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LEGAL HARMONY: INDIA'S INITIATIVES LEAD TO A **REDUCTION IN LITIGATION**



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The Indian judicial system faces a significant challenge: over 673,000 pending cases involving the Union of India. To tackle this immense burden, the Ministry of Law and Justice launched the Legal Information Management & Briefing System (LIMBS) portal in 2022. This web-based platform serves as a central hub for uploading information and monitoring government litigation across various ministries and departments.

Formation of LIMBS

For the purpose of monitoring of litigation of Union of India, a web-platform namely, Legal Information Management & Briefing System (LIMBS) was created in the year 2016. LIMBS Ver.2 has been launched in the year 2019 to overcome the then existing technological gaps in the application. The vision of LIMBS Ver.2 is 'to be a single platform for Litigation of GoI along with establishment of a synchronized regime for monitoring of Litigation' across all Ministries / Departments of Government of India.

Details regarding Central Government cases are updated on LIMBS portal by the 57 user Ministries / Departments. Data on LIMBS portal is user based which is entered by user of respective Ministry / Department and not centrally by the Department of Legal Affairs.

The LIMBS portal playing a crucial role in bringing transparency and accountability to government litigation. By centralizing information and enabling data-driven analysis, LIMBS empowers policymakers to identify trends, pinpoint critical areas, and formulate targeted solutions.

Reforms Recommended by Law Commissions

Law Commissions have proposed crucial reforms to streamline government litigation. Key recommendations include:

Repealing the notice requirement for suits against the government: This would expedite dispute resolution by removing administrative hurdles.

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Appointing a Litigation Ombudsman: This ombudsman would act as a neutral body for grievance redressal against the government in legal matters.

Deleting Article 112 of the Limitation Act: This article grants the government a 30-year window for filing suits, potentially leading to unnecessary litigation delays.

Government Initiatives

Recognizing the urgency of the situation, the government has taken several steps to mitigate the burden of litigation:

Adoption of Alternative Dispute Resolution (ADR) mechanisms: Encouraging methods like mediation and arbitration can expedite dispute resolution outside the traditional court system.

Introduction of the Mediation Bill, 2021: This bill aims to institutionalize and promote mediation as a preferred method for resolving disputes efficiently.

State Litigation Policies: Several states have formulated policies outlining strategies to minimize government litigation.

Moving Forward: A Collaborative Approach:

While government initiatives are commendable, further efforts are needed to achieve a substantial reduction in litigation:

Reviewing Litigation Policies: Regularly reassessing and updating policies can ensure they remain relevant and effective in addressing contemporary challenges.

Strengthening Legal Teams: Equipping government departments with skilled lawyers and adequate resources can enhance their capacity to handle legal matters efficiently.

Case Management Techniques in Courts: Implementing stricter timelines, regular monitoring, and prioritization of older cases can expedite the judicial process.

Adherence to Timelines and Discouraging Adjournments: Establishing a culture of respect for court time will prevent unnecessary delays and expedite case resolution.

By adoption of these approach, the judiciary, government departments, and legal professionals, can make significant strides towards reducing its burden of government litigation. This, in turn, will free up valuable resources for judicial attention to other pressing matters, ultimately leading to a more efficient and accessible justice system for all.

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Prem Chandra Vaish
Senior Mentor

ARTIFICIAL INTELLIGENCE CAPABILITIES IN CORPORATE WORLD

Embrace the dawn of a new era, where humans and AI join forces as high-tech teammates. Now AI as your corporate sidekick, ready to amplify your strengths, unlock hidden potential, and unleash a whirlwind of innovation. Let's ditch the fear and dive into the real AI revolution for Corporate World, where humans and machines conquer the business world together.

Brainpower

AI, as your Guide, devours mountains of information in seconds, unearthing hidden trends and predicting customer behavior with uncanny accuracy. **This translates to a 90% reduction in time spent on data analysis, according to a McKinsey Global Institute study.** With AI handling the grunt work, you're freed to focus on what truly matters: the human magic of creativity, strategic thinking, and problem-solving. Imagine crafting award-winning marketing campaigns or designing groundbreaking products, while your AI assistant tirelessly crunches numbers and predicts market shifts.

Productivity

AI handles the mundane, **from invoice processing (reducing errors by up to 80%, as seen in a 2023 PwC report) to scheduling meetings, freeing your team to tackle strategic initiatives and customer-centric activities.** Need a report generated, a competitor analyzed, or a market forecast? AI delivers lightning-fast insights with razor-sharp accuracy. It's like having a time-traveling efficiency machine on your side, enabling you to make data-driven decisions in real-time.

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Customers Feeling

Forget one-size-fits-all marketing. AI learns your customers' desires and anticipates their needs, making hyper-personalized experiences that make them feel like VIPs. A 2023 Harvard Business Review study found that companies using AI for personalization see a 15% increase in customer satisfaction and a 10% boost in revenue. Need help at 3 am? No problem! AI-powered chatbots and virtual assistants are always on duty, offering 24/7 friendly support and resolving issues in a flash.

Innovation Unleashed

Don't fear AI stifling creativity. Think of it as your brainstorming buddy, churning out ideas, analyzing trends, and sparking game-changing innovations. AI can sift through vast amounts of data to identify previously unseen patterns and connections, leading to revolutionary breakthroughs. With AI's analytical prowess, you can ditch the guesswork and make informed decisions based on real-time insights. Imagine launching products your customers crave, every single time.

A Twist

AI power without responsibility is a recipe for disaster. That's why human oversight and ethical considerations are crucial. We need to ensure AI operates fairly, transparently, and responsibly. Remember, AI can't replicate empathy, judgment, or moral reasoning. That's where we, the humans, shine. We guide AI, ensuring its responsible use, and add the irreplaceable human touch to everything we do.

The Bottom Line

AI isn't the enemy; it's the ultimate business ally. It empowers us, amplifies our strengths, and fuels innovation. Together, humans and AI can build a future where businesses can achieve sustainable growth.

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GROUP OF COS. DOCTRINE" APPLIES TO ARBITRATION IN INDIA AND CAN BE INVOKED TO BIND NON-SIGNATORIES PARTIES: SC



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In the matter of Cox and Kings Ltd. v. SAP India (P.) Ltd. [2023] 157 taxmann.com 142 (SC), the Supreme Court upheld the 'group of companies' doctrine in the arbitration law proceedings. The Court held that the "Group of Cos. doctrine" applies to arbitration in India & can be invoked to make arbitration agreements binding on non-signatory parties. The Court further clarified that the principle of alter ego or piercing the corporate veil cannot be the basis for applying the group of companies doctrine.

Brief facts of the case:

In the instant case, certain questions were kept before the Apex Court. The Court deliberated on the following questions for consideration:

- (a) Should the group of companies doctrine be incorporated into Section 8 of the Arbitration Act, or can it stand independently in Indian jurisprudence without any statutory provision?
- (b) Is the continued invocation of the group of companies doctrine warranted based on the principle of 'single economic reality'?
- (c) Should the group of companies doctrine be construed as a tool for interpreting the implied consent or intent to arbitrate between the parties?
- (c) Can the principles of alter ego and/or piercing the corporate veil alone justify triggering the operation of the group of companies doctrine, even in the absence of implied consent?

Court's interpretation:

Regarding the inquiry into the autonomous existence of the 'doctrine of a group of companies,' the Court determined that this doctrine possesses an independent status as a legal principle. This conclusion was drawn through a coherent interpretation of Section 2(1)(h) in conjunction with Section 7 of the Arbitration Act.

On the question of 'single economic reality,' the Court held the doctrine to be applicable when there is a tight group structure or single economic reality without any reference to the parties' intention. However, the Court ultimately relied on implied or tacit consent by the non-signatory, evidenced by its conduct, to hold that it was a party.

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Legal provisioning

"The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties; The Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement; The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;

Under the Arbitration Act, the concept of a "party" is distinct and different from the concept of "persons claiming through or under" a party to the arbitration agreement;

Court's observations:

The Court observed that the foundation for invoking the group of companies doctrine lies in upholding the distinct corporate identities of the group entities while ascertaining the shared intention of the involved parties to include the non-signatory party within the scope of the arbitration agreement.

Regarding the basis of the application of 'group of companies doctrine', the Court held that the principle of alter ego or piercing the corporate veil could not be the basis for applying the group of companies doctrine.

Court's Pronouncement on application of the Group of Companies Doctrine in Indian Arbitration Jurisprudence

In applying the group of companies doctrine, the courts or tribunals must evaluate all cumulative factors outlined in Discovery Enterprises. Consequently, the sole reliance on the principle of a single economic unit cannot be the exclusive justification for invoking the group of companies doctrine.

The right to assert claims in a derivative capacity is limited to those "claiming through or under". The Court finds fault in the approach taken in Chloro Controls, as it erroneously traces the group of companies doctrine back to the phrase "claiming through or under". Such an approach contradicts well-established principles in contract law and corporate law.

Emphasizing the utility of the group of companies doctrine in discerning party's intentions within the complexity of transactions involving multiple parties and agreements, the Court advocates for its retention in Indian arbitration jurisprudence."

The Referral Court directed to let the Arbitral Tribunal decide non-signatory binding; the Court emphasized the comprehensive application of Doctrines for Arbitration Agreement Inclusion.

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ROLE OF HR IN INDUSTRY



R K Gupta
Sr Partner

Human resources (HR) is of paramount importance in today's industry as it serves as the bedrock of effective organizational management. HR plays a pivotal role in attracting, hiring, and retaining skilled talent that drives business growth. It ensures adherence to labour laws, mitigates legal risks and fosters a fair and inclusive work environment. An HR should ensure the organization complies with employment laws, internal policies, and industry standards. In addition, they also need to promote a fair and respectful work culture. This further contributes to the overall growth of the organization.

By managing employee benefits, compensation, and performance evaluations, HR bolsters motivation and productivity. Furthermore, HR bridges communication between management and employees, acting as a channel for grievances and concerns, thereby enhancing employee satisfaction and reducing turnover.

Strategic HR planning aligns workforce capabilities with organizational goals, enabling companies to navigate challenges and seize opportunities proactively. Ultimately, HR holds the key to a harmonious workplace, cultivating a positive company culture, and fuelling overall success by unlocking the full potential of human capital.

Treating company personnel as clients is a common strategy used by successful HR departments. A different perspective on the relationship might assist HR in staying focused on the core objective encouraging employees to give their best effort.

While the HR department handles a wide range of tasks, the majority of the team's duties fall under these fundamental tasks:

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A) Human Resource Development

- Tracking candidates and strategically hiring: It is HR's responsibility to provide the business with capable, dependable employees.
- Speeding up the on-boarding procedure: Some workplace environments need a high cultural learning curve, and it is the role of HR to make culture integration simpler. Not every workplace environment is one you can jump into with both feet and stay afloat.
- Teaching employees and Staff: The ability of HR to elevate the workforce by developing managers into better leaders and employees into having a wider, deeper skill set is part of what makes HR so valuable.
- Encourage employees to take regular breaks to look after their wellbeings.
- Focus on creating a culture of openness and transparency.
- Developing a culture of automatic feedback from employees.
- Praise, Support and encourage employees. Make yourself available for them when they are in need of support.

B) General Work: Industrial Relations

- Human resources frequently manage an organisation's whole payroll. They can assist employers in setting new hires' salaries and guarantee that all workers get paid on time. HR experts use technology to record all workers' work hours in order to calculate the correct remuneration. Organising leave and perks. HR is responsible for overseeing work schedules, vacation policies, and perks like health insurance.
- Ensuring The Welfare of Employees: One key purpose of having an HR department in a company is to ensure employee welfare. Employees who are both physically and mentally fit tend to be more productive and effective at work. Using a thorough employee wellbeing programme, HR can make sure of this. Human resources support numerous activities and opportunities to promote a healthy work environment since employee welfare is correlated.
- Settling disputes between offices: For the purpose of mediating disputes between employees and between employees and management, HR specialists get specialised training.

C) Addressing legal issues:

Last but not least, HR specialists are in charge of resolving complaints of harassment and discrimination as well as making sure labour and employment regulations are obeyed. In the post-pandemic world, the role of HR has expanded beyond traditional functions. It has evolved to become a strategic partner in navigating the complexities of today's business environment. As HR professionals, we must continue to adapt, innovate, and lead the way in shaping the future of work.

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SUPREME COURT DECIDES **ARBITRATION CLAUSES** IN **UNSTAMPED AGREEMENTS ENFORCEABLE**

In the recent judgment titled *NN Global Mercantile v Indo Unique Flame*, a Constitution Bench of seven judges led by Chief Justice D.Y. Chandrachud overturned the 5-judge bench decision in *NN Global Mercantile v Indo Unique Flame (2023)* (here referred as *NN Global 1*) and *SMS Tea Estates v Chandmari Tea Co. Pvt Ltd., (2011)* and upheld the validity of an unstamped arbitration agreement. The bench held that an unstamped arbitration was inadmissible per the Stamp Act of 1899, but it was not void ab initio.

In *NN Global 1*, a five-judge Bench held that an unstamped arbitration agreement was void and unenforceable in a 3:2 majority decision which was criticised for causing unnecessary delays in the arbitration process.

The issue before the court was whether the arbitration agreement in an instrument that is not chargeable to stamp duty would be considered non-existent, unenforceable, or invalid under Section 35 of the Stamp Act, 1899, which applies to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Act. This is pending payment of stamp duty on the substantive contract/instrument.?

The Supreme Court thoroughly discussed the purpose of Section 11(6A) in the Arbitration Act. The section mandates that Courts examine the existence of an arbitration agreement in proceedings under Section 11 of the Arbitration Act. The Court clarified that this examination is not limited to the mere "existence in fact" of the agreement. Instead, the Courts must determine if the arbitration agreement is enforceable.

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According to the judgement in Vidya Drolia & Ors. vs. Durga Trading Corporation, in order for an arbitration agreement to be deemed valid, it must meet the criteria set forth by both the Arbitration Act and the Indian Contract Act of 1872, indicating that it must be a legally binding agreement that can be enforced.

The Court explained that to be valid, the arbitration agreement must meet the requirements under Sections 2(h) & (j) of the Contract Act. Section 2(h) defines "agreement" as "every promise and every set of promises, forming the consideration for each other," and Section 2(j) defines "contract" as "an agreement enforceable by law." Therefore, any arbitration agreement that is not a valid and enforceable contract under the law is not considered to exist.

In conclusion, the Court clarified that under Section 11(6A) of the Arbitration Act, the examination of the existence of an arbitration agreement encompasses not only its factual existence but also its validity and enforceability under the law.

After analyzing the information mentioned above, the conclusions drawn by the majority are as follows:

1. An instrument incorporating an arbitration clause, subject to stamp duty, must be stamped before it is actionable. An unstamped instrument, lacking contractual validity and legal enforceability, does not legally exist.
2. Sections 33 and 35 of the Stamp Act dictate that an arbitration agreement within an unstamped instrument is considered non-existent unless the instrument undergoes validation in accordance with the Stamp Act.

Nevertheless, the Supreme Court explicitly stated that it refrains from making any judgment about proceedings under Section 9 of the Arbitration Act, which deals with interim protection in support of arbitration.

In essence:

1. An unstamped instrument lacks contractual validity and is unenforceable.
2. When an unstamped instrument, including an arbitration clause, is presented in a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), the Court must impound the instrument.

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3. Only after impounding, payment of the required stamp duty, and compliance with endorsement procedures under Section 42 of the Indian Stamp Act, 1899 ("Stamp Act") can the Court entertain the Section 11 petition.

4. The arbitration agreement remains legally non-existent until the unstamped instrument is duly stamped.

In conclusion, this ruling by the Supreme Court addresses the enduring challenge of enforcing agreements lacking proper stamping and containing arbitration clauses. The Court's decision involves overruling the prior Division Bench's stance, aligning instead with established cases such as SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd. and Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd. However, the shift from a pro-arbitration and minimal-judicial intervention approach, along with increased scrutiny by the courts, has the potential to cause delays in the appointment of arbitrators. The Court missed an opportunity to provide explicit guidelines for avoiding a pre-reference stage mini-trial regarding stamping sufficiency. Although the judgment sets a benchmark for future arbitration agreements, its implications on ongoing arbitration proceedings in India, where the issue persists, are substantial.



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SEBI'S FVCI REGULATIONS: A HOLISTIC INSIGHT INTO INDIA'S THRIVING **VENTURE CAPITAL LANDSCAPE**

In 2000, SEBI introduced the SEBI (Foreign Venture Capital Investor) Regulations 2000 (referred to as "FVCI Regulations"), facilitating registration for foreign venture capital and private equity investors. These regulations offer specific benefits to registered investors.

The term "Foreign Venture Capital Investor" [FVCI] is defined in the SEBI (FOREIGN VENTURE CAPITAL INVESTOR) REGULATIONS, 2000 [FVCI Regulations] as "an investor incorporated or established outside India, intending to invest in venture capital fund(s) or venture capital undertakings in India, subject to registration under the FVCI Regulations." Moreover, the Reserve Bank of India ("RBI") has extended benefits under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("NDI Rules") to investments made by FVCIs.

Meaning of Venture Capital

Venture Capital (VC) serves as a crucial funding avenue for seeding capital in start-up ventures and technology projects. It represents a high-risk, high-return investment model. In essence, VC involves external investors providing funds to support new, growing, or struggling businesses. Venture capitalists contribute funding with an awareness of the significant risks associated with the company's future profitability and cash flow.

Permitted Investments

Equity or equity-linked instruments, or debt instruments issued by unlisted Indian companies operating within the specified permissible sectors, may be considered for investment by Foreign Venture Capital Investors (FVCIs) in India. FVCIs are exclusively permitted to invest in the sectors listed below:

- Dairy industry
- Poultry industry

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- Nanotechnology
- Biotechnology
- Research and development of new chemical entities in the Pharmaceutical Sector
- IT (software and hardware)
- Seed research and development
- Production of biofuel
- Hotel-cum-convention centres with a seating capacity of over three thousand
- Infrastructure sector

Additionally, FVCIs can invest in equity, equity-linked instruments, or debt instruments issued by Indian startups, regardless of the specific sector in which the startup operates. Moreover, FVCIs may consider investing in units of venture capital funds (VCF), Category-I Alternative Investment Funds (Cat-I AIF), or the units of schemes or funds established by such VCFs or Cat-I AIFs.

Key Benefits of FVCI Route

The Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) have extended several benefits to funds registered under the Foreign Venture Capital Investor (FVCI) Regulations, making the registration an advantageous option for investors. FVCIs, upon registration, enjoy a range of regulatory relaxations, with some of the notable benefits outlined below:

1. **Exemption from Pricing Norms:** FVCIs are exempted from pricing norms both at the time of entry and exit. This exemption allows FVCIs the flexibility to acquire or sell instruments at a mutually agreeable price between the buyer and the seller/issuer. This exemption is particularly significant as it enables FVCIs to structure cash-out transactions without being subjected to fair market value-related complexities.
2. **Exemption from Open Offer Provisions:** Provisions related to open offers under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, do not apply when FVCIs sell shares to promoters, provided the transfer is executed pursuant to a pre-existing arrangement.
3. **One-Year Lock-in Exemption:** FVCIs are exempted from the one-year lock-in requirement specified in the SEBI (Issue of Capital and Disclosure) Regulations, 2018 (ICDR Regulations).

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This exemption is contingent upon the condition that FVCIs have held the shares for a minimum of one year. Consequently, FVCIs have the opportunity to exit promptly when the investee company undergoes public listing.

4. Qualified Institutional Buyers (QIB) Classification: FVCIs are categorized as Qualified Institutional Buyers under the ICDR Regulations. This classification renders FVCIs eligible to subscribe to securities offered in an initial public offering through the book-building process.

These benefits collectively enhance the attractiveness of FVCI registration for investors seeking regulatory advantages and operational flexibility in their investment activities.

Registration Requirements for Foreign Venture Capital Investors (FVCIs)

Foreign Venture Capital Investors (FVCIs) seeking SEBI registration must meet specified eligibility criteria:

- Track record, professional competence, and integrity assessment.
- RBI approval for investments in India.
- Legal structure confirmation.
- Authorization for venture capital investments.
- Regulatory compliance or income tax status.
- Absence of prior refusal by the Board.
- Assessment of being a fit and proper person.

FVCIs must adhere to investment conditions:

- Disclosure of investment strategy.
- Concentration of total funds in a single venture capital fund.
- Allocation: 66.67% in unlisted equity shares, 33.33% in specified instruments, and disclosure of fund life cycle.

These stringent criteria ensure transparent and regulated investment practices for FVCIs in India.



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IMPACT OF DPDP ACT ON HEALTHCARE: NAVIGATING DATA PRIVACY CHALLENGES

In the current realm of digital transformation, safeguarding sensitive information has become a global imperative, with the healthcare industry emerging as a uniquely intricate landscape. The following aspects illuminate the distinctive nature of data privacy in healthcare, setting it apart from other sectors:

1. Sensitivity of Health Data:

Health data, inherently personal and often of a sensitive nature, extends beyond financial implications to impact an individual's well-being, trust in healthcare providers, and societal perceptions.

2. Regulatory Rigor:

Operating under a complex web of stringent regulations, the healthcare sector faces unparalleled demands for patient data protection, creating a highly regulated environment compared to other industries.

3. Longitudinal Data Challenges:

Unlike transactional data, healthcare data, including Electronic Health Records (EHRs) and patient histories, is retained for extended periods, necessitating specialised considerations for secure storage, access control, and data integrity.

4. Interconnected Stakeholders:

The vast and interconnected ecosystem of stakeholders, including healthcare providers, insurers, and research institutions, requires robust mechanisms to ensure data privacy across diverse platforms and systems.

5. Ethical Considerations in Data Usage:

Healthcare providers grapple with ethical dilemmas in balancing the imperative to use patient data for research while protecting individual privacy, leading to nuanced processes for obtaining informed consent.

6. Challenges with Emerging Technologies:

Integrating emerging technologies like telemedicine and wearable devices introduces additional challenges in healthcare data protection, expanding the potential attack surface for cyber threats.

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7. Complexity of Healthcare Information:

The diversity and intricacy of healthcare information, including medical records and diagnostic images, demand specialised data protection measures beyond those found in simpler transactional data.

8. Life-and-Death Implications:

Inaccurate or compromised health data can have life-and-death implications, heightening the significance of ensuring accuracy, security, and privacy.

Digital Transformation Challenges in Healthcare Management Systems:

While the healthcare sector embraces digital transformation, understanding and implementing management systems lags, presenting challenges in data governance and privacy.

Governance Standards Analysis:

An examination of governance standards reveals a substantial gap in the healthcare sector's compliance, with almost half of ISO standards related to ICT and Data Governance remaining overlooked.

DPDP Act and Sectoral Disparities:

Despite the Digital Personal Data Protection (DPDP) Act defining a clear framework for Data Privacy, the healthcare sector needs more concern and compliance with data governance, diverging from other industries.

Government Considerations and Exemptions:

In a potential relief for the industry, the government contemplates exemptions for educational and health entities from children's data processing restrictions under the DPDP Act. The eligibility criteria encompass functions related to the "interests of a child," signalling a nuanced approach to regulatory implementation.

In summary, as the healthcare industry grapples with multifaceted challenges, the evolving regulatory landscape and potential exemptions underscore the need for continuous adaptation and a delicate balance between innovation and compliance. The DPDP Act significantly shapes the healthcare sector's approach to data privacy, addressing unique challenges through regulatory measures.



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