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EDITION**

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# **MONTHLY NEWSLETTER**

**LEXTECH: CENTRE FOR  
LAW, ENTREPRENEURSHIP  
AND INNOVATION**



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# TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS



## SECTION 1





## TELECOM REGULATORY AUTHORITY OF INDIA ('TRAI') HAS ISSUED A CONSULTATION PAPER ON REGULATING OVER-THE-TOP ('OTT') PLATFORMS

### NEWS

TRAI has released a [consultation paper](#) seeking input from stakeholders on the regulation of social media and OTT platforms. It specifically requests suggestions regarding the possibility of selectively banning certain OTT services instead of implementing a total Internet shutdown.

### THE LEGAL TALK

The Department of Telecommunications and TRAI have jointly issued a consultation paper on the regulatory framework for OTT services. They are seeking input from relevant stakeholders to develop recommendations regarding the same. Accordingly, a consultation paper has been issued which aims to gather suggestions on regulating OTT services, including possible collaboration between OTT providers and licensed telecom services. The paper is also exploring the potential outcome of selectively prohibiting OTT services in certain situations. It also emphasizes the significance of differentiating distinct categories within OTT services

### THE WAY FORWARD

As per the suggestions in the consultation paper, if OTT services and social media are brought under TRAI's regulatory control, platforms offering voice, video, and messaging services will need a telecom licence. As a result, these services might become subject to telecom interception obligations, including integration with a centralised monitoring system. This could lead to security agencies having the capability to monitor any call at any time, potentially compromising the integrity of end-to-end encryption mechanisms.



# KARNATAKA HC UPHOLDS GOVERNMENT'S AUTHORITY OVER SOCIAL MEDIA CONTENT

## NEWS

In the matter of X Corp v Union of India, the [Karnataka High Court](#) upheld that social media intermediaries are obligated to adhere to the government's blocking orders without any room for resistance. Further, the court held that Social Media Intermediaries ('SMIs') must diligently comply with the government's blocking orders or promptly initiate legal measures against objectionable posts to avail themselves of the safe harbour provisions under the Information Technology Act, 2000 ('IT Act'); and to avoid potential criminal charges.

## THE WAY FORWARD

The [court's decision](#) weakens the right to freely express oneself, as it restricts content without adequately communicating the reasons. This action suppresses digital rights and uses the excuse of "fake news" to limit right to speech. [Moreover](#), it ignores fundamental constitutional principles and gives the government too much power, establishing a dangerous precedent.

## LEGAL TALK

In the present case, the government derives its authority to issue content blocking orders from Section 69A of the IT Act. Under this provision, such orders may be issued to SMIs when the content is deemed highly objectionable and poses a threat to public order, national security, and the sovereignty and integrity of the nation. The responsibility for evaluating objectionable posts lies with the examining committee established in accordance with [Rule 7 of the IT Rules, 2009](#). The committee is entrusted with undertaking diligent and reasonable efforts to assess the nature of the content. Additionally, Section 69A of the IT Act confers discretionary power on authorities to communicate the reasons for issuing blocking orders.

# CANADA PASSED ONLINE NEWS ACT

## NEWS

The Canadian Senate's recent passage of the Online News Act (Bill C-18) represents a notable development in the ongoing dispute between the Canadian government and tech giants like Google and Meta (formerly Facebook). The legislation requires social media platforms to provide remuneration to media outlets for sharing news content on their platforms, intending to create a more equitable environment. The implementation of this law is expected to have significant implications for the dynamics of news distribution in the digital space.

## LEGAL TALK

In Canada, the Department of Justice Act mandates the Minister of Justice to produce a Charter Statement for government bills, as stipulated under Section 4.2. Notably, in the case of Bill C-18, the Charter Statement is aligned with Section 2(b) of the Canadian Charter of Rights and Freedoms, which guarantees fundamental freedoms such as freedom of thought, belief, opinion, and expression, encompassing the freedom of the press and other communication media. The objective of Bill C-18 is to establish a comprehensive framework that ensures fair and equitable compensation for news content utilized by technology platforms. In doing so, the legislation seeks to strike a delicate balance between protecting the right to freedom of expression and addressing the economic interests of news businesses. By acknowledging and safeguarding Charter rights, the bill aims to address pertinent concerns and create a regulatory structure that fosters an environment of accountability and fairness in the digital media landscape.

## THE WAY FORWARD

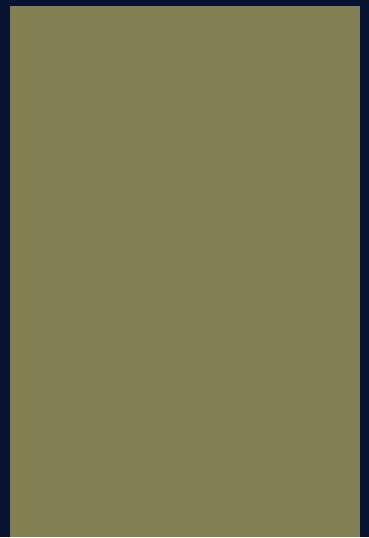
In India, a similar issue arises where media houses and tech giants like Google and Facebook are at odds over payments for news content. Recently, the Union Information and Broadcasting Secretary emphasized fair revenue sharing for digital publishers from Big Tech at the DNPA conference. Also, the CCI is probing complaints about unjust advertisement intermediation, arbitrary revenue-sharing, content free-riding, and Google's alleged abuse of dominance in its service agreement.



# Online Gaming and Betting Laws



## SECTION 2



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# GST COUNCIL ANNOUNCES HIKE IN TAXES FOR ONLINE GAMING COMPANIES ('OGC') – NEW TAX RATE TO BE 28%

## NEWS

Recently, the GST Council announced a hike in the rate of taxes on online gaming to 28%, which is to be paid by OGCs. Moving away from the previous model of a tax on the companies' gross gaming revenue ('GGR'), the new tax will be applicable on the full-face value of the bet itself.

## LEGAL TALK

Introducing new GST rates have raised concerns that levying tax on the face value (the entire amount of a player) will override the bounds of GST. Initially, the tax was levied only on the amount of money that a person paid for the services that he availed of on the platform, while the remainder was kept by the platform in a fiduciary capacity, which was used by the customer to place a bet. The levy of the new tax assumes that all online games are either gambling or betting, which is not true. Here, the government has failed to distinguish between skill-based games and chance-based games. Online skill gaming is a legitimate business protected under Article 19(1)(g) of the Constitution. The Apex Court in *M/s Games Kraft Technologies Pvt. Ltd. v. Director General of Good Services Tax Intelligence* has ruled emphasizing that as long as the game is of the nature of skill, GST would be levied only on the platform fees and not the entire money.

## THE WAY FORWARD

The new GST tax rate would hinder the digital India dream, by increasing the illegal and unauthorized offences, which most of them are unregulated. The GST council, therefore should reconsider the new tax rate, make it clearer and more moderate applicable only on platform fee and not on the entire face value.





# MEITY'S PROPOSES NEW RULES TO REGULATE ONLINE GAMES

## NEWS

The proposed new rules to regulate online games have not yet been added to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021, which would require amending the same. The Ministry of Electronics and IT ('MeitY') has tried to bring a new model of self-regulation organisations ('SRO') into the online gaming sector. SROs will be the body that determines if an online game is permissible or not. It is also expected to include experts from different areas, like education, psychology, mental health, and child rights.

## LEGAL TALK

The draft gaming rules proposed are issued under clauses (z) and (zg) of sub-section (2) of Section 87 of the Information Technology Act, 2000, that are considered to be critically affecting online games:

- 1.The government will set up SROs, and these will decide the permissibility of a game.
- 2.Online games that involve any kind of gambling will be prohibited, including gambling ads.

Real-money gaming (RMG) on the other hand, will not be allowed unless stakes are placed on the result of the game. The RMG is different from gambling in that it requires you to purchase the chips or coins for real money, which will have a monetary value, and then play. RMG are legal as they are skill-based, and the stakes are not on any uncertain outcomes. These draft rules were introduced by the MeitY through the Government of India (Allocation of Business) Rules, 1961. The rules are based on the assumption that proper regulation will reduce harmful consequences like financial loss, fraud, or the risk of addiction caused by online gaming. This classification of gambling and games of skill by the SRO will be very beneficial for GST, which would provide a stable and equitable platform for the games of skill.

## THE WAY FORWARD

These rules will promote online games by boosting the confidence of investors and bringing in stability. This can possibly unlock the potential of a 20-billion-dollar online gaming industry in India.



# FinTech



## SECTION 3



# RESERVE BANK OF INDIA ('RBI') GIVES A GREEN SIGNAL TO FIRST LOSS DEFAULT GUARANTEES ('FLDG')



## NEWS

RBI has recently released its Guidelines on Default Loss Guarantee ('DLG') in Digital Lending through which the FLDG arrangement has been allowed, subject to certain restrictions. An FLDG arrangement is a contractual arrangement between regulated entities ('REs') like banks and Non-Banking Financial Companies ('NBFCs') and Lending Service Providers (or LSPs) like FinTech companies.

## LEGAL TALK

Under this arrangement, these LSPs agree to guarantee the REs losses due to defaults in a particular loan portfolio, up to a certain percentage. Previously, the RBI had completely restricted FLDGs by classifying them as "synthetic securitization". Now, the RBI has permitted LSPs to extend guarantees through the FLDG model up to 5% of the entire loan portfolio. Moreover, the REs can accept a DLG from the LSP if it is only in three forms: cash, fixed deposits with a lien marked in favour of the RE, or bank guarantees in favour of the RE.



## THE WAY FORWARD

The introduction of FLDG arrangements is seen as a positive development that will enhance credit penetration and financial inclusion in the digital lending ecosystem. It will also foster greater transparency and enhance deeper partnerships and collaborations between banks, REs, NBFCs, and the new-age FinTechs.



# ONLINE PAYMENT PLATFORMS COME UNDER THE AMBIT OF PMLA: DELHI HIGH COURT

## NEWS

The Delhi High Court ('Delhi HC') has held that online payment platform PayPal is a 'payment system operator' and issued a directive against the US-based company, compelling them to adhere to the provisions of the Prevention of Money Laundering Act, 2002 ('PMLA'). This decision of the court leads to the inference that even technology intermediaries that assist in transactions through banks without directly handling funds will now have to comply with the guidelines specified in the PMLA.

## LEGAL TALK

"Payment system operator" has been defined under Section 2(1)(rb) of the PMLA, 2002, as an individual or entity running a payment system, including overseas principals. An overseas principal is someone who resides outside India and either owns, controls, or manages, directly or indirectly, the activities or functions of a payment system in India. Further, Section 2(1)(wa) clarifies "reporting entity" as banks, financial institutions, intermediaries, businesses, or professionals. From the perusal of the definition of overseas principal, it can be understood that technology intermediaries handling funds directly or indirectly will come under the ambit of PMLA. Upholding the same, the Delhi HC clarified that any player that enables the transfer of money between two ends will fall under the ambit of the payment system.

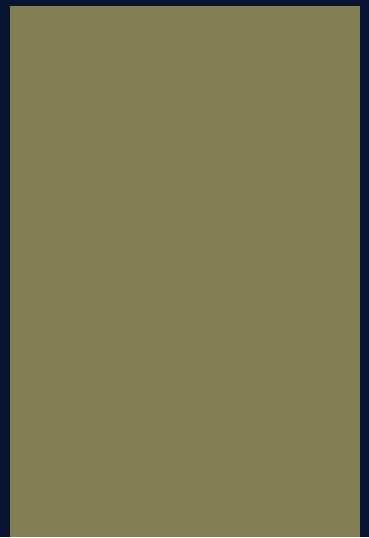
## THE WAY FORWARD

After this judgement, payment operators operating within India will be expected to bear increased regulatory costs. Further, they must form dedicated teams for compliance and monitoring, and conduct more rigorous KYC verifications. Additionally, these entities will be obliged to periodically disclose transactions of significant worth or those arousing suspicion of potential money laundering to the Financial Intelligence Unit.

# ARTIFICIAL INTELLIGENCE



SECTION 4





# CLASS ACTION LAWSUIT AGAINST WORLD'S FIRST ROBOT LAWYER

## NEWS

DoNotPay Inc. ('DoNotPay'), the world's first robot lawyer service faced trouble recently when a class-action lawsuit was filed against it for unauthorised practise of law. DoNotPay operates an Artificial Intelligence ('AI')-powered chatbot that uses natural language processing and machine learning algorithms to provide legal advice and assistance to its users. While the matter is still under sub-judice, the legal implications that have arisen are noteworthy.

## LEGAL TALK

Looking at the applicable laws, DoNotPay's robot lawyer seems to be in violation of California's Unfair Competition Law ('UCL') under Business and Professions Code 6125 and 6126 for pretending to be an attorney with a licence. A similar parallel can be drawn in the Indian context, where Section 33 of the Advocates Act, 1961, imposes comparable restrictions. These laws state that, unless provided by another law, only persons enrolled as advocates shall be allowed to practise law. Consequently, the operation of DoNotPay's robot lawyer, purporting to possess legal licensure, raises concerns of non-compliance with these statutes in both California and India.

## WAY FORWARD

The main question that arises in this case is whether the chatbot can be held guilty of such an offence in the first place. As per the UCL, it can be enforced only against natural persons. In this case, whether DoNotPay's liability would extend to the founders and employees of DoNotPay is yet to be seen. AI and technology laws can be drafted, but creating laws in a subject area that is constantly evolving is not feasible as the pace of amendments to the law cannot match the pace of AI's evolution.

# AI TRAFFIC CAMERAS ENSURING SUCCESS OF SAFE KERALA PROJECT

## NEWS

The Safe Kerala Project is an initiative by the Government of Kerala where 726 AI cameras have been installed on the highways within the state, which will analyse vehicles in violation and send photos to the Motor Vehicles Department of the Government of Kerala. It has been built in a Build, Own, Operate, Transfer (BOOT) mode. There was a hindrance to this major advancement when the Leader of Opposition, VD Satheesan, moved the Kerala High Court, alleging corruption in the implementation of the project.

## LEGAL TALK

In this particular case, the petitioner raised the argument that the State government's decision to entrust private entities with the information of citizens constitutes a violation of the right to privacy as protected under Article 21. The presiding Justice PV Kunhikrishnan, while considering the matter acknowledged the significance of AI and commended the implementation of AI cameras as a positive initiative. He emphasized that any issues pertaining to transparency and corruption which may arise from this implementation, should be addressed as separate matters and should not serve as grounds to discourage the use of AI cameras altogether.

## THE WAY FORWARD

While AI represents the future of technology, but it cannot completely replace traffic police officers as it cannot detect underage driving, car registrations, valid driving licences, or pollution norms. It still does not account for rental cars, and the accused driver may be different from the owner of the car. The government also needs to ensure transparency for a smooth implementation of the project.



# DATA PRIVACY



## SECTION 5





# NEW DATA PROTECTION BILL SET TO MAKE ITS APPEARANCE IN PARLIAMENT AFTER CABINET NOD

## NEWS

The Right to Privacy was declared a fundamental right by the Supreme Court in K.S. Puttaswamy v. Union of India. The government is responsible for processing the personal information of millions of its citizens. As a result, scholars have insisted on specific legislation for data privacy to regulate bodies and prevent the government from taking decisions autonomously. The revamped version of the data protection bill will make its appearance in front of Parliament during the monsoon season.



## LEGAL TALK

In the present bill, the powers of the intended Data Protection Board ('DPB') has been severely restricted, and the government reserved the right to appoint people in power autonomously. Here, Section 8 of Chapter II has given unbridled power to the government where they can use the data without consent for 'fair and reasonable' purpose – a provision opened to diverse interpretations. Moreover, the bill establishes that a data principal is 'deemed' to have provided consent for various reasons, thereby granting requisite authorities the ability to access and use personal data.

## THE WAY FORWARD

The provision of deemed consent in the new data protection bill is unclear and vague and gives the government and its agencies wide-ranging exemptions. These issues could possibly enable the government to misuse its powers and show a disregard for people's fundamental rights.

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