Centre for Advanced Research in Corporate Law Newsletter

National Law University and Judicial Academy, Assam

March 2019

Message from the Chief Patron

Prof. (Dr.) J. S. Patil
Vice Chancellor, NLUJAA

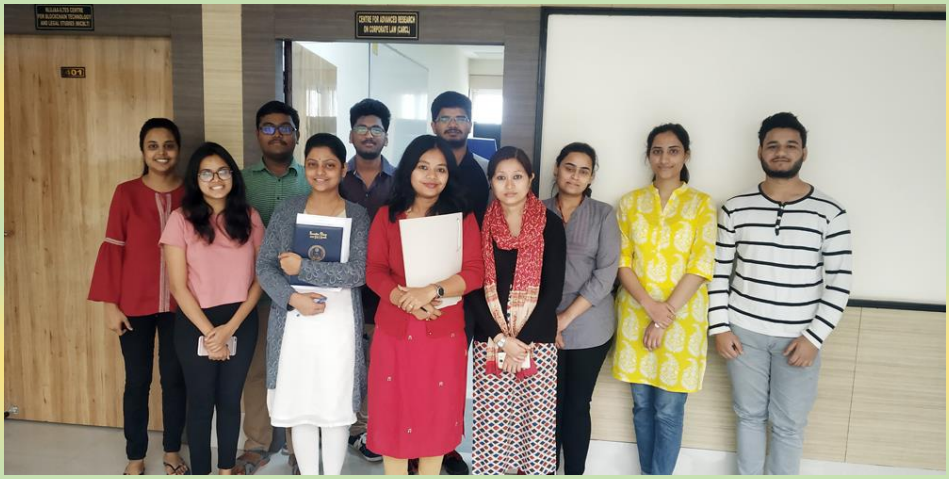
I am pleased to know that the Centre for Advanced Research in Corporate Law (CARCL) of National Law University and Judicial Academy, Assam (NLUJAA), has come up with its first newsletter. Corporate law is already an important area of law which is growing at an incredible pace in India. The focus of the Central Government to bring in companies to play a key role in economic development of the country is reflected from various schemes undertaken such as the 'Make in India', 'Skill India" etc. All these initiatives have increased the need of dynamic and skilled professionals who can cater the needs of these companies to smoothly establish themselves in the complex system of laws in India. Corporate law as an academic discipline has a great potential for the growth and research in corporate law. This responsibility lies on the academic institutions to draw out different modalities which can develop corporate law as a subject as well as a vibrant discipline of research. With this motive, The National Law University and Judicial Academy, Assam has established a Centre for Advanced Research in Corporate Law (CARCL) which will cater to the activities needed to focus on various aspects of corporate law, especially in the North East. The focus area of the Centre will be to develop Corporate Law as a vibrant academic discipline. This Centre is first of its kind in the entire Northeastern Region of India. The basic objective of the newsletter will be to relay information about the Centre and its various ongoing activities and future endeavours.
I am elated of the fact the Centre for Advanced Research in Corporate Law (CARCL) has come up with its first newsletter within a short span of time since its inception. I would also like to applaud the efforts of the contributors of this newsletter which has made it a success. I hope the readers of this volume will find it interesting and alluring.

About NLUJAA

The National Law University and Judicial Academy, Assam (NLUJAA) has been established by the Government of Assam by way of enactment of the National Law School and Judicial Academy, Assam Act, 2009 (Assam Act No. XXV of 2009). The word 'School' was replaced by the word 'University' by amending the National Law School and Judicial Academy, Assam (Amendment) Act, 2011. The Hon'ble Chief Justice of Gauhati High Court is the Chancellor of the University. NLUJAA promotes and makes available modern legal education and research facilities to students and scholars drawn from across the country, including the North East, coming from different socio-economic, ethnic, religious and cultural backgrounds.

About CARCL

The National Law University and Judicial Academy, Assam has proposed to establish a Centre on Corporate Law and Governance which will cater to the activities needed to focus on various aspects of corporate law, especially in the North East. The focus area of the Centre will be to develop Corporate Law as a vibrant academic discipline. The Centre will try to further these programmes and work with different agencies and institutions focus on corporate issues in the northeast region. NLU Assam as being the only National Law university in the northeast region, has a unique advantageous position. The institution has already the basic facilities for working and research on the area and a centre will help in focusing and fast tracking the work in this area.



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Biggest Three-way merger of Public Sector Banks[1]

From 1st of April 2019, the number of Public Sector bank will fall from 21 to 19, thanks to the Government of India's decision to amalgamate Vijaya Bank and Dena Bank into Bank of Baroda. After this amalgamation, Bank of Baroda will become the 3rd largest bank in India. The Cabinet has approved the scheme of amalgamation on 1st of January 2019. The amalgamation of the bank will be effective from the next financial year i.e. 1st April 2019.

The power to amalgamate national or public sector bank is via section 9(2)(c) of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. This section gives the power to the central government after consultation with RBI to amalgamate any nationalized bank with another. Several committees of the RBI have also recommended amalgamation of banks. The first committee in this regard was the Narsimha Committee of 1998, it was followed by Leelandhar Committee in 2008 and the latest one Nayak Committee in 2014, all have recommended amalgamation of banks to increase lending capacity.

Previously, State Bank of India was merged with 5 of its subsidiary, State Bank of Bikaner and Jaipur (SBBJ), State Bank of Hyderabad (SBH), State Bank of Mysore (SBM), State Bank of Patiala (SBP) and State Bank of Travancore (SBT), and also took over the Bharitiya Mahila Bank in 2017. This was the largest bank merger.

After 1st April, Bank of Baroda will become 3rd largest Bank in India after State Bank of India and ICICI.

The Press Note 2 of 2018 and its Amendments on FDI Policy in E-Commerce Sector: An Analysis[2]

The Press Note 2 of 2018 issued by the Department of Industrial Policy and Promotion (DIPP) in December 2018 provides for certain regulations or conditions for the e- commerce sector related to Foreign Direct Investment (FDI) policy in the sector. It came into force on 1st Feb, 2019. The amending clause is 5.2.15.2. According to the previous policy 100% FDI is allowed in the marketplace model (B2B model) of e commerce through automatic route i.e. without prior government approval.

According to the policy the e commerce entity should not have ownership over the goods sold in the platform. The new Press Note 2 of 2018 includes new criteria of 'control' to determine whether an entity has ownership or not. This is done because even though there was restriction on sale from one seller of more than 25% in the

[1] Ashutosh Tiwari, Student 3rd year, National Law University and Judicial Academy, Assam.
[2]Diksha Sharma, Student 4th year, National Law University, Assam

previous policy yet there have been practice of entities having affiliated sellers, therefore these affiliated sellers sell in the platform without exceeding the limit. It states that if a vendor's purchase from an e commerce entity accounts for more than 25% of such purchases from the entity or its group companies then the e commerce entity will said to be have control over such vendors. Therefore, a vendor or entity having equity participation by a particular e commerce entity or having control over it cannot sell products in such an e commerce platform. Now the problem here is that it might have a negative impact on the small scale brands as the entities won't be able to invest in such brands and this might substantially affect their growth. According to the previous policy, the e commerce entity could provide the vendors with support services like warehousing, logistics etc. But the Press Note 2 of 2018 has included one additional requirement i.e. these services should be provided by the e commerce entity equally to everyone without any discrimination. However, it again creates a difficulty what if an entity wants to give some additional benefits to a seller because it is creating more profits for the e commerce entity by employing various means as compared to other sellers.

The Press Note 2 also has provision on exclusivity. That means a marketplace e commerce entity cannot compel the seller to sell its products only on its platform in exclusion of other platforms. This might create problems for some entities which sell their products in a particular platform to earn more profit. Again how will it be determined if a particular seller voluntarily or involuntarily has entered into an exclusive agreement with an e commerce platform. Example can be taken of businesses which have very constricted sales in India. In such a situation the business to reduce various costs may enter into a voluntary exclusive agreement with the e commerce entity.

The e commerce entity has to again submit a compliance certificate of the guidelines along with the report of the statutory auditor to the Reserve Bank of India within first of every September. This year this compliance certificate should be submitted by 30th September, 2019.

Finally it can be said that if implemented properly this Policy will help in controlling predatory pricing as well as bring some kind of control into the excessive discounts of giant e commerce entities. Especially this can be a huge relief to the entities in the brick and mortar model who are losing their market because of the e commerce entities. However, it still has its loopholes that the government should address as soon as possible to make it effective in the long run.

HelpUsGreen: An Initiative Not Only for Promoting Business but Also for Serving Humanity[3]

I was highly inspired by a news on The Hindu on September 22, 2018, that Ankit Agarwal has been declared as the winner of the United Nations Young Leaders Award, 2018 and has also been nominated for the Goalkeepers Awards by Bill and Malinda Gates Foundation for recycling temple flower wastes along the river Ganges, making profit out of it and also countering some of the major social evils existing in India. This initiative is unique in the sense that it served as a solution to three most vital questions, via- why the holy rivers should be polluted by the sacred flowers offered to Gods in temples? why access to opportunity and fair wages should be denied to the women of our community? and why the consumers should inhale the toxic fumes from charcoals or suffer the ill-effects of chemical fertilizers. In short, besides making profits this initiative served the purposes of Environmental Protection, Women Empowerment, Social Justice and Better Public Health.

Offering of flowers in temples and mosques is attached with the symbol of devotion, but the believe that such sacrosanct flowers shall be dumped into the rivers like Ganges for maintaining their sanctity has a serious impact on the environment. These flowers rots and havoc is created in the fragile ecosphere of the water bodies that leach with the groundwater. The insecticides and pesticides (>1000 pm) used for growing the flowers along with toxic arsenic, cadmium and lead mixes with the water that makes it highly poisonous (PH 6 – 8.5) and it causes hepatitis, severe diarrhoea and cholera resulting into 86.7 of child mortality across India and Bangladesh. In short, the biophysical stability of river Ganges was losing its strength making the lives of millions of people vulnerable. The project therefore made a huge strive forward to clean river Ganges by recycling those flower wastes to produce some valuable products. This project also strives for empowering women that are involved in this mission and belonged to marginalized sections. The significance of this initiative is multidimensional which can be briefly analysed under the following heads-

Commercial Significance

The main products that this enterprise will be dealing with mainly consist of- incense sticks and cones which will be free from toxic fumes producing healthy fragrances, vermicomposting (organic soil), Flora foam (Biodegradable alternative to toxic thermocol) and Flora leather (A vegan leather that is made from flower waste instead of animal skin). The Biodegradable thermocol will be 27% cheaper than the commonly available toxic thermocol and this can be used for packaging electronic gadgets. They are now planning to produce around 11 tons of such products at Kanpur. Further a DIY incense making kit will be launched to teach how to recycle flower wastes. This

[3]Jayanta Baruah, LLM Student, NLUJAA

child friendly kit will amount to Rs. 295 only. While five grow kits are also expected to be released that will include- Italian herb, Indian medicinal, diabetic-friendly Indian herb and a mosquito repellent option along with three herb pots and vermicomposting that will amount to Rs. 225 each. a Pack pf 20 Ayurveda incense sticks will cost only Rs. 350. Similarly there are several other commercial significances of this project.

Environmental Significance

With 11,060 metric tons of waste flowers were recycled till that date which clearly shows how much significantly this project has contributed towards the cleaning of the environment at large. Further, the products of this enterprise will be 100% biodegradable and will be free from harmful chemicals that will further help in disposing off those products after being once used without polluting the ecosystem. This project will ensure a full-fledged sustainable growth.

Women Empowerment

Around 79 women are being employed in this project and it is expected that this number will increase up to 5000 by 2022. Most of them were from marginalized sections and lived a very pathetic life which finds expression in the words of Saroj, a stuff of the HelpUsGreen team who revealed that how awful it was to clean toilets for 20 hours every day, this project has brought to her and her children new hopes of a better life. This initiative not only promoted environmental justice but also brought into concern the economic development of backward communities of India who faced huge discriminations. Around 73 manual scavenger families were impacted as their incomes increased over 6 times more than what they were earning initially. This project aimed at promoting social justice amongst the communities of Dalits and other marginalized sections in particular by providing them with better living conditions while it promoted social justice for the entire population across India s it brought a brilliant solution to several water-borne diseases that were caused by water pollution.

Legal Significance

Climate Change and other damages to the natural ecosystem due to anthropogenic activities made Environmental protection one of the most important matter for concern in most of the International Legal Framework. The most important being the United Nations Framework Convention on Climate Change (UNFCCC) which encouraged adaptation technologies to mitigate climate change and HelpUsGreen can serve as a better example of such adaptation methods. Further, this project ensures development on sustainable basis securing both inter and intra generational equity. It addition to these it also strives for achieving the goals of women empowerment, reducing poverty, eliminating discriminations, clean and healthy environment that are also the principal targets of Sustainable Development Goals (SDGs). In India, too at national level several policies were adopted with the

objectives of women empowerment, securing clean and healthy environment, adequate standards of living, etc. which are also the objectives of this project.

HelpUsGreen has provided a very good example as to how besides merely earning profits, a great deal of services towards the humanity can be done. This initiative not only highlighted the most vital and serious issues of the time which are waste management, environmental pollution, poverty, health issues, social discriminations, etc. but provided an ever green solution to all these problems in a very simple way. The promoter of this initiative is also willing to share his wisdom of knowledge about the technologies invested in this project across the globe to mark this as a beginning of a new revolution. Ankit Agarwal and his supporters have become an inspiration for many young entrepreneurs that how business can be given a much broader meaning than just defining it in terms of exploiting profits.

The Reliance Saga[4]

"This is also not a case of accidental or unintentional disobedience. As is clear…. the Reliance companies are able to pay this amount, but are wilfully refusing to do so."

It is not often that the Supreme Court uses the provisions under Section 2(b) of the Contempt of Courts Act, 1971 to find a general civilian guilty of wilful disobedience, the fact that it held Anil Ambani, Chairman of one of the leaders in the Indian industry in breach made national headlines for several days, summing up what has been a fascinating tale of division, success, controversies, possibilities and failure.

Formed after a split in the empire of the Legendary Indian Tycoon Mr. Dhirubhai Ambani, the Reliance Anil Dhirubhai Ambani Group or Reliance ADAG Group as is better known has been headed by Anil Ambani ever since the empire was divided between him and elder brother Mukesh, currently Asia's richest person. This description seems ironical, and how!

Reliance ADAG counts among its portfolio it's four crown jewels in Reliance Power, Reliance Communications, Reliance Infrastructure and Reliance Capital, all incorporated under the Companies Act, operating in 20,000 towns and roughly 4,50,000 villages in India and abroad. So when the Swedish company Ericsson successfully sued Reliance Communication over clearing dues worth Rs. 550 Crore, eventually leading the Chairman Anil Ambani being held guilty of contempt by not clearing the dues despite an undertaking in the Highest Court of the Land to this effect and being warned of a possible three-month jail sentence on failure to clear the dues in 4 weeks; it seemed like 'Reliance,' once a household name had reached their lowest ebb.

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[4] Manisha Bhati, Student 3rd year, National Law University and Judicial Academy, Assam.

But it was never a downward journey for the conglomerate; its owner was at one point listed as the World's sixth wealthiest person by Forbes Magazine in 2008. And ever since, the owner's personal wealth has shrunk from $45 billion in 2007 to $2.44 billion in 2018 eroding most of the wealth of its other shareholders as well. Reliance Communication or RCom once had about 17% market share in the telecom sector and was at second position in 2010. But the price wars in the telecom sectors, enlarged by heavy debt and falling profitability led to RCom shutting down its wireless operations in 2017. This was followed by the National Company Law Tribunal (NCLT), set up under the Companies Act, 2013 admitting three insolvency petitions under the Insolvency and Bankruptcy Code, 2016 against RCom by Ericsson seeking more than Rs. 1,100 Crore in dues. However, RCom moved the national Company Law Appellate Tribunal (NCLAT) and presented potential deals with Reliance Jio and Brookfield to avoid Bankruptcy and settle Ericsson's dues at a total of Rs. 550 Crores. The deal in the telecom sector, once approved was to be governed by TRAI, set up under the Telecom Regulatory Authority of India Act, 1997. However, since the deal with Jio did not come through, RCom was unable to pay off this amount leading to Ericsson moving the Supreme Court, eventually leading to the SC's recent verdict.

This peculiar case of riches to rags has once again brought to the fore how sharply fortunes in the Indian industry change, closely after corporates and their owners like Kingfisher, Jindal Steel, etc. reached a point of financial no return after being poster boys in their respective sectors. As factors like controversies around Rafale, the new age E-commerce boom and the digitalisation of the Indian consumer play out, Reliance ADAG in general and RCom in particular will have to undergo what is thought to be the most painful process of insolvency and judicial trials to try and reclaim at least part of the wealthy glory that once defined how successful businesses were run in India.

The Recent Ban on Advertising of Ayurvedic, Unani and Siddha Drugs (Asu Drugs)[5]

In the recent past we see that, there has been inflation in the number of misleading advertisements that have taken place relating to the Ayurvedic, Unani and Siddha drugs (ASU Drugs). Therefore, the Government via The Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) has amended the Drugs and Cosmetics (Eleventh Amendment) Rules, 2018 (Amendment) vide its notification G.S.R. 1230(E) on December 21, 2018. The amendment seeks to regulate the advertisements of ASU Drugs by curbing the misleading advertisements. In an aim to

[5]Shristi Talukdar. Student 3rd year, National Law University and Judicial Academy, Assam.

monitor the misleading advertisements that were taking place in media and print, there was a Memorandum of Understanding (MoU) signed by Ministry of AYUSH with the Advertising Standards Council of India (ASCI).

It's been reported by the Grievances Against Misleading Advertisements (GAMA) and Advertising Standards Council of India (ASCI) that, there have been 804 cases relating to misleading advertisements of AYUSH products and services including Ayurvedic medicines between April, 2015 and January, 2018.

There are various Regulations that govern ASU Drugs in India. The Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945 regulate the import, manufacture, packaging, distribution, labelling and sale of drugs. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955 govern the regulation of advertisements for drugs (including ASU drugs).

The recent amendment to the Drugs and Cosmetics (Eleventh Amendment) Rules, 2018 aims to protect the consumer interests and regulate the AYUSH industry. The amendment added Rule 170(1), prohibiting a manufacturer or his agent from publishing and advertisement relating to the use of ASU drugs for mitigation, treatment or prevention of any disease, disorder, diagnosis, cure, syndrome or condition. The amendment mentions about the Unique Identification Number (UIN), which is required for advertising and ASU Drug for purposes other than that prohibited under the aforesaid rule i.e. Rule 170(1). One needs to apply to the State Licensing Authority (SLA) for the UIN within a period of three months from the date of notification of this Amendment. The SLA has power to suspend and cancel manufacturing licences if the directions are not followed.

The Amendment mentions about the grounds on which application for advertisements can be rejected. This includes, misleading claims about the effectiveness of the concerned ASU Drugs; depiction of testimonials or photographs of government officials or celebrities; appearance of inaccuracy about the real nature of the ASU Drug; vulgar content; if that drug or medicine is referred and used for capacity of performance of both male and female organs or to enhance the height etc.; reference to the government or an autonomous organisation of the government. The Amendment also mentions that if the advertisements don't fall within these grounds, then they need to apply for the UIN before April 21, 2019.

There are a lot of issues relating to this Amendment. Firstly, the Amendment lacks in clarity and is not justified because, as according to the Rule 170 the applicant has to submit the data a second time which has been already submitted to the regulator while applying for a manufacture, sale or import licence under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945. Secondly, in Section 33N of the Drugs and Cosmetics Act, 1940 Central Government has powers to make rules for with the intention to give effect to the provisions of the Chapter IVA of the

Act, which deals with the regulation of import, manufacture, sale and distribution of drugs and cosmetics (including ASU drugs). Therefore, we see that advertisement of the drugs is outside the purview of the said Act and even the rules, but, is a subject matter under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Thirdly, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 has provisions prohibiting advertisements of drugs (which apply to ASU drugs as well) so the question arises as to why there is a need for an additional rule if this already exists. Fourthly, the Draft Rules that was submitted differed from the Final Rules. Fifthly, as the Amendment differentiates between allopathic drugs and ASU drugs without any basis, is violating the right to equality under Article 14 of the Constitution of India. It also violates Article 19(1)(a) as the amendment violates the right to freedom of commercial advertisements.

Let's hope that this amendment doesn't cause turmoil and disruptions in the ASU drug industry and the industries are more careful with their advertising and marketing strategies.

RERA: An Analysis [6]

Real Estate (Regulation and Development), Act, 2016 is a revolutionary step in protecting the rights of property purchaser especially people buying from big real state firms which are now dominating the real estate scenario in many areas. It is the first law which aims to regulate and fixes accountability in the real estate arena. It is a model law as real estate is a state subject which has to be enacted by the states. It requires the states to set up their own regulators and make their own rules or follow the model law.

RERA was aimed to provide for a regulating authority in real estate arena as this market is highly unregulated. RERA has infused accountability in the real estate business by establishment of State Regulating Authority. RERA has been till now been notified in 28 states and all the UTs. Though not all the states have implemented RERA as it is and it has been diluted to some extent.

RERA creates transparency in the real estate business by requiring the builders to upload all the required documents such as where the money is spend, alterations made, ongoing projects and other information required under it to be available on the RERA website. It mandates the builders to register the project before starting any mode of sale or advertisement. The law has made the business extremely transparent as the home buyers can check on the RERA website of the project is registered or not or a particular agent who are again required to get registered are bogus or not.

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[6] Abhinav Singh, Student 3rd year, National Law University and Judicial Academy, Assam.

Protection Provided

RERA brings accountability and transparency in the real estate business.

- RERA has mandated that any real estate project, which has more than eight apartments or area of more than 500 sq. meters, will have to get that project registered under state RERA and update the relevant data to the RERA website before initiating any sale.
- RERA creates an obligation on the promoter that proceeds to the tune of 70% from sale of any particular project have to kept in a different account and which can only be used by promoter for that particular project only.
- RERA restricts the amount of superficial area which was sold to the buyers previously. The home buyers now only have to pay for the carpet area and not "super built up area". Super built up area includes area such as common area, area in front of an apartment and such other areas. It also creates an adjudicating body to resolve disputes arising between a developer and the home buyer(s).
- RERA provides for delay in delivering possession to buyers. Under it if the developer has delayed the project then the developer is bound to give the money invested by the buyer in the project with pre-determined interest and of the buyer has agreed to not take the money back then the builder has to pay interest monthly till the possession is delivered.
- RERA protects the consumers from fraud by mandating the developer to pay back the entire amount if any misrepresentation has been made.
- RERA provides for the developer to maintain the building for defects arising under 5 years and such complaints made are to be rectified within 30 days.
- RERA makes it mandatory for the developers to acquire permission from 2/3rd allotted buyers for any major or minor changes in the plans of the building.

NFRA- A new up growth of Corporate accountability[7]

In the recent times, it can be seen that with the advent of globalisation, there has been a revolutionary change in various facets of the way of life of people. This has in turn affected the policies and preferences of the government as well. In the present state-of-art development, much importance is given on the corporate sector of a particular country and India is not an exception. There has been a shift over the preferences of people in India and they often opted to lead a corporate life as it is more challenging and also as an aspect of standard life. To ensure the confidence of the people in the present corporate sector, it is necessary to maintain transparency

[7]Ms. Daisy Changmai, Faculty Member of Law, National Law University & Judicial Academy, Assam

and authenticity of the management of companies in India. One of the most important methods of maintaining transparency and authenticity in the companies is to bring financial accountability. It is the overall responsibility of the management. But generally we find the dearth of a single independent body which may make the corporate sector accountable towards the persons associated with the company. The National Financial Reporting Authority (hereinafter referred to as NFRA) is the answer to this ever-rising demand of the corporate world. The Central Government of India constituted the NFRA under the section 132 of the Companies Act, 2013 with a view to set up a regulatory body to assist in the framing and enforcement of legislation relating to accounting and auditing and improving the investor and public confidence in the financial reporting of an entity. The NFRA classified the companies into different category in order to conduct investigation and quality reviews of certain companies.

As to the composition of NFRA, it must consist of a chairperson who is expert in accountancy, auditing, finance or law and will be appointed by the Central Government. Moreover, there must be maximum 15 full-time members. The jurisdiction of NFRA extends to the listed and unlisted companies for investigation of chartered accountants and their firms. However, the NFRA may investigate other entities apart from the abovementioned companies if there are some public interests involved.

NFRA performs many important functions such as laying down policies and standard for accounting and auditing for companies and their auditors and make recommendation to the Central Government. It may also monitor the compliance of such standard and policies and suggests measures for improvement in the quality of service. The Authority will have the power to that of a Civil Court and initiate proceeding either *suo moto* or on reference made by the Central Government. It can investigate into the matters of professional or other misconduct committed by prescribed class of CA firms or CAs and on proving of such misconduct it shall have the power of imposing fine to an individual between Rs. 1,00,000 to 5 times fees received and to a firm between 5,00,000 to 10 times the fees received. Any aggrieved person may go for the appeal to the appropriate authority against the decision of NFRA. It is pertinent to mention that prior to the constitution of NFRA, the Central Government used to consult with ICAI regarding accounting standards and policies and Quality Review Board for quality audit. The Quality Review Board and ICAI will continue their role of auditing private limited companies as earlier.

In view of recent scams and due to the reluctances of auditors, it is become obligatory to establish some regulatory measures in India which is one of the largest economy of the world. The National Financial Reporting Authority will fill up all gaps left by earlier institutions and act as a bridge between the stakeholders and auditing companies. It is expected that the authority will also improve foreign and domestic

investment, enhance economic growth by supporting globalisation of business practices and develop accountable audit profession.

Patent Laws in India: Latest News and Views (2018)[8]

In the year 2018 certain significant developments have been observed in the field of Patent laws in India. The following list enumerates the major ones:

- Patent Prosecution Highway (PPH), as the name suggests, brings fast track prosecution of patents. PPH has been followed in many Patent Offices as bilateral or trilateral agreements. One such trilateral agreement is also followed jointly by European Patent Office (EPO), the Japan Patent Office (JPO) and the United States Patent and Trademark Office (USPTO) as Trilateral-PPH. It helps speedy prosecution and examination of a patent application in one country, if it has been accepted or granted by a country which is part of that agreement. India is also taking steps in order to avail benefits of this concept. The same is evident from the agreement signed between Japan and India on October 29, 2018, to start a pilot program of Japan-India Patent Prosecution Highway (PPH) in the first quarter of the fiscal year 2019, after making the necessary amendments in the Patent Rules. Implementing PPH in India will increase the number of patent filings in India, as it will increase the efficiency and prosecution timeline for patent applications.
- Indian Patent Office (IPO) is getting ready to go with the flow of new technologies. Indian Patent Office, in August 2018, floated a tender inviting Expression of Interest (EoI) for making use of Artificial Intelligence (AI), Block chain, Internet of Things (IoT) and other latest technologies in Patent Processing System of IPO. The said tender showed the clear intent of the Controller General to not only consider the expeditious implementation of the procedures but also to adopt the latest technology in order to achieve efficiency and high standards of implementation.
- NBA opens window to pursue pending issues under the Biological Diversity Act, 2002 (BD Act), for the patent applicants to facilitate and enhance implementation of the Act in public interest towards meeting the objectives of the BD Act. The Central Government has directed the Authority to take decisions within a period of 100 days. These directions shall come into force with immediate effect.
- Creation of Cell for IPR Promotion and Management (CIPAM) to realize objectives of National IPR policy, especially creating awareness. In order to

[8]Juri Goswami, Research Scholar cum Associate, NLU, Assam

bridge gap between knowledge creation and lack of awareness to get it protected or commercialized, a lot of awareness programs were conducted in the year 2018. Such programs were conducted by Government organizations, R&D Institutions, Universities and NRDC in association with Intellectual Property Offices and in collaborations with Industry Associations like FICCI, CII and ASSOCHAM. Funds have been allocated for this purpose through special projects like Cell for IPR Promotion and Management (CIPAM). CIPAM is a professional body under the aegis of Department of Industrial Policy and Promotion (DIPP) which ensures focused action on issues related to IPRs and addresses certain identified ideas of the National IPR policy.

- Digital India is one of the major objectives of the Government of India. With this objective, Controller General of Patents Designs and Trademarks (CGPDTM) has launched the complete portal for Industrial Designs in India. Earlier through the e-Filing portal one could only e-file the design application; whereas from January 01, 2019, CGPDTM has added more services in India relating to industrial design. Applicants can now file all requisite forms along with respective fee through the e-filing system of Controller General of Patents, Designs & Trademarks.

The Insolvency and Bankruptcy Code 2016 and the rights of the rights of the Board of Directors[9]

The Insolvency and Bankruptcy Code 2016 was formulated with the basic objective of consolidating the existing legal framework on insolvency and bankruptcy in India. The scope of the Code is to look into the resolution process of insolvency and bankruptcy of corporate persons, partnership firms and individuals in a time bound manner. Under this Code, the insolvency and bankruptcy proceedings are being carried on by Insolvency professionals registered under the Code. One of the important aspects of the Code is that upon the commencement of the resolution process, the rights of the Board of directors remain suspended. This rights include the right to vote and participate in meetings and resolution processes of Committee of creditors (hereinafter referred as COC). This right automatically becomes vested in and are exercised by the Insolvency Professionals. This particular aspect has certain implications which has been debated recently. Under this provision, during the resolution process, the directors are entitled to attend the meeting of the Committee of creditors (COC) but are not given voting rights. One of the duties of the insolvency professionals under this code is that they have to maintain confidentiality which is specifically stated under the Insolvency and Bankruptcy Board of India (Insolvency

[9] Monmi Gohain, Asst. Professor of Law, NLUJAA.

Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and other related regulations. So in relation to the suspension of rights of the Board of Directors, a question arose to the fact that should the confidential documents displayed during the COC or not. One view is that if the above documents are shared with the Board of directors it will be in conflict with the obligations of the insolvency professionals to maintain confidentiality. It would also create some conflict between the Board of directors and the other participants of the COC. In this context, a remarkable judgement has been delivered by the Hon'ble Supreme Court in the case of *Vijay Kumar Jain v. Standard Chartered Bank and Others*[10]. The main contention of the case was the seeking of right of participation by a director in the meetings of COC and having access to the documents and other information discussed in the meetings. The NCLT, in this case decided that the directors have the right to attend the meeting as per section 24 of the Code but do not have access the information displayed by the documents, which is considered confidential by the insolvency professional. This decision was appealed and but was upheld by NCLAT. Finally, the decision of NCLAT was challenged in the Supreme Court of India. The Supreme Court held that the directors though not members of the COC, has the right to participate in the meetings and also to receive the copies of the resolution plans presented to the COC. The Supreme Court also held that under Regulation 21(3)(iii) of CIRP Regulations, the notice of the COC meeting has to be given which will contain the copies of all relevant matters to be discussed in the meeting. The above decision was given keeping in view the fact that it will add to the transparency of the COC meetings. The participation of the directors will also facilitate the COC meetings as they are well versed with the affairs of the Company. This time frame is an important feature of this Code. This particular development will expedite the resolution process of Insolvency and Bankruptcy of Corporate Persons in India.

The Companies (Amendment) Ordinance 2018[11]

The companies (amendment) ordinance came on November 2, 2018, and provided for amendment of a large number of provisions of the act. The main effect of this act was decriminalizing a number of offences and thus providing the corporates and professionals a much-needed relief. The main purpose of doing so was to promote ease of doing business in India as envisioned by the Indian Government and could also be traced through a number of schemes put into effect by them. The acts that were previously punished as compoundable offence have now been categorized as acts which have civil liabilities attached to them. Further, amendment has been

[10] Judgement dated January 31, 2019 passed by a bench comprising Hon'ble Justice Rohinton Fali Nariman and Hon'ble Justice Navin Sinha in Civil Appeal No. 8430 of 2018 and Writ Petition (Civil) No. 1266 of 2018.
[11] Subhangini Jain, Student 4th Year, National Law University and Judicial Academy, Assam.

brought in case of repeated offence and thereby compliance with the penalties. The jurisdiction of the National Company Law Tribunal has also been redefined and burden on the tribunal has been lessened. Furthermore, the Central Government has been vested with more powers.

Before the amendment Sec 53(3) which provided for prohibition of issue of shares at a discount was punished with fine or imprisonment or both. After the amendment the offence has been reduced one carrying civil liabilities i.e the officer or the company whoever is convicted of commission of the said offence is now liable to a penalty instead of fine or imprisonment or both.

In a similar manner offence under

- Section 64(2) which constitutes offence due to failure or delay in filing notice of alteration of share capital,
- Section 92(5), which punished failure or delay in filing annual return
- Section 102(5) dealing with attachment of a statement in notice
- Section 105(3), which deals which proxies whereby a default had been made in declaring the attachment of a proxy in a notice
- Section 117(2) which provides for punishment for default or delay in filing of ceratin resolutions
- Section 121(3) dealing with annual general meeting
- Section 137(2) when the copy of financial statement has not been filed with the registrar
- Section 140(3), dealing with the filing of the statement after resignation has been given by the audior, etc…which were previously punishable with only fine or fine or imprisonment or both have now after the ordinance been changed to civil offences punished only with penalties. [12]

A new section i.e Section 454A has been inserted by the amendment whereby a person convicted of an offence under the provisions of the companies Act 2013 commits the same offence again within a period of three years shall be liable to for the same for an amount which equals to twice the amount in case of first default.[13]

The third important amendment brought by the Ordinance of 2018 was de-clogging the NCLT. The jurisdiction of the Regional Director has been enlarged by increasing the pecuniary jurisdiction. Previously, the jurisdiction of the regional director was for the offence fir which the maximum amount of fine that could be

[12] Highlights of Companies (amendment) Ordinance,2018,https://www.icsi.edu/media/webmodules/Highlights_of_Companies_Amendment_Ordinance_2018.pdf

[13] The Companies (Amendment) Ordinance, 2018, http://www.mca.gov.in/Ministry/pdf/NotificationCompanies(Amendment)Ordinance_05112018.pdf

imposed was upto Rs 5 lakhs After the amendment, the power of the regional director for compounding of offences have been increased upto 25 lakhs. When the maximum amount of penalty does not exceed 25 lakhs such amount could be compounded by the regional director.

And Section 441(6)(a) which was acting as a hurdle in the adjudication of certain offences because it required the permission of special court for compounding of offences has been omitted.

Also new powers have been vested in the central government give approval for changing of the financial year of the company having any holding/subsidiary/associate company located outside of India under sec 2(41). This power was previously with the tribunal and now has been shifted to the central government. Also, the power to approve the conversion of a public ownership into a private limited has been transferred from a tribunal to central government under sec 14(1) of the act.

Corporate Governance : Need, Framework and Issues[14]

In today's era companies due to their big size use a vast social structure. It is therefore imperative that these resources should be used by board of directors for the best interest of not only to stakeholder but the shareholder as well. The board therefore have freedom to exercise such decisions but such freedom must be exercise with in the frame work of an accountability.

The organisation of economic co-operation and development (OPEC) emphasises that corporate governance includes the mutual relation among the board, management, stakeholder and shareholder. A good corporate governance sets the imperatives for the management and its board to pursue the aims and objectives which are beneficial for the shareholders and should facilitate effective monitoring

Corporate governance is the system of rules, practices and processes by which a firm is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government and the community.

Need for the corporate governance

- To provide a separation between management from the ownership
- The obscurity between the owner and shareholder
- For the realisation that as being a part of Society, Company be obliged for certain responsibilities towards the society.

[14] Shikar Garg, 2nd year, National Law University and Judicial Academy, Assam.

Principles of Corporate Governance

Corporate governance has advanced around certain key values, which form the base of rules and guiding principles set for the corporate.

Transparency: -Revelation of the related information about corporate in timely and precise manner is essential. It helps stakeholder to know day to day activity of corporate and also helps to preserve the rights of the stakeholders

Accountability:-It ensures the responsibility of the person who takes decision for the interest of the others. Hence all the persons like chairmen, manager, directors and other officers should be answerable to other investors of the corporate.

Independence:-Individuality of top manager plays a significant role for effective working of the corporate. No party must not have any interference in the work of board of directors for their personal interest.

Corporate Governance Framework in India

The Indian context on Corporate Governance has been massively in sync with the international standards. Largely, it can be defined in the following:

- The Companies Acts 2013 has provisions concerning Board Constitution, Independent Directors, Board meetings, Related Party Transactions, General meetings, Audit Committees, Board processes etc.
- SEBI (Securities and Exchange Board of India) Guidelines certify the protection of stakeholders and have instructed the companies to follow to the best practices cited in the guidelines.
- Accounting Standards issued by the ICAI (Institute of Chartered Accountants of India) wherein the ICAI is an independent body and issues accounting standards. The revelation of financial statements is also made compulsory by the ICAI assisted by the Companies Act 2013, Sec. 129.
- Standard Listing Agreement of Stock Exchanges applies to the companies whose shares are listed on various stock exchanges.
- Secretarial Standards Issued by the ICSI (Institute of Company Secretaries of India) provides standards on General Meetings', 'Meetings of the board of Directors', etc. The companies Act 2013 authorises this independent body to issue standards which each and every company is required to follow so that they are not punished under the Companies Act itself.

Issues in Corporate Governance in India

There are many issues related to the corporate governance in India. Only the major issues have been highlighted here:

Board performance

Having at least one women director is a compulsion, and also maintaining the equilibrium between the executive and non- executive directors is a tragic task.

Inspection, Evaluation and transparency is lost somewhere. Result oriented performance is no longer a criterion now. All these requirements cannot be fulfilled.

Independent Directors

In the current scenario the appointment of an independent director does not seem to be fulfil the reasons of appointment. The actual situation seems to be worse even SEBI already has issued guidelines for the appointment of audit committee for the corporates,

Accountability to Stakeholders

The accountability of shareholder is extended for the society at large and also the environment. Now the accountability is not restricted to that of the company and shareholder. Now the directors are bound to keep the interest of the community not only their own interest

Risk Management

Now director of the companies is required to undertake the risk management techniques as per the company laws and also have to mention it in their in report to shareholder as well.

Privacy and Data Protection

This is a significant governance issue. Cyber security has developed to be the most vital aspect of contemporary governance. To achieve the Good governance leaders and directors in the company must be well known about the threats in this field.

Corporate Social Responsibility (CSR)

India is the first country in the world to declare corporate social responsibility mandatory. In CSR, companies are required to invest minimum 2% of profit in the last three years for social welfare. In case of failure companies are required to give proper reasons for the same. But companies seem to very neutral towards making such investments.

Conclusion

The higher and vibrant the level of corporate governance, the more successful and sturdier is the company in the eyes of the shareholders. It is the independent, lively and the energetic directors are the ones who infuse and fund towards displaying the whole idea and the aspect of ‘corporate’ as that of having a positive outlook and a more vibrant outlook.

Regime Before Insolvency and Bankruptcy Code, 2016[15]

The regime before the enactment of Insolvency and Bankruptcy Code,2016 was very gruesome and complex. There were several acts and several organisations which dealt with Insolvency and Bankruptcy process. But after the enactment of Insolvency and Bankruptcy Code, 2016 the whole process became simpler and less complicated. Earlier the Creditor had very limited power in cases of default but this has significantly changed since the I&BC, 2016.

Past insolvency process –

1. Joint lenders Forum (JLF): - It is a body compromised of the banks that have given loan to the concerned borrower entity. The JLF comes into action when the assets of more than 100cr or more have become stressed. The JLF works under the RBI guideline 'Framework for Revitalizing Distressed Economy (2014)'. The purpose of the JLF is to initiative corrective action plan (CAP) when an account becomes the potential of being NPA.
2. Corporate Debt Restructuring: - It is the reorganisation of a distressed company's outstanding obligations to restore its liquidity and keep it in business. Under CDR, a negotiation is done between the distressed company and their creditors. Restructuring is done by decreasing of the loan amount or interest rate or increasing in time period of payback or debt for equity swap.
3. Strategic Debt Restructuring: - Under SDR, banks who have given loans to a borrower gets the rights to convert the full or part of their loans into equity shares. Introduced in 2015. Provides for the giving of the control of the company to the creditor or lender to initiate a comprehensive turnaround by taking control. But the major drawback of this system was that the creditors, specially the banks, were very sceptical about taking control over the management of the company. This was the major setback to the system and hence the need for new system was needed.
4. Scheme for Sustainable Structuring of Stressed Assets. (S4A): - Because of the failure if the SDR, a new system was brought in June 2016. In this system, the control over the company remains with the creditor until 50% of the debt of the company is sustainable. But a major problem with this system is that it did not made any changes to the repayment terms etc. Hence this was not a permanent solution to the problem but rather it just postponed the problem to a future date.

There are two major entities which looked when there is potential for becoming of NPA.

[15] Ashutosh Tiwari, 3rd Year, National Law University and Judicial Academy, Assam.

CRILC – Central Repository of Information on Large Credits: - The CRICL collects and stores information regarding loans of 50cr and more.

SMA-2 Special Mention Accounts -2 – It as account which stores the information regarding those loans which report repayment problems for the last 60days.

Past Legislations governing the insolvency and bankruptcy process.

Before the enactment of the I&BC, 2016, the process was not governed by any one particular legislation but rather several of legislations. Some of the Legislations which governed the I&BC, 2016 were -

1. Companies Act. 2013.: - Chapter 19 and 20 of the company at deals with the revival and rehabilitation of sick companies and winding up of the company.
2. Companies Act, 1956
3. Sick industrial companies (Special provisions) Act, 1985: - The act dealt with the distressed Industrial firms. Under SICA, the Board of Industrial and Financial Reconstruction assesses industrial company and if the firm is unviable, then refer it to the High Court for Liquidation. This act was repealed in the year 2016.

Then in the year 2016 the government of India passed the Insolvency and Bankruptcy code of 2016 which wide its schedules made changes in the following acts so as to reduce the complexity and a smooth function of the Code. Following acts were amended

- Indian Partnership Act, 1932
- Central exercise act,1944
- Income tax Act, 1961
- Customs Act, 1962
- Recovery of Debts due to financial institutions Act, 1993.
- Finance Act, 1994
- Securities and reconstruction of Financial Assets and Enforcement of Security Interest act, 2002
- Sick Industrial Companies Repeal act, 2003
- Payment and settlement systems act, 2007
- Limited liability partnership act, 2008
- Companies act, 2013

Effect of I&BC, 2016.

The Insolvency and Bankruptcy Code, 2016 will be beneficial in many ways, one of the major reform that the Insolvency and Bankruptcy Code, 2016 does is that it clearly demarcates between the Insolvency and Bankruptcy. Insolvency is a short term inability to meet the liabilities whereas Bankruptcy is long term inability to pay

the liabilities. The I&BC 2016 ensures the low time for the resolution process and a higher recovery rate as compared to the previous laws.

Bankruptcy and Insolvency Code 2016[16]

What is Insolvency and Bankruptcy?

Insolvency means when a person is unable to pay back the debts to its creditors. The person or the company who is unable to off the debts is known as the insolvent. Insolvency can be resolved by changing the repayment plan of the loans or writing off a part thereof. Bankruptcy is a concept slightly different from insolvency, which is rather amicable. Bankruptcy is a legal status when a person moves to the court and declares himself insolvent. In most jurisdictions, bankruptcy is imposed by a court order, often initiated by the debtor.

Need of Insolvency and Bankruptcy and Insolvency Code

- Before the bankruptcy and insolvency code came into existence there were many different legislations regulating this issue for example Individual cases were dealt with under the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920;
- Industrial Sickness cases and their financial restructuring were being handled by Sick Industrial Companies (Special Provisions) Act (SICA), 1985.
- Recovery of financial debts was being handled by: (i) Recovery of Debt Due to Banks and Financial Institution Act, 1993, and (ii) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and (iii) Companies Act, 2013. Thus, so many legislations made this thing complicated now with the coming up of insolvency and bankruptcy code all these legislationsare embraced under one umbrella.

Moreover, if the stakeholders of the company were able to resolve issues of insolvency then intervention of high courts will not be required since it is not possible for them so a code or a law is required for the same. It is often said that "in the absence of a bankruptcy law a firm's assets would be sold as scrap and value.

The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. It was passed by Lok Sabha on 5th May 2016. The Code received the assent of the President of India on 28 May 2016.

It offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). The most

[16] Barkha Joshi, Student 3rd Year, National Law University and Judicial Academy, Assam.

significant feature of the is the creditors can decide the ability to work of the company and also to contemplate a plan for the revival of the or liquidation of the company assets.

The Code creates a new institutional framework, consisting of a:

- regulator,
- insolvency professionals,
- information utilities
- adjudicatory mechanisms,

that will facilitate a formal and time bound insolvency resolution process and liquidation. In order to remove any kind of chaos the code has an overriding effect on all the other legislations.

1. Insolvency Resolution Process- If the default is above Rs.1 Lakh (may be increased up to Rs.1 Cr by the Government, by notification), the creditor may initiate insolvency resolution process. Insolvency resolution process includes two stages: The first stage is where the creditor decides whether the company will be able to revive or work further with the existing debts. Second Stage is the liquidating if it seems that the company won't be able to revive then the creditors the n the creditors wind up the company and distribute the assets.
2. **Liquidation Process**: Liquidation process is initiated when insolvency resolution process fails or when the creditors fail to submit a resolution plan for it. Then a liquidator is appointed. The liquidator shall form an estate of all assets of corporate debtor called the liquidation estate. Liquidator shall receive, verify and admit or reject, as the case may be, the claims of creditors within the prescribed time. Creditor may appeal to the adjudicator within 14 days.

New institutions provided under the code

The Code has provided a host of new institutions to carry out the provisions of the Code, which are as below: New Institutions Proposed under the Code are:

1. Insolvency Professionals

These insolvency professional manages the insolvency resolution process. They help the creditors in procuring relevant information and also help in managing the liquidation process.

2. Insolvency Professional Agencies

Insolvency professional agencies register, examine and certify the insolvency professionals. It is very essential for these agencies to be registered and credited by the Insolvency and Bankruptcy Board of India.

3. Insolvency and Bankruptcy Board of India

The Bankruptcy Board of India must consist of a Chairperson, then three members have to be nominated by the central government one for finance ministry and one for ministry of corporate affairs and one ex offcio then one other member has to be nominated from the reserve bank of India and five other members from central government. The Chairperson and the other members shall be persons of ability, integrity and standing, who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in the field of law, finance, economics, accountancy or administration.: This body will have regulatory over-sight over the Insolvency Professional, Insolvency Professional Agencies and Information Utilities. Under the Board's supervision, these agencies will develop professional standards, codes of ethics and exercise a disciplinary role over errant members leading to the development of a competitive industry for insolvency professionals. The Board is responsible for making guidelines and regulation on matters of insolvency and bankruptcy.

4. Insolvency Information Utilities

The Code provides for information utilities which would collect, collate, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. An individual insolvency database is also proposed to be set up with the goal of providing information on insolvency status of individuals.

Conclusion

India currently ranks 136 out of 189 countries in the World Bank's index on the ease of resolving insolvencies. India's weak insolvency regime, its significant inefficiencies and systematic abuse are some of the reasons for the distressed state of credit markets in India today. The Code promises to bring about far-reaching reforms with a thrust on creditor driven insolvency resolution. It aims at early identification of financial failure and maximizing the asset value of insolvent firms. The Code also has provisions to address cross border insolvency through bilateral agreements and reciprocal arrangements with other countries.

The unified regime envisages a structured and time-bound process for insolvency resolution and liquidation, which should significantly improve debt recovery rates and revitalize the ailing Indian corporate bond markets.

FDI policy: Uniform law for Globalise Economy[17]

The recent amendment in the FDI policy of India brings a lot of changes in the business structure of E-commerce marketplace in the country. The countrywide new policy is highly influenced by the Maori Community Data Sovereignty Network in New Zealand or be it European Commission funded project "Decode' (Decentralized Citizen-Owned Data Ecosystem) in the Amsterdam and Barcelona or Canada's OCAP First Nations data sovereignty system.

The policy changes that have been introduced by the DIPP are with the intention to bring data sovereignty, security and regulation in the E-commerce platform. The new aspects of this policy are governance in the inventory based E-commerce platform.

Data is the new oil in the presently era 'Precious & flowing' the flow of data is more liquid able then oil for the safeguard and Protection of data. After the verdict of K. S. Puttuswamy give a new aspect to right to privacy. In order to keep it intact new regulations has been coded where flow of data from Indian corporation to outside is restricted, licenced by the government and given access to state. Here, also, chain of business working without the information and data of Indian citizen or under the contract to share technical data, software which are not of community value are excluded framework.

Data has been defined differently in different statues as per its usage. The term data in the context of E-commerce is any type of information converted into a binary digital form that is efficient to store, process, transfer across different device, platform, server. This data can be used for market trend. Algorithms can mine a vast amount of data.

Among the new upcoming goal, development of infrastructure in the robust digital economy is the new goal. The three core component of government in their 'Digital India' are

1) development of secure and stable data infrastructure
2) provide digital government services
3) work for the digital literacy in India.

Steps are being taken in order to create storage infrastructure in India. So, that large amount of data can be stored and secured but it will take around three more years to establish such infrastructure. Digital India aims to achieve last mile connectivity across urban to ruler, hilly areas etc.

[17] Akshay Bohra, Student 3rd Year, National Law University and Judicial Academy, Assam.

The present FDI policy tries to demarket the marketplace modal to the inventory based modal. As per the new regulations e-commerce having foreign investment as example Alibaba backed flipkart cannot trade in their inventory based product. It helps in removing the monopoly and price control by the foreign companies to protect the indigenous retail market place. Such E-commerce cannot exercise ownership or control over the inventory sold at its platform.

Certain strategies are brought on ecommerce websites and applications. Firstly, the introduction of a channel, custom route for the shipment of product. Also, an integrated system that connect RBI, custom and Indian post need to be brought. Non-compliant entities will not be allowed to continue their trade in India. MeitY & other government department have duty to look after such entities. All the e-commerce business provides application downloading operating in India must have a registered office in India from where sales and distribution regulated in India. Mandatory pricing in INR and physical invoice bill.

Couple of undertaking also held mandatory on the part of seller with respect to giving details of the seller, providing undertaking of its being genuine. Also, the Trade Mark owners shall be given an option of register themselves with e-commerce platforms for the sale of luxury goods, cosmetics, there is a need to seek authorisation from the Trade Mark owner an agreement should be there seeking genuine-ness.

Piracy on the internet is neck to neck to the legit use of e-commerce websites, online distribution is matter of concern to protect the platform intermediator shall put in place to prevent pirated content. “Trusted entities” shall be identify and copyright owner’s permission made compulsory. Rogue Websites and Infringing website list is introduced and all such shall be removed. To protect the use of e based marketplace.

Thus, the new policy on FDI bring certain changes and also, it took steps in order to assure the trusted and safe marketplace from the foreign investment.

Option, Necessity & Critique of Banking Regulation Amendment Act, 2017[18]

Overview- This Amendment Act was laid down in legislature to replace the Banking Regulation (Amendment) Ordinance, 2017 which was promulgated in May, 2017. The said ordinance and bill was promulgated & passed to amend the Banking Regulation Act, 1949, this act allows the RBI to guide as well as issue directions to the banks so they can initiate recovery against NPA* and loan defaulters. These proceedings will be in according with the recently passed & enacted Insolvency and Bankruptcy Code, 2016 (IBC).

[18] Brijbhan Singh, Student 3rd Year, National Law University and Judicial Academy, Assam.

Provisions-

- Section 35AA is inserted after section 35A in the Banking Regulation Act, 1949, which states that the central government may order the apex bank of the country, Reserve Bank to issue directions to a banking company or banking companies to initiate the process of insolvency resolution in respect of a loan default, under the provisions which are there in recently enacted Insolvency and Bankruptcy Code, 2016 (IBC).
- Section 35AB of the said act states that RBI can also issue guidelines, time to time for resolution of stressed Assets, by this section RBI is also given authority and is empowered to appoint authorities as well as issue guidelines/directives for resolution of stressed Asset.

Option & Necessity-

Option available to banks- The proportion of NPA with the total loans extended by banks has significantly increased from 2.3% in 2008 to 7.5% in 2016, the lender banks previously has options to recover an outstanding loan; some banks convert the debt to equity and change the management of the company. Collective action plan can be taken by lenders if the lenders are more than one, lender bank can also take other legal actions such as approaching the debt recovery tribunals for recovering the outstanding amount, the lender bank can also take possession of the collateral security under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, but these options were limited and time consuming so, IBC was enacted in 2016 to provide a time bound process to recover the outstanding amount and further, this amendment act was enacted in accordance with IBC.

Necessity of giving additional legislative powers to the RBI- 88% of the NPA in country is loans granted by the public sector bank which is not good for the banking sector as well as the Indian economy, there were other legislations in this regard but when IBC was enacted, it was necessary for government to make amendment in the principal act and give RBI power to initiate recovery proceeding under IBC, the argument to give additional legislative power to RBI was that economic urgency and the large amount of NPA justify the need of giving extra power to the apex bank.

Critique-

- There is no clear rationale and background, the preamble of this amendment act is vague in nature as the objective is not clearly mentioned.
- This act is not a magic potion that it will solve the NPA crisis as the ICB is in itself a new act and it will take time.
- This act give power to apex bank of country to initiate the recovery proceeding but it will not help as the commercial decision is better than the

bureaucracy decision which will be taken by RBI for profit influenced private sector economy.

The Interlinking Rights of Lessor and Lessee in View of Security Deposits[19]

The Security Deposit is a quantum of money required by the lessor from the lessee or the tenant in order to create a buffer and protect himself against any losses or defaults by a financially irresponsible lessee and is solely for the faithful performance of the terms of lease. The sum of money advanced is usually in the form of cash or securities in liquidated form of two to six months in rent. However the major problems that arises in the respect of security deposits is the rights of the landlord upon the tenants default and in contrary the the rights of the tenant when his interest in the deposit for his own benefit gets threatened by the conduct of the landlord. However, the tenant receives the deposit at the end of the lease with deduction of any amount for repairs or restoration. However the ideal framework is quite different how the real life nuances work. According to the Supreme Court advocate Arvind Shukla , the Lease and License Agreement should contain a strong clause to protect the security deposit given by the tenant but the law must allow the lessor at the same time to utilise the money for clearing of unpaid utilities bill , unpaid amount for repairs and maintenance and municipal dues. According to real estate consultant Kamran Khan of VB Builders: The tenant needs to understand that there are more costs to renting than just the rent and one of these costs is that of a security deposit. Tenants may find it confusing as to what is the difference between a rent and a deposit? Why pay last months rent before you even move in? Most importantly, there is a difference between a fee (rent) and a deposit. A fee is nonrefundable and once paid it is not receivable or refundable. However , a deposit in nature is refundable after the tenant has moved out and security deposits are among the most common deposits that are required.

In Delhi, the cases pertaining to security deposit reaching the courts are few and far between. However, security deposit is a huge thing in other metros such as Mumbai, Bangalore and Chennai.

Even the norms pertaining to security deposit change city-wise. While in Delhi, landlords charge three to six months rent as security deposit, in southern cities of Bangalore and Chennai, ten months rent as deposit is the general rule. In Mumbai,

[19]Prithwish Ghosh, Student 1st year National Law University, Assam

landlords follow a different rule altogether. The rent is a package and the package is divided into rent plus security. For every Rs 1 lakh of security that one pays, the rent decreases by Rs 1000 per month. The case of Amit Tandon, a bachelor working with KPMG in Mumbai, who shares his three bedroom apartment with his two friends. Their monthly rent package was Rs 30,000 but after paying a whopping security of Rs 5 lakh, they have managed to reduce the monthly rent by Rs 5,000. In addition to the above contentions, the basic security deposit lies with the owner and gets passed onto the successive owner in case of the owner is deceased or change of ownership. In the event of a sale or other transfer of the Building or transfer of this Lease, Landlord shall transfer the Letter of Credit to the transferee, and Landlord shall thereupon be released by Tenant from all liability for the return of such security. The provisions hereof shall apply to every transfer or assignment made of the security to such a transferee. Tenant shall be responsible for any of the costs associated with such transfer that are in excess of nominal costs. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the Letter of Credit or the proceeds thereof, and that neither Landlord nor its successors or assigns shall be bound by any assignment, encumbrance, attempted assignment or attempted encumbrance. These aforementioned contentions can be further backed by: -

Custodial Scheme -If protected in a custodial scheme, the deposit will remain held there following a change of landlord, provided that the new landlord is registered with the same scheme. The old landlord must inform the scheme administrator of the change and the scheme administrator, at that point, will issue a confirmation detailing the changes and send it to:

1) The old landlord (or agent acting on her/his behalf)

2) The new landlord (or agent acting on her/his behalf), and

3) The tenant.

However, the tenant has to keep it into notice that the security deposit is being used unfairly for unnecessary expenses, or for repairing of normal wear and tear or for making expensive improvements to the property. In that case the tenant has the complete right to bring about a lawsuit against the owner .The conclusion is that there is no conclusion. There are only agreements to be reached and in reaching those agreements, compromises to be made. Astute and concerned tenants will realize that compromises must be made by both landlord and tenant. The material presented here intentionally presents very little in absolute terms.