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TRANSFORMING THE INDIAN JUDICIARY: THE ROLE OF TECHNOLOGY IN COURT PROCEEDINGS

N K Gupta
Founder & Managing Partner

The integration of technology into various sectors has not only expedited processes but also improved accessibility. One such sector that has embraced technology-driven changes is the Indian judiciary, where the e-Courts Project is revolutionizing court proceedings. This article explores the role of technology in reshaping court proceedings in India, shedding light on the e-Committee's endeavours and the impact of virtual court hearings.

The Jurisdiction of Court Proceedings

Court proceedings, a vital aspect of the judicial system, have often faced challenges in terms of efficiency and accessibility. Traditionally, these proceedings were held physically, involving numerous logistical considerations. However, the paradigm is shifting. Holding court proceedings is an administrative matter firmly within the purview of the judiciary. It is the courts' prerogative to determine whether proceedings should be conducted in person or online.

The e-Courts Project

The e-Courts Project, currently overseen by the Chief Justice of India (CJI) through the e-Committee of the Supreme Court, plays a pivotal role in shaping the future of court proceedings in the country. This initiative focuses on planning, policy formulation, and the implementation of technology-driven solutions in close collaboration with the Department of Justice.

Standardizing Video Conferencing

To ensure uniformity and standardization in the conduct of video conferencing during court proceedings, the Hon'ble Supreme Court of India passed a significant order, Suo Motu Writ (Civil) No. 5/2020, on April 6, 2020. This order conferred legal sanctity and validity upon court hearings conducted via video conferencing. Additionally, a 5-judge committee formulated Video Conferencing rules, which were circulated to all High Courts for adoption after local contextualization.

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Parliamentary Standing Committee and Virtual Court Hearings

An Action Taken Report on the observations and recommendations from the 103rd interim report of the Department-related Parliamentary Standing Committee was submitted to the Rajya Sabha Secretariat on December 16, 2020. These recommendations are currently under consideration before the Parliamentary Standing Committee.

Virtual court hearings have emerged as a game-changer, significantly enhancing efficiency in the judicial process. The vast infrastructure created for this purpose, along with substantial government funding, underscores the commitment to modernize the legal system. The Chief Justice of India and other dignitaries have emphasized the importance of optimizing this infrastructure to its fullest potential.

Conclusion

The integration of technology into court proceedings has ushered in a new era for the Indian judiciary. The e-Courts Project, with its comprehensive approach and the support of the e-Committee and the Supreme Court, is driving this transformation.

As the system continues to evolve and adapt, the focus remains on making justice more accessible, efficient, and transparent for all citizens. Embracing technology is not just a choice; it is a necessity for the strengthening of the judicial system in India.

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INDIA'S JUDICIAL LANDSCAPE AND AI

Prem Chandra Vaish
Senior Mentor

In a recent development, there has been a notable technological shift in India's judicial landscape through the incorporation of Artificial Intelligence (AI). As global enthusiasm for AI's capabilities spans various sectors, the Indian judicial system is cautiously venturing into the domain of automation and data-driven decision-making.

This article explores the captivating progress and hurdles linked to AI's emergence in the Indian legal framework, substantiated by recent and pertinent news.

Recent Update: Landmark Decision by Delhi High Court Regarding AI's Boundaries

In a pioneering judgment, the Delhi High Court presided over by Justice Prathiba M Singh, underscored the pivotal importance of human intelligence and the humane aspect inherent in the adjudication process.

The backdrop for this judicial stance was the case involving luxury brand Christian Louboutin's allegations of trademark infringement against a partnership firm. While acknowledging AI's potential, the court categorically ruled that AI, including sophisticated tools like ChatGPT, could not be the cornerstone for legal or factual conclusions. Justice Singh's verdict highlighted the indispensable requirement of the nuanced human viewpoint, which AI currently struggles to emulate. This ruling serves to emphasize the Indian judiciary's cautious attitude towards the integration of AI.

In a recent landmark ruling, the Delhi High Court rendered a significant decision regarding the role of Artificial Intelligence (AI) in the adjudicatory process. Justice Prathiba M Singh, presiding over the case involving luxury brand Christian Louboutin's trademark infringement claims against a partnership firm, highlighted the vital human element that AI cannot replace in legal proceedings.

The court's ruling centred on the use of AI tools such as ChatGPT for legal decision-making. Justice Singh emphasized that AI should not form the foundation for making legal or factual determinations in a court of law. While AI tools can be valuable for preliminary comprehension and research, the court underscored their inherent limitations and susceptibility to variables like user queries and training data.

The case's backdrop involved the plaintiff's attempt to introduce ChatGPT's responses as evidence to support their claims. However, the court rejected this approach, citing concerns about AI-generated responses being potentially incorrect, fictional, or imaginative. The decision highlighted AI's evolving nature and established that AI cannot replace the cognitive abilities and essential human qualities necessary for the adjudicatory process.

Justice Singh explicitly stated that the accuracy and reliability of AI-generated data remain uncertain, leading to the conclusion that AI's role should be confined to preliminary understanding and research rather than serving as the basis for legal decisions.

This ruling carries significant implications for the use of AI tools like ChatGPT in legal proceedings. It sets a clear precedent that while AI has its place in certain contexts, it cannot substitute the human intellect and nuanced human perspective crucial for sound legal adjudication. As AI technology continues to advance, this decision will likely influence future discussions and decisions concerning the integration of AI into legal processes.

Challenges and Considerations:

1. Bias and Fairness: A significant challenge revolves around the potential bias ingrained in AI algorithms, which could exacerbate existing inequalities within the justice system. Sustaining impartial and equitable AI decisions necessitates continuous vigilance and refinement of algorithms.

2. Quality of Data: The effectiveness of AI systems heavily relies on the calibre and volume of training data. In a diverse country like India, obtaining comprehensive and impartial data can pose a difficulty, potentially impacting the accuracy of AI-generated predictions.

3. Ethical Quandaries: The role of AI in making ethical and moral judgments remains a topic of contention. Resolving matters involving intricate human emotions and values could be an intricate task for AI to adequately comprehend and address.

4. Human Significance: The recent verdict from the Delhi High Court reiterates the indispensable significance of the human factor in the judicial process. While AI can offer assistance, it currently lacks the capacity to substitute the nuanced comprehension, empathy, and ethical discernment brought to the table by human judges.

The Way Forward:

As the Indian judicial system sets forth on its AI expedition, adopting a cautious yet progressive stance is of paramount importance. Integrating AI holds the potential to enhance efficiency, accessibility, and equity within legal proceedings. Nonetheless, safeguarding the integrity of human judgment, confronting biases, and upholding ethical standards must remain at the forefront of this evolutionary journey.

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SUPREME COURT: THE REFERRAL COURT HAS A DUTY TO CONCLUSIVELY DECIDE THE ISSUE OF 'EXISTENCE & VALIDITY OF ARBITRATION AGREEMENT' RAISED AT A PRE-REFERRAL STAGE

Vijay Sharma
Sr. Partner

The Hon'ble Supreme Court has, through its judgment in "Magic Eye Developers Pvt. Ltd. Vs M/S. Green Edge Infrastructure" decided the issue as to whether it is the duty of the Courts to conclusively decide the issue as to the existence and validity of an arbitration agreement at a pre-referral stage.

Briefly put, the facts, the issue involved and the findings given by the Hon'ble Supreme Court in the above-mentioned judgment are as under:

Facts of the case:

The Appellant filed an appeal before the Hon'ble Supreme Court against the impugned common judgment and order passed by the Hon'ble High Court of Delhi in respective arbitration petitions whereby the Hon'ble High Court of Delhi had allowed Application preferred by the Respondent under Section 11(6) of the Arbitration and Conciliation Act, 2015 and referred the disputes for arbitration by appointing an Arbitrator by holding that the objection as to the existence of arbitration clause has to be determined by the Ld. Arbitrator Tribunal.

The issue before the Hon'ble Supreme Court:

Whether the referral court bound to decide the dispute with respect to the existence and validity of an arbitration agreement when the same has been raised at a pre-referral stage?

Held:

The Hon'ble Supreme Court has held that as the dispute with respect to the existence and validity of an arbitration agreement goes to the root of the matter, the referral court has to decide the said issue conclusively and finally when the same is raised at the pre-referral stage, and it should not leave the said issue to be determined by the arbitral tribunal.

The Hon'ble Supreme Court has, while passing the aforementioned judgment, placed reliance upon the judgment given by the Constitution Bench of the Hon'ble Supreme Court in the case of "N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd. and Ors." reported as 2023 SCC Online SC 495 wherein it has been held that without an agreement, there cannot be any reference to the arbitration.

In the said decision, the Hon'ble Supreme Court has also specifically observed that the intention behind the insertion of Section 11(6A) in the Act was to confine the Court, acting under Section 11, to examine and ascertain the existence of an arbitration agreement, they were of the opinion that if the dispute/issue with respect to the existence and validity of an arbitration agreement is not conclusively and finally decided by the referral court while exercising the pre-referral jurisdiction under Section 11(6) and it is left to the arbitral tribunal, it will be contrary to Section 11(6A) of the Arbitration Act.

Since the Hon'ble Supreme Court was of the view that it is the duty of the referral court to decide the said issue first conclusively to protect the parties from being forced to arbitrate when there does not exist any arbitration agreement and/or when there is no valid arbitration agreement at all, it quashed and set aside the impugned common judgment and order passed by the Hon'ble High Court in respective Arbitration Petitions and remitted the matter back to the High Court/referral court to decide the respective arbitration petitions afresh.

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GLIMPSES OF SIGNIFICANT DIRECT TAX DEVELOPMENT & RULINGS– AUGUST 2023

Tarun Rohatgi
Sr Mentor

1. Supreme Court judgment in the case of SECUNDRABAD CLUB ETC. VS. C.I.T.-V CIVIL APPEAL NO(S). 5195-5201 OF 2012

Income Earned from non-members by clubs is not exempt and not covered by principles of Mutuality

This landmark verdict has significant implications for Mutual concerns and not only clubs. The practical impact of this decision is that mutual concerns will be required to pay taxes on interest income on deposits with Banks and others.

The reasoning given by Hon'ble SC:

1. Precedent Status of Cawnpore Club Order: The Order in the Cawnpore Club case-140 Taxmann 378 cannot be considered a binding precedent under Article 141 of the Indian Constitution. The Cawnpore Club order did not establish any legal principle regarding the taxation of interest income earned by clubs from fixed deposits. The appeals against Cawnpore Club did not address the larger question of whether the club's interest income from fixed deposits could be taxed or whether the principle of mutuality applied.

2. Principle of Mutuality and Bangalore Club Judgment: The judgment in the Bangalore Club case-5SCC 509 stands valid and does not require re-evaluation based on the Cawnpore Club order.
The principle of mutuality does not apply to interest income derived from fixed deposits by appellant clubs, regardless of whether the banks holding these deposits are corporate members of the club or not.

3. Validity of Bangalore Club Judgment: The Bangalore Club judgment 509 is not flawed due to the absence of reference to the Cawnpore Club order. The Cawnpore Club order's impact is limited, and Bangalore Club's stance on taxation of interest income remains intact.

4. Taxation of Interest Income and Mutuality Principle: Interest income generated by appellant clubs from fixed deposits in banks is considered regular income under Section 2(24) of the Income Tax Act, 1961.
This income is treated similarly to any other income from various sources and is not protected by the principle of mutuality.

2.Commissioner of Income-tax v. Industrial Development Bank of India Ltd. - [2023] 152 taxmann.com 591 (SC)

Revisionary powers u/s 263 and limitation

This landmark verdict has significant implications for Mutual concerns and not only clubs. The practical impact of this decision is that mutual concerns will be required to pay taxes on interest income on deposits with Banks and others.

The issues before the Commissioner while exercising the powers under Section 263 of the Act relate back to the original Assessment Order and, therefore, the limitation would start from the original Assessment Order and not from the Re-assessment Order."

Referring to the decision in Alagendran Finance Ltd. vs. Commissioner of Income Tax, the court stated that *"once an Order of Assessment is re-opened, the previous order of assessment will be held to be set aside, and the whole proceedings would start afresh. However, this does not mean that even when the subject matter of reassessment is distinct and different, the entire proceedings of assessment would be deemed to have been reopened.*
This implies that only in cases where the issues before the Commissioner, at the time of exercising powers under Section 263 of the Act, relate to the subject matter of reassessment, the limitation would start from the date of the reassessment order."

Section 69A of the Income Tax Act- Unexplained Money

3.Abhishek Bipinbhai Naik v. Income-tax Officer - [2023] 152 taxmann.com 500 (Surat-Trib.)

Where cash amount deposited by assessee in its bank account was immediately transferred to accounts of two companies to which assessee was distributor and acting as a commission agent for promotion, marketing and distribution of various products through RTGS/NEFT and these cash deposits were related to business activities of assessee associated with said two companies, impugned addition made under section 69A in respect of said cash deposit was not justified -

4.Ramachandra Kanu Mendadkar v. CIT(A)- Mumbai ITAT

ITANO.163/MUM/2023 : itatonline .org

A advocate while an route to Delhi for a matter before the Honourable Supreme Court, was found carrying a substantial sum of Rs. 16 lakhs in cash at the airport. This cash was seized.

The Assessing Officer, unsatisfied with the explanation, invoked the powers vested in Section 69A of the Income Tax Act to make an addition to the advocate's income.

The Tribunal took cognizance of the advocate's diligent maintenance of books of accounts, all audited in compliance with Section 44AB. The advocate had disclosed the professional receipts, and the cash amounts were meticulously documented.

The Tribunal emphasized a crucial legal principle - the Revenue's demand for the taxpayer to prove the source of the source is untenable. In this case, where the professional receipts were disclosed and the books of accounts were transparently maintained, the onus could not be shifted back to the taxpayer to verify the origin of every penny.

Important Circulars / Notifications issued by CBDT

1.Notification No. 65/2023, dated 18-08-2023- Housing Perquisites for Employees

CBDT revises Rule 3 to lower rates of rent-free accommodation valuation and introduces an inflation-linked cap w.e.f 01.09.2023. Till 31.08.2023 the old rules would apply.

The new rules will impact employees living in an accommodation provided by their employer. The rules will have an impact on the amount of tax that will be deducted from their salary. The new rules have introduced an inflation-linked cap if the same accommodation is provided to the employee for more than one year.

The new CBDT rules for accommodation provided to an employee will use various factors such as valuation rate, population threshold of a city, furnished or unfurnished to calculate the perquisite value of the house.

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The new CBDT rules for accommodation provided to an employee will use various factors such as valuation rate, population threshold of a city, furnished or unfurnished to calculate the perquisite value of the house.

2. CBDT releases instructions for AOs to implement Abhisar Buildwel's ruling delivered on scope of Sec. 153A/153C : Instruction 1 of 2023, dated 23-08-2023

The Supreme Court in its judgement delivered on 24th April, 2023 in the case of Pr. CIT-III vs Abhisar Buildwell Pvt. Ltd-[2023] 149 taxmann.com 399 (SC) has upheld the view of the Delhi High Court in the case of Kabul Chawla that in respect of unabated assessments, no addition can be made by AO in absence of any incriminating material found during the course of the search settling the controversy which had arisen post the introduction of new scheme of reassessment in search cases under section 153A in the year 2003.

Now, CBDT, instead of moving any review application before the Supreme Court has itself reviewed the judgment of the Supreme Court and has issued its own Instruction No. 1/2023 dated 23.08.2023 for -– 'uniform implementation' of the judgment of the Supreme Court in the case of Abhisar Buildwell.

In the said Instructions, the assessing officers have been directed to reopen the proceedings in all matters which have been disposed of by the Supreme Court in Abhisar Buildwell or by applying the said judgment by taking recourse to section 150 of the Act.

Pending/Abated Assessments: For cases in this category, necessary steps under section 153A(2) of the Act have been recommended by the CBDT.

Completed/Unabated Assessments: These involve detailed protocols, especially regarding cases reopened under sections 147/148.

Appeals and Appellate Authorities: If any appeal is pending, the CBDT's instructions clarify the manner in which the Abhisar Buildwell judgment should be presented before appellate authorities.

Procedure for AOs: The CBDT has articulated specific procedures that AOs should follow, which encompass identifying the type of assessments, understanding potential cases for revival, and complying with sections of the Act based on the nature of the assessment.

In our view these instructions will only increase uncertainty andlitigation .
For detailed and specific guidance , Please contact our offices .

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DIRECT TAX: INCOME TAX LAW AUGUST 2023

Anil Kuamr Gupta
Sr Mentor

(1) Pandora Box intended to be opened by the Income Tax Department : CBDT's recent detailed Instructions dated 23-08-2023 referring the SC ruling in case of PCIT vs. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC) that wherever possible thru M/A to ITAT and Standing counsels in High Courts of ITD instructed to cite & highlight the underlying rulings therein; Gist of Instructions are:

CBDT releases instructions for AOs to implement Abhisar Buildwel's ruling delivered on scope of Sec. 153A/153C : Instruction 1 of 2023, dated 23-08-2023

The Supreme Court, in the case of Abhisar Buildwell [2023] 149 taxmann.com 399 (SC), provided power to the Assessing Officer (AO) to reopen the completed/unabated assessments, subject to fulfillment of the conditions as mentioned under sections 147 if no incriminating material is found during the search.
Accordingly, exercising powers under section 119, the Central Board of Direct Taxes (CBDT) issued the instruction for AOs implementing the above judgment while framing assessments. The AOs are directed to divide the cases impacted by the judgment into two broad categories:

I. Pending/abated assessments: *AO would be required to ascertain assessments falling in the category of assessments that became abated on the date of the search or requisition. In such cases, if any proceedings initiated or any order of assessment or reassessment has been annulled in appeal or in any other legal proceedings, the same shall stand revived from the date of receipt of the order of annulment as per the provisions of section 153A(2). The AO would need to take necessary action as per the provisions of section 153A(2) read with section 153(8), in respect of such pending/abated assessments.*
II. Completed/unabated assessments: *In respect of assessments that were unabated/completed at the time of issue of notices under section 153A/153C, the following scenarios will emerge :*
a) Lead and all the tagged cases : AO will be required to reopen the cases following the procedure prescribed under section 148A in accordance with the law laid down by the Hon'ble Supreme Court. In view of the specific provisions of section 153(6), all the cases reopened under section 147/148 will be required to be completed by 30th April 2024.

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The Supreme Court in its judgement delivered on 24th April, 2023 in the case of Pr. CIT-III vs Abhisar Buildwell Pvt. Ltd-[2023] 149 taxmann.com 399 (SC) has upheld the view of the Delhi High Court in the case of Kabul Chawla that in respect of unabated assessments, no addition can be made by AO in absence of any incriminating material found during the course of the search settling the controversy which had arisen post the introduction of new scheme of reassessment in search cases under section 153A in the year 2003.

b) Cases where an appeal is pending (filed either by the Department or the assessee or both) before :
·CIT(A) : The said judgment is required to be brought to the notice of CIT(A).
·ITAT : The departmental representative should bring the said judgment to the notice of the ITAT in the cases covered by the judgment.
·High Court : The Standing Counsel should bring the said judgment to the notice of the High Court in the cases covered by the judgment.
c) Cases where the decisions of appellate authorities rendered after the Supreme Court judgment are inconsistent with the same : Necessary action may be taken to file Miscellaneous Application (MA) and Notice of Motion (NoM) to the ITAT and High Court, respectively, requesting the review of the decision in line with the Abhisar judgment, with a prayer for condonation of delay, wherever necessary.
It is brought to attention that the time limit for filing a Miscellaneous Application before the ITAT is 6 months from the end of the month in which the order is passed by the ITAT, as per section 254. On receipt of the decision of the Hon'ble ITAT/High Court, as the case may be, necessary action as per law and extant instructions should be taken.
The CBDT also enlists the procedure to be adopted along with necessary actions by the AO in order to implement the judgment of the Supreme Court.

While Gist of Ruling is : *AO can interfere with completed assessments u/s 153A only if incriminating material found during search : SC*

The issue before the Supreme Court was

"Whether in respect of completed assessments/unabated assessments, the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not ?"

The revenue contended that AO has the jurisdiction to assess the 'total income' considering other material, though no incriminating material was found during the search, even in respect of completed/unabated assessments.

The matter was reached to ***different High Courts, and courts held that no addition could be made to completed/unabated assessments without incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla vs. CIT [2015] 61 taxmann.com 412 (Delhi), which has been subsequently followed and approved by the other High Courts. The Delhi High Court held that in the absence of any incriminating material, the AO could make no addition, and the AO has no jurisdiction to re-open the completed assessment.***

The Supreme Court held that section 153A was added to the statute to eliminate the practice of conducting two separate assessments and taxing "undisclosed" income at a regular tax rate instead of a special rate. As a result of this amendment, in the event of a search, a block assessment for six years will be conducted. To initiate a search assessment or block assessment under Section 153A, a valid search must be conducted under Section 132; The very purpose of the search, which is a prerequisite/ trigger for invoking the provisions of section 153A is detecting undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in the ordinary course of regular assessment; Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of the search. Accordingly, the Supreme Court upheld the view taken by the Delhi High Court in the case of Kabul Chawla; Therefore, if incriminating material is discovered during a search conducted under Section 132 or requisition under Section 132A, the AO would have the authority to assess or reassess the "total income," considering the collected material, even if the assessment has been completed; If no incriminating material is found during a search and the assessment is already completed or unabated, the revenue's only option would be to initiate reassessment proceedings under sections 147/48 of the Act, provided the conditions mentioned in sections 147/148 are fulfilled.

(2) Another area of Concern is regarding Sections 42 & 43 of the Black Money (Undisclosed Foreign Income & Assets) Tax Act-2015 (hereinafter referred to as BMA-2015) where-under Penalty of Rs. 10 lakhs is leviable upon an Assessee/Person *for Non Disclosure in his/her ITR of any Foreign Asset(s) held whereas the same might be an inadvertent mistake since the sources of Investments therein and Income (if any) accruing therefrom is either NIL or Explainable or Explained;*

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INTRODUCING THE MEDIATION BILL 2023: TRANSFORMING DISPUTE RESOLUTION IN INDIA

The Mediation Bill of 2023 heralds a novel approach to settling conflicts in India by propounding alternative dispute-resolution methods. This legislation centres around mediation, an avenue wherein disputing parties endeavour to find a resolution outside the courtroom, aided by a neutral third party known as a mediator.

Enacted by the Rajya Sabha on August 1, 2023, the Mediation Bill of 2023 stands as a landmark legislation aimed at elevating and streamlining the role of mediation in settling disputes within India. This bill lays out a formal framework for mediation, including the formation of an overseeing body, the Mediation Council of India, to regulate and oversee the mediation procedure.

The bill's principal objective lies in fostering and advancing the practice of mediation across India, with a specific focus on institutional mediation for dispute resolution. Moreover, it aims to stimulate community-based mediation and legitimize the use of online mediation as an efficient and economical process. Central to this bill is the creation of a comprehensive legal structure for mediation and the establishment of protocols to enforce settlement agreements reached through this process.

An important provision within the bill mandates pre-litigation mediation for specific categories of disputes, encompassing commercial, familial, and landlord-tenant conflicts. This mandate is designed to encourage parties to pursue amicable resolution avenues before resorting to legal proceedings.

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Key Features of the Mediation Bill, 2021

Definition and Scope: The Mediation Bill specifies the scope of "domestic mediation" as mediation taking place within India, wherein either one or both parties habitually reside, are incorporated, or conduct business in India. Additionally, "international mediation" is defined in the bill as mediation pertaining to commercial disputes linked to legal relationships, be they contractual or otherwise, governed by Indian law. This includes scenarios where one party is an individual from another country or a foreign entity.

Mandatory Pre-litigation Mediation and Settlement: The bill's Section 6 (1) imposes a requirement for parties to engage in pre-litigation mediation, following the bill's stipulations, prior to initiating any lawsuit or legal proceeding. This directive holds irrespective of whether a Mediation Agreement exists, thereby establishing mandatory pre-litigation mediation.

Exclusions from Mediation: The bill's Section 7 outlines the disputes ineligible for mediation under its framework. This includes disputes involving minors, individuals with limited mental capacity, criminal prosecution, third-party rights, tax-related matters, and more. The list of excluded disputes can be modified by the central government.

Mediation Process and Timeframes: The mediation process is confidential, and parties are allowed to withdraw after the initial two mediation sessions. The bill sets a 180-day period for mediation completion, extendable by another 180 days with the consent of the parties. Court-annexed mediation must follow directives set forth by the Supreme Court or High Courts.

Recognition and Enforcement of Settlement Agreements: The bill introduces the concept of a "Mediated Settlement Agreement" to describe an agreement resulting from mediation. Domestic mediation agreements are deemed final and binding under Section 28, and enforcement aligns with the provisions of the Code of Civil Procedure, 1908.

Grounds for Challenging Settlement Agreements: The bill establishes specific grounds to challenge a domestic Mediated Settlement Agreement, including fraud, corruption, impersonation, and disputes unsuitable for mediation.

Institutional Mediation: The bill defines a "Mediation Service Provider" as an entity facilitating mediation and outlines responsibilities such as maintaining mediator panels and infrastructural support. The bill includes Lok Adalats and court-attached mediation centers within this definition.

Online Mediation: Chapter VII accommodates online mediation, including pre-litigation mediation conducted via digital platforms with the parties' written consent.

Establishment of Mediation Council: Chapter VIII charts the creation and functions of the Mediation Council of India, tasked with overseeing mediation operations.

Community Mediation: Chapter X introduces community mediation for disputes impacting local harmony, specifying the types of individuals eligible for inclusion in mediation panels.

Assessment and Conclusion

The Mediation Bill of 2023 is a momentous stride towards enhancing dispute resolution in India. By formalizing mediation and its processes, the legislation has the potential to alleviate the judicial backlog while delivering timely justice. However, certain aspects warrant further clarification. The bill should clearly define recognized mediation service providers and stipulate mediator qualifications. Additionally, concerns arise over mandatory pre-litigation mediation, which may clash with the voluntary essence of mediation. Balancing this, the bill could grant parties the choice to engage in pre-litigation mediation. Lastly, a potential conflict of interest might emerge from the mediator's role in communicating parties' views to each other, which could undermine the confidentiality principle.

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UNLOCKING THE PUZZLE OF BENEFICIAL OWNERSHIP: CLARITY AND UNITY IN FOREIGN INVESTMENTS REGULATIONS

In the complicated world of rules about foreigners investing in Indian companies, there's something called the "beneficial owner". This idea is super important when we talk about Press Note 3 and the NDI (Non-Debt Instruments) Rules. Understanding this "beneficial owner" thing is really crucial because it helps us figure out when someone is involved in buying or owning parts of an Indian company, according to Press Note 3. **Under PN3 in Para 3.1.1(a) mandates that FDI from all countries sharing land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route**.

At first, there's a bit of confusion about what "beneficial owner" really means. Different rules like the Companies Rules 2018, Know Your Customer (KYC) norms, and the Prevention of Money Laundering Act (PMLA) all have different ways of thinking about it.
The Companies Rules 2018 says that someone is a beneficial owner if they own 10% or more of a company. But the PMLA and KYC norms say it's when someone owns 25% or more.

Because of this mix-up, different banks that are allowed to deal with foreign money (Authorized Dealer Banks) have been doing things in different ways. Some go with the 10% rule from the Companies Rules 2018, while others use the 25% rule from the PMLA and KYC norms.
But things changed on March 7, 2023. The Ministry of Finance (Department of Revenue) made a big change. They updated the Prevention of Money Laundering Act (PMLA) and said that now, for someone to be a beneficial owner, they need to own 10% or more of a company, not 25%. The Reserve Bank of India (RBI) also changed the KYC norms on April 28, 2023, to match this. So now, the rules are the same – if you own 10% or more of a company, you're the beneficial owner.
This means that the confusion about what beneficial owner means has been sorted out. Banks that deal with foreign money now have to follow the new 10% rule for beneficial ownership.

In conclusion, navigating the complex landscape of foreign investments in Indian entities requires a clear grasp of the concept of the "beneficial owner." This term takes centre stage within the context of Press Note 3 and the NDI (Non-Debt Instruments) Rules, playing a pivotal role in determining the scenarios where transactions involving securities in Indian companies fall under Press Note 3's jurisdiction.

This substantial change revised the definition of a beneficial owner under the PMLA, reducing the threshold for controlling ownership from 25% to 10%. This modification was echoed in the KYC norms through an amendment by the Reserve Bank of India on April 28, 2023.
The harmonization of these rules has effectively resolved the ambiguity surrounding the definition of the beneficial owner, bringing much-needed clarity to the regulatory environment. With the alignment of threshold levels, the regulatory framework has become consistent, promoting a streamlined approach in assessing beneficial ownership across various contexts, including the PMLA, KYC norms, and the Companies Act, 2013.

This transformation represents a significant step forward in enhancing transparency and accountability in foreign investments in Indian entities. The revised rules empower Authorized Dealer Banks to align their practices with the revised 10% threshold, ushering in a new era of clarity and uniformity in understanding and applying the concept of beneficial ownership. As a result, investors, financial institutions, and regulatory authorities can now operate within a well-defined and coherent framework, fostering a more secure and stable investment landscape.

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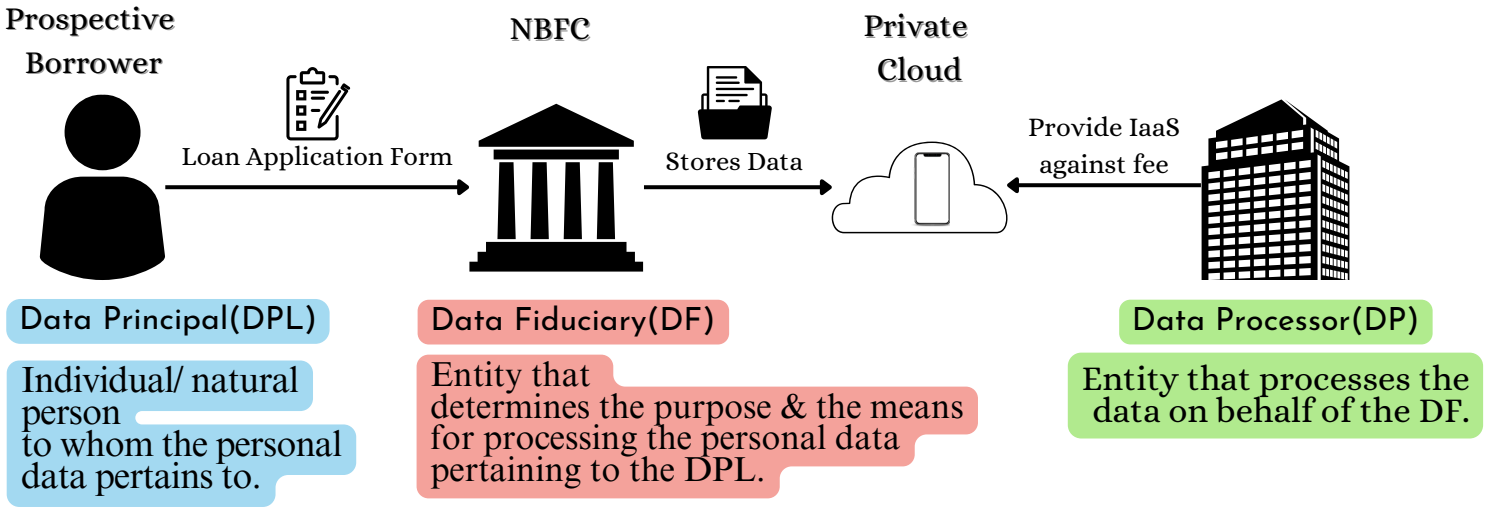
DECODING DIGITAL PERSONAL DATA PROTECTION ACT

INTRODUCTION

The Information Technology Act provided data protection norms for certain types of data; the current law is going to be the first of its kind in India that specifically deals with the privacy rights of Indian citizens and will have an overarching ambit over multiple sectors and commercial practices. Let us discuss the important definitions introduced by this Act in the context of lending by NBFCs,



1. APPLICABILITY

Section 3 of the Act applies to - [the] processing of digital personal data within the territory of India where the personal data is collected-- (i) in digital form; or (ii) in non-digital form and digitised subsequently

As a result, the legislation will encompass not just cases of digital lending where borrower details are gathered and handled through digital methods but also conventional lending procedures where individual data might be gathered in person (for instance, when a borrower provides information using a physical loan application form) and later transformed into digital format for processing.

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Right & Duties of Prospective buyer(DPL)	Obligations of NBFC (DF)	Obligations of Cloud Service Provider(DP)
Right to access: • The Act grants DPL the right to request & obtain a summary of personal data being processed & processing activities undertaken. • Exception: where personal data has been shared with another DF for investigation of offences. • Request must be made by DPL in the manner prescribed by Central Government.	**Completeness, accuracy and consistency:** • They must ensure the completeness, accuracy and consistency of personal data processed, a. used to make a decision that affects DP b. disclosed to another DF • DF will need to make additional efforts to comply with this obligation, given that it can sometimes be difficult to have "complete" set of all personal data	**Data Processor Role :** • Data processors are typically required to process personal data only on behalf of and under the instructions of the data fiduciary,
Right to correction and erase Data : • DPs can request a DF to correct, complete, or update their personal data. They also have the right to seek the erasure of their personal data in a form that the central government may prescribe. • DFs are required to act on such request unless this personal data is necessary for the specified purpose or is necessary for compliance with laws in force.	**Notifying personal data breaches:** • DF must notify the Board &each affected DP of every personal data breach. In the absence of a materiality threshold for such notification, any instance falling within the definition of a personal data breach must be reported even if it does not involve personal data that is innately sensitive; or have a negative impact on the data principal. DFs face penalties of up to **INR 200 crore (USD 24 million)** if they do not notify DPs / Board in the prescribed manner.	**Engaging Data Processor** • Under Section 8(2), the DPDPB 2023 allows Data Fiduciaries to engage with Data Processors for specified purposes only under a contract • This Act doesn't allow further transfer of data by the DP to another DP.
Right to nominate: • Data principals have the right to nominate an individual to exercise their rights in the event of their death or incapacity. • Example: A prospective borrower (data principal) applying for a loan with an NBFC, holds the right to nominate an individual (like a family member) to act on their behalf in case of death or incapacity. • This nominee would ensure that the NBFC and any involved third-party data processor respect the principal's data rights as per their wishes, maintaining data privacy and control.	**Technical safeguards and reasonable security measures:** • DF must implement appropriate technical and organisational measures to ensure that they effectively observe the provisions of the Act (e.g., data retention standard operating procedures; a notice and consent logging mechanism); and take reasonable security measures to prevent personal data breaches (e.g., encryption, if appropriate). The breadth of these terms suggests that DFs have some latitude in determining what the	**Ensuring Robust Security Measures and Facilitating Data Principal Requests for Personal Data Protection** • Maintain appropriate security measures to protect the personal data, and assist the data fiduciary in complying with requests from data principals regarding their personal data.

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Right of grievance redressal:

- DFs and consent managers must provide DPs a readily available means of grievance redressal for any matters pertaining to this Act.
- While no specific period would need to be adhered to until prescribed, DFs and consent managers may need to be prepared to create such systems and form standard operating procedures to provide redressal measures.

Prohibition on retention of personal data

- DFs are obliged to erase personal data when a DP withdraws consent or as soon as it is reasonable to assume that the specified purpose for collection of personal data is no longer served by its retention.
- The Act suggests that a specified purpose is no longer served where a data principal does not, for a prescribed time period, approach the DF for the performance of the specified purpose and exercise her rights in relation to such processing.
- Different periods of time may be prescribed for different classes of DFs and for different purposes.

Data Retention and Disposal:

- Data Processor shall delete or return all personal data to the Data Fiduciary after the end of the provision of services relating to the processing unless otherwise required by law.

Duties of data principals:

- The Act also imposes certain duties on DPs. These include the duty not to impersonate another person and to provide only such information as may be verifiably authentic when exercising their right to correction or erasure.
- Their failure to do so may carry a penalty of up to IN 10,000 (USD 120). The fact that a data principal has not complied with its duties will not be a justification for a data fiduciary to not comply with its own obligations.

Details of a grievance officer:

- DFs must publish the business contact information of a person who may answer a DP's queries pertaining to the processing of their personal data (such as a DPO where the data fiduciary qualifies as an SDF).
- DFs cannot justify non-compliance with their obligations under the Act based on a data principal's failure to carry out her (corresponding) duties. They also cannot contract out of their obligation to process personal data in consonance with the Act.
- For example, even if a DF requires a data processor to undertake reasonable security safeguards under a contract, it does not absolve the data fiduciary of its obligation to ensure that such reasonable safeguards were, in fact, undertaken or the imposition of a penalty on the data fiduciary (if the Board determines this applies)

Ensuring Confidentiality: Authorized Personnel Processing Personal Data

- Processor shall ensure that persons authorized to process personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

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