

# Legal Updates

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by Aretha Legal

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- Jan Vishwas Bill passed by Lok Sabha and Rajya Sabha to decriminalize 183 provisions across 42 laws including Drugs and Cosmetics Act, 1940, the Legal Metrology Act, 2009, Information Technology Act, 2000, the Food Safety and Standards Act, 2006 etc.
- Mediation Bill, 2021 passed by Rajya Sabha which introduced provisions for constitution of Mediation Council of India, a neutral third party. This bill proposes to complete the mediation time in 180 days.
- SEBI vide circular no. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123, in order to bring more transparency and to ensure timely disclosure of material events /information by listed entities, has amended disclosure requirement of material events/information under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- IRDAI issued guidelines on remuneration of directors and key managerial personnels dated 30 June 2023 for private sector insurers.

### **IBC will coax over the Electricity Act, 2003 in terms of Liquidation Proceedings**

The Supreme Court in the case of *Paschimanchal Vidyut Vitran Nigam Limited (PVVNL) v. Raman Ispat Private Limited and Ors. (RIPL)*, dealt an appeal filed by PVVNL against an order of the National Company Law Appellate Tribunal, Allahabad, that rejected their appeal against the release of the attached property of PVVNL for liquidation. The impugned order allowed the release of the attached property, attached by the PVVNL, in favor of the official liquidator of the RIPL with the rationale to help to complete the sale process and the distribution of remains in accordance with the law, especially the Insolvency and Bankruptcy Code, 2016 (IBC) in conformity with Section 53 (*Waterfall Mechanism*) of IBC.

The main contention made by PVVNL was that the Electricity Act, 2003, provides them priority over the IBC. The two Judge Bench comprising of Hon'ble Justice S. Ravindra Bhat and Hon'ble Justice Dipankar Dutta opined that secured creditors must decide whether or not they want to relinquish its security interest. In case it does so, its dues rank high in the waterfall mechanism (Section-53 of IBC). In case it chooses not to relinquish its security interest and instead proceeds to enforce it without success or is unable to realize all its dues in the process of enforcement, it must then perform stand lower in priority and await distribution of assets upon realization of the liquidation estate.

The submission made by the official liquidator was that PVVNL's claim would be classified under Section 53 of IBC, entitling PVVNL to a pro-rata distribution of proceeds along with other secured creditors from the sale of liquidated assets.

The Supreme Court, after careful examination of the provisions of the IBC, decided that during the insolvency resolution process, a secured creditor is not permitted to realize its dues by initiating any proceedings. Further, debts owed to a secured creditor receive a higher priority if the secured creditors have cancelled security in the manner set out in Section 52 of IBC. In cases where the secured creditors do not relinquish security, the importance of the claim is lower in respect of any amount unpaid following the enforcement of security interest under Section 53(1)(e)(ii) of IBC. This landmark judgement gives impetus to many pending disputes of similar nature for speedy disposal.

Pranay Kumar  
[pranay@arethalegal.com](mailto:pranay@arethalegal.com)

### **Online Gaming to be sin-taxed at 28%**

The decision of the Goods and Services (GST) Council to levy 28% on the entire transaction value for online games has stirred up the gaming industry, which was all set to grow in India. Higher tax on Online Gaming (games played on any electronic device, including personal computers, mobile phones, tablets, and other devices) can be considered a sin-good tax which not only demoralizes the people to use the good but also a good source of government revenue. Taxing the pot instead of the gross gaming revenue would further dissuade the users from entering the gaming industry.

The government's justification for a higher tax rate on online gaming is answering the moral question that online gaming cannot be taxed on equal footing with essential commodities. However, miserably failed to distinguish online gaming between a game of skill and a game of chance, which has increased the uncertainty and apprehensions within the industry.

The Indian gaming industry is expected to reach \$5B by 2025, which is expected to attract INR 15,000 Cr. or more FDI in the next three financial years. However, this move would not only impede the industry's growth but might force several players to move out of India, where taxes are lesser. Imposing higher GST on online gaming would effectively drive Indian gamers towards offshore and illegal platforms, which would result in government tax revenue loss. Excessive taxation is not in the best legal interest of the government but also not ideal from the economic perspective, and this would stunt the growth of the industry in the nascent stage. Recently, Ministry of Finance has clarified that GST would be charged only on entry level amount and not on each bet placed with the gaming platform.

Sajal Jain  
[sajal@arethalegal.com](mailto:sajal@arethalegal.com)

### **ROC penalizes Directors for failing to remit unspent CSR funds**

The Companies Act, 2013 (Companies Act) introduced mandatory corporate social responsibility (CSR) for the first time, putting a greater responsibility on companies in our country to set out a clear CSR framework. The company secretary professional or other responsible officers are expected to be well versed about all the requirements with respect to CSR to guide the management and the board of directors of the company to ensure the absolute compliance of the provisions relating to corporate social corporate responsibility. In case any provision relating to corporate social responsibility is not fulfilled, the company would end up in non-compliance resulting in the company and its directors/officers facing a severe penalty. Further to this, all company directors/officers

including the chief financial officer and company secretary are also responsible for the default and may have to face similar penalties.

In a recent case, four directors of a company were penalized by the Registrar of Companies, Chennai, on April 12, 2023 for not transferring the unspent CSR amount within the prescribed time limit, i.e. for violation of provisions of section 135(5) of the Companies Act by M/s Temenos India Private Limited and consequently, a penalty of INR 2 lakhs was levied on each of the four directors amounting to a total penalty of INR 8 lakhs.

To avoid such penalties, the company and its directors and officers must take every care to ensure timely absolute compliance by putting a compliance mechanism in place in the company.

Akshat Chaudhary  
[akshat@arethalegal.com](mailto:akshat@arethalegal.com)

### **An Overview of the Draft Digital Personal Data Protection Bill, 2022**

On November 18, 2022, the Ministry of Electronics and Information Technology introduced the Digital Personal Data Protection Bill, 2022 (Bill) for public consultation. This followed the withdrawal of the previous Personal Data Protection Bill 2019 in August 2022. Post the Union Cabinet approval on July 5, 2023, and the Bill will be presented during the upcoming Parliament session starting on July 20, 2023.

The inception of this Bill traces back to August 2017 when the Supreme Court of India acknowledged privacy as a fundamental right in the case of *Justice K.S. Puttaswamy v. Union of India*. Subsequently, a committee led by Justice B.N. Srikrishna was formed to assess matters relating to data protection.

In the Bill, the term "Data Principal" is broadly defined, encompassing individuals to whom the personal data pertains. This includes children (those below 18 years of age) and their parents or legal guardians. The definition of "Personal Data" has been simplified to denote any data that can be used to identify an individual. Notably, the Bill treats all personal data equally, without distinguishing between sensitive or critical personal data for enhanced protection.

The Bill sets forth penalties to address personal data breaches, imposing a fine of INR 250 Cr. (approximately \$30M) for failing to implement reasonable security measures. Furthermore, any failure to report personal data breaches to affected data principals incurs a penalty of INR 200 Cr. (around \$25M).

Dhruv Bhardwaj  
[dhruv@arethalegal.com](mailto:dhruv@arethalegal.com)

### **The EU Data Act: Applicability and Implications**

The EU Data Act is a new piece of legislation proposed in the European Union. While the GDPR is already in place to regulate how personal data can be processed, the EU Data Act seeks to regulate how non-personal data generated by connected devices (devices that collect or transmit data over a network such as fitness trackers, smart home appliances, smart watches, etc.) can be used and shared. Traditionally, when a product is purchased, the purchaser acquires all its parts and accessories. However, with respect to the connected products, it is usually stipulated through contracts that the manufacturer or the seller shall have the exclusive right to access and use the data generated by the connected device.

In this context, the EU Data Act shall confer several rights, such as the right to access and use data generated or collected by connected devices and the right to portability of such data. The EU Data Act shall also regulate such data transfer between business and public authorities. The EU Data Act aims to address this disparity in access to data by giving the users of the product/connected devices the right to use the data as well as transfer it to third parties. Example: a smart home appliance breaks down. Under the current regime, the user shall have no alternative but to avail the services of the appliance manufacturer to get it repaired. However, with the passing of the EU Data Act, a user shall be able to access and transfer the data generated by the appliance to a repair service provider that is more cost-effective than the manufacturer.

Similar to the GDPR, the Act shall adopt an extra-territorial approach, i.e., if the supplier of the connected device is providing its device to recipients residing in the European Union, the Act shall apply to such supplier irrespective of the location of the supplier.

Thus, the EU Data Act could have a significant impact on India. The EU Data Act could make it easier for Indian businesses to access and use data from the EU, which could boost their competitiveness. The EU Data Act could also help to create new data-driven businesses in India. On the other hand, the EU Data Act would significantly increase compliance costs for Indian businesses, and it would also compel Indian businesses, offering their products to recipients in the EU, to amend their data protection measures and implement new policies.

Mohina Anand  
[mohina@arethalegal.com](mailto:mohina@arethalegal.com)

### **Snapshot - The Uniform Civil Code**

India prides in its secularism enshrined in our Constitution, ensuring that the state does not discriminate against its citizens based on their religion. The freedom to practice any religion is recognized as a fundamental right under Articles 25 and 26 of the Indian Constitution. To date, different personal laws govern various religious communities in India. Accounting for the vast differences in personal laws, differences and discrepancies have often crept up, sometimes even leading to unequal treatment.

The concept of a Uniform Civil Code has been proposed to address these shortcomings. The Uniform Civil Code aims to replace the existing religious personal laws with a uniform law applicable to all citizens, regardless of their religion. This idea is rooted in Article 44 of the Indian Constitution.

The Supreme Court has consistently called for the initiation of steps towards a Uniform Civil Code to ensure equality, national integration, and the protection of fundamental rights. In the landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum* in 1985, the court emphasized that a Uniform Civil Code would help promote national integration and called for its enactment. Subsequent cases, like that of *Shayara Bano v. Union of India*, brought the issue of a Uniform Civil Code to the forefront again. The court emphasized that the Constitution requires the state to provide a Uniform Civil Code to address social maladies and protect fundamental rights. The 21st Law Commission has supported testing personal laws against fundamental rights, aligning with Justice DY Chandrachud's opinion that personal laws should not claim supremacy over the Constitution. It is imperative to analyze the Bill when released to ensure that the citizen's fundamental rights are not violated.

Naasha F. Anklesaria  
[naasha@arethalegal.com](mailto:naasha@arethalegal.com)

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For any queries, help or assistance, please email us on [query@arethalegal.com](mailto:query@arethalegal.com)

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