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Gujarat National Law University

Gujarat National Law University Centre for Law & Economics

Centre for Empirical & Applied Research in Law & Interdisciplinary Studies

AIM AND SCOPE

To promote high-quality interdisciplinary research in law and economics by fostering scholarly discourse, encouraging innovative legal and economic analysis, and providing an open-access, peer-reviewed platform for academics, practitioners, researchers, and students to advance knowledge and informed policy discussions.

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IN LOVING MEMORY

Prof. Thomas Shahan Ulen

EDITORIAL BOARD OF THE GNLU JOURNAL FOR LAW AND ECONOMICS

In Memory of Prof. (Dr.) Tom Ulen: Memories and Reflections by Prof. (Dr.) Tom Ginsburg

I met Tom Ulen through my mentor Robert Cooter. I was on the teaching market after finishing my PhD at Berkeley, and the University of Illinois had given me an offer to join the faculty. I had two other job offers but Cooter told me I should go to Illinois, and so of course I accepted the offer.

When one first starts in the legal academy, it is hard to have confidence. Like any job, one begins without really knowing what one is doing, and the main task is to pretend, while learning all the time how to act like a law professor. Tom always took my ideas seriously, however naïve and simple they were. As everyone who met him knows, Tom exuded calm and curiosity. Being in Tom's presence gave a sense of confidence, which was so important to a junior person. But it also inspired all of us to read more, to learn more, and to talk about ideas constantly.

At my farewell dinner leaving the University of Illinois, Tom gave a speech in which he said that Cooter had told him to watch out for me because I was like a son to him. Tom then said that this feeling had transferred to Tom, and I feel the same way. Losing Tom is like losing an academic father. The best tribute to him is for all of us to practice his virtues of kindness, curiosity, conversation, and mentorship. May his memory be a blessing.

A Tribute by GNLU Centre for Law and Economics in respectful memory of Professor Ulen

By Prof. (Dr.) Ranita Nagar, in honour of Prof. (Dr.) Thomas S. Ulen

This was the time, when both of us, Dr. Hitesh Thakkar and myself, as the faculties of economics at a law university and the university were both very ignorant about the specialized academic domain of law and economics, yet were aspirational about establishing and furthering this inter disciplinary domain. These aspirations though, were met with heavy literature content, difficult to discern.

This is when we came across your book, **"*Law and Economics*" by Robert Cooter and Thomas Ulen.** This book started making inroads for us into the fascinating interface of the two giant domains. Encouraged by this feat, and with a view to create a platform for deeper engagement with the subject, me and my very young and brilliant colleague, now Dr. Hitesh Thakkar, under the visionary leadership of Prof. (Dr.) Bimal Patel, the then VC GNLU, established the GNLU Centre of Law and Economics.

The Centre was established but it needed much intellectual guidance and hand holding. We reached out to you, Professor to conduct courses, contribute expert sessions at our multiple conferences, write forewords for our books and provide advisory guidance to our Journal on law and economics. You, in your generosity and kindness, always made yourself available in all the above roles. In spite of the time difference between our countries, you ensured your enthusiastic and spirited presence, be it at 6.00 am Illinois time in the mornings and on the many occasions at 9 pm at night. Your enthusiastic presence was the academic expertise we could count on as a generous family member, dependable like a rock.

During extended times, right from the challenges of getting the subject introduced at the university, stretching into periods of facing non acceptance, domain exclusivity, lack of a critical scholarly mass on account of inaccessible subject in silos etc, your writings expressed almost similar experiences of challenges and rigidities faced by an economist in University of Illinois treading into_the domain of law, from your personal experience and about how the outcome of that personal struggle culminated in the very resounding success of the domain and its importance in Law policy and your towering presence in the field.

The manner in which you have encouraged the genesis, evolution and growing maturity of the GNLU Centre of Law and Economics, cannot be expressed in words. The positive externalities, of your book, your sustained handholding has led to the establishment of four Centres of Law & Economics at different National Law Universities in India. The law students at GNLU, have found a way to take interest in economics as a subject because it lends a practical understanding to the learnings of the law. Law students otherwise wary of economics as a discipline, have not only grown to take a deep interest in the subject but many have chosen their path into careers in public policies and some in the further studies and work in the domain of law and economics.

The concretization of your works, have also shown imprints in the Indian judiciary, where some judgements, in particular by Justice Sikri, have mentioned the importance of basing judgements on the learnings of Economic analysis of Law.

You have affected our lives, as academicians, students, policy makers and jurisprudence by enriching it. You have made me, by colleague, Dr Hitesh Thakkar, our Centre OF Law and Economics and our university grow, find recognition & appreciation in the scholarly community.

And most of all you have nourished our souls, made us feel loved, respected and validated. Your loss leaves a vacuum and a very heavy heart.

Your deep dedication to the field of Law and Economics and your lifelong commitment to sharing and disseminating its ideas across the world have left an enduring mark on all of us. Through your scholarship, teaching, and generous engagement with students and scholars, you have inspired generations to explore, question, and understand the profound relationship between law and economics.

In our journey at the GNLU Centre for Law and Economics, your presence and guidance have been truly invaluable. You ignited in us a passion for learning and encouraged us to look at law not merely as a system of rules, but as a discipline enriched by economic reasoning, empirical inquiry, and interdisciplinary thinking. We can say with deep gratitude that our learning, growth, and development in the field of Law and Economics would not have been the same without your support, encouragement, and intellectual generosity.

You have helped create an intellectual space in which Law and Economics could be studied, discussed, questioned, and developed. Your contribution has extended far beyond the classroom and academic scholarship. You have built connections, inspired institutions, encouraged young scholars, and helped nurture an intellectual community that continues to grow.

For us, you have been much more than a distinguished scholar and teacher. You have been a **teacher, mentor, philosopher, and friend**-someone who has walked alongside us, encouraged us to think differently, and shared in our journey of discovery. Your warmth, humility, openness, and willingness to engage with ideas have made your presence especially meaningful to us.

As we reflect upon your contribution and legacy, we are reminded that the true measure of a teacher lies not only in what they teach, but in the intellectual curiosity they awaken and the people they inspire to carry that learning forward. In this sense, your influence will continue to live through the scholars, students, institutions, and communities that you have touched.

On behalf of the GNLU Centre for Law and Economics, we express our deepest gratitude for your scholarship, your guidance, your mentorship, and, above all, for the inspiration you have given us. We are deeply honoured to have learned from you and to have shared this journey with you.

Thank you, Professor Ulen, for inspiring us, believing in us, and helping us find our place in the world of Law and Economics. Your legacy will remain an enduring part of our intellectual journey.

The following is a note penned by Prof. (Dr.) Nuno Garoupa sir, European Association of Law and Economics, in honor of Prof. (Dr.) Thomas S. Ulen

It is with great sadness that we share the news that Thomas S. Ulen, Swanlund Chair Emeritus at the University of Illinois College of Law, passed away on 13 September 2026.

Tom Ulen was one of the pioneering figures in the development of Law and Economics as a scholarly field and a towering presence in the international academic community. He joined the University of Illinois in the late 1970s, beginning an association with the University that would span nearly half a century. He held the Swanlund Chair, one of the University's highest endowed faculty honors, and directed the College of Law's Program in Law and Economics.

A prolific and internationally influential scholar, Tom helped shape modern Law and Economics. His co-authored textbook, *Law and Economics*, became one of the leading works in the discipline, was translated into numerous languages, and introduced generations of students around the world to the economic analysis of law. He served on the founding board of directors of the American Law and Economics Association, and taught and lectured extensively across the world.

His influence, however, extended far beyond his publications and formal academic achievements. For the European Association of Law and Economics, Tom was much more than a distinguished scholar. He was a mentor, a guide, a generous colleague, and a steadfast supporter of the European Law and Economics community. He shared his expertise freely, encouraged younger scholars, helped strengthen the international connections of our field, and contributed greatly to the visibility and development of Law and Economics in Europe.

Those who knew Tom will also remember his humor, kindness, warmth, and humanity. He had a genuine interest in others and an extraordinary generosity of spirit and intellect. That generosity endured long after his retirement, as he continued to share ideas, encouragement, friendship, and good humor with colleagues and former students around the world.

The European Association of Law and Economics has lost not only a preeminent scholar, but also a great friend. His scholarship has left a lasting mark on our discipline, while his intellectual generosity and personal warmth have touched generations of students and colleagues. He will be deeply missed, and his legacy will continue to inspire future generations of legal scholars and economists.

We honor Tom Ulen's memory with gratitude, affection, and profound respect.

Gratitude to Prof. (Dr.) Thomas S. Ulen by the GNLU Centre for Empirical and Applied Research in Law and Interdisciplinary Studies

By Dr. Hiteshkumar Thakkar, in honour of Prof. (Dr.) Thomas S. Ulen

Prof. Ulen, your love, passion, and unwavering commitment to law and economics held the power to inspire even a curious scholar who initially was a stranger to the domain of law and economics to approach you, learn from you, and gradually develop a deep admiration for the subject. What began as a simple curiosity about the scientific methodology of the field became a meaningful academic and research journey, bringing that once-unfamiliar scholar closer to the intellectual family of law and economics and creating a lasting engagement with the world of law and economics.

Prof. Ulen, you have always remained approachable and generously committed to sharing your extensive knowledge of the subject. You have made law and economics not merely a subject to be studied, but a field to be explored, understood, and carried forward by the next generation. Your learning transcends across disciplines, institutions, countries, and generations, making the pursuit of law and economics truly universal.

The Centre remains deeply indebted to Prof. Ulen for his enduring mentorship, generosity, and invaluable contributions. We are deeply saddened by his loss, and we share in this grief with his family, friends, students, and colleagues.

Gratitude to Prof. (Dr.) Thomas S. Ulen by the GNLU Law and Economics Student Community

Prof. Ulen has been one of the GNLU Centre for Law and Economics' most valuable mentors and an enduring presence throughout the Centre's academic journey and development. His association with GNLU and the Centre has enriched our endeavours on numerous occasions. He contributed as a domain expert at the GNLU Academy on Law and Economics (GALE) in 2020 and at the 3rd GNLU Workshop on Law and Economics: Theories and Applications in 2022. His association with GNLU also included his participation as the plenary speaker at the 1st International Conference on Law & Economics in 2015 and the 2nd International Conference on Law & Economics in 2016. He was an integral presence in all the academic, research, and training activities of the GNLU Centre for Law and Economics. Professor Ulen played an instrumental role in grooming the GNLU Centre for Law and Economics and the GNLU Journal of Law & Economics as our esteemed Advisory Board Member. Prof. Ulen's generous contribution of his research articles to the journal set benchmark standards, which remain our aspirational goals.

The seeds that he planted has matured into a blossoming intellectual tree, under whose shade the scientific approach finds rational means to create social surplus and provide meaningful answers to legal problems.

The Centre remains deeply indebted to Prof. Ulen and mourns this heavy loss with his family and well-wishers.

EDITORIAL NOTE

- *Editors*

The first issue of Volume IX of the GNLU Journal of Law & Economics presents carefully curated articles that delve into critical intersections of law and economics. Moving across varied domains, from macroeconomic inequality and corporate executive compensation to digital economics and financial regulation, this issue reinforces the Journal's dedication to fostering multi-disciplinary scholarship with real-world policy relevance.

The issue opens with a special dedication to Prof. Thomas S. Ulen, titled **"In Honour of Prof. Thomas S. Ulen's Legacy in the Evolution of Law and Economics: Reflections on Its Rise, Reception, and Future of Law and Economics"** which reproduces the foreword originally written by Prof. (Dr.) Thomas S. Ulen to the edited book Economic Analysis of Law and Governance, edited by Ranita Nagar and Dr. Hiteshkumar Thakkar (2022) and published by the GNLU Centre for Law and Economics and Eastern Book Company (EBC). It traces the evolution and reception of Law and Economics within the Indian legal academy and the broader international scholarly community. The piece situates the emergence of Law and Economics within the history of paradigm shifts, drawing on Thomas Kuhn's account of scientific change to examine how new approaches gain acceptance within established disciplines. The piece also contains the brief notes on lectures delivered by Prof. Ulen during the 03rd GNLU Workshop on Law and Economics: Theories and Applications, organised by the GNLU Centre for Law and Economics in the fall of 2022 and his Plenary talk discussing the importance and challenges in the empirical analysis and in the study of the law.

The paper titled **"Deconstructing Income Inequality: A Multi-Metric Analysis of Regional Disparities in India,"** authored by Prof. L.C. Mallaiah, Abhishek Kumar Kushwaha, and Asha Prasuna, challenges purely economic accounts of regional disparity by examining inequality as a legal and institutional construct. Employing a multi-metric empirical approach across Net State Domestic Product (NSDP) tiers, the authors reveal that intra-state rural-urban divides account for the majority of total inequality. Institutional vulnerabilities in market access, labour mobility, and welfare delivery are brought to the fore, alongside actionable legal recommendations spanning direct benefit transfers, agricultural markets, and progressive taxation.

The tensions between different classes of creditors during insolvency proceedings are explored by Rajbeer Singh Saluja and Bharadwaja Reddy Chintakunta in "**Conflict Between Homebuyers and Other Creditors in the Real Estate Sector During Insolvency Proceedings: A Law and Economic Analysis**." Examining why the IBC's 2018 amendment recognizing homebuyers as financial creditors has failed to protect them in practice, the authors use the Supertech Ltd. insolvency as a case study. Frameworks including the Prisoner's Dilemma, Transaction Cost Economics, and Olson's Logic of Collective Action are applied to show how information asymmetry, asset specificity, and coordination failures leave dispersed homebuyers marginalized against concentrated secured creditors. The paper concludes by recommending statutory codification of Reverse CIRP, tailored exceptions to Section 29A, and better harmonization between RERA and the IBC.

Turning to the corporate sphere, Dr. Shweta Mohan and Dr. Shantanu Braj Choubey, in "**Corporate Governance and the Limits of Legal Regulation: An In-Depth Analysis of Executive Compensation at Amara Raja Energy & Mobility Ltd.,**" investigate the economic rationale behind ballooning executive compensation in corporate India. Focusing on a detailed case study of Amara Raja Energy & Mobility Ltd., the authors analyse the company's Median Pay Gap Ratio (MPGR) alongside its governance architecture. Their study demonstrates how existing regulatory structures, including Nomination and Remuneration Committees, can remain fully compliant while failing to constrain excessive executive payouts, underscoring the structural limits of conventional corporate law.

The final contributions turn towards the rapidly evolving digital economy and competition law. In "**The Regulation of Dark Patterns by Competition Law: A Cross Jurisdictional Analysis with Insights from Indian Jurisprudence,**" Dr. Tilottama Raychaudhuri and Ms. Shatakshi Johri examine how manipulative digital design techniques, or "dark patterns," intersect with competition law across the US, EU, Japan, and India. Drawing on behavioural economics, particularly bounded rationality and cognitive bias theory, the authors examine how dominant digital firms use dark patterns to entrench market power, erode consumer autonomy, and exploit data advantages, with reference to cases such as WhatsApp LLC v. CCI and US v. Google. Despite growing judicial recognition of these practices, the study finds that India lacks a dedicated competition law framework to address dark patterns. It accordingly calls for explicit regulatory definitions, behavioural economics audits, and ex-ante intervention mechanisms tailored to digital markets.

The issue also considers the economic consequences of regulatory design in "**Global Penalties, Local Harm: Why Economic Theory Disfavours Global Turnover-Based Fines Under India's Competition Law,**" by Mr. Abhyudaya Yadav, Dr. Ankit Shrivastav, and Dr. Jasmine Kaur. The paper critiques India's 2023 shift from relevant-turnover to global-turnover-based antitrust penalties under Section 27(b) of the Competition Act. Using a formal deterrence model built on Becker's expected-cost framework, the authors show that penalizing global rather than domestic turnover systematically over-inflates fines by a factor inversely proportional to a firm's domestic revenue share, breaking the link between punishment and local harm. A comparison with the EU and US, where global turnover functions only as a statutory ceiling rather than the operative penalty base, further highlights the authors' concerns regarding the Indian approach. The paper argues that this misalignment risks chilling innovation and investment while inviting proportionality challenges, and recommends reverting to a harm-anchored, relevant-turnover model while reserving global turnover for genuinely transnational violations.

In **Evaluating the Corporate Insolvency Resolution Process (CIRP): Empirical Evidence on Operational Issues, Challenges, and Stakeholder Dynamics,** Dr. Hitesh Kumar Thakkar analyses the impact of the CIRP Process with particular attention to the operational and institutional challenges affecting its functioning. Drawing on qualitative and quantitative evidence gathered from practitioners and stakeholders involved in CIRP, the paper examines how factors such as delays, litigation, non-cooperation by suspended management, stakeholder interests, and institutional constraints influence the efficiency and effectiveness of the resolution process. The study combines semi-structured interviews, stakeholder discussions, observations of NCLT proceedings, and questionnaire-based data to examine the practical functioning of the insolvency framework. It further considers the role of the Committee of Creditors, Resolution Professionals, adjudicating authorities, and other stakeholders, while examining issues concerning timelines, valuation, institutional capacity, and procedural bottlenecks.

In **Raising the Guardrails on Property Rights: Kesavananda, Minerva Mills, and the 2024 Recalibration of State Power,** Pratishtha Chaturvedi and Prof. (Dr.) Ram Singh examine the decision in the case of Property Owners Association v. State of Maharashtra *(2024)* and its implications for the constitutional protection of property rights in India. The paper traces the evolution of the relationship between individual property rights and the State's redistributive powers through the constitutional trajectory of Articles 39(b), 39(c), 31C, and 300A, with particular reference to *Kesavananda Bharati* and *Minerva Mills*. It considers the Court's treatment of the expression "material resources of the community", the limits placed on State acquisition of private and community resources, and the role of judicial review and proportionality in assessing such State action. The authors also examine the economic dimensions of property rights and eminent domain, including questions of compensation, procedural safeguards, and the balance between collective welfare objectives and individual rights.

This issue reflects the Journal's commitment to bringing together legal and economic perspectives to examine questions that have a bearing on law, policy, and society. The contributions in this volume approach these questions from different angles, but are united by a common effort to understand how legal rules and economic realities interact in practice.

The Editorial Board expresses its deepest gratitude to the distinguished members of the Review Process Committee, comprising Prof. (Dr.) Gaurang D. Rami, Prof. (Dr.) Manoranjan Kumar, Prof. (Dr.) Aman Deep Singh, Prof. (Dr.) Rohit Bhaskar Jadhav, and Ms. Krishna Agarwal, for their meticulous reviews and invaluable contributions to maintaining the academic integrity of this volume.

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In Honour of Prof. Thomas S. Ulen's legacy in the evolution of Law and Economics: Reflections on the Rise, Reception, and Future of Law and Economics

- *Thomas S. Ulen*[1]

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Abstract

This piece was originally written by Prof. (Dr.) Thomas S. Ulen as the foreword to the edited book "Economic Analysis of Law and Governance," and is reproduced here as a dedication to Prof. (Dr.) Thomas S. Ulen. This foreword reflects on the reception of law and economics in the Indian legal academy and bar, situating this reception within the discipline's own history in the United States. Drawing on Thomas Kuhn's account of paradigm shifts, Prof. Ulen draws an analogy between the rise of law and economics with the displacement of the geocentric model by the helio-centric one, while cautioning that unlike astronomy, law and economics need not displace doctrinal scholarship but can coexist alongside it. He surveys the discipline's global spread, and the persistence of confirmation bias among scholars and practitioners alike. Finally, he closes with predictions for the future of law and economics in public health law, legal history, comparative law, and above all the growing importance of empirical data in legal scholarship.

We are reproducing this Foreword here in honour of Prof. Ulen's legacy and his invaluable contributions to the genesis and evolution of Law and Economics at GNLU and other universities in India. We are publishing this foreword along with the lectures delivered by Prof. Ulen during the 03rd GNLU Workshop on Law and Economics: Theories and Applications, organised by the GNLU Centre for Law and Economics in the fall of 2022.

Keywords: *Law and Economics; Legal Education in India; Legal Scholarship Methodology; Doctrinal and Interdisciplinary Legal Analysis; Empirical Legal Studies; Comparative Law*

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[1] Swanlund Professor Emeritus, University of Illinois at Urbana-Champaign, and Professor Emeritus, University of Illinois College of Law.

This piece was originally written by Prof. (Dr.) Thomas S. Ulen as the Foreword to the edited book *Economic Analysis of Law and Governance*, edited by Ranita Nagar and Hiteshkumar Thakkar (2022) and published by the GNLU Centre for Law and Economics and Eastern Book Company (EBC).

1. Introduction

I am honored to have been asked and extremely pleased to write this introduction. Many of the readers of this book know law and economics and have contributed to the growth of that discipline in India and elsewhere. They will understand what I am about to tell you about why it gives me such pleasure to write this Foreword to the edited book *Economic Analysis of Law and Governance* by Nagar and Thakkar (2022).

First, my many interactions with the Indian legal academy have invariably been enjoyable and constructive. Clearly, Indian professors have not only discovered law and economics but have found it to be an attractive and useful way to address legal issues. Their enthusiasm for the subject is infectious.

Additionally, I have been heartened by the apparent interest of the practicing Indian bar in law and economics. Members of that distinguished group have attended some of the talks I have given and have asked penetrating questions about the subject matters of my lectures. I hope very much that the bar truly finds the academic work in our field useful.

That last comment recalls the growing pains that law and economics suffered in the United States. I want to comment on those pains involved in getting the legal academy to accept law and economics and then the different pains involved in getting the practicing bar to recognize that there is much in the law-and-economics literature that they might find to be useful to them. I hope that you are spared both of those pains, but if you are not, I assure that there is "light at the end of the tunnel." Your persistence will pay off.

When law and economics first appeared as an innovation that attracted economic and legal attention – roughly around 1980, there was a great deal of skepticism in the U.S. legal academy about whether this scholarly innovation would contribute anything useful. I would call some of that skepticism "prudent" in the sense that it raised questions that any academic discipline should raise if a scholarly innovation questions the central paradigm prevailing in that discipline and that the innovators should be prepared to answer. Most academic disciplines have a tested and long-standing set of assumptions and a core methodology that have served the discipline and its practitioners well. They do not abandon those things lightly.

2. Prof. Kuhn's Reading of Legal Innovation

Thomas Kuhn's study of how a scholarly innovation succeeds in displacing the prevailing paradigm and thereby affecting what he called a "scientific revolution" is fascinating and applicable to law and economics (Kuhn, 1996). He says that the innovators point out some previously unremarked phenomena that cannot be easily explained by the prevailing paradigm. For example, in the "geocentric model" of our planetary system (the model that Copernicus, Kepler, Brahe, and others overthrew), all the planets and the sun were said to revolve around the Earth. Some observers found "anomalies" (the word is from Kuhn) in the movement of some planets: They appeared to stop their steady passage across the sky and to reverse the direction in which they were traveling and then, after a while, to reverse their direction again to resume the original path. These loops in planetary orbits were odd and not easily explained within the prevailing geocentric model. An alternative theory – the "heliocentric model," which put the Sun at the center of our Solar System – offered a simple but, for some, troubling explanation for the anomaly of planetary loops: They are the result of the Sun's being at the center of system and of all the planets, including the Earth, revolving around the Sun. The implication of those championing the new model was that if one could observe the movement of the planets from the Sun, at the center of our solar system, the anomalous movements – the loops in the orbits of the planets – would disappear.

The proponents of the geocentric model attempted to explain the eccentric movement of the planets (and thereby to preserve their model against the innovators), but those attempts made the geocentric model exceedingly complex and inflexible. In contrast, the heliocentric model not only easily accommodated the anomalies but also led to additional discoveries that probably would not have been made under the old paradigm.

The triumph of the heliocentric model was not quick or easy. The geocentric model was entangled with theological conceptions that placed humans (and their planet) at the center of the divinely created heavens, as if God arranged the solar system to highlight Humans as his crowning achievement. So, rejecting the geocentric model was much more than a mere scientific dispute. It threatened the deepest theological conceptions of the time. Remember that in 1633 the Catholic Church tried Galileo Galilei (who had just published his Dialogue Concerning the Two Chief World Systems) for heresy and forced him to abjure his contention that the Earth revolved around the Sun.[2]

I do not think that it is too arrogant of those who profess law and economics to suggest that their scholarly innovation has been to traditional doctrinal legal scholarship what the

[2] There is a famous account, perhaps apocryphal, that Galileo muttered to his Inquisitors after his abjuration, "And yet it moves," referring to the Earth. See https://blogs.scientificamerican.com/observations/did-galileo-truly-say-and-yet-it-moves-a-modern-detective-story/.

heliocentric model of the Solar System was to the geocentric model.[3] But there are limits to this analogy. In the battle between the heliocentric and geocentric models, one or the other had to triumph. They could not co-exist. That is not so as between law and economics, any of the other "law ands," and traditional doctrine analysis. There is room for all of those perspectives to coexist and supplement one another in legal analysis.

3. Why Innovations Succeed: Evidence, Utility, and the Limits of Confirmation Bias

We know that in most (but not all) instances of scholarly innovation, there is a pitched academic battle between the proponents of the old paradigm and those of the new paradigm. These battles are often generational, with the older, established professors arguing in favor of the old paradigm and younger, up-and-coming professors arguing in favor of the innovative paradigm. This general perception prompted the great physicist Max Planck to quip that science advances funeral by funeral.[4]

I do not want to leave this matter with that cynical thought. My experience has been that in any scholarly discipline, an innovation must prove its worth before being accepted. This is typically not a political battle or one in which money and special interests play a significant role. Rather, scholarly disciplines accept a new way of viewing their subject matter only after its proponents have shown by more than a preponderance of the evidence (and, perhaps, almost "beyond a reasonable doubt") that their innovation is useful. That utility can have multiple dimensions – including helping to explain better the anomalies that the current paradigm has trouble explaining; helping to make the disparate parts of a discipline cohere better; translating academic concerns into useful practices in medicine, business, education, legal practice, economic policy, and so on; and answering old conundrums in the field.

I want to make one final observation on this matter. In most people's lives, they do not change their minds in response to persuasive argumentation, including the presentation of compelling evidence. Rather, their practice is to seek out (or give greater weight to) evidence that confirms their prior beliefs (a practice psychologists call the "confirmation bias"). Consider, for example, the reasoning of those reluctant to be vaccinated against Covid-19.

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[3] I once gave a talk to a professional society of faculty from many different disciplines in which I talked about the revolution in the legal academy that law and economics was creating. In the question-and-comment session after the talk, I was astonished (and heartened) to learn from professors in physics, geology, engineering, biology, and economics (among other scholarly areas) that their disciplines had all gone through a significant paradigm change during their careers.

[4] More precisely, Planck said, "A new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it." (2017).

Their reasons range from the absurd ("I've heard that the vaccine contains a microchip that when inserted into your bloodstream, causes you to vote for Biden") to the misguided ("The authorities have not required the manufacturers to go through the usual tests for new vaccines"). I think that the most compelling evidence is that showing that more than 90 percent of those who have died of Covid-19 since the availability of vaccines in January, 2021, were unvaccinated. And yet I do not think that that evidence has changed many people's minds.

While some in academia suffer from confirmation bias, one of the defining glories of great universities is that they are places whose people – faculty, students, alumni, and staff – seem to me to be less likely to suffer from the confirmation bias. Indeed, I would go so far as to say that one of the most important things that we teach at great universities is not so much the details of our various disciplines but the methods of critical inquiry by which we live and that we practice daily in our professional scholarship. So, although I think that Planck's wonderful quip has a kernel of truth, it misses something essential about academic inquiry. After all, there are very few academic innovations that survive if they are wrong (consider alchemy) and very few innovations that should have triumphed but ultimately did not transform their discipline.

The early years of law and economics in the United States and Western Europe (the areas I am most familiar with) were characterized by strife between the innovators and the traditionalists.[5] I am happy to report that by the early 1990s most of the reluctance to admit law and economics to a place in the U.S. and Western European legal academies had ended. I would like to think that this happened because those professing law and economics persuaded their colleagues that their innovation was worthwhile. From that point on, law and economics has become part of the standard curriculum of most North American law schools – either as a stand-alone course or as a discipline whose findings are routinely covered in more traditional law school courses – and a tool that al-most every law professor in North America has in her toolkit.

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[5] I should qualify this assertion by noting that in the early 1980s the faculty members of the University of Illinois College of Law – all of them distinguished traditional, doctrinal legal scholars – welcomed me, a traditional economist, onto their faculty with open arms and warmth. They exhibited nothing more than a healthy skepticism that I could dispel by demonstrating in my teaching, scholarship, and collegial activities that I was as productively concerned with explaining and analyzing the law as they were. In my wildest dreams I could not have imagined a more fulfilling place to have worked.

4. From Academic Curiosity to Practical Tool

Above I noted that for a scholarly legal innovation to be truly effective, it must move beyond being something that only professors in a discipline discuss and care about. It must become some-thing that practitioners use.[6] For too long, law and economics was, alas, something that only academics recognized as exciting. It did not immediately make its way into legal practice in obvious or dramatic ways. There are, of course, examples of law and economics having had an influence on some practice areas, such as criminal law, litigation, environmental regulation, corporate law, bankruptcy law, and more. But there is also a famous literature criticizing the academy's infatuation with law and economics to the exclusion of developing useful tools for practitioners, especially judges.[7] I think that this criticism is overdrawn, but I also think that there are things that law and economics could have done to minimize these complaints. For example, we could have been less messianic in our urging traditionalists to abandon their doctrinal studies in favor of learning economics, then psychology, and now empirical techniques. We might have found ourselves more congenially welcomed if we presented our tools as supplements, not replacements, for their traditional interpretive tools[8] (Garoupa & Ulen, 2021).

I am extremely heartened to see that law and economics is also becoming popular and of use to an ever-increasing number of countries and regions around the world. The indications of this growth are several: the increasing number of national and regional professional associations devoted to law and economics; the increasing number of languages into which the text by Bob Cooter and me has been translated; the percentage of our text's sales coming

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[6] The same movement from academy to practice is true of medicine, journalism, education, business, and the other disciplines within the modern university that have a strong connection to a distinct profession.

[7] See, for example, Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993); Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession,"* 69 WASH. L. REV. 561 (1994); Ronald K.L. Collins & Harry T. Edwards, *On Legal Scholarship: Questions for Judge Harry T. Edwards*, 65 J. L. EDUC. 637 (2016). Judge Edwards was a distinguished professor at the University of Michigan Law School before joining the federal judiciary. For a persuasive contrary view, see – among many other writings – RICHARD A POSNER, HOW JUDGES THINK (2008); Richard A. Posner, *What Is Wrong With the Federal Judiciary, Part I*, 19 GREEN BAG 2D 187 (2016); Richard A. Posner, *What Is Obviously Wrong with the Federal Judiciary, Yet Eminently Curable, Part II*, 19 GREENBAG 2D 257 (2016); RICHARD A. POSNER, DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY (2016), and RICHARD A. POSNER, THE FEDERAL JUDICIARY: STRENGTHS AND WEAKNESSES (2017).

[8] Put in the terms of Kuhn's famous model, those of us who were drawn to law and economics did not need to characterize their innovation as the heliocentric model to the traditional geocentric model. That is, the battle was not a clash of paradigms in which only one could succeed and the other would be banished. It was, rather, about whether economic tools could and should be part of a lawyer's standard tool kit, alongside the doctrinal tools that had and still serve legal analysis so well.

from foreign users; the in-creasing number of Zoom talks and classes that we give to foreign audiences; and more.

5. Looking Ahead: Future Directions for the Discipline

Nonetheless, there is still much work to be done using the tools of law and economics. I cannot presume to imagine all the ways that scholars of the future will find to use law and economics. We will be surprised, I am sure, by the inventiveness and creativity with which they do their scholar-ship. But I can guess about some general topics and directions that are likely to attract the attention of future law-and-economics scholars.

One prediction that I am confident in making is that matters of public health will be of interest. What legal policies can we adopt that either minimize the likelihood of pandemic disease arising or equip us to better serve the public if another virus arrives to ravage humanity? What role can law play to help spur the further development of novel vaccines? And what role can legal tools like nudges and mandates play in helping to increase the rate of vaccination against novel diseases?

There is still much work to be done in specifying the role that law plays in economic development – not just in increasing the rates of GDP growth and GDP per capita growth but also in making societies happier (Kenny, 2011).

As a general matter, I am confident that data analysis will continue to grow as an important part of legal scholarship. Legal scholarship has recently embraced empirical analysis as an exciting and informative addition to doctrinal and economic analysis. But there is so much more to do. In many cases, we simply do not have the data that we must have to measure the effectiveness of legal policies. To further that analysis every society needs to develop a plan for gathering data on legal matters. There is almost no limit to the methods that might be used to gather those data – surveys, interviews, archival research, recordation of all information about legal disputes and how they are disposed of, and more. There are so many gaps in our data about legal matters that we either ignore the empirical side of our legal analysis or resort to experiments that, while informative, could be usefully supplemented by comprehensive cross-sectional, panel, and longitudinal real-world data.

I am also confident that as law and economics spreads around the world's legal academies and practitioners that the historical, cultural, governance, and resource differences among the almost 200 countries in the world will generate fascinating studies of why some areas of law are similar across national and regional borders while other areas are different and distinctive. I am aware that comparative law has studied these matters for decades. But that field has not yet brought the full force of the tools of law and economics to bear on its subject (Garoupa & Ulen, 2021).

Similarly, legal historians have contributed fascinating studies of the development of legal systems. With only a few exceptions,[9] however, they have not brought the full force of law and eco-nomics to the study of legal history. That sort of cross-disciplinary history has been extremely fruitful in other instances, such as economic history; so, I see no reason why it cannot be similarly productive in economic legal history.

6. Lectures on Law and Economics by Prof. (Dr.) Thomas Ulen (Delivered at 03rd GNLU Workshop on Law and Economics 2022)

GNLU Centre for Law and Economics organised the 3rd GNLU Workshop on Law and Economics – Theories and Applications from 12th September to 18th September 2022. The Workshop was graced by the presence of participants from across India and abroad, including research scholars from Rotterdam University, students and professors from National Law Universities, among others. During the workshops across seven days lectures were delivered by many eminent scholars such as, Prof Ram Singh, Prof. Regis Lanneau, and including Prof. (Dr.) Thomas Ulen.

6.1. Lecture 1: Introduction to Law and Economics (GNLU Centre for Law and Economics, 2022a)

This lecture on "Introduction to Law & Economics" delivered by Prof. (Dr.) Thomas Ulen gives a brief introduction to basic concepts and principles of Law and Economics. Particularly, he introduces the microeconomic approach in analysing law's impact on human behaviour. He differentiates positive analysis, which considers how people are likely to behave, from normative analysis which focuses on how laws should be designed and enforced. Law creates incentives through consequences, or "prices," for people to behave in certain way with an assumption that people will respond to those incentives. He also highlights the importance of *ex ante* and *ex post* analyses, thus stressing the need to analyse how legal rules affect behaviour even before a dispute arises.

Discussion is based on transaction costs and Ronald Coase's idea that low transaction costs would allow bargaining to produce efficient allocation, while high transaction costs may

[9] For an exception, see the scholarship of Dan Klerman – for example, Klerman, "Economic Analysis of Legal History," in ULEN, ED., THE METHODOLOGIES OF LAW AND ECONOMICS (2017).

require the intervention of law (Coase, 1960). He then applies this reasoning to fields such as torts, property and liability, and contractual remedies. Further, he discusses the relationship between law and social norms with the use of the ideas developed by Robert Ellickson, to prove that individuals do not behave solely based on the law, but sometimes due to social norms as well (Ellickson, 1998).

In the end, he gives his insights on limitations of markets and the prospect of monetary motivation leading to unintended outcomes, as demonstrated in Daycare-Fine Experiment (Gnezzy & Rustichini, 2000). Prof. Ulen hence argues that while tackling social issues, one has to consider markets, law, and social norms together. He also speaks about social costs, which are cases where an individual action causes costs to others, and that those individuals should account for such externalities.

Overall, the session emphasized that Law and Economics is a way of analysing the interplay of legal rules, incentives, markets, transaction costs, and social norms.

***6.2. Lecture 2: Coase Theorem** (GNLU Centre for Law and Economics, 2022b)*

Prof. Thomas Ulen's lecture explains how economics approaches property rights differently from traditional property law by focusing on the efficient use of scarce resources and the role of property rights in achieving that efficiency. The central idea is the Coase Theorem, based on Ronald Coase's *The Problem of Social Cost*, which states that when transaction costs are zero or very low, parties can bargain and reach an efficient allocation of resources regardless of how the law initially assigns the right (Coase, 1960). Prof. Ulen identifies three main transaction costs namely; search, negotiation and enforcement costs and explains through the farmer and rancher example that where these costs are low, private bargaining can lead to the most efficient outcome. However, when transaction costs are high and bargaining is not possible, law becomes important, and the court may have to undertake a "hypothetical market transaction" to determine to whom the legal right is more valuable.

The lecture then turns to the law and economics of intellectual property, which is particularly important because innovation is one of the major drivers of economic growth (Solow, 1956) Prof. Ulen explains that information is different from real property because it is non-material and non-rivalrous in consumption, meaning that one person can use an idea without preventing another from using it. Since information is also difficult to appropriate once disclosed, there may be too little incentive to produce it therefore, society can respond by subsidising its production, producing it publicly or giving the creator an enforceable property interest. However, certain works such as recipes, magic tricks and comedy routines, may instead be protected through strong social norms.

Unlike real property, intellectual property is generally limited in duration. Prof. Ulen uses patents to ask why protection is fixed and why it is not adjusted according to the social value of an invention. The reasons he notes is that a patent may create a monopoly right and therefore a social cost, but patent duration is an ex-ante rule meaning, when protection is granted, we do not yet know how valuable the invention will become or how easily it can be substituted. Copyright raises a similar balance, because later creators often build on earlier works. His example of *Pyramus and Thisbe*, *Romeo and Juliet* and *West Side Story* shows why protection cannot continue forever, while the falling cost of copying explains the need to preserve incentives for creators (Landes & Posner, 2003). Trademarks differ because they may last indefinitely in competitive markets, although marks such as Aspirin or Xerox may become generic.

The broader point is that different kinds of property require different forms of protection, and the law must structure these rights in a way that encourages creation and efficient use without creating unnecessary social costs.

6.3. Lecture 3: Tort liability and Insurance (GNLU Centre for Law and Economics, 2022c)

The economic analysis of tort law originated in the 1960s after Guido Calabresi applied Ronald Coase's insights from "The Problem of Social Cost" to accident law (Coase, 1960; Calabresi, 1970). The lecture develops this to discuss that the economic objective of tort law is to minimise the total social costs of accidents. Prof. Ulen discusses that these social costs consist of three distinct elements: precaution costs (expenses incurred to prevent accidents), accident losses and administrative costs.

When bargaining between two strangers who have been involved in an accident is prevented by high transaction costs, tort law steps in to internalise the social costs that their activities impose on others. Now, in a tort law regime, the parties are under a veil of ignorance, as they don't know ex ante whether they will be the victim or the injurer (Rawls, 1971). Therefore, rational actors here will take a cost-justified precaution up to the point where its marginal cost equals its expected marginal benefit.

The discussion distinguishes between negligence, which incentivises care in bilateral situations where both parties can prevent harm, and strict liability, which is more efficient for unilateral risks. A negligence standard exonerates an injurer from liability if their level of care meets or exceeds the social-cost-minimising legal duty. Here, because the potential victims assume that the level of care will be met, they also take the necessary precautions, leading to bilateral precaution. Under strict liability, an injurer is liable for harm caused regardless of their level of care, though rational injurers still take cost-justified precautions to minimise their expected liability. Because victims are relieved of any legal duty to take care, strict liability is most efficient in unilateral precaution contexts where only the injurer can minimise risk.

He then discusses the real-world application of this theory when actors are not usually rational. In this case, while insurance can introduce moral hazard and adverse selection, insurers mitigate these issues through deductibles, coinsurance, and experience rating, thereby maintaining care incentives.

Towards the end, Prof. Ulen explains how ex ante safety regulations and ex post tort liability complement each other by reducing accident costs while addressing the limitations of relying solely on either mechanism.

6.4. Lecture 4: Economics of Crime & Punishment *(GNLU Centre for Law and Economics, 2022d)*

The economics of contracts, torts, and other private issues helps private entities deal with issues that arise amongst them, or rather avoid them altogether. The area of crime differs completely as it does not deal with just a private entity; a crime is committed against the state, all of us. The lecture traces the economic analysis of crime and punishment from its foundational theory to its most consequential empirical tests. The central theme is Gary Becker's rational-choice model of criminal behaviour, which holds that individuals weigh the expected benefits of a crime against its expected costs, the probability of detection, arrest, and conviction, multiplied by the severity of the resulting sanction, and offend only when benefits exceed costs (Becker, 1968).

Unlike property, contract, and tort law, criminal law is uniquely amenable to empirical testing, and the lecture traces how Becker's theory shaped real-world policy, including the U.S. Sentencing Commission's push toward determinate sentencing and the fourfold rise in American incarceration between 1980 and 2012. A theory being coherent, however, does not make it correct, it must survive contact with data. Isaac Ehrlich's early work found a strong deterrent effect from capital punishment, but this was later undermined by Donohue and Wolfers's comparative analysis of U.S. and Canadian homicide trends, which showed the two countries' rates moving in lockstep despite sharply diverging death-penalty policies, suggesting execution was not the operative variable (Donohue & Wolfers, 2005).

Particular attention is devoted to Donohue and Levitt's controversial finding that the legalization of abortion after Roe v. Wade (1973) accounts for roughly half of the 1990s crime decline, through both a "cohort size" effect (fewer young men in the highest-crime-prone age group) and a more contested "cohort quality" effect (children born under more favourable circumstances) (Donohue & Levitt, 2001). These findings are weighed against rival explanations, policing levels, the receding crack epidemic, and pandemic-era disruption, while returning throughout to the broader methodological point: a theory's internal coherence, however elegant, is never sufficient; it must be tested against evidence, and efficiency, however analytically powerful, is not the same thing as justice.

*6.5. Lecture 5: **Behavioural Law and Economics** (GNLU Centre for Law and Economics, 2020e)*

In this lecture, Prof. Thomas Ulen discusses behavioural law and economics, examining how human behaviour departs from standard rational choice theory because individual and group decision-makers are imperfectly rational. The decision-making of a human can be clouded by status quo bias, confirmation bias, overoptimism or the endowment effect. This can be further explained in the light of assignment of legal rights under the Coase theorem where transaction costs can exist in form of certain biases. To address these cognitive flaws, he explores public policy mechanisms for example shifting from a rule of presumed denial to the rule of presumed consent. Furthermore, he delves into the dual system of thinking contrasting fast, intuitive "system 1" with slow, deliberative, logical "system 2" thinking as measured by the cognitive reflection test, and illustrates how cognitive disfluency and rules of criminal legal procedure forces decision-makers to use system 2 reflection. Further, he demonstrates application of this understanding in contract framing and contract remedies.

He concludes by giving a snapshot of application of behavioural law and economics in other areas of law like bankruptcy. Additionally, he states his criticism of behavioural economics and that regulating for rationality should be more evidence-based than regulating for traditional market imperfections.

***6.6. Lecture 6: The Why, the How, and the Pitfalls of Empirical Legal Studies** (GNLU Centre for Law and Economics, 2021)*

Prof. Thomas Ulen explains the place of empirical legal studies (ELS) within legal education and research. Traditionally, legal education has focused mainly on the practical aspects of lawyering and judging, along with doctrinal and jurisprudential analysis. The law-and-economics movement, particularly from the late 1970s and 1980s onwards, introduced economic methods into areas such as property, business associations and criminal law. This encouraged scholars to move beyond theoretical arguments and examine legal rules through empirical evidence. Instead of only asking whether a legal rule was theoretically efficient, researchers could formulate hypotheses and test them against actual behaviour and available data.

Prof. Ulen refers to the minimum-wage debate as an example of the importance of empirical research. The traditional economic argument suggests that an increase in the minimum wage would increase the cost of employing low-skilled workers and therefore lead to unemployment. However, the research of David Card and Alan Krueger (2015) challenged this assumption., they examined employment data and found no evidence that increases in the minimum wage necessarily resulted in employment losses for low-skilled workers. The example demonstrated how empirical evidence can be used to test established economic predictions about the effects of legal and policy changes.

Prof. Ulen further discusses some of the difficulties involved in conducting empirical legal research. One difficulty is that many concepts relevant to law and economics are difficult to measure directly. Researchers may not have sufficient information about how often commercial contracts are performed, renegotiated or disputed. In such situations, he suggested that researchers can examine observable changes in behaviour following a change in the law and use such changes as evidence of the law's effects.

Towards the end of the lecture, Prof. Ulen emphasised that empirical legal studies should not be understood as being limited to quantitative methods. Qualitative evidence, historical evidence and other forms of evidence can also contribute to understanding how legal rules operate in practice. The broader purpose of ELS, therefore, is to examine the relationship between law and actual behaviour using evidence, while remaining conscious of the limitations of the available data.

7. Concluding Remarks

Finally, I want to stress that the business and pleasure of being involved with a worldwide community of scholars is learning from them and enjoying their scholarly contributions, like those collected in this volume. Our profession is collaborative, cumulative, and collegial. Borrowing from Sir Isaac Newton's famous and memorable description of the sciences,[10] we might say, "If we can see further, it is because we are standing together on the shoulders of those who went before us, side-by-side with legal scholars from all over the world."

[10] In a letter to Robert Hooke, dated February 5, 1675, Newton wrote, "If I have seen further, it is by standing on the shoulders of giants."

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Deconstructing Income Inequality: A Multi-Metric Analysis of Regional Disparities in India

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Abstract

Despite three decades of sustained economic growth, income inequality across Indian states has widened, with persistent rural-urban disparities. Paper argues that inequality is fundamentally a legal and institutional problem, not merely an economic one. Using a multi-metric empirical framework integrating the Gini coefficient, percentile ratios, Generalized Entropy (GE) indices, and the Atkinson index we analyse income inequality across High, Moderate, and Low Net State Domestic Product state groups, identified through Z-score standardisation, supplemented by OLS regression and Theil index decomposition. Moderate NSDP rural areas record the highest inequality (Gini = 0.4849; p90/p10 = 15.656; A(1) = 0.394), while High NSDP urban areas exhibit rising top-end wealth concentration (GE(1) = 0.1969). Financial inclusion emerges as the strongest predictor of reduced inequality ($\beta = -0.31$, $p < 0.01$). Theil decomposition reveals that 58% of total inequality is intra-state, rendering inter-state fiscal transfers insufficient as a standalone remedy. The paper recommends targeted reforms to the Direct Benefit Transfer framework, labour law, agricultural market regulation, and progressive taxation to address India's structural inequality.

Keywords: *Income Inequality, Law and Economics, Fiscal Federalism, Gini Coefficient, Atkinson Index, Institutional Economics, Regional Disparities, India, NSDP, Redistribution.*

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

1. Introduction

India's economy has grown steadily over the past three decades. But growth alone has not reduced inequality. Income disparities between states have widened, and the gap between rural and urban households remains large. The top 1% income share rose from around 6% in 1982 to over 22% by 2014 (Chancel & Piketty, 2019). At the same time, millions of households in the lowest income deciles remain excluded from the benefits of economic expansion (Asher & Novosad, 2020; Piketty, 2014).

This paper argues that income inequality in India cannot be understood through economics alone. Legal frameworks play an equally important role. Property rights, labour law, agricultural market regulation, fiscal transfers, and welfare delivery systems all determine whether growth reaches the poor. When these frameworks are poorly designed or weakly enforced, inequality persists even when the economy grows. The Industrial Disputes Act, 1947, the APMC Acts, and the Aadhaar-linked DBT architecture are not peripheral to the inequality debate — they are central to it.

This study examines income inequality across Indian states in two steps. First, states are grouped into High, Moderate, and Low NSDP categories using Z-score standardisation. Second, four inequality measures are applied: the Gini coefficient, percentile ratios, Generalized Entropy (GE) indices, and the Atkinson index. These are supplemented by OLS regression and Theil decomposition. The empirical analysis is then connected to a systematic examination of the legal and institutional structures that shape inequality outcomes.

Three findings stand out. Moderate NSDP rural areas have the worst inequality in the sample (Gini = 0.4849; p90/p10 = 15.656; Atkinson A(1) = 0.394), driven by both severe lower-end deprivation and growing wealth at the top. High NSDP urban areas have rising wealth concentration despite lower overall inequality (GE(1) = 0.1969). And 58% of total inequality is within states, not between them — which means that equalising average incomes across states through fiscal transfers will not solve most of India's inequality problem. The paper is structured as follows: Section 2 covers data and methodology; Section 3 develops the law and economics framework; Section 4 presents the results; Section 5 offers policy recommendations; and Section 6 concludes.

2. Data Sources and Methodology

1.1 Primary Data

The main dataset comes from the Consumer Pyramids Household Survey (CPHS), conducted by the Centre for Monitoring Indian Economy (CMIE). We use the September-to-December 2022 wave, which covers approximately 174,000 households across rural and urban India. This provides detailed income data at the household level. For state classification, we use Net State Domestic Product (NSDP) per capita figures for 2022-23, sourced from the Reserve Bank of India (RBI). Combining household-level income data with state-level NSDP allows us to analyse inequality both within and across economic development tiers.

1.2 Data Limitations

The CPHS has known limitations that affect this analysis. First, the survey underrepresents lower-income and marginalised households, which may lead us to underestimate inequality at the lower end of the distribution (Somanchi, 2021). Second, CPHS income data is not directly comparable to NSSO or PLFS estimates because of differences in how income is defined, the reference period, and the sampling method. Third, the survey leans slightly urban in some waves, which may affect rural-urban comparisons. The estimates in this paper should therefore be read as indicators of structural patterns and relative differences, not as exact absolute measures. Future research should validate these findings using NSSO 77th Round and PLFS 2022-23 data.

1.3 State Categorisation Using Z-Score Standardisation

States are divided into three groups — High NSDP, Moderate NSDP, and Low NSDP — using Z-score standardisation. The Z-score for each state's NSDP per capita is:

$$Z = \frac{NSDP_{state} - NSDP_{mean}}{NSDP_{std\_dev}}$$

where X is the state's NSDP per capita, μ is the national mean (₹1,31,244), and σ is the standard deviation (₹66,491). States with $Z > 0.5$ are High NSDP; those with $-0.5 \leq Z \leq 0.5$ are Moderate NSDP; and those with $Z < -0.5$ are Low NSDP. This method avoids arbitrary thresholds and is consistent with approaches used in regional convergence and development studies (Barro & Sala-i-Martin, 1992; Gennaioli et al., 2014). Detailed state-wise classifications are in Appendix Table A2. We tested alternative thresholds (Z = 0.3 and Z = 0.7) as robustness checks; results do not change direction across any specification.

1.4 Multi-Metric Inequality Framework

No single inequality measure tells the full story. The Gini coefficient gives a broad summary of inequality but does not show where in the distribution the problem lies. Percentile ratios (p90/p10, p90/p50, p10/p50, p75/p25) show how different income groups compare to each other. The Generalized Entropy (GE) indices decompose inequality by its source: GE(-1) highlights deprivation at the bottom; GE(0) captures proportional gaps across all income levels; GE(1) reflects concentration at the top; and GE(2) is most sensitive to very large gaps at the top. The Atkinson index adds a welfare dimension. It measures how much income society could give up without reducing welfare if income were distributed equally, based on the degree of inequality aversion epsilon (Atkinson, 1970). Together, these four measures provide a layered and complete picture of inequality across India's economic geography.

1.5 NSDP-Based State Classification

High NSDP states — including Delhi, Gujarat, Tamil Nadu, and Karnataka — have strong industrial and service sectors, high urbanisation, and good infrastructure. Despite lower overall inequality, they show rising wealth concentration among top earners, consistent with evidence from Chancel and Piketty (2019). Moderate NSDP states — such as Andhra Pradesh, West Bengal, Punjab, and Haryana — have large urban centres alongside substantial rural populations that depend on agriculture and informal work. This creates a sharp internal rural-urban divide. These states record the highest inequality in rural areas (Gini = 0.4849). Low NSDP states — including Bihar, Jharkhand, Chhattisgarh, and Uttar Pradesh — are largely agrarian and have limited industrial development. Inequality here is more evenly spread across income levels, driven mainly by widespread low incomes rather than extreme wealth at the top.

1.6 Econometric Framework

To test the statistical significance of inequality determinants, we use an OLS regression model:

Gini_it = alpha + beta_1(NSDP per capita)_it + beta_2(Urbanisation Rate)_it + beta_3(Financial Inclusion Index)_it + beta_4(Education Attainment)_it + beta_5(Labour Participation)_it + epsilon_it

Financial inclusion is measured by commercial bank branches per 100,000 population (RBI, 2023). Education attainment is the share of population with secondary or higher education (Census of India, 2011). Labour participation comes from the PLFS 2022-23 (Ministry of Labour & Employment, 2023). We also use a Theil index decomposition to separate inequality within states from inequality between states. This tells us how much of the overall inequality problem comes from gaps between states versus gaps within them.

3. Theoretical Framework: A Law and Economics Perspective

The study of income inequality draws on economics, law, and political economy. Atkinson (1970) laid the normative foundation for inequality measurement, showing how statistical measures connect to social welfare functions that reflect society's values about fairness. Sen (1976, 1999) extended this by arguing that inequality is fundamentally about capability deprivation, not just income distribution. Both insights inform this paper's emphasis on legal and institutional barriers as key drivers of persistent inequality. Piketty (2014) showed historically that market economies tend toward rising inequality unless progressive institutions and redistribution actively counteract it. For India specifically, Chancel and Piketty (2019) found that the top 1% income share more than tripled between 1982 and 2014. Bharti (2021) confirmed that this concentration has continued into the 2020s.

In the Indian context, several studies have identified the structural roots of inequality. Deaton and Dreze (2002) documented the widening rural-urban divide and the limited reach of trickle-down growth after liberalisation. Himanshu (2018) showed that consumption-based measures understate income inequality and that the upper deciles have captured most of the gains from reform. Asher and Novosad (2020) found that rural stagnation persists because access to non-farm employment remains limited. Ghosh et al. (2021) established a strong negative link between financial inclusion and rural inequality, a finding our regression confirms directly. Deshpande (2022) highlighted how caste intersects with income distribution, showing that legal frameworks on affirmative action and land tenure have complex distributional effects in practice. On fiscal federalism, Rao and Singh (2020) found that Finance Commission transfers partially reduce but do not eliminate spatial inequality, consistent with our Theil finding that 42% of inequality is between states.

The law and economics tradition has increasingly engaged with inequality as an institutional problem. Kaplow and Shavell (2002) formalised the efficiency-equity trade-off, arguing that redistribution should happen through the tax-transfer system, with other legal rules designed for efficiency. Acemoglu and Robinson (2012) showed empirically that inclusive institutions — secure property rights, impartial rule of law — are necessary for sustained equitable growth. De Soto (2000) identified the formalisation of property rights as the specific channel through which lower-income groups gain access to capital markets, which is directly relevant to the financial exclusion documented in Low and Moderate NSDP rural areas. North (1990) established the core framework linking institutional quality to long-run income distribution, which underpins the legal-institutional analysis.

3.1 Welfare Economics and Social Welfare Functions

The inequality measures in this study are grounded in social welfare theory, not just statistics. The Atkinson index A(epsilon) is derived from a social welfare function W = SigmaU(y_i), where U(.) has diminishing marginal utility parameterised by epsilon. The index equals 1 - (EDE/μ), where EDE is the 'equally distributed equivalent' income — the income level that, if received by everyone, would produce the same social welfare as the actual distribution. This gives the index a concrete meaning. The A(1) = 0.394 in Moderate NSDP rural areas means that society could achieve the same welfare by distributing just 60.6% of current income equally. In other words, 39.4% of current income is wasted, in welfare terms, because of how unequally it is distributed. This framing matters for policy: it gives a measurable basis for comparing the urgency of redistribution across regions and for assessing the returns from different policy instruments. The GE indices also have formal welfare foundations, corresponding to the Theil class of social welfare functions, which justifies using them for decomposition analysis.

3.2 Institutional Economics and Property Rights Theory

Institutions — the formal and informal rules that govern economic activity — are the main long-run determinant of inequality outcomes (North, 1990; Acemoglu & Robinson, 2012). Rural areas in India face a set of institutional constraints that limit income mobility: land tenure is often insecure, formal credit is largely inaccessible, contracts are hard to enforce, and labour rights are not portable across states. These constraints hit the poorest hardest. De Soto (2000) made this point sharply: when smallholder land cannot serve as collateral, it is 'dead capital' — an asset that exists but cannot be mobilised to generate income. This explains why GE(-1) values are high across all rural categories in our sample. Lower-income rural households are not just poor; they are structurally excluded from the mechanisms —

credit, insurance, formal employment — that would allow them to move up the income distribution.

3.3 Efficiency-Equity Trade-offs in Redistribution Law

A key question in redistribution law is whether equity gains from redistributive policies come at the cost of economic efficiency. Kaplow and Shavell (2002) argue that redistribution should be handled entirely through the income tax system, leaving other legal rules to pursue efficiency. This works when the tax base is comprehensive. In India, the income tax covers only around 7-8% of the workforce. Most rural workers in Low and Moderate NSDP states are informal and entirely outside the formal tax net. This means that non-tax legal mechanisms — MGNREGA, DBT, APMC price regulation, and land reform — carry a much larger share of the redistribution burden than they would in a more formalised economy. The efficiency-equity trade-off in each of these instruments is therefore not just a theoretical concern; it is a practical design problem with real distributional stakes, examined in Section 3(e).

4. Legal-Institutional Architecture and Income Inequality in India

4.1 Constitutional Fiscal Federalism

India's federal fiscal structure is set out in Article 246 and the Seventh Schedule of the Constitution. Revenue powers are concentrated at the Union level, but spending responsibilities sit mainly with states. This vertical imbalance requires intergovernmental transfers. The Finance Commission, established under Article 280, manages this by recommending the devolution of central tax revenues and grants to states, using fiscal capacity and need criteria. The 15th Finance Commission (2021-26) transferred 41% of central taxes to states. Yet our findings show that these transfers are not enough to offset the disadvantages of Low NSDP states. Bihar, Jharkhand, and Chhattisgarh still have Gini coefficients above 0.41 and high GE(-1) values. Part of the problem is a classic principal-agent issue: state governments receive the money but do not always have incentives to deploy it efficiently. Strengthening conditionality and outcome-based funding under Articles 275 and 282 is a necessary next step.

4.2 Direct Benefit Transfers and the Aadhaar Framework

The Direct Benefit Transfer (DBT) scheme uses Aadhaar-linked payments under the Aadhaar Act, 2016 to deliver welfare benefits directly to recipients, cutting out intermediaries. The Supreme Court upheld this framework in K.S. Puttaswamy (Ret.) v. Union of India (2018), subject to limits on mandatory linking outside welfare contexts. The system works well in principle, but it has a serious implementation gap. Biometric authentication failures exclude manual labourers and elderly beneficiaries — the very people with the highest Atkinson values in this study. This is not just an administrative problem; it is a legal-design failure that can and should be fixed by amending the operational guidelines to allow alternative authentication methods.

4.3 APMC Act Reforms and Agricultural Market Law

The APMC Acts established regulated market yards for agricultural produce that limited competition and kept farm-gate prices low. This is visible in the high GE(-1) values in Moderate and Low NSDP rural areas. The Farm Laws of 2020, repealed in 2021, tried to open agricultural markets to private buyers. The debate over those laws captures the core efficiency-equity tension in agricultural market reform: liberalisation can improve price discovery for farmers who are connected to markets, but without protections for smallholders, it risks shifting bargaining power to large corporate buyers. Evidence from states that reformed earlier, like Bihar, shows mixed results (Saroj et al., 2021). Any future market reform must build in explicit legal protections for small and marginal farmers.

4.4 Labour Law Rigidities and the Formal-Informal Wage Gap

Chapter V-B of the Industrial Disputes Act, 1947 requires government approval before firms with 100 or more workers can retrench or close. This deters employers from creating formal jobs and pushes them toward informal labour arrangements. The result is a large and persistent wage gap between formal and informal workers. This gap drives much of the extreme polarisation documented in our percentile ratios. The Labour Codes (2019-2020) raise the Chapter V-B threshold to 300 workers, which should make it easier to create formal jobs in medium-sized firms. But these codes have not yet been implemented in most states as of 2024, limiting their current impact.

4.5 Welfare Legislation: MGNREGA and the National Food Security Act

MGNREGA (2005) guarantees 100 days of employment per rural household annually at minimum wage. It has raised reservation wages and reduced seasonal income volatility in Low and Moderate NSDP states (Dutta et al., 2012). However, leakage, delayed wage payments, and corruption in attendance records reduce its effectiveness. The National Food

Security Act (2013) provides subsidised foodgrains to around 75% of the rural population. This helps with food security, but its effect on monetary income inequality is limited. Both programmes suffer from gaps between what the law promises and what administration delivers — a problem that requires stronger grievance redressal and accountability mechanisms, not just more spending.

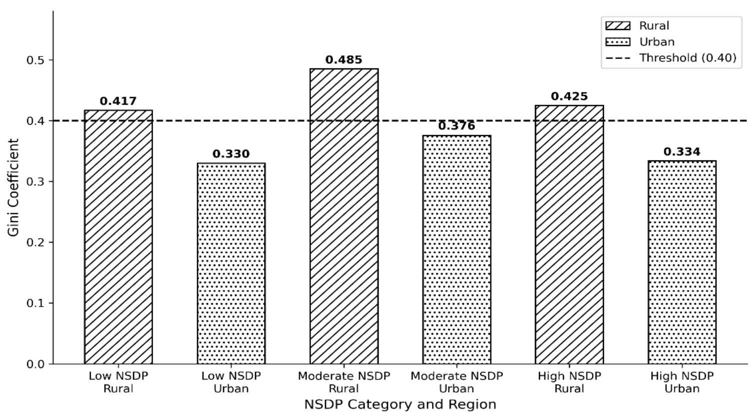
4.6 Taxation Law and Wealth Concentration

India's Income Tax Act, 1961 has a top marginal rate of up to 42.7% on the highest incomes. But the income tax base covers only around 7-8% of the workforce. Capital gains are taxed at lower rates than wages. The wealth tax was abolished in 2015. Agricultural income is exempt under Article 10(1) of the Constitution. These features are directly relevant to the GE(1) values in High NSDP urban areas (0.1969), which show growing concentration at the top of the income distribution. Rationalising capital gains tax rates and reintroducing some form of wealth or inheritance tax would bring the tax system into better alignment with the redistributive need documented in this study.

5. Results and Analysis

5.1 Gini Coefficient Analysis

Figure 1 shows the Gini coefficients across all six NSDP-region categories. Three patterns stand out. First, rural areas have higher inequality than urban areas within every NSDP group. This is consistent across all three development tiers and confirms that the structural drivers of rural inequality — limited labour mobility, weak financial access, agricultural income volatility — are not resolved by state-level economic growth alone. Second, Moderate NSDP rural areas have the highest Gini (0.4849), which is even higher than Low NSDP rural areas (0.4174). This is notable because it suggests that economic growth in these states, driven mainly by urban industry, can actually widen the rural-urban gap rather than



narrow it. Himanshu (2018) documented a similar pattern in post-reform India, and it is consistent with Acemoglu and Robinson's (2012) argument that growth without inclusive institutions does not reduce inequality. Third, even in prosperous High NSDP states, rural Gini values (0.4254) remain above the 0.40 threshold, confirming that state-level prosperity does not automatically reach rural households.

Figure 1: Gini Coefficients Across NSDP Categories and Regions Note: The dashed line denotes Gini = 0.40.

Source: Authors' own construction from CMIE CPHS (2022).

5.2 Percentile Ratios and Income Polarisation

NSDP Category	Region	p90/p10	p90/p50	p10/p50	p75/p25
Low NSDP (0)	Rural	12.455	2.708	0.217	2.234
Low NSDP (0)	Urban	4.268	2.371	0.556	2.157
Moderate NSDP (1)	Rural	15.656	2.540	0.162	3.138
Moderate NSDP (1)	Urban	5.500	2.500	0.455	2.333
High NSDP (2)	Rural	6.557	2.192	0.334	2.213
High NSDP (2)	Urban	4.448	2.194	0.493	2.100

Table 1: Percentile Ratios for Income Distribution Across NSDP Categories

Note: Source: Authors' own construction from CMIE CPHS (2022).

Table 1 shows how income is distributed across deciles within each category. The p90/p10 ratio of 15.656 in Moderate NSDP rural areas is the highest in the sample. The richest 10% earn nearly 16 times more than the poorest 10%. But the low p10/p50 ratio (0.162) is equally important: the bottom decile earns just 16.2% of the median income. This means the lower tail is severely depressed, not just that the upper tail is very high. This is the pattern of a split labour market — a formal sector accessible to a few, and a large informal sector with stagnant incomes and little upward mobility (Deshpande, 2022). By contrast, High NSDP urban areas show a p90/p10 ratio of just 4.448 and a p10/p50 ratio of 0.493. Urbanisation, better financial access, and more formal employment all help keep polarisation in check, even in areas where some wealth concentration is occurring.

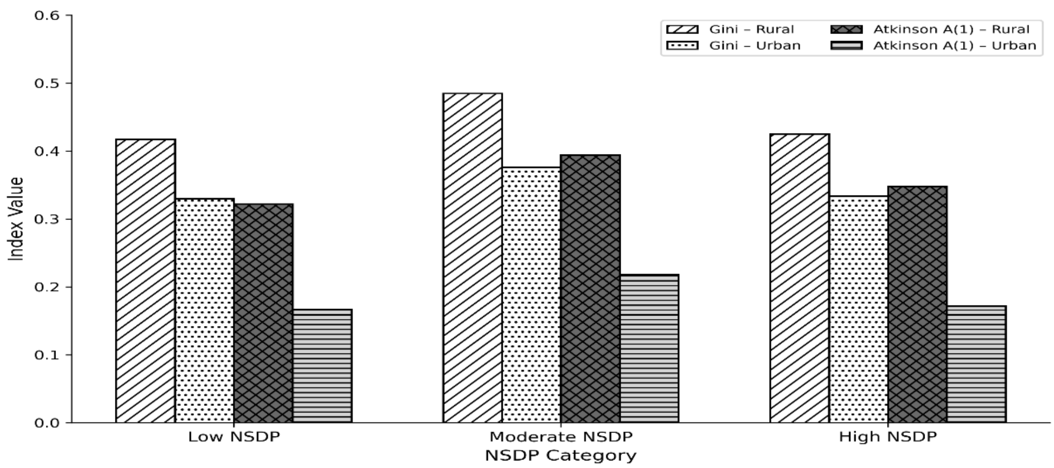
5.3 Generalized Entropy Indices: Where Does Inequality Come From?

NSDP Category	Region	GE(-1)	GE(0)	GE(1)	GE(2)
Low NSDP (0)	Rural	1.637	0.389	0.317	0.425
Low NSDP (0)	Urban	0.361	0.183	0.186	0.234
Moderate NSDP (1)	Rural	1.595	0.500	0.461	0.799
Moderate NSDP (1)	Urban	0.466	0.246	0.260	0.600
High NSDP (2)	Rural	2.161	0.428	0.394	0.844
High NSDP (2)	Urban	0.267	0.189	0.197	0.268

Table 2: Generalized Entropy Indices Across NSDP Categories

Note: Source: Authors' own construction from CMIE CPHS (2022).

The GE indices in Table 2 and Figure 2 show that inequality does not have the same structure everywhere. The most striking result is the GE(-1) value of 2.161 in High NSDP rural areas — the highest in the entire sample. This tells us that in prosperous states like Gujarat, Tamil Nadu, and Karnataka, rural households at the very bottom are severely deprived relative to others in the same rural population. Economic growth at the state level has not reached them. North (1990) and De Soto (2000) would explain this through institutional exclusion: without



secure land rights and access to formal credit, poor rural households cannot access the productive assets that would raise their incomes, regardless of how well the state economy performs overall.

Figure 2: Gini Coefficients and Atkinson A(1) Index Across NSDP Categories

Note: Source: Authors' own construction from CMIE CPHS (2022).

High NSDP urban areas tell the opposite story. Their GE(-1) is the lowest in the sample (0.267), meaning the bottom of the urban distribution is not severely deprived. But their GE(1) is among the higher values (0.197), indicating growing concentration at the top. Wealth is accumulating among the richest urban earners, consistent with Piketty's (2014) argument that capital returns outpace wage growth in growing economies. Moderate NSDP rural areas are the most concerning case: they combine high GE(-1) (1.595), the highest GE(0) (0.500), and elevated GE(1) (0.461). This means income is unequal at the bottom, in the middle, and at the top simultaneously. This is what makes these areas the most urgent target for policy action. Figure 3 shows this decomposition visually.

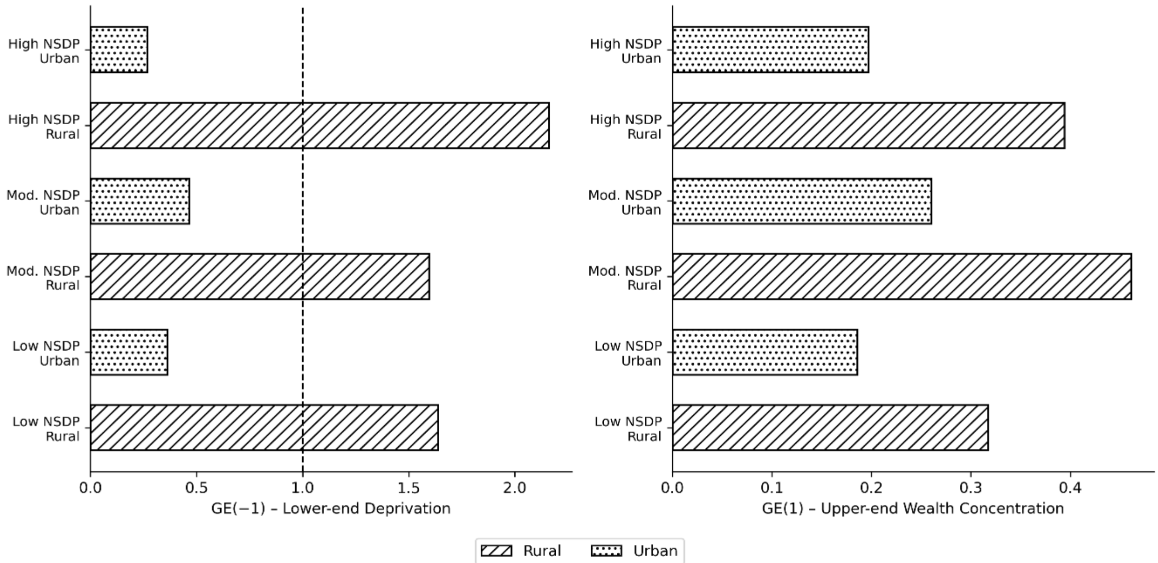


Figure 3: GE(-1) (Lower-End Deprivation) and GE(1) (Upper-End Concentration) Across NSDP Categories
Note: Source: Authors' own construction from CMIE CPHS (2022).

5.4 Atkinson Index: How Urgent Is Redistribution?

NSDP Category	Region	Gini	p90/p10	GE(0)	A(1)	Key Observation
Low NSDP (0)	Rural	0.417	12.455	0.389	0.322	Substantial rural inequality; widespread low incomes are the main driver.
Low NSDP (0)	Urban	0.330	4.268	0.183	0.167	Lower urban inequality; formal employment moderates polarisation.
Moderate NSDP (1)	Rural	0.485	15.656	0.500	0.394	Highest inequality in the sample; deprivation at the bottom and concentration at the top.
Moderate NSDP (1)	Urban	0.376	5.500	0.246	0.218	Moderate urban inequality; substantially lower than in rural areas.
High NSDP (2)	Rural	0.425	6.557	0.428	0.348	Rural inequality persists despite state-level prosperity; institutional exclusion is the key driver.
High NSDP (2)	Urban	0.334	4.448	0.189	0.172	Most balanced distribution overall; growing wealth concentration at the very top (GE(1) = 0.197).

Table 3: Summary Inequality Measures and Redistributive Urgency Across NSDP Categories

Note: Source: Authors' own construction from CMIE CPHS (2022). A(1) denotes Atkinson index with inequality aversion parameter epsilon = 1.

Table 3 translates the inequality picture into welfare terms. The Atkinson index A(1) = 0.394 in Moderate NSDP rural areas means that society could achieve the same level of social welfare as the current distribution by giving everyone just 60.6% of total income equally distributed. Put differently, 39.4% of current income generates no social welfare gain because of how unequally it is distributed. This is the highest welfare loss in the sample and far exceeds the value for High NSDP urban areas (0.172). It provides a clear welfare-based case for prioritising redistribution in Moderate NSDP rural regions above all other areas. It also reinforces Piketty's (2014) argument that middle-income economies with fast growth but weak redistribution institutions face mounting long-run welfare costs from inequality.

5.5 Regression Results and Theil Decomposition

The OLS regression results, shown in Figure 4, confirm the main drivers of inequality across states. Financial inclusion has the strongest effect: each unit increase in bank branches per 100,000 population is associated with a reduction of 0.31 in the Gini coefficient ($p < 0.01$). This strongly supports expanding rural banking access and improving the DBT delivery architecture. Urbanisation rate ($\beta = -0.22$, $p < 0.05$) and education attainment ($\beta = -0.18$, $p < 0.05$) are also significant predictors of lower inequality. Formal labour market participation has a smaller but directionally consistent negative effect ($\beta = -0.14$, $p < 0.10$), supporting the case for labour law reform to expand formal employment.

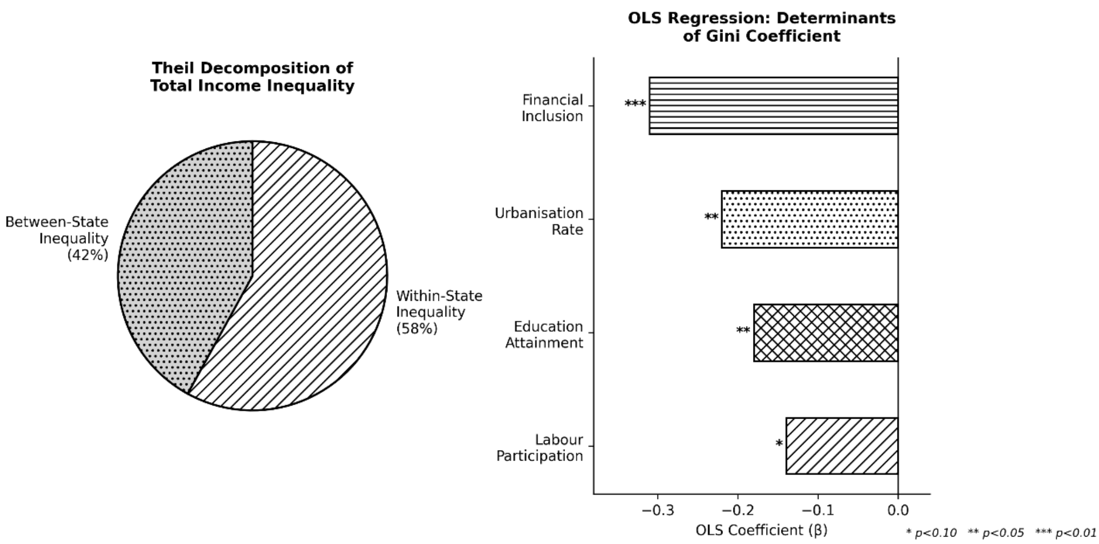


*Figure 4: Theil Index Decomposition of Total Inequality (left) and OLS Regression: Determinants of the Gini Coefficient (right) Note: *** p<0.01; ** p<0.05; * p<0.10.*

Source: Authors' own construction.

The Theil decomposition (Figure 4, left) shows that 58% of total income inequality comes from within states and 42% from between states. This is an important finding for policy. It means that more than half of India's inequality problem is not about the gap between richer and poorer states — it is about the gap between rural and urban areas within the same state. This finding directly challenges the assumption that fiscal equalisation through the Finance Commission is sufficient. Even if transfers fully equalised average incomes across states, most of the inequality problem would remain untouched. Intra-state institutional and legal reforms are not a secondary option; they are the primary requirement.

5.6 Discussion: What the Numbers Tell Us About Law and Policy

Three policy-relevant conclusions follow from the empirical findings. First, inequality in Moderate NSDP rural areas is driven by identifiable institutional failures — suppressed agricultural prices, unreachable welfare transfers, and a labour market that keeps most rural workers in low-wage informal jobs. These are legal problems with legal solutions. Second, the growing wealth concentration in High NSDP urban areas points to a specific gap in the tax system: capital income and wealth are insufficiently taxed relative to labour income, enabling wealth to accumulate at the top even as overall Gini values stay moderate. Third, the 58% within-state share in the Theil decomposition means that any reform strategy focused only on inter-state equalisation will address less than half of the inequality problem. The greater part requires intra-state institutional change — reforms that directly target the rural-urban gap within each state. These three findings define the architecture of the policy agenda.

6. Policy Recommendations

6.1 Framework

The empirical findings point to the need for legal and institutional reforms that work alongside — not merely after — economic growth. This section builds on the Providing Urban Amenities to Rural Areas (PURA) framework, envisioned by Dr. A.P.J. Abdul Kalam, to organise three sets of recommendations: financial inclusion, rural infrastructure, and agricultural market reform. Each recommendation is grounded in the quantified findings from Section 4 and evaluated for both its economic efficiency rationale and its legal implementation requirements.

6.2 Financial Inclusion and DBT Reform

Financial inclusion is the strongest single predictor of lower inequality in this study ($\beta = -0.31$, $p < 0.01$). Yet India has only 14.6 bank branches per 100,000 rural residents (RBI, 2023). Expanding this is not just good development policy — it has strong cost-benefit support. Burgess and Pande (2005) found that India's earlier rural banking expansion reduced poverty by 4.1%. Mudra loans have supported over 40 million micro-entrepreneurs (Press Information Bureau, 2023). The case for expansion is clear. Three legal reforms would strengthen delivery. First, amend DBT operating guidelines to allow alternative authentication methods — OTP verification, voice authentication — for beneficiaries who cannot use biometrics. This removes the single biggest exclusion error in the current system. Second, strengthen grievance redressal under the Right to Information Act, 2005 and Consumer Protection Act, 2019, with mandatory response timelines and penalties for delays. Third, expand Mudra loan eligibility through delegated legislation to cover informal sector workers in Moderate and Low NSDP rural areas.

6.3 Rural Infrastructure and Fiscal Transfer Conditionality

Fifty-eight percent of India's inequality is within states, concentrated in the rural-urban gap. Investment in roads, electricity, digital connectivity, and healthcare directly reduces this gap by lowering the cost of market participation for rural households and expanding access to non-farm work. The returns are well established. Cost-benefit analyses of PMGSY road investments show benefit-cost ratios of 1.8 to 3.2 (World Bank, 2016). The economic case for expanded investment in Moderate and Low NSDP states is strong. The legal reform needed is about how central money reaches the ground. Centrally Sponsored Schemes (CSS) under Article 282 currently lack strong conditionality. Introducing performance-linked grants and mandatory social audits under the Public Financial Management System would reduce the principal-agent problem in intergovernmental transfers and improve outcomes at the state and district levels.

6.4 Agricultural Market Reform and Smallholder Protection

The experience with APMC reforms shows that agricultural market liberalisation is not automatically beneficial for all farmers. It can improve price discovery for larger, better-connected producers, but smallholders often lack the bargaining power to benefit. E-NAM, the digital agricultural marketplace, is a better model: it improves market transparency within the existing regulatory framework, without dismantling the protections that smaller farmers depend on. This approach is consistent with Kaplow and Shavell's (2002) principle that where efficient rules produce regressive outcomes, equity safeguards should be built into the rules themselves. Three specific legal steps are recommended: mandate price transparency in all APMC and E-NAM transactions; enact a national framework law for contract farming that includes minimum price guarantees and village-level dispute resolution; and extend the One District One Product (ODOP) model through state industrial policy law to districts where rural Gini exceeds 0.45, creating non-farm income opportunities in the areas of highest polarisation.

7. Conclusion

This paper has examined income inequality across Indian states using a multi-metric empirical approach — Gini coefficients, percentile ratios, GE indices, Atkinson index, OLS regression, and Theil decomposition — and situated the findings within a law and economics framework. The central message is straightforward: income inequality in India is shaped as much by legal frameworks and institutional structures as by market forces. Growth alone will not reduce it. Targeted legal reforms are equally necessary.

Three findings stand out. Moderate NSDP rural areas have the worst inequality in the sample (Gini = 0.4849; A(1) = 0.394; p90/p10 = 15.656). Both deprivation at the bottom and concentration at the top are high here, and both are connected to institutional failures — APMC market structures that keep farm-gate prices low, DBT implementation gaps that deny benefits to marginalised households, and labour law rigidities that trap rural workers in informal employment. High NSDP urban areas show growing wealth concentration (GE(1) = 0.1969), pointing to a specific gap in the tax system: capital income and wealth are not taxed progressively enough to counteract the natural tendency toward concentration that Piketty (2014) identifies. And the Theil decomposition shows that 58% of inequality is within states, which means that fiscal equalisation between states, however important, leaves the majority of the inequality problem unaddressed. The within-state rural-urban gap is where most of the policy work needs to happen.

This study has limitations. The CPHS data is cross-sectional and underrepresents lower-income groups, so the estimates likely understate lower-tail inequality. The regression results show associations, not causal effects. Future research should use panel data across CPHS waves to track the effects of specific legal reforms over time. Incorporating caste and gender dimensions, as Deshpande (2022) recommends, would give a more complete picture. Causal identification using variation in Finance Commission formula changes or staggered state-level APMC reforms would also strengthen the empirical foundation.

India's inequality challenge has a legal dimension that has not received enough attention in the policy literature. Reforming labour law to expand formal employment, fixing the biometric exclusion error in the DBT system, building conditionality into fiscal transfers, and bringing capital gains and wealth into the tax base — these are achievable legal changes. They do not require waiting for the economy to grow its way out of the problem. The evidence in this paper shows clearly where the problems are. It also shows that the solutions require not just more spending, but better law.

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Appendix

Category/Region	p90/p10	p90/p50	p10/p50	p75/p25	GE (-1)	GE(0)	GE(1)	GE(2)	Gini	A(0.5)	A(1)	A(2)
Low NSDP Rural	12.455	2.708	0.217	2.234	1.637	0.389	0.317	0.425	0.417	0.156	0.322	0.766
Low NSDP Urban	4.268	2.371	0.556	2.157	0.361	0.183	0.186	0.234	0.330	0.087	0.167	0.420
Mod. NSDP Rural	15.656	2.540	0.162	3.138	1.595	0.500	0.461	0.799	0.485	0.208	0.394	0.761
Mod. NSDP Urban	5.500	2.500	0.455	2.333	0.466	0.246	0.260	0.600	0.376	0.117	0.218	0.483
High NSDP Rural	6.557	2.192	0.334	2.213	2.161	0.428	0.394	0.844	0.425	0.175	0.348	0.812
High NSDP Urban	4.448	2.194	0.493	2.100	0.267	0.189	0.197	0.268	0.334	0.091	0.172	0.348

Table A1: Comprehensive Inequality Measures Across NSDP Categories and Regions

Note: Source: Authors' own construction from CMIE CPHS (2022). A(.) denotes Atkinson index with respective inequality aversion parameter.

State/Union Territory	NSDP (₹)	Z-Score	State/Union Territory	NSDP (₹)	Z-Score
Andaman & Nicobar Is.	1,72,275	0.62 (High)	Maharashtra	1,53,664	0.34 (Mod.)
Andhra Pradesh	1,26,690	-0.07 (Mod.)	Manipur	60,204	-1.07 (Low)
Arunachal Pradesh	1,02,870	-0.43 (Mod.)	Meghalaya	69,997	-0.92 (Low)
Assam	68,813	-0.94 (Low)	Mizoram	1,40,016	0.13 (Mod.)
Bihar	29,909	-1.52 (Low)	Nagaland	76,462	-0.82 (Low)
Chandigarh	2,44,233	1.70 (High)	Odisha	90,172	-0.62 (Low)
Chhattisgarh	87,838	-0.65 (Low)	Puducherry	1,38,988	0.12 (Mod.)
Delhi	2,58,941	1.92 (High)	Punjab	1,23,874	-0.11 (Mod.)
Goa	2,95,114	2.46 (High)	Rajasthan	84,935	-0.70 (Low)
Gujarat	1,81,963	0.76 (High)	Sikkim	2,73,145	2.13 (High)
Haryana	1,73,973	0.64 (High)	Tamil Nadu	1,66,590	0.53 (High)
Himachal Pradesh	1,51,124	0.30 (Mod.)	Telangana	1,69,354	0.57 (High)

State/Union Territory	NSDP (₹)	Z-Score	State/Union Territory	NSDP (₹)	Z-Score
Jammu & Kashmir	73,947	-0.86 (Low)	Tripura	91,455	-0.60 (Low)
Jharkhand	60,938	-1.06 (Low)	Uttar Pradesh	47,552	-1.26 (Low)
Karnataka	1,75,895	0.67 (High)	Uttarakhand	1,49,547	0.28 (Mod.)
Kerala	1,52,870	0.33 (Mod.)	West Bengal	74,334	-0.86 (Low)
Madhya Pradesh	63,379	-1.02 (Low)	—	—	—

Table A2: State-wise NSDP per Capita and Z-Score Classification (2022-23)

Note: Mean NSDP = ₹1,31,244; Standard Deviation = ₹66,491. Classification: High NSDP ($Z > 0.5$); Moderate NSDP ($-0.5 \leq Z \leq 0.5$); Low NSDP ($Z < -0.5$). Source: RBI (2023); Z-scores computed by authors.

Conflict Between Homebuyers and Other Creditors in the Real Estate Sector During Insolvency Proceedings: A Law and Economic Analysis

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Abstract

The Insolvency & Bankruptcy Code, 2016 (IBC) was enacted to consolidate and streamline insolvency proceedings in India, aiming for timely resolution and maximisation of asset value. However, its initial framework did not take into account, the unique position of homebuyers in real estate insolvency cases, leaving them without statutory recognition as creditors. This gap often resulted in financial and personal problems for individuals who had invested in under-construction properties. The Insolvency & Bankruptcy Code (Second Amendment) Act, 2018 addressed this by conferring the status of financial creditors upon homebuyers under Section 5(8)(f), thereby granting them representation in the Committee of Creditors and voting rights in resolution processes. While this reform was a significant step towards consumer protection, practical challenges in its implementation such as coordination among dispersed creditors, high voting thresholds, and prolonged litigation have limited its effectiveness. This paper explores the statutory framework, judicial pronouncements with a special emphasis on the Supertech judgement, and economic analysis to evaluate the current regime. It further proposes reforms to enhance efficiency, ensure equitable treatment, and align the IBC's application in the real estate sector with its core objectives.

Keywords: *Macroeconomics and law, Insolvency and Bankruptcy Code, Real estate, Committee of Creditors.*

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (hereinafter *IBC*), was enacted with the objective of consolidating and amending laws relating to reorganisation and insolvency resolution in a time-bound manner, thereby maximising the value of assets and balancing the interests of all stakeholders (Insolvency and Bankruptcy Code, 2016, pmbl.). While initially designed with corporate debtors, financial institutions, and operational creditors in mind, the real estate sector presented a unique challenge. Real-estate insolvencies which involve the homebuyers, project-specific assets and strong completion-based expectations make them fundamentally different from the traditional financial-creditor-driven insolvencies.

Over the years, it has been seen that the number of real-estate CIRP admissions, prolonged delays for exceeding the statutory 330-day timeline, and very low-resolution success rates have revealed a systematic mismatch between the IBC framework and the needs of the real-estate stakeholders. These recurring outcomes raise an important policy question: *why does CIRP repeatedly fail for real-estate projects despite legislative reforms?*

This paper undertakes a law and economic analysis to answer this question. It applies key economic theories such as the Prisoner's Dilemma, Payoff Matrix, Coase Theorem, Nash Equilibrium, Kaldor-Hicks Efficiency, Transaction Cost Theory and Collective Action Theory to explain the conflicts between the homebuyers and the secured financial creditors during CIRP through different case studies. This paper demonstrates how collective-action failures, high transaction costs, and misaligned incentives push real-estate CIRPs into prolonged deadlock.

Finally, the paper suggests that the most viable solution, institutionalising a project-specific Reverse CIRP mechanism, which prioritises completion over liquidation, aligns the interests of the stakeholders and reduces the delay. The study concludes by recommending that Reverse CIRP be formally codified into the IBC to ensure predictability, efficiency, and better outcomes for homebuyers and lenders alike.

2. Literature Review

The following literature review examines the real estate vs homebuyers' conflict under IBC. Pandey and Anthwal challenge the fundamental classification of homebuyers as financial creditors, arguing that this fails to recognize the distinct identity of real estate allottees. They contend that placing homebuyers in the same category as commercial lenders creates an artificial paradigm where consumer expectations, cantered on specific performance and physical asset delivery are structurally suppressed by voting mechanisms and resolution priorities built for institutional debt recovery (Pandey & Anthwal, 2024).

Chawla identifies critical institutional gaps and ongoing conflicts between the provisions of the IBC and the Real Estate (Regulation and Development) Act (RERA), the findings reveal that the IBC remains ill-equipped to handle information asymmetry and the highly divergent interests of homebuyers, while RERA simultaneously lacks the enforcement mechanism to curb the structural diversion of project funds. To resolve these systemic deadlocks, Chawla advocates for a harmonized approach that includes the integration of real estate regulatory oversight within the Committee of Creditors (CoC) and the formal adoption of specialized Reverse Corporate Insolvency Resolution Process (Reverse CIRP) models (Chawla, 2025).

Mohan & Raj argue that the legal classification of homebuyers within modern corporate insolvency frameworks is like an oxymoron because it improperly conflates consumer expectations with commercial lending objectives. Under bankruptcy rules, when homebuyers are designated as “financial creditors,” they are forced into a structure designed for institutional lenders. Lenders operate with commercial metrics focusing strictly on debt optimization, risk premiums, and maximizing financial recovery through liquidation or corporate debt restructuring. Homebuyers, by contrast, prioritize the physical completion and delivery of their residential units. By treating consumers as commercial lenders, the legal framework fails to protect their primary interest (housing delivery) and binds them to voting mechanisms that favour financial metrics over construction completion (Mohan & Raj, 2020).

Dutta illustrates the real-world economic consequences that occur when highly specific real estate assets are governed by standard corporate-wide bankruptcy procedures. Traditional corporate insolvency relies on asset-homogeneity assumptions, assuming that corporate property can be pooled, valued, and sold. However, real estate assets are illiquid and tied to specific physical allotments (individual flats). Forcing these non-fungible consumer assets into standard corporate voting and creditor-pooling rules generates massive value-destructive deadlocks. Institutional creditors frequently vote for asset liquidation or sweeping debt hair-cuts, which freezes construction activities, triggers multi-year litigation, drives down the asset value, and permanently strips homebuyers of both their life savings and their prospective homes (Dutta, 2018).

Kokorin argues by demonstrating that because modern real estate developers operate across a web of multiple, heavily interconnected projects, a traditional insolvency solution is destined to fail. Real estate groups rely on cross-entity liability arrangements, intra-group guarantees, and the shifting of capital and asset pools across various ongoing projects. When insolvency hits a single project, standard corporate bankruptcy rules trigger an entity-wide freeze, dragging entirely solvent or nearly-finished independent real estate projects into the corporate debtor's bankruptcy pool. This halts construction across all projects indiscriminately (Kokorin, 2020).

Aggarwal, traces the evolution of the homebuyer rights under the IBC from having no legal recognition under the original IBC, 2016 to being recognised as financial creditors after the 2018 Amendment, and discusses the judicial emergence of Reverse CIRP. The author argued that there is a conflict between the homebuyers seeking the possession and banks seeking monetary recovery, while also observing that the secured or unsecured status of homebuyers remain unresolved under the IBC. He further describes Reverse CIRP as a promising and mutually beneficial solution, though he still recognises it being in an experimental phase with its effectiveness to be fully established (Aggarwal, 2024).

3. Reverse CIRP Framework: Judicial Precedents and Legislative Blueprint

The Reverse Corporate Insolvency Resolution Process (Reverse CIRP) emerged as a judicial response to the inadequacies of the traditional Corporate Insolvency Resolution Process (CIRP) when applied to the real estate sector. Unlike conventional insolvency proceedings that prioritize asset monetisation and creditor recovery, Reverse CIRP focuses primarily on project completion and delivery of possession to homebuyers. The framework evolved through judicial innovation, statutory amendments, and regulatory reforms under the Insolvency and Bankruptcy Code, 2016 ("IBC"). The IBC was enacted to consolidate and amend laws relating to insolvency resolution in a time-bound manner with the objective of maximisation of asset value and balancing stakeholder interests (Insolvency and Bankruptcy Code, 2016, pmbl.). Initially, the Code did not expressly recognise homebuyers within the creditor structure, thereby excluding them from the insolvency resolution process despite their substantial financial stakes in under-construction real estate projects.

In 2018, the lack of sufficient protection and security of the homebuyers came before the Supreme Court in *Chitra Sharma v. Union of India*, where homebuyers who had invested in the projects of Jaypee Infratech Ltd. sought protection under the IBC. The Court observed that the absence of any formal recognition of homebuyers as financial creditors placed them in a vulnerable position, and stressed the need for legislative reform to protect their interests

(*Chitra Sharma v. Union of India*, 2018). This led to a change through the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, which inserted an Explanation to Section 5(8)(f), deeming amounts raised from allottees in real estate projects as amounts having the "commercial effect of a borrowing" (Insolvency and Bankruptcy Code [Second Amendment] Act, 2018, § 5(8)(f)). Consequently, homebuyers were recognised as financial creditors under the Code and granted representation in the Committee of Creditors ("CoC"). The amendment was upheld by the Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India, where the Court held that the classification of homebuyers as financial creditors was constitutionally valid because the advances paid by homebuyers were effectively used by developers as a source of finance and therefore possessed the commercial effect of borrowing (*Pioneer Urban Land*, 2019).

Further procedural recognition was introduced through Regulation 9A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which created the mechanism of an Authorised Representative ("AR") for homebuyers in the CoC (Insolvency and Bankruptcy Board of India [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, reg. 9A). This ensured collective participation of allottees even where individual participation was impractical due to their large numbers. The broader CIRP framework continues to operate through Sections 6-10 of the IBC, permitting initiation of insolvency proceedings upon default of ₹1 crore or more, while Section 14 imposes a moratorium once proceedings commence. Sections 16-18 and 23 govern the appointment and powers of the Interim Resolution Professional ("IRP") and Resolution Professional ("RP"), whereas Sections 21, 28 and 30(4) vest decision-making authority in the CoC, requiring 66% voting approval for resolution plans. The statutory timeline for completion of CIRP was reinforced through the Insolvency and Bankruptcy Code (Amendment) Act, 2019, which imposed the outer limit of 330 days under Section 12 (Insolvency and Bankruptcy Code (Amendment) Act, 2019).

3.1. Judicial Emergence of Reverse CIRP

The concept of Reverse CIRP was first judicially introduced by the National Company Law Appellate Tribunal ("NCLAT") in Flat Buyers Association Winter Hills - 77, Gurgaon v. Umang Realtech Pvt. Ltd. In this case, the NCLAT recognised that traditional insolvency mechanisms were unsuitable for real estate projects where the primary objective of stakeholders was completion of construction rather than liquidation of the corporate debtor.

The Tribunal permitted the promoter to remain outside the formal insolvency structure while acting as an "external lender" or financial contributor under the supervision of the IRP. The NCLAT held that real estate insolvency should be project-specific and emphasised that homebuyers could not be subjected to "haircuts" in relation to allotted flats. The Tribunal further clarified that secured financial creditors could not be preferred over allottees in respect of possession rights (*Flat Buyers' Ass'n*, 2020).

The jurisprudence was subsequently reinforced in Anand Murti v. Soni Infratech Pvt. Ltd., where the Supreme Court approved a settlement structure permitting continued construction at the original contracted price in order to avoid the escalation and disruption ordinarily caused by conventional CIRP proceedings (*Anand Murti v. Soni Infratech Pvt. Ltd.,* 2022). Similarly, in Ram Kishor Arora v. Union Bank of India and Indiabulls Asset Reconstruction Co. Ltd. v. Ram Kishore Arora, the NCLAT and Supreme Court confined insolvency proceedings to specific defaulting projects rather than extending the moratorium to the entire real estate company. This judicial approach prevented otherwise viable projects from being paralysed by insolvency proceedings arising from isolated defaults (*Ram Kishor Arora,* 2022*)*.

The principle of project-specific insolvency was later echoed in Tarun Ahuja v. Puri Construction Pvt. Ltd., where the Tribunal recognised the importance of isolating distress to individual projects rather than imposing a company-wide freeze affecting healthy developments (*Tarun Ahuja*, 2024).

3.2. Interaction Between Reverse CIRP and Section 29A

A major legal tension within Reverse CIRP arises from Section 29A of the IBC, which disqualifies defaulting promoters from submitting resolution plans. Since Reverse CIRP relies heavily upon promoter-led completion of projects (Insolvency and Bankruptcy Code, 2016, § 29A), the judiciary effectively created a functional exception by allowing promoters to infuse funds as external contributors despite the statutory bar. In practice, this judicial innovation attempted to balance the objectives of project completion and consumer protection against the anti-abuse purpose underlying Section 29A. However, because this accommodation lacked explicit statutory recognition, tribunals exercised significant discretion in determining when promoter participation could be permitted.

3.3. Interaction Between IBC and RERA

Reverse CIRP also developed within the broader regulatory overlap between the IBC and the Real Estate (Regulation and Development) Act, 2016 ("RERA"). RERA imposes strict project-account obligations, including the mandatory requirement that 70% of project funds be maintained in escrow accounts exclusively for construction and land costs (Real Estate [Regulation and Development] Act, 2016). Judicial inconsistency emerged regarding the application of these requirements during insolvency. In Anand Murti v. Soni Infratech Pvt. Ltd., the Supreme Court relaxed strict adherence to RERA escrow requirements and accepted promoter undertakings to facilitate completion of construction (*Anand Murti*, 2022). Subsequently, in Mansi Brar Fernandes v. Shubha Sharma, the Supreme Court characterised the IBC as a "remedy of last resort" and directed homebuyers to first exhaust remedies under RERA before invoking insolvency proceedings. The Court thereby acknowledged the distinct but overlapping roles of RERA and the IBC in resolving real estate disputes (*Mansi Brar Fernandes*, 2025).

3.4. Regulatory Amendments by the Insolvency and Bankruptcy Board of India

To address procedural deficiencies in real estate insolvencies, the Insolvency and Bankruptcy Board of India ("IBBI") amended the CIRP Regulations with effect from 3 February 2025. These amendments introduced structured safeguards particularly relevant to Reverse CIRP proceedings. Regulation 4E introduced the mechanism of Interim Possession Transfer, permitting Resolution Professionals to hand over completed units to allottees during the pendency of CIRP upon obtaining approval of 66% of the CoC. Regulation 38(4) mandated the constitution of Monitoring Committees comprising insolvency professionals, creditors, and successful resolution applicants to submit periodic progress reports concerning project completion and implementation of the resolution plan. Regulation 30C further required preparation of a Real Estate Permissions Report within sixty days, identifying all development permissions, approvals, and regulatory compliances necessary for informed creditor decision-making (IBBI Regulations, 2016). Although these amendments introduced procedural safeguards, Reverse CIRP itself continues to lack formal statutory codification within the substantive provisions of the IBC.

3.5. Success of Reverse CIRP

The insolvency of Supertech Ltd. (Union Bank of India v. Supertech Ltd) became one of the most significant real estate insolvency proceedings in India and demonstrated the practical necessity of Reverse CIRP principles. The company entered insolvency following admission of a Section 7 petition filed by Union Bank of India in relation to a default of approximately ₹431.92 crore associated with the Eco Village II project. The proceedings immediately affected more than 25,000 homebuyers across multiple projects, many of whom had already paid 70–90% of the flat value. The insolvency exposed the fundamental conflict between secured creditors seeking immediate recovery and homebuyers seeking project completion and possession. The NCLAT's project-specific approach in Ram Kishor Arora v. Union Bank of India attempted to limit insolvency proceedings only to defaulting projects in order to avoid disruption of functioning developments ("NCLT Orders Insolvency Proceedings," 2022; Aryan, 2022; "Flat Buyers of Supertech's Twin Towers," 2022; Haidar, 2025).

A further illustration of the operational success of Reverse CIRP principles is found in Satish Chander Verma v. Grand Reality Pvt. Ltd. The dispute arose from the stalled "Marvel Ganga Fria" residential project in Pune, where allottees had paid over ₹22.58 crore but possession had not been delivered (*Satish Chander Verma v. Grand Reality Pvt. Ltd.*, 2025b). Following commencement of CIRP, Pax Homes LLP intervened and expressed willingness to complete the project. During the pendency of these proceedings, the appellant, along with the developer and homebuyers, approached the Supreme Court seeking expedited resolution, and on 30 May 2025 the Supreme Court directed the NCLAT to dispose of the matter at the earliest (*Satish Chander Verma v. Grand Reality Pvt. Ltd.*, 2025a). Instead of permitting conventional CIRP to proceed toward liquidation or third-party resolution, the NCLAT permitted a project-specific completion mechanism under judicial supervision. Construction was ultimately completed, occupation certificates were obtained, and possession was delivered to all homebuyers. Consequently, the NCLAT closed the CIRP proceedings and discharged the Resolution Professional (Bansal, 2025). The case reaffirmed the principle originally articulated in Flat Buyers Association Winter Hills - 77, Gurgaon v. Umang Realtech Pvt. Ltd. that real estate insolvency may be resolved through promoter-led, project-specific completion mechanisms rather than value-destructive liquidation (*Flat Buyers' Ass'n*, 2020).

Overall, the legal development of Reverse CIRP demonstrates a gradual transition from conventional creditor-centric insolvency toward a project-completion-oriented framework tailored to the peculiar realities of the real estate sector. The framework presently rests upon a combination of statutory amendments recognising homebuyers as financial creditors, regulatory interventions by the IBBI, and extensive judicial innovation through NCLT, NCLAT, and Supreme Court jurisprudence.

4. Conceptual Framework and its Application

4.1. Game Theory

The Prisoner's Dilemma is a game theory concept involving two individuals arrested for a crime and kept in separate cells. Each person can either cooperate by staying silent or defect by confessing and blaming the other. If both remain silent, they receive a light punishment (for example, one year in prison each). If one confesses while the other stays silent, the confessor goes free and the other receives a severe punishment (for example, ten years). If both confess, they each receive a moderate punishment (for example, five years). Although staying silent benefits both individuals the most, fear of being betrayed usually leads both to confess, resulting in a worse outcome for both (Meegan, 2023; Investopedia Team, 2025).

The Supertech insolvency case reflects this situation. Banks could either cooperate by delaying loan repayment and allowing the developer to use available funds to complete construction, or defect by demanding immediate repayment and pushing for liquidation. Liquidation is considered the least efficient because in liquidation the recovery rate is only 7% (Singh & Thakkar, 2021). Similarly, homebuyers could cooperate by supporting a restructuring plan and accepting delays in possession, or defect by demanding immediate possession or refunds because they had already paid significant amounts. The best outcome for everyone required cooperation from both sides so that projects could be completed and asset value preserved. However, a lack of trust prevented this. Banks opposed proposals that prioritized homebuyers, while homebuyers focused on obtaining possession as quickly as possible. Both feared that cooperating alone would leave them worse off if the other side did not cooperate. As a result, both chose to protect their own interests, creating a deadlock that ultimately harmed everyone involved (Haidar, 2025).

The payoff matrix is a tool which is used in the game theory to represent the different strategic choices and possible outcomes between two or more decision-makers, called players (Lee, 2025).

	Player B: Option 1	Player B: Option 2
Player A: Option 1	A: x, B: y	A: m, B: n
Player A: Option 2	A: p, B: q	A: r, B: s

Table 1: Basic structure of a Payoff Matrix

Source: Author's own creation

A payoff matrix is a game theory tool used to show the different choices available to players and the possible outcomes resulting from those choices (Lee, 2025). By examining the matrix, we can understand how the decisions of one party affect the other and whether cooperation can lead to better results or whether mistrust prevents it (Király et al., 2024).

	Homebuyers: Cooperate where they support plan and accept delay.	Homebuyers: Oppose the demand of refund and only want the possession of their flat immediately.
Banks: Cooperate where they defer repayment and allow construction.	Banks: 3, Buyers: 3 Projects completed both benefits.	Banks: 0, Buyers: 5 Banks lose; buyers win via court, allowing possession
Banks: Oppose where they demand repayment and push liquidation.	Banks: 5, Buyers: 0 Banks recover loans, buyers lose homes	Banks: 1, Buyers: 1 Deadlock, where both suffer

Table 2: Payoff Matrix

Source: Author's own creation

In the Supertech insolvency case, two main stakeholders were involved: homebuyers, who wanted their homes completed and delivered, and banks and financial institutions, who wanted repayment of their loans even if it required liquidation of the company (Dev, 2022). Both groups had choices that directly affected each other.

The **(3,3)** outcome in the table represents mutual cooperation. Banks agree to delay repayment and allow construction to continue, while homebuyers support the plan and accept delays. This results in project completion, delivery of homes, and eventual loan recovery. The **(0,5)** outcome occurs when banks cooperate but homebuyers oppose the plan. Legal disputes delay the process, causing losses to banks, while buyers may recover money through court intervention. The **(5,0)** outcome occurs when banks oppose the plan but homebuyers cooperate. Homebuyers continue to support the process, but banks push for liquidation, causing projects to stop and buyers to lose both their homes and investments. The **(1,1)** outcome represents mutual opposition. Both sides refuse to compromise, leading to delays, stalled construction, legal expenses, and poor recovery for all stakeholders.

This matrix shows that the lack of cooperation between banks and homebuyers in the Supertech CIRP resulted in highly inefficient outcomes. Instead of working together to maximize overall value and complete projects, both sides acted in their own interests, leading to prolonged litigation and unfinished projects.

Nash Equilibrium refers to a situation where no player can improve their outcome by changing their strategy alone while the other players continue with their existing strategies. In such a situation, each player's decision is the best response to the decisions of the others (Myerson, 1999).

In the Supertech case, homebuyers wanted construction to continue and homes to be delivered, while banks wanted loan recovery and, in some cases, liquidation of the company. Although both groups were members of the Committee of Creditors (CoC), their interests were fundamentally different (Dev, 2022).

The case ultimately reached at **(1,1) Nash Equilibrium**. Banks continued to insist on loan recovery, while homebuyers pursued possession through claims and court proceedings. Neither side was willing to change its position because doing so alone could make it worse off. Although the cooperative **(3,3)** outcome would have benefited everyone more, distrust and short-term concerns prevented cooperation. This created a deadlock where neither side could improve its position independently, making it a classic example of Nash Equilibrium (Chen, 2025).

4.2. Kaldor-Hicks Efficiency

Kaldor-Hicks efficiency states that a decision is efficient if the people who benefit from it gain enough that they could theoretically compensate those who suffer losses, even if compensation is not actually paid. The focus is on whether the overall benefits are greater than the overall losses, rather than ensuring that every individual benefits. This principle is especially useful in insolvency cases, contract renegotiations, and market regulation, where it is often impossible to make everyone better off. Instead, the goal is to maximize overall welfare.

In insolvency proceedings under the IBC, where different stakeholders have conflicting interests, the Kaldor-Hicks approach asks a simple question: **Do the total benefits of a**

decision exceed the total losses? If the answer is yes, the outcome is considered efficient, even if some stakeholders suffer losses ("Kaldor-Hicks Efficiency," 2025).

For example, if a resolution plan generates a gain of ₹500 crore for banks but causes a loss of ₹100 crore to homebuyers due to delays or partial possession, the net gain is ₹400 crore. Therefore, the plan would be considered Kaldor-Hicks efficient because the banks' gain could hypothetically compensate the homebuyers' loss, even if no compensation is actually paid.

In the Supertech case, a resolution plan where banks accept a haircut or delay in repayment while homebuyers accept delayed possession or partial units may not fully satisfy either group. However, if the project is completed and the company survives, the overall gains to all stakeholders exceed the losses caused by delays, rental expenses, and opportunity costs. Therefore, such a plan can be considered Kaldor-Hicks efficient. This framework supports decisions that may impose losses on some stakeholders if doing so creates greater overall benefits, making it particularly relevant in complex insolvency cases like Supertech.

4.3. Transaction cost economics

Application of the transaction cost economics by Oliver Williamson is important to understand the various instances in the process which contribute to the high transaction cost of CIRP in the case of real estate sector:

4.3.1. Bounded Rationality: The Information Asymmetry

Williamson begins with this: people are bounded rational; they can only process a limited amount of information and make decisions within constrained cognitive limits (Simon, 1955).

Individual homebuyers cannot easily obtain or comprehend the financial details they need to make informed decisions. A homebuyer does not have access to Supertech's complete accounts, does not know how much the company actually owes to Union Bank of India or other creditors, and cannot readily assess whether completing projects is financially viable or whether liquidation would better protect their interests. This information gap is structural as even if a homebuyer invests time in self-education, it is quite difficult to match the sophisticated knowledge that institutional creditors maintain through teams of professionals.

4.3.2. Opportunism:

Williamson defines opportunism as “self-interest seeking with guile” behaviour where parties exploit information gaps and ambiguities for strategic advantage (Williamson, 1975, pp. 20–23).

Developer opportunism occurred through systematic fund diversion. Supertech accepted homebuyer advances exceeding 70% of flat costs but then allegedly shifted these funds across multiple projects rather than maintaining dedicated project accounts required by RERA. This violated the 70% requirement designed to protect homebuyers. This is opportunistic behaviour enabled by information asymmetry as homebuyers could not track where their funds were actually utilized because they lacked financial visibility into the company’s operations.

Creditor opportunism emerges during CIRP through voting strategies that prioritize individual creditor recovery over total value preservation. Banks facing the payoff matrix, observe that their highest individual payoff comes from opposing cooperative plans and instead demanding rapid liquidation or asset sales to recover dues. This voting choice is rational from the bank’s individual perspective but against the collective outcome, even if liquidated, it destroys 75-80% of project value, all stakeholders would suffer. Yet each bank still prefers its maximum individual recovery over collectively lower but broader benefit.

Williamson states that when opportunism is possible, parties must invest in costly safeguards monitoring mechanisms, legal structures, and enforcement systems to protect themselves (Williamson, 1975, pp. 20–23). In Supertech CIRP, the Resolution Professional must conduct audits to trace fund diversions, verify creditor claims, and mediate between competing interest groups. All these activities consume time and money, increasing transaction costs and obstructing prompt resolution. The very need for court supervised insolvency proceedings, rather than simple private renegotiation between developers and creditors, reflects the difficulty in controlling opportunism through market forces alone.

4.3.3. Asset Specificity: Why Partially Built Apartments Cannot Be Easily Appropriated

Asset specificity measures how much an asset loses value when redeployed outside its original transaction area (Williamson,1991). Real estate exhibits extreme asset specificity; for instance, Supertech’s projects occupy fixed land parcels in Greater Noida that cannot be altered, repurposed without massive expense, or sold near full value if abandoned mid-construction. A half-completed residential tower has exactly one economic purpose: project completion. Because the structural frames, materials, and installations cannot be reused elsewhere without substantial loss, the invested capital becomes permanently "locked in".

This extreme asset specificity triggers a severe hold-up problem. Once homebuyers advance 70% to 90% of flat costs into a partially built structure, they are effectively trapped. They cannot recover their money without project completion, leaving them vulnerable to developers or Resolution Professionals who can exploit this dependency by demanding extra payments or imposing unfavourable terms. Conversely, abandoning the project and liquidating the half-built structure destroys value for all stakeholders, as incomplete buildings sell for only a small fraction of their completion value. Traditional corporate insolvency assumes assets can be liquidated or transferred cleanly without massive value destruction. However, this framework collapses entirely in the real estate sector because the underlying assets are highly specific

4.3.4. Governance Failure: Why CIRP Cannot Solve Real Estate Insolvency

Williamson's central insight is that different transaction problems require different governance structures. When transaction costs are low and assets are general-purpose (fungible), market contracting works well. When transaction costs rise and assets become specific, hierarchical governance (firms, organizations, courts) becomes necessary (Williamson, 1999).

The current CIRP framework was designed mainly for insolvencies in manufacturing and financial services sectors where assets are relatively general-purpose, creditor interests align around debt recovery, and resolution timelines can be compressed to 330 days. It assumes a uniform creditor class with similar objectives: maximize asset value, recover debts, liquidate or rehabilitate quickly.

Real estate insolvency exhibits fundamental governance misalignment as explained below: CIRP's 330-day deadline assumes rapid asset identification and valuation. Real estate construction operates on multi-year timescales (as the constructions are time taking). Completing Supertech projects requires 2-3 additional years of construction, the statutory timeline creates a pressure toward liquidation rather than completion (which is value maximising). The Supertech CoC comprises incompatible stakeholders with incompatible preferences: homebuyers seek possession and project completion; banks seek debt recovery and almost every time prefer immediate asset monetization; construction contractors seek payment of dues; employees want salaries. Standard CIRP governance: Committee voting and majority rule cannot reconcile conflicting objectives among numerous stakeholders. Williamson emphasizes that governance structures must simultaneously safeguard transactions against opportunism hazards. A single Resolution Professional cannot effectively monitor opportunism across 40 Supertech projects, each with distinct construction status, stakeholder claims, and completion timelines.

Williamson's theory suggests that when standard governance fails, hierarchical governance characterized by court oversight, mandatory disclosure, and judicially enforced coordination should be encouraged (Williamson, 1999). Reverse CIRP shifts to bilateral negotiation between the promoter and secured lenders, with homebuyer protections enforced through judiciary. By eliminating the need for large group coordination while providing judicial oversight, Reverse CIRP reduces transaction costs and solves the governance problem that standard CIRP cannot.

4.4. Collective Action Problem: Why Homebuyers Fail Despite Numerical Superiority

Mancur Olson's Logic of Collective Action provides the explanation for an apparent paradox in Supertech CIRP: homebuyers can potentially hold the higher share in the Committee of Creditors voting share yet exercise minimal effective influence over resolution outcomes, Olson's central finding that rational, self-interested individuals in large groups will not voluntarily act to achieve common objectives without special incentive mechanisms, directly explains this irrational outcome (Olson, 1965).

The asymmetry between homebuyers (large, dispersed group) and banks (small, concentrated group) creates disparities in bargaining power that structure resolution outcomes in favour of creditors despite homebuyer numerical dominance. Understanding this is essential for explaining why the 2018 IBC amendment conferring homebuyer financial creditor status has failed to deliver anticipated improvements in homebuyer protection (Insolvency and Bankruptcy Code [Second Amendment] Act, 2018). Olson identifies a fundamental distinction: small concentrated groups can overcome barriers; large dispersed groups cannot. Homebuyers exemplify a large diffuse group facing coordination obstacles (Olson, 1965).

The free-rider problem operates at scale. Each individual homebuyer faces identical economic incentives: the costs of collective action must be borne by individuals, while any benefits are distributed across all the members. Rational self-interest leads each homebuyer to assume others will bear the costs while they can effortlessly "free-ride" on the collective outcome. However, when all of them reason identically, insufficient resources are devoted to collective action, and the group cannot achieve its objectives despite numerical majority. Geographic dispersion amplifies coordination costs. Homebuyers are scattered across Delhi NCR and multiple states, making face to face coordination expensive. Banks operate through centralized offices where representatives can coordinate comparatively with great ease. This disparity in coordination speed means bargaining asymmetry: banks formulate careful unified positions whereas homebuyers would require weeks of organizing to achieve minimal consensus.

The Authorized Representative (AR) mechanism fails to solve underlying collective action. While the AR aggregates diverse preferences into a single vote, it creates new principal-agent problems. An AR appointed by a majority subset of homebuyers may not faithfully represent all homebuyer interests; a 51% majority can bind a 49% minority. The AR mechanism treats a problem (aggregation difficulty) but not the bigger problem (Jensen & Meckling, 1976).

Olson identified only two mechanisms through which large groups overcome collective action problems: selective incentives (private rewards for participation) and coercion (mandatorily enforced by law) (Olson, 1982). Neither operates effectively in current CIRP. Those homebuyers investing time and money in organizing collective action receive identical outcomes to free-riders. There is no mechanism to reward active participation like, priority possession for those contributing to legal funds. Such discrimination within the homebuyer class is not permitted under IBC provisions and also is not suitable in these cases as this may lead to elitism among the homebuyers. No law mandates that homebuyers contribute to collective legal funds or permits forced contribution pooling. The Authorized Representative can compel homebuyers to fund sophisticated litigation strategies. This can be a viable way to combat free riding and truly enable collective action. Institutional structure facilitates collective action. Banks operate through formal organizational hierarchies with clear and dedicated strategies. Real estate insolvency illustrates the same: banks holding a smaller voting share frequently exercise decisive influence over resolution outcomes, while homebuyers holding a higher voting share remain marginalized and unable to get favourable settlement terms.

5. IBC Performance in Real Estate Sector

The performance of IBC in the real estate sector reveals deeps structural inefficiencies that consistently hinder effective resolution. According to the IBBI's aggregated CIRP data, more than 7,000 corporate debtors have admitted into insolvency since 2016, of which the real-estate sector accounts for approximately 21%-24%, which makes it the second-largest contributor to CIRP admissions after manufacturing (CARE Ratings, 2023).

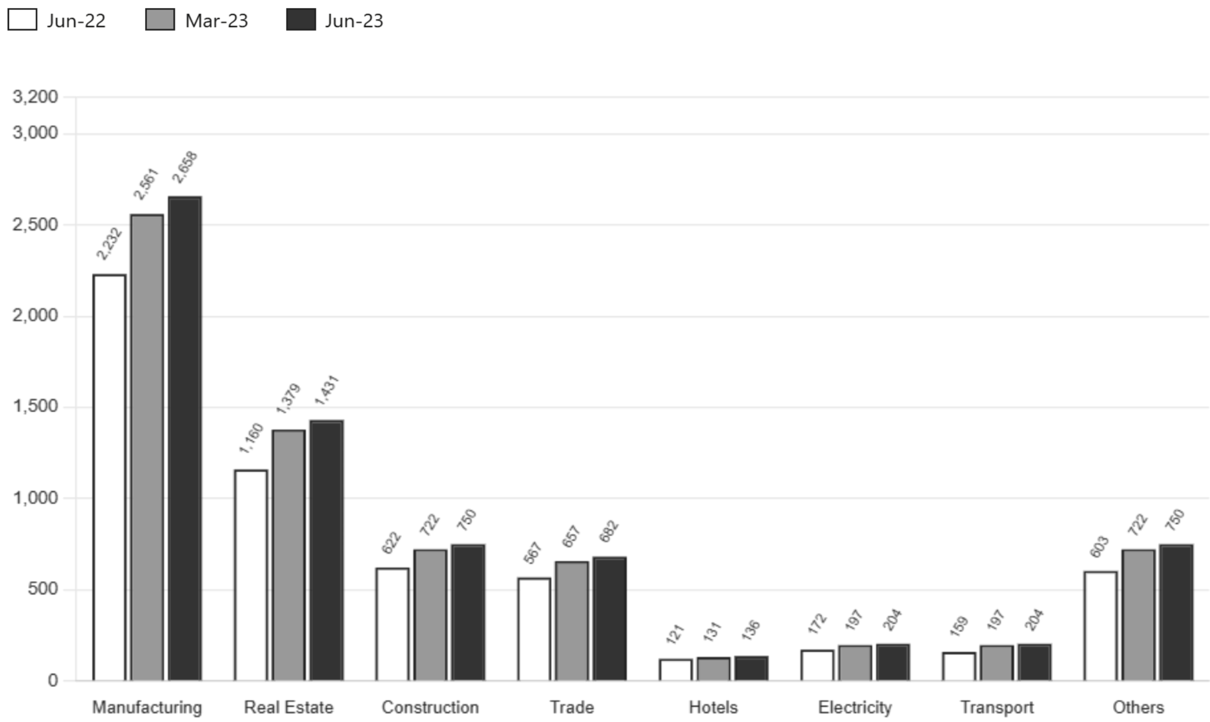

Chart 1: The cumulative of CIRP cases (2023) (sector wise)

Source: IBBI (Care Ratings, 2023)

Despite this high representation, the results remain disproportionately poor. Only about 14–15% of real-estate CIRPs end with an approved resolution plan, while a large share of the remaining cases either moves into liquidation or are closed due to withdrawal, appeal, or settlement. However, there is a big category which shows that the cases still remain pending for several years (CARE Ratings, 2023).

Chart 2: The status of CIRPs.

Source: IBBI (Care Ratings, 2023)

The problem is exacerbated by prolonged timelines across real-estate CIRPs. IBBI data shows that more than 65% of ongoing CIRPs have already crossed 270 days, and a significant portion is pending for over two years. This delay is far beyond the statutory 330-day limit, showing the systemic inefficiency of the CIRP framework in the real-estate sector. (CARE Ratings, 2023)

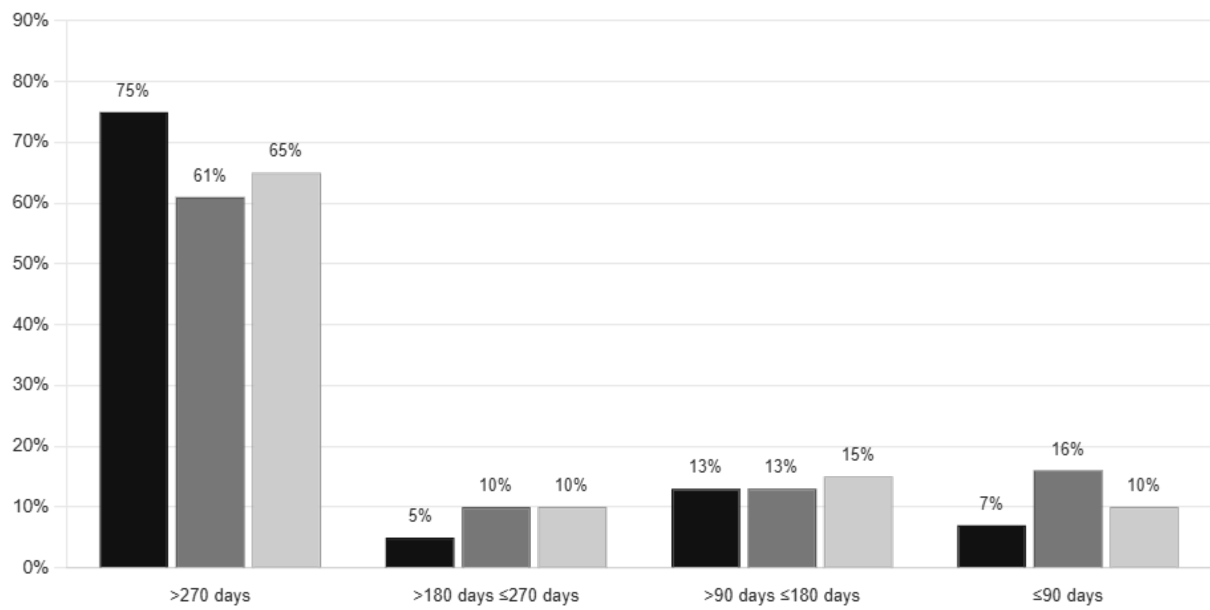

Chart 3: The timeline of Ongoing CIRPs

Source: IBBI (Care Ratings, 2023)

These trends collectively shows that the IBC, in its current form, struggles to deliver timely or meaningful resolutions in real-estate insolvencies. Stakeholder's conflicts, project-specific constraints and prolonged timelines combine to render CIRP substantially ineffective for homebuyer-driven distress cases and it necessitates alternative mechanisms such as codification of Reverse CIRP and project- level resolution frameworks.

6. Suggestions and Findings

The core finding of the paper is that a deep structural mismatch exists between the traditional framework of the Insolvency and Bankruptcy Code, 2016 (IBC) and the economic realities of the real estate sector. While the IBC was originally framed as a creditor-driven, time-bound mechanism designed to maximize asset value, real estate insolvencies are uniquely project-specific, involve highly immovable assets, and include homebuyers whose primary interests are centred on housing security and possession rather than financial restructuring or liquidation. Aggregated data from the Insolvency and Bankruptcy Board of India (IBBI) reflects these structural inefficiencies: the real estate sector is the second-largest contributor to Corporate Insolvency Resolution Process (CIRP) admissions (accounting for 21% to 24%), yet its outcomes are disproportionately poor. Only about 14% to 15% of real estate CIRPs yield an approved resolution plan, while over 65% of ongoing cases are delayed beyond 270 days, frequently breaching the statutory 330-day limit (CARE Ratings, 2023). Through a law and economic analysis, the authors demonstrate that judicial and statutory attempts to solve this crisis have fallen short due to systemic, behaviour-driven deadlocks. Although the 2018 amendment legally classified homebuyers as financial creditors to grant them representation in the Committee of Creditors (CoC), economic principles explain why this failed to deliver effective protection. Applying Mancur Olson's *Logic of Collective Action*, the paper finds that homebuyers operate as a large, geographically dispersed group plagued by the free-rider problem and high coordination costs. This severely limits their actual influence in voting blocs compared to secured lenders (like banks), who operate as small, concentrated groups with clear institutional hierarchies. Furthermore, concepts from game theory, such as the *Prisoner's Dilemma* and *Nash Equilibrium*, highlight a fundamental conflict of interest. Homebuyers seek project completion and apartment possession, while banks rationally pursue immediate loan recovery or asset monetization. This strategic mistrust drives both parties into a defensive, non-cooperative Nash Equilibrium that stalls construction, causes prolonged litigation, and destroys overall value. From a transaction cost perspective, real estate assets possess extreme asset specificity (partially completed towers have only one economic purpose), which leads to a hold-up problem where assets cannot be easily repurposed, making standard corporate liquidation highly value-destructive. Finally, while judge-made mechanisms like Reverse CIRP, (focusing on project completion led by a promoter under professional supervision) align better with Kaldor-Hicks efficiency, their reliance on judicial discretion rather than statutory text breeds enforcement inconsistencies regarding fund segregation, Section 29A disqualifications, and compliance with the Real Estate Regulatory Authority (RERA).

To resolve these systemic defects, the authors conclude that real estate insolvency reform must move away from unpredictable, case-by-case judicial workarounds and instead be formally integrated into the text of the IBC through comprehensive legislative action. First, the authors suggest the formal codification of project-specific Reverse CIRP and project-wise insolvency within the IBC. This statutory architecture would allow tribunals to isolate insolvency proceedings strictly to a defaulted project site rather than imposing a company-wide moratorium. By confining the distress, the law can prevent a spillover effect that halts a developer's otherwise healthy, well-performing projects, thereby protecting non-defaulting homebuyers and preserving ongoing corporate operations. Second, the paper recommends introducing diligently tailored, structured exceptions to Section 29A of the IBC specifically for the real estate sector. Under strict monitoring, capable original promoters who are entirely clear of fraud, malfeasance, or asset diversion should be permitted to submit project-specific resolution plans to complete stalled constructions. To ensure maximum transparency, accountability, and market value preservation under this exception, the authors advise that these promoter-led plans be subjected to an open "Swiss Challenge" process, require an elevated 75% CoC approval threshold, and grant homebuyers a distinct voting block to safeguard their possession-seeking assets. Third, to combat the information asymmetries and opportunism inherent in real estate insolvencies, the authors recommend upgrading the regulatory monitoring framework. They advocate for the implementation of mandatory monitoring committees, independent asset valuations, and a shift from quarterly progress tracking to strict monthly reporting during the construction phase. Finally, the authors emphasize the critical need to harmonize the friction between RERA's regulatory mandates and the IBC's insolvency rules. Because local RERA authorities often lack enforcement capabilities once a developer becomes truly insolvent, the authors propose a new statutory Coordination Framework. This framework would establish a clear operational hierarchy, utilizing fast-track approvals that respect RERA for technical and regulatory compliance (such as fund segregation and escrow rules) while utilizing the IBC framework for corporate financial restructuring, ultimately aligning insolvency law with real estate's economic realities to lower transaction costs and ensure predictable outcomes.

7. Conclusion

This paper addresses the regulatory and economic mismatch within the Insolvency and Bankruptcy Code, 2016 (IBC) regarding the unmapped statutory position of homebuyers in real estate insolvencies. While the original 2016 framework completely ignored real estate allottees, the subsequent Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 attempted to balance consumer protection by designating homebuyers as financial creditors under Section 5(8)(f), granting them representation in the Committee of Creditors (CoC) via an Authorized Representative (AR) under Regulation 9A. However, as outlined in the introduction, the unique, project-specific, and completion-based expectations of real estate stakeholders remain fundamentally incompatible with a rigid, traditional corporate insolvency process. This structural misalignment frequently breaches the statutory 330-day timeline under Section 12, forcing viable developments into value-destructive deadlocks rather than maximizing asset value. The existing academic literature underscores this systemic friction, with scholars noting that conflating consumer housing expectations with commercial lending metrics suppress consumer rights, ignore the multi-project interconnected liability networks of modern developers, and trigger sweeping corporate freezes that strip homebuyers of both their life savings and their prospective homes.

The judicial emergence and evolution of the Reverse Corporate Insolvency Resolution Process (Reverse CIRP) developed as a necessary, judge-made workaround to these corporate-wide constraints. Pioneered by the National Company Law Appellate Tribunal (NCLAT) in *Flat Buyers Association Winter Hills - 77, Gurgaon v. Umang Realtech Pvt. Ltd.*, and reinforced by the Supreme Court in *Anand Murti v. Soni Infratech Pvt. Ltd.*, the judiciary successfully established that real estate insolvency should be project-specific. By confining the insolvency and moratorium to individual defaulting project sites, as seen in *Ram Kishor Arora*, *Indiabulls*, and *Tarun Ahuja*, the courts prevented isolated defaults from paralyzing a developer's healthy, parallel developments. Yet, this judicial mechanism operates under severe legal tension. It creates a functional, uncodified exception to the anti-abuse provisions of Section 29A by allowing defaulting promoters to infuse funds as external contributors. Furthermore, it creates friction with the Real Estate (Regulation and Development) Act, 2016 (RERA), which mandates that 70% of project funds be maintained in strict escrow accounts. While the Insolvency and Bankruptcy Board of India (IBBI) attempted to bridge these procedural gaps through the February 2025 amendments: introducing Regulation 4E for Interim Possession Transfers, Regulation 38(4) for Monitoring Committees, and Regulation 30C for Real Estate Permissions Reports, Reverse CIRP still lacks formal statutory codification within the text of the IBC.

The critical operational necessity of these project-completion principles is starkly highlighted by the major real estate insolvencies examined in this study. In the *Supertech Ltd.* insolvency, a Section 7 petition over a ₹431.92 crore default on the Eco Village II project immediately jeopardized over 25,000 homebuyers, exposing the hostile impasse between secured lenders demanding debt recovery and buyers seeking possession. Conversely, the operational success of a project-specific approach was validated in *Satish Chander Verma v. Grand Reality Pvt. Ltd.* concerning the stalled Marvel Ganga Fria project (2025b). Instead of succumbing to third-party liquidation, judicial supervision allowed an external entity (Pax Homes LLP) to step in, complete construction, obtain occupation certificates, and deliver physical possession to all homebuyers, resulting in the successful closure of CIRP proceedings by the NCLAT.

Applying a rigorous law and economic analysis reveals the precise behavioural and structural barriers that cause traditional CIRPs to fail. Through Game Theory, the *Supertech* deadlock is modelled as a classic Prisoner's Dilemma. While mutual cooperation would yield the highest collective payoff, a mutual deficit of trust drives banks (demanding rapid asset monetization) and homebuyers (demanding immediate possession) into a highly inefficient (1,1) Nash Equilibrium, where both sides suffer from prolonged, expensive litigation and unfinished projects. While a cooperative restructuring plan aligns with Kaldor-Hicks Efficiency, where the aggregate welfare of completing the project outweighs localized delays or financial haircuts, strategic mistrust blocks its implementation. This deadlock is further explained by Oliver Williamson's Transaction Cost Economics. Real estate assets exhibit extreme asset specificity; a half-completed residential tower cannot be redeployed, trapping homebuyers in a severe "hold-up problem" where they are vulnerable to cost escalations. Bounded rationality and severe information asymmetry prevent individual buyers from verifying accounts, while developer opportunism (such as the illicit diversion of homebuyer advances across multiple projects) and creditor opportunism drive up monitoring and enforcement costs. Ultimately, standard CIRP governance fails because its multi-year construction demands cannot be reconciled with a compressed 330-day corporate timeline. This governance failure is compounded by Mancur Olson's *Logic of Collective Action*, which demonstrates why homebuyers remain marginalized despite their numerical superiority in the CoC. As a large, geographically dispersed group, homebuyers are plagued by high coordination costs and the free-rider problem, lacking the selective incentives or statutory coercion required to pool litigation funds. Consequently, small, concentrated, and institutionally organized financial creditors consistently dominate the bargaining landscape. The empirical performance data compiled by the IBBI validates these theoretical breakdowns, showing that while real estate represents the second-largest contributor to CIRP admissions (accounting for 21% to 24%), its outcomes are disproportionately dismal. Only 14% to 15% of real estate CIRPs successfully conclude with an approved resolution plan, while over 65% of ongoing cases languish beyond 270 days and frequently cross multiple years.

To bridge this gap, the core findings and suggestions of this paper call for a paradigm shift away from unpredictable judicial workarounds and toward permanent legislative reform. First, the paper recommends the formal statutory codification of project-specific Reverse CIRP within the text of the IBC to confine defaults and protect non-defaulting phases from company-wide liquidations. Second, it suggests introducing highly structured, monitored exceptions to Section 29A, permitting original promoters who are entirely clear of fraud or malfeasance to submit resolution plans. To maintain market integrity, these plans must be subjected to an open Swiss Challenge process, require an elevated 75% CoC approval threshold, and utilize a distinct homebuyer voting bloc. Third, to curb opportunism and close information asymmetries, the paper advises upgrading the monitoring architecture to include independent asset valuations and strict monthly technical and construction reporting. Finally, the authors propose a statutory Coordination Framework to harmonize the friction between RERA and the IBC, leveraging fast-track approvals that respect RERA's technical and escrow safeguards while deploying the IBC's financial restructuring powers. Incorporating these structural reforms is the only viable mechanism to eliminate value-destructive deadlocks, lower transaction costs, and fulfil the core statutory objectives of balancing stakeholder interests and maximizing asset value within the real estate sector.

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Corporate Governance and the Limits of Legal Regulation: An In-Depth Analysis of Executive Compensation at Amara Raja Energy Mobility Ltd.

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Abstract

One of the primary objectives of the norms of corporate governance is to reduce the agency costs between management and shareholders. To this end, the agency theorists have argued that the executive pay should have a balance of incentives and disincentives to align their interests properly with those of the shareholders. This led to an exorbitant increase in executive pay, which is now often referred to as one of the primary reasons behind the growing inequality in the society. This has been true also for India, as it stands only second to the USA in the list of countries with highest Median Pay Gap Ratio (MPGR) or the CEO to median worker pay gap ratio. And one of the Indian companies that has regularly reported extremely high MPGRs is Amara Raja Energy and Mobility Ltd. (AREML), while still being fully compliant with the corporate governance norms. The present paper analyses the corporate governance of AREML since it was listed in 1996. It employs economic tools to understand the reasons behind the excessive executive compensation at AREML.

Keywords: *Excessive Executive Compensation, Directors, Nomination and Remuneration Committee, Agency Costs, Inequality.*

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

1. Introduction

According to French historian Francois Pierre Guillaume Guizot, there are two facets of 'civilization':

"…on one hand, an increasing production of the means of giving strength and happiness to society; on the other, a more equitable distribution, among individuals, of the strength." (Guizot et al., 1997).

To put it in different words, according to Guizot, a true civilized society is one that focuses on not only increasing the production of the means to satisfy human wants but also ensures their equitable distribution. The same has been the subject matter of economics as it deals with scarce resources and their optimum allocation in the society. Furthermore, one of the principles of economics is that society faces trade-offs between efficiency and equality. Efficiency refers to the size of economic pie whereas equality refers to the share of the economic pie that is distributed equally among the individuals. Thus, the following two kinds of forces should work together in every progressive society:

i. Increasing the size of the economic pie, and
ii. Equitable distribution of the resources so generated.

Increasing the size of economic pie has always been a challenge for a society/country as resources are limited. Therefore, enhancing productivity through investment, technological advancement and suitable laws and policy can certainly address these issues. Furthermore, if the size of the economic pie grows it definitely leads to more income availability for individuals. Once the economic production expands the subsequently the aim is equitable allocation of resources. Fair and equal distribution of income and resources ensures ample opportunity for everyone.

Therefore, for an economy to develop it becomes necessary for the primary, secondary and tertiary sector to perform well. Economic development takes place when there is a continued surge in the real income, purchasing power, which ultimately leads to improved criteria of living standards. Here, the role of public sector as well as the private sector becomes imperative in shaping the growth and development. The public sector is governed by the government whereas the private sector is controlled by individuals. While the public sector's focus is on overall development, the individuals that control the private sector are primarily driven by profit motive.

Business is one of the means through which there can be a significant change in the economic production of a country. Trade and business serve as an agent of change in society. Business includes the combination of capital, assets, technologies and lots of human resources for the production and distribution of commodities with the aim to generate profit. It is the most efficient and viable human activity in the global scenario. Hence, a better business can lead to a better economy, thus ensuring economic development. Business essentially follows certain principles and theories for their conceptual framework and models which guide decision making in organisational behaviour. Economic theories have crucial role to play in corporate governance as they illuminate on how firms should be organized, how and what rational decisions to be taken into consideration and how conflicts between different stakeholders can be managed. One of the major economic theories that has always influenced corporate governance is agency theory.

The agency theory complements above mentioned goals of private sector. At the core of this theory is the idea that the agents (managers/corporate directors) may not always act in the best interest of their principals (owners/shareholders) unless proper incentives and controls exist.

1.1. The Relevance of Agency Theory

By and large, the agency theory takes into account the glitches and resolutions regarding the conflicting interest between principals and agents with respect to delegation of task. The main purpose of agency theory in corporate governance is efficient organisation of information and risk bearing costs. In economic thought the agency theory plays a vital role in management of corporation as it is an extension of Neo-Classical school of thought. The Neo-Classical belief of maximizing utility by the individuals and maximizing profit by the firm is very much present in the Agency Theory. On the first point, the writings of agency theorists have exercised great influence from the Neo-Classical school. The idea inherent in the concept of 'efficient contracting', the principle that characterises agency theory, is that the principals need to incur agency costs to ensure that the agent's interests and their own are properly aligned. The need for incurring agency costs for achieving the objectives of efficient contracting was first outlined by Michael Jensen and William Meckling in a paper published in the Journal of Financial Economics in 1976 (Jensen & Meckling, 1976). They reached the conclusion that the manager of a firm "will choose a set of activities for the firm such that the total value of the firm is less than it would be if he were the sole owner" (Jensen & Meckling, 1976). Thus, they argue that being the principal in this agency relationship with the managers, the shareholders "can limit divergences from [their] interest by establishing appropriate incentives for the agent" (Rosen, 1990). These costs were referred to as agency costs and include the following:

a. the monitoring costs,
b. the bonding expenditures, and
c. the residual loss.

Thus, it was based on their argument that subsequent corporate governance scholars concluded that the only way to minimize agency costs within a company is by properly structuring executive compensation. It was argued that the structure of the executive's compensation should strike a balance between "incentives and insurance"; in other words, variable income and fixed income (Rosen, 1990).

However, this led to the focus of modern states in the contemporary world only on linear growth and inequality has become the norm. This linear growth with inequality is observed in manufacturing sectors, small and medium enterprise public as well as private sectors undertakings. This inequality is in terms of unequal distribution of income in terms of:

a) Wages and salaries;
b) Ownership /shareholders; and
c) Social inequality.

All forms of inequality restrict the economic mobility within the society and limits the very idea of inclusive growth of the economy. One of the most prominent reasons behind the rising income gap, as identified by the inequality scholars, is excessive executive compensation.(Piketty & Goldhammer, 2014; Stiglitz, 2015) In a paper published in 2015 by the International Monetary Fund (Dabla-Norris et al., 2015), it was found that an increase in the income of the top 20 per cent of the population has a negative impact on the GDP of the nation, while a similar increase in the income of the bottom 20 per cent can have a completely opposite effect.

It has been pointed out by inequality theorists that the executives have broadly been able to "set their own pay" while their exorbitant pay packages do not reflect an increase in productivity "as indicated by the lack of correlation between managerial pay and firm performance" (Stiglitz, 2015). Further, excessive executive compensation has been found to incentivize the managers for taking excessive risks and for providing misleading information (Stiglitz, 2009). Others have referred to the executives as 'supermanagers' who base their claim to the excessive compensation on the grounds of 'hypermeritocracy' (Piketty & Goldhammer, 2014).

It has been further observed that there is a positive correlation between the size, performance and age of the company and its levels of executive compensation (Sánchez-Marín et al., 2022). Also, it has been found that percentage of shares owned by directors and ownership concentration lead to an increase in executive compensation (Sánchez-Marín et al., 2022). Further, excessive compensation, short-term approach and longer tenures have also been found to be connected to long-term debt levels and low credit line limits (Chemla et al., 2025).

2. The Gradual Increase of MGPR in India

The growth in pay disparity is often measured in MPGR (median pay gap ratio), or CEO to median employee pay gap ratio (i.e., the wage gap between Chief Executive Officers (CEOs) and the median employee of the company). The trend in the US over the years has been aptly presented in a paper published Mishel and Schieder (2017). Using the stock-options-realised measure, they found that MPGR was around 20:1 in 1965 and 58:1 in 1989. They further noted that the ratio ballooned to astronomical levels and reached its peak in the year 2000 when it was recorded at 376:1, before declining to 312:1 in 2017.

In India, certain listed companies report such high MPGRs that are beyond any logic or justification. The company with the highest MPGR in FY2023 was Bharat Rasayan Ltd. Its CEO was granted a remuneration that was 41,695 times that of the median employee.

Considering the fact that there are over 1900 listed companies in the National Stock Exchange, to conduct a comprehensive study of the reasons responsible for high MPGRs, the authors have adopted the following parameters to zero down on the ideal sample company:

i. should have been listed for at least 5 years;

ii. should have at least 1000 employees; and

iii. should be listed in NIFTY500.

On the basis of the above parameters, the company that reported the highest MPGR in FY2023 is Amara Raja Energy Mobility Ltd. (AREML). In FY2023, the company reported MPGR of 1:1872.45 in FY2023; meaning that its CEO earned more than 1800 times that of the median employee's wages. The chart below is a testament of the fact that income inequality within the company has always been astronomically high.

FY	Ratio b/w Median Emp Rem & MD Rem
FY2015	1:2316.75
FY2016	1:2448.41
FY2017	1:2082.77
FY2018	1:2003.64
FY2019	1:1885.99
FY2020	1:2106.03
FY2021	1:1951.50
FY2022	1:1412.82
FY2023	1:1872.45

Table 1: Ratio b/w Median Emp Rem & MD Rem

Source: Annual Reports (FY 2015 to 2023) from Amara Raja Energy & Mobility Limited (1996-2023).

The paper seeks to present an economic analysis of the corporate governance structure of AREML to assess the reasons behind the high pay disparity within the company. It will be contrasted against the laws on corporate governance that are supposed to act as a safeguard against excessive executive compensation. Based on its findings, the paper will end with suggestions for improvements in corporate governance laws for fixing the issue of high MPGRs.

3. A Case Study of AREML

In the FY2022-23, out of all the companies listed in India, Amara Raja Energy & Mobility Ltd. (formerly known as Amara Raja Batteries Ltd. and hereafter referred to as AREML) had the widest gap between the CEO's remuneration and median employee's salary ("Fat CEO Salaries Come under the Gaze of Shareholders and Boards," 2023). According to the annual report of the company for the financial year 2022-23, the CEO's pay was found to be 1,872.45 times that of the median employee's remuneration in the company. This pay-gap ratio was more than twice than that recorded in the company with the second highest pay-gap, i.e. Amber Enterprises India Ltd., where the pay-gap ratio was 1:917.

The annual increase in the CEO's pay at AREML in FY2023 was 38.50 per cent. At the same time, the median remuneration of employees in the same period increased by a mere 4.48 per cent. Moreover, it is worth noting that in 2021 the company featured in the Forbes 500 Best Employers List (" Amara Raja Group enters Forbes 500 best employers list", 2021). It is to be noted that the total number of permanent employees in the company in the same year was 7,993. The researchers have analysed all annual reports of the company available on Bombay Stock Exchange's website, i.e. annual reports from FY1996-97 to FY2022-2023.

3.1. Company Profile: The Before Times

AREML is a family-run business. It is otherwise known as the manufacturer and owner of the famous brand 'Amaron Batteries'. The company was incorporated on 13th February, 1985 as a private company. The first three subscribers of shares in the capital of the company were Mr. Radhakrishna Naidu Bollinaemi, Mr. Abbaiaah Prabhu Naidu Manaru and Mr. Ramesh Yelawarthy. It was subsequently converted into a public company on 6th September, 1990. The company came out with a public issue in 1991 and its shares got listed on four stock exchanges, The Stock Exchange, Mumbai (BSE), National Stock Exchange (NSE), Hyderabad Stock Exchange Ltd. (HSE) and Calcutta Stock Exchange Association Ltd. (CSE). On 27th September 2023, the company changed its name from Amara Raja Batteries Ltd. to Amara Raja Energy & Mobility Ltd.

The promoter group, represented by RN Galla Family Pvt. Ltd., holds 28.06 per cent shares in the company. In 2017, RN Galla Family Pvt. Ltd. was incorporated and all the promoters shares in Amara Raja Batteries Ltd. were transferred to this company. All directors in RN Galla Family Pvt. Ltd. are from the Galla family itself.

RN Galla Family Pvt. Ltd. derives its name from Mr. Ramachandra N. Galla, who is famously referred to as the founder-chairperson of the Amara Raja Batteries (*Amara Raja Energy & Mobility Limited*, n.d.; Bureau, 2021). It may be of interest to note, however, that Mr. Ramachandra Galla's name does not appear amongst the names of the three individuals who were the initial subscribers of shares in the capital at the time of the incorporation of the company. Also, annual report for FY1996-97 mentions that Mr. Ramachandra Galla was employed by the company on 1st September, 1990. Prior to that, he was working as Sr. Engineer at Seargent & Lundy Power Consultants, USA. Also, it is worth mentioning that until 1997, he was working as the Managing Director in the company while the Chairman was Mr. U.V. Warlu. It is only from FY1997-98 onwards that Mr. Ramachandra Galla has been designated as the Chairman-cum-Managing Director of the company. At the same time, it can also be noted that his son, Mr. Jayadev Galla, was employed for the first time on 9th December, 1991 by the company. Before that, he was working as International Sales Administrator at GNB Technologies, USA.

3.2. The Board of Directors

According to the Annual Report FY2022-23 of the company, the Board of Directors consists of the following individuals:

Sl. No.	Name of Director	Position
1.	Mr. Jayadev Galla	CMD & CEO (Executive Director)
2.	Mr. Harshavardhana Gourineni	Executive Director
3.	Mr. Vikramadithya Gourineni	Executive Director
4.	Mr. Annush Ramaswamy	Independent Director (Non-Executive)
5.	Ms. Bhairavi Tushar Jani	Independent Director (Non-Executive)
6.	Mr. N. Sri Vishnu Raju	Independent Director (Non-Executive)
7.	Mr. T.R. Narayanaswamy	Independent Director (Non-Executive)

Table 2: List of Directors in AREML

Source: Annual Report of FY2022-23 of AREML from Amara Raja Energy & Mobility Limited (1996-2023).

It is to be noted that all three executive directors of the company come from the Galla family. The following chart gives a clearer understanding of the relationship between the three executive directors:

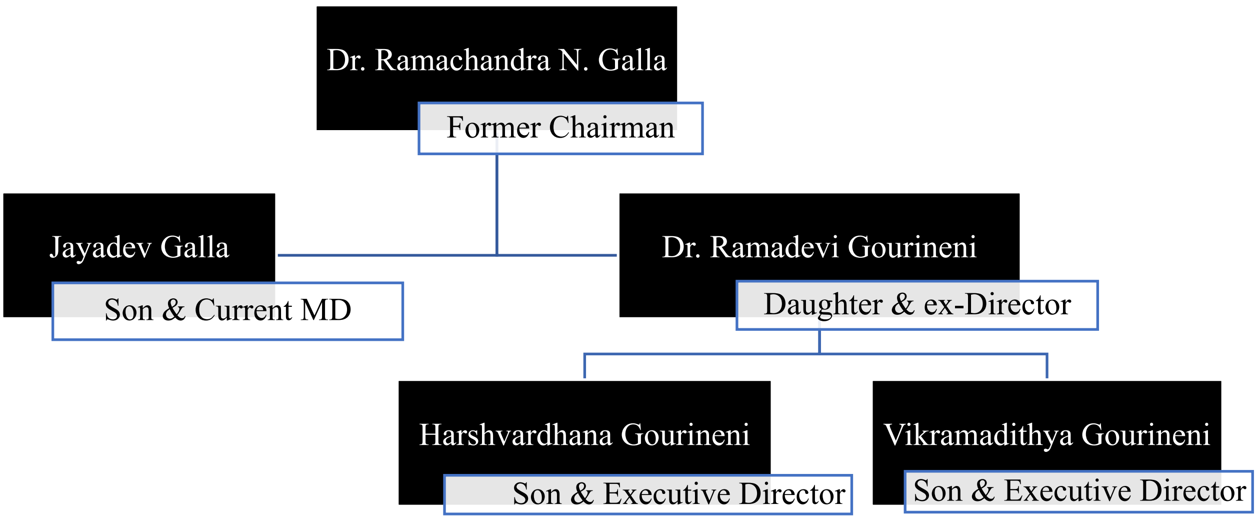

Figure 1: Family tree of AREML's Promoters

Source: Authors' own construction from Public documents of AREML available at Ministry of Corporate Affairs' website.

Mr. Jayadev Galla, the current managing director and chairman, has been working at the company since 9th December, 1991. He was working as an executive director until 2003 when he was made the managing director of the company. He has been serving the company as its managing director ever since. Mr. Jayadev Galla took the helm of the Amara Raja Batteries Ltd. from his father, Dr. Ramachandra N. Galla, on 14th August 2021, when he was made the Chairman of the company.

The last three entries in the list of directors have been designated as independent directors. The independent directors have a significant role to play in the fixation of remuneration of the executive directors as they constitute two-thirds of the Nomination and Remuneration Committee (NRC) in the company and, also, hold the chairpersonship of NRC. According to the annual report for FY2022-23 of the company, all four independent directors are a part of the NRC, with Mr. N. Sri Vishnu Raju as its Chairperson.

3.2.1. Remuneration of Executive Directors

There have been only five executive directors in Amara Raja Energy & Mobility Ltd. since 1996. The details of their remuneration have been represented in the table below.

FY	**RNGalla (1995-2021)**	**J Galla (1995-present)**	**R Bhamidipati (2012-13)**	**H Gourineni (2021 – present)**	**V Gourineni (2021 – present)**
FY1996	70,73,997	23,57,999			
FY1997	1,11,50,331	1,11,50,331			
FY1998	2,22,40,091	2,22,40,091			
FY1999	2,99,30,935	2,99,30,935			
FY2000	1,29,51,455	1,29,51,455			
FY2001	1,30,64,500	1,30,64,500			
FY2002	1,37,43,106	1,37,43,106			
FY2003	65,20,369	65,20,369			
FY2004	24,00,000	24,09,360			
FY2005	75,48,176	75,48,175			
FY2006	1,56,67,877	2,04,36,362			

FY2007	2,32,20,000	3,87,00,000			
FY2008	4,75,10,000	7,91,70,000			
FY2009	4,01,00,000	6,30,70,000			
FY2010	8,30,40,000	13,84,00,000			
FY2011	7,20,80,000	12,01,30,000			
FY2012	10,41,80,000	17,36,30,000			
FY2013	14,08,80,000	23,48,00,000	2,40,20,000		
FY2014	17,59,90,000	29,33,20,000	2,08,30,000		
FY2015	20,15,90,000	33,59,70,000			
FY2016	23,55,50,000	39,25,90,000			
FY2017	22,83,88,000	38,06,47,000			
FY2018	23,32,00,000	38,86,00,000			
FY2019	23,82,00,000	39,69,00,000			
FY2020	27,26,00,000	45,43,00,000			
FY2021	28,41,00,000	47,35,00,000			
FY2022		38,00,00,000		15,26,00,000	15,26,00,000
FY2023		52,63,00,000		26,32,00,000	26,32,00,000

Table 3: Year-wise remuneration of executive directors of AREML

Source: Annual Reports (FY 1996 to 2023) from Amara Raja Energy & Mobility Limited (1996-2023).

Mr. Ramachandra N. Galla became a Non-Executive Chairperson w.e.f. 1st September 2005. Subsequently, his commission was reduced to 3 per cent of net profits. The company got the approval from the Central Government for paying its NEDs up to 4 per cent of net profits, out of which only 1 per cent was being paid to all the other NEDs.

It can be observed from the above table that since 1996, there has been cumulatively only five executive directors in the company, out of which four are from the Galla family itself. Only Mr. Ravi Bhamidipati does not have any direct ties with the Galla family. Having a direct relationship with the Galla family seems to be of high relevance also in the quantum of remuneration of executive directors. The lowest remuneration, amongst all the executive directors, was drawn by Mr. Bhamidipati. His tenure, as an executive director, was also the shortest, i.e. of less than one year.

The largest component in the remuneration of all executive directors at Amara Raja has been "commission", which is paid as a percentage of profits before tax. The managing director has been paid commission at the rate of 5 per cent since the beginning of the data. Also, Mr. Jayadev Galla has been constantly paid commission at the rate of 5 per cent even prior to his becoming the managing director of the company, i.e. 1st August 2003. Even after stepping down from the position of executive director on 1st September 2005, Mr. Ramachandra Galla was receiving commission at the rate of 3 per cent. It is pertinent to note that even at that time the law required that in case there is an executive director on the Board, none of the non-executive directors (NED) individually or, if there are more than one such NED, to all of them together, should be paid a commission of more than 1 per cent, according to S. 309(4) of the Companies Act (1956). To do this, consent from the Central Government was taken time and again until 2021, when Mr. Ramachandra Galla finally retired from the company. The two grandsons of Mr. Ramachandra Galla, i.e. Harshavardhana Galla and Vikramadithya Galla, are receiving commission at the rate of 2 per cent. The lowest commission to be paid to any executive director since the listing of the company has been Mr. Ravi Bhamidipati, who received it at the rate of 1 per cent of profits before tax.

What is also very interesting to note is that between FY1996-97 (after listing of Amara Raja) to FY2004-05, both Mr. Ramachandra Galla and Mr. Jayadev Galla have either received the same amount or almost the same amount as remuneration. This happened irrespective of the differences between the amount being paid to them under different components such as salary, housing rent, and perquisites. It continued until FY2005-06, when Mr. Ramachandra Galla was made a non-executive chairperson. A similar trend can again be witnessed in the amount of the remuneration being paid to the Gourineni brothers.

The fact that the structure of the managing director's remuneration, or that of most of the other executive directors', has not changed much over the years signifies how little impact the evolution of corporate governance norms has been able to make in this regard on the company. It could be possible that in Amara Raja, irrespective of the composition of the NRC, most of the executive directors (the ones who have come from the promoter Galla family) have been able to wrestle out from the company whatever compensation they have so desired. This casts a dark shadow over the efficiency of the independence of the NRC at the company.

3.3. Executive vs Employee Compensation

With respect to the mandate of disclosures under the laws regarding employee compensation, the requirements have changed over the years. Thus, the comparison between executive and employee remuneration for Amara Raja has been presented through three different tables below. However, for a comprehensive understanding of the trend regarding employees share in the wages paid by the company, all three of them are equally important.

3.3.1. FY1995-96 to FY2001-02

Between FY1995-96 and FY2001-02, the company disclosed the highest employee remuneration (apart from the executive directors') as well as the number of employees who were earning above a certain limit. However, the company has not disclosed the total number of employees that it employed for each of those financial years. The data regarding the period has been provided for in Table 4:

FY	**MD Remuneration (₹)**	**Highest Employee Remuneration (₹)**	**No. of employees earning above 3lakh (until 1998); 6lakh (until 2000); 12lakh (until 2001); 24 lakh (until 2002)**	**Ratio b/w MD & Highest Emp Rem**
FY1996	70,73,997			-
FY1997	1,11,50,331	3,43,000	2	1:32
FY1998	2,22,40,091	5,78,245	11	1:28
FY1999	2,99,30,935	6,48,509	1	1:46
FY2000	1,29,51,455	8,62,620	4	1:15
FY2001	1,30,64,500	-	0	-
FY2002	1,37,43,106	-	0	-

Table 4: MD and Highest Employee Remuneration between FY1995-96 and 2001-02

Source: Annual Reports (FY 1996 to 2002) from Amara Raja Energy & Mobility Limited (1996-2023).

Table A shows that between FY1995-96 and FY2001-02, while the managing director was being paid exorbitantly, the employees were not being paid even a fraction of that. Except for 1995-96, the MD has charged the company more than a crore each year, while the employee only second to him did not make more than 9 lakhs. For the last two years under study, there were no employees, apart from the executive directors who earned more than 12 lakhs or 24 lakhs, respectively.

The trend depicted by the MD Remuneration and highest employee remuneration is presented with the help of the chart below. From the data available, it can be seen that the rate of increase of the pay of the highest employee was steady and rose by approximately 100 per cent. On the contrary, the MD's pay saw a rise of about 200 per cent in the same period before falling back to almost the same levels.

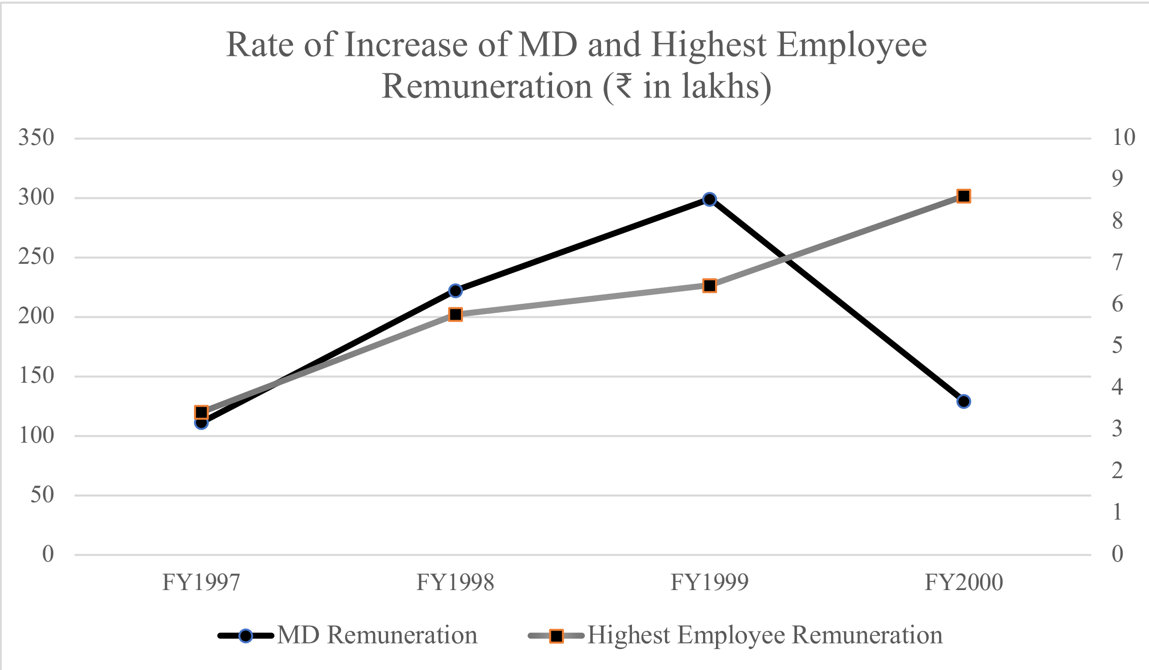

Figure 2: Rate of Increase of MD and Highest Employee Remuneration in AREML FY1995-96 to FY2001-02

Source: Compiled by the authors from data in Amara Raja Energy & Mobility Limited (1996-2023).

Between FY2000-01 to FY2014-15 (except for FY2001-02 to FY2003-04), the company disclosed the number of employees it employed in the given period as well as the total expense on employee remuneration. From the available data, average employee remuneration and ratio of the same with MD remuneration has been calculated. The said data has been presented herein under Table 5.

FY	**Profit Before Tax (₹)**	**MD Remuneration (₹)**	**Avg Employee Remuneration (₹)**	**Total Employees**	**Ratio b/w MD &**

					Avg Emp Rem
FY2001	23,51,40,997	1,30,64,500	1,19,250	882	1:109
FY2002	24,73,47,904	1,37,43,106	-	-	-
FY2003	11,73,38,638	65,20,369	-	-	-
FY2004	1,15,19,337	24,09,360	-	-	-
FY2005	13,58,11,156	75,48,176	1,13,394	1500	1:66
FY2006	37,34,64,223	2,04,36,362	1,59,437	1300	1:128
FY2007	71,19,84,448	3,87,00,000	1,67,927	1584	1:230
FY2008	1,45,93,81,425	7,91,70,000	2,17,757	1874	1:363
FY2009	1,22,65,86,080	6,30,70,000	2,44,497	2111	1:258
FY2010	2,54,63,48,749	13,84,00,000	2,50,182	2493	1:553
FY2011	2,21,01,28,596	12,01,30,000	2,58,376	2999	1:465
FY2012	3,18,64,50,000	17,36,30,000	3,13,129	3202	1:554
FY2013	4,21,81,70,000	23,48,00,000	3,65,223	3467	1:643
FY2014	5,36,70,00,000	29,33,20,000	4,12,926	3834	1:710

Table 5: MD Remuneration, Average Employee Remuneration, and their ratio for FY2000-01 and FY2013-14

Source: Annual Reports (FY 2001 to 2014) from Amara Raja Energy & Mobility Limited (1996-2023).

In the period under study, it can be observed that the ratio between the MD remuneration and that of an average employee has steadily increased. While the MD of Amara Raja made 66 times that of an average employee in FY2004-05, in almost about a decade in FY2013-14, he was making 710 times that of an average employee. This is a testimony to the widening gap between the haves and have-nots within Amara Raja. The increasing trend has also been presented below with the help of a graph.

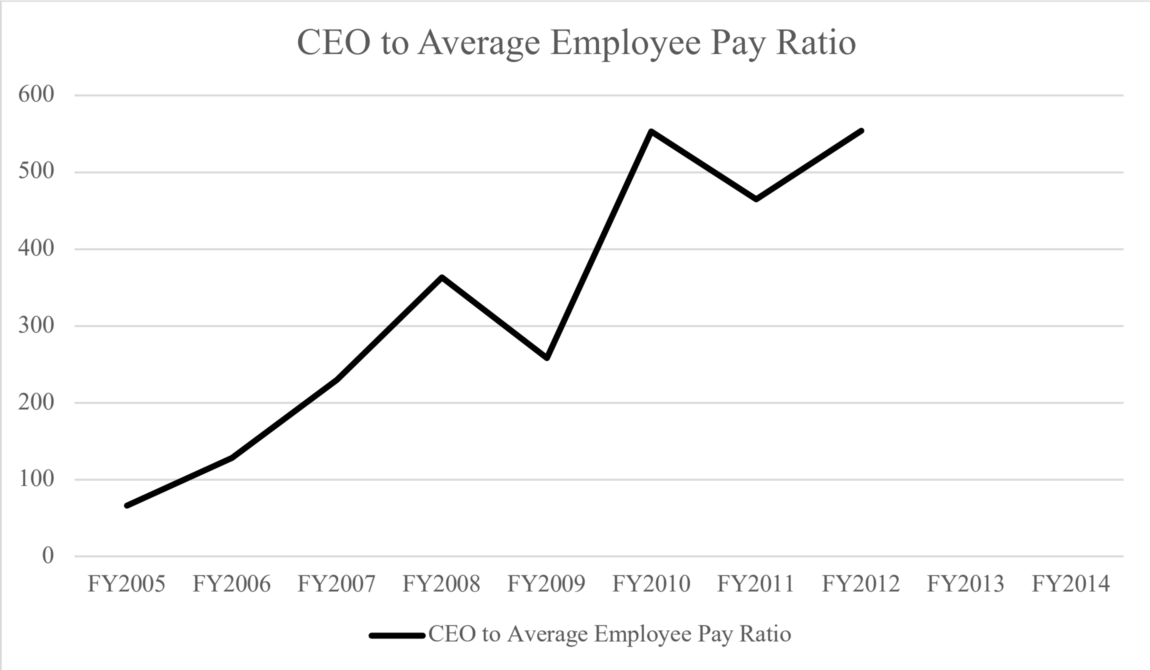

Figure 3: CEO to Average Employee Pay Ratio in AREML

Source: Annual Reports (FY 2001 to 2014) (Compiled by the authors from data in Amara Raja Energy & Mobility Limited (1996-2023)).

Another important trend that can be observed here is that there is a very strong positive relationship between the number of employees and profit before tax. The correlation coefficient for the two sets of data comes to around 0.96, which indicates positive correlation between the two variables. Thus, it can be said that an increase in the number of employees has had a positive impact on the profits of the company. Conversely, a fall in the profits would have led to a decline in the hiring of employees.

It is to be noted that in Table 5 average employee remuneration has been used, as opposed to median employee remuneration under Table C, due to lack of available data for the relevant period of study. However, the problems with using average data instead of median is duly acknowledged as it includes the salary paid to the executive directors and to other key managerial personnel. Also, there may be high disparity in the remuneration paid to workers at different levels and it will not be reflective in the average data, as it is in case of median remuneration.

3.3.2. FY2014-15 to FY2022-23

Starting from FY2014-15, in compliance of the new Companies Act 2013, Amara Raja has started publishing data regarding its median employee remuneration as well as its ratio with the MD remuneration. The same has been compiled and is presented hereinbelow under Table 6.

FY	**Profit Before Tax (₹)**	**MD Remuneration (₹)**	**% Change in MD Rem**	**Median Employee Rem (₹)**	**% Change in Median Emp Comp**	**Total Employees**	**Ratio b/w Median Emp Rem & MD Rem**
FY2015	6,09,90,00,000	33,59,70,000	14.54	1,45,018	8.62	4430	1:2316.75
FY2016	7,22,19,30,000	39,25,90,000	16.85	1,60,345	10.57	5617	1:2448.41
FY2017	7,02,21,00,000	38,06,47,000	(3.04)	1,82,760	13.98	6222	1:2082.77
FY2018	7,14,20,00,000	38,86,00,000	2.09	1,93,947	6.12	7051	1:2003.64
FY2019	7,30,37,00,000	39,69,00,000	2.15	2,10,446	8.52	7452	1:1885.99
FY2020	8,40,68,00,000	45,43,00,000	14.44	2,15,714	7.11	7640	1:2106.03
FY2021	8,73,33,00,000	47,35,00,000	4.24	2,42,634	8.85	7595	1:1951.50
FY2022	6,89,80,00,000	38,00,00,000	(19.73)	2,68,966	8.72	7615	1:1412.82
FY2023	9,47,57,00,000	52,63,00,000	38.50	2,81,076	4.48	7993	1:1872.45

Table 6: MD Remuneration, Median Employee Remuneration, and their ratio in FY2014-15 and FY2022-23

Source: Annual Reports (FY 2015 to 2023) from Amara Raja Energy & Mobility Limited (1996-2023).

The advantage with Table 6, over the previous two tables, is that it records median employee remuneration. It can be observed that the gap between the managing director's remuneration and that of a median employee has been consistently high. Although Amara Raja Energy & Mobility Ltd. featured on various news portals in 2023 for being the company with the highest pay gap between managing directors and the median employee, however the data suggests that such high pay gap is a common phenomenon for the company. Except for FY2021-22 when the MPGR was 1:1412.82, the ratio for FY2022-23 (that scored the company the top spot amongst the companies with the greatest pay disparity) was the lowest for the company since it started disclosing the MPGR. The trend of the MPGR has been presented below through the help of a graph. Though the MPGR seems to be on a declining trajectory, however, the rate of its decline is negligible for it to come down to reasonable levels in the near future.

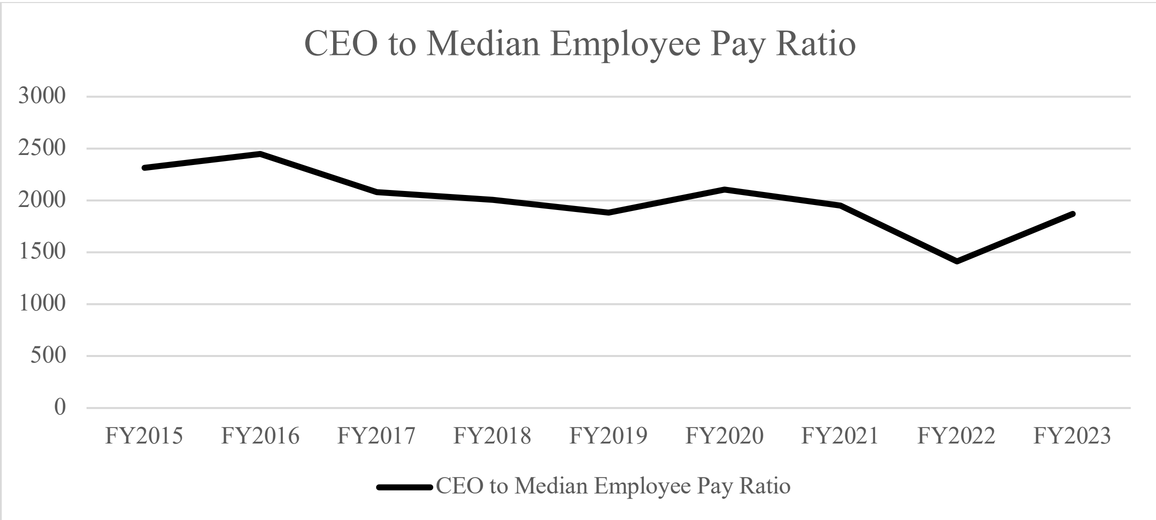

Figure 4: CEO to Median Employee Pay Ratio in AREML

Source: Annual Reports (FY 2015 to 2023) from Amara Raja Energy & Mobility Limited (1996-2023).

What is also to be noted from the data above is that there has been a steady increase in the number of employees in the company. Also, the correlation coefficient between profit before tax and number of employees for the period under study comes to about 0.72. This signifies that during FY2014-15 and FY2022-23, there was a positive correlation between the number of employees and profit before tax. However, the correlation was not as strong as it was under Table B.

3.4. Fixation of Remuneration of Mr. Jayadev Galla, the Managing Director-cum-Chairperson

Let us now analyse the procedure that the company had to undergo for the re-appointment and fixation of remuneration of Mr. Jayadev Galla as the managing director-cum-chairperson.

On 30th May 2020, a resolution is passed unanimously by the Board of Directors of Amara Raja Batteries Ltd. for re-appointing Mr. Jayadev Galla as the Vice Chairman and Managing Director of the company for a further term of five years starting from 1st September 2020. At the time, the composition of the NRC was the same as it is now except for one small difference; Mr. Annush Ramaswamy was yet to join the company. Thus, the NRC consisted of only three individuals, which amounted to half of the total strength of the Board.

In the resolution, it was specified that the appointment shall be subject to approval in the next general body meeting. The board resolution further went on to specify the responsibilities as well as the remuneration payable.

According to the said resolution, Mr. Galla is entitled to a monthly payment of ₹ 20,00,000/- (rupees twenty lakh only), along with a commission at the rate of 5 per cent of the net profits of the company. In addition to this, he is also entitled to other kinds of perquisites including housing rent allowance, medical reimbursement for self and family, leave travel concession, provident fund, leave encashment, gratuity, car, telephone, and club fee. It is to be noted that the resolution further states under Para 5 that the "aggregate of salary, commission and perquisites in any financial year shall not exceed 5% of net profits of the company." This is in tune with S. 197(1) of the Companies Act 2013, where it specifies an upper cap of 5 per cent of net profits on the remuneration to be paid to managing directors.

Mr. Galla is also entitled to receive reimbursement for all expenses that he may incur in furtherance of the company's business. However, under Para 10 of the resolution, he is "not entitled to receive any fees for attending meetings of the Board/Committee".

Thereafter, on the same day, i.e. 30th May 2020, Mr. Jayadev Galla submitted his consent letter to the Board of Directors. This was done towards the fulfilment of the requirement as specified under the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, wherein Form No. MR.1 requires such a letter of consent from the incoming managing director as one of the attachments.

In the very next annual general meeting of the company that was held on 7th August, 2020, the said board resolution was tabled before the shareholders through Special Resolution No.

8. The resolution proposed the appointment of Mr. Jayadev Galla as the Vice Chairman and Managing Director of the company. Also, it specified that the remuneration to be paid to Mr. Galla shall be as agreed upon between himself and the Board. In other words, the resolution simply proposed the appointment of Mr. Galla on the same terms and remuneration as had been agreed upon in the Board meeting held on 30th May 2020. The said resolution was passed with requisite majority. And with the passing of the said resolution in the general meeting, the procedure for the re-appointment of Mr. Jayadev Galla as the managing director of Amara Raja Batteries Ltd. was completed.

It is to be noted that Mr. Jayadev Galla was appointed as the managing director of ARBL for the first time on 1st August, 2003. Before that, he held the position of executive director in the company and had been working with the company on that position since 9th December, 1991. Prior to him taking the position, the position of managing director was held by his father, Mr. Ramchandra Galla.

Another important point to note is that until 2020, under Article 21.1(e) of the Articles of Association of Amara Raja gave the Galla Family the power to nominate the managing director. However, what is more important to note is that under Article 20.6, Mr. Jayadev Galla was named as the Vice-Chairman of the Board and Mr. Ramachandra Galla was named as its Chairman. The same clause also gave the power to the Galla Family to nominate the Chairman. Because of the said clause, the father-son due enjoyed permanency on the board. However, both above-mentioned clauses were amended in 2020 to remove the names of any individual from the Articles that otherwise entitled him/her to directorship. It may be noted that the said amendment was brought into effect after the acquisition of JCI (the only other promoter group apart from the Galla family, holding equal percentage of shares) by Clarios International, Brookfield in FY2019-20.

3.4.1. Why is MD Remuneration so high in Amara Raja?

The remuneration paid to the managing director at Amara Raja has been consistently high since its listing in 1995. Also, from the annual reports of the company perused starting from FY1996-97, it can be observed that the structure of the MD remuneration has not changed much. In fact, the list of components of MD remuneration has remained the same through years. It includes:

i) Salary

ii) Housing Rent Allowance

iii) Medical Reimbursement
iv) Other Perquisites
v) Commission

Out of all the above stated components, the one that contributes a significant chunk to MD remuneration has been the 'commission'. The managing director has been paid a commission at the rate of 5 per cent of the profit before tax since the beginning of the data set. This structure of the remuneration or the percentage of commission has remained unchanged, irrespective of the independent directors who comprised the nomination and remuneration committee (NRC). However, there are also other reasons behind the fixation of remuneration at such astronomical levels for the managing director of Amara Raja.

3.5. The Problematic 'Independent' Directors

The independent directors have a significant role to play in the appointment and fixation of remuneration of the directors, including the managing director. The law mandates that all listed companies must have a nomination and remuneration committee (NRC) (Companies Act, 2013, S.178(1); SEBI LODR Regulations, 2015, Schedule II, Part D). Also, it is mandatorily required that all NRCs must have at least three independent directors, under Reg. 19 of SEBI LODR Regulations, 2015. The chairperson of the NRC must always be an independent director too. Thus, it can be observed that in the scheme of things as devised under the above-stated laws, the degree of independence of the independent directors, and that of the NRC, is of crucial importance.

To ensure the independence of the independent directors, the company laws prescribe for certain important criteria. However, the case of Amara Raja makes one wonder if those criteria are enough to maintain the independence of the independent directors.

Since FY1996-97, there have been in total eleven individuals who were appointed on the board of the Amara Raja Energy & Mobility Ltd. as independent directors. Their names and tenures are provided for in the table given below:

Sl. No.	**Name**	**Tenure as Independent Director**	**Tenure on NRC**	**Tenure on the BoD**
1.	Dr. Upendranath Nimmagadda	FY2003 – FY2006	FY2003 – FY2006	FY1997 (reappointed) – FY2006

2.	V.R. Rao (Alternate Director for Dr. Nimmagadda)	FY2003 – FY2006	FY2003 – FY2006	FY1997 – FY2006
3.	P. Lakshmana Rao	FY2003 – FY2015	FY2003 – FY2015	FY1997 (originally appointed in 1994) – FY2015
4.	Manjula Chawla (Alternate Director for John Kennedy, Mark Koczela, John Major, Jerome Okarma, Jacqueline Ertl)	FY2003 – FY2005	FY2003 – FY2008	FY1999 – FY2008
5.	John P. Kennedy (JCI)	FY2003 – FY2004	FY2003 – FY2005	FY2003 – FY2005
6.	Mark L. Koczela (JCI)	FY2005 – FY2006	FY2005 – FY2006	FY2002 – FY2006
7.	Raymond J Brown (1st nominee for JCI; then independent)	FY2013 – FY2017	-	FY2003 – FY2010; FY2013 – FY2017
8.	Ravi Bhamidipati (1st independent; then executive)	FY2005 – FY2009	FY2006 – FY2009	FY2005 – FY2009; FY2013 – FY2014
9.	Nagarjun Valluripalli	FY2005 – FY2010	FY2005 – FY2020	FY2005 – FY2020
10.	N. Sri Vishnu Raju	FY2008 – present	FY-2015 – present	FY2008 –present
11.	T.R. Narayanaswamy	FY2010 – present	FY2012 – present	FY2010 – present

12.	Bhairavi Tushar Jani	FY2015 – present	FY2020 - present	FY2015 – present
13.	Annush Ramaswamy	FY2022 – present	FY2023 – present	FY2022 - present

Table 7: Independent Directors in AREML

Source: Amara Raja Energy & Mobility Limited (1996-2023) and Ministry of Corporate Affairs (n.d.).

The company constituted its remuneration committee for the first time in FY2002-03. Before that, it was the prerogative of the board of directors to appoint the directors and to fix their remuneration. It must be noted that there were in total five members of the remuneration committee when it was constituted for the first time.

3.5.1. JCI Directors as 'Independent Directors'

On 22nd December, 1997, a share subscription and investment agreement (SSIA) were entered into between the Galla Family and Johnson Controls (Mauritius) Pvt Ltd (JCI), a subsidiary of a multi-national corporation engaged in the field of energy, i.e. Johnson Controls. According to the SSIA, the board of directors was to comprise of 9 directors; 3 nominated by the Galla Family, 3 nominated by JCI and 3 independent directors to be appointed upon mutual consent of Galla Family and JCI. So, it can be observed that the other shareholders had little to no role to play in the appointment of the directors to the board of the company because of the SSIA. Both the Galla Family and JCI held almost equal number of shares, i.e. around 26%, until the declassification of JCI as a promoter upon its acquisition by Clarios International in FY2019-2020. Thus, it should be clear that any director being appointed by JCI on the Board of Amara Raja must be one being appointed as a representative of JCI. However, it is somewhat out of place to see that even JCI's directors were considered by the company as independent directors. Also, the short tenures of JCI's directors, coupled with their inability to effect any change in the management of Amara Raja, points towards the callous approach of JCI towards the governance of Amara Raja.

Another related instance that arouses curiosity in this regard is the case of Ms. Manjula Chawla. Ms. Chawla served the Board as an alternate director for as many as five representative or nominee directors of JCI for about 9 years. She served as an independent director on behalf of Mr. John P Kennedy between FY2002-03 to FY2003-04, and then similarly for Mr. Mark Koczela during FY2004-05 – FY2005-06. In fact, she has also served as a member of the remuneration committee between FY2002-03 to FY2007-08. It is to be noted that both Mr. Kennedy and Mr. Koczela were nominee directors of JCI and were even associated with JCI. It was possible due to the uncertainty in laws at that time. The law currently prescribes that for an alternate director to be classified as 'independent'; the original director must also be independent, under First Proviso to S. 161(2) of the Companies Act, 2013.

3.6. Long Tenures & Post-retirement benefits

Dr. Upendranath Nimmagadda, along with Mr. P. Lakshmana Rao and Ms. Manjula Chawla, were the founding members of the remuneration committee, when it was constituted for the first time in the FY2002-03. All three of them were named as the first independent directors of the company from that same financial year.

It is to be noted that, at the time of being designated as independent directors for the first time, Dr. Nimmagadda and Mr. P. Lakshamana Rao were already serving the company as non-executive directors. That makes their tenure on the board as non-executive directors exceed the then cap of continuous nine years.

Furthermore, Dr. Nimmagadda's relation with the Galla family did not end in FY2005-06 upon his retirement from the Board. In the very next financial year, i.e. FY2006-07, Dr. Nimmagadda was appointed on the Board of Amara Raja Power Systems Ltd., a company promoted by the Galla family. He served the company as a 'Director' till 30th October, 2023, as per the MCA's website. It is worth mentioning here that the data available since 2016 shows that Dr. Nimmagadda, along with his wife, were the second largest shareholders of the company after the Galla family.

This brings into question the effectiveness of Dr. Nimmagadda as an independent director in two different ways:

(i) his extremely long tenure of more than nine consecutive years; and

(ii) his position as a 'Director' and shareholder in Amara Raja Power Systems Ltd., that he acquired immediately after his cessation from the Board of Amara Raja Energy & Mobility Ltd.

The present case exemplifies the system of quid pro quo that sometimes exists between the executive directors and the independent directors. In the present case, the quid pro quo has been provided in the form of a post-retirement benefit.

Another case in point is that of Mr. Nagarjun Valluripalli. He served on the Board and as the chairperson of NRC of Amara Raja Energy & Mobility Ltd. for a continuous period of about 14 years. According to the MCA's website, Mr. Valluripalli ceased to be an independent director at the company on 5th August, 2019. And in less than one year, i.e. 27th July 2020, a Joint Venture is announced between Amara Raja and Blaze Automations, a company promoted by Mr. Valluripalli (PTI, 2020). He was appointed as a 'Director' in the new company, i.e. Amara Raja Blaze Technologies Pvt. Ltd., along with Mr. Jayadev Galla and Mr. Vikramadithya Gourineni. It is to be noted that Mr. Valluripalli has been on the Board of Blaze Automation Services Pvt. Ltd. since 1st May, 2009.

Yet another case of probable post-retirement benefit is that of Mr. Ravi Bhamidipati. He was first appointed as an independent director and served in that capacity in the NRC for three years. And in a few years after his retirement, he was appointed as one of the executive directors in Amara Raja. It is to be noted that Mr. Bhamidipati is the only person outside of the Galla family to have served on the Board of Amara Raja as an executive director.

It is important to note that the present laws on independent directors considers only the past relation, pecuniary or otherwise, with the company or its KMPs. It does not talk about the lure of the post-retirement benefits that can effectively compromise the independence of the independent directors.

When it comes to independent directors serving long tenures, Dr. Nimmagadda is not an exception. Mr. P. Lakshman Rao served on the Board of Amara Raja for as long as approximately 21 years. He served as the chairman of the NRC for the whole duration of his tenure on the NRC, i.e. 12 years. After his retirement, Mr. Nagarjun Valluripalli became the chairman of the NRC. Mr. Valluripalli himself has served on the Board of the company as an independent director and a part of the NRC for about 15 years. Similarly, Mr. N. Sri Vishnu Raju has been serving the board as an independent director for about 15 years and has been on the NRC since FY2014-15. Mr. T.R. Narayanaswamy's tenure as an independent director with Amara Raja has now exceeded 13 years and he has been on the NRC for since FY2011-12. Also, Ms. Bhairavi Tushar Jani has also been an independent director in the company for about 8 years now. Such long tenures of independent directors may hamper their independence. In this regard, it is important to be reminded of the observation of the Cadbury Committee: "[n]on-executive directors may lose something of their independent edge, if they remain on a board too long" (Cadbury, 1996).

3.7. Sole right of the Galla Family to appoint the managing director

As has been noted above, until 2020, it was the sole right of the Galla Family to appoint the managing director. Also, prior to the amendment of 2020, the Articles specified that Mr. Jayadev Galla will be the Vice-Chairperson and Mr. Ramchandra Galla will be the Chairperson of the Board. This limited the options of the Company to appoint anyone as managing director except for Mr. Jayadev Galla, effectively nullifying any scope of the NRC to negotiate with the managing director over the quantum of his remuneration.

3.8. Low Number of Executive Directors

Since 1995, the company has had only five executive directors, out of which four come from the Galla Family. This reduces competition within the company and, also, denies it the benefit of outside talent. Furthermore, it makes sure that the power within the company remains concentrated in the hands of the Galla Family, even though the percentage of its shareholding has been equal to that of JCI (until FY2019-20) and Clarios International (post-FY2019-20). It also signifies the limited role that the NRC has been able to play in the appointment of the executive directors since its inception. This highly tightened and controlled governance structure has effectively led to the determination of executive compensation as per the sole will of the Galla Family.

3.9. Linkage of Executive Remuneration with Gross Profits

As has been noted above, the largest component of executive remuneration in Amara Raja has been ‘commission’, which is calculated as a percentage of profits before tax. This is a much narrower approach as profits do not reflect the overall performance of the company. Irrespective of its lacunas, share prices are a much better indicator of company performance. They include a range of factors such as market perception, future potential, changes in tax rates, court proceedings, political environment, international market trends, industry trends, and profits. However, Amara Raja has not only linked its executive remuneration with gross profits, it has also regularly exceeded the limits prescribed under the company law for which it had to seek special permissions from the Central Government.

4. Conclusion & Suggestions

Amara Raja has consistently been amongst the companies with the highest pay-gap ratios. Also, the percentage increase in the overall wages of the employees is negligible in comparison to that of the percentage increase in the remuneration of the executive directors.

There are several reasons behind this abnormal and widening pay-gap within the company which need to be addressed:

i) the centralized control over the affairs of the company by the Galla Family;

ii) amendment of articles of association that further empowered the Galla Family;

iii) ineffective independent directors;

iv) long tenures of independent directors;

v) the lure of post-retirement benefits for independent directors;

vi) linkage of executive compensation with gross profits;

vii) non-serious participation of the other shareholders (excluding the Galla Family) in the affairs of the company; and

viii) low number of executive directors.

Unless these issues are remedied, the governance structure of Amara Raja will never be able to reap equitable benefits for each of its stakeholders, especially its employees. And the income inequality that it so perpetuates in the society, will only go on increasing.

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The Regulation of Dark Patterns by Competition Law: A Cross Jurisdictional Analysis with Insights from Indian Jurisprudence

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Abstract

This decade has witnessed a steep hike in the use of deceptive and manipulative design techniques, broadly referred to as "dark patterns". The purpose of such patterns is to play on consumer biases and coax consumers into decisions that they may not have otherwise taken, especially where such decisions entail negative consequences. To address this concern, there has been development of laws which prohibit the usage of dark patterns, including consumer, advertising and data protection laws. However, the jurisprudence in this regard is piecemeal. Dark patterns are an intrinsic feature of digital markets, and competition authorities too are addressing such practices, without calling them out as dark patterns. In this paper the authors conduct a cross jurisdictional examination of laws regulating dark patterns and point out the need for specific competition law regulation of dark patterns in India.

Keywords: *Dark patterns, consumer behaviour, competition law, digital markets.*

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

1. Introduction

Competition law enforcers are facing an urgent need to adopt regulatory approaches that protect digital users, while promoting a healthy business ecosystem. Dark patterns are a contemporary, yet underplayed concern in digital markets. As countries move towards better AI governance, self-audits and transparency, competition remedies will be left incomplete if dark patterns are not specifically called out as antitrust violations.

The first part of the paper contains the introduction and the literature review. The second part of the paper starts with understanding consumer rationality and consumer bias through the lens of behavioral economics. Here the authors discuss the evolution of economic theories governing human choice behaviour, including bounded rationality, the conditional logit model, the prospect theory and the growing relevance of behavioral factors in digital platforms and competition law.

The third part of the paper explains dark patterns and how they play on consumer bias. As dark patterns are constantly evolving, a complete categorization of the same is unfeasible. However, to explain and establish the use of dark patterns, the authors have categorized dark patterns as identified by existing legal scholarship.

The fourth part describes the intersection of dark patterns with competition law. Here the authors discuss how dark patterns go beyond mere persuasion and translate into coercion. This part specifically highlights the challenges in regulation of dark patterns by competition law. In the fifth part of the paper, the authors undertake a cross-jurisdictional analysis of the legal frameworks regulating dark patterns in US, EU, Japan and India, including cases, where such patterns have been used, but not called out directly by competition law. Recent developments indicate that there is potential for dark patterns to be regulated under Indian competition law, specifically, with the explicit discussion of dark patterns in the decision of the NCLAT in *WhatsApp LLC v. CCI* (2025, para.190).

The sixth and last part presents the findings of the research paper and suggests approaches that can bridge the regulatory gap on the subject.

1.1 Literature Review

According to a recent report, consumers in India are estimated to be losing around ₹28,000 crore annually due to dark patterns, and a large proportion continue to be misled even when they are aware such patterns exist (The Hindu, 2026). Explaining why persuasion of this kind succeeds is the task with which this paper begins, and the explanation lies in behavioral economics rather than in the classical assumption of the rational consumer. The starting point is Herbert Simon's theory of "bounded rationality" developed in his seminal 1955 article in the Quarterly Journal of Economics, which challenged the assumption that consumers reason with unlimited computational and informational capacity (Simon, 1955). Seventy years on, the theory has grown in relevance. Giarlotta and Petralia (2024) trace the many directions in which Simon's original insight has travelled; the Stanford Encyclopedia of Philosophy situates his analytical model of realistic choice as the foundational break from the classical model of economic man (Wheeler, 2024); and Mallard (2018) offers a critical, comprehensive analysis of bounded rationality and behavioral economics, urging greater coherence between the two fields. This body of scholarship establishes bounded rationality as settled theoretical ground, robust enough to carry a regulatory argument. Indian policy discourse has already begun to draw on this ground. Indian regulators are increasingly relying on behavioral economics for policy design (Ministry of Finance, 2019), and Badhani (2024) has situated cognitive bias specifically within Indian policymaking. What this literature has not yet done, and what this paper sets out to do, is carry that behavioral lens specifically into Indian competition law.

Bounded rationality is only the starting premise. The literature that follows it explains more precisely how and why consumers deviate from rational choice, and it is this finer-grained understanding that the paper draws on to explain how digital design can predictably steer consumer decisions. Gomes (2005) traces these deviations from the rational-actor paradigm; McFadden's conditional logit model (1974) demonstrates that the characteristics of the choices on offer, and not merely the preferences of the chooser, shape the decision made; Kahneman and Tversky's prospect theory (1979) shows that choice under uncertainty departs systematically from mathematical accuracy; and Tversky and Kahneman's earlier work on heuristics and biases (1974) identifies the cognitive shortcuts consumers rely on in place of full information-processing. Read together, this literature supplies a framework for understanding not merely that consumers are imperfectly rational, but the specific, recurring forms of imperfection, which digital interfaces can anticipate and exploit. Schilling (2026) applies this framework to dark patterns, to analyze their effect on choice in digital platforms and argues for a correspondingly nuanced regulatory response. Of the literature surveyed here, Schilling's is closest to the present paper's own project, and the authors build on it by extending the analysis specifically into competition law.

Competition law has been slower than economics in shedding the assumption of the rational consumer, and bridging that gap in the Indian context, is the specific task this paper undertakes. A body of literature has documented the particular ways in which consumers depart from the 'rational actor' competition law has traditionally assumed, including the limits of willpower (Duivenvoorde, 2015), the departure from self-interest (Devlin & Jacobs, 2013), the mental shortcuts, or heuristics, that consumers use in place of full information-processing (Conlisk, 1996), the cognitive biases that result (Waldman, 2020), and the exploitation of these biases through interface design to manufacture a faux decisional autonomy (Heick, 2019; Bunčić, Krstić & Kostić-Stanković, 2021). Read together, this literature shows why the rational-actor assumption is difficult to sustain in digital markets, and it grounds the case made throughout this paper that the Competition Commission of India cannot leave this gap unaddressed.

The final piece is the literature that names and classifies dark patterns, on which the authors' taxonomy in Part 3 draws directly (Brignull, 2023; OECD, 2022). This, along with judicial precedents from India and other jurisdictions, establish that dark patterns cause loss of consumer autonomy that goes beyond persuasion, and may be a competition concern in its own right. Comparatively little of this scholarship, however, connects dark patterns explicitly to competition law: Brenncke (2024) and Marty and Torregrossa (2023) are among the few to do so, and it is this thin connection that the present paper seeks to thicken, with specific reference to India. The timing for doing so is apt. The NCLAT's recent decision in the competition law case- WhatsApp LLC v. CCI (2025) - has addressed dark patterns as a form of coercive choice architecture, and Indian law and economics scholarship offers an early sense of what a fuller doctrinal response could look like, particularly its calls for behavioral audits and more nuanced regulatory and judicial reasoning (Ministry of Finance, 2019; Badhani, 2024; Sikri, 2024). It is by drawing these strands together- the theoretical grounding in bounded rationality and behavioral economics, the still-thin scholarship connecting dark patterns to competition law, and India's own emerging judicial and policy engagement with the issue – that the paper builds the case for a dedicated competition law response to dark patterns in India.

2. Understanding Consumer Bias through Behavioral Economics

A fundamental issue in economics has been understanding human choice behaviour. At the origin of economic sciences, human behaviour was considered to be largely rational. Economists hoisted their theories on the assumption that one's desire for goods and services would exceed their ability to pay, forcing them to make '*choices*' which served their best interest. This 'rationality principle' finds its place earliest in Smith's Wealth of Nations, through the example of a hunter who is skilled at making bows and arrows, "*He frequently exchanges them for cattle or for venison, with his companions; and he finds at last that he can, in this manner, get more cattle and venison, than if he himself went to the field to catch them. From a regard to his own interest, therefore, the making of bows and arrows grows to be his chief business..*" (Smith, 1982).

2.1 Theory of Bounded Rationality

However, with the passage of time, the idea of human behaviour as rational, began to be reconsidered. In the 1980s and 90s, economic studies demonstrated all is not right with the rational actor paradigm (Huck, Zhou & Duke, 2011).

Herbert A. Simon coined the term 'bounded rationality' which introduced the notion that consumers are mostly rational but there are deviations from rational behaviour (Gomes, 2005). The theory of bounded rationality is epistemic to understand consumer rationality and decision making. It has a significant contribution in the growth of behavioral economics. This theory encapsulates behaviour that rejects the notion of perfect rationality assumed by the classical model of economic man (Wheeler, 2024). Aware of the gap between economic theory and findings in empirical studies, Simon did not reproduce the progress in psychology on human rational behaviour. Rather, he suggested a realistic rational choice model, analytical in nature, that took into account limitations of computation and information related capacity, affecting a decision maker's perception in multiple situations (Giarlotta & Petralia, 2024). This is a novel formulation of choice and the authors emphasize on his work for the regulators to understand consumer behaviour in digital interfaces. Recent scholarly works from Schilling, Mallard, Wheeler, Giarlotta and Petralia have given analytical explanations to Simon's work (Schilling, 2026; Mallard, 2018; Wheeler, 2024; Giarlotta and Petralia, 2024). They enlist and illustrate the advancements in Simon's work to the present issues of consumer decision making, like dark patterns in digital platforms. They further advocate for an integrated and nuanced application of the bounded rationality theory and behavioral economics, seconded by the authors in this study. Later on, Simon's theory was further deepened by the contributions of Daniel L. McFadden (1974) with his 'conditional logit model' which provided the theory and method for analyzing choices between two or more discrete alternatives (McFadden, 1974). Daniel Kahneman and Amos Tversky (1979) in their work on 'prospect theory' or decision making under uncertainty (Kahneman & Tversky, 1979). These works paved the way for 'irrational' behaviour of consumers and considering the psychological aspects behind them (Gomes, 2005).

2.2. Behavioral Economics and Competition Law

Contrary to the field of economics, Competition law, although built on the same foundations of 'rational actor' and 'rational choice' theory, initially remained unperturbed with the inclusion of 'irrationality' (Leslie, 2010). However, the assumption that consumers have well defined preferences and make rational decisions, based on those preferences is flawed. Consumers may have cognitive limitations which make comparison between products and prices more difficult, or they may display a range of behavioral biases. Therefore, scholars advocate a more 'realistic theory of decision making' based on behavioral economics, where economic actors work under realities of bounded rationality, limited will power (Duivenvoorde, 2015) and deviation from self-interest (Devlin & Jacobs, 2013). Recent cases illustrate a growing recognition among competition authorities of the importance of behavioral factors in digital markets, acknowledging that consumer behaviour can significantly impact market dynamics and competition (See *U.S. et al. v. Google, LLC*, 2024; *Google & Alphabet v. Commission*, 2017; *The Hindu*, 2024, September 13).

At the outset, it is important to address why consumers do not make the best choice for themselves (Lanneau, 2021). Consumers often take more irrational decisions than rational (Duivenvoorde, 2015) and these decisions may be influenced by many factors, including how the information is provided, whether there's informational overload, how high is the information cost, difficulties of "*attention*, *encoding and comprehension*, *inference*, as well as in the *response processes"* faced while processing information (Duivenvoorde, 2015). People often see what they expect to see rather than observing objectively. Research shows that consumers often misinterpret 20-25% of material meanings they see in TV ads or read in magazines, while virtually 100% misinterpret at least some part of the communication (Duivenvoorde, 2015). These typical and predictable irrational thought processes and results thereof, are called *cognitive biases* (Duivenvoorde, 2015; Waldman, 2020).

Further, consumers may not have the cognitive abilities or full information to make an informed choice, so they develop mental shortcuts called *heuristics* or rules of thumb (Conlisk, 1996). For instance, one might assess the risk of heart attack among middle aged people by recounting similar accidents amongst acquaintances, or evaluate the possibility of a business venture failing by envisioning the difficulties it might encounter. This implies that rather than objective assessment, consumers would rather go with available information that can be quickly recalled, and make decisions accordingly (Tversky & Kahneman, 1974). Over time these mental shortcuts may lead to structurally incurring cognitive errors in decision making, arriving at the issue of the role of *biases* in competition. Once such biases are recognized by firms, they can be used to construct designs that manipulate consumers into choosing a targeted option through *faux* decisional autonomy (Heick, 2019; Bunčić, Krstić & Kostić-Stanković, 2021). Firms then can retain customers not because of superior product quality, but because the transaction cost of exit exceeds the cognitive reserve of the user.

3. What are Dark Patterns and How do they play on Consumer Bias?

3.1 Theorizing 'Darkness' in Dark Patterns

The first classification of "dark patterns" was made in 2010 by Harry Brignull, who described these patterns as interfaces designed for users to be tricked into doing something that they would have not done otherwise (Brignull, 2023). More recent definitions describe the term dark pattern as a "user interface that substantially subverts or impairs user autonomy, decision making, or choice, regardless of a business's intent." (The California Consumer Privacy Act, 2018, s. 1978.140). They are not merely mistakes but are carefully curated with a strong knowledge of human psychology, without keeping the interest of the user in mind (Mathur & Mayer, 2021).

The Organisation for Economic Co-operation and Development (***OECD***) Committee on Consumer Policy has described dark commercial patterns as (OECD, 2022):

[B]usiness practices employing elements of digital choice architecture, in particular in online user interfaces, that subvert or impair consumer autonomy, decision-making or choice. They often deceive, coerce or manipulate consumers and are likely to cause direct or indirect

consumer detriment in various ways, though it may be difficult or impossible to measure such detriment in many instances (OECD, 2022).

The harshest feature of dark patterns is loss of autonomy in consumer decision making (Australian Competition and Consumer Commission [ACCC], 2022). In India, the decision by the National Company Law Appellate Tribunal (NCLAT) in *WhatsApp LLC v. CCI & Ors.* (2025) has explicitly discussed dark patterns as "choice architecture" or "…design tricks (that) can coerce users into accepting terms that a truly competitive process might not produce", by leveraging status quo bias to trick users into providing consent, striking at the voluntariness of consent obtained (*WhatsApp LLC v. CCI & Ors*., 2025, para. 190). Therefore, the discourse on dark patterns in India is now being recognized by courts in the antitrust context.

3.2 Types of Dark Patterns

Dark patterns constitute a variety of practices and are constantly evolving. The table below describes some commonly used dark patterns:

Type of Dark Pattern	**Cognitive Bias**	**Consumer Behaviour Illustrations**
Sneaking	disguises relevant information	Unwanted subscription or insurance added to shopping basket (Gray et al., 2024).
Bait and Switch	subverting desired results (Gray et al., 2024)	Software apparently free, requires payment shortly after installation
False Urgency/Countdown Timer	fear of missing out (Westin & Chiasson, 2019)	Countdown timer (Gray et al., 2024).
Activity Messages and Disguised Advertisements	Untrue message that others are viewing the same product	Guided to click on concealed advertisement ("Types of deceptive pattern", n.d.).

Forced registration/Forced disclosure	Seeking more information than needed	Requiring personal data before a purchase ("Forced action", n.d.).
Misdirection	Manipulative interface	§ **Confirmshaming** -"No, I'd rather pay the full price" (Guerrini & Wang, 2020). § **Tricky questions** -"if you want us to not send you promotional messages, don't check the box below" (Guerrini & Wang, 2020). § **Interface interference**-one choice looks bigger than the other (Gray et al., 2024) § **Pressured selling** -adding an expensive product, nudging (Luguri & Strahilevitz, 2021).
Testimonials/Fake Social Proof	Misleading testimonials	Considering others testimonials (Luguri & Strahilevitz, 2021).
Hidden/Hard to Cancel Subscription/Immortal Accounts/Obstruction	Automatic subscription or renewal of service	Difficulty in withdrawing, unable to delete data (Luguri & Strahilevitz, 2021).
Fake Scarcity/Low Stock Messages	Scarce availability	Possibility of soon being sold out, due to high demand (Luguri & Strahilevitz, 2021).

Drip-pricing	Revealing the full price later	Charging a higher amount at checkout (The Guidelines for Prevention and Regulation of Dark Patterns, 2023; OECD, 2022).
Forced action/Preselection	Default option pre-selected by provider	Forced consent to promotion offers or email subscriptions (Gray et al., 2018).

Table 1- Types of Dark Patterns with associated Cognitive Biases and Consumer Behaviour Illustrations

Source(s): Authors' construction adapted from various sources as cited

4. Intersection of Competition Law and Dark Patterns

In this section, the authors examine the intersection between competition law and dark patterns. The authors outline the competition issues that may arise due to the use of dark patterns by dominant firms and then move on to discuss the importance of data in digital markets and how dark patterns can lead to the erosion of privacy, which is an emerging competition concern. Finally, this section discusses the obstacles to the regulation of dark patterns by competition law.

4.1 Abuse of Dominance and Dark Patterns

a. Dark Patterns, Privacy and Competition Law

It can be argued that dark patterns do not have tangible anti-competitive effects, on the ground that they are mere persuasion tactics and help in personalization which can promote efficiency and improve consumer experience (Day and Stemler, 2020; Brenncke, 2024; Marty and Torregrossa (2023). Moreover, there is scant data on actual economic harm caused to consumers due to the employment of dark patterns (Newman, 2015). To look at the increase in consumption of products without any change in the price of the same, as a result of dark patterns, may be a case of oversimplification.

However, the authors put forward that dark patterns go far beyond persuasion and can subvert the decision-making power of the user, resulting in systematic exclusion of competition from the market. To the extent dark patterns are used by a dominant undertaking, these may be regulated by provisions relating to abuse of dominance under competition law. Enterprises, particularly those active in the digital space can use dark patterns to "*(i) exclude competition in digital markets; and then (ii) based on their market power, extract resources akin to restricting output in product markets"* (Day & Stemler, 2020).

Dark patterns may affect competition by hindering or disincentivizing the process of shopping and comparing offers. For instance, drip pricing (Rasch, Thöne and Wenzel, 2020), through reduced price transparency, has been found to hinder consumers' ability to identify the lowest price (Rasch, Thöne and Wenzel, 2020). Other dark patterns may lock in consumers into existing services and hamper switching, such as the forced registration, hidden subscription and "hard to cancel" dark patterns (OECD, 2022). Dominant firms may use dark patterns to further entrench their dominance in the market. For example, dark patterns may be used to neutralise competitive threats (OECD, 2022) or control consumer behaviour (for instance, through the use of defaults) (Competition and Markets Authority, 2022), or to gather consumer data to offer personalised services that rivals, in absence of such data, cannot (OECD, 2020; Competition and Markets Authority, 2023). A dominant firm could also use dark patterns to leverage its position to obtain market power in a related or downstream market (Gomes, 2005). Dark patterns can also impede a consumer's ability to select the offerings of the best firms on their individual merit (Kemp, 2020; Zhong, 2024). Market efficiency can suffer in particular through the transaction costs involved in certain dark patterns (OECD, 2022), such as hard to cancel subscription traps, etc. (Morton and others, 2019). Further, competitive pressures may induce businesses to commonly use dark patterns in competition regimes where such patterns are not clearly prohibited (OECD 2022).

Dark patterns erode an essential aspect of privacy known as "decisional privacy." Since dark patterns are a form of online manipulation which affects decision making, users feel that their decisions are an exercise of their free will. When people think that they are making their own decisions, they effectively share contacts, locations, messages, photographs, and other personal information, freely. This results in giving dominant firms access to huge amounts of personal data (Day & Stemler, 2020). In digital markets, economies of scale and scope, as well as network effects, can be created by control over large volumes of data (Raychaudhuri, 2020). Most countries are developing mechanisms to deal with data protection issues which have a bearing on competition in the market. Notably, in India, the *WhatsApp* (2025) case has recognized privacy as an antitrust concern, acknowledging the economic value of data, even if the consumer benefits from a "free" product, and the potential anti-competitive effects that this data collection can have.

b. The Obstacles in Regulating Dark Patterns by Competition Law

There exist several obstacles in evaluating dark patterns as anti-competitive conduct, even if the same are recognized as having competition implications.

The first is that traditionally antitrust law focuses on economic benefit accrued to consumers, hence the courts may be quicker to pronounce liability on conduct that leads to restriction of output and charging of higher prices (Lao, 1998). Dark patterns may come in forms, which on the face of it, have little to do with prices, though they may coerce consumers into making unnecessary purchases at a later stage. This reliance of antitrust law on prices to measure consumer welfare has allowed several tech giants to escape violations in the past (Lao, 1998; Newman, 2019). It is only recently that regulations pertaining to digital platforms are focusing on non-price considerations and enhancing fairness, contestability and privacy in markets (Deutscher, 2022).

A second problem is with antitrust law's approach of being cautious in avoiding false positives. In antitrust law, a finding of a false positive (or a violation where there is none) is regarded to be more costly than the finding of a false negative. Even if these false negatives or "error costs" have not been elaborately discussed in antitrust cases, it is evident that courts are largely guided by this principle, which influences presumptions and burdens of proof in law (Hovenkamp, 2022). Though emerging regulations on digital platforms are advocating for a recalibration of this "error cost" framework by suggesting ex-ante regulation, the same has provoked considerable debate. Scholars argue that the potential costs of ex-ante regulation may outweigh the benefits by chilling innovation in platform markets (Chopra et al., 2023).

The third is the issue of network effects. Many see this as a chicken and egg problem – to gain a significant number of buyers a platform needs to attract a significant number of suppliers- again to attract enough suppliers a platform needs enough buyers (Hagiu & Rothman, 2016). Platforms do not operate like traditional markets and costs and prices here do not follow trajectories similar to traditional markets (Raychaudhuri, 2020). Market power based on network effects is difficult to build and may be a result of efficiency. Hence, it is important to tread carefully before applying “rule based" rather than “effects based” restrictions. This has been the approach of some regulators, including the Competition Commission of India, which has been cautious in regulating digital markets (Chopra et al., 2023).

Particularly in light of the decision of the SC in *CCI v. Schott Glass* (2025) which mandates an effects-based analysis for establishing abuse of dominance under Section 4 of the Competition Act, it is becoming increasingly difficult to rely solely on *ex post* enforcement mechanisms. An effects-based framework, by design, requires demonstrable market distortion or consumer harm, often identifiable only after the conduct has taken root. This creates a structural limitation in digital markets. Specifically in contexts such as dark patterns, harm may crystallize rapidly due to network effects. Due to this, by the time measurable anti-competitive effects emerge, market power may already be entrenched and user choice meaningfully constrained.

5. The Legal Treatment of Dark Patterns: A Cross Jurisdictional Analysis

The legal treatment of dark patterns across the world is characterized by regulatory overlaps, as several legislations, including advertising laws, data protection laws, consumer and competition laws, regulate dark patterns. This section outlines the legal treatment of dark patterns in the US and the European Union, after which it briefly discusses its regulation in Japan. Finally, the paper moves on to analyze the legal treatment of dark patterns in India, to justify why specific competition law regulation of dark patterns may be required.

5.1 United States

The US Federal Trade Commission [FTC] has twin objectives of protecting competition and protecting consumers. Dark patterns are covered under Section 5 of the Federal Trade Commission Act (Federal Trade Commission Act, s. 5). This section empowers the FTC to act against firms which use unfair or deceptive trade practices, including dark patterns (Khan, 2023). In September 2022, the FTC issued a Staff Report (Competition Policy International, 2023) titled “Bringing Dark Patterns to Light” (FTC Bureau of Consumer Protection, 2022). It mentions cases in which the FTC scrutinized common dark patterns being followed by companies and indicates the compounding effect of dark patterns on consumer bias and competition (FTC Bureau of Consumer Protection, 2022).

US antitrust cases, however, have been examining non-price injuries arising due to consumer manipulation much before the term dark patterns gained prominence. For instance, in ***U.S. v. Microsoft Corporation*** (2001) Microsoft was charged with using anti-competitive terms in its software development agreements and license contracts, to illegally preserve its monopoly in the operating system market (Kobayashi & Wright, 2020). The court determined that Microsoft's actions, which involved requiring its customers to use "Internet Explorer" *by design*, created barriers to entry and protected Microsoft's monopoly power, hence constituted anti-competitive behaviour (See Patterson, 1997; see also Lopatka & Page, 2001).

In recent years, the US FTC has acted against several companies using online manipulative techniques in the digital space. However, most of these are not anti-trust cases (See *In the Matter of Epic Games, Inc*.; Gorman et al., 2023; *FTC v. Age of Learning, Inc. (ABCmouse),* 2020). With respect to antitrust, the recent decision in ***United States v. Google LLC*** (2025) underscores why dark patterns cannot be relegated solely to consumer protection law when deployed by dominant digital platforms. The court reaffirmed that Google's default search placements, which were secured through exclusive distribution agreements, foreclosed rivals by steering massive query volume to Google, thereby reinforcing its scale advantage (*United States v. Google LLC*, 2025). In this way, behavioral bias interacted with network effects to "freeze" the search market. Further, the court declined to impose "choice screens" as a remedy (*United States v. Google LLC*, 2025). It reasoned that compelled product design interventions are disfavored and that there was insufficient evidence that presenting users with alternative options would meaningfully enhance competition among general search engines (*United States v. Google LLC*, 2025). Therefore, in digital markets, merely offering alternatives does not undo the competitive consequences of years of behavioral conditioning and steering.

Amongst the other recent cases dealing with dark patterns, the *Amazon* cases are significant. In ***FTC v. Amazon.com, Inc.,* (2023)**, Amazon was pulled up for deceiving customers into signing up for its Prime program without consent and making it hard to terminate the memberships. (*FTC v. Amazon.com, Inc.*, 2023). In this case, the Commission identified multiple dark patterns which impacted consumers, (US FTC, 2023) like the use of "***forced action***", "***interface interference***" (Gorman et al., 2023) "***obstruction***" or "***roach motel***" (Gorman et al., 2023) and lastly "***misdirection***" by use of "remind me later" and "keep my benefits" options, rather than a "continue to cancel" option for easy exit (Gorman et al., 2023).

In reply, Amazon questioned the FTC's flawed understanding of legal liability based on opaque characterizations of dark patterns (Nelson, 2024). Amazon also raised questions about the subjectivity surrounding the concept of coercion. Eventually, the FTC secured a settlement with Amazon worth $2.5 billion, comprising a $1 billion civil penalty and $1.5 billion in consumer redress (Nelson, 2024; Federal Trade Commission, 2025; *FTC v. Amazon.com, Inc.,* 2023).

In the **Amazon Antitrust case**, filed in September 2023, the issue of employment of dark patterns by Amazon was raised. The FTC and 17 State Attorneys General alleged that Amazon used a host of anticompetitive and unfair practices (including anti-discounting measures, degrading quality, degrading consumer shopping experience, over charging sellers and stifling innovation) to create entry barriers and illegally maintain its monopoly in the market (*Federal Trade Commission and Others v. Amazon.com Inc*.). The compliant also contains allegations that "***while Amazon technically offers Prime Video on a standalone basis, Amazon successfully uses dark patterns and other manipulative design techniques to thwart most shoppers from actually being able to sign up for it***" (*Federal Trade Commission and Others v. Amazon.com Inc*., para. 220).

However, due to the US government shutdown and other delays, the case has been stayed. (Robson & Mac, 2025).

5.2 European Union

In Europe, the Digital Services Act, 2022, defines dark patterns as "*practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions*", focusing on user's free and informed consent in general (The Digital Services Act (DSA) - Regulation (EU) 2022/2065, 2022). The EU has further expanded its focus on dark patterns with a proposed Digital Fairness Act (The Digital Fairness Act). The new initiative aims to regulate certain deeper issues affecting online consumers, like digital contracts, dynamic pricing, addictive designs of digital products, misleading influencer marketing and unfair commercial practices related to dark patterns (The Digital Fairness Act).

With respect to competition law, the Digital Markets Act, 2022, [DMA] contains provisions which indirectly regulate dark patterns. Under the DMA, undertakings that meet certain criteria, causing them to have significant impact in the market, are designated as 'gatekeepers' (Digital

Markets Act Regulation 2022, EU 2022/1925). Article 13(4) of the DMA prohibits gatekeepers from violating their obligations through the use of 'behavioral techniques or interface design' (Digital Markets Act Regulation 2022, EU 2022/1925). Articles 5 and 6 lay down obligations of gatekeepers to ensure transparency in their dealings with end users and business users, including restrictions on usage of consumer data, aggregating non-public data through click, search, view or voice, and limiting interoperability of users. It mandates gatekeepers to allow easy uninstallation of software applications and allow easy changes in default settings (Digital Markets Act Regulation 2022, EU 2022/1925).

Though the term "dark pattern" is of recent origin, the importance of behavioral biases in competition law has been considered by the European Commission much earlier. In the ***Microsoft Internet Explorer case*** (2009), the Commission preliminarily found that Microsoft had abused its dominant position by tying its web browser Internet Explorer with Windows (Case COMP/C-3/39.530 – Microsoft (Tying). The Commission held that such bundling harms competition between competing web browsers and reduces consumer choice. The remedy in this case focused on consumer behaviour by way of binding commitments, requiring Microsoft to provide consumers with a choice screen that allowed them to select a browser from a provided list. Further, the presentation of choices on the screen were to be randomized and unbiased. Instead of mere unbundling, like in the previous Microsoft [Media Player] case (Case COMP/C-3/37.792) this idea of a "choice screen remedy" took into account actual consumer preferences (Economides & Lianos, 2011).

Recently, in the ***Google Android*** (2018) case, the Commission found that Google tied the Google Search app with its mobile app store, Play Store, and its mobile web browser, Google Chrome, with the Play Store and Google Search Apps. Moreover, consumer traffic was channelized towards Google's search engine through restrictions like exclusive pre-installation and led to status quo bias (CASE AT.40099-*Google Android*). Arguably, the choice architecture of search engines is a dark pattern (Kelly & Rubin, 2024). Following a finding of abuse, Google introduced a choice screen on all new Android phones and tablets in the European Economic Area (EEA) and the UK where the Google Search app is pre-installed (Android, 2023). Again, in the ***Google Shopping*** (2017) case, Google was found to be abusing its dominant position through preferencing its own shopping service as against other services in its general search page. The Commission found that users would not have frequently clicked on specialized search results, if not for the designed visibility, and imposed a hefty fine (*Google and Alphabet v. Commission*, 2017). The authors submit that this biased display of search is a dark pattern (Day & Stemler, 2020).

The ***Amazon Marketplace*** **and** ***Buy Box case*** (2022) involved investigations against Amazon for abuse of its dominant position, through the use of a self-preferencing algorithm and use of confidential third-party seller data. Sellers who used Amazon's fulfilment services received preferential treatment by being offered automatic eligibility into the Amazon Prime program and Amazon's Buy Box. Amazon's website enhanced their visibility as well as sales. When a consumer selected from a search result ranked on Buy Box, it was an algorithm influenced result (CASE AT.40462- Amazon Marketplace and AT.40703- Amazon Buy Box 2022). In a majority of cases, the consumers were found to have purchased the top ranked result on the interface (Hagens Berman, n.d.). As most customers preferred fast and free deliveries, access to Amazon Prime also influenced sales. To settle the above cases, Amazon has submitted commitments to change the design features (Hagens Berman, n.d.).

A parallel and particularly instructive development can be seen in the ***Meta Facebook Marketplace Case*** (2024) where Meta was found to have abused its dominant position by tying Facebook Marketplace to the core Facebook social networking service and by imposing unfair trading conditions on competing classified ad providers. By integrating Marketplace directly into Facebook's interface and leveraging users' dependence on the social network, Meta effectively channeled traffic towards its own service, thereby distorting competition (*Meta Platforms Inc. – Facebook Marketplace* Case AT.40684, 2024).

The Facebook Marketplace case assumes broader significance for future enforcement in the digital economy, as it recognizes that coercion need not take overt or traditional forms. Instead, it may manifest through subtle mechanisms such as nudging, interface design, and specifically, the deployment of dark patterns. Thus, a review of important European competition law cases shows that though competition authorities do not categorize, or use the nomenclature "dark patterns", they regulate similar practices under competition law.

5.3 Japan

Further insight is offered by a report of the Japan Fair Trade Commission, which examined the potential for analyzing dark patterns under the Japanese Antimonopoly Act (Japan Fair Trade

Commission, 2025). The report concludes that the use of dark patterns may constitute "deceptive customer inducement" or an "abuse of superior bargaining position" under the Act. The report identifies 11 typical dark patterns and at the same time, adopts a measured approach, acknowledging that not all dark patterns fall within the scope of competition law (Japan Fair Trade Commission, 2025). In particular, practices that primarily involve the manipulation of consumers' emotions or psychological vulnerabilities – without clear exclusionary effects or competitive foreclosure – may escape antitrust scrutiny (Japan Fair Trade Commission, 2025).

This highlights both the strengths and the limitations of competition law as a tool to regulate dark patterns and emphasizes the need for complementary regulatory regimes to address forms of digital manipulation that do not directly translate into competitive harm. One must bear this in mind when proceeding to analyze the nature of practices that might be best regulated under competition law.

5.4 India

In India, dark patterns have been addressed by consumer protection, advertising, banking and insurance laws, and like Europe, have been indirectly regulated by competition law.

The Central Consumer Protection Authority, India's consumer protection regulator, has laid down the Guidelines on Dark Patterns, defining them as "*any practice/s or deceptive design pattern, designed to mislead or trick users to do something they did not want to do, by subverting or impairing consumer autonomy, decision-making or choice, leading to unfair trade practice, misleading advertisement, or violation of rights of the consumer*" (The Guidelines for Prevention and Regulation of Dark Patterns, 2023). Meanwhile, the Advertising Standards Council of India (ASCI), has published a discussion paper on dark patterns in 2022 (Advertising Standards Council of India, 2022) and issued "Guidelines on Deceptive Design Patterns in Advertising" *(ASCI Guidelines)* in 2023, to harmonize digital advertisements with the ASCI Code (ASCI Guidelines, 2023; see also (Obhan & Dutta, 2023). The apex financial regulator, Reserve Bank of India (RBI) and the insurance regulator, Insurance Regulatory and Development Authority of India (IRDAI) have also tightened regulation of dark patterns and mis-selling, indicating increased vigilance (Singh, 2026; Mandal, 2026).

As regards competition law, the National Company Law Appellate Tribunal (NCLAT) has explicitly recognized dark patterns in its decision in *WhatsApp LLC v. CCI* (2025) (explored in detail later), therefore making dark patterns relevant in the competition law domain.

The scope of the Competition Commission of India's (***CCI***) regulatory intervention has in recent years extended beyond pricing considerations to non-price considerations (Gupta & Bhushan, 2021). In 2023, the Committee on Digital Competition Law was constituted in India, to examine the need for *ex ante* regulation in digital markets. It released its report in March 2024, highlighting the unique features of digital markets which are characterized by network effects and multi-sidedness. Section 3(3) of the Digital Competition Bill designated an enterprise as a Systemically Significant Digital Enterprise if it has significant presence with respect to a Core Digital Service, on the basis of quantitative thresholds and factors like inter-linkage of the enterprise with multiple sides of market, barriers to entry, extent of lock-in, including behavioral bias and switching costs (Digital Competition Bill, 2024). However, due to opposition from various stakeholders, this bill has been withdrawn (Kaushik, 2025) and currently there is no digital competition law in India.

Meanwhile, the CCI has been deciding cases which involve the use of manipulative practices in the digital space. In ***Matrimony.com Ltd. v. Google*** (2018) the CCI found that Google held a dominant position in the online general web search and search advertising markets in India, as it formed a "*gateway to the internet*" for a vast majority of internet users (*Matrimony.com Ltd. v. Google*, Case No. 07 & 30 of 2012). The primary allegation in this case was that Google was abusing its dominant position by favoring its *"own services and partners, through manually manipulating its search results to the advantage of its vertical partners"* (*Matrimony.com Ltd. v. Google*, Case No. 07 & 30 of 2012). The CCI also observed that the market power owing to large volumes of personal data can deter innovation and harm consumer welfare (*Matrimony.com Ltd. v. Google*, Case No. 07 & 30 of 2012). However, this order was criticized on grounds of lack of evidence of consumer harm, as there was no actual analysis of user's clicking behaviour in India (Muralidharan, 2018). The authors argue that the practice of creating a deceptive search result and then diversion of traffic may be classified as a bait and switch (ASCI Guidelines, 2023) type of dark pattern where the user performs one action, but gets a different or undesired result (Saville & Rocha, 2023). Such practices are harmful to consumers and are prohibited by both advertising and consumer laws in India (The Consumer Protection Act, 2019).

In ***XYZ v. Alphabet Inc. & Ors. Case No. 07 of 2020,*** **(Google Pay case)**, the CCI found that Google, through its design, offered better integration for its own Unified Payments Interface (*UPI*) app (Google Pay) as compared to other UPI apps for processing payments on the Google Play Store (*XYZ v. Alphabet Inc. & Ors.* Case No. 07 of 2020). The CCI specifically found that Google Pay was better integrated into the system than other UPI apps allowing for a more user-friendly experience for those using Google Pay, which led to a greater number of users using the Google Pay app for payment. The CCI held that Google, through its discriminatory practice against other UPI platforms had abused its dominant position (*XYZ v. Alphabet Inc. & Ors.* Case No. 07 of 2020). On appeal, the NCLAT, in a mixed verdict, upheld the finding of abuse with respect to imposition of unfair and discriminatory conditions by Google, but set aside the findings of significant negative effect on innovation and denial of market access to other payment processors (*Alphabet Inc. & Ors. v. CCI & Anr.* Competition Appeal (AT) No. 04 of 2023).

In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users **(2021)** the CCI launched a suo motu case against WhatsApp's privacy policy. Here it found a prima facie case of abuse of dominance against WhatsApp, on grounds that WhatsApp is engaging in exploitative abuse that eliminates consumers' choice regarding sharing their user data with WhatsApp's parent company, Facebook, as many of the terms in WhatsApp's privacy policy were "*broad, vague and unintelligible"* (*In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Competition Commission of India*, Suo Moto Case No. 01 of 2021, 05 of 2021 & 30 of 2021, 2021). The use of ambiguous terms like 'such as', 'for example' and 'includes' indicated that sharing of data may extend beyond the information categories expressly mentioned in the policy (*In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Competition Commission of India*, Suo Moto Case No. 01 of 2021, 05 of 2021 & 30 of 2021, 2021).

A sense of urgency was created in the users, with a fear of losing essential features or access to the platform itself (*In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Competition Commission of India*, Suo Moto Case No. 01 of 2021, 05 of 2021 & 30 of 2021, 2021). Many accepted the update under pressure and confusion caused by WhatsApp, forcing them to accept the policy out of **coercion** and not free choice (*In Re: Updated Terms of Service* *and Privacy Policy for WhatsApp Users, Competition Commission of India*, Suo Moto Case No. 01 of 2021, 05 of 2021 & 30 of 2021, 2021). The behavioral biases limited the ability of consumers to meaningfully engage with the policy updates, forcing them to agree with something that they don't agree with. This violated Section 4(2)(a)(i) of the Competition Act, 2002 (*In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Competition Commission of India*, Suo Moto Case No. 01 of 2021, 05 of 2021 & 30 of 2021, 2021). In November 2024, the CCI passed its order and imposed a fine of ₹213.14 crore on Meta, WhatsApp's parent company for imposing unfair terms on users and abusing its dominant position in the messaging market (*In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, Competition Commission of India, Suo Moto Case No. 01 of 2021, 2021).

Following the CCI's order, the NCLAT on appeal by Meta, expressly engaged with the concept of dark patterns in its decision (*WhatsApp LLC v. CCI & Ors.*, Competition Appeal (AT) No 1 of 2025). It examined how the framing of the choice, "agree or be cut off from your social network", and the use of "choice architecture" or design tricks could coerce users into actions they would not otherwise take (*WhatsApp LLC v. CCI & Ors.*, Competition Appeal (AT) No 1 of 2025). The Tribunal also discussed the role of status quo bias in influencing user behaviour (*WhatsApp LLC v. CCI & Ors.*, Competition Appeal (AT) No 1 of 2025). Further, it observed that the mandatory, "take-it-or-leave-it" nature of the policy could be construed as creating a manufactured sense of urgency between January and May 2021, pressuring users to accept the terms out of fear of losing access to the service (*WhatsApp LLC v. CCI & Ors., Competition Appeal* (AT) No 1 of 2025). Significantly, even after clarifications were issued that accounts would not be deleted, users continued to receive repeated in-app prompts to accept the policy (*WhatsApp LLC v. CCI & Ors*., Competition Appeal (AT) No 1 of 2025). The Tribunal also flagged the use of deceptive language. Ultimately, the NCLAT upheld the findings of abuse and the penalty of ₹213.14 crore, while setting aside the five-year prohibition on data sharing between WhatsApp and Meta companies (*WhatsApp LLC v. CCI & Ors*., Competition Appeal (AT) No 1 of 2025).

The SC, while examining WhatsApp's updated privacy policy, made pointed observations cautioning against the exploitation of Indians' personal data, underscoring the independent economic value of data itself. The Court emphasized that mere formal consent cannot be equated with informed or meaningful consent, particularly in a country marked by uneven levels of digital literacy. These observations are especially salient in the context of dark patterns. Where interface design, repeated prompts, or coercive framing are used to secure acceptance, the resulting "consent" is often a product of manipulation rather than genuine autonomy. The Court's recognition that data possesses intrinsic economic value further aggravates this concern.

6. Conclusion

Though dark patterns are a competition law concern, there is no competition law provision in India, prohibiting their usage. This raises several difficulties.

First is the problem of identification by the regulator. It can be hard to understand that a tricky design interface is a dark pattern (Porto & Egberts, 2023) unless the law states so. Dark patterns have not been explicitly defined or recognized by competition laws in India. However, consumer, advertising, banking and insurance laws and regulations in India, have defined dark patterns.

Secondly, dark patterns of various forms are being regulated in digitals markets. India does not have any digital competition law. Competition authorities, in examining these practices mostly rely on the principles of coercion, competitive foreclosure and consumer harm. Proving either of these elements is not easy. Cases reveal that the courts have not articulated a consistent standard for determining coercion (Lampecco, 2021). It has also been argued that the coercion theory will work in the first place, if no substitutes are present (Lampecco, 2021). If there are substitutes available and customers buy a product which makes them worse off, by taking a biased decision, would it be correct to classify this practice as coercion? Going by competition law jurisprudence, there are no clear answers to this.

Thirdly, cases suggest that it is very difficult to demonstrate that dark patterns have in fact resulted in competitive foreclosure and consumer harm. This was illustrated in the Google Pay case, where the CCI was criticized for punishing Google, in absence of sufficient evidence to demonstrate that the status quo bias created by its default payment app Google Pay, had impacted consumers. The NCLAT later overturned the CCI's views that Google blocked market access or hindered innovation. Therefore, unless we operate on a presumption of harm, and shift the burden to the defendant, it will be very arduous to prove that deceptive patterns have caused the harm (Economides & Lianos, 2011). This task of gathering enough evidence by way of market studies and otherwise, will be even more burdensome in newer competition regimes like India, where the regulator is already facing constraints of resources.

Further, this challenge is compounded by the Supreme Court's recent ruling in *Schott Glass* (2025) which clarified that an assessment of *effects* is mandatory in abuse of dominance cases (*Competition Commission of India v. Schott Glass* 2025 INSC 668). Therefore, by insisting on proof of actual or likely adverse effects on competition, the Court raised the evidentiary threshold for intervention. While this may, in general, be viewed as acceptable, in the specific context of dark patterns, where harm is often behavioral and cumulative rather than immediately observable, this effects-based requirement makes successful enforcement even more difficult, without certain presumptions or recalibrated standards of proof. The EU's trajectory offers certain valuable takeaways. In the pre-DMA era, the cases on Google Shopping and Google Android assessed impugned conduct through an effects-based lens, yet recognized that certain practices, such as self-preferencing, displayed a "certain form of abnormality" or inherent discriminatory character within the meaning of Article 102 TFEU. Post-2024, the DMA marked a decisive turn, wherein for designated gatekeepers, it operates largely on a quasi "by object" logic, meaning that practices such as self-preferencing (Article 6(5)), tying/bundling, and cross-use of data are treated as *presumptively* unlawful, doing away with the need for the Commission to establish anticompetitive effects in each individual case (Sainio, 2023).

In view of the factors highlighted above, the authors put forward the following suggestions.

Firstly, digital competition law, which is being debated in India, should clearly address dark patterns. Defining dark patterns in competition law, or adopting their definitions/classifications from other laws, will lead to harmonious interpretation and prohibition of such practices by Indian regulators. Regulators globally are weighing a hard law versus a soft law approach on such emergent issues to balance compliance and incentives (Thakkar, 2019).

Secondly, the advantage of competition law calling out dark patterns directly is that specific obligations can be imposed on dominant digital firms not to indulge in such practices. This will be particularly useful for newer competition regimes like India, which has resource constraints but a rapidly developing digital market. It would be useful to think about how the *Google* and *WhatsApp* case would have played out in India, if dark patterns had already been explicitly recognized by competition law.

Thirdly, the decision in *Schott Glass* (2025), which mandates an effects-based assessment, may be ill-suited to digital markets, particularly in the context of practices such as dark patterns (*Competition Commission of India v. Schott Glass* 2025 INSC 668). Economic analysis and a nuanced approach in judicial decisions is necessary to achieve legal efficiency (Sikri, 2024). In digital markets waiting for demonstrable effects may result in irreversible consumer harm and market tipping. This suggests the need for more specific or separate regulatory frameworks for digital markets that permit ex-ante intervention against dark patterns, without requiring regulators to await the full materialization of harm. Authors suggest incorporation of dedicated behavioral economics audits in legal and policy interventions, to promote effective competition in digital markets. (Ministry of Finance, 2019; Badhani, 2024).

In the opinion of the authors, careful consideration of the suggestions above would help in antitrust regulation of dark patterns. The CCI Chairperson has vocalized AI and dark patterns to be an emerging threat to competition and a burning issue for the Competition Commission (BRICS Competition Law & Policy Centre, 2024; Sharma, 2024). This is a regulatory gap in the digital competition law framework in India and needs urgent attention.

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Evaluating the Corporate Insolvency Resolution Process (CIRP): Empirical Evidence on Operational Issues, Challenges, and Stakeholder Dynamics

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Abstract

Evaluating the Corporate Insolvency Resolution Process (CIRP) using applied empirical research evaluates whether the stakeholders, such as Resolution Professionals, Committee of Creditors (CoCs), adjudicating authority and legal practitioners, are in tune with the mandate of the Insolvency and Bankruptcy Code (IBC). The CIRP is strictly time-framed, with the resolution plan to be completed within the stipulated time limit. In approving the resolution plan, the CoC adheres to the principles of natural justice and balances the interests of all stakeholders, including operational creditors. The CoC ensures a fair and efficient resolution process that maximises value for the corporate debtor and benefits all stakeholders involved. There are instances where suspended management consistently remains non-cooperative, regardless of potential consequences. The National Company Law Tribunal (NCLT) is entrusted with the task of adjudicating all matters arising from the IBC. In this multifaceted CIRP mechanism, infrastructure enhancement, capacity building, and stakeholder engagement are opportunities to strengthen the adjudicatory framework and reduce delays in the CIRP and related processes. The study presents qualitative and quantitative evidence of how the Corporate Insolvency Resolution Process (CIRP) assesses the efficacy of the Insolvency and Bankruptcy Code (IBC) 2016 in the state of Gujarat, India. This research examines the operational issues and challenges under the IBC, focusing on how stakeholder dynamics and institutional constraints affect the insolvency resolution

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

process. It also analyses how factors such as delays, litigation, and non-cooperation influence the efficiency and effectiveness of CIRP.

Keywords: *applied empirical research, Corporate Insolvency Resolution Process (CIRP), Committee of Creditors (CoCs), operational creditors, suspended management*

1. Introduction

The Insolvency and Bankruptcy Code (IBC) 2016 underwent a complete change in the insolvency process of the corporate. The IBC has replaced all laws concerning insolvency and bankruptcy. The National Company Law Tribunal (NCLT) is designated as the adjudicating authority for the procedural and approval of the Corporate Insolvency Resolution Process (CIRP) under IBC. The CIRP is strictly time-framed, where the resolution plan is to be completed within 180 days or 180 days and a one-time extension of 90 days, i.e. 270 days. An overall maximum timeline of 330 days, including any extension or any legal proceedings period. If the resolution plan is not approved by 66% of the Committee of Creditors, or no resolution plan is made within the above time-frame, the liquidation process will be initiated for the corporate entity. So, IBC can also realise from its output or speedy disposal of cases. It also prevents the 'corporate death' of the debtor, as too many 'corporate deaths' are fatal for an economy in the long run from both a micro as well as, a macroeconomic perspective. This research examines the operational issues and challenges arising under the IBC by analysing how stakeholder dynamics, including CoC self-interest, non-cooperation by suspended management, and institutional constraints, contribute to delays, litigation, and institutional bottlenecks, thereby affecting the efficiency, effectiveness, and overall outcomes of the insolvency resolution process. The study is unique because it relies on data from practitioners and stakeholders involved in CIRP. While other studies, such as, Chatterjee et al. (2018), Regy & Roy (2017), Thakkar et al. (2024), Thakkar, Rami, & Sarmah (2023), Thakkar & Agarwal (2023), Singh & Thakkar (2021), Thakkar & Agarwal (2021-2022), Thakkar & Agarwal (2022), Thakkar et al. (2020), Thakkar & Agarwal (2026), Thakkar, Maurya & Sood (2026), and Thakkar (2022-2023) in the domain of economic analysis and the efficacy of law. This research highlights that the impact analysis of the IBC involves a multidimensional approach to stakeholders and the regulatory framework, based on practitioners' responses.

2. An Empirical Investigation of Operational Challenges and Stakeholder Dynamics in the Corporate Insolvency Resolution Process (CIRP)

The study is based on quantitative and qualitative methods to evaluate the efficacy of the Corporate Insolvency Resolution Process (CIRP). For the qualitative method, the study adopted the face-to-face interview method with respondents. The interviews were conducted in a semi-structured manner, and relevant questions were raised concerning the broad objectives of the study. The duration of the interviews varied with respect to the time considerations of respondents; it ranged from approximately 45 minutes to 1 hour.[2] Along with in-depth unstructured interviews, four panel discussions with all stakeholders were undertaken, and NCLT hearings were also observed for more than three months. In order to validate it in the real world, a questionnaire was created based on identified factors discovered through interviews, panel discussions and observations of NCLT proceedings.

The process of gathering data was done through non-probability sampling. The participants were chosen from the three categories of advocates, creditors and resolution professionals (RPs) using strategies including convenience sampling. The study has a sample size of 103; with 5 creditors, 27 resolution professionals and 71 advocates. Then the data was processed and coded, following which, descriptive and frequency analyses were conducted. For the research design on the impact assessment various studies like Chatterjee, et. al., (2018), Regy & Roy (2017), Abhirami & Rahul (2022), Singh & Thakkar (2021), Thakkar, et. al., (2023), Jolly & Singh (2021) etc., have been referred.

[2] The concept of data saturation is defined as "bringing new participants continually into the study until the data set is complete, as indicated by data replication or redundancy. In another word, saturation is reached when the researcher gathers data to the point of diminishing returns when nothing new is being added."

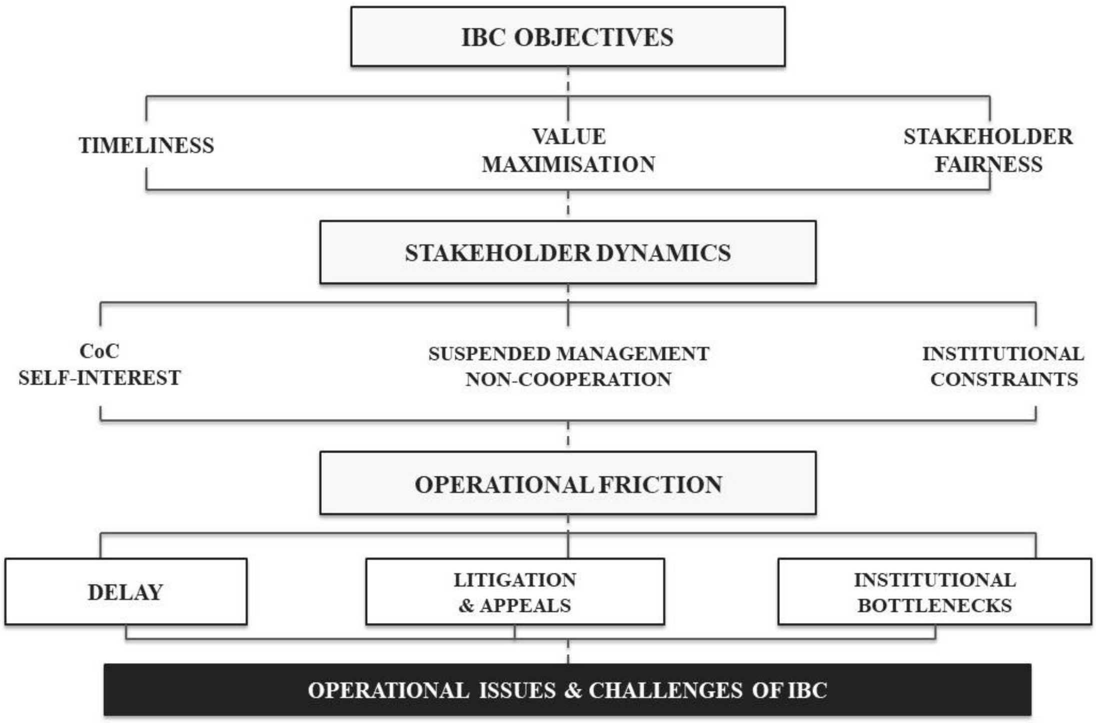

Chart 1: IBC Operational Issues & Challenges

Source: Author's Own Construction

This research paper is grounded in a conceptual framework examining the operational issues and challenges arising under the Insolvency and Bankruptcy Code (IBC). The framework demonstrates how the IBC's core objectives, timeliness, value maximisation and stakeholder fairness; may be affected or diluted by various stakeholder dynamics, particularly self-interest within the Committee of Creditors (CoC), non-cooperation by suspended management, and institutional constraints. These dynamics, in turn, generate operational friction, manifested primarily through delays, litigation and appeals, and institutional bottlenecks. Collectively, these factors contribute to the operational issues and challenges encountered in the implementation of the IBC, with potential implications for the efficiency, effectiveness and overall outcomes of the insolvency resolution process (Chart 1).

Mathematical Model of CIRP Operational Efficiency

$$\text{CIRP Operational Efficiency} = \frac{\text{Timeliness} + \text{Value Maximisation} + \text{Stakeholder Fairness}}{\text{Delays} + \text{Litigation} + \text{Non-Cooperation} + \text{Institutional Bottlenecks}}$$

3. Transformative Effects of Corporate Insolvency Resolution Process (CIRP) on Economic Dynamics

The Corporate Insolvency Resolution Process (CIRP) provides an avenue to scrutinize the company's balance sheets, comparing the assets and liabilities to determine whether the debtor can pay off their debts. Such scrutiny of the time-bound process gives an undue opportunity to the committee of creditors (CoC) and resolution professional (RP) to dispose of debtors' assets and resolve the company's value as a going concern (Sukul & Bansal, 2021). Also, ensure maximization of assets during insolvency in a time-bound manner (Insolvency and Bankruptcy Code, 2016, preamble).

3.1.Mandated Role and Responsibilities of the CoC in CIRP

The intended impact of the IBC is interestingly in a recent decision of the National Company Law Tribunal (NCLT) in *Rathi Graphic Technologies Ltd. v Rajkumar Rathi (2019)* ruled that though the commercial wisdom of the Committee of Creditors is indispensable, the procedure of approval of a resolution plan is always subject to judicial scrutiny. The tribunal made an interesting observation and held that the CoC under the IBC, in *Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2019)*, is an instrumentality of the state in the commercial sphere. That being said, it held that, in the process of approving the resolution plan, adherence to the principles of natural justice and the balancing of the interests of all stakeholders is primary. It held that all decisions arrived at by the CoC while considering a resolution plan must be backed by proper information and data. Thus, implicitly the NCLT held that if a certain resolution plan confers zero or a relatively low amount in favour of operational creditors or any stakeholder for that matter, and the CoC approves such resolution plan, the CoC must back its decision with sufficient and cogent reasons, on account of being an instrumentality of the state, principles of natural justice bind the CoC. This judgement is extremely important and welcome, especially when the discourse around conferring more rights upon operational creditors is gaining momentum.

Due to its significance in the CoC's decision-making, RP initiates the valuation process with two registered valuers to determine fair market and liquidation values.[3] Valuation is a critical step in the bankruptcy proceedings. The minimal entitlement to operational creditors and

[3] Regulation 27 (1) of the CIRP Regulations states that the RP shall designate two registered valuers to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 within 7 days of his appointment but not longer than a period of 47 days after commencement of insolvency.

dissident financial creditors can be determined with its help. It provides direction for evaluating the resolution solutions even though it is not a floor price for the assets. The severe consequences of errors or faulty valuation methods may necessitate the reversal of approved resolution plans. In practice, with a standard valuation approach, the IBC's strategy contains a substantial gaping hole as a result of this absence, which encourages complacency among valuation specialists and leads to incorrect asset appraisals. Intentional lapses, undervaluing assets for malicious intentions, errors in diligence and breaches in care can also break the IBC's obligations. There were various judgments addressed issues related to asset valuation, undervaluation and malicious practices, for example, *Swiss Ribbons Pvt. Ltd. v. Union of India (2019), Arcelor Mittal India Private Limited v. Satish Kumar Gupta (2019), Innoventive Industries Ltd. v. ICICI Bank (2018), State Bank of India v. Videocon Industries Ltd. (2020), Jaypee Infratech Ltd. v. NBCC (India) Ltd. & Ors. (2020)* etc., to ensure the effectiveness and credibility of the insolvency framework. These judgments and cases reflect the evolving jurisprudence under the IBC, highlighting the importance of fair valuation practices, transparency in resolution processes and protection of creditor rights to ensure the effectiveness and credibility of the insolvency framework.

The exclusion of the operational creditors from the decision-making procedure and CoC has been a point of debate since the enactment of the code and has been termed as contrary to the objective of the code to "balance the interests of all the stakeholders" (Swiss Ribbons Pvt. Ltd. v. Union of India, 2019). However, an economic thought has to be given to the problem before reaching a final conclusion and deciding on the issue of affecting the efficiency of the resolution process by offering more voting rights to operational creditors in CoC. The operational creditors can find their place in CoC only if their debt is more than 10% of the total debts or if the CoC lacks any financial creditors. In both situations, it is indicated that the operational creditors are given a lesser role in the insolvency process as compared to the financial creditors. But for an unbiased economic analysis of the outcome of the equitable treatment between the creditors, it is necessary to presume the non-existence of these discriminatory provisions.

3.2.Mandate and Functions of NCLT in CIRP

As per Section 5(1) of IBC, the National Company Law Tribunal (NCLT) is entrusted with the task of adjudicating all matters arising under the IBC. One of the implicit aims of the code is the resolution of corporate debtors with minimal judicial intervention; hence, ideally, the role of the NCLT should be limited to ensuring compliance with the code and disposing of complaints of non-compliance quickly (Arun Kumar Jagatramka v. Jindal Steel and Power Ltd., 2021). However, since the inception of the code, that has not been the case; the judicial system, including the NCLT and its functioning, has received its fair share of criticism for delays in the overall CIRP. The higher judicial forums should refrain from reviewing the merits of a decision arrived at by the NCLT (unless absolutely necessary). A review of merits at several stages tempts affected stakeholders to manufacture litigation at higher levels, thereby stalling the entire CIRP (Chand, 2022).

Procedurally too there are certain concerns about the functioning of NCLTs. Further, studies have suggested that there is a maximum delay in the admission of insolvency applications. However, the delay cannot be solely attributed to NCLT, but also to the parties, who often fail to remove office objections without removing applications that cannot be entertained. Inadequate infrastructure and lack of required number of specialised judges also stall the entire process. The humongous amount of workload on National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) can also be attributed to the inordinate delays in CIRP. The NCLTs hear matters arising from the IBC as well as the Companies Act, which can be further appealed to the NCLAT. Further, the NCLAT is the appellate body for the National Financial Reporting Authority (NFRA) and the Competition Commission of India (CCI). Most of the time, this is because of delays in court processes since the NCLT and NCLAT are overworked, with insufficient bench members.

3.3.Non-cooperation by suspended management in CIRP

Non-cooperation by suspended management presents itself in several forms in the CIRP, which unnecessarily obstructs the valuation of assets and accurate evaluation of the company's financial position. For example, refusal to provide access to financial statements and books of accounts, forum shopping, refusal to enter premises etc. It hinders the resolution process. Under Section 17(2)(b) of the IBC, the resolution professional has the right to access the corporate debtor's books, records and other financial information. Also, Section 19(2) effectively compels the corporate debtor to cooperate with the RP. Refusal to comply with this provision can lead to legal repercussions. In practice, management often attempts forum shopping to choose a favorable jurisdiction for legal proceedings. This tactic can delay the resolution process and increase costs. Frivolous litigation is a tactic used to frustrate the resolution process. It was noticed that the suspended management refused to allow access to the company's premises for inventory verification or asset assessment (M/s Exbuzz Fire and Security Pvt. Ltd. v. M/s Future Retail Limited & Anr., 2024).

3.4.Adherence to Timelines in CIRP

One of the core principles of IBC is the timely resolution of distressed companies. Hence, time is of the greatest essence in reducing the already depreciating value of corporate debtors. In pursuance of the achievement of this objective, the IBC has prescribed a timeline to ensure speedy resolution to insolvency. Primarily a 180-day timeline is prescribed once the insolvency application is admitted, termed as the *"insolvency commencement date"*. Further, the Resolution Professional can file for an extension of up to 90 days, i.e. 270 days, subject to a resolution passed with 66% majority voting of the CoC, beyond the prescribed timeline, and the CIRP ought to be completed within 330 days, inclusive of any extension of the period of CIRP and time consumed in legal proceedings. In Arcelor Mittal v Satish Kumar Gupta (2019), the Hon'ble Supreme Court highlighted the importance of adhering to the timeline and held that the model timeline must be followed as closely as possible. Alternatively, in the CoC of Essar Steel India Ltd. v Satish Kumar Gupta (2019), the Supreme Court held that the timeline is directory in nature. If circumstances demand an extension beyond 330 days to enable the corporate debtor back on its feet, then such CIRP can be extended beyond the 330 days, in the interest of all stakeholders.

However, studies have suggested that the present timeline is seldom achieved and given the current state of affairs, the timeline is practically non-feasible (Shikha & Shahi, 2021). There are inordinate delays at several stages, both pre and during CIRP. As per the code, the adjudicating authority ought to reach a conclusion on the question of the existence of default within 14 days of an application moved under Section 7. However, interaction with stakeholders has revealed that applications at times have taken over a year to be admitted, mostly due to procedural requirements – such as service of notice, time to file a reply, etc. Thus, there is a pressing need to depart from the present 'one timeline fits for all' approach pertaining to the CIRP timeline.

4. Qualitative Empirical Evidence on Operational Challenges and Stakeholder Dynamics in the CIRP

Assessing the impact of Corporate Insolvency Resolution Process (CIRP) through the practical insights of resolution professionals, advocates and bankers, quoting their applied acumens in CIRP based on the identified factors and variables. The research studies conducted by various scholars have applied qualitative tools in line with this research, such as, Creswell (2007), Bowen (2008), Marshall et al. (2013), Schultze & Avital (2011), Bryman (2012), Pratihari & Uzma (2020), Thakkar et al. (2023), Noronha et al. (2018), Alvesson (2003), Avital (2011), Thakkar, H. (2022-2023) and Qu & Dumay (2011).

4.1.Compliance with Time Limits

[…] The timeline with respect to the completion of CIRP and the overall process have absolutely gone haywire. Forget 180 days, even 270 days and 330 days, and it goes on for years altogether. Now some of them are because of litigation and some of them are because of the liberal attitude of the courts. I mean, when there are unscrupulous promoters who try to ensure that the CIRP does not progress in the way it is supposed to be, it goes on for years. Generally, only the high stakes matter or the ones which are in view of the public, they get over around 330, 360 or at max 400 days but otherwise it goes on for almost a couple of years. (Respondent NCLT Advocates)

[…] with all these things to bring the CIRP in 330 days, is impossible in the Indian context – with so much litigation and paperwork. 330 days is only on paper, and rarely does it happen. [Respondent Insolvency Professional (RP)]

[…] in a Supreme Court judgment, [it was held] that 14-day period was directory and not mandatory. So once that came, everyone started taking it easy including the tribunals. They were very happy to dispose it in 14 days and it kept the corporate debtor on toes, but after that particular judgment, it opened the floodgates. I mean there are section 7 applications which have been pending for almost a couple of years, it goes on and on. (Respondent NCLT Advocates)

4.2.Institutional Bottlenecks

[…] On certain days, a single judicial member was assigned to handle two to three benches simultaneously. For instance, today, one judicial member managed both Court 1 and Court 2 of the Ahmedabad bench before proceeding to oversee matters at the NCLT Kolkata bench and the Indore bench. (Respondent NCLT Advocates)

[…] I think there are still a lot of cases which are pending and there is a problem of manpower, due to lack of judges and their appointment in the NCLT. Most of the staff that work at NCLTs and NCLAT are on deputation and contractual. [Respondent Insolvency Professional (RP)]

[…] At NCLT Ahmedabad in Gujarat, there were two benches in operation - one in the morning and another in the afternoon. Each bench consisted of one judge and one technical member. The schedule of their sessions varied daily. Additionally, the bench occasionally conducted virtual hearings for cases from locations like Indore, Chennai, Bengaluru, and others. (Observation at NCLT Ahmedabad over a period of three months)

4.3.Non-cooperation from the Corporate Debtor

[…] Promoters do not want to cooperate because of the mindset they have, the moment the company goes into insolvency; they think they have lost their company, which generally happens because most of these assets have no value. [Respondent Insolvency Professional (RP)]

[…] When our team went as a RP, entry to the office premises was restricted. This professional (RP) had to go to the local police, local magistrate, get the order, they went along with guarded police because those involved corporate debtor (suspended management) had kept their bouncers on the gate. (Respondent NCLT Advocates)

[…] Largely once the orders from the Tribunal are given, in 90% cases the promoters do cooperate or at least give a substantial portion of the documents. The promoters, who are not going to provide the documents with whether that particular penalty is there in the code or not, they are not going to give it, come what may. I have personally seen promoters who have planned the entire thing far in advance, and they say that there was a fire in the premises. This is the FIR, or these are the documents that we lost, and so on and so forth. (Respondent NCLT Advocates)

4.4.Code of conduct for CoC

[…] IBC’s current act is already providing the manner in which the CoC has to be conducted. The framework in which they have to agree is the Constitution, largely it is there. This will be more a sort of governance. We are questioning how it can be well governed. There is always room for improvising and this can help. (Respondent NCLT Advocates)

4.5.Procedural Delays and significant Adjournment

[…] Counsels frequently request adjournments, often due to procedural matters rather than substantive issues. Delays arise from late filing of replies and rejoinders by the counsels, prompting the need for adjournments. Additionally, counsels may seek extensions citing other commitments. The average gap between hearings is typically 30-45 days. (Observation at NCLT Ahmedabad over a period of three months)

5. Quantitative Empirical Evidence on Operational Challenges and Stakeholder Dynamics in the CIRP

This section deals with the consolidated frequency count and percentage analysis of 103 samples. Assessing the impact of CIRP through empirical evidence provided practical insight into various issues and opportunities within the process. It provides a data-driven understanding of the CIRP's impact and highlights areas for improvement. Also, see the research studies of Chatterjee, et. al., (2018), Thakkar, Agarwal & Urmi (2023), Thakkar, Rami & Sarmah (2023), Thakkar, H. (2022-2023), Singh & Thakkar (2021) and Thakkar & Agarwal (2021-2022).

5.1. Timeliness in CIRP: An Empirical Assessment of the Feasibility of Prescribed Timelines and Delays in Creditor Admission

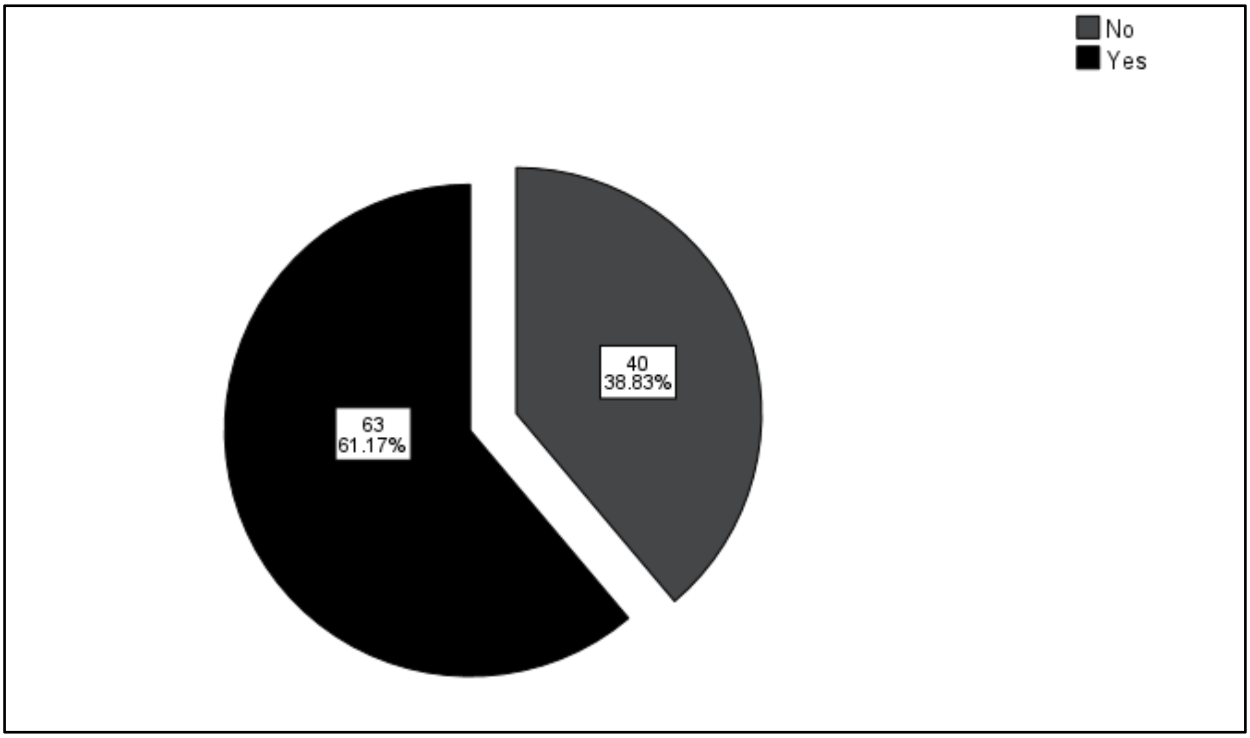

Figure 1: The feasibility of CIRP's present timeline (180 days; one-time extension - 270 days; including time consumed in legal proceedings - 330 days)

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 1, on being asked whether the current timeline for CIRP under section 12(1) of the IBC was feasible, 61% of the respondents said yes, while 39% of them said no. Average timelines under IBC have reached 588 days (irrespective of the end result being liquidation or resolution) as of April 2023.

The data collected shows only in rare cases (5%) that the admission process of financial creditors is cleared in less than 14 days. A significant percentage of the respondents believed that the admission process for the creditors is cleared in 14 days - 2 years or even more than 2 years. It is important to note that only a handful of cases are admitted within the prescribed time limit of 14 days, as provided under Section 7 of the IBC (Figure 2).

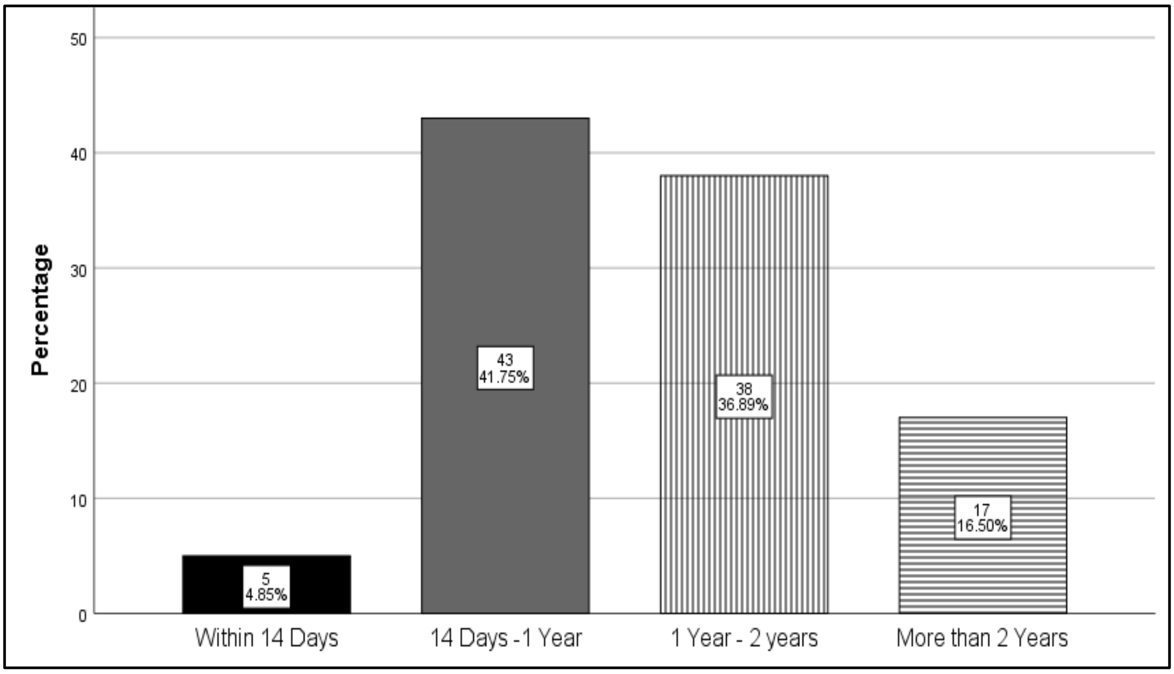

Figure 2: Time taken to clear the admission process for financial creditors in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

Data collected in Figure 3 shows that significant percentage of the respondents suggested that it takes about 14 days - 2 year and even some time it goes more than 2 years for the admission process for operational creditors. These figures clearly indicate that the timeline (Within 14 days) provided in section 9 of the IBC is not being adhered to and very few responses support it.

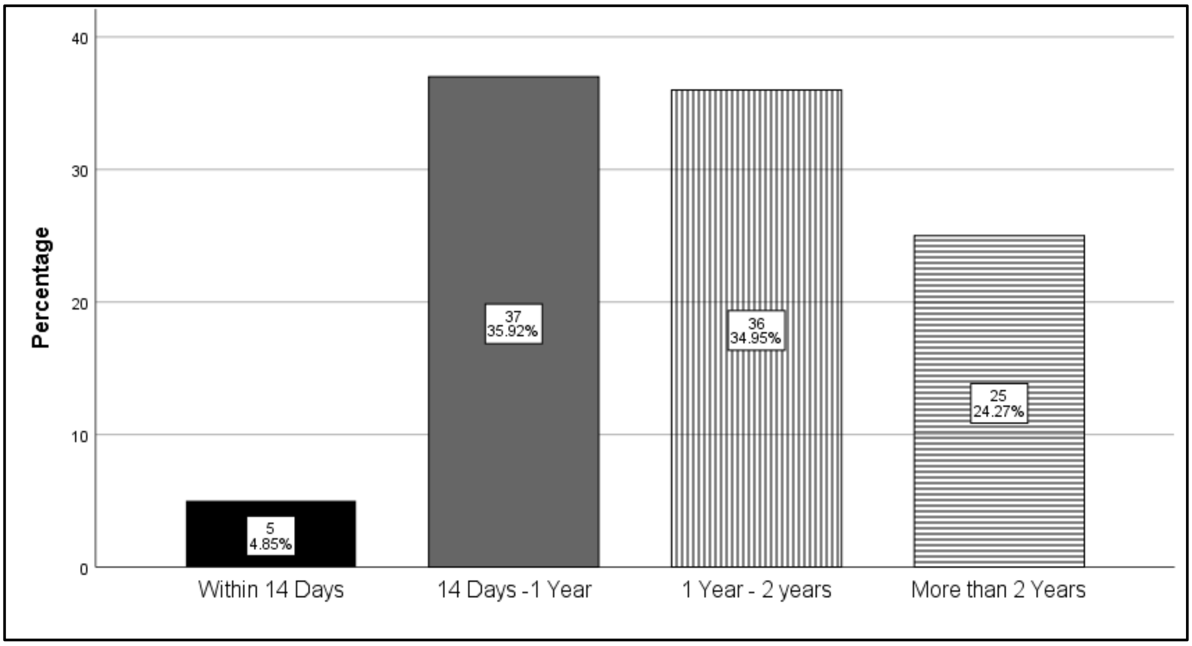

Figure 3: Time taken to clear the admission process for operational creditors in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

5.2.An Empirical Assessment of Resolution Plan Approval and CIRP Completion Timelines

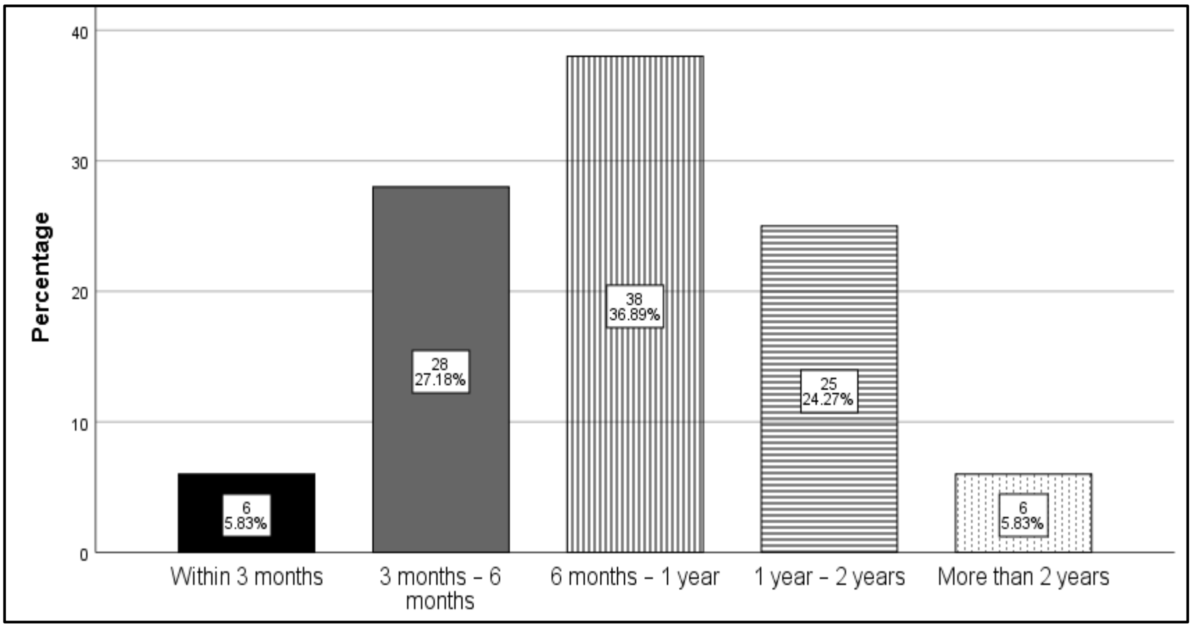

Figure 4: Time Taken by NCLT/Adjudicating Authority to approve a CoC-approved Resolution Plan

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 4, it can be observed that on the question of the average time taken by adjudicating authority to approve a resolution plan approved by a committee of creditors, around more than 60% responded with the option of 6 months - 2 years. According to the above data, NCLT takes significantly more time than prescribed by the Insolvency Law Committee to reject or approve a resolution plan.

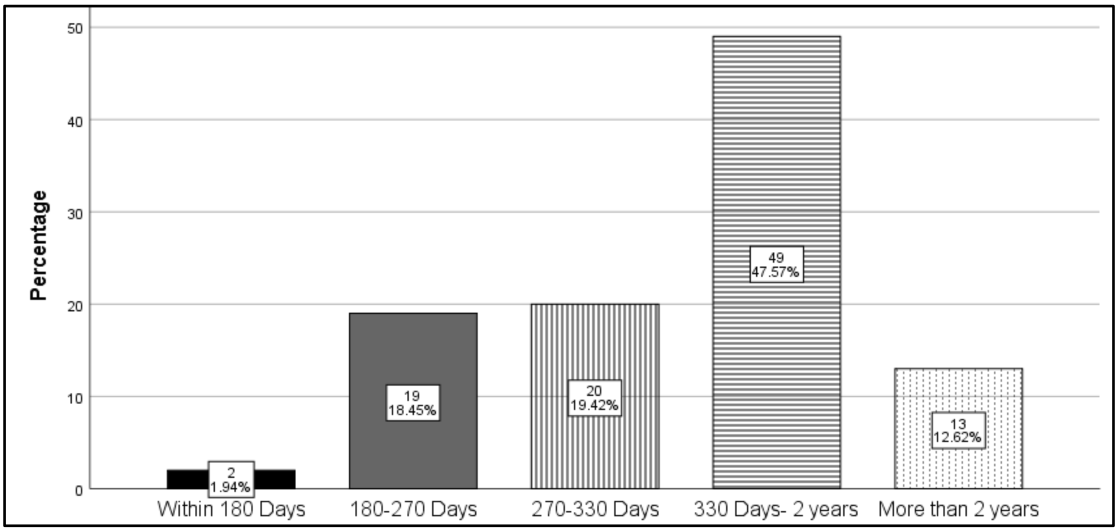

Figure 5: Average Time Taken for Completion of CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 5, from the data analysis, it is seen that more than 60 percent (60.19%) respondents suggested that the average disposal of cases takes between 330 days - 2 years and also more than 2 years. Only a minuscule 1.94% of the total number of respondents felt that the CIRP process is disposed of within 180 days. According to the data, the majority of the creditors, resolution professionals and advocates are of the opinion that most of the cases were disposed after 330 days, breaching the prescribed timeline of CIRP (Thakkar, et. al., 2023).

5.3.Reasons for Delays and Stages with Maximum Delay in CIRP

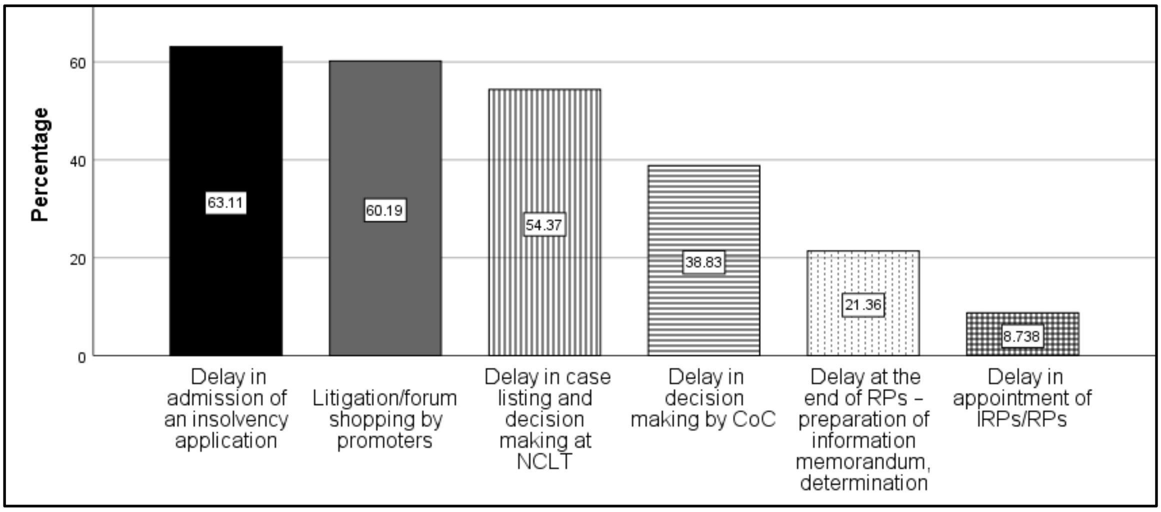

Figure 6: Reasons for Delays in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

As per the responses in Figure 6, the most common reason for the delay in CIRP is the delay in admission of the insolvency application, which was supported in almost 63.11% of the responses. The next most common reason for delay was litigation or forum shopping by the petitioners, wherein they kept on changing the bench to hear the matter; this was also seen as a reason for delay in 60.19% of the total number of responses. Approximately the same number (54.37%) of responses supported the view that delay is caused by delay in case listing and decision-making at NCLT. 38.83% of the total responses attributed the cause of delay in CIRP to the delay in decision-making by the Committee of Creditors. Apart from this, 21.36% of the total responses received believed that the delay was due to the delay caused by resolution professionals in preparing the information memorandum. Another 8.7% of respondents believed that the delay was due to a delay in the appointment of a Resolution Professional/Interim Resolution Professional.

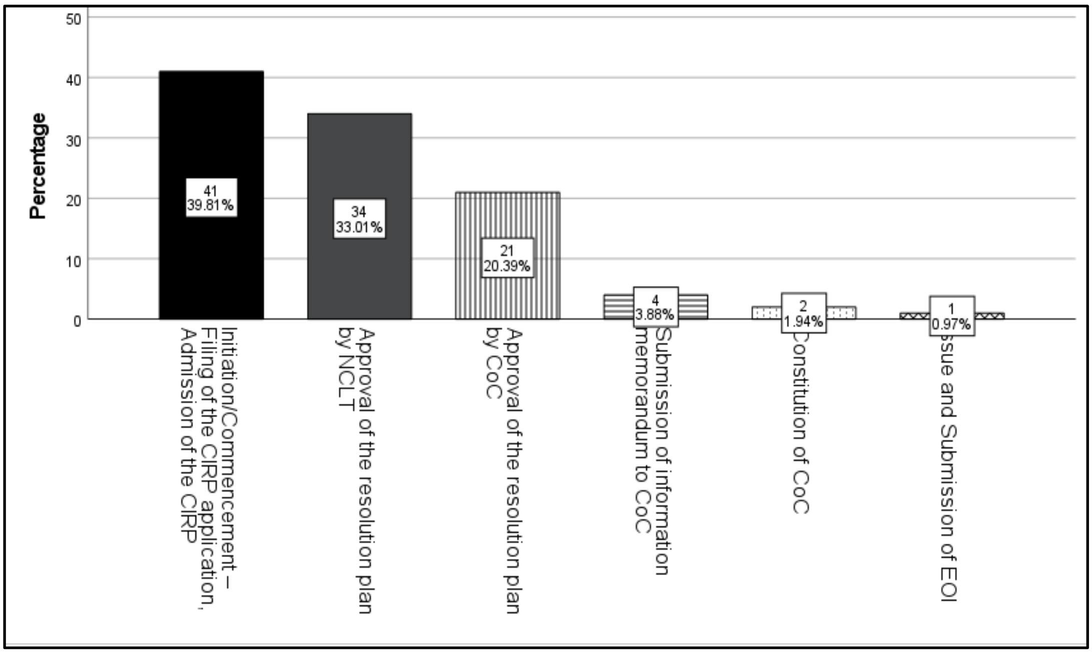

Figure 7: Stages of Maximum Delay in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 7, it can be observed that there are a total of 6 stages involved in the CIRP where the process may be delayed. About two-fifths (39.81%) of the total respondents believed that the delay is most likely to occur at the initiation or commencement of the process itself. About one-fifth (20.39%) of the respondents believe that the maximum delay shall occur at the stage of approval of the resolution plan by the CoC. However, 33.01% considered that the maximum delay should arise in the resolution plan's final stage of NCLT approval. Another 1.94% believe that most of the delay shall occur before the constitution of CoC. About 3.88% of respondents considered that most of the delay shall occur at the submission of the information memorandum to CoC. However, only a sole respondent (0.97%) considered the maximum delay to occur at the stage of issue and submission of EOI. From the above statistical analysis, it is evident that the most delay will occur either at the initiation of the proceedings or at the approval of the AA or the CoC.

5.4. Financial Creditors and Operational Creditors under the IBC: Stakeholder Dynamics, Challenges, and Suggested Reforms

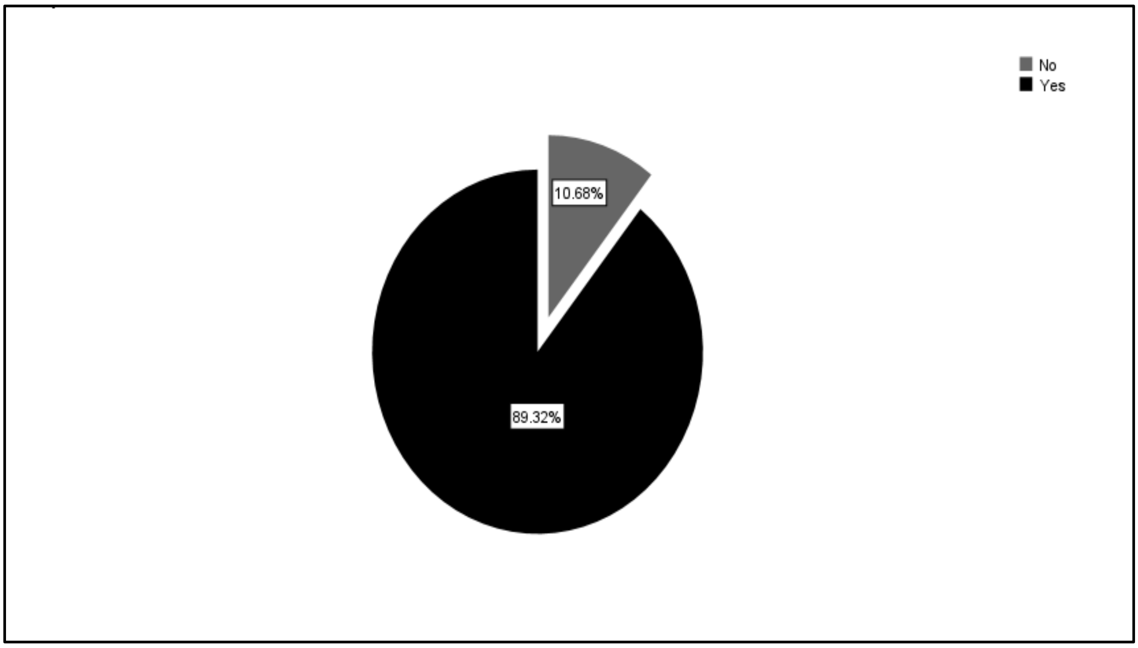

Figure 8: Orientation of IBC towards Financial and Operational Creditors

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 8, on whether IBC in its current form is more inclined towards financial creditors than operational creditors, the majority agreed with the given statement, with about 89.32% of the respondents agreeing with this statement, compared to 10.68% disagreeing. It further substantiates that under the IBC, operational creditors do not have the right to vote or the right of representation in the committee of creditors, restricting them from having any say in the decisions regarding the insolvency resolution process, which includes the approval of the resolution plan that may alter their rights substantially. Against this backdrop, the guarantee to the operational creditors for the provision of a minimum liquidation amount is meaningless as usually in such cases the liquidation amount is near 0 (Mahapatra et. al., 2020). Moreover, the judgment of NCLT Ahmedabad also reiterates that the financial creditors are placed on a higher footing than the operational creditors (Pani Logistics v. Sona Alloys Pvt. Ltd., 2022).

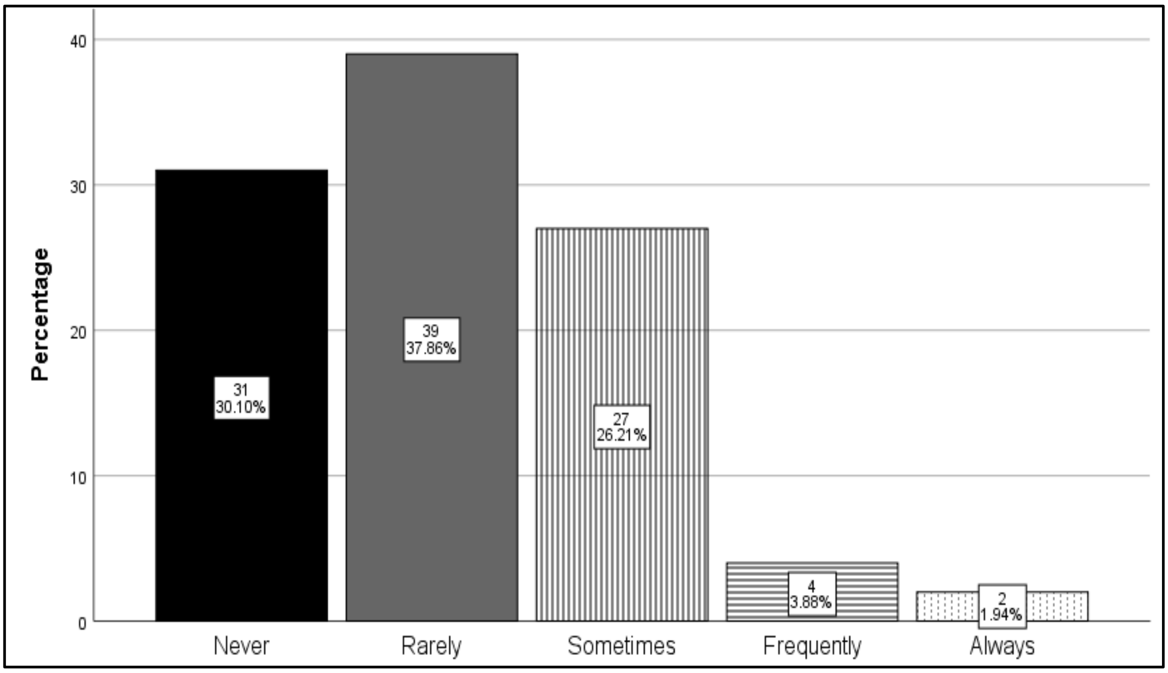

Figure 9: Financial Creditors' Sensitisation towards the Needs of Operational Creditors

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

Based on the data from Figure 9, it does not seem that the financial creditors are sensitized towards the needs of operational creditors since about 68% responded with "Rarely" (37.86%) or "Never" (30.10%). Similar results have been found in the study of Pryor & Garg (2020), wherein it was found that the Committee of Creditors, consisting of financial creditors, usually maximizes its own returns and does not consider maximizing the distribution to all creditors. Which clearly shows that they are not sensitized to the needs of the operational creditors. For instance, the termination of essential contracts by operational creditors is something which is not barred under the moratorium. This may give them a bargaining position with financial creditors. Further, 26.21% responded "Sometimes", whereas only 3.88% responded "Frequently" and 1.94% responded "Always".

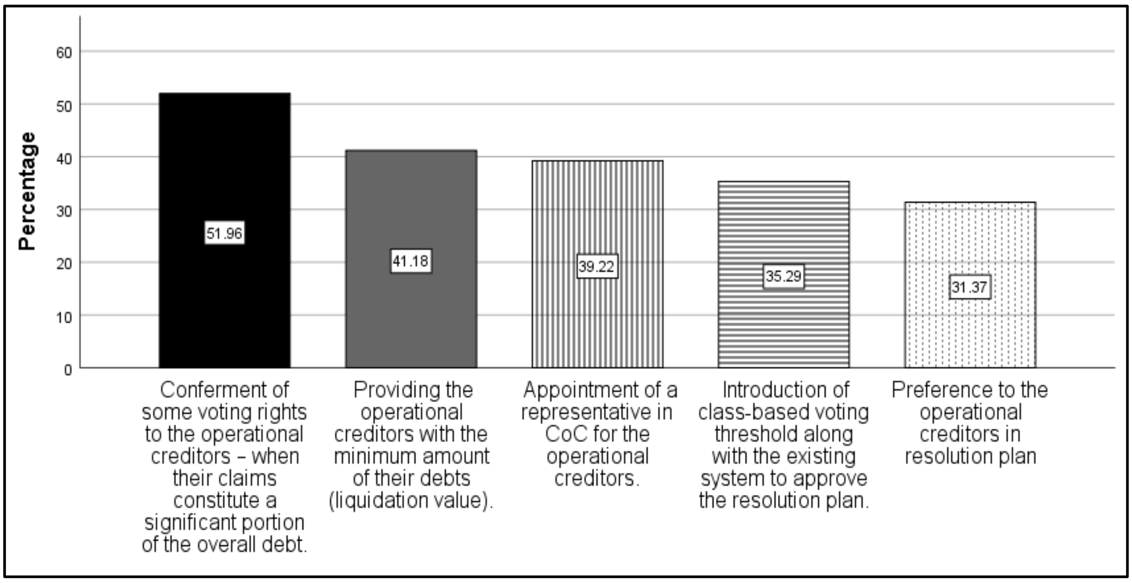

Figure 10: Suggested Amendments to the IBC in the Interest of Operational Creditors

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

According to the results of the frequency analysis performed on the responses gathered, of the five amendments that were proposed to be implemented in favour of the Operational Creditors, the amendment that confers upon operational creditors some voting rights in cases where their claims constitute a significant portion of the overall debt was proposed in the most number of responses of about 52%. Along with this getting the highest number of responses, it is essential to note that the apex court in the Swiss Ribbon Case has also emphasized the same.

The amendment that proposed providing the operational creditors with a minimum amount of their debts was supported in about 41% of responses. Another 39% of responses supported the representation of the operational creditors in the Committee of Creditors to promote their interests. The option seeking to introduce a class-based voting threshold was supported in 35% of the responses received. Meanwhile, about 31% of responses supported the view that giving preference to operational creditors in the resolution plan would be in their best interest (Figure 10).

5.5.Non-Cooperation of Suspended Management of the Corporate Debtor in CIRP

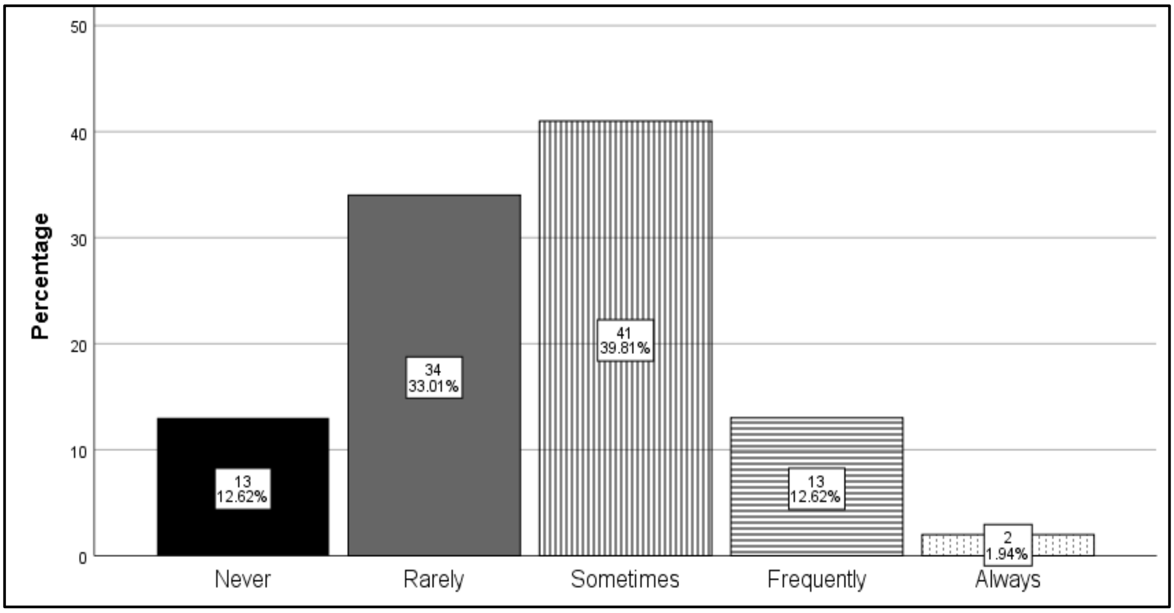

Figure 11: Cooperation and Non-Cooperation of Suspended Management in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

It can be inferred from the responses in Figure 11 that the suspended management of the debtor company often does not cooperate for smooth functioning of the CIRP proceedings. 12.62% of respondents said they 'never' cooperate and 33.01% said they do so 'rarely'. Majority of the respondents (39.81%) replied with 'sometimes' indicating that suspended management perhaps cooperates as and when they deem fit. This indicates that there is no solid mechanism to deter suspended management from being a barrier to the smooth conduction of CIRP proceedings (Figure 11).

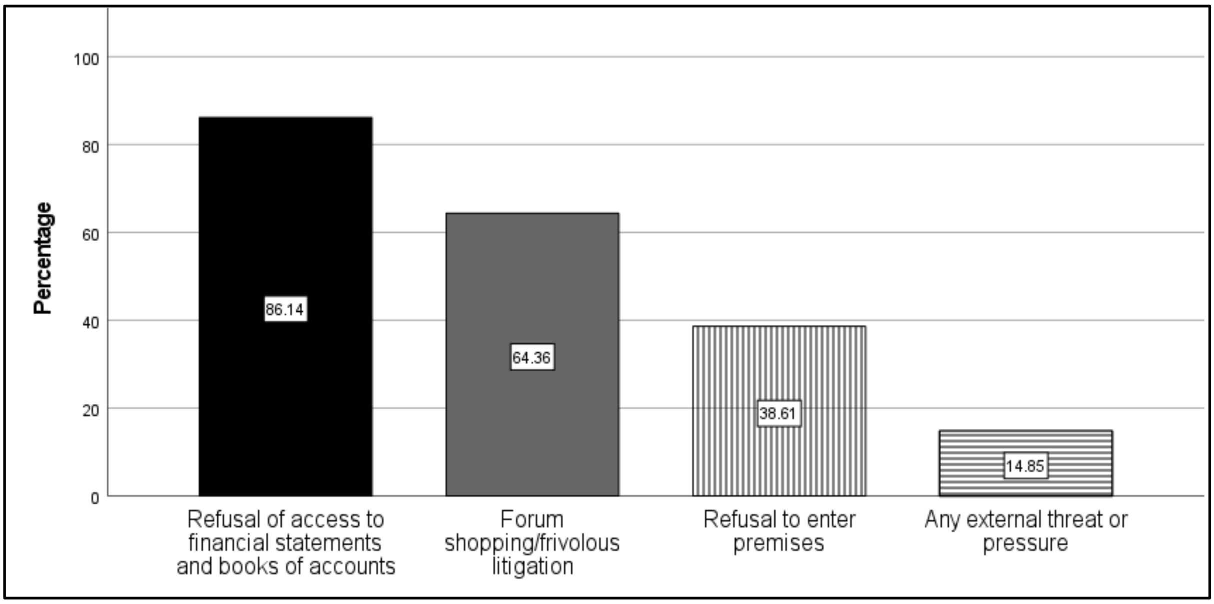

Figure 12: Types of Non-Cooperation by Suspended Management in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

It can be observed in Figure 12, non-cooperation by suspended management can present itself in several forms. A huge chunk of the respondents (86.14%) said that the suspended management refuses to give access to financial statements and books of accounts. Forum shopping or frivolous litigation is also widespread as mentioned by 64.36% of the respondents. 38.61% of respondents cited that they have experienced or observed refusal to enter premises by the suspended management. The use of external threats or pressure, the least popular amongst the given forms of non-cooperation, also occurs for a noteworthy amount of time, with 14.85% of respondents having either experienced or observed it.

5.6.Measures to Improve the Operational Efficiency of CIRP

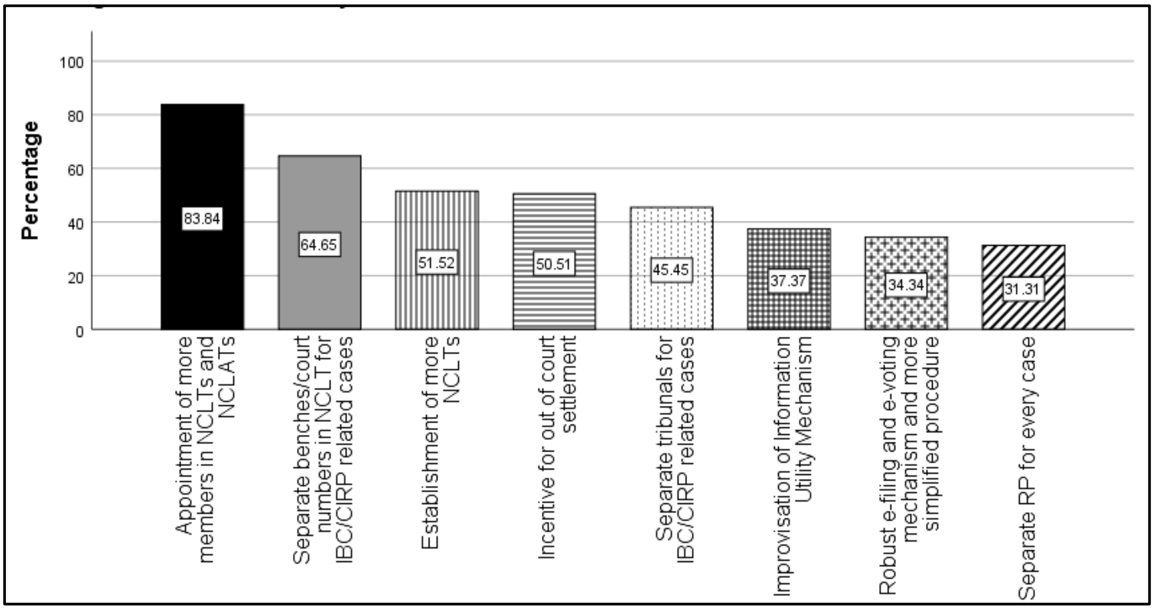

Figure 13: Measures to Improve the Operational Efficiency of CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 13, the frequency analysis indicates changes to increase the efficiency of CIRP. 83.84% of respondents stated 'appointment of more members in NCLTs and NCLATs', and 64.65% reported setting up separate benches/court numbers in NCLT for IBC/CIRP related cases. 51.52% of respondents stated 'establishment of more NCLTs as a method to increase the efficiency of CIRP, 50.51% stated 'incentive for out of court settlement', 45.45% reported 'separate tribunals for IBC/CIRP related cases'. 37.37% of respondents stated 'improvisation of information utility mechanism', 34.34% reported 'robust e-filing and e-voting mechanism and more simplified procedure', and 31.31% chose 'separate RP for every case' as their response. A request made for resolution plans to increase the efficiency of CIRP is that the resolution professional shall issue the information (Ministry of Corporate Affairs, 2023), the evaluation matrix, and a request for resolution plans within five days of the date of issue of the provisional list under sub-regulation (Munjal, 2022).

6. Conclusions

The CIRP enables a thorough examination of the company's balance sheets, comparing assets and liabilities to assess the debtor's ability to repay debts. This process, constrained by time, gives the CoC and RP a chance to scrutinise the debtor's assets and evaluate the company's worth as a going concern, all while ensuring asset maximisation within the insolvency timeline. In the process of approving a resolution plan, the CoC needs to uphold the principles of natural justice and prioritize balancing the interests of all stakeholders, including operational creditors. Otherwise, it will go for juridical scrutiny. Improving the valuation system is vital, as it can be compromised by intentional negligence, undervaluation of assets driven by malicious intent, and failures in diligence and duty of care in assessing fair market value and liquidation value. These aspects require attention to ensure the integrity of the valuation process. Since the code's inception, the judicial system has faced criticism for delays in CIRP proceedings. However, this can be due to insufficient infrastructure and a shortage of specialized judges, further contributing to delays in the process. The substantial workload burdening NCLT and NCLAT is another factor causing significant delays in CIRP proceedings. Non-cooperation by suspended management is a substantial concern in the CIRP under the IBC. Section 19(2)(b) grants the resolution professional the authority to access the corporate debtor's books, records and financial information. Failure to comply with this provision can result in legal consequences. The suspended management complies with Tribunal orders by providing substantial documentation. Yet, some promoters persistently withhold necessary documents, disregarding potential penalties outlined in the code. The prolonged timelines and delays in completing the CIRP under the IBC have become a significant issue. The CIRP has become lengthy, with a common occurrence of receiving hearing dates from the adjudicating authority. Delays are notable, especially at the admission stage, where 4 to 6 months can elapse without progress, contrary to the intended time-bound nature of the process. Litigation, significant adjournment, and interference from unscrupulous promoters are all contributing factors. This often results in CIRP processes extending for years instead of adhering to the intended timelines of 180, 270 or 330 days.

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Global penalties, Local harm: Why economic theory disfavours global turnover-based fines under India's competition law

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Abstract

The implementation of global penalty under the Competition Act, 2002 through the Competition (Amendment) Act, 2023 has raised concerns among competition law academics and practitioners. This revision marks a significant departure from the relevant turnover doctrine based on the ruling in Excel Crop Care Ltd. v. CCI, raising concerns over proportionality and economic coherence. The legislative change creates a structural disconnect between an act within a constrained economic context, geographically within India, and the ambit of sanctions imposed globally. This paper challenges this trend by attempting to reconcile global turnover linked sanctions with legal theory and economic tools. This involves deterrence theory, optimal fine determination, proportionality norms, and marginal harm analysis to suggest that global turnover linked penalties may be economically unviable and legally unsustainable. This paper adopts a doctrinal and law and economics methodology, analysing Indian and comparative approaches to global turnover based penalties. The paper contends that the prevailing policy risks chilling innovation and investment, creates tensions with competitive neutrality, and weakens the territorially grounded orientation of the Competition Act, 2002. It argues for a penalty model grounded in harm attribution rather than enterprise size to restore proportionality and regulatory legitimacy.

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

Keywords: *Global turnover, penalty, proportionality, optimal fine and marginal harm etc.*

1. Introduction

The current issue of turnover-based fines in India has a clear practical relevance with Apple's recent appeal before the Delhi High Court in connection with its challenge to the 2023 amendment to Section 27(b) of the Competition Act, 2002 (Competition Act, 2002, s. 27(b)) and the CCI's 2024 Monetary Penalty Guidelines to the extent that they allow antitrust penalties based on a company's global turnover rather than their practices in India (Bar & Bench, 2025). Yet in directly challenging the legal and proportional basis of global-turnover–based sanctions, an industry leader and data giant has transformed a matter once a mere question of academic and policy debate into one of practical constitutional and regulatory significance, with consequences not only for App Store operations at Apple Inc., but also for the overall treatment of Multi National Enterprises under Indian competition law (Business Standard, 2025).

With the increasing enforcement of anti-competitive behaviour by governments and regulators around the globe, turnover-based penalty regimes have resulted in extensive academic, judicial, and policy debate. The basic justification is deceptively simple in that by aligning monetary sanctions with the economic scale of offenders (either via their aggregate turnover or relevant turnover) the authorities seek to create monetary sanctions that are both significant enough in deterring wrongful behaviours but not so severe that economic activity or the innovation they intend is stymied (Srivastava, 2023). This is done so the fines increase according to the resources and the market access of the offender and in combination with the "ability to pay" and "harm-based" criteria (Ranjan & Chhabra, 2025). The method is based on fundamental law-and-economics theories - the proposed ideal fine needs to exceed expected gains due to the crime and need to adjust for the probable likelihood of detection (Wils, 2007).

Proportionality principle impedes arbitrary actions by regulatory bodies, as it requires them to assess sanctions so that they are in consonance not only with the seriousness and duration of the breach but also with the behaviour of the firm and the character of the market, including a few other factors. (Terlinden, 2025). Fines based on turnover, from structural-technical-economic perspective, reflect the regulatory goal of "internalizing externalities" the costs of the externalities caused by the anti-competitive practice should be met not by the market or the purchaser (Combe, 2006).

But it is notoriously difficult to put proportionality into practice. However, when the thresholds for fines are too low as is sometimes the case when we consider only "relevant turnover" for a product that at the relevant point in time is new or earning little regulatory action runs the danger of losing its deterrent effect (Srivastava, 2023). The one downside is that the use of global turnover as a penalty basis is too widespread and can result in excessive, even existential, fines, which commentators in various markets in Europe, India and the U.S., specifically now recognize and appreciate all too well (Wils, 2007; Schoon, 2024). In the cases involving multi-sided platforms and cross-subsidization or digital products (where market borders blur and revenue attribution is difficult), empirical findings and agency experience in the EU and India indicate that, in the end, the definition and tracing of "relevant turnover" present persistent challenges (Ranjan and Chhabra, 2025; Schoon, 2024).

Recognizing such issues, regulators globally have begun adding thorough procedural guidelines to statutory turnover maxima for penalty determination. A well-known framework for these processes was provided by the European Commission's 2006 Guidelines consisting of a multi-step process starting from the value of sales in the affected market, adjusted for aggravating or mitigating factors, with a global turnover ceiling (Wils, 2007). The process aims for enterprises to be transparent and foreseeable and uses adjustment levers that capture seriousness, duration, intent, and cooperation with the authorities. Furthermore, giving guidelines not only disciplines the discretion of the agency but also increases legal certainty, which is a powerful accelerator of proactive compliance and reduces costly litigation (Wils, 2007).

This also is seen in recent amendments in Indian law. The 2024 Monetary Penalty Guidelines of the CCI aim to move regulatory ad hocism in the following direction: 1) starting with relevant turnover; 2) proportionality considerations; 3) using global turnover only where proportional or deterrence reasons for this are required (Competition Commission of India [CCI], 2024a);(Veritas Legal, 2024) (Metalegal, 2025). This innovation has embedded India's enforcement philosophy with world-established best practice, so that it binding discretion, and counterbalances apprehension of arbitrariness, or an unplanned escalation of penalties (Metalegal, 2025). While the Guidelines approach, consistent with EU procedural methods is reflective of a maturity in regulation, ongoing dialogue with affected parties, together with the judicial body itself, is certainly required for enforcement refinement (Terlinden, 2025). We've made some progress, but that's certainly not enough.

The issue becomes more serious when platforms and conglomerates are involved in antitrust law actions. However, the principle of proportionality must be applied with sufficient care to balance the broader policy requirement of high deterrence, particularly in cases involving recalcitrant and repeat offenders (Combe, 2006); (Terlinden, 2025). Scholarly literature suggests that optimal case is to incorporate "*hybrid*" regime. Under this regime, the focus is shifted toward fact specific assessment of market harm as the anchoring principle. Additionally, statutory caps operate as ultimate safeguard rather than decisive determinant of penalty determination (Schoon, 2024). Existing scholarship on turnover-based penalties under competition law has largely focused on the doctrinal transition from relevant turnover to global turnover. However, limited attention has been devoted to examining whether the shift is compatible with the economic foundations of antitrust penalties, particularly the principles of optimal deterrence, proportionality, marginal harm attribution and territoriality. This paper seeks to address this gap by integrating legal analysis with economic theory.

Against this backdrop, this paper proceeds on three fronts. First, it maps the statutory and institutional framework governing the penalty regime under the Competition Act, 2002, along with the recent amendment and the CCI Guidelines. It also analyses the penalty regimes of the United States and the European Union in comparison with India. Second, the paper explores the economic underpinnings of the penalty framework and assesses the pre and post amendment regimes in mathematical terms, showing that global turnover linked penalty bases are mathematically incorrect and economically unviable. Third, it navigates the issues associated with the global turnover-based penalty regime in India and explicates its implications for the Indian legal regime and the economy as a whole.

2. Penalty bases in antitrust enforcement: a comparative framework of the united states, the European union and the Indian regime

Antitrust agencies across the globe are navigating their regime toward establishing a framework of penalty which combats anti-competitive conduct that ensures maximum effectiveness and optimal proportionality. This understanding underpins regulatory bodies and legislature to shape the competition law policy, be it India, EU and USA. However, there are significant variations in the terms of economic methodology and practical outcomes when it translates into broader policy. Despite sharing similar theoretical perspective regarding deterrence, each jurisdiction's specific legislative architecture reflects distinct approaches to balance market harm against enforcement powers. These approaches are shaped by specific economic ideology of that jurisdiction whether it views turnover as proxy for deterrence or it a redistributive function. A fundamental economic rationale has held up and is universally known, that fines have to be more than the expected benefits of anticompetitive behaviour to deter rational agents from engaging in wrongdoing (De la Mano & Durand, 2023). It is not a simple task of figuring a number for fines to be just and effective, the economic value of the violation as well as the legal necessity of a proportionate calculation between the punitive penalties and the good must be respected (Marques & Rodrigues, 2023).

Internationally, the US is known for its comprehensive and empirical foundations. The penalty is typically proportionate based on the "volume of commerce affected" in accordance with the Sherman Act (Sherman Antitrust Act, 1890) and US Sentencing Guidelines (U.S. Sentencing Commission, 2024); for criminal fines the penalty may be double the unlawful gain or loss resulting from the offense (Department of Justice, 2024; Fox, 2022). The traditional competition law and economics scholarship asserts that linking punishment to measurable market harm ensures that the regulatory costs of unlawful conduct are borne by the infringing parties themselves. The magnitude of such costs must be aligned with the extent of harm caused by the infringer in the market. (Connor & Lande, 2023).

The penalty base in US is limited to affected commerce, it prevents penalties from spilling over to unrelated activities. It also focuses on harm, including robust individual-level sanctions, with the threat of criminal liability for executives expected to enhance organizational compliance incentives. The United States approach demonstrates a strong commitment to the harm principle. The penalty remains linked to affected commerce rather than enterprise size. Consequently, deterrence is achieved while preserving a direct relationship between sanction and injury.

In the European Union, the 'value of sales' is determined within a system which has a statutory global turnover cap. This is an attempt to accommodate the economic logic of the US model, but also consider proportionality and the ability to pay (Schoon, 2024). The penalty is determined by looking at this relevant turnover, i.e. the amount of sales of goods and services associated with the violation within the European Economic Area (EEA). This evaluation is then used to determine the scale of changes made based on the severity and duration of the offending conduct (Marques & Rodrigues, 2023). Unlike the US model, built through a harm-based approach, the EU model differs from its peers in that market turnover is not directly linked to consumer loss in practice. Rather than that, some acts including cartel participation may trigger fixed gravity multipliers regardless of their implications for consumers.

Empirical evidence has however suggested that fines imposed in the EU have become harder and more effective over the past few decades, significantly reducing business uncertainty compared to the model set before (De la Mano & Durand, 2023). As a result of this, the statutory cap, which is set at 10% of the infringer's global turnover, represents an obstacle to overly punitive (or even just existential) sanctions. This point, of course, is an important one—something that policy can supplement by measures such as proportionality and a wider deterrent (Schoon, 2024). Although the European Union uses global turnover as a statutory ceiling, the actual methodology remains anchored to the value of sales associated with the infringement. Therefore, global turnover operates as a limitation on discretion rather than as an independent measure of liability.

India’s landscape in the regulation of competition has transformed dramatically in recent years. In the first place, the Excel Crop case (*Excel Crop Care Ltd. v. Competition Commission of India*, 2017) established the judicial precedent that the penalty was connected to “relevant turnover”, much like the EU emphasis on the linking of product and market. But policymakers ultimately found such an approach insufficient. Indian enforcement lessons show how fines solely on turnover from the affected market were too low to deter major multinational conglomerates, especially in high-growth sectors such as technology where Indian revenue accounts for a minuscule fraction of global operations (Ramkumar, 2023). With the Competition (Amendment) Act, 2023, which offered the Competition Commission of India (CCI) the power to impose fines of up to 10% of a company’s global turnover, (Competition Act, 2002, s. 27(b), Explanation 2) it made its regulatory framework one of the most comprehensive in the world regarding anti-competitive behaviour (Krishnan & Shah, 2023). This change responds to the enforcement pressures regulators face in a more globalised economy, while revealing significant deviations in penalty frameworks. The conduct is comparable, meaning that fines in India can vary dramatically from those found in the EU or the US when domestic damage is limited but global sales are large (Chatterjee & Chakrabarti, 2023).

The economics and comparative scholarship question the nature of penalty bases that completely detach themselves from local harm. Using global turnover as the primary measurement, rather than merely as a statutory cap (such as the EU’s), has the effect of diminishing the direct link between market impact and the magnitude of penalties (Kumar, 2022). This detachment adversely impacts foreign capital, the valuation of firms and drivers of cross-border innovation, both on a value and incentive basis due to companies trying to anticipate their risk based on the local risks in India (Dhir & Moorthy, 2023). The 2024 CCI Penalty Guidelines are beginning to respond to concerns about arbitrariness and judicial overload with penalty determination.

The regulatory framework is further supplemented by the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024, which govern the determination of turnover or income for the purposes of penalty computation (Competition Commission of India [CCI], 2024b). The Monetary Penalty Guidelines, 2024, in turn, provide the methodology for determining the quantum of penalty (Competition Commission of India [CCI], 2024a). The new rules set out a gradual manner for calculating fines according to the relevant turnover of the impugned product or service, with weight to adjustments for gravity, mitigating/aggravating factors, and using only global turnover as a penalty cap or in exceptional circumstances where relevant turnover determination is not available or deterrence is deficient (Competition Commission of India [CCI], 2024a) (ELP Law, 2024; Law.asia, 2025). Therefore, the fundamental of this framework rests on transparency and predictability. It guides the regime to remain consistent with the principles of due process and proportionality.

Contemporary multi-sided digital platforms and conglomerates, poses common problem for all major jurisdictions. This includes a sharp demarcation of '*relevant turnover*' or '*affected commerce*' metrics in these dynamic new age markets (Schoon, 2024). That creates an ongoing tension and a trend, particularly in the EU, to periodically reassess penalty computation policy, as market realities and technological transition challenge traditional legal categories (Marques & Rodrigues, 2023). Curiously, while they diverge in how data is collected, all three regimes have the same underlying concern to protect the public interest, rather than suppress innovation or punish fair competition or the integrity of practices (De la Mano & Durand, 2023). Judicial review mechanisms have been invaluable along the way (albeit they are more assertive in the US and EU), offering infringers the possibility to contest outlier fines, offer evidence of inability to pay, or shine a light on inconsistencies or procedural weaknesses (Fox, 2022).

While the dominant academic consensus now favours what are termed 'hybrid' models, based on a fact-specific determination of harm in the relevant market as the penalty base, scaling up to the size of the enterprise as justified (e.g., repeat/multi-jurisdictional offences), and the provision of transparent caps and reductions for mitigating factors (Connor & Lande, 2023). It is also economically sensible, and gives firms the incentive not only to make compliance investments commensurate with the market risk base, but also to set a common and rational expectation on multinational behaviour (De la Mano & Durand, 2023). When we examine the methods of using turnover fines in a combined manner between India, the EU and the US, it is evident that deterrence and proportionality are principles in every country, the application of penalty bases however varying significantly in terms of predictability, fairness and economic efficacy. While the US's strict harm-linked approach, the EU's balance of market and firm size and India's deterrence-oriented but risk-laden regime hint that the problem lies not just with what 'turnover' is but how it links the principles of justice, economic rationality and the constantly changing frontier of competition policy.

3. Law & economics framework for evaluating global turnover–based penalty regime: a critique of economic viability under the competition act, 2002

As we demonstrate in the previous section, the comparative analysis reveals that while the United States, the European Union and India all employ the normative language of deterrence and proportionality, their applications of turnover in the calculation of antitrust sanctions differ substantially. These differences correspond to varying expectations in terms of how close the penalties must match the actual market damage of the breach. So, when looking at the economic coherence of India's recent statutory drift toward a global turnover base, we must do more than doctrinal comparison and we must consider whether such a metric might serve to achieve an efficient deterrent in a territorially bounded competition regime. In a traditional law-and-economics approach, fines serve a dual, but closely connected, goal: to eliminate the private incentives of the offender to commit socially harmful actions, and in a way that is proportionate to the degree of the domestic harm. In this light, appropriate sanction is expected illicit gain adjusted for the potential of detection taking into account and internalizing the negative externalities of anticompetitive conduct (Becker, 1968). But now widespread enforcement, across a number of jurisdictions, has shifted to turnover-based formulations, with the EU's global turnover cap and most recently the statutory sanctioning of penalties linked to worldwide revenue applied to a variety of jurisdictions – the most significant of which recently came in India.

The section outlines therefore constitutes a concise model of deterrence to establish whether a global turnover base constitutes the harm–sanction nexus of Indian law. The model is intentionally simplified, and is designed purely to demonstrate the point at which the economic relationships are foundational, not as a full structural model of multinational trade. It operates under the assumption of a unitary product company that clearly distinguishes between domestic turnover and global operations and not the intricacies like conglomerate/diversified company, multi product company or multi sided digital platforms. These limitations are deliberate, so we may consider the underlying logic and explore the underlying logic without a confounding variable.

3.1 The Economic Logic of Deterrence: Baseline Theory and Variables

The basic deterrence identity used throughout is Becker's expected cost condition:

$$p \times F = G$$

where p is the probability of detection and successful sanction, $F$is the monetary penalty and G is the private gain from the illicit conduct (Becker, 1968). A welfare motivated extension, by Landes and Posner, recognises that the socially appropriate sanction should reflect expected social harm H (overcharge plus deadweight loss) and should be adjusted for the probability of detection and any efficiency gains to the firm (Landes & Posner, 1983).
Polinsky and Shavell formalise the trade-off between the magnitude of fines and the resources required to increase p, emphasising low-probability/high-penalty equilibria as empirically common (Polinsky & Shavell, 2000). Optimal deterrence theory prescribes that fines track offense specific variables such as harm or illicit gain adjusted for enforcement probability; they must not be indexed to offender traits such as total income or global scale because those traits are orthogonal to the marginal harm caused by a local infringement. Modern scholarship has expanded optimal deterrence theory beyond the traditional expected cost framework. Contemporary competition law scholarship emphasises proportionality, legal certainty, innovation incentives, compliance costs and dynamic efficiency as relevant determinants of penalty design. Accordingly, an economically coherent penalty regime must not merely deter unlawful conduct but must also preserve incentives for productive investment and innovation.
For present purposes define the variables that will be used in the model:

- p= probability of detection and successful sanction in the relevant jurisdiction.

- F= fine imposed by the regulator.
- G= private gain from the illegal conduct attributable to the relevant market (domestic gain).
- T_i= turnover of the enterprise in the domestic market (India).
- T_g= global turnover of the enterprise (worldwide sales).
- β= ratio of illegal gain to turnover in the relevant market (i.e., $G = \beta T_i$).
- α= domestic share of global turnover, $\alpha = T_i/T_g$(so $0 < \alpha \leq 1$).

To operationalise this deterrence logic in competition law, it is necessary to express the illegal gain G in market-measurable variables. Suppose a firm operating under perfect competitive conditions sells its product at price P_c with marginal cost C and earning sales of quantity Q_c. Following collusion or an abuse of dominance, the firm increases the price to P_m and reduces output to Q_m. The resulting incremental and unlawful profit, representing the private gain from the conduct, is approximately:

$$G = (P_m - P_c)Q_m$$

The total turnover of a single product firm in the affected (relevant) market is:

$$T_i = P_m Q_m$$

Hence, the illegal gain can be expressed as:

$$G = T_i(\frac{P_m - P_c}{P_m})$$

Define the overcharge ratio as:

$$\beta = \frac{P_m - P_c}{P_m}$$

This β measures the proportion of each unit of turnover that represents unlawful gain — effectively quantifying the intensity of the violation. Therefore:

$$G = \beta T_i$$

Substituting this expression into Becker's deterrence identity gives the optimal fine required for efficient deterrence:

$$F^* = \frac{G}{p} = \frac{\beta T_i}{p}$$

3.2 Constructing the model: why substituting global turnover miscalibrates deterrence

Where legal rules substitute global turnover for domestic turnover the regulator effectively computes a fine on the basis of T_g rather than T_i. The global-based sanction would therefore be

$$F_{global} = \frac{\beta T_g}{p}$$

Using $\alpha = T_i/T_g$, we can write

$$F_{global} = \frac{\beta T_i}{\alpha p} = \frac{1}{\alpha} \times F^*$$

Thus, the multiplier $\frac{1}{\alpha}$ (the inverse of the domestic share of global turnover) scales the domestically optimal fine. When the infringing activity is local and α is small (as is often the case for multinational enterprises with limited sales in India), F_{global} will far exceed the domestically optimal sanction. Economically, therefore, the global base produces systematic over-deterrence: expected corporate cost pF_{global} will be much greater than G, i.e.,

$$pF_{global} = \beta T_g = \frac{G}{\alpha} > G, \text{ if } \alpha < 1.$$

Conversely, to the extent a regulator's statutory cap or formula uses global turnover but imposes only a fraction of that amount (for example a capped percentage), under-deterrence may result in cases where p is low and the chosen fraction does not restore pF to G. The global base therefore introduces two failure modes:

(i) a likely explosive over-deterrence for small α; and

(ii) unpredictable under-deterrence where the mapping from global base to actual monetary sanction is administratively constrained.

3.3 Variable Detection Probability and Heterogeneity Across Firms

The previously described model considers p as exogenous; in reality, p is variable and a function of enforcement resources, firm size, and international cooperation. Polinsky and Shavell (and following literature) emphasize that low probabilities of detection in conjunction with resource constraints justify larger sanctions in expectation, provided that sanctions are proportionate to the harm involved and do not create perverse incentives (Polinsky & Shavell, 2000). Motchenkova's dynamic methodology shows that penalty schedules which ignore the interaction between enforcement intensity and sanction magnitude are incapable of sustaining full compliance equilibria over time. An optimal penalty rule must therefore account for the temporal path of the probability of detection *p(t)* and the enforcement authority's cost of increasing *p*. Replacing a market anchored penalty base with a global turnover base without considering the cross-border profile of *p*, which typically declines with jurisdictional fragmentation, further aggravates this calibration error. In such circumstances, a regulator may impose an excessively large fine while the probability of detection remains low. Thereby, resulting in sanctions that exceed the socially optimal level of deterrence and generate deadweight welfare losses.

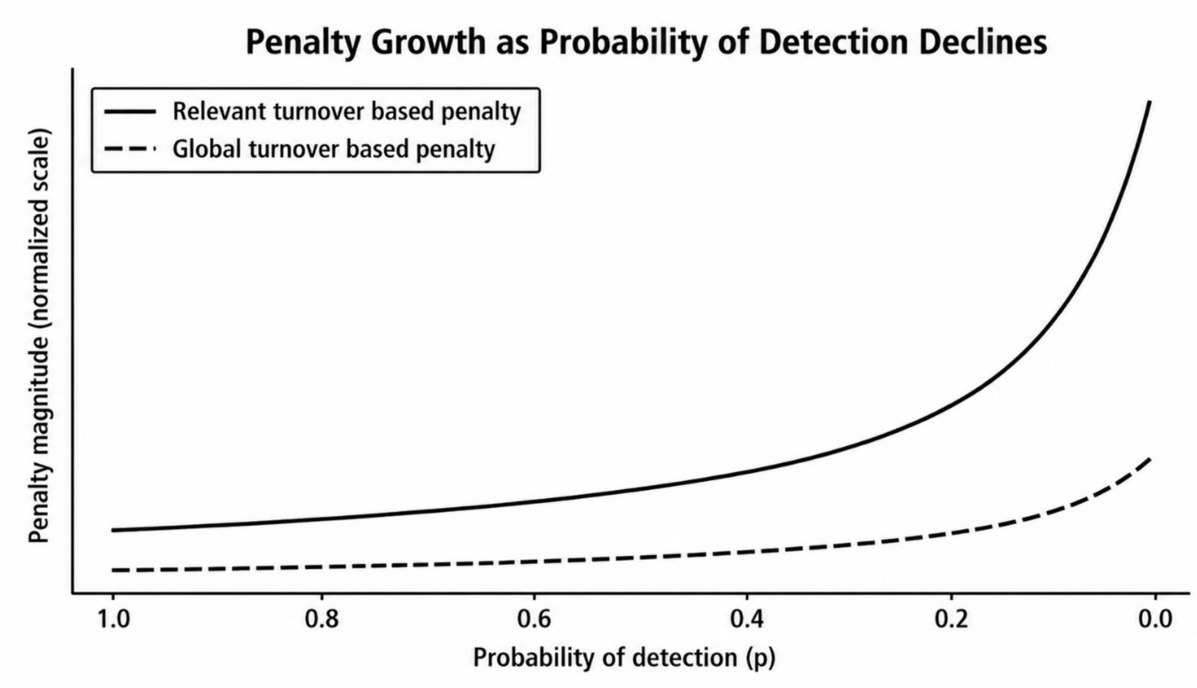

Fig 1. The figure is illustrative and is generated using hypothetical values solely for demonstrating the theoretical relationship between probability of detection and sanction magnitude under alternative penalty bases. It does not represent actual enforcement data.

Source: Authors' own construction.

3.4 Comparative and Doctrinal Context: EU, U.S., and India

The EU's statutory maximum expression as a percentage of global turnover (Article 23(2), Regulation 1/2003) is supplemented by in-depth Guidelines on the manner in which Fines are levied. (Council Regulation (EC) No. 1/2003, art. 23(2)) When the market affected is genuinely global and damage is distributed by jurisdiction, then it can be contended that the global base is commensurate with aggregating harms. But EU guidelines also incorporate adjustments to be found in the turnover “involved in the infringement” and in the gravity of the offence; the formal scheme thus establishes an obligatory connection back to the victim’s market.

Criminal enforcement in the United States has traditionally been based on affected commerce and the gravity of the offence (and supplemental punishment via individual sanctions), in contrast to the approach adopted to make it close to a domestic harm base. (Sherman Antitrust Act, 1890; U.S. Sentencing Commission, 2024; Ginsburg & Wright, 2010) Section 27(b) of the Indian Act and the latest Competition (Amendment) Act, 2023 in India provide some statutory language allowing for global turnover in certain circumstances; Indian jurisprudence (such as the controversy in Excel Crop Care and its related administrative practice) highlights the tension between past “relevant turnover” readings and the new, statutory prospect of a global base. The Supreme Court’s judgment in Excel Crop Care crystallised that relevant turnover principle as a judicial check on disproportionate punishment and grounded the penalty calculus in territoriality of harm rather than size of the enterprise’s global reach. The doctrinal issue lies in the fact that global turnover deviates from the object of India in statutes, preserving competition in Indian markets, and risks breaking administrative law principles of proportionality and predictability unless it is closely cabined. The comparative analysis reveals that neither the United States nor the European Union employs global turnover as the primary determinant of sanctions in ordinary competition cases. Rather, both jurisdictions maintain a direct connection between the infringement and the affected market. India's post-2023 framework therefore represents a significant departure from prevailing international practice.

3.5 Theoretical and Practical Unviability of a Global Turnover Approach in India

Three points synthesise the central critique. First, economic optimality requires that the expected sanction be calibrated to the expected local gain and local social harm; a global base server that links and systematically inflates (or unpredictably deflates) the sanction relative to domestic harm undermines this principle. Second, the distributional consequences are retrogressive in terms of the competition policy, of which companies with a significant global footprint but a small domestic one face disproportionately high punishment costs in face of substantively small domestic misconduct, and which invite charges of forum shopping among the regulators, and which are perversive to the incentives towards investment. Third, given the pragmatic enforcement perspective, low enforcement probability that is varying and a global base implies socially costly equilibria, which is either excess over-deterrence or reduced administrative enforcement fines that would see cartel profits continue forth. These are findings that are congruent with normative theory of law-and-economics and empirical criticisms of turnover schemes.

The formal model demonstrates unambiguously that the fine designed to deter domestic anticompetitive behaviour should be a function of the expected domestic gain and the jurisdiction-specific probability of detection. Using global turnover as the default base overstates the relevant economic magnitudes by a factor of $1/\alpha$, thereby impeding the deterrence function and generating unacceptable distributive and efficiency costs. In the case of India, it can be prescribed the following policy: readjust the statutory methodology in a way that fines should be pegged on the turnover in the affected market, or on an empirically estimated measure of the penalty of overcharge and deadweight loss attributable to India; the use of global turnover multiples should not be exercised, but only when the violated market is truly global and the harm attributed to different jurisdictions is transparently modelled.

4. Challenges and structural risks in the global turnover penalty regime

4.1 The Chilling Effect of Global Penalty Bases on Innovation and Investment

India's Competition (Amendment) Act, 2023 expanded the penalty base from "*relevant*" domestic turnover to a firm's global turnover. (Competition Act, 2023, s. 27(b)) Under the new law, CCI may impose fines up to 10% of a firm's worldwide sales. (Competition (Amendment) Act, 2023) This reverses *Excel Crop Care Ltd. v. CCI* (2017), in which the Supreme Court held that "*turnover…should be construed as relevant turnover*" limited to the business directly involved in the infringement. (Excel Crop Care Ltd. v. Competition Commission of India, 2017) Critics note this change can produce disproportionate outcomes, for example, if global revenue far exceeds Indian business, a 10% global turnover fine could be "*unjustly disproportionate, hindering business operations in India*" (Banerjee, 2024).

Economic theory highlights why such heavy fines risk suppressing pro-competitive behaviour. In a seminal model, Hylton & Lin show that when a monopolist's innovation creates positive spillovers, the usual rule of internalizing consumer harm is no longer optimal (Hylton & Lin, 2014). In their dynamic framework, punishing firms as if operating on a static welfare loss ignores the value of market-expanding R&D. In fact, they conclude that optimal penalties may be far more lenient or even zero: "*in light of the benefits from innovation, the optimal policy will punish monopolizing firms more leniently… It may be optimal to not punish the monopolizing firm at all*." Conversely, a draconian fine steal away almost all gains from innovation and so deters the investment in the first place. Enforcement authorities should exercise "*a bit more caution or forbearance*" when high penalties would otherwise eliminate an innovator's returns (Hylton & Lin, 2014). Similarly, it would also not be incorrect to assert that when markets are imperfect, imposing high fines on companies inevitably affects all of the firm's stakeholders (Wils, 2006).

International precedent reflects the same balancing test. The OECD warns that fines "*are not infallible*", if set high enough to ensure full deterrence, "*many companies could face financial difficulties, which could undermine competition in the market.*" (OECD, 2014). Likewise, "*while fines can be an effective deterrent mechanism, excessive fines may undermine competition*" by harming shareholders, employees or even consumers (if costs are passed on). (OECD, 2014) The EU Commission similarly notes that when a dominant firm's conduct weakens rivals, competitors become "*less willing to carry out significant investments in research and development*," so that "*damage to innovation is likely to occur.*" The concern is not theoretical alone. U.S. courts have explicitly cited an innovation chill as a reason to limit antitrust liability: in *Verizon v. Trinko*, the Supreme Court invoked the "*negative innovation effect*" of overbroad liability when rejecting an "*essential facilities*" claim (*Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 2004).

Combined, these insights warn that India's global turnover penalty regime may be chilling entrepreneurial risk taking and innovation. Punishing global revenue, without a clear link to doing harm at home, might discourage multinationals from introducing new offerings or platforms in India. The Amendment Act has even included "turnover" in cartel cases, meaning the firm's complete, global revenues, magnifying this risk. Conversely, the Supreme Court in Excel Crop emphasized proportionality and clear interpretation to avoid hitting multi-producers too hard. Perhaps the way to go forward: for regulators to limit global fines in practice, limiting their scope to revenue linked to India or using "inability to pay" calculations, as the European Union does. Antitrust punishments need to discourage abuse and protect incentive structures for innovation. As Hylton & Lin note, enforcement is most often effective when substantial value of innovation is at stake. Without that care, the new global turnover limit threatens to penalize ambitious growth and investment, precisely the opposite of what a competition regime exists to do.

4.2 Territorial Limitation of Dominant Position and The Global Penalty: A Paradox of Proportionality

Section 4 of the Competition Act expressly confines to the "relevant market in India, "for the inquiry into dominance, thereby linking both remedial and liability measures to territorial effects on Indian markets.[18] The concurrent authorization of the Amendment Act to derive a penalty base on an undertaking's global turnover results in a stark paradox: the substantive wrong is defined by local market power and local harm, whereas the punitive instrument calculates culpability by reference to global turnover (Srivastava, 2023). That disjunction severs the ordinary legal nexus between offence and sanction and immediately raises questions of proportionality and foreseeability (Srivastava, 2023).

Proportionality requires a rational relationship between the gravity and territorial extent of the wrong and the scale of the sanction; a global-turnover base instead calibrates punishment based on the offender's characteristics — size, product diversification, and export intensity — largely orthogonal to the local injury. Imposing extremely high fines when the likelihood of detecting and penalizing misconduct is low violates the principle that penalties must be proportionate to the offence (Wils, 2006). The Supreme Court in *Excel Crop Care Ltd. v. CCI* has also endorsed a relevant-turnover approach precisely to avoid disproportionate outcomes and to preserve predictable penalty exposure tied to the infringing business.19 Allowing global turnover as an operative base, then, risks undoing that judicial safeguard and invites challenges grounded in arbitrariness and irrationality. 20 Comparative practice offers useful guardrails.

The European Commission treats a percentage of worldwide turnover as a statutory ceiling but constructs the operative fine by reference to turnover "involved in the infringement" and by adjusting for gravity and duration; the global cap is an outer bound—not the default metric for local harm. OECD analyses likewise stress calibration and market-linkage as essential for legitimate fine setting. By contrast, India's statutory text now authorises global turnover without mandatory apportionment rules thereby departing from these calibrating practices and increasing the risk that penalties will lack the requisite territorial nexus.

Restoring doctrinal alignment need not weaken enforcement. At minimum, implementing rules should require: (a) prima facie showing that the infringement and resultant harm are transnational before any global revenue is considered; (b) a transparent market-by-market apportionment methodology that ties any global base back to India-specific turnover or apportioned harm; and (c) express judicial-reviewable safeguards to ensure proportionality and foreseeability in each case. Without these constraints, the global-turnover option will remain an instrument that dislocates liability from harm and weakens the rule-of-law foundations of India's competition regime.

4.3 Methodological Incoherence in CCI Penalty Practice and The Systemic Risks of Global Turnover Sanctions

A review of over a decade of penalty decisions under Sections 3 and 4 of the Competition Act shows that the Competition Commission of India (CCI) has not implemented a stable, principled or proportionate penalty methodology yet (Abraham & Marvão, 2022). An international turnover baseline applied to this volatile domain would escalate uncertainty and create a greater threat of excessive and constitutionally precarious punishments. Existing empirical work indicates that CCI has consistently diverged from the statutory penalty structure in cartel cases. While Parliament does expressly provide a profit-based penalty of up to three times the profit per year of the cartel, within CCI it has exercised this metric in a limited sense, and instead used a controlling percentage of cases on average turnover of the previous three years, a metric originally for non-cartel infringements (Abraham & Marvão, 2022). Almost two-thirds of the cartel decisions examined applied this misaligned approach which was validated via quantitative analysis. Penalty intensity too varies wildly without principled explanation. Most fines in cartel cases are still well below three percent of turnover; well under the statutory limit of ten percent per year of violations — even where collusion is being investigated with regard to public procurement and essential goods. The Commission, however, had a nine or ten percent penalty in some cases simply due to an absolute turnover of little magnitude with final penalties amounting to fewer than one crore rupees (AZB Partners, 2019), a consequence unlikely for deterrents of subsequent wrongdoing. India's leniency regime and its empirical evidence confirm that the penalty system of the Competition Commission of India's (CCI) is already inefficient and not preventative at all when applied concerning relevant turnover (Abraham & Marvão, 2022). Most cartelists have managed to keep more than 80 percent of the statutory maximum fines, while repeat offenders have received even fewer comparative sanctions (Abraham & Marvão, 2022). Since penalty metrics change in unpredictable ways, and reductions in leniency cannot be calibrated, businesses can't predict sanction consequences. This assessment is hampered by the uneven application and punishment rate of CCI penalties. Fines are considerably below optimal levels for the analysis of rough exploratory calculations of this kind. It is obvious that penalties have certainly been much lower than what was permissible the authorities allowed (Bhattacharjea & De, 2021). In such a system with a base for penalties for all businesses doing business on a global level, setting turnover as the penalty rather than adjusting it to specific regions would not alleviate rather amplify an imbalance already present. Using unpredictable percentage rates on global turnover would in fact produce disproportionately large sanctions that are not tied to damage done in the Indian marketplace.

4.4 Regressive Dynamics of Global Turnover Penalties for Multiproduct and Multinational Firms

Analysts have demonstrated that turnover-based caps actually penalize conglomerates more severely. As a result, a fine linked to total revenue implies that a specialized firm, which sells only the infringing piece of goods, pays proportionately lower penalties than one with a multi-line firm with similar illicit profits (Bageri, Katsoulacos & Spagnolo, 2013). In practice, diversified multinational companies are often fined by a great deal and may be forced to inefficient under-diversification (Bageri, Katsoulacos & Spagnolo, 2013). This regressive effect creates perverse incentives on the part of large global firms where the responsibility of regulation falls on the big global firms and the small or concentrated ones (even where equally blameworthy) escape with small penalties (Srivastava, 2023). It may also deter MNEs from making investments in India or even entering into new product line development, since any local abuse could trigger a fine on the entire global enterprise. As the model showed, for a single product firm, punishing against global turnover as a penalty base result in systematic miscalibration and inefficiency. The distortion is further enhanced when the firm's product or part operates across various items or lines of business. Every other, irrelevant item adds a different line of goods to the global aggregate turnover from which it receives the penalty, and the penalty's quantum increases non-linearly with the magnitude of harm to the affected market. As a result, for multiproduct and diversification firms, global turnover-based fines grow exponentially, and bear no principled relationship to the domestic infringement.

5. Conclusion

The point of this paper has led to the conclusion that embedding global turnover within a territorially bound competitive system as the basis for punitive actions leads to a structural mismatch between the source of harm and its punishment. We demonstrate through a formal deterrence framework that in this type of scenario, substituting India-specific turnover with global revenue ratchets sanctions systematically up, such that India's share in a firm's international sales is inversely proportional to the total revenue generated from India and vice versa. This results in anticipated sanctions significantly higher than that of local crime, even social damage. Global turnover based fines in these situations are blunt instruments rather than calibrated rules to ensure an optimum deterrent effect, and expose the possibility of even heavier penalties for actions with economically-impactful local factors. This disconnect contradicts the principle of proportionality as expressed by Excel Crop Care, and can discredit the predictability and legitimacy which any viable competition regime should have in order to be legitimated. This comparison of EU to USA also further confirms that advanced antitrust regimes regard world turnover as at most a statutory ceiling or residual reference point and only allow for operative fines to be based on the impact to a market (e.g.--in a relevant market - commerce) or the value of sales. Both function within codified rules that connect penalties with the market dependent turnover, weight gravity, and duration, and both provide protections like "inability to pay" measures and strong judicial supervision.

India's revised Section 27(b), however, authorizes global turnover in respect of violations defined and investigated only within the markets in the "relevant markets in India" without the applicability for analogous apportionment and or imposed harm-linkage provisions in the law. The effect is a doctrinal paradox: Domination and abuse are territorial, but a punitive metric is extraterritorial indexed to size of the firm, not impact on the Indian market. The economic and institutional effects of such a design are hardly theoretical. For the large multinationals with little Indian presence, the threat of fines of as much as 10 per cent of global turnover can act as a huge disincentive not to expand operations, experiment with new business models or take on risky R&D that can have positive spill-over effects across inroads on Indian consumer behavior.

Also, empirical examinations of CCI's previous fining practice suggest an already unstable approach that relies on inconsistent statutory bases and that the intensity of the penalties varies widely across comparable cases. The implementation of a global turnover lever in this context will also heighten the possibility for outlier sanctions, charges of forum-shopping, and constitutional challenge on the basis of arbitrariness and disproportionality, without any evidence that under-deterrence issues will be remedied. On a higher level, a global turnover penalty regime jeopardises the normative character of Indian competition enforcement apart from being economically inefficiency. The function of antitrust is to correct and remedial; to restore competitive circumstances; to avoid the recurrence of unlawful conduct. It is not meant to redistribute wealth or to hold firms responsible simply for being large or global in size.

Some aspects of penalty architecture linked to global turnover might shift toward a “big fish” approach to enforcement, not applying sanctions as a calibrated response to the harm inflicted on consumers in the local Indian market. But where fines are indexed not by domestic injury but enterprise scale, the regime takes on the redistributive aspects of industrial policy/fiscal extraction rather than of justice for correction. In that context, at its core the normative position, the paper argues, is that India should not lose its penalties on the basis of turnover; it should reformulate them through a market-connected, harm-anchored architecture in which global turnover is used sparingly and transparently.

A consistent reform blueprint would: (a) reintroduce relevant turnover, or the empirical estimate of domestic overcharge, as the principal penalty basis; (b) restrict global turnover to cases of actual transnational violation or to a statutory cap role; and (c) embed certain parameters that can operationalize the concepts of proportionality, territorial nexus and predictability, under close judicial review. Such a hybrid model would place the Indian regime in line with best practice, sustain strong deterrence against serious cartels and abuses, whilst also avoiding the innovation-chilling, investment-distorting, and doctrinally fragile outcomes that are likely to result from a default global-turnover approach.

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Raising the Guardrails on Property Rights: Kesavananda, Minerva Mills, and the 2024 Recalibration of State Power

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Abstract

The Supreme Court ruling in Property Owners Association v. State of Maharashtra (2024) is a decisive institutional recalibration in the history of property rights in modern India. This article examines the judgment's implications for the scope of property rights. We focus on the limits the judgment seeks to place on the state's power to acquire private and community resources, to give effect to the directive principles in Part IV of the Constitution. We argue that the judgment is a decisive step toward a stronger protection of property rights. The apex court has reinterpreted Article 300A of the Constitution to emphasise that the protection of property rights under the article is on par with a human right. To limit the state's ability to infringe upon citizens' rights to property, the apex court has established a set of governing principles. Moreover, it has defined the term "material resources of the community" under Article 39(b). By incorporating the economic and legal doctrine of proportionality, the Court has raised the institutional guardrails on property rights. Furthermore, the Court has observed that judicial interpretations of the Constitution should not be ideology-driven.

Keywords: *Property Owners Association (2024), Fundamental Rights, Directive Principles, Property Rights, Article 39(b), Article 31C, Judicial Review, Article 300A, Kesavananda Bharati and the Minerva Mills*

JEL Classification: *K11, K10, P14, H11*

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1. Introduction

The citizens' right to property vis-à-vis the state's power to acquire it has been a vexed legal issue in Indian constitutional law since Independence. The tussle between the legislature and the judiciary on the scope of individual property rights dates back to the First Amendment to the Constitution.[3] Property rights also sat at the centre of several other constitutional amendments, including the 44th Amendment in 1978, which reduced the status of the right to private property from a fundamental right to a constitutional right. Moreover, some landmark Supreme Court rulings, including the famous judgments in *Kesavananda Bharati* and the *Minerva Mills* cases, resulted from legal disputes over this very issue.[4] Yet the scope and strength of citizens' rights to property vis-à-vis the state remain unresolved. Even after 75 years of independence, these issues remain a source of occasional tension between the executive and the legislature, on the one hand, and the judiciary, on the other.

Against this backdrop, the Supreme Court ("SC") ruling in *Property Owners Association v. State of Maharashtra* (2024 INSC 835) is a landmark in the evolution of property rights in modern India.

In this article, we examine the judgment's implications for the scope of property rights and the limits it places on the state's power to acquire private and community resources to give effect to the directive principles of state policy outlined in Part IV of the Constitution.[5] We argue that the judgment is a decisive step by the judiciary toward better protection of property rights by limiting the state's ability to infringe upon citizens' rights to property. We analyse the *Property Owners Association v. State of Maharashtra* ruling in the context of a series of property-rights-related constitutional amendments and the judicial response to them.

[3] The First Amendment to the Constitution inserted the Ninth Schedule to the Constitution. The purpose of the Ninth Schedule was to protect certain legislations from judicial review. At the same time, 13 different legislations, each related to land reform, were inserted in the Ninth Schedule and granted protection from judicial review. In *IR Coelho v. The State of Tamil Nadu* (2007 2 SCC 1), the Supreme Court held that laws in the Ninth Schedule could be called up for judicial review if challenged on the grounds of violation of the Basic Structure of the Constitution. See Noorani (2007).

[4] See *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*, AIR 1973 SC 1461, and *Minerva Mills Ltd. & Ors. v. Union of India & Ors*, AIR 1980 SC 1789

[5] For a discussion of the constitutional status of the Directive Principles, non-justiciability of Part IV, and the judiciary's practice of reading of Part IV in conjunction with Part III to give effect to certain socio-economic claims and provide judicial remedies, see Jain (2019).

Several successive constitutional amendments have progressively narrowed the scope of property rights in India.[6] Following the 44th Amendment in 1978, the right to private property was diluted from a fundamental right to a constitutional right under Article 300-A. Previously, Parliament added Articles 31A, 31B, and 31C through a series of constitutional amendments to circumvent judicial scrutiny of certain laws, often those involving the acquisition of, or restrictions on, private property.[7] Furthermore, if state agencies acquire a resource "to give effect" to the Directive Principles in Article 39(b) and (c) of Part IV of the Constitution, Article 31C protects the acquisition from legal challenges on the ground that it violates fundamental rights. Moreover, they are not obligated to compensate the affected owners.

Therefore, when acquiring private property, executive agencies have often invoked Article 31C alongside Article 39(b) and (c) to circumvent constitutional protection of property rights and legal scrutiny on grounds of fundamental rights violations. In addition, as discussed in Singh (2012), they have exploited ambiguities in the definitions of "public purpose" and "resources of the community".

Simply put, legislative enactments and executive processes have sought to restrict the scope of property rights in both law and practice. The affected owners, on the other hand, have resisted such attempts through the courts. Consequently, Articles 31A, B and C and 39(b) and (c) have been extensively scrutinised and litigated against on several grounds, *inter alia*, that they infringe upon fundamental rights granted by Articles 19 (right of expression, employment, protest, etc.) and 14 (equality before law).

It is this strand of litigation that resulted in the landmark cases of *Kesavananda Bharati*, *Minerva Mills* and *I.R. Coelho v. The State of Tamil Nadu.* Together, these judgements cemented judicial review of the state's actions as an unimpeachable component of the Constitution.[8] The SC ruling

[6] For a comprehensive account of successive property-related amendments, see Singh (2006). The author examines the First, Seventeenth, Twenty-Fourth, Twenty-Fifth, and Forty-Fourth Amendments, which have progressively removed aspects of takings decisions from the courts' purview and placed them with the legislature and/or the executive, substantially eroding the right to property in India.

[7] As a result of several Constitutional amendments -namely the 1st, 4th, 7th, 25th, 39th, 40th, and 42nd Amendments- Article 31 stands abolished, and Articles 31A, B, and C have been added. At the time of their inclusion, these articles granted legislatures unbridled power, exempting them from judicial review and challenges on the grounds of violating fundamental rights.

[8] Judicial review has varying connotations across countries. In India, judicial review has one of the widest ambits and strongest significance. It first rose to such significance in *Kesvananda Bharati.* In *Minerva Mills* it was formally and explicitly recognised as a part of the Basic Structure. See Rao and Reddy (1997) for a detailed discussion. More

in *Property Owners Association v. State of Maharashtra (2024)* belongs to this league of pathbreaking judicial pronouncements.

We discuss how, through this judgment, the SC has sought to delineate and restrict the scope of the power enjoyed by the state under Article 31C to acquire property and other resources in pursuit of laws giving effect to the directive principles. The apex court has reaffirmed its long-standing view that provisions of the Constitution that restrict fundamental rights and property rights must be interpreted to minimise infringements of individual rights. Moreover, in the spirit of the proportionality principle, the Court has argued that restrictions on individual rights cannot be unreasonable.[9] Accordingly, the SC has limited the legislature's power to infringe property rights under the guise of the directive principles contained in Article 39(b) and (c). The apex court has also delineated the scope of the term "material resources of the community" under Article 39(b), which has occasionally been a source of disputes between the state and property owners. Equally important, the apex court has reinterpreted the protection to property available under Article 300A of the Constitution.

Our analysis contributes to the literature on the evolution and the current state of property rights protection in India (For a comprehensive review of this literature, see Singh (2006), Singh (2012) and Allen (2015)). We also contribute to the discussion of the state's power to acquire property and the scope of judicial review of the acquisition process and practices.[10] We argue that the apex court has, in effect, ruled that the laws and rules empowering the state to acquire

recently literature has examined judicial review as a constraint on specific forms of executive lawmaking, particularly the ordinance-making power (Maurya & Sood, 2024).

[9] The proportionality principle requires that the degree of infringement of individual rights in pursuit of the public good should be minimal and, in any case, not disproportional to the public good achieved. The principle is widely applied in constitutional law across many jurisdictions, helping protect individual rights against state action. The list includes Canada, Germany, Israel, Spain, Poland, Portugal, the European Court of Justice, the European Court of Human Rights, and the Appellate Panel of the World Trade Organisation, among others. The US Supreme Court uses other comparable checks to determine whether limiting a fundamental right is justified on public-interest grounds. For application of this principle in the context of eminent domain laws, see Schaefer (2018), Schaefer and Singh (2018) and Singh (2004).

[10] The property rights have been at the core of the question: can any portion of the Constitution be amended, to any extent, by the Parliament? Tussle between the judiciary and the legislature on this question has been marked by landmark judgements such as *Kesavananda Bharati*, *Minerva Mills* and *IR Coelho.* At the crux of it all was the Court's belief that though every part can be amended, the amendments cannot violate the basic structure of the Constitution. Over the years, various constitutional benches have spelt out what this basic structure entails. For a longer discussion on the conflict around the amending powers of the legislature, see Noorani (2007), Baxi (1999). Also see Supreme Court Observer (2025).

properties should be reasonable in the spirit of the proportionality principle (Schaefer, 2018; Schaefer and Singh, 2018).[11]

The struggle between the judiciary and the legislature over property rights can be mapped to a broader constitutional issue: what restrictions on fundamental and other legal rights are reasonable in pursuit of directive principles of state policy? Judicial interpretation of the relationship between the directive principles and individual rights has moved through different stages (Ambrose, 2013). This debate over the place of individual rights in collective welfare calculations also appears in the broader law and economics literature. One strand of this literature has argued that individual rights should not be treated merely as another component of aggregate welfare calculation. Individual rights must operate as independent constraints on state action (White, 2019). We place the SC ruling within this strand and examine its implication in the context of property rights.

The article is organised as follows. Section 2 provides the legal context for the issues at hand. It traces the trajectory of judicial decisions and constitutional amendments concerning Articles 39(b), (c), and 31C, and details how these constitutional provisions, often a source of conflict between the legislature and the judiciary, have been interpreted by the Courts over time. Section 3 outlines the facts of Property Owners Association v. State of Maharashtra and examines the key legal questions the Court addressed. Section 4 analyses the judgment and its broader implications on the right to property in India. Section 5 concludes by explaining how the judgment recalibrates the balance between the State's redistributive powers and the constitutional protection of private property.

2. The Legal Context and the Trajectory of Amendments

The Indian State and its organs ordinarily acquire private property by exercising the eminent domain power listed as entry 42 of the Third List of the Seventh Schedule of the Constitution. Several acquisition laws are also presented as measures intended to give effect to Article 39(b) and (c) of Part IV of the Constitution. Specifically, Article 39(b) and (c) state that:

The State shall, in particular, direct its policy towards securing

[11] We infer this from *Property Owners' Association v. State of Maharashtra*, 2024 INSC 835, paras 203, 217–220. The Court held state action depriving individuals of property must satisfy procedural protections that are "just, fair and reasonable."

b) "*that the ownership and control of the material resources of the community are distributed to subserve the common good".*

c)*" that the operation of the economic system does not result in concentration of wealth and means of production are not concentrated to common detriment"*

Acquisition under eminent domain enjoys protection under the saving clause of Article 31A. That is, acquisition cannot be challenged on the grounds that it violates the fundamental rights, the rights conferred by Article 14 (equality before law) or Article 19 (right of expression, employment, protest etc.). Article 31A offers such a protection to eminent domain laws on the condition that compensation, no less than the market value, is provided for the acquisition.

By contrast, laws enacted to give effect to the provisions of Article 39 (b) and (c) enjoys the 'safe harbour protection' under Article 31C. Simply put, such laws are protected from being challenged on the grounds that it infringes upon fundamental rights as mentioned in Articles 19 and/or 14. Historically, when right to property was protected under Articles 31 and 19(f), Article 31C also protected qualifying laws against challenges under Article 31. Therefore, a law enacted to give effect to Article 39(b) and (c) could not be invalidated on the grounds that compensation provided was insufficient or illusory. Given this additional protection, state agencies found it attractive to use Article 39(b) and (c) to acquire all sorts of resources during the drive for nationalisation. Several states enacted laws to acquire resources with the purported aim of giving effect to Article 39. The so-enacted laws have been used to acquire a wide range of community and private resources, including contract carriages, land, housing, Coke oven plants, assets of sick textile undertakings, drugs, capital, licenses for felling bamboo, refractory plants, mines and minerals, mining leases, natural gas, among others.[12]

[12] Article 39(b) has been used for the acquisition:
Of contract carriages: see *State of Karnataka v. Shri Ranganatha Reddy* (1977) 4 SCC 471;
Of land, see *Maharao Sahib Shri Bhim Singhji v. Union of India* (1981) 1 SCC 166;
Of housing, see *B Banerjee v Anita Pan* (1975) 1 SCC 166;
Of coke oven plants, see *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.*(1982) 1 SCC 147
Of assets of sick textile undertakings, see *National Textile Corp Ltd. v. Sitaram Mills Ltd.* AIR (1986) SC 1234; Of drugs, see *Union of India v. Cynamide India Ltd.* (1987) 2 SCC 720.
Of capital, see *N. Parthasarathy v. Controller of Capital Issues*, (1991) 3 SCC 153;
Of licenses for felling of bamboo, see *Orient Paper and Industries Ltd. v. State of Orissa*, (1991) SCC 81;
Of refractory plants, see *Assam Sillimanite Ltd & Anr v. Union of India* (1992) SCC 692;
Of Mines and minerals, see *Tata Iron & Steel Co v UOI,* (1996) 9 SCC 709;
Of Mining lease, see *Victorian Granites Pvt. Ltd. v. P. Rama Rao & Ors* (1996) 10 SCC 665;
Of Natural Gas, see *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* (2010) 7 SCC 1.

Unsurprisingly, the affected individuals have sought court intervention against the pervasive use of Article 39(b) and (c) by the state agencies. Laws declaring that they give effect to Article 39(b) and (c) and the states' actions under them have been challenged on multiple grounds. Early on, the litigant owners disputed the sweeping extent of the 'safe harbour protection' given to the states to acquire resources in the name of Article 39 (b) and (c).

Following the Supreme Court (SC) ruling in *His Holiness Kesavananda Bharati Sripadagalvaru vs State of Kerala,* AIR 1973 SC 1461 (commonly referred to as the *Kesavananda Bharati* case), all laws proposing to realise objectives of Article 39 (b) and/or (c) and seeking safe harbour under Article 31C are subject to judicial inquiry.[13] Specifically, laws purporting to materialise Article 39(b) and (c) are subject to review on whether they have a direct nexus with the objectives of the clauses in Article 39. Courts have used the nature of the connection between the stated objectives of a law and the provisions in clauses (b) and (c) as a touchstone to determine whether the broad protections of Article 31C should be granted to the law.

Specifically, the SC in *State of Maharashtra v. Basantibai Mohanlal Khetan (*AIR 1986 SC 1466*)* has held that protections of Article 31C are to be accorded if the Court is satisfied that the law in question gives effect to provisions of Article 39 (b) and (c), *even if an explicit declaration to this effect is not made in the text of the Act itself*. However, the protections of Article 31C are to be accorded only to those provisions of law which are necessary for giving effect to the objects of Article 39.[14]

Once taken up for judicial review, a law must satisfy the necessary condition of whether it serves the common good or achieves a public purpose.[15] Furthermore, for the protections of Article 31C to be available, the resources in question *must be* "material resources of the community".

However, what constitutes "material resources of the community" has remained unsettled in the entire saga of litigation surrounding Article 39. The judicial pronouncements have been inconclusive.

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[13] At the time of its inclusion, Article 31C had two parts. The first provided protection to laws giving effect to directive state principles as mentioned in Article 39(b) and (c), and the other restricted judicial review of such laws. The second part stated, "no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy." This provided the State with sweeping, unrestricted powers. In *Kesavnanda Bharati (1973)* this restriction on judicial review was held to be violative of the basic structure of the Constitution, and consequently, the second part was struck down.

[14] *Maharashtra State Electricity Board vs Thana Electric Supply Co. & Ors* AIR 1990 SC 153.

[15] Much litigation against the use of eminent domain has involved affected individuals disputing the official claim that the acquisition was for the public good. See Singh (2013).

In *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.* (AIR 1983 SC 239), hereafter referred to as *Sanjeev Coke*), a 5-judge bench of the SC held that "material resources of the community" are not confined to natural resources, but include *all* natural, man-made, public and privately-owned resources.

Sanjeev Coke's broad interpretation of "material resources of the community" has influenced several subsequent decisions.[16] For instance, in *State of Tamil Nadu v. L. Abu Kavur Bai (AIR 1984 SC 326), the SC further expanded the scope of material resources beyond Sanjeev Coke to include movable and immovable property*. In this case, the Court held that Article 31C was based on *"the theoretical aspiration that means of production, key industries, mines, minerals, public utilities and services may be taken under public ownership".*[17] Besides, the Court held that people whose properties are taken over under Article 39(b) cannot "be heard to complain" that the award should be based on the market value.

Such a sweeping interpretation of "material resources of the community" by some SC judges did not sit well with the consensus among the judiciary. Here, it is pertinent to note that the judgment in *Sanjeev Coke* drew upon a minority judgment authored by Justice Iyer in the earlier case of *The State of Karnataka v. Ranganatha Reddy* (AIR 1978 SC 215). The majority in *Ranganatha Reddy* had refrained from making any observations on Article 39 (b) and had explicitly distanced itself from the observations of Justice Iyer.[18]

The mainstream judicial view on the scope of the "material resources of the community" differed from the ruling in *Sanjeev Coke.* This became evident from the SC judgment in *Minerva Mills*, which came a couple of years later. According to the then-prevailing view among judges, laws giving effect to the principles of Article 39(b) and (c) enjoyed a sweeping set of protections

[16] For instance, courts have provided Article 31C protection to laws acquiring electrical energy (or licenses to provide thereof) (T*insukhia Electric Supply Co. Ltd vs State Of Assam*, AIR 1990 SC 123), and refractory plants (*Assam Sillimanite Ltd. vs Union Of India* , AIR 1990 SC 1417)

[17] *State of Tamil Nadu v. L. Abu Kavur Bai*, AIR 1984 SC 326, paras 29-31, 78-83

[18] In *Ranganatha Reddy,* Justice Iyer authored a minority opinion in which he observed that all man-made, private, public resources are material resources of the community. The majority distanced itself from his views. While the judges are at liberty of authoring a dissenting, separate judgement, only the majority opinion is binding on all subsequent benches of co-equal or lesser strength. Since *Ranganatha Reddy* had a bench of seven judges, *Sanjeev Coke* (a bench of five judges) was bound by the majority opinion. However, in *Sanjeev Coke*, the bench drew upon Justice Iyer's minority opinion and upheld the constitutional validity of the acquisition of coke oven plants. Coke oven plants were held to be within the scope of Art 39(b), precisely because Justice Iyer had said all resources are material resources of the community.

under Article 31C. Still, their infringement of fundamental rights could not be unreasonable.[19] In effect, majority in the judiciary stressed on the need to assess the impact on people's rights and the general harm done to them, compared to public benefits achieved by the acquisition. This concern with balancing individual rights and public objectives can be understood through the proportionality principle discussed in Schaefer (2018) and in Schaefer & Singh (2018). We use proportionality here as an analytical principle, without suggesting that the judgments of this period applied the formal proportionality test, developed in later constitutional jurisprudence. The principle requires that the acquisition be carried out in a way that ensures the mildest infringement of the rights of the affected people.

In *Kesavananda Bharati,* the Court had noted that the objective of (safe harbour) protections against Articles 14 and 19 was never intended to give "absolute primacy to one over the other" and "disturb the harmony of the Constitution". The Court deemed the balance between fundamental rights and directive principles an essential feature of the Constitution's basic structure. More recently, in *I.R. Coelho v. State of Tamil Nadu, the Court held that, while interpreting laws, there is an underlying assumption that* Parliament would not legislate contrary to fundamental rights.[20] They need to strike a balance between. Further, the Court held that:

> *"by enacting Fundamental Rights and Directive Principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental Rights and Directive Principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution."*[21]

[19] Justice Y.V. Chandrachud noted in *Minerva Mills* "Article 31-C has removed two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help preserve the dignity of the individual."

[20] In *Waman Rao vs The Union of India* (1981 2 SCC 362*)* the Court observed that if laws truly gave effect to clauses (b) and (c) of Article 39, then it was difficult to conceive how they would violate the fundamental rights. That such laws would rather, strengthen the basic structure of the Constitution.

[21] In *IR Coelho* the court held, "The framers of the Constitution have built a wall around certain parts of fundamental rights, which have to remain forever, limiting ability of majority to intrude upon them. That wall is the 'Basic Structure' doctrine..."

Moreover, the scope of safe harbour protection under Article 31C remains unclear. The Forty-Fourth Amendment repealed Articles 19(f) and 31 and introduced Article 300A, changing right to private property from a fundamental to a constitutional right. Even though Article 31C previously protected qualifying laws against challenges under Article 31, it did not expressly provide similar protection against Article 300A. This left uncertainty about whether, and to what extent, a law protected by Article 31C could be challenged under the constitutional right to private property, including on the grounds that the compensation provided was illusory or inadequate.

Against this backdrop, the SC ruling in *Property Owners Association v. State of Maharashtra* is a milestone because it addresses two longstanding uncertainties: the scope of the phrase "material resources of the community" and the extent of protections that Article 31C offers against the constitutional right to property under Article 300A.

3. The Key Legal and Economic Issues

In *Property Owners Association v. The State of Maharashtra,* the property owners mounted a legal challenge against the Maharashtra government's use of Article 39(b) to acquire private buildings under the Maharashtra Housing and Area Development Act of 1976.

The appellants, owners of old and dilapidated, multistoried residential buildings in the Brihan Mumbai area, were significantly affected by the Bombay Rent Act. This Act restricted landlords from charging market rent and made tenant eviction nearly impossible. In effect, it severely hampered the property owners' control over their properties.[22] Although landlords retained de jure ownership of their properties, restrictions on raising rents and evicting tenants effectively stripped them of meaningful de facto control. As a result, they neither had the incentives nor the means to carry out repairs or rebuild them. This restricted the supply of new housing in the area, thereby exacerbating the housing shortage and the spread of slums.[23]

[22] As long as the tenant pays the standard rent or is willing to pay it. Additionally, the hardship/grievance clause of the Act made it extremely difficult to evict tenants. It stated "No decree for eviction shall be passed ... if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. Where the Court is satisfied that no hardship would be caused either to the tenant or the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree."

[23] See *Property Owners Association v. The State of Maharashtra*, paras 5-12, where the Court discusses the introduction of rent control, the deterioration of old residential buildings, shortage of housing and inadequacy of repair and reconstruction measures and establishes these as background to the enactment of contested provisions.

To address this problem, the state government enacted the Maharashtra Housing and Area Development Act, 1976 (MHADA). Chapter VIII of the Act provides for repairs and reconstruction of the dilapidated buildings in Brihan Mumbai, and collection of "cess" to repair the rent-controlled buildings, referred to as "cessed buildings" hereafter. The MHADA was amended to include Chapter VIII-A. The amendment pertains to the buildings constructed before September 01, 1940.[24] Under Chapter VIII-A, the State government may acquire a cessed building and transfer control to a cooperative society of the building's occupiers for repair or reconstruction if at least 70% of such occupiers petition the government to do so. The amended MHADA explicitly states that it aims to give effect to Articles 39(b) and (c) by distributing ownership and control of these buildings, thereby serving the common good.

The owner is to be paid compensation of a hundred times the monthly rent for such acquisition. As rent rates are excessively suppressed, the compensation amount is meagre compared to the market value of these properties, leaving the affected owners worse off.

Unsurprisingly, the acquisition-affected owners have challenged the acquisition of their properties on multiple grounds. The appellant owners have challenged the MHADA's declaration that it gives effect to the objectives of clauses (b) and (c) of Article 39[25] on two fronts. First, they have challenged the classification of these privately-owned, old buildings in a state of bad repair as a "material resource of the community". Second, they have argued that such a classification of buildings is arbitrary and bears no relation to the stated objective. In other words, the owners have questioned the official claim that the acquisition under the Act is for the common good.

The property owners have argued that Chapter VIII-A of the Act violates their fundamental rights under Articles 14 and 19 of the Constitution, deprives them of their property for illusory or arbitrary amounts, and does not achieve any common good. By claiming the compensation to be *illusory*, they have questioned the adequacy of the compensation amount.

See also para 33, where the Court refers to *Malpe Vishwanath Acharya v. State of Maharashtra*, (1998) 2 SCC 1. In *Malpe*, the Court discussed the effect of frozen rents and restrictions on eviction. It recorded that the rent-control regime had reduced landlords' capacity to maintain and repair old buildings, discouraged investment in rental housing, and contributed to the shortage of housing and the growth of slums.

[24] These efforts to levy a cess and establish an authority for structural repairs failed to achieve the desired results due to the significant scale of the problem and the insufficiency of funds.

[25] Chapter VIII-A and the explicit declaration towards the objective of giving effect to the principles of Article 39(b) were added through an amendment in 1986.

As a separate count, the property owners have contested the treatment of their buildings as "material resources of the community". The property owners have, in effect, questioned the SC ruling in *Sanjeev Coke* that "material resources of the community" are not confined to natural resources, but include natural, artificial, public and privately-owned resources. Moreover, they argued that, because these properties are privately owned, they cannot be considered community resources.

4. An Overarching Judgment: Legal and Economic Implications

4.1. Defining the material resources of the community

The 9-judge judgment in *Property Owners Association v. State of Maharashtra* is a watershed moment in the evolving history of the right to property vis-à-vis the State. This landmark ruling by the SC has unequivocally restricted the scope for the legislature and executive to infringe upon property rights in the name of Article 39(b) and (c) and the safe-harbour clause contained in Article 31C. To this end, the SC has addressed the main issue arising from the case details discussed in Section 3 above, namely, the scope of the term "material resources of the community".

The court has defined community resources as natural resources and those that have a community element. The qualifiers of materiality and community element need to be identified on a case-by-case basis. Therefore, whether a resource is a community resource can be determined by examining its impact on the ecology and/or the well-being of the community. The apex court has provided an outline of the guiding principles:

a) The nature of the resource and its inherent characteristics
b) The impact of the resource on the well-being of the community
c) The scarcity of the resource; and
d) The consequences of such a resource being concentrated in the hands of private owners.

Expanding on these criteria, the court has included, in a non-exhaustive list of community resources, common-good resources such as forests, ponds, wetlands, and resource-bearing lands, as well as natural resources like mines, minerals, and natural gas. Furthermore, the court has broadened the scope of acquisition under Article 39(b) to include not only tangible but also intangible resources, such as spectrum and airwaves, that affect the general well-being of the public.

Regarding ownership, the court has clarified that privately owned resources, as a class, can neither be categorically included nor categorically excluded from the scope of the Article. Natural and community resources, even if in private hands, fall within the scope of Article 39(b). However, the Court has emphatically dismissed the view that all privately owned resources fall within the scope of Article 39(b).

Therefore, the SC judgment in *Property Owners Association v. State of Maharashtra* marks a stark departure from the court's articulations in *Sanjeev Coke* and other judgments based on Justice Krishna Iyer's views - who was of the opinion that all means of production, and their produce, are of the community, and can be acquired by the State under Article 39(b). The SC observed that the interpretation of "resources of the community" adopted in Sanjeev Coke and several subsequent judgments was rooted in a particular economic ideology: the view that the State's acquisition of private property benefits the country. The Court observed that Justice Iyer (in *Ranganatha Reddy*), by including all private property within the ambit of the phrase, cast a wide net. The Court has emphatically rejected such a sweeping interpretation of Article 39(b).

In a course correction, the 9-judge bench explicitly held that view to be incorrect. The SC has restricted the scope of Article 39(b) to scarce and finite common resources that directly affect the community's well-being. Covering all private property under the ambit of community resources that can be distributed, the bench has argued, would be equivalent to endorsing a particular economic ideology and structure for the economy, which is contrary to the spirit of the Constitution.

The Court has argued that when reading and interpreting the Constitution, one cannot render certain words in a provision otiose. The Court has drawn upon the debate and discussions in the Constituent Assembly around the Directive Principles, in general, and Article 39(b) in particular. The Court has held that: "The Constitution was framed in broad terms to allow succeeding governments to experiment with and adopt a structure for economic governance which would subserve the policies for which it owes accountability to the electorate." According to the Court, this flexibility to pursue economic policy in accordance with domestic and international requirements of the time gets the credit for the country's economic growth.

To corroborate this, the SC has highlighted Dr Ambedkar's objection to any constitutional proposals that explicitly express a preference for a social structure or economic policy for future governments. The apex court has noted that "according to Dr Ambedkar, if the Constitution laid down a particular form of economic and social organisation, it would amount to taking away the liberty of people to decide the social organisation in which they wish to live. He opined on several occasions that economic democracy is not tied to one economic structure, such as socialism or capitalism, but to the aspiration for a 'welfare state'."

Furthermore, underscoring the importance of constitutional protection of property rights, the court has argued that "the interpretation of Article 39(b), both as a precursor to the protection of Article 31C and as an aspirational Directive Principle, cannot run counter to the constitutional recognition of private property. To hold that all private property is covered by the phrase 'material resources of the community' and that the ultimate aim is state control of private resources would be incompatible with the constitutional protection"

4.2. Limits on Eminent Domain

According to the apex court, state agencies may exercise the sovereign power of eminent domain, subject to the constraints arising from Article 300A. The court has elaborated upon the strength and character of property rights inherent in Article 300A of the Constitution.

To provide context, before 1978, Article 31C's protection of laws aimed at implementing directive principles was broader. It extended to protection against the then-existing Article 19(f) and Article 31; also, under Article 19(f), the right of private property was a fundamental right, Article 31 (also a part of fundamental rights) necessitated compensation for the acquisition of private property and required the acquisition to serve a public purpose. Specifically, before 1978, any law acquiring a resource, purporting to give effect to the directive principles in Article 39(b) and (c), was protected from being challenged on the ground that the compensation provided was illusory and/or insufficient.

Since the 44^{th} Constitutional Amendment Act 1978, however, Article 19(f) has been abolished, and Article 300A has replaced the original Article 31. As a combined effect of the 44^{th} Amendment, the property right has been reduced from a fundamental right to a constitutional right. In this backdrop, a key unsettled constitutional issue is whether the original protection afforded by Article 31C to Article 19(f) and Article 31 automatically extends to acquisitions under Article 300A. Therefore, it was unclear if laws acquiring private property to give effect to Article 39(b) and (c) could still circumvent constitutional protections to the right to private property.

The SC has emphasised that, although the property right is not a fundamental right, the Constitution continues to provide a potent safety net against "arbitrary acquisitions, hasty decision making and unfair redressal mechanisms". To clarify the scope and character of Article 300-A, the Court has relied upon and reiterated the judicial view articulated in *Kolkata Municipal Corporation v. Bimal Kumar Shah* (2024 INSC 435). In this ruling, the SC observed that compulsory acquisition by the State must be validated beyond the twin conditions of serving a public purpose and paying compensation. Assuming that the constitutional protection of the right to property is restricted to just these two conditions would be a disingenuous reading of the provision and offensive to the egalitarian spirit of the Constitution. The post-colonial reading of the constitutional right to private property must consider the larger labyrinth of sub-rights. The court observed:

> "*The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the 'power of eminent domain'. Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. [...] A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands*."

These sub-rights, which are integral to the larger constitutional right to property, include the right to be heard on objections to the acquisition and the right to a reasoned decision (in the spirit of the proportionality principle). In addition, they entail the state's duty to inform the person of the rationale behind its acquisition decision. The apex court's message is clear: Do not take property rights lightly.

4.3. Kesavananda Bharati and Minerva Mills Judgments Revisited

From the above, it is evident that through the extant judgment, the SC has intended to strengthen property rights by restricting the scope for the legislature and executive to acquire resources under Article 39(b) and also Article 300A. The SC has noted that the safe-harbour clause of Article 31C, which protects legislation dealing with Article 39(b), grants the state vast powers with far-reaching consequences. Because of the potential implications of this power for individual rights, the matter cannot be left entirely to the legislature's discretion. The Court clarified the extent of protections that Article 31C afford to qualifying laws. If a law falls within the purview of Article 39(b), it is protected only against infringements of fundamental rights under Articles 14 and 19. The safe harbour clause of Article 31C does not extend to individual rights under other provisions of the Constitution.

The apex court has argued that Article 31C "does not grant the legislature absolute authority to include any legislation within the fold of Article 39(b) without a governing principle". The need for a governing principle to judge a law seeking safe harbour has been addressed by the Court in this judgment. Thus, the Court reiterated the case for judicial review of laws that seek Article 31C protections in pursuit of Article 39(b) and (c), as in the landmark judgement of *Kesavananda Bharati.* By subjecting such laws to judicial review, the judgment enabled subsequent benches of the court to protect individuals' right to property from the unreasonable exercise of state power. [26]

Further, the SC has settled a constitutional issue that arose after the Minerva Mills judgment. As mentioned earlier, the 42nd Amendment to the Constitution in 1976 aimed to expand the scope of Article 31C's protection beyond clauses (b) and (c) of Article 39 to cover "any or all of the principles laid down in Part IV" of the Constitution, which lists the directive principles. As a result, laws enacted to give effect to any directive principle could infringe fundamental rights without judicial scrutiny. In the *Minerva Mills* case, the SC struck down this all-encompassing phrase and thus the extension of Article 31C's protection to all of the directive principles. In doing so, the Court restricted the scope for the legislature and executive to evade legal scrutiny

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[26] Successive benches of the court have used the unimpeachable status afforded to judicial review to review and restrict unreasonable acquisition practices. The courts have often done so by broadly interpreting the narrow constitutional provisions of Article 300A. Although Article 300A does not explicitly call for compensation, the courts have nevertheless inferred it. See Allen (2015) for a detailed discussion

of fundamental rights violations simply by appealing to *any* directive principle. Additionally, the judgment in *Minerva Mills* made judicial review an unamendable part of the Constitution that Parliament cannot alter. Court did so by explicitly adding judicial review to the list of features that constitute the basic structure.[27]

As the original protections of Article 31C applied to "*principles specified in clause (b) or clause (c) of article 39",* by striking down the phrase *"any or all of the principles laid down in Part IV"*, the judgement in *Minerva Mills* raised a question: Did the court intend to strike down the original protections offered to Article 39(b) and (c); or did the court intend to revive the original statement, "*principles specified in clause (b) or clause (c) of article 39"*? In the existing judgment, the SC clarified that protection under Article 31C applies to clauses (b) and (c) of Article 39, subject to judicial review.[28]

In *Property Owners Association v. State of Maharashtra*, the SC went beyond reiterating the significance of judicial review and sought to further strengthen individual property rights by subjecting any takings decision to the procedural diligence and various sub-rights described in section 4.2 above. What is new and even more critical is the SC's observation that Article 31C protection can be challenged under Article 300A, which also pertains to the constitutional right to property.[29] No matter under what constitutional provisions the private resource is acquired, the constitutional guarantee of the right to property, as outlined in Article 300A, cannot be circumvented. Any acquisition of private property needs to be compensated for, justified on the grounds of serving a public purpose, and sub-rights of the harmed party (to be heard, to an expedited process, etc.) are to be adhered to. The apex court's description of the right to property as a human right speaks volumes about the importance it assigns to property rights.

[27] The Basic Structure doctrine is a larger concept that originated in the judgment of *Kesavananda Bharati*. We have analysed only one aspect of the doctrine, which has been used to protect property rights better. Many constitutional scholars have looked at the Basic Structure Doctrine as a protector of constitutional integrity. For a detailed discussion, see Kumar (2007), Nariman (2025), Baxi (2023).

[28] Ours is an economic analysis of the judgement and pertains to the impact this judgement has on the evolution of property rights and use of eminent domain. While this issue on the current status of Article 31C is significant to legal discourse, we mention it here in a limited sense for the sake of completeness.

[29] The Court has clarified that this interpretation of Article 39(b) does not limit the state's power of acquiring privately owned resources via other provisions of the Constitution.

5. Conclusion

In 1991, the state government of Maharashtra acquired privately owned, rent-controlled, and dilapidated buildings in Brihan Mumbai, under Chapter VIII-A of the Maharashtra Housing and Area Development Act (MHADA). The purported aim of the acquisition was to serve the larger common good under Article 39(b) of the Directive Principles: to rehabilitate the tenant residents of these buildings. The owners of these buildings challenged the acquisition chapter, particularly MHADA's characterisation of privately-owned buildings as a "material resource of the community". This legal challenge snowballed into broader constitutional questions. The legal disputes ultimately reached the apex court in *Property Owners Association v. State of Maharashtra* (2024 INSC 835).

The SC ruling in this case has addressed several unsettled constitutional questions: What constitutes a material resource of the community? To what extent is the infringement of private property rights justified in the state's pursuit of giving effect to Article 39 (b) and (c) or any other directive principles of the state policy? What is the scope of property rights under Article 300A?

The Court holds that the laws and processes enacted to give effect to Article 39(b) and (c) continue to enjoy Article 31C protection against challenges on the grounds of being violative of Articles 14 and 19 (fundamental rights). However, any such law or act is subject to judicial review to test whether it bears a direct nexus with the directive principles contained in Article 39(b) and (c). Reinforcing its rulings in the celebrated judgements in *Kesavananda Bharati and Minerva Mills,* the Court has provided governing principles to determine whether a law can avail itself of the protections under Article 31C.

As to what is a "material resource of the community", the Court has argued that all scarce and finite resources, whose concentration in private hands would be detrimental to the public good, such as natural resources (wetlands, ponds, mines etc.) and community resources (e.g. spectrum and airwaves) qualify as community resources. Privately owned resources, as a class, can neither be categorically included nor categorically excluded from the list of community resources. Determining whether acquiring a resource is in the community's interest must be done on a case-by-case basis.

With this definition, the SC has set aside the ruling in *Sanjeev Coke* regarding the definition of community resources, which included not only natural resources, but all artificial, privately or publicly owned resources. The SC has held that such a sweeping interpretation would be akin to imposing a particular economic ideology and structure, which runs counter to the ideal of economic democracy embedded in the Constitution by the framers.

To emphasise the significance of property rights in the Constitution, the apex court has observed that the right to private property, though not a fundamental right, is a constitutional right. The court has described property rights protection under Article 300A as on a par with a human right. Therefore, even if an acquisition is made to give effect to the directive principles in Article 39(b), the state agency must justify the acquisition on the grounds of serving the common good and pay adequate compensation. In addition, it should respect the sub-rights of private property, such as the right to timely notice, to be heard of any objections, to restitution, and to an expeditious and efficient process, among others.

In sum, going beyond *Kesavananda Bharati* and *Minerva Mills*, *Property Owners Association v. State of Maharashtra* has significantly strengthened property rights by delineating and restricting the scope of the state's power to infringe private property in pursuit of directive principles. The judgement emphatically underscores the sacrosanct nature of private property in the Indian Constitution. With clear guiding principles for the use of Articles 39(b) and (c) and the importance of property rights underscored, the SC has set the stage for stronger judicial protection of property rights.

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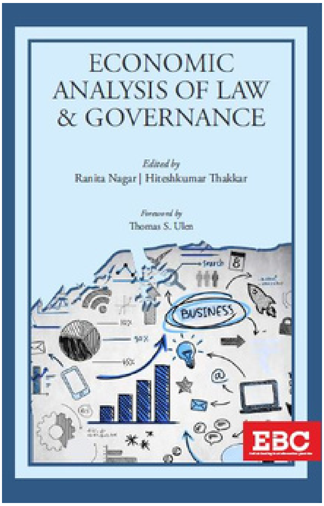

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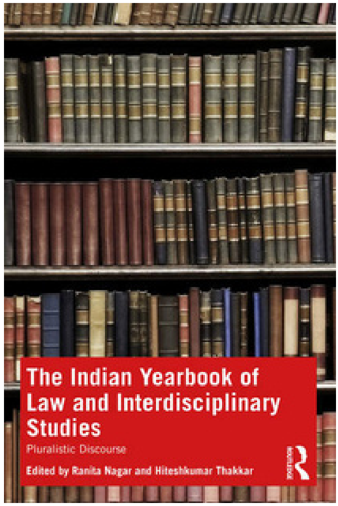

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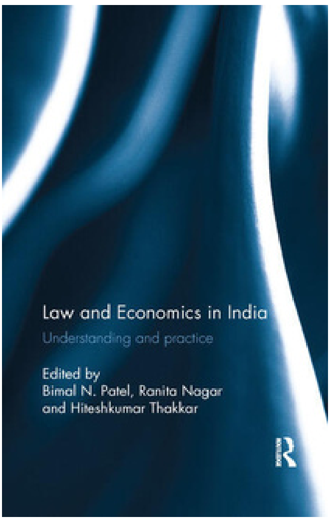

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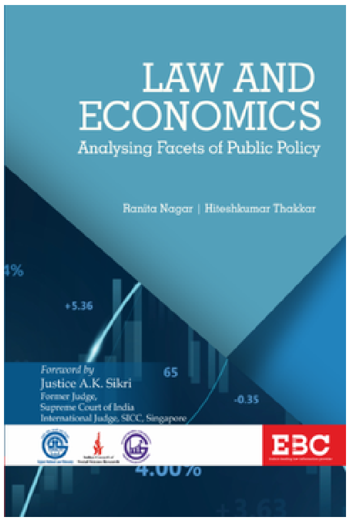

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