In 2018, the European Commission for the Efficiency of Justice adopted an ethical charter on the use of AI in courts, outlining core principles like accountability and risk mitigation.

In the United States, the picture is less clear. Although Chief Justice John Roberts acknowledged the potential of AI in his annual report, the federal court system lacks established AI guidelines. Individual courts and judges at various levels have implemented their own rules, reflecting the fragmented nature of the American judicial System.

Cautious Embrace, with Open Questions

The English guidance, while acknowledging the potential benefits of AI, stops short of a full embrace. Critics like Giulia Gentile, a lecturer at Essex Law School who studies AI in legal systems, pointed out the lack of disclosure requirements for judges using AI and the absence of an accountability mechanism.

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The Courts and Tribunals Judiciary's Approach

In a landmark decision, the judiciary last month sanctioned the use of AI by judges for writing legal opinions. However, the guidelines explicitly prohibit the use of AI for research or legal analyses due to concerns about misinformation, inaccuracies, and bias in the technology. Master of the Rolls Geoffrey Vos, the second-highest ranking judge in England and Wales, emphasized that while judges can cautiously embrace AI, they must uphold confidence and take full personal responsibility for the opinions they produce.

AI as a Tool, Not a Replacement at all

Despite the limitations, the guidance acknowledges the potential of AI as a valuable tool for overburdened judges facing mountains of paperwork and lengthy decisions. AI can assist with tasks like writing background material, summarizing existing knowledge, or locating familiar information. However, it should not be relied upon for legal research, finding new information, or generating persuasive legal reasoning.

Appeals Court Justice Colin Birss shared a positive experience using ChatGPT to draft a paragraph in a ruling within his area of expertise. "I asked ChatGPT to summarize a specific legal area, and it provided a concise paragraph," Birss recounted. "I already knew the answer and was about to write it myself, but ChatGPT saved me time. It's a

Legal Scholars' Perspectives

In a time when the legal community is contemplating the potential roles of AI, including replacing lawyers and influencing case decisions, the approach outlined by the judiciary is considered restrained. Scholars like Ryan Abbott, a law professor at the University of Surrey, commend the judiciary for addressing AI in the legal context. Abbott notes the unique caution surrounding AI in the judiciary, emphasizing the need to keep humans in the loop.

Five years ago, **the European Commission for the Efficiency of Justice issued an ethical charter on AI in court systems, setting the stage for AI discussions in legal circles.** England and Wales now moving towards the forefront of global courts addressing AI, showcasing a proactive stance compared to other jurisdictions.

England and Wales join a global conversation on regulating AI in the legal domain, with their guidelines potentially influencing other jurisdictions.

Limitations and Warnings

The guidance emphasizes the limitations of AI technology, particularly cautioning against the use of chatbots like ChatGPT for confidential information. Infamous cases of legal gibberish resulting from AI-generated content, as witnessed in New York, underscore the importance of exercising caution when using AI tools.

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AMENDMENT OF STATUTORY RETURNS FILED BY AN ASSESSEE UNDER GST: AN ANALYSIS

Puneet Agrawal
Sr Partner

An assessee making taxable supplies under the Goods & Services Tax regime is required to regularly file statutory returns. As per the Central Goods & Services Tax Act, 2017 ("CGST Act"), a regular taxpayer needs to furnish monthly returns in Form GSTR-1 & Form GSTR-3B and one annual return in Form GSTR-9. Moreover, separate returns are required to be filed by the assessee registered under the composition scheme, non-resident taxpayer, taxpayer registered as an Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS), etc.

It is pertinent to note that while filing the GST returns inadvertent errors like the wrong GSTIN of the supplier, mistakes in invoice details, availment of credit under an incorrect head, etc. may occur. In these situations, though there is no revenue loss, the benefit of ITC legally available to taxpayers is unjustifiably denied to them. Lately, the assessees' have been facing the difficulty of rectifying/amending genuine errors in GST returns filed by them.

However, the lack of proper instrumentality on the GST portal regarding the amendment of GST returns has left the assessees running from pillar to post. The present article discusses the above issue in light of the relevant provisions and recent judicial pronouncement.

Relevant provisions

The filing of returns under GST is governed by the provisions of sections 37, 38, and 39 of the CGST Act. The above provisions are discussed below:

- Section 37: Section 37(3) provides that any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under Section 42 or Section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed. The proviso to sub-section (3) stipulates that no rectification of error or omission in respect of the details furnished under section 37(1) shall be allowed after the 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.
- Section 38: Section 38 provides for communication of details of inward supplies and ITC providing therein that an auto-generated statement containing the details of ITC shall be made available electronically to the recipients of such supplies in such form and manner as may be prescribed.

- Section 39: This section provides for the furnishing of returns electronically indicating the inward and outward supplies of goods and services, ITC availed, tax payable, etc. Sub-section 39(9) although provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after 30th day of November following the end of financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

From a bare reading of the above provisions, it is clear that rectification of error or omission in the GST returns i.e. GSTR-1 & GSTR-3B can be made, however the same has to be made within the due date as provided therein.

Judicial Pronouncement

- **Star Engineers (I) Pvt. Ltd. vs. UOI & Ors., W.P. No. 15368 of 2023 (Bom HC)-** The Hon'ble Bombay HC held that the provisions of section 37(3), section 38 and section 39(9) need to be purposively interpreted. Furthermore, any inadvertent error which had occurred in the filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of section 37(3) read with the provisions of section 39(9) read dehors the provisos. The proviso ought not to defeat the intention of the legislature as borne out from a bare reading of the provisions.
- **M/s Sun Dye Chem vs. ACST, W.P. No. 29676 of 2019(Madras HC)-**The Hon'ble HC while allowing the assessee to re-submit the annexures to Form GSTR-3B with correct distribution of credit between IGST, SGST and CGST, held that the Petitioner should be in a position to rectify an inadvertent human error particularly in the absence of an effective, enabling mechanism under statute.
- **M/s Shiva Jyoti Construction vs. Chairman, CBEC & Ors, 2023 (71) G. S. T. L. 120 (Ori.)-** The Hon'ble Orissa HC while allowing the Petitioner to rectify its return held that it is not as if there will be any escapement of tax. This is only about the ITC benefit which in any event has to be given to the Petitioner. On the contrary, if it is not permitted, then the Petitioner will unnecessarily be prejudiced.

Conclusion

An assessee who has made a bona fide error while filing its GST return should be allowed to rectify/ modify its returns. An assessee cannot be denied to amend its returns merely on the ground that there is no enabling provision under the CGST Act. Correction of returns will allow genuine taxpayers to avail of ITC which would have been otherwise denied to them owing to an error in the return made by their suppliers. An assessee cannot be prejudiced in these circumstances especially when there is no loss of revenue.

The government has also acknowledged the difficulties faced by an assessee and as per recent news is in the process of developing a facility for the amendment/rectification of GST returns. The above facility will bring much-needed relief to the taxpayers and will reduce the litigation surrounding the present issue.

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DIVERSE INTERPRETATIONS OF IBC LAWS: EXPLORING THE IMPACT OF VARIOUS SUPREME COURT DECISIONS

Jatin Sehgal
Sr Partner

Introduction

The foundational tenets of the law suggest that while some laws are to be interpreted with different aspects of society, others must be liberally construed to be known as 'litera legis' of the law to understand and apply the law to its specific context in its true "ratio legis" that the statute wants to serve. This article seeks to evaluate a distinct law that is fairly nascent but already set forth as an example for its achievements. The law of insolvency and bankruptcy is an exhaustive code with various laws encapsulated in it, but the law's achievements hold a major acclaim to the interpretation of the law. This article's primary aim is to summarise some of the most important interpretations that have been set forward by the national law tribunals and the apex court. The law sets forward the law that must be followed, but the court's interpretation of the status, control validity, and applicability/reachability of a law makes it feasible.

Article

To begin with, in the case of **M/S. Surendra Trading Compa v. M/S. Juggilal Kamlapat Jute Mills Company Limited and Others**, the apex court dwelled upon the tenets of "shall" or "may", and it is not new when the court has interpreted 'shall' as 'may', the major issues being: Is it necessary or voluntary to apply within the 14-day window given by NCLT for admission or rejection? Is any part of the NCLAT ruling warranted? Is the applicant required to correct the problems within the allotted seven days, or is it optional? Is this kind of refusal interpreted as an administrative order, as a rejection of the application on its merits, or both?

Ordinarily, procedural laws are not to be understood as mandatory; rather, they are always supporting and subordinate to justice. It is incorrect to follow any interpretation that leaves the victim of justice bewildered or frustrated. The Supreme Court also cited Order 8 Rule 1 CPC, which stipulated that "it is to expedite and not to scuttle the hearing" and stipulated a 30-day timetable. The defendant is rendered disabled by the provision. It does not restrict the court's power to give more time.

The Supreme Court determined that there was insufficient justification for the NCLAT's conclusion that a seven-day time limit is necessary. It continued by saying that the period starts when the application is accepted, so the IBC's 180-day deadline for finishing the resolution procedure could not be used to support NCLAT's decision. Until the objections are withdrawn, it cannot be regarded as a properly submitted application. The application is only eligible for consideration if it is finalized in all respects. Noted was the possibility that, in a particular case, there could be substantial, rational, and acceptable reasons for not being able to fix the errors within seven days. Consequently, the Court found that the provision mandating the elimination of errors within seven days is just a directory rather than mandatory.

The Court ordered that all requests for time extensions be given due consideration to prevent abuse. The applicant must refill the application after removing the objections and file a written application if the objections are not withdrawn within seven days. The written application must provide sufficient justification for the applicant's inability to remove the objections within the allowed period. The application can be reviewed if the NCLT is pleased with the cause; otherwise, it must be refused.

Creditors

In 2021, the case of **RP Sanjiv Goenka Group v. AMR Infrastructure Ltd.** came forth as a judgment to understand that the core of creditors under the IBC law would not just mean the financial creditors but also include the operational creditors. The statement clarifies that the word "creditor" unambiguously includes both creditors: operational and financial creditors.

Another very important aspect of the arena was who can be a creditor, to which the court faced another question as to whether a trade union can be a creditor or not under the definition in IBC. The Apex court, in its Prudent jurisprudence, refused to entertain whether the trade union is a creditor or not in **Jk Jute Mill Mazdoor Morcha V. Juggilal Kamlapat Jute Mills Company Ltd. Through Its Director & Ors.** The NCLAT erred, according to the Supreme Court, in not taking into account whether the trade union fit the concept of "person" as defined by Section 3(23) of the Code. Similarly, because a trade union doesn't offer any services to the corporate debtor, the NCLAT is wrong to rule that it cannot be an operational creditor.

The union represents its members, who are employees to whom the employer may owe dues. These dues are surely obligations to pay for the services rendered by each employee and are collectively defended by the union. In a similar way, asserting that every worker will have a distinct claim, cause of action, and default date misses the possibility of filing a joint petition under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with multiple workers authorizing one worker to file the petition on behalf of all.

We allow the appeal and overturn the NCLAT's decision for all of the aforementioned grounds. The case has now been returned to the NCLAT, which has been pending for a while, and the appeal will be reviewed on its merits as soon as possible.
Another very prominent development in the IBC was the aspect where the court maintained its prior decisions, ruling that a DRT Recovery Certificate holder has three years from the date of the Recovery Certificate to commence CIRP proceedings and twelve years to file a claim in CIRP if pursued as a deemed decree.

In the case of **Tottempudi Salailith v. SBI and others**, The appellant, Mr. Tottempudi Salalith, held the position of managing director of Totem Infrastructures Limited, the corporate debtor/respondent number two. The corporate debtor stopped making payments on loans and facilities from several different organizations. After serving notice by Securitization and Reconstruction of Financial Assets and Enforcement Security (SARFESI) Section 13(2), the exposed lenders launched recovery proceedings with the Debt Recovery Tribunal (DRT) against the corporate debtor. Three recovery certificates were issued by the DRT on September 8, 2015, August 4, 2017, and October 17, 2017, in that order. SBI requested that CIRP be initiated against the Corporate Debtor under Section 7 of the I&B Code based on the Certificates. The NCLT considered the letter dated 29.01.2020, which the Corporate Debtor delivered to SBI and Union Bank, throughout the adjudication procedure. As a result, on December 1, 2021, an order was issued admitting SBI's CIRP application. In the NCLAT, the appellant appealed the NCLT's admission decision. The NCLAT upheld the NCLT's verdict, broadly agreeing with its reasoning.

The Supreme Court finally determined that the application that was submitted to the Authority is a composite one, founded on three recovery certificates, two of which were granted in 2017 and within the three-year timeframe mentioned in Article 137 of the Limitation Act. As a result, the Section 7 petition concerning these certificates can be pursued.

Concerning the third recovery certificate that was granted in 2015, the Supreme Court observed that it was granted under the Recovery of Debts and Bankruptcy Act, 1993 (1993 Act) and that, by Section 19 (22A) of the 1993 Act, it possesses the status of a deemed decree. Additionally, the enforcement life of a decree is twelve years under Article 136 of the Limitation Act.

In addressing the appellant's first and second contentions, the SC cited the landmark case of Kotak Mahindra Bank Limited, in which the financial creditor was allowed to begin CIRP within three years of DRT issuing the recovery certificate. The Corporate Debtor's letter dated 29.01.2020 was sent after the Section 7 Petition of the I&B Code was filed, proving that the NCLAT's rationale was procedurally incorrect. Therefore, the NCLAT could not have used this putative recognition of debt to extend the statute of limitations in the absence of a pleading amendment.

The Court clarified that the day the limitation period begins to run is the date of default. Responding to the appellant's third contention, the Supreme Court found that the statute of limitations began on the date of the recovery certificate. In another SC case, the period of limitation was held to have begun on the date of the recovery certificate. The recovery procedures before the DRT started in 2014, according to the present appeal. Then, the I&B Code was nonexistent. In addition, it was found in Kotak-I that the recovery certificate would give the financial creditor a new avenue for legal action. It is not possible to prevent financial creditors from requesting that the NCLT start the CIRP by using the theory of election.

Based on the third recovery certificates, two of which were issued in 2017 and within the three years specified in Article 137 of the Limitation Act, the Supreme Court determined that the application that was filed with the Authority is a composite application. As a result, the Section 7 petition about these certificates can be maintained.

The Supreme Court noted that the third recovery certificate issued in 2015 was issued under the Recovery of Debts and Bankruptcy Act of 1993 (the 1993 Act) and that it also had the features of a presumed decree under Section 19 (22A) of the 1993 Act. Furthermore, Article 136 of the Limitation Act specifies that a decree has a twelve-year enforcement life.

According to the Supreme Court's decision in Kotak-I, the financial creditor has twelve years to submit a claim under I&B Code procedures if he wants to pursue a recovery certificate as a presumed decree. In a different scenario, The Supreme Court set that a financial creditor has twelve years to claim the I&B Code if he wants to pursue a recovery certificate as a presumed decree.

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VALIDITY OF WILLS IN SUSPICIOUS CIRCUMSTANCES

Deepak Vijay
Sr. Partner

One of the most important aspects of estate planning is drafting a will, which guarantees that the testator's desires regarding the disposal of his or her assets are honored. The testator feels more secure about their possessions knowing that everything will be handled and given to the person they most love and trust. Indian law is very clear about the essentials of a valid will. These include the testator's capacity to execute a will, clarity about inheritance under the will, and witnesses to the will. However, a will could occasionally be contested because there are suspicious circumstances surrounding its execution.

Meaning of Suspicious Circumstances

A circumstance is considered "suspicious" when it is not normal or is 'not normally expected in a normal situation' or is 'not expected of a normal person'. Examples of suspicious circumstances include the testator's shaky or doubtful signature; the testator's feeble or uncertain mind; an unfair disposition of property; an unjust exclusion of the legal heirs, especially the dependents; or the beneficiary's active or leading role in the Will's creation. But this suspicion ought to be founded on reality rather than being the idle conjecture of a suspicious mind.

A petition for the grant of probate or letters of administration is typically filed before the appropriate court to establish the validity of a will. The court invites the contending party to raise any objections to the validity of the Will after the petitioner has met its initial burden of proof by demonstrating compliance with Act provisions and bringing the witness(es) who attest to the Will. The respondent now claims that the testator's true intention was not to dispose of the properties as specified in the Will, citing suspicious circumstances surrounding the execution of the document. Depending on the specific facts and circumstances of the case, there are several shades to this argument of suspicious circumstances.

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Judicial Interpretation

The Apex Court dealt with the issue of "suspicious circumstances" that could render the Will unenforceable, in a Special Leave Petition in the case of Kavita Kanwar v. Pamela Mehta & Ors. 2020 SCC OnLine SC 464. The Apex Court pronounced a comprehensive judgment on issues.

About the execution of a Will, factors that may constitute suspicious circumstances to invalidate a Will, and grant of probate in the matters of testamentary and succession under the Indian Succession Act, 1925.

The Supreme Court, at the outset, stated that a will has to be proved like any other document. However, the Court will expect the executor to show by satisfactory evidence that the will was (i) signed by the testator, (ii) the testator at the relevant time was in a sound and disposing state of mind, (iii) the testator understood the nature and effect of the dispositions, and (iv) the testator has put his signature on the document of his own free will.

Based on several rulings, the Court noted that any occurrence that is not "normally expected in a normal situation" may qualify as a "suspicious circumstance." Suspicious conditions include several features, including a shaky and doubtful signature, a feeble or unsure mind of the testator, unfair property disposition, unjust exclusion of lawful heirs, and the principal beneficiary's active involvement in the will's execution.

The Supreme Court took note of the suspicious circumstances in the present case and stated that any of the suspicious factors taken into account by itself and standing alone cannot operate against the validity of the propounded Will. The relevant consideration would be about the quality and nature of each of these facts and then the cumulative effect and impact of all of them upon making the Will with the free agency of the testatrix. The Court further emphasized that it's critical to remember that determining whether suspicious circumstances surround a will requires taking a holistic approach to the case and taking into account all the unique circumstances.

Conclusion

The execution of a will is an important step in ensuring how one's legacy devolves after passing. It is crucial to keep in mind that a testator's will becomes enforceable following their death. Consequently, a probate court must be persuaded that the testator, who is no longer living, legitimately executed the will for it to rule on this grave issue. One must also keep in mind that as per the provisions of the Indian Succession Act, of 1925, in the case of patent ambiguity or deficiency in the will, no extrinsic evidence will be relied upon. Therefore, the Court will only rely on the will to decide on its validity.

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GST- SHOW CAUSE NOTICES- INPUT TAX CREDIT MISMATCHES, PARTICULARLY IN THE YEARS 2017-18 AND 2018-19

Rakesh Garg
Sr Mentor

Introduction

A Show Cause Notice (SCN) is a formal notice issued by the tax authorities under the Goods and Services Tax (GST), to a taxpayer, requiring him to explain or justify a particular claim or action, or inaction. The purpose of a Show Cause Notice is to allow the taxpayer to explain their actions, and to provide evidence or arguments that show that the violation was not intentional or that the taxpayer was not at fault.

We have seen that the SCNs issued by various States focus on various mismatches, and one such mismatch is between Form GSTR-3B and Form GSTR-2A. Another significant reason could be that the registration of the counterparty supplier is canceled from a retrospective date (i.e., before the date of the original supply). The taxpayer would argue that his supply/ purchase is genuine and meets all the requirements of section 16 of the CGST Act.

In this paper, we will highlight two leading judgments, where the Hon'ble Courts held that input tax credit (ITC) could be claimed based upon books of accounts in bonafide cases. This ratio hold good at least during the initial years of GST when there were no specific provisions, and requisite utility by the GSTN was lacking.

The time limit for the issue of SCN

We have seen that the SCN under section 73 of the GST Act for the year 2017-18 could be issued up to 31.12.2023 and for the year 2018-19 by 31.01.2024. Certainly, the time limit for the issue of SCN for the year 2017-18 under section 74 is the end of July 2024; and so on.

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Leading Two Judgments

U.O.I. vs. Bharti Airtel Ltd. (SC) - 2021 (11) TMI 109 dated 28.10.2021 (SC): First judgment in this regard is by the Hon'ble Supreme Court, where, to summarise, it was held, -

1. The registered person is under a legal obligation to maintain books of accounts and records as per the provisions of the GST Act and Rules regarding the transactions in respect of which the output tax liability would occur.
2. Even during the pre-GST regime, the registered persons were maintaining such books of accounts and records and submitting returns on their own. No such auto-populated electronic data (similar to GSTR-2A) was in vogue. It is the same pattern that had to be followed by the registered person in the post-GST regime.
3. The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment. The primary source is in the form of agreements, invoices/challans, receipts of the goods and services, and books of accounts which are maintained by the assessee manually/electronically. These are not within the control of the tax authorities.
4. Form GSTR-2A is only a facilitator for making an informed decision while doing such self-assessment. The registered person is required to submit returns based on such self-assessment in Form GSTR-3B.

Suncraft Energy Private Limited vs. The Assistant Commissioner, State Tax - 2023 (8) TMI 174 delivered on 02.08.2023 (Calcutta HC) where SLP was dismissed by the Hon'ble Supreme Court vide order dated 14.12.2023 - 2023 (12) TMI 739

In this case, the Hon'ble Calcutta High Court observed as under: -

"*9. The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer,*

and unless and until the first respondent can bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable."

Conclusion:

By inserting clause (aa) in section 16(2) of the CGST Act with effect from 01.01.2022, the position might change. The said clause reads as under, -

(aa) the details of the invoice or debit note referred to in clause (a) have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

Similarly, Rules 59 and 60 of the CGST Rules have been substituted with effect from 01.01.2021. Thus, at least for the financial years 2017-18 to 2019-20, the recipient of the supplies, relying upon these two judgments, could take input tax credit based upon its books of accounts: certainly, the transaction should be genuine and bonafide.

Lastly, before parting, we should also remember the judgment by the Hon'ble Supreme Court in the case of **State of Karnataka vs. Ecom Gill Coffee Trading (P) Ltd.**- 2023 (3) TMI 533 dated 13.03.2023 (SC). In this case, about section 70 of the Karnataka VAT Act (**similar to section 155 of the GST Act**), it was held that the burden of proving the correctness of ITC remains upon the dealer claiming such ITC; and it cannot be shifted on the revenue. In the absence of any further cogent material, like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices, and payment particulars, etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was justified in denying the ITC.

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UPHOLDING JUDICIAL DISCIPLINE, DOCTRINE OF PRECEDENTS, AND CLARITY ON SALE DEED OPERATIVE DATES: ANALYSIS OF RECENT SUPREME COURT JUDGMENT

Anil Kuamr Gupta
Sr Mentor

Introduction

In a recent judgment (2024 INSC 8) delivered by Justice Vikram Nath, the Supreme Court of India tackled the significant principles of Judicial Discipline and Propriety. The case of Mary Pushpam vs. Telvi Curusumary & Others decided on January 3, 2024, provides insights into the importance of adhering to decisions made by Coordinated Benches and the doctrine of merger in legal proceedings.

Judicial Discipline and the Doctrine of Precedents

Justice Vikram Nath emphasized the essential role of Judicial Discipline and the Doctrine of Precedents in maintaining certainty and consistency in judicial decisions. The judgment underscores that decisions of a coordinate Bench of the same High Court must be respected and are binding, with the only recourse being a reference to a larger bench for a different view.

The doctrine of Merger

The judgment delves into the Doctrine of Merger, a common law principle aimed at maintaining the hierarchy of courts and tribunals. Quoting from Kunhayammed v. State of Kerala, the Court clarifies that when a superior forum modifies, reverses, or affirms a decision, the decision of the subordinate forum merges with the superior one. This doctrine, rooted in hierarchy, ensures clarity in legal orders governing the same subject matter.

Coordinate Benches and Judicial Discipline

Referring to the State of Punjab v. Devans Modern Breweries Ltd., the Court reiterated that a coordinate Bench should generally follow the decision of an earlier coordinate Bench. It is only when there is disagreement that the matter may be referred to a larger Bench. The concept of "per incuriam" was also highlighted, stating that a decision is per incuriam when the court acts in ignorance of a previous decision of its own or a coordinate jurisdiction.

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Sale Deed Operative Dates

In a separate case (2024 INSC 1), the Court addressed the issue of sale deed operative dates in the matter of Kanwar Raj Singh vs. Gejo. The Court, relying on Section 47 of the Registration Act, clarified that a registered document operates from the time it would have commenced to operate if no registration were required. The judgment analyzed the Constitution Bench decision in Ram Saran Lall, emphasizing that Section 47 doesn't determine the completion of a sale but governs the time from which a registered document operates.

Reopening of Assessment and Jurisdictional Limits

In another notable case (2024:RJ-JP:583-DB), the Rajasthan High Court held that reopening of assessment for AY 2015-16, under Section 148A/148A(d) of the Income Tax Act, based on information from the Insight Portal of ITD, lacked jurisdiction. The court ruled that once a notice under Section 148A is found barred by limitation, no further proceedings can be initiated, rendering the subsequent proceedings baseless.

Conclusion

These recent judgments emphasize the significance of Judicial Discipline, adherence to precedent, and the careful application of legal principles. The clarity provided on sale deed operative dates and the limitations on reopening assessments reinforces the commitment to upholding justice while respecting legal precedents.

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WHY IS RECOGNITION OF THE "GROUP OF COMPANIES" DOCTRINE IN INDIAN ARBITRATION LAW A MILESTONE?

The recognition of the "group of companies" doctrine by the Supreme Court in the Cox & Kings Ltd. v. SAP India Pvt. Ltd. case on December 6, 2023, stands as a monumental milestone in Indian arbitration law. Led by Chief Justice Dr. Dhananjaya Y. Chandrachud, the five-judge bench's groundbreaking decision challenges established norms surrounding the separate legal personality of entities within corporate groups. By emphasizing a consent-based approach and acknowledging the distinct existence of the group of companies doctrine in arbitration law, the Court provides valuable insights that reconcile this doctrine with well-established principles of corporate and contract law.

The decision signifies a departure from conservatism, aligning India with the global trend of recognizing the doctrine and setting a precedent for a more inclusive approach to arbitration involving corporate groups. Despite raising questions and concerns, the judgment marks a paradigm shift, providing jurisprudential clarity and underscoring the importance of consent and mutual intention in complex transactions.

Sanctity of the Separate Legal Personality

The cornerstone of the analysis lies in determining whether the group of companies doctrine has an independent existence under arbitration law or if it relies on principles like piercing the corporate veil. The Supreme Court's verdict emphasizes a consent-based approach grounded in arbitration law rather than disturbing the well-established principles of corporate law. The Court differentiates between the roles of corporate law, determining substantive legal liability, and arbitration law, focusing on the jurisdiction of arbitral tribunals.

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Fact-Based Analysis

The application of the group of companies doctrine is not automatically based solely on the existence of a corporate group. The Court stresses the importance of fact-specific analysis, highlighting the need for the non-signatory to demonstrate an intention to be bound by the arbitration agreement. This intention is paramount and requires a close examination of the commercial circumstances and conduct of the parties within the corporate group. The mere membership in a group is not sufficient; there must be a mutual intention to arbitrate.

Concluding Remarks

The Cox & Kings ruling signifies a departure from the conservative approach and aligns with the global trend of recognizing the group of companies doctrine. Despite providing jurisprudential clarity, the decision raises several questions and concerns. While the Court asserts that the doctrine will be applied on a fact-specific basis, it leaves room for future litigation, particularly regarding specific scenarios involving corporate groups. The liberal acceptance of the doctrine may also motivate litigants to expand the scope of parties involved in arbitral proceedings.

Judicial Background and Global Perspectives

Chief Justice Chandrachud's opinion delves into the legal evolution of the group of companies doctrine, both in India and internationally. The judgment provides a detailed analysis of how different countries, including the USA, France, England, Switzerland, and Singapore, have approached the doctrine. The Chief Justice emphasizes the need to retain the group of companies doctrine as a tool for determining the mutual intention of parties in complex transactions involving multiple entities.

Arbitration Agreement as a Creature of Contract

The judgment meticulously explores the features of an arbitration agreement, emphasizing the consensual nature of arbitration. Chief Justice Chandrachud elucidates the importance of consent in arbitration agreements, maintaining that non-signatories should not be forced into arbitration against their will. The judgment acknowledges the challenges posed by multi-party contracts and underscores the need for a pragmatic approach to determine parties to an arbitration agreement.

Group of Companies Doctrine in India:

The Chief Justice defines the "group of companies" in the Indian context, addressing concerns about its compatibility with the principle of separate legal personality. The judgment distinguishes between the "piercing the corporate veil doctrine" and the group of companies doctrine, noting that the latter identifies the mutual intention of separate legal entities without disregarding their separateness. The burden of proof lies with the party seeking joinder of a non-signatory, emphasizing the high threshold for proving mutual intention.

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Independent Existence of the Group of Companies Doctrine

Contrary to the earlier interpretation in the Chloro Controls case, the Cox & Kings ruling asserts that the group of companies doctrine has a separate existence in Indian arbitration jurisprudence. The Court rejects the idea that the doctrine is traced to the phrase "claiming through or under," highlighting its independent foundation on the mutual intent of parties.

Standard of Determination and Competence-Competence

The judgment clarifies the role of the referral court in determining the validity of the arbitration agreement, with a focus on the "prima facie" verification. In complex transactions, the Court suggests that arbitral tribunals are better suited to decide whether a non-signatory is a true party to the arbitration agreement, aligning with the principle of competence-competence.

Justice Narasimha's Concurring Opinion

Justice P.S. Narasimha concurs with the majority opinion, emphasizing the need for the arbitration agreement to be in writing. He agrees that the group of companies doctrine should be subsumed under Section 7(4)(b) of the Arbitration Act and criticizes the Court's approach in Chloro Controls.

Conclusion

The Cox & Kings decision marks a paradigm shift in Indian arbitration law, recognizing the group of companies doctrine while upholding the separate legal personality of entities within a corporate group. While providing much-needed clarity, the judgment leaves room for future challenges and highlights the importance of a fact-specific analysis in determining the applicability of the doctrine. As India aligns itself with the global trend, the ruling sets a precedent for a more inclusive approach to arbitration involving corporate groups, emphasizing the importance of consent and mutual intention in complex transactions

Contributed By

Ismat Chughtai
Associate

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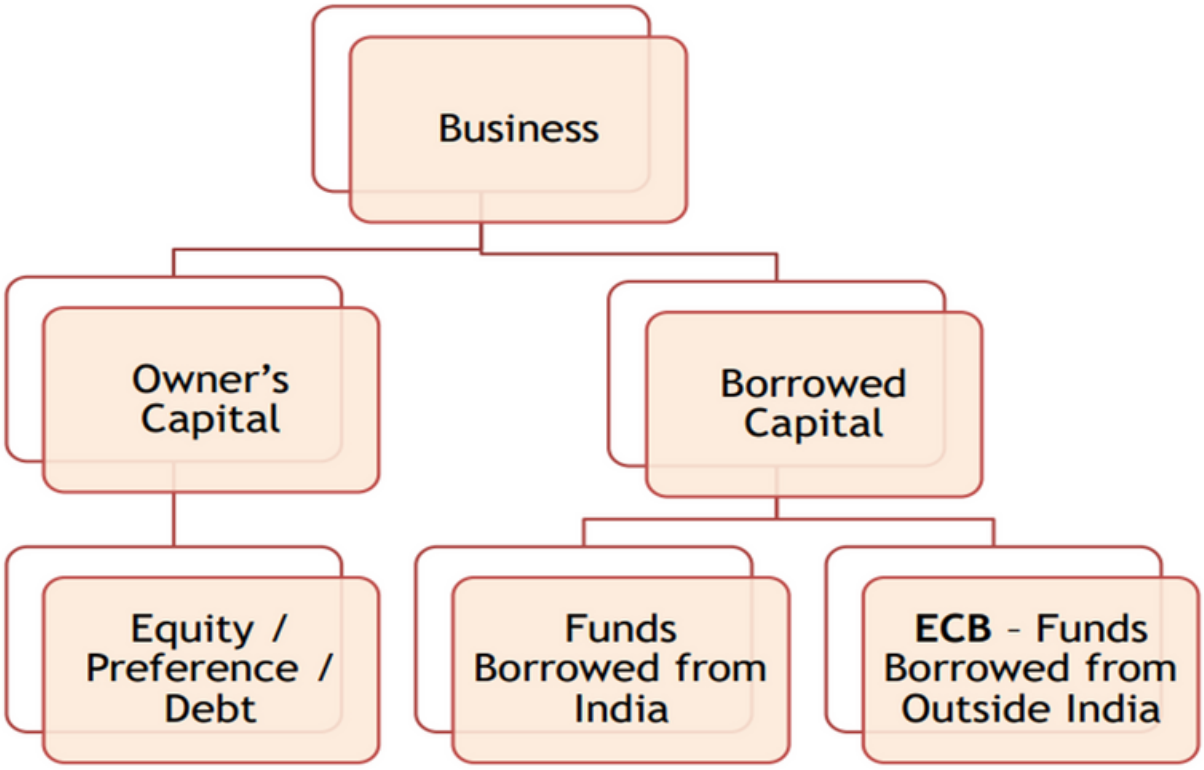
EMPOWERING INDIA'S STARTUP ECOSYSTEM: A COMPREHENSIVE GUIDE TO EXTERNAL COMMERCIAL BORROWINGS (ECB)

In India, startups play a pivotal role in driving economic growth through their contributions to innovation and novel ideas. Recognizing their significance in national development, the Government has established various incentives and adopted a progressive stance towards startups. In furtherance of this commitment, the government has promulgated liberalized guidelines facilitating startups to access External Commercial Borrowings (ECB) from overseas sources.

The ECB is defined as per (FEMA Notification No. 3R &8) "External Commercial Borrowings (ECB)" means borrowing by an eligible resident entity from outside India in accordance with the framework decided by the Reserve Bank in consultation with the Government of India;



Under the specific directives tailored for startups, any startup eligible to receive Foreign Direct Investment (FDI) can now leverage ECB opportunities. This initiative, spearheaded by the Reserve Bank of India (RBI), empowers startups to secure foreign funds and deploy them strategically to fuel their expansion and development endeavors.

Earlier, the Ministry of Finance used to decide the ECB policy; however, in due course of time, the responsibility of reviewing, revision, and implementing the ECB framework was transferred to RBI, under the consultation of the Government of India. External Commercial borrowing (ECB) for Start-ups.

Criteria for Startup Recognition

To be acknowledged as a startup, an entity must satisfy the following criteria:

- Age Limit: The entity should not have surpassed 10 years from its date of incorporation or registration.
- Turnover Limit: The annual turnover of the entity should not exceed Rs. 100 crores in any of the financial years since its incorporation or registration.
- Purpose of Operations: The entity's primary activities should involve innovation, development, deployment, or improvement of products, processes, or services. Alternatively, it should operate on a scalable business model with a significant potential for employment generation or wealth creation.

The Reserve Bank of India, through its circular No. 13 RBI/2016-17/103 A.P. (DIR Series), introduced a new framework enabling startups to raise External Commercial Borrowings (ECB). Under this, AD Category-I Banks are authorized to facilitate recognized startups in raising ECB through the automatic route under the following framework:

Eligibility

An entity recognized as a Startup by the Central Government (DPIIT) as of the date of raising ECB.

(Rationale behind recognized startups: This initiative appears to incentivize entities to officially register as recognized startups, enabling them to access the associated benefits and subsequently be subject to regulatory oversight.)

Recognized Lender

- Lender/investor to be a resident of FATF compliant country; and shall not be from a country identified in the public statement of the FATF as:

1. A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which countermeasures apply; or
2. A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Not permissible from Overseas branches/subsidiaries of Indian banks or overseas WOS / JV of an Indian company.

Amount, Average Maturity & All-in costs

- Amount – The borrowing per Startup will be limited to USD three million or equivalent per financial year, either in INR or any other convertible foreign currency or a combination of both.
- Ratio – Leverage ratio and ECB Liability – Equity Ratio are not applicable.
- Maturity – The minimum average maturity period will be 3 years.
- All-in-cost – Mutually agreed between the borrower and lender.

(The rationale behind granting startups the flexibility to determine their borrowing costs stems from the recognition that the cost of borrowing is a contractual matter between borrowers and lenders. This special relaxation acknowledges the need for startups to have the freedom to negotiate borrowing terms based on prevailing market conditions. Under the general External Commercial Borrowings (ECB) framework, restrictions on borrowing costs, such as the all-in-cost ceiling, are imposed to regulate capital inflows and maintain market stability by aligning rates with domestic market standards.)

Form and End-use

- Forms- The borrowing can be in the form of loans or non-convertible, optionally convertible, or partially convertible preference shares. The funds should come from a country that fulfills the conditions of the recognized lender above.
- End Use – For any expenditure in connection with the business of the borrower.

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Currency and conversion

- Denominated in any freely convertible currency or INR or a combination thereof (Hedging recommended but not mandatory)
- Conversion of ECB into equity is freely permitted, subject to RBI Regulations on foreign investment in Startups as outlined in the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, the process of conversion will be subject to the framework established for External Commercial Borrowings (ECB).
- In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as of the date of the agreement.

Security and Guarantee

- The borrowing entity has the discretion to choose the type of security to offer to the lender.
- Security options encompass movable, immovable, and intangible assets such as patents and intellectual property rights, as well as financial securities.
- The selected security must adhere to the regulations governing foreign direct investment, foreign portfolio investment, or any other relevant norms applicable to foreign lenders or entities holding such securities.
- Both corporate and personal guarantees are permissible.
- Guarantees issued by non-residents are acceptable only if they meet the qualifications outlined above.
- Indian banks, all India Financial Institutions, and NBFCs are prohibited from issuing guarantees, standby letters of credit, letters of undertaking, or letters of comfort.

Contributed By
Aarushi Gairola
Associate

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CLICKWRAP CONTRACTS: UNDERSTANDING A CRUCIAL ELEMENT IN DIGITAL INTERACTIONS

Introduction

In the rapidly evolving digital landscape, Clickwrap Contracts have become essential to online interactions, facilitating seamless agreements between users and companies in Mobile apps, website registrations, social media platforms, online surveys and Forms, etc. This article delves into the concept of Clickwrap Contracts, their significance, enforceability, international perspectives, the Indian scenario, and best practices for their design.

Meaning: What are Clickwrap Contracts?

A Clickwrap Contract is a digital agreement where users actively click on buttons like "I accept" or "OK" to agree to standardized terms before accessing content, making purchases, or using a website. These contracts cover terms and conditions, usage policies, privacy terms, and End-User License Agreements (EULAs).

Salient Features of Clickwrap Contracts

- Unilateral Contracts: Agreed upon by multiple users, these contracts are unilateral and standardized.
- Unique Identification: Users signify consent by clicking recognizable buttons like "I agree" or "OK."
- Scope: Covering various aspects, Clickwrap Contracts include terms and conditions, usage policies, and EULAs.
- Opt-out Option: Users can choose not to agree by clicking options like "Cancel" or "I disagree."

Importance of Clickwrap Contracts

Crucial in Business-to-Consumer (B2C) interactions, Clickwrap Contracts offer several benefits:

- Embedded Accessibility: Easily accessible and downloadable, embedded into websites.
- Efficiency in Mass Contracts: Enables companies to establish contracts simultaneously with multiple users.
- Flexibility: Allows companies to save electronic signatures and add clauses without prior user consultation.
- Enforceability of Clickwrap Contracts: Legal scrutiny has shaped the enforceability of Clickwrap Contracts, with critical cases providing parameters:

International Perspective: Cases like Feldman v. Google, Inc., and Hotmail Corporation v. Van Money Pie have emphasized the importance of clear notice and manifested assent.

In Specht v. Netscape (2002), the court established a precedent that clicking a button did not signify agreement if users were unaware of the terms, emphasizing the necessity of adequately informing users for enforcement.

Sgouros v. TransUnion Corp highlighted that while clicking a box can indicate acceptance, the page layout must effectively inform users of the terms for enforcement.

In Nguyen v. Barnes and Noble, Inc., the court found that including a link without explicit notice or requiring explicit action did not put users on reasonable notice, leading to non-enforcement of Barnes & Noble's terms.

Indian Scenario: In the Indian legal landscape, Clickwrap Contracts gain recognition through the Information Technology Act, of 2000, as they are not explicitly covered under the Indian Contract Act. Section 10A of the IT Act ensures the validity of E-contracts, using electronic means for communication, proposals, or acceptances. Courts in India, aligning with international perspectives, stress the importance of clear notice and manifested assent in clickwrap agreements. However, these agreements are scrutinized for fairness in the Indian context, especially regarding imbalances in bargaining power or attempts to waive consumer rights. Unfair or biased clickwrap agreements may be deemed unenforceable, underscoring the importance of fairness and transparency in such contracts in India.

Best Practices for Designing Clickwrap Contracts

Ensuring enforceability and user understanding:

- Active User Consent: Users must actively click "I agree" for consent.
- Screen Design: Keep layouts simple, uncluttered, and easily understandable.
- Notice of Terms: Provide clear and reasonable notice of terms in user-friendly language.
- User Comprehension: Ensure Clickwrap Contracts are easily understood, encouraging users to read Terms of Service (TOS).
- Documentation: Maintain records of consent and contract versions for enforceability.

Conclusion

As Clickwrap Contracts continue to gain prominence, legal frameworks must evolve to provide clear guidelines and statutory support. While international cases showcase enforceability, Indian laws are yet to explicitly recognize Clickwrap Contracts. Best practices emphasize active user consent, user-friendly design, clear notice of terms, and proper documentation, ensuring fairness and transparency in digital agreements. As digital interactions advance, Clickwrap Contracts, alongside Shrinkwrap and Browsewrap contracts, represent the future of online agreements with the potential for enhanced efficiency and user protection.

Contributed By
Nancy Girdhar
Associate

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C-582, Defence Colony, New Delhi-110024