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## INDIA'S DISPUTE RESOLUTION LANDSCAPE: A SPECTRUM OF OPTIONS



**N K Gupta**  
Founder & Managing Partner

In the vast and diverse legal landscape of India, resolving disputes is a critical aspect of maintaining a functioning society and fostering business growth. As a common law country with an adversarial dispute resolution system, India offers various methods to settle conflicts, including litigation, arbitration, conciliation, and mediation. Each method presents its own advantages and challenges, giving parties the flexibility to choose the most suitable path for their specific dispute.

### **The Adversarial System: Litigation and Arbitration**

Litigation and arbitration are the most common methods of dispute resolution in India. Litigation involves presenting the case before a court, and the court then passes a judgment based on the evidence and arguments presented by both parties. On the other hand, arbitration involves an impartial third party, an arbitrator or an arbitral tribunal, who listens to the arguments of both parties and makes a binding decision.

### **The Commercial Courts Act and its Implications**

For commercial disputes valued at INR 300,000 or more, India has designated commercial courts under the Commercial Courts Act. These courts aim to provide an expedited and specialized process for commercial litigation, distinct from regular civil procedure. The Act also mandates pre-institution mediation and case management hearings to encourage parties to resolve their disputes before full-fledged litigation.

### **Arbitration Council of India: Advancing the Arbitration Process**

Arbitration, a preferred choice for resolving commercial disputes in India, is governed by a time-bound process. A recent amendment introduced the Arbitration Council of India, which is expected to enhance the arbitration process. This council will have powers to grade arbitral institutions, issue guidelines, and accredit arbitrators, ensuring the quality and efficiency of arbitration proceedings.

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## Online Dispute Resolution in the Age of COVID-19

The COVID-19 pandemic forced courts and arbitral tribunals to embrace technology for dispute resolution, enabling e-filing and video conferencing for hearings. However, it remains uncertain whether these online methods will become permanent alternatives or gradually phase out as normalcy returns.

## Standard of Proof: Striking the Balance

India employs different standards of proof for civil and criminal cases. In civil cases, the standard is "preponderance of probabilities," while criminal cases require "proof beyond reasonable doubt." Striking the right balance between the two standards is essential to ensure fairness and justice in the Indian legal system.

## Rights of Audience: Lawyers and Representation

Lawyers enrolled with any Indian State Bar Council have the right to represent parties in courts and tribunals, subject to certain exceptions. For specialized tribunals like the NCLT, CESTAT, ITAT, such as company secretaries and chartered accountants, are permitted to appear as representatives. Foreign lawyers can offer advice in India during casual visits, but permanent practice is not allowed.

## Court Proceedings: Balancing Transparency and Confidentiality

Court proceedings in India are generally public, and judgments are made available on court websites. However, certain circumstances allow for confidentiality, such as in family disputes, trials of sensitive offenses, and cases of sexual assault.

### Pre-Action Conduct: Encouraging Mediation and Early Settlements

The Commercial Courts Act emphasizes pre-institution mediation in commercial disputes without urgent interim relief. Subject-specific requirements for pre-action conduct also exist, and failure to comply can impact the outcome of a claim.

## Interim Remedies: Seeking Dismissal Before Trial

A defendant can seek summary dismissal of a suit on various grounds, such as lack of cause of action, undervalued claims, statute of limitations, or existence of an arbitration agreement. The applicable procedure under the Code of Civil Procedure determines the dismissal process.

In conclusion, India's dispute resolution methods offer a spectrum of options to parties involved in conflicts, providing them with the freedom to choose the most appropriate and efficient method. From traditional litigation and arbitration to modern online dispute resolution, the Indian legal system continually evolves to meet the changing needs of its citizens and businesses, aiming to ensure justice is accessible to all.

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**Prem Chandra Vaish**  
Senior Mentor

## STEP TOWARDS RESPONSIBLE AI: AI COMPANIES TAKE A PLEDGE FOR SAFER TECHNOLOGY

Artificial Intelligence (AI) has been making rapid strides in recent years, transforming industries and revolutionizing the way we live and work. However, the unprecedented power of AI also comes with significant responsibilities to ensure safety, security, and trust in its development and deployment. In a groundbreaking move, seven leading AI companies in the United States have voluntarily committed to implementing safeguards to address these concerns, marking a significant step towards responsible AI.

The United States of America has made a momentous announcement, revealing the voluntary safeguards pledged by Amazon, Anthropic, Google, Inflection, Meta (formerly Facebook), Microsoft, and OpenAI. These tech giants have come together to strive for a safer AI landscape, promising to be transparent and accountable in their actions. **The companies have vowed to put safety first, even before the world establishes legal and regulatory frameworks for AI development.**

**The AI companies have committed to the following initiatives:**

- 1. Watermarking AI Content:** The companies will adopt measures like trademarks or other means to identify AI-generated content, making it easier for users to recognize and differentiate between AI-generated and human-generated material.
- 2. Regular Reporting on System Capabilities and Limitations:** In a move towards transparency, the companies will publicly report the capabilities and limitations of their AI systems regularly. This will include disclosing security risks and evidence of any bias that may exist in their AI tools.
- 3. Security Testing and Sharing:** To bolster safety measures, the companies will subject their AI products to rigorous security testing, involving independent experts. They will also share crucial information about their products with governments and other stakeholders working to manage AI risks effectively.

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**4. Research on Bias and Privacy Risks:** The companies will actively conduct research to understand the risks of bias, discrimination, and privacy invasion stemming from the spread of AI tools. This commitment aims to address and mitigate potential harms caused by AI algorithms.

**5. Tackling Society's Biggest Challenges:** Emphasizing their dedication to the greater good, the companies will channel their advanced AI tools towards tackling significant societal challenges like curing cancer and combating climate change.

This groundbreaking commitment was announced ahead of an executive order that United States is developing to further enhance AI safety. **The pledge signifies a giant leap in responsible AI practices and sets a precedent for other companies and governments around the globe to follow.**

While the voluntary safeguards are undoubtedly a commendable first step, the journey towards responsible AI is an ongoing process. The United States emphasized the track record of AI, highlighting the insidiousness and prevalence of dangers that have emerged. By rolling out AI technologies that mitigate these risks, the companies aim to make AI safer and more trustworthy.

As the world continues to embrace AI's transformative potential, it is imperative to prioritize safety and ethics. The collective commitment of these prominent AI companies marks a pivotal moment in the evolution of AI development, signalling a collaborative effort to create an AI-powered future that is both innovative and responsible. As technology advances, so too must our commitment to safeguarding society from its potential pitfalls, ensuring that AI remains a force for good in the years to come.

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## SEIZURE OF CASH U/S 67 OF THE CGST ACT: A CATEGORICAL CASE OF REVENUE OVERREACH?



**Puneet Agrawal**  
Sr. Partner

In tax regimes, the concept of search and seizure is well recognized, to curb tax evasion and to protect the interest of genuine taxpayers. The power of search and seizure in itself is wide and draconian in nature and has on several occasions raised questions on its scope, validity & legality, in the light of the relevant provision of the CGST Act. Recently, the seizure of cash by revenue as part of the search & seizure proceedings under GST has once again opened up a Pandora's box of instances of revenue overreach, raising apprehensions amongst the taxpayers.

**The present article undertakes an analysis of the issue of seizure of cash, in the light of the existing legal provisions under GST, and judicial pronouncements and suggests a way forward.**

### **Legal Position On Seizure of Cash Under GST**

The search and seizure provision as contained in s. 67(2) of the CGST Act, empowers the proper officer to seize any 'goods' which he has 'reasons to believe' are liable to confiscation under the Act, or to seize any 'documents' or 'books' or 'things' which in his opinion are useful for or relevant to any proceedings under the Act. It's evident from a bare reading of s. 67(2) of CGST Act, that a proper officer having reason to believe may carry out search & seizure of 'goods', 'documents', 'books' or 'things'.

#### **• 'Goods' defined u/s 2(52) of the CGST Act**

As per Section 2(52) of the CGST Act, goods include movable property and actionable claims and explicitly exclude money and security. The definition of 'goods' makes it unambiguous that goods do not include money.

#### **• 'Document' defined u/s 2(41) of the CGST Act**

As per S. 2 (41) of the CGST Act, a document has been defined as any written or printed record and includes electronic records defined as per s. 2(t) of the Information Technology Act, 2000.

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## • Meaning & Scope of 'Things'

The CGST Act, 2017 does not define what is implicated by the term 'thing'. Therefore, the term 'thing' has to be taken in its ordinary meaning. 'Thing' in common parlance means an inanimate object as distinguished from a living being. The scope of the ordinary meaning of the term "thing" is quite extensive.

**On a holistic reading of the provisions, it's evident that the legislature has not specifically provided for the seizure of cash/money/currency under GST. Moreover, the definition of 'goods' & 'documents' make it clear that cash does not qualify to fall under either of them.**

Therefore, the major conundrum concerns the classification of Cash as 'Things', and if so, can it be liable for seizure u/s 67(2) of the CGST Act. The expansive and wide interpretation of the term 'things' to include cash has been the subject of challenge before several High Courts. However, the power to seize can be exercised only if that thing, in the opinion of the proper officer is useful for or relevant to any proceeding under the CGST Act. Furthermore, the 2nd Proviso to s.67(2), states that the things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under the Act.

On a combined reading of the entire provisions and considering that the text is to be interpreted in the context, ordinarily the cash should not fall in the expression 'things' appearing in section 67(2) because the same cannot be considered to be 'useful for or relevant to any proceedings under the Act'. If at all cash can be seized, only if the revenue is able to satisfy this threshold requirement that cash can be retained for so long as it is necessary for examination or any proceeding under the Act. How & to what extent cash is necessary for the examination can depend upon anybody's view. However, courts have taken a different view while examining the above issue.

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## JUDICIAL PRONOUNCEMENTS

The validity of cash seizure under the powers granted as per section 67 of the CGST Act was deliberated in recent judicial pronouncements. While Hon'ble M.P HC in the case of Smt. Kanishka Matta vs. UOI & Ors, 2020 (42) G. S. T. L. 52 (M. P.) on the alone interpretation of the word "thing", held that money has to be included and it cannot be excluded from Section 67(2) of the CGST Act. It appears that the Counsel representing the Assessee did not make submissions regarding the further requirement in the section mainly that the things must be relevant or useful for any proceedings under the Act. That aspect has not been considered or decided by the HC.

Furthermore, the Hon'ble Kerala HC took a different approach. According to the Kerala HC, cash can be seized only if it's stock in trade of the business. Please refer to the cases of Shabu George, Gigi Mathew v. STO, WA 514 of 2023 & ii) Dhanya Sreekumari v. STO and Ors. WP(C) No. – 21772 of 2022.

The Hon'ble Delhi HC has also considered this aspect in the case of Arvind Goyal CA v. UOI W.P. (C) 12499/2021, though prima facie, but in the light of the peculiar facts of that case left the question open. The Delhi HC is further examining this aspect in a few other cases.

### Way Forward

In light of the above legal provisions and judicial pronouncements, it is clear that the seizure of cash u/s 67(2) of the CGST Act, is draconian in nature, and has civil consequences on the business of the taxpayers. It is being observed that cash is being seized in a routine course, without recording proper reasons & without any justification. The tax administration is expected to strike a fine balance between the fundamental right to carry on the business and the need to safeguard the interest of the revenue within the strict parameters of the statutory powers granted to them. It is also for the lawmakers to strike that fine balance. Any ambiguity in provisions giving such drastic powers to administrative authority must be carefully engrafted and must be circumscribed with strict mandatory procedural requirements.

### **Meanwhile, in cases, wherein cash has been seized invoking the power under Section 67 of the GST Act, then the assessee may take the follow the following steps:**

- i. Request the Department for the immediate release of Cash Seized citing the above quoted judicial rulings.
- ii. If there is no action from the end of the Department, then the assessee can knock on the doors of the Hon'ble High Courts under Writ Jurisdiction.



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## GOODS AND SERVICES TAX - JULY 2023



**Rakesh Garg**  
Sr. Mentor IDT & GST

### Circulars issued in July 2023 – A Brief Analysis:

#### 1. Circular No. 192/04/2023-GST dated 17.07.2023

#### Interest Computation under sec 50(3) of the CGST Act

(i) The amount of ITC available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST. Due to this procedure, many a times, when the taxpayer decides to reverse its wrongly availed ITC under the IGST Act, he finds that it does not have sufficient balance in electronic credit ledger of IGST; however, he has sufficient total balance of (IGST+CGST+SGST) in electronic credit ledgers.

(ii) Therefore, it is clarified that it is the total ITC available in electronic credit ledgers, under the heads of IGST, CGST and SGST taken together, that has to be considered-

- for calculation of interest under rule 88B of CGST Rules,
- for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed ITC of IGST, and
- to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

(iii) Credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

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## 2.Circular No. 193/05/2023-GST dated 17.07.2023

### **Difference in ITC availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for the period 01.04.2019 to 31.12.2021**

(i) During the initial period of implementation of GST, in many cases, the suppliers failed to furnish the correct details of outward supplies in their Form GSTR-1, which has led to certain deficiencies or discrepancies in Form GSTR-2A of their recipients. However, the concerned recipients may have availed ITC on the said supplies in their returns in Form GSTR-3B. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons.

(ii) The Board, on the recommendation of the GST Council, issued Circular No. 183/15/2022-GST dated 27 Dec. 2022. It specified the procedure and documents, including certificate by the Supplier/CA, for allowing such mismatch in ITC during the F.Y. 2017-18 and 2018-19.

(iii) The present Circular No. 193/05/2023-GST (supra) has been issued to specify that the Guidelines specified by Circular No. 183/15/2022-GST (supra) shall also be applicable for the further periods as under: -

- For the period from 01.04.2019 to 08.10.2019 à In toto
- For the period from 09.10.2019 to 31.12.2021 à After giving effect to the provisions to rule 36(4) with regard to unmatched ITC as applicable during the relevant period, which has been explained in the Circular No. 193/05/2023-GST (supra) through illustrations (even if the claimant of ITC has given certificate of the Supplier/ CA). These limits during the relevant period were as under: -
  - a) From 09.10.2019 to 31.12.2019 à Eligible ITC + 20%
  - b) From 01.01.2020 to 31.12.2020 à Eligible ITC + 10%
  - c) From 01.01.2021 to 31.12.2021 à Eligible ITC + 5%
- With effect from 01.01.2022 à Percentage/Limit specified in rule 36(4) is not applicable since the ITC is available based upon Form GSTR-2B

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### 3. Circular No. 194/06/2023-GST dated 17.07.2023

#### **TCS liability under Sec 52 of the CGST Act in case of multiple E-commerce Operators in one transaction.**

(i) Where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under sec 52 including collection of TCS à Buyer > Buyer-side ECO > Supplier-side ECO > Supplier à Seller-side ECO be required to collect and pay TCS, as applicable and also make other compliances. In this case, Buyer-side ECO will not be required to make any compliances as per sec 52 of CGST Act with respect to this particular supply.

(ii) Where the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under sec 52 including collection of TCS à Buyer > Buyer-side ECO > Supplier (also an ECO) à Buyer-side ECO will also be required to collect TCS and pay, as applicable; and also make other compliances under sec 52 of the CGST Act.

### 4. Circular No. 195/07/2023-GST dated 17.07.2023

#### **Replacement of parts and repair services during warranty period**

##### **(A) Warranty fulfilled (Goods/Services) by the Original Manufacturer**

(i) Where the manufacturer provides replacement of parts and/or repair services to the customer during the warranty period, without separately charging any consideration, no further GST is payable.

(ii) However, if any additional consideration is charged by the manufacturer from the customer, then GST will be payable on such supply with respect to such additional consideration.

(iii) These supplies cannot be considered as exempt supply; and accordingly, the manufacturer is not required to reverse the ITC.

##### **(B) Warranty fulfilled by the Distributor - Replacement of parts and/or repair services**

(i) If no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity.

(ii) However, if any additional consideration is charged by the distributor from the customer, then GST will be payable on such supply.

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(iii) If the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer by issuance of a tax invoice à GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions of the CGST Act. In such case, no reversal of ITC is required by the distributor.

(iv) If the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement without any consideration à No GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.

(v) If the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sec 34(2) of the CGST Act à Tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.

(vi) If the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note à GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions of the CGST Act.

## **(C) Extended warranty**

(i) If a customer enters into an agreement of extended warranty with the manufacturer at the time of original supply à the consideration for such extended warranty becomes part of the value of the composite supply à since the principal supply is of “goods”, GST would be payable accordingly.

(ii) In case where a consumer enters into an agreement of extended warranty at any time after the original supply à the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services).

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## 5. Circular No. 196/08/2023-GST dated 17.07.2023

### Share capital held in subsidiary company by the parent company

(i) Securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself, is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under sec 7 of the CGST Act.

(ii) Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

## 6. Circular No. 197/09/2023-GST dated 17.07.2023

### Refund related issues

(A) Refund of accumulated ITC under sec 54(3) on the basis of Form GSTR-2B

In view of the insertion of clause (aa) in sec 16(2) of the CGST Act w.e.f. 1 Jan. 2022 vide N. No. 39/2021-CT dated 21.12.2021, and the amendment in Rule 36(4) of the CGST Rules w.e.f. 01.01.2022 vide N. No. 40/2021-CT dated 29.12.2021, necessary changes have been made in Circular Nos. 125/44/2019-GST dated 18.11.2019 and 135/05/2020-GST dated 31.03.2020; as under: -

- Refund of accumulated ITC under sec 54(3) should be available on the basis of values available as per Form GSTR-2B instead of Form GSTR-2A.
- Annexure-A to the Circular No. 125/44/2019-GST dated 18.11.2019 also stands amended to the following extent: -

a. "Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column "Declaration/Statement/Undertaking/Certificates to be filled online" to be read as "Undertaking in relation to sections 16(2)(c)".

b. "Copy of GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

c. "Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

(B) Manner of calculation of Adjusted Total Turnover under Rule 89(4) of CGST Rules

It is clarified that consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide N. No. 14/2022-CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

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(C) Admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of rule 96A(1)

(i) It was already clarified in para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019 that as long as goods have actually been exported even after a period of three months, payment of IGST first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. Same principle applies in case of export of services.

(ii) As long as goods are actually exported or payment is realized in case of export of services, even if it is beyond the time frames of rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, in such cases, on actual export of the goods or on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized ITC in terms of sec 54(3), if otherwise admissible.

**It is clarified that consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide N. No. 14/2022-CT dated 05.07.2022, the value of goods exported out of India to be included while calculating “adjusted total turnover” will be same as being determined as per the Explanation inserted in the said sub-rule.**

(iii) In such cases, the said exporters would be entitled to claim refund of IGST so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of rule 96A(1). However, interest of refund paid in compliance of rule 96A(1) shall not be admissible.

(iv) Further, the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of rule 96A(1) of GST Rules as “Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

## **7.Circular No. 198/10/2023-GST dated 17.07.2023**

### **Issue pertaining to e-invoice - Supply to Government/PSU**

Where supplies are made by a registered person (to whom e-invoicing is applicable) to the Government Departments or establishments/Government agencies/local authorities/PSUs, which are registered solely for the purpose of deduction of tax at source (TDS) as per provisions of sec 51 of the CGST Act, he is required to issue e-invoices under rule 48(4) of GST Rules for such supplies.

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## 8. Circular No. 199/11/2023-GST dated 17.07.2023

### **Taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons**

(A) In respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs:

- HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in sec 20 of the CGST Act or issue tax invoices under sec 31 of the CGST Act to the concerned BOs.
- The BOs can avail ITC on the same subject to provisions of sec 16/17 of the CGST Act.
- In case, the HO uses the ISD mechanism, HO is required to get itself registered mandatorily as an ISD in accordance with sec 24(viii) of the CGST Act.
- Further, such distribution of the ITC or issuance of tax invoices under sec 31 is possible only if the said services pertain to the concerned BOs.
- The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sec 15(4) of CGST Act. As per rule 28(a), the value of supply of goods/services between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of GST Rules provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services.
- Accordingly, in cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.
- Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of II proviso to rule 28 of GST Rules.

(B) In respect of internally generated services provided by the HO to BOs:

In such cases, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

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## ARTICLE 24 OF THE INDIAN CONSTITUTION



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### Abstract

Child labour is a pervasive problem in many countries, and India is no exception. The Indian Constitution recognizes the importance of protecting children's rights and well-being, and Article 24 is one of the provisions that addresses this issue. This research paper examines the ongoing importance of Article 24 in India's efforts to protect children's rights and the need for continued efforts to implement and enforce this constitutional provision.

### Introduction

Article 24 of the Indian Constitution prohibits the employment of children below the age of 14 years in any factory, mine, or hazardous occupation. The article was included in the Constitution to protect the rights of children and to ensure that they are not subjected to exploitative or hazardous working conditions. The article states that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." The article also empowers the government to make laws that regulate the working conditions of children in non-hazardous occupations.

The article is in line with international conventions and protocols such as the United Nations Convention on the Rights of the Child, which India ratified in 1992. Article 24 was further strengthened by the passing of the Child Labour (Prohibition and Regulation) Act in 1986.

It is relevant to mention that the inclusion of Article 24 in the Indian Constitution and the enactment of laws such as the Child Labour (Prohibition and Regulation) Act reflect India's commitment to eradicating child labour and protecting the rights of its children.



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## Importance of Article 24

Article 24 of the Indian Constitution is of great importance as by prohibiting the employment of children below the age of 14 years in any factory, mine, or hazardous occupation, the article recognizes the vulnerability of children and their need for protection from exploitative and dangerous working conditions.

**The article is significant in several ways:** Protection of child rights: Article 24 recognizes the right of children to be protected from economic exploitation and hazardous work. It acknowledges that children have a right to education, health, and a safe childhood, which are essential for their overall development.

**Prevention of child labour:** The article plays a critical role in preventing the exploitation of children and in curbing the prevalence of child labour in India. By prohibiting the employment of children in hazardous occupations and regulating their working conditions in non-hazardous industries, the article seeks to protect children from physical, mental, and emotional harm.

**Compliance with international conventions:** The inclusion of Article 24 in the Indian Constitution reflects India's commitment to international conventions and protocols, such as the United Nations Convention on the Rights of the Child. The Convention recognizes the importance of protecting children from economic exploitation and from work that is likely to be hazardous or harmful to their health, education, or development.

**Promotion of social justice:** The article promotes social justice by recognizing the vulnerability of children from disadvantaged backgrounds, who are often subjected to exploitative working conditions. It acknowledges the need to provide equal opportunities for all children, regardless of their social and economic status.

## The Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 is an Indian law that prohibits the employment of children below the age of 14 in certain hazardous occupations and defines a child as a person who has not completed their 14th year of age. It prohibits the employment of children in occupations such as bidi-making, carpet weaving, fireworks, and brick kilns, among others. It also prohibits the employment of children in any occupation that is likely to be hazardous to their health or development.

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However, the Act allows children to be employed in certain non-hazardous occupations, provided that their working conditions are regulated, and they are not made to work for more than three hours a day and not more than six days in a week. The Act also requires employers to maintain registers of the children they employ and to provide them with education, healthcare, and other benefits.

The Act provides for penalties for those who violate its provisions, including fines and imprisonment. It also sets up a mechanism for the inspection of workplaces to ensure compliance with its provisions.

The Child Labour (Prohibition and Regulation) Act, 1986 has been amended several times to strengthen its provisions and to bring it in line with international standards. However, there are still concerns about the implementation of the Act and the prevalence of child labour in certain industries in India.

## **Protection of children's rights and well-being:**

Under Article 24 of the Indian Constitution, no child below the age of 14 years can be employed in any factory, mine, or hazardous occupation. This provision is similar to the prohibition on hazardous work for children under Article 24 of the UNCRC.

In addition, the Indian Constitution has several other provisions that seek to protect the rights and well-being of children. For example, Article 15(3) allows for special provisions to be made for the advancement of children, and Article 39(e) directs the State to ensure that children are not abused or forced by economic necessity to enter occupations unsuited to their age or strength.

The Right of Children to Free and Compulsory Education Act, 2009 is another important legislation that aims to protect the rights of children in India. This act provides for free and compulsory education for all children between the ages of 6 and 14 years and seeks to ensure that children have access to quality education that promotes their holistic development.

## **UNHRC (UNITED NATIONS HUMAN RIGHTS COUNCIL) Convention on Child's Rights:**

Article 24 of the United Nations Convention on the Rights of the Child (UNCRC) states that every child has the right to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. It also provides for measures to ensure the provision of adequate nutrition, safe drinking water, and basic sanitation.

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Furthermore, Article 24 calls for special measures to protect children from harm and to promote their physical and mental well-being. This includes protection from hazardous work, harmful substances, and all forms of abuse, neglect, and exploitation.

International Labour Organisation conventions on Child Labour

The International Labour Organization (ILO) has several conventions related to child labour, including the Convention on the Worst Forms of Child Labour (C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)) and the Convention on Minimum Age for Employment (Minimum Age Convention, 1973 (No. 138) - United Nations and the Rule of Law).

Both the conventions aim to eliminate child labour and promote the rights and welfare of children. The ILO provides technical assistance and support to countries to help them implement these conventions and develop policies and programs to address child labour issues.

## Important Case laws pertaining to Article 24

**MC Mehta v. State of Tamil Nadu (1996):** In this landmark case, the Supreme Court of India ordered the closure of all tanneries operating in the state of Tamil Nadu that were found to be violating Article 24 by employing children below the age of 14 in hazardous working conditions.

**People's Union for Democratic Rights v. Union of India (1982):** In this case, the Supreme Court of India held that the right to education was an essential prerequisite for the protection of the right against exploitation under Article 24. The court held that if children are not given access to education, they may be forced into labour.

**Unni Krishnan, J.P. v. State of Andhra Pradesh (1993):** In this case, the Supreme Court of India held that the right to education was a fundamental right under Article 21 of the Constitution and that the government had a duty to provide free and compulsory education to all children up to the age of 14.

**State of Karnataka v. Appa Balu Ingale (2003):** In this case, the Karnataka High Court held that the prohibition on child labour under Article 24 was not absolute and that children could be employed in family-based occupations, as long as the work was not hazardous and did not interfere with their education.

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## Limitations and Challenges

There are some challenges and limitations associated with Article 24 of the Indian Constitution:

**Enforcement:** Despite the existence of Article 24, child labour remains a significant problem in India. The enforcement of the law is often weak, and many children continue to work in hazardous and exploitative conditions.

**Limited scope:** Article 24 only applies to children under the age of 14 and does not cover all forms of work. As a result, some children are still forced to work in non-hazardous industries or as domestic help.

**Poverty:** Many families in India rely on their children's income to survive. Article 24, while well-intentioned, may create financial hardship for these families by removing their children's source of income.

**Inadequate education:** While Article 24 prohibits child labour and promotes education, the Indian education system is often inadequate, with limited access to schools, poor quality education, and high dropout rates. This makes it difficult for children to break out of the cycle of poverty and find alternatives to work.

## The 'Saviour'

Kailash Satyarthi (Nobel Prize 2014) is an Indian child rights activist who has dedicated his life to fighting against child labour and promoting children's rights around the world. He is the founder of the Bachpan Bachao Andolan (Save Childhood Movement), which is a non-governmental organization that works to rescue and rehabilitate children from forced labour and trafficking.

### Here are some of Kailash Satyarthi's notable works related to child labour:

**Rescue operations:** Kailash Satyarthi has led many rescue operations to save children who are forced to work in hazardous conditions

**Advocacy:** Kailash Satyarthi is a vocal advocate for children's rights and has spoken at many international forums, including the United Nations General Assembly.

**Education:** Kailash Satyarthi believes that education is the key to ending child labour, and he has worked to set up schools and vocational training centers for children who are rescued from labour.

**Global March Against Child Labour:** Kailash Satyarthi was one of the leaders of the Global March Against Child Labour.

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## Conclusion

Article 24 of the Indian Constitution serves as an important provision to protect the rights of children by prohibiting their employment in hazardous industries and promoting their education. However, despite the existence of this provision, child labour remains a significant problem in India, and there are several challenges and limitations associated with its implementation.

Enforcement of the law is weak, and poverty often drives families to rely on their children's income. Limited access to education, poor quality education, and high dropout rates also make it difficult for children to break out of the cycle of poverty and find alternatives to work. Nevertheless, the work of activists like Kailash Satyarthi, who have dedicated their lives to ending child labor and promoting children's rights, gives hope for a better future for children in India. Through rescue operations, advocacy, education, and awareness-raising campaigns, they have made significant progress in raising awareness of the issue and taking concrete steps towards eradicating child labour.

To fully realize the rights of children and end child labour in India, it is crucial to continue addressing the challenges and limitations associated with Article 24, including strengthening enforcement mechanisms, addressing poverty, and improving access to education. Only through concerted efforts can we create a society where all children have the opportunity to live their childhood and pursue their dreams free from exploitation.

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## COPYRIGHT INFRINGEMENT IN THE MUSIC AND FILM INDUSTRY: SAFEGUARDING **INTELLECTUAL PROPERTY** **RIGHTS** UNDER INDIAN LAW

In the fast-paced digital era, the music and film industries in India face a daunting challenge: protecting their intellectual property rights from rampant copyright infringement. With the proliferation of online platforms, file-sharing networks, and streaming services, unauthorized reproduction and distribution of copyrighted content have become widespread issues. This article delves into the grave consequences of copyright infringement in the Indian music and film industry and explores the legal provisions and ongoing efforts to combat this ever-growing menace.

### **The Impact of Copyright Infringement**

Under the Indian Copyright Act of 1957, copyright infringement is a serious offence that poses significant financial, creative, and ethical consequences for artists, creators, and the industries as a whole. For musicians and filmmakers, their livelihoods often depend on the revenue generated from their work. When unauthorized copies of their music or films circulate freely, it leads to a loss of revenue from legitimate sales and distribution channels.

Moreover, copyright infringement stifles creativity. Artists might feel discouraged to produce new and innovative works when they perceive a lack of protection for their creations. This, in turn, impacts cultural diversity and artistic progress in Indian society.

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## Legal Provisions Under the Indian Copyright Act

The Indian Copyright Act provides robust protection to creators and copyright owners, offering them exclusive rights to reproduce, distribute, perform, communicate, and adapt their works. Section 14 of the Act outlines the specific rights granted to copyright holders, ensuring that their creative endeavours are safeguarded.

Section 51 of the Act deals with offences relating to copyright infringement. It outlines various acts that amount to infringement, including unauthorized reproduction, distribution, communication to the public, and adaptation of copyrighted works. Anyone found engaging in such activities without obtaining proper licenses or permissions from the copyright owners can be held liable for copyright infringement.

## Tips Industries Ltd. v. Wynk Music Ltd. (2018)

In this case, Tips Industries, a music company, filed a copyright infringement suit against Wynk Music, a popular music streaming service. Tips Industries alleged that Wynk Music was offering its copyrighted songs for streaming without obtaining proper licenses. The court ruled in favour of Tips Industries, stating that Wynk Music's failure to obtain licenses constituted copyright infringement. This case highlighted the importance of securing proper licenses from copyright owners for online music streaming services.

## Enforcement Efforts and Legal Framework

In response to the escalating issue of copyright infringement, Indian music and film industries have taken legal action against individuals and entities involved in piracy. The Act empowers copyright holders to initiate civil and criminal proceedings against infringers, seeking remedies such as injunctions, damages, and accounts of profits.

The Act also provides for the issuance of "John Doe orders" or "Ashok Kumar orders," allowing copyright owners to take pre-emptive action against anonymous infringers. This provision has been instrumental in dealing with online piracy and file-sharing websites.

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## Conclusion

Copyright infringement remains a significant challenge for the Indian music and film industries in the digital age. The unauthorized reproduction and distribution of copyrighted content have far-reaching implications, affecting artists, industries, and audiences alike. However, with robust legal provisions, enforcement efforts, and public awareness campaigns, the battle against piracy continues.

Preserving intellectual property rights is vital for nurturing creativity, supporting artists, and sustaining thriving industries in India. As consumers, it is essential to recognize our role in respecting copyright and supporting the creative endeavours that enrich our lives. Only through collective efforts can we ensure a future where the music and film industries in India thrive, fostering a diverse and vibrant cultural landscape for generations to come.



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## COMPLIANCE FOR FOCCs IN DOWNSTREAM INVESTMENT

The core tenet of Downstream Investment is, “What can be done directly, may also be done indirectly. What cannot be done directly cannot be done indirectly”.

Foreign-owned or controlled companies (FOCCs) can be a great source of investment for companies that want to have a controlling interest and ownership in the investee, or even want to conduct business operations in India as a domestic company.

The following conditions are to be complied with by the FOCC:

### **CONDITIONS FOR DOWNSTREAM INVESTMENTS BY INDIAN COMPANIES (as per NDI Rules):**

1. Approval Requirement: Downstream Investments must have the approval of the Board of Directors and, if applicable, a Shareholders' Agreement.
2. Equity Levels and Automatic Route: Downstream investments can be made within the foreign equity levels permitted for different activities under the automatic route.
3. Compliance with SEBI/RBI Guidelines: The issue, transfer, pricing, and valuation of shares must adhere to the guidelines set by SEBI (Securities and Exchange Board of India) and RBI (Reserve Bank of India).
4. Source of Funds: For downstream investments, the Indian entity making the investment must use funds from abroad and not from domestic market borrowings. These guidelines were initially issued by DIPP (Department of Industrial Policy and Promotion) in 2009 via Press Note 4 and later incorporated by RBI in FDI Regulations.
5. Compliance with FEMA: The raising of debt and its utilization must comply with the provisions of the FEMA Act and related rules and regulations.

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7. **Transfer of Capital Instrument:** The capital instrument of an Indian company held by another Indian company (FOCC) that has received foreign investment and is not owned or controlled by resident Indian citizens, or is owned or controlled by persons resident outside India, can be transferred to:

- i) A person resident outside India, subject to reporting requirements in Form FC-TRS;
- ii) A person resident in India, following pricing guidelines;
- iii) An Indian company that has received foreign investment and is not owned or controlled by resident Indian citizens or owned or controlled by persons resident outside India.

8. **Compliance Responsibility:** The Indian company (FOCC) making the first-level downstream investment is responsible for ensuring compliance with these regulations for the investments made at subsequent levels.

9. **Statutory Auditor's Certificate:** The first-level company (FOCC) must obtain an annual Certificate from its Statutory Auditor confirming compliance with these regulations. The Director's Report in the Annual Report of the Indian company must also mention the compliance. In case of a qualified report by the auditor, the matter should be promptly brought to the attention of the Regional Office (RO) of the Reserve Bank where the company's Registered Office is located, and an acknowledgement from the RO should be obtained.

## **Pricing guidelines:**

Rule 21 of the NDI Rules mandates that pricing guidelines apply to transactions between a PROI and an Indian resident, but not between two PROIs. Rule 23(5) of the NDI Rules similarly mandates pricing guidelines if an FOCC is transferring capital instruments to an Indian resident. This suggests that the rule treats an FOCC as a PROI, even though the NDI Rules treat an FOCC as an Indian resident from the reporting perspective.

## **1. Reporting Downstream Investments:**

If a person who resides outside India makes an investment in India, they are obligated to report this investment. Specifically, when an FOCC makes an indirect foreign investment by investing in another Indian entity (known as a downstream investment), they must notify the Secretariat for Industrial Assistance, Department for Promotion of Industry and Internal Trade (DPIIT) within 30 days of making such investment.

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This reporting requirement becomes applicable when equity instruments have not been allotted along with the details of investment in new or existing ventures.

## 2. Filing Form 'DI' with RBI:

Additionally, the FOCC (Indian entity or investment vehicle) making the downstream investment under the NDI Rules must submit Form 'DI' to the Reserve Bank of India (RBI) within 30 days from the date of allotment of equity instruments. This form provides essential information about the investment.

## 3. Late Submission Fee:

In case the responsible FOCC fails to complete the reporting requirements as mandated by Regulation 4 of the NDI Regulations, a late submission fee will be imposed. The exact amount of the late submission fee will be decided by the RBI in consultation with the Central Government.

It is important for entities involved in foreign investments to adhere to these reporting guidelines to ensure compliance with the applicable regulations. By doing so, they contribute to the transparency and smooth functioning of foreign investment activities in India.



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## REGULATORY LANDSCAPE OF FINTECH LAWS IN INDIA

### Introduction:

The fintech revolution has been sweeping across the globe, and India stands at the forefront of this transformative journey. Recently, India has witnessed a remarkable evolution and growth of fintech laws, it is important to acknowledge significant milestones, such as the recent collaboration between India and Sri Lanka in adopting India's Unified Payments Interface (UPI) technology.

On July 21, 2023, during a joint press statement at Hyderabad House, New Delhi, Prime Minister Narendra Modi and Sri Lankan President Ranil Wickremesinghe exchanged several agreements, one of which involved the acceptance of India's UPI technology in Sri Lanka. This move marked yet another instance of India's fintech prowess being recognized globally, following earlier partnerships with France, UAE, and Singapore for cross-border transactions.

Now, let's delve into the regulatory landscape of fintech laws in India:

### Overview of Financial Regulators with their roles and responsibilities in India:

In India, the regulatory framework for fintech is a multi-dimensional tapestry comprising various authorities that oversee different aspects of the financial sector. The key regulatory bodies hold distinct responsibilities in the fintech realm:

**Reserve Bank of India (RBI):** Holds a pivotal role in regulating and supervising the entire financial system. It oversees traditional banks, non-banking financial companies (NBFCs), and payment systems, and also plays a significant role in shaping fintech regulations.

Proactive in fostering innovation while safeguarding financial stability. It regulates and supervises NBFC-P2P lending platforms, digital payment systems, and mobile banking. RBI's guidelines for P2P lending platforms aim to protect borrowers and lenders while promoting financial inclusion.

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Securities and Exchange Board of India (SEBI): Responsible for regulating the securities market in India. It monitors and regulates entities engaged in securities trading, including stock exchanges, brokers, and market intermediaries. Its purview extends to fintech startups involved in crowdfunding and peer-to-peer investment platforms and aims to protect investors and maintain market integrity, thereby nurturing investor confidence in the fintech space.

Insurance Regulatory and Development Authority of India (IRDAI): As the name suggests, IRDAI regulates the insurance sector, ensuring the protection of policyholders and fostering growth in the insurance industry. It also regulates insurtech startups and digital insurance providers, ensuring compliance with customer protection norms and promoting digitization in the insurance sector

Pension Fund Regulatory and Development Authority (PFRDA): Oversees and regulates the pension sector in India, promoting pension-related schemes and products.

Fintech companies offering digital pension solutions come under the purview of PFRDA, which promotes innovation while safeguarding the interests of pensioners.

National Payments Corporation of India (NPCI): While not a regulator per se, NPCI plays a significant role in the fintech ecosystem by providing infrastructure and managing payment systems like UPI (Unified Payments Interface). As the backbone of India's digital payments ecosystem, NPCI sets the standards for secure and efficient payment systems, facilitating fintech innovations in the payments domain.

## **Coordination and Challenges in Fintech Regulation:**

Collaborative Approach: Given the diverse regulatory landscape, coordination among various bodies is essential to ensure a coherent and supportive environment for fintech companies. Regular dialogues and information-sharing forums foster a collaborative approach to addressing fintech challenges.

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**Innovation and Risk Management:** Striking a balance between fostering innovation and mitigating risks is a challenge for regulators. Encouraging innovation while safeguarding consumer interests and financial stability requires dynamic and adaptive regulatory frameworks.

**Regulatory Sandboxes:** Regulatory sandboxes have emerged as a valuable tool for testing fintech innovations in a controlled environment. Regulators can observe new technologies, assess their impact, and adapt regulations accordingly.

**Data Protection and Cybersecurity:** With the increasing reliance on data-driven technologies, data protection and cybersecurity are critical concerns. Regulators must ensure robust data protection measures and cybersecurity protocols to safeguard consumer data.

## **Conclusion:**

The regulatory landscape of fintech laws in India presents a dynamic and evolving ecosystem. As fintech continues to shape the financial services landscape, regulators must strike a delicate balance between encouraging innovation and ensuring consumer protection. A coordinated approach, facilitated by open dialogue and collaborative initiatives, will foster an environment conducive to fintech growth while safeguarding the interests of all stakeholders in the digital financial realm.



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