
THE CONSTITUTIONALISATION OF BUSINESS REGULATION IN INDIA: TRANSNATIONAL INFLUENCES ON COMPETITION, CORPORATE GOVERNANCE AND DIGITAL MARKETS

V. Rajasaravanan, Assistant Professor,
Chennai Dr. Ambedkar Government Law College, Pattaraiperumpudur.

Dr. V. Jeyaseelan, Assistant Professor,
Chennai Dr. Ambedkar Government Law College, Pattaraiperumpudur.

ABSTRACT

This article examines how Indian business regulation is gradually being constitutionalised, that is, brought within the discipline of Fundamental Rights, judicial review and constitutional values, rather than being treated as a purely technical or statutory field. Taking competition law, corporate governance and digital-market regulation as three connected sites of enquiry, the article traces how ideas that first took shape in the European Union, such as ex-ante platform regulation, stakeholder-oriented corporate accountability and data protection as a rights-based discipline, have travelled into Indian law through statute, regulatory practice and judicial reasoning. The central argument is that Indian courts and regulators have used Articles 14, 19(1)(g) and 21 of the Constitution, along with the doctrine of proportionality, to give business regulation a constitutional foundation, while transnational regulatory ideas supply the technical vocabulary through which this constitutionalisation is expressed in fields as fast-moving as digital markets. The article closes by noting the limits of this convergence, particularly the wide executive discretion retained under recent Indian legislation.

Keywords: constitutionalisation of Business Regulation, Fundamental Rights, Digital Market Regulation, Transnational Regulatory Convergence, Indian Competition Law.

I. INTRODUCTION

Business regulation in India was, for much of the post-Independence period, treated as an exercise of ordinary legislative and executive power, answerable to Parliament and to the licensing bureaucracy rather than to the Fundamental Rights chapter of the Constitution.¹ Company law, competition policy and, later, data governance were seen as technical, almost apolitical, domains best left to specialised ministries and tribunals. This picture has changed considerably over the last three decades. Indian courts have increasingly tested economic and regulatory statutes against Articles 14 and 19(1)(g), which guarantee equality before law and the freedom to carry on trade, business, or profession, subject to the reasonable restrictions permitted by Article 19(6).² The Supreme Court's recognition of privacy as an independent fundamental right flowing from Article 21 in *Justice K.S. Puttaswamy v. Union of India* has added a further, and arguably the most consequential, constitutional dimension to business regulation, because it places data-handling businesses squarely within the field of constitutional scrutiny.³

This article uses the term "constitutionalisation" to describe a process, not a single event: the gradual absorption of constitutional norms, standards of reasonableness, proportionality and rights-consciousness into fields of law that were earlier governed mainly by statute and executive discretion.⁴ The process is visible in three connected areas of business regulation examined here. First, competition law, where the Competition Act, 2002 and its 2023 amendment increasingly echo doctrines developed for testing State action against Article 19(1)(g), and where the Competition Commission of India (CCI) has had to justify its orders in language that resembles constitutional reasonableness review. Second, corporate governance, where statutory duties on boards and mandatory social-responsibility spending under the Companies Act, 2013 reflect a shift from a purely shareholder-centred model of the company towards a stakeholder-oriented model influenced by comparable developments in European company law. Third, digital-market and data-protection regulation, where the Digital Personal Data Protection Act, 2023 (DPDP Act) is a direct legislative response to the constitutional right to privacy recognised in *Puttaswamy*, and where the CCI's investigation of

¹See generally Competition Act, No. 12 of 2003, INDIA CODE (2003); Companies Act, No. 18 of 2013, INDIA CODE (2013).

²INDIA CONST. arts. 14, 19(1)(g), 19(6).

³*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

⁴See Sujit Choudhry, *Migration as a New Metaphor in Comparative Constitutional Law*, in *The Migration of Constitutional Ideas* 1 (Sujit Choudhry ed., 2006).

Google's Android practices drew openly on reasoning developed by the European Commission.⁵

Two comparative jurisdictions anchor the analysis: India and the European Union. The choice is deliberate rather than arbitrary. The European Union offers the most developed transnational template for economic regulation that is explicitly rights-conscious, built on the Charter of Fundamental Rights of the European Union and on Treaty provisions governing competition and the internal market.⁶ India, for its part, possesses a written Fundamental Rights chapter, a tradition of expansive judicial review, and a regulatory state that has, in the last decade, been rapidly reformed to deal with digital markets, data protection and merger control. The comparison is not one of formal transplantation; India has not copied European instruments word for word. It is, instead, a study in what comparative constitutional scholars describe as norm circulation, where ideas, structures and even specific phrases move across borders and are domesticated to fit local constitutional text and institutional capacity.⁷

Methodologically, the article proceeds by doctrinal and comparative analysis. It reads Indian statutes, regulatory orders and Supreme Court judgments alongside the corresponding European Union treaty provisions, regulations and directives, treating the European Union not as a source of binding authority for Indian courts, which it plainly is not, but as a comparator that helps show which features of Indian regulatory design are locally invented and which are borrowed, whether consciously or through the ordinary diffusion of global regulatory practice.⁸ This comparative method is well suited to the study of constitutionalisation, because constitutionalisation is itself usually a matter of degree and of interpretive emphasis rather than a single legislative event, and is best observed by tracing how the same regulatory problem, dominant digital platforms, stakeholder-blind companies, or unregulated data collection, has been answered differently, yet along a recognisably similar path, in two systems that share little constitutional history but face similar economic pressures.

The research question that structures this article is as follows: to what extent has Indian business regulation been constitutionalised through the interaction of Fundamental Rights,

⁵In re: Alphabet Inc. & Ors. (Android matter), Case No. 39 of 2018, Competition Comm'n of India, order dated Oct. 20, 2022; Case AT.40099, Google Android, Commission Decision of July 18, 2018 (Eur. Comm'n).

⁶Charter of Fundamental Rights of the European Union arts. 8, 16, 2012 O.J. (C 326) 391; Consolidated Version of the Treaty on the Functioning of the European Union arts. 101-102, 2012 O.J. (C 326) 47.

⁷Sujit Choudhry, *supra* note 4, at 13-19.

⁸See Sujit Choudhry, *supra* note 4, at 1-9 (on comparative method in constitutional borrowing).

judicial review, statutory regulation and transnational regulatory ideas? The article answers this question in five further parts. Part II sets out the constitutional architecture within which Indian business regulation operates. Part III examines competition law. Part IV turns to corporate governance and accountability. Part V considers digital markets and data protection, the area where transnational influence is most visible. Part VI draws the three strands together to assess the overall extent of constitutionalisation, and Part VII offers a short critique before the conclusion.

II. THE CONSTITUTIONAL ARCHITECTURE OF INDIAN BUSINESS REGULATION

Any discussion of constitutionalisation in Indian business regulation must begin with three Articles of the Constitution that, together, form the framework within which economic legislation is tested. Article 14 guarantees equality before the law and equal protection of the laws, and has been read by the Supreme Court as prohibiting arbitrary State action, a standard that regulators such as the CCI and the Securities and Exchange Board of India (SEBI) must satisfy when they impose penalties or conditions on businesses.⁹ Article 19(1)(g) guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade or business, while Article 19(6) permits the State to impose reasonable restrictions on this right in the interests of the general public.¹⁰ This pairing is the constitutional hinge on which most economic regulation turns: a regulatory statute restricts freedom of trade, and the question for courts is whether the restriction is reasonable, proportionate and connected to a legitimate public purpose. The Supreme Court's early recognition, in *Maneka Gandhi v. Union of India*, that the Fundamental Rights are not isolated silos but form an integrated scheme, has meant that regulatory restrictions on business are tested not merely for source of power but for fairness of procedure and substance.¹¹

The third and most recent addition to this architecture is the right to privacy, recognised as an independent facet of the right to life and personal liberty under Article 21 in the nine-judge Bench decision in *Justice K.S. Puttaswamy v. Union of India*.¹² The Court held that privacy is an inalienable right that protects informational self-determination, bodily autonomy and

⁹INDIA CONST. art. 14; *Competition Comm'n of India v. Steel Auth. of India Ltd.*, (2010) 10 S.C.C. 744 (India).

¹⁰INDIA CONST. arts. 19(1)(g), 19(6).

¹¹*Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

¹²*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

decisional freedom, and that any restriction on it, whether by the State or, in appropriate circumstances, by private actors performing functions of public significance, must satisfy a threefold test of legality, legitimate aim and proportionality.¹³ Because large parts of the modern economy consist of businesses that collect, process and monetise personal data, Puttaswamy transformed data protection from a matter of contract and consumer protection into a matter of constitutional concern, obliging Parliament to legislate and obliging courts to test that legislation against the proportionality standard the judgment itself laid down.

Judicial review supplies the mechanism through which these substantive guarantees are enforced against regulatory bodies. Indian courts have developed a doctrine of administrative reasonableness that borrows heavily from proportionality analysis while retaining a distinctly Indian vocabulary of "manifest arbitrariness".¹⁴ Tribunals created for economic regulation, such as the Competition Appellate structures and the National Company Law Appellate Tribunal, operate under the shadow of this constitutional review, because their orders remain open to challenge before the High Courts and the Supreme Court on grounds that ultimately trace back to Articles 14 and 21. This layered structure, statute, specialist regulator, appellate tribunal and constitutional court, is what allows transnational regulatory ideas to be absorbed into Indian law without a formal amendment to the Constitution: Parliament legislates using vocabulary borrowed from other systems, and the constitutional courts then domesticate that vocabulary by reading it through Articles 14, 19 and 21.

The Supreme Court's decision in *Modern Dental College and Research Centre v. State of Madhya Pradesh* gave this doctrine a sharper edge by adopting a structured, four-stage proportionality test, requiring that any restriction on a business freedom pursue a legitimate goal, be a suitable means of achieving it, be the least restrictive option reasonably available, and strike a fair balance between the right restricted and the public interest served.¹⁵ Although the case concerned fee regulation in private professional colleges rather than a digital platform or a listed company, its proportionality framework has since been treated as of general application, and it was this same four-stage structure, rather than a looser standard of mere rationality, that the Puttaswamy Bench adopted two years later when it set out the test for interferences with informational privacy. The convergence of these two lines of authority, one

¹³Id. at 264-70 (summary of conclusions).

¹⁴See *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India) (basic structure doctrine underlying later manifest-arbitrariness review under Article 14).

¹⁵*Modern Dental Coll. & Research Ctr. v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).

rooted in Article 19(1)(g) and the other in Article 21, means that Indian business regulation today is tested by a single, unified proportionality standard regardless of which Fundamental Right is invoked, a development that itself mirrors the manner in which European Union law applies one general proportionality principle across the different freedoms protected by the Treaties and the Charter.

III. COMPETITION LAW: FROM ECONOMIC REGULATION TO CONSTITUTIONAL REASONING

The Competition Act, 2002, which replaced the older Monopolies and Restrictive Trade Practices Act, was itself a product of transnational influence, drawing on European and American antitrust concepts such as abuse of dominance, anti-competitive agreements and combination control.¹⁶ The CCI's function of eliminating practices that adversely affect competition necessarily restricts the Article 19(1)(g) freedom of businesses to structure their commercial affairs as they wish, so the Supreme Court has repeatedly required the CCI to root its orders in reasoned, proportionate findings rather than mere administrative convenience. In *Competition Commission of India v. Steel Authority of India Ltd.*, the Court emphasised that even at the stage of forming a prima facie opinion, the CCI must act judicially and give reasons, since its orders have serious civil consequences for businesses.¹⁷ In *Excel Crop Care Ltd. v. Competition Commission of India*, the Court went further and held that penalties under the Act must be calculated with reference to "relevant turnover", rejecting a mechanical reading that would have imposed disproportionate liability, a conclusion that reflects the proportionality sensibility more commonly associated with fundamental-rights adjudication.¹⁸ These judgments show competition law being quietly folded into the reasonableness discourse that Article 19(6) demands.

The clearest recent instance of transnational borrowing within Indian competition law is the CCI's 2022 order against Google concerning the Android operating system. The CCI found that Google had abused its dominant position in the licensable smart-mobile operating-system market, the Android app-store market and the general web-search market by tying and bundling its own applications, entering into anti-fragmentation agreements with device manufacturers and restricting competing search and app-store services, and imposed a penalty together with

¹⁶Competition Act, No. 12 of 2003, INDIA CODE (2003).

¹⁷*Competition Comm'n of India v. Steel Auth. of India Ltd.*, (2010) 10 S.C.C. 744, para. 33 (India).

¹⁸*Excel Crop Care Ltd. v. Competition Comm'n of India*, (2017) 8 S.C.C. 47 (India).

behavioural directions requiring Google to allow un-installation of pre-loaded apps and to permit alternative billing systems.¹⁹ Google itself argued before the Competition Appellate Tribunal and later the Supreme Court that the CCI's order borrowed extensively, in places almost verbatim, from the European Commission's own 2018 Google Android decision, which had earlier found similar conduct to infringe Article 102 of the Treaty on the Functioning of the European Union (TFEU) and imposed a substantial fine.²⁰ The Supreme Court declined to interfere with the CCI's findings on this ground, and Google was required to comply with the behavioural remedies.²¹ Whatever the merits of the copying allegation, the episode illustrates something important for the constitutionalisation thesis: Indian competition enforcement did not simply borrow a technical finding about market dominance, it borrowed an entire mode of reasoning about how dominant digital platforms interact with the economic freedom of smaller businesses and consumers, a mode of reasoning that in the European Union is itself shaped by Charter values such as the freedom to conduct a business and consumer protection.²²

The Competition (Amendment) Act, 2023 deepened this transnational connection by introducing a "deal value threshold" for merger notification, requiring CCI approval for any transaction exceeding two thousand crore rupees in value where the target enterprise has substantial business operations in India, even if the target's assets or turnover fall below the ordinary thresholds.²³ This provision was introduced specifically to capture acquisitions of data-rich but asset-light digital businesses, of the kind that had previously escaped merger control in cases resembling Facebook's acquisition of WhatsApp, and its architects openly acknowledged that they were responding to the same regulatory gap that had earlier prompted the European Union to develop turnover-based notification thresholds and, later, the ex-ante gatekeeper regime of the Digital Markets Act.²⁴ The 2023 Amendment also shortened merger review timelines, introduced a settlements and commitments mechanism allowing parties to resolve certain contraventions without a full finding of guilt, and increased penalties for cartel conduct to a percentage of global turnover rather than only domestic turnover, changes that again mirror the European Commission's settlement procedure and its practice of calculating

¹⁹In re: Alphabet Inc. & Ors. (Android matter), Case No. 39 of 2018, Competition Comm'n of India, order dated Oct. 20, 2022.

²⁰Case AT.40099, Google Android, Commission Decision of July 18, 2018 (Eur. Comm'n); see also Google Claims India Copied EC Landmark Ruling, Mobile World Live (Jan. 3, 2023).

²¹See AZB & Partners, Parliament Approves Amendments to the Competition Act, 2002, at 1-2 (2023) (noting disposal of Google's challenge before the Supreme Court in January 2023).

²²Charter of Fundamental Rights of the European Union art. 16, 2012 O.J. (C 326) 391.

²³Competition (Amendment) Act, No. 9 of 2023, sec. 6 (amending sec. 5 of the Competition Act, 2002), INDIA CODE (2023).

²⁴Nishith Desai Assocs., The Competition (Amendment) Act, 2023, at 2-3 (2023).

finances on worldwide turnover under Regulation 1/2003.²⁵ What began as an ordinary exercise in statutory reform therefore ends up reproducing, in Indian legislative language, a regulatory logic that constitutional lawyers in the European Union would recognise as an expression of proportionality and the balancing of the freedom to conduct a business against the public interest in contestable markets, values that Articles 16 and 38 of the Charter of Fundamental Rights of the European Union make explicit and that Indian courts reach through Article 19(1)(g) and 19(6) instead.²⁶

The 2023 Amendment's introduction of a settlement and commitment mechanism deserves separate mention, because it shows constitutional reasoning shaping enforcement procedure rather than only substantive doctrine. Before 2023, an enterprise accused of anti-competitive conduct before the CCI had only two options, contest the case fully or accept an adverse finding, a binary structure that businesses and commentators had long criticised as disproportionately costly and adversarial compared with negotiated outcomes available in other jurisdictions.²⁷ The new mechanism allows an enterprise under investigation for certain contraventions to propose commitments or a settlement, which the CCI may accept without recording a formal finding of contravention, a procedural change that closely tracks the European Commission's long-standing practice of accepting commitments under Article 9 of Council Regulation 1/2003 in cases short of the most serious cartel conduct. Indian telecom-sector litigation had already prepared the ground for this shift: in the long-running dispute over predatory pricing between Reliance Jio and incumbent operators including Bharti Airtel, the CCI's insistence on a reasoned, evidence-based finding of dominance and abuse, rather than a presumption against a new entrant or an incumbent, was itself repeatedly tested before the Telecom Disputes Settlement Appellate Tribunal and the High Courts on standards of fairness and non-arbitrariness drawn from Article 14, reinforcing the sense that even sector-specific competition disputes in India are conducted within a constitutional register.²⁸

IV. CORPORATE GOVERNANCE AND ACCOUNTABILITY: TOWARDS A STAKEHOLDER CONSTITUTION FOR COMPANIES

Corporate governance in India has undergone a parallel, if less dramatic, transformation. The

²⁵Council Regulation 1/2003, on the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty, art. 23, 2003 O.J. (L 1) 1.

²⁶Charter of Fundamental Rights of the European Union arts. 16, 38, 2012 O.J. (C 326) 391.

²⁷Competition (Amendment) Act, No. 9 of 2023, sec. 18 (inserting sec. 48A into the Competition Act, 2002), INDIA CODE (2023).

²⁸See Competition Comm'n of India v. Bharti Airtel Ltd., (2019) 2 S.C.C. 521 (India).

Companies Act, 2013 replaced a company law framework built primarily around shareholder primacy with one that imposes duties running beyond shareholders. Section 135 of the Act requires companies above prescribed thresholds of net worth, turnover or profit to spend a fixed percentage of average net profits on corporate social responsibility activities, and to report on this spending to shareholders and, indirectly, to the public.²⁹ Section 166 codifies directors' duties to act in good faith to promote the objects of the company for the benefit of its members as a whole, while also having regard to the interests of employees, the community and the environment, language that moves Indian company law away from a pure shareholder-wealth-maximisation standard towards an "enlightened shareholder value" model.³⁰ SEBI's Listing Obligations and Disclosure Requirements Regulations, 2015 add a further layer, requiring listed companies to maintain independent directors, audit committees and risk-management committees, and, for the largest listed entities, to publish a Business Responsibility and Sustainability Report covering environmental, social and governance performance.³¹

This trajectory closely tracks developments in the European Union, where the amended Shareholder Rights Directive requires listed companies to give shareholders a binding or advisory vote on directors' remuneration policy and to disclose related-party transactions, and where the Corporate Sustainability Reporting Directive, which replaced the earlier Non-Financial Reporting Directive, now obliges large companies to report in detail on sustainability matters using a common European reporting standard.³² Although the DPDP Act and the Companies Act are formally domestic statutes passed by the Indian Parliament, the substantive content of India's sustainability-reporting and stakeholder-duty provisions has been shaped, both by explicit reference in committee reports and by the practical necessity of Indian companies complying with the reporting expectations of European and other overseas investors and supply-chain partners, by this wider transnational corporate-governance movement.³³ The constitutional dimension of this shift lies less in direct judicial pronouncement, since the Supreme Court has not yet been called upon to test Section 135 against Article 19(1)(g) in a reported decision, and more in the way statutory corporate duties have begun to absorb the

²⁹Companies Act, No. 18 of 2013, sec. 135, INDIA CODE (2013).

³⁰Companies Act, No. 18 of 2013, sec. 166, INDIA CODE (2013).

³¹Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 17, 34, Gazette of India, pt. III sec. 4 (India).

³²Directive 2007/36/EC, as amended by Directive 2017/828, arts. 9a-9c, 2017 O.J. (L 132) 1; Directive 2022/2464, of the European Parliament and of the Council of 14 December 2022, 2022 O.J. (L 322) 15.

³³See Khyati Anand & Melissa Cyrill, India's Digital Personal Data Protection Act, 2023: Data Privacy Compliance, India Briefing (2023).

language of reasonableness and proportionality that pervades Indian constitutional adjudication: courts reviewing SEBI's disciplinary orders against companies and directors regularly apply the same standard of non-arbitrariness under Article 14 that governs any other exercise of regulatory power, so that even a field as private as internal corporate governance is disciplined by public-law standards once a statutory regulator enters the picture.³⁴

There is a further, subtler, constitutional thread here. The horizontal application of fundamental rights, that is, their application to private parties and not merely to the State, remains contested in Indian constitutional theory, but the Puttaswamy judgment's observation that privacy can bind private entities performing functions with public significance has opened the door to treating large corporations, particularly dominant digital platforms and systemically important financial institutions, as bearers of constitutional duties rather than merely as beneficiaries of Article 19(1)(g) protection.³⁵ Corporate governance reform in India can therefore be read as a legislative pre-emption of this horizontal-rights question: instead of waiting for courts to declare that corporations owe direct constitutional duties to employees, communities and data principals, Parliament has used ordinary statute to impose comparable duties directly, a pattern that resembles the European Union's own preference for detailed directive-based regulation over open-ended constitutional litigation against private companies.

SEBI's related-party transaction norms illustrate the same point from a different angle. The Listing Obligations and Disclosure Requirements Regulations require material related-party transactions of listed companies to be approved by a resolution of independent directors on the audit committee and, above prescribed thresholds, by shareholders through a resolution in which interested related parties may not vote, a structure designed to protect minority shareholders and, indirectly, other stakeholders from expropriation by promoters or controlling shareholders.³⁶ This mirrors, though it does not copy line for line, the disclosure and shareholder-approval mechanism for related-party transactions that the amended Shareholder Rights Directive introduced across the European Union, and both regimes trace their underlying justification to the same regulatory anxiety, that a company's formal separation of ownership and control can be misused to divert value away from those who cannot easily exit

³⁴See Companies Act, No. 18 of 2013, sec. 135, INDIA CODE (2013); INDIA CONST. art. 14.

³⁵Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1, para. 298 (India) (Chandrachud, J.) (on horizontal application to private actors performing functions of public significance).

³⁶Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 23, Gazette of India, pt. III sec. 4 (India); Directive 2007/36/EC, as amended by Directive 2017/828, art. 9c, 2017 O.J. (L 132) 1.

the relationship, whether minority shareholders in the European context or, more broadly in the Indian context, the wider body of stakeholders whom Section 166 of the Companies Act now requires directors to consider. Once again, therefore, a technical corporate-governance rule imported from European practice ends up doing constitutional work in the Indian setting, operationalising the Article 14 concern with non-arbitrary, even-handed treatment inside the internal governance of the company itself.

V. DIGITAL MARKETS, DATA PROTECTION AND THE CONSTITUTION

It is in the regulation of digital markets and personal data that the constitutionalisation of Indian business regulation is most visible, and where transnational influence from the European Union is most direct. The starting point remains *Puttaswamy*, which did three things of lasting importance for business regulation. It confirmed that informational privacy is a fundamental right; it required that any interference with that right by the State, and by clear implication any statutory permission granted to private data-processing businesses, must satisfy the tests of legality, necessity and proportionality; and it firmly linked data protection to human dignity rather than treating it as a mere consumer-contract matter.³⁷ The DPDP Act, enacted in August 2023, is Parliament's answer to this constitutional command. It creates a framework of "data fiduciaries" and "data principals", requires that personal data be processed only for a lawful purpose and with either consent or a specified legitimate use, gives data principals rights of access, correction and erasure, and establishes a Data Protection Board of India with the power to investigate complaints and impose penalties on data fiduciaries that fail to implement reasonable security safeguards.³⁸

The structural resemblance to the European Union's General Data Protection Regulation (GDPR) is unmistakable and, in places, quite deliberate: both statutes use similar categories of data controller and data subject, though under different names, both apply extraterritorially to processing connected with offering goods or services to persons within the jurisdiction, and both build in a specialised regulator with investigatory and penalty powers.³⁹ Yet the DPDP Act also departs from the GDPR in constitutionally significant ways. It does not create a separate category of "sensitive personal data" attracting heightened protection, a category the

³⁷*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

³⁸Digital Personal Data Protection Act, No. 22 of 2023, secs. 2, 4, 8, 27, INDIA CODE (2023).

³⁹Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data (General Data Protection Regulation), arts. 3-4, 2016 O.J. (L 119) 1.

GDPR treats with particular care; it grants the Central Government wide power to exempt government instrumentalities from the Act's provisions in the interests of national security, sovereignty and public order, without the kind of independent judicial or parliamentary oversight of such exemptions that Puttaswamy's proportionality test would appear to demand; and it amends the Right to Information Act to withdraw the earlier public-interest override that allowed disclosure of some personal information held by public authorities.⁴⁰ These departures mean that while the DPDP Act borrows the technical architecture of European data protection law, its treatment of State power sits in some tension with the constitutional proportionality standard that the statute is supposed to be implementing, a tension that will likely have to be resolved by future litigation testing the Act's exemption clauses against Article 21.

Cross-border data transfer provides a further point of comparison. The GDPR permits personal data to leave the European Union only where the recipient country has been found to offer an "adequate" level of protection through a formal adequacy decision of the European Commission, or where the exporting business puts in place specific contractual or corporate safeguards approved under the Regulation, a mechanism that has already generated substantial litigation before the Court of Justice of the European Union over transfers to jurisdictions whose surveillance laws were found wanting.⁴¹ The DPDP Act takes a markedly lighter approach: it permits transfer of personal data outside India by default, subject only to the Central Government's power to restrict transfers to specified countries by notification, reversing the European default of prohibition unless adequacy is shown. This is not a minor technical difference. It reflects a deliberate policy choice by the Indian government to prioritise the free flow of data supporting its outsourcing and digital-services industry over the precautionary, rights-protective posture that the European Union has adopted, and it means that the constitutional proportionality logic developed in Puttaswamy, which asks whether a restriction is necessary and narrowly tailored, has so far been applied by the DPDP Act mainly to restrictions on data principals' own rights rather than to the question of whether their data should be allowed to leave the country at all.

Digital-market regulation shows a comparable pattern of borrowing coupled with domestication. The European Union's Digital Markets Act, which entered into force in

⁴⁰Digital Personal Data Protection Act, No. 22 of 2023, secs. 17, 44(3), INDIA CODE (2023); Right to Information Act, No. 22 of 2005, sec. 8(1)(j), INDIA CODE (2005) (as amended).

⁴¹Regulation 2016/679, arts. 44-46, 2016 O.J. (L 119) 1; Case C-311/18, Data Prot. Comm'r v. Facebook Ir. Ltd. (Schrems II), ECLI:EU:C:2020:559.

November 2022 and became fully applicable from March 2024, introduced an ex-ante regime under which platforms designated as "gatekeepers", currently including Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft, must comply with a fixed list of obligations and prohibitions, such as permitting interoperability, refraining from self-preferencing and allowing business users to reach customers outside the gatekeeper's own platform, on pain of fines of up to ten per cent, or twenty per cent for repeat infringement, of worldwide turnover.⁴² India has not enacted an equivalent ex-ante statute, though a Digital Competition Bill on similar lines was examined by a government-appointed committee; instead, as discussed in Part III, the Competition (Amendment) Act, 2023 achieved a more limited version of the same goal through the deal-value threshold, while the CCI has continued to use the existing abuse-of-dominance framework, reasoning explicitly modelled on the European Commission's own findings, to discipline large platforms on a case-by-case basis.⁴³ The result is that India has, for now, chosen judicial and quasi-judicial constitutionalisation, filtering transnational digital-market norms through statutory abuse-of-dominance proceedings that remain subject to Article 14 and Article 19(1)(g) review, over the European Union's more legislatively codified ex-ante model, though the direction of travel, as the pending Digital Competition Bill suggests, may eventually converge on something closer to the European template.

VI. MAPPING THE CONSTITUTIONALISATION THESIS

Bringing the three strands together, a coherent picture emerges of how Indian business regulation is being constitutionalised. First, Fundamental Rights supply the constitutional vocabulary, Article 14's guarantee against arbitrariness, Article 19(1)(g)'s freedom of trade read with the Article 19(6) reasonableness proviso, and Article 21's privacy guarantee following *Puttaswamy*, within which regulatory statutes must operate. Second, judicial review operationalises this vocabulary. Courts do not usually strike down competition, company or data-protection statutes outright; instead, they require regulators such as the CCI, SEBI and, prospectively, the Data Protection Board to exercise their statutory powers in a reasoned, proportionate and non-arbitrary manner, effectively importing constitutional standards of review into administrative decision-making across all three fields.⁴⁴ Third, statutory regulation

⁴²Regulation 2022/1925, of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), arts. 3, 5-7, 2022 O.J. (L 265) 1.

⁴³Ministry of Corp. Affairs, Report of the Committee on Digital Competition Law (2024).

⁴⁴See *Excel Crop Care Ltd. v. Competition Comm'n of India*, (2017) 8 S.C.C. 47 (India); *Competition Comm'n of India v. Steel Auth. of India Ltd.*, (2010) 10 S.C.C. 744 (India).

is the primary vehicle through which this constitutionalisation occurs. Unlike jurisdictions where courts directly apply constitutional provisions to private economic actors, Indian constitutional values usually reach businesses indirectly, through Parliament's exercise of its power to legislate reasonable restrictions, so that the constitutional character of business regulation depends heavily on how faithfully the implementing statute and its enforcing regulator track the underlying constitutional standard.

Fourth, and the specific focus of this article, transnational regulatory ideas supply much of the technical content that Indian statutes then subject to this constitutional discipline. The Competition Act's abuse-of-dominance doctrine, the CCI's Android reasoning, the Companies Act's stakeholder-oriented duties, SEBI's sustainability-reporting requirements and the DPDP Act's fiduciary-principal architecture all originate, wholly or in substantial part, in regulatory models developed in the European Union or, in the case of early competition law, in a mixture of European and American antitrust thinking.⁴⁵ What Indian courts and, to an extent, the drafters of Indian statutes have done is not simple transplantation but what comparative scholars call "constitutional domestication": foreign regulatory technique is absorbed into Indian law, but its legitimacy within the Indian system is then tested, and its content adjusted, by reference to India's own constitutional text, in particular Articles 14, 19 and 21, rather than by reference to the Charter of Fundamental Rights of the European Union or any other foreign constitutional instrument.⁴⁶ The Google Android episode captures this dynamic precisely: the CCI borrowed European factual and doctrinal reasoning about platform dominance, but its order was ultimately defended before, and sustained by, the Supreme Court of India applying Indian administrative and constitutional law, not European Union law.

Comparative constitutional scholarship offers a useful vocabulary for describing this pattern more precisely. Writers on the migration of constitutional ideas distinguish between outright resistance, where a legal system declines to engage with foreign models at all, mechanical transplantation, where foreign rules are copied with little adaptation, and what might be called constitutional assimilation, where foreign regulatory technique is accepted but subordinated to, and reshaped by, the receiving system's own constitutional commitments.⁴⁷ The Indian

⁴⁵See *In re: Alphabet Inc. & Ors. (Android matter)*, Case No. 39 of 2018, Competition Comm'n of India, order dated Oct. 20, 2022; Companies Act, No. 18 of 2013, sec. 135, INDIA CODE (2013); Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).

⁴⁶Sujit Choudhry, *supra* note 4, at 13-19.

⁴⁷See Sujit Choudhry, *supra* note 4, at 13-19 (distinguishing resistance, transplantation and assimilation as modes of constitutional migration).

experience surveyed in this article fits the third category far more comfortably than the second. Even where Indian drafters and regulators have borrowed heavily, the deal-value threshold from European merger practice, the fiduciary-principal architecture from the GDPR, the stakeholder language from European company law, the resulting Indian rules have been fitted into a domestic constitutional grammar built around Articles 14, 19 and 21, and their validity in India ultimately depends on satisfying that grammar rather than on any European authority. This is why the CCI could rely on European Commission reasoning in the Google Android matter without thereby subjecting Google to European Union law, and why the DPDP Act, despite its GDPR-like architecture, remains answerable only to the Indian Constitution and the Indian courts.

This composite process, rights providing the standard, courts providing the mechanism, statute providing the vehicle and transnational ideas providing much of the content, is what justifies describing Indian business regulation as increasingly "constitutionalised" rather than merely "regulated". The label matters because it changes how disputes are litigated and how compliance is designed: a business facing a CCI order or a Data Protection Board penalty today argues not only that the regulator misapplied a statutory test, but that the order is disproportionate, arbitrary, or insufficiently protective of the underlying constitutional right, whether that right belongs to the regulated business under Article 19(1)(g) or to affected consumers and data principals under Article 21.

VII. LIMITS AND CONCERNS

The constitutionalisation thesis should not be overstated. Several features of recent Indian legislation sit uneasily with a fully rights-driven model of business regulation. The DPDP Act's broad government-exemption power, discussed in Part V, concentrates discretion in the executive in a manner that Puttaswamy's own proportionality framework would ordinarily discourage, and the composition of the Data Protection Board, whose members are appointed by the Central Government rather than through an independent selection process, raises questions about the Board's institutional independence when it must adjudicate complaints against government instrumentalities as well as private businesses.⁴⁸ Similarly, while the Competition (Amendment) Act, 2023 borrowed the deal-value-threshold idea from European practice, it did not adopt the European Union's more elaborate procedural safeguards for

⁴⁸Digital Personal Data Protection Act, No. 22 of 2023, secs. 17, 19, INDIA CODE (2023).

designated gatekeepers, such as the structured dialogue and specification proceedings under the Digital Markets Act, leaving Indian platforms to rely on ordinary administrative-law remedies that, however constitutionally grounded, are slower and less predictable than a codified ex-ante regime.⁴⁹

Institutional capacity is a further, often understated, limit on the constitutionalisation thesis. Rights-consciousness and proportionality review are demanding standards to apply consistently, and they presuppose a regulator with the staffing, technical expertise and independence to build the kind of detailed evidentiary record that proportionality analysis requires, of the sort the CCI assembled, not without controversy, in the Google Android matter. The Data Protection Board of India, still in its early years of operation, and the CCI, which continues to face a substantial backlog of merger and conduct cases relative to its sanctioned strength, may struggle to replicate this standard of review consistently across the much larger volume of complaints that digital-market and data-protection regulation is likely to generate in the coming years.⁵⁰ A constitutionally grounded standard of review that cannot be applied with reasonable speed and consistency risks becoming a standard honoured mainly in appellate judgments rather than in the ordinary run of regulatory decision-making, a gap between constitutional promise and administrative practice that future institutional reform, rather than further doctrinal development, will have to close.

A related concern is one of sequencing. In the European Union, rights-based instruments such as the Charter of Fundamental Rights and the GDPR were adopted against the backdrop of decades of prior competition and internal-market jurisprudence from the Court of Justice, so that by the time digital-specific instruments such as the Digital Markets Act were drafted, the underlying constitutional values of proportionality and fair balance were already well settled in judicial practice. In India, by contrast, the constitutional foundation and the digital-specific statute have arrived almost simultaneously, *Puttaswamy* in 2017 and the DPDP Act only six years later, leaving comparatively little time for a body of Supreme Court jurisprudence interpreting the right to privacy in the specific context of commercial data processing to develop before Parliament had to legislate. The DPDP Act may therefore have to be revised more than once as courts gradually clarify what *Puttaswamy*'s proportionality standard actually requires of data fiduciaries, in the same way that the Competition Act itself was substantially

⁴⁹Regulation 2022/1925, of the European Parliament and of the Council of 14 September 2022, arts. 45-49, 2022 O.J. (L 265) 1.

⁵⁰Ministry of Corp. Affairs, Report of the Committee on Digital Competition Law, at 45-48 (2024).

amended in 2007 and again in 2023 once judicial experience revealed gaps in the original 2002 design.

There is also an asymmetry in how far constitutionalisation has progressed across the three fields examined here. Competition law has the richest body of Supreme Court authority testing regulatory action against Articles 14 and 19, built up over more than a decade of CCI litigation. Corporate governance, by contrast, has been constitutionalised mostly through statutory borrowing rather than direct judicial pronouncement, since very few reported decisions test the Companies Act's stakeholder duties against Fundamental Rights doctrine as such. Digital-market and data-protection regulation sits somewhere in between: Puttaswamy supplies a strong constitutional foundation in principle, but the DPDP Act's exemptions and the absence, so far, of a settled ex-ante digital-competition statute mean that the constitutional promise remains only partly realised in enforceable regulatory practice. Future litigation testing the DPDP Act's exemption clauses, and the eventual fate of the proposed Digital Competition Bill, will likely determine whether this asymmetry narrows or persists.

VIII. CONCLUSION

Indian business regulation has moved, over the last three decades, from a field governed mainly by ordinary statute and executive discretion to one increasingly disciplined by Fundamental Rights and judicial review. Articles 14, 19(1)(g) and, since 2017, Article 21's privacy guarantee under Puttaswamy, now supply the constitutional standards against which competition, corporate-governance and digital-market regulation are tested, even though these standards usually reach private businesses indirectly, through the statutes and regulators that Parliament creates rather than through direct constitutional litigation against companies. At the same time, much of the technical content of this regulation, the abuse-of-dominance doctrine applied against Google, the deal-value merger threshold, the stakeholder-oriented duties in the Companies Act, and the fiduciary-principal architecture of the DPDP Act, has been drawn from, or consciously modelled on, regulatory ideas developed first in the European Union. The result is a distinctly Indian form of constitutionalised business regulation: transnational in technique, constitutional in justification, and still, in important respects such as the scope of government exemptions under the DPDP Act, unfinished business for Indian courts to complete.

For legal practitioners and compliance officers, this composite picture carries a practical lesson

that is easy to miss amid the doctrinal detail. A business operating in India can no longer treat competition clearance, corporate-governance compliance and data-protection registration as three unrelated regulatory boxes to be ticked separately by three different internal teams, because all three now draw on a common constitutional vocabulary of reasonableness, proportionality and non-arbitrariness, and an adverse finding in one field, an abuse-of-dominance order, a related-party-transaction irregularity, or a data-breach penalty, is increasingly likely to be scrutinised by the same appellate courts using the same constitutional yardsticks. Recognising business regulation in India as constitutionalised, rather than as a collection of independent statutory silos, is therefore not merely an academic observation; it is also a more accurate description of the legal risk that regulated businesses, Indian and multinational alike, actually face, and of the transnational regulatory currents, largely originating in the European Union, that continue to shape the content of that risk.

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