ECONOMIC DIGITALIZATION AND INDIAN LAW

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ABSTRACT

India's declaration of independence marked a turning point in its economic history. Less than a sixth of Indians were literate, and as a result of Britain's steady deindustrialization, the nation was in abject poverty. Dreams of individual, economic, social, and political freedom were brought about by independence. 74 years later, the nation's economic activities have changed as a result of these ideals. Currently, India is the country with the largest share of the global digital economy and the most infrastructure for e-business and e-commerce, which use information and technology to create and adapt products and services for online sale or consumption. Digital novelties range from collaboration platforms and apps for smartphones to digital banking, e-commerce, virtual learning, and much more.

In India, millions of people use the digital economy to buy and sell goods and services. Nowadays, fraudulent use of digital marketing involves "hijacking" advertising traffic for cybercriminals' financial gain by using fake traffic and engagement. Spammers who engage in phishing or use malware or "bad code" to generate fraudulent traffic to ads are examples of digital marketing fraud. In India, the Ministry of Electronics & Information Technology (MeitY) and the Digital Economy & Digital Payment Division (DEDPD) are the two government departments in charge of keeping an eye on the country's digital economy.

Clearly, there is less connection between legal development and the digital economy. To ensure India's continued and stronger digital economic growth, the issues of legal development in the nation must constantly be addressed. The paper examines how the lack of laws, which leads to crimes in digital economy and an indifferent attitude from legal decision-makers as a barrier to economic development.

Keywords: Economy Development, Digitalization, Digital Economy, Digital-Fraud, Legal Regulations

Introduction:

The Indian government launched the "Digital India" initiative in July 2015 to enhance online infrastructure and expand citizen access to the internet (by, for example, connecting rural areas to high-speed internet networks), enabling the nation to advance digitally.

The three main goals of the initiative are as follows:

1. Create a reliable and secure digital infrastructure.
2. provision of digital services
3. Achieve universal Internet access for all citizens

All sectors are expected to benefit from the government's increased efforts to build a digitally empowered economy, with core digital sectors like information technology and business process management, digital communication services, and electronics manufacturing likely to see their GDPs double to US$ 355-435 billion by 2025.

In a different report, [1]McKinsey noted that the "Digital India" initiative is anticipated to increase the nation's digital economy from US$ 200 billion in 2018 to US$ 1 trillion by 2025.

[2]India's technology sector was projected to reach US$ 194 billion in FY21, a 2.3% YoY increase, according to NASSCOM's (National Association of Software & Services Companies) Strategic Review 2021, on the back of the nation's swift digital transformation and technology adoption. In 2020, 8% of India's GDP was produced by the country's technology industry (GDP). The industry continued to be a net employer and placed a strong emphasis on digital upskilling. Additionally, NASSCOM predicted that the nation's digital talent pool would likely exceed 1.17 million workers in FY21, a 32% increase.

[1] Digital India: Technology to transform a connected nation, McKinsey Digital, *available at:* https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/digital-india-technology-to-transform-a-connected-nation (Visited on April 8,2023)

[2] Technology Sector In India 2021- New World: The Future Is Virtual/Strategic Review, Nasscom, *available at: https://nasscom.in/knowledge-center/publications/technology-sector-india-2021-new-world-future-virtualstrategic-review* (Visited on April 8,2023)

Necessity of "Digital India":

India's digital divide is wide and is causing economic disparities between those who can afford technology and those who cannot, which is impacting the country's overall digital growth despite rising adoption of digital technologies and the IT industry.

The government launched the "Digital India" initiative to close this gap, which includes various programmes like e-governance, mobile e-health services, and digital finance for digital inclusion. The "Digital India" initiative is enabling the nation (including small towns and rural areas) to develop its internet infrastructure through programmes like Aadhaar (a digital ID programme), BharatNet, and public Wi-Fi hotspots. According to the McKinsey Report, Uttar Pradesh (recorded >36 million internet subscribers), Madhya Pradesh, and Jharkhand were among the five states with the fastest-growing internet penetration between 2014 and 2018.

The nation's low mobile data rates have also made it possible for a sizable portion of the populace to access the Internet. [3]The number of internet subscribers overall (including wireless and wired subscribers) increased to 776.45 million as of September 2020, according to the Telecom Regulatory Authority of India, from 687.62 million subscribers in September 2019.

The government collaborated with the top technology companies listed below to implement the "Digital India Platform":

1. To give engineering students the chance to develop technology-based, marketable solutions, Google and the Ministry of Electronics and Information Technology (MeitY) launched the "Build for Digital India" programme in 2019.

2. MeitY and Amazon Web Services (AWS) worked together to launch a quantum computing applications lab in India in January 2021 with the goal of accelerating research and development centred on quantum computing and fostering innovative scientific findings.

3. The National Digital Literacy Mission (NDLM) centres were established by the government in collaboration with private sector businesses (such as Amdocs,

[3] The Indian Telecom Services Performance Indicators July – September, 2019, Telecom Regulatory Authority of India, *available at: https://trai.gov.in/sites/default/files/PIR_08012020_0.pdf* (Visited on April 8,2023)

Cognizant, Cyient, Google, Intel, Microsoft, and Zensar Technologies) to support digital literacy training in India.

Highlights of the Union Budget 2021–22 for Digital India:

[4]Gujarat International Finance Tec-City in Gandhinagar is being proposed to develop a top-tier fintech hub (GIFT) allocated $15.32 billion (Rs. 1.15 lakh crore) to digitise the Indian Railways. Awarded service providers compensation totalling Rs. 9,000 crore (US$ 1.20 billion) for building and enhancing their telecom infrastructure.

From February 1st, 2021, all voters will be able to access their "Digital voter ID card" by connecting their mobile number to the election commission's website.

Unified payments interface (UPI) usage is on the rise, which is a clear indication that more and more Indians are embracing a digital lifestyle. Additionally, the fact that 2.73 billion (>2x) UPI transactions were processed in March 2021 compared to 1.25 billion in March 2020 shows how much the government's "Digital India" initiative has advanced the nation's digital development.

The emergence of technologies like artificial intelligence, the Internet of things (IoT), cloud computing, blockchains, and robotics presents the government with new opportunities to support India's continued technological and digital development.

[5]A digital economy is predicted to generate 60–65 million jobs by 2025, according to a McKinsey report. The government is well-positioned to take advantage of this opportunity and generate an economic value of US$ 1 trillion from the digital economy by 2025 thanks to the "Digital India" mission.

Governing the Digital Economy:

India must determine on regulations that are appropriate for the job, particularly in the areas of privacy, consumer protection, intellectual property, and financial regulation in order to build a

[4] Budget 2021: Govt to facilitate a fintech hub, Business Standards, *available at: https://www.business-standard.com/budget/article/budget-2021-govt-to-facilitate-a-fintech-hub-at-gift-city-says-fm-121020100513_1.html/budget/budget-2021-govt-to-facilitate-a-fintech-hub-at-gift-city-says-fm-121020100513_1.html* (Visited on April 8,2023)

[5] Digital India: Technology to transform a connected nation, McKinsey Digital, *available at:* https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/digital-india-technology-to-transform-a-connected-nation (Visited on April 8,2023)

Digital Economy. [6]Through its Digital India initiative, India expects the digital economy to generate $550 billion to $1 trillion in GDP by 2025 and add 1.5 million to 2 million jobs by 2018.

At a Brookings India Development Seminar on April 20, 2018, Joshua Meltzer, Senior Fellow, Global Economy and Development at the Brookings Institution, discussed regulating the digital economy stated that based on his working paper "Regulating for a Digital Economy: Understanding the Importance of Cross-Border Data Flows in Asia," Meltzer argued that the economic opportunities from technologies such as cloud computing, big data, and the internet of things are also not limited to the IT sector but are economy-wide, including in sectors such as manufacturing and agriculture.

Software services and IT-enabled services (ITES), which range from financial analysis, accounting, and medical transcription to the creation of applications for smartphones, make up more than 40% of India's exports of goods and services. India continues to depend heavily on cross-border data flows for its service exports.

The Cross-Border Data Flow:

According to Meltzer, limiting cross-border data flows reduces the competitiveness of both the nation enforcing the policies and other nations that rely on the data coming from those nations. The Information Technology Rules (2011), which restrict the cross-border transfer of sensitive personal data, are just a few examples of government regulations and rules in India. The National Data Sharing and Accessibility Policy (2012), in particular for cloud providers, mandates that government data be stored in India. The Companies (Accounts) Rules (2014) mandate that backups of financial data, if kept outside of India, must be kept there. According to the National Telecom M2M Roadmap (2015), gateways and app servers that cater to Indian customers must be housed within the country.

Meltzer contends that restricting cross-border data flows lowers both the competitiveness of the country enforcing the policies and that of other countries that depend on the data coming from those countries. Meltzer suggested that in order to fully take advantage of the business and trade opportunities that cross-border data flows provide, legitimate regulatory goals like

[6] IBEF, Digital India, *available at: https://www.ibef.org/government-schemes/digital-india* (Visited on April 8,2023)

privacy and security must be realised concurrently. Regulators should concentrate on utilising current technologies to maximise benefits for the entire economy. Building a trustworthy environment where agreements and contracts for data sharing are negotiated bilaterally and multilaterally is at the heart of all of this. In essence, government backdoors that undermine internet trust must always be avoided.

Legal Concerns with The Digital Economy:

THE digital economy continues to have an impact well beyond of Silicon Valley thanks to its cross-border transactional capabilities. Digitalization-related problems, such as data privacy, intermediary liability, intellectual property concerns, and others—are often brought before Indian courts. Other judicial systems also seem to be seeing a similar situation. Policymakers, particularly tax administrators, are seeking to better regulate the digital environment as the pie grows as a result of the move from the physical economy to the virtual economy.

Informational privacy is a component of the right to privacy, according to the Supreme Court of India's historic ruling by a nine-judge Constitutional Bench in the case of Judge [7]K. S. Puttuswamy (Retd.) and Anr. vs. Union of India and Ors. According to the supreme court, there are non-State actors who might pose a threat to privacy in the digital age as well as State actors. However, it was determined that the right to privacy is subject to a variety of reasonable limitations and is not an absolute. The Court has also emphasised the need of India having a legislation governing data protection.

The Information Technology Act of 2000 continues to be the main piece of legislation controlling matters pertaining to technology in India since a data protection law has not yet been passed there. In some circumstances, an intermediary is free from responsibility under Section 79 of this Act. Under the auspices of this Act, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Regulations, 2021 (2021 IT Rules) were this year established.

Digital media ethics code and information technology intermediary guidelines, 2021:

These Regulations provide a thorough framework for intermediaries, such as prominent social media intermediaries, news and current affairs publishers, and producers of online curated

[7] *K. S. Puttuswamy (Retd.) and Anr. vs. Union of India and Ors.* (AIR 2017 SC 4161)

content, to follow while doing due diligence.

They must establish a grievance redressal procedure by designating a Grievance Officer, who is responsible for resolving complaints within fifteen days of receiving them. The Grievance Officer must also follow the rules set out by the relevant administration. A Chief Compliance Officer must be appointed, and significant social media intermediaries must carry out extra due diligence. If the intermediary fails to perform the required due diligence, the Chief Compliance Officer is accountable in any action pertaining to any relevant third party information, data, or communication connection made accessible or hosted by the intermediary.

A prominent social media intermediary that mainly offers messaging services must also make it possible to identify the initial author of any content on its platform, as may be required by law. In general, these Guidelines are making the message vulnerable by requiring intermediaries and publishers to undergo considerable compliance actions. So, it should come as no surprise that these Guidelines have already been subject to a number of legal challenges.

It seems that laws governing the internet economy will remain in place. The scope and effect of the digital economy are substantial now that it is a mainstream phenomenon. It must be controlled, just like any other economy. Making sure that the border between regulation and overregulation is not crossed becomes the issue.

The anonymity that social media may provide a user can be both a blessing and a curse. For those prepared to engage in adventure that borders on illegality, this cloak offers an additional layer of protection. It is under these ambiguous circumstances that determining the author may be difficult. For instance, a joke that is funny to one person may not be funny to another. Who determines if this situation is a comedy in the first place? As long as the digital world is left unregulated, courts will be overrun with cases involving such complicated concerns.

The justifications for passing restrictions, such as preventing terrorism and preserving national sovereignty, are completely unimportant. No business or individual would challenge or attempt to challenge such regulation. Each sovereign State would strive to take whatever steps are necessary to safeguard both the security of its population and its boundaries. But, the sovereign must make sure that these laws are faithfully followed for the intended purpose and aren't exploited improperly as instruments of state surveillance. These inquiries seem to be prevalent all around the globe.

The world may eventually need a uniform global framework, norms, and minimum criteria in the area of international law for such regulation since technology does not comprehend artificial boundaries. Countries that create rules and regulations that strike the correct balance will succeed in the digital world up to that point.

Whatever the situation, technology is subject to quick change. For legislation in the digital environment to stay relevant, policy makers will need to swiftly adapt and grasp technical advancements.

Issues with digital taxes: Creating legislation to control the digital economy is one piece of the jigsaw. The second element has to do with taxing digital businesses. Global tax authorities are baffled by the taxation rights pertaining to digital firms.

The Organization for Economic Co-operation and Development (OECD) is working to get an agreement on the regulations governing how to tax the digital economy and to have universal principles implemented with respect to regulations governing international taxes.

Nowadays, there is disagreement across nations regarding how to approach the same problem. On the one hand, it seems that certain nations are competing with one another to convince the OECD that earnings must be taxed in the nation where value is produced. So, taxes rights must be vested inside the U.S. if, for example, the value of a digital firm is developed on American territory. In contrast, a different group of nations, including India, emphasise that even if a digital business is run from outside of India, a portion of profits and taxes on them must be paid in India (that is, the source country) if, for example, Indian users are the ones who generate user participation and demand.

This only serves to highlight the stark differences in opinion on a number of digital taxation-related topics that are presently being discussed before the OECD.

Countries taking unilateral action: Several nations are taking unilateral action until a consensus is reached. For instance, India's Budget Act of 2016 authorised the imposition of an equalisation tax. As time has gone on, this levy's purview has grown. The levy seems to be a modifiable tool for levying income tax in order to circumvent treaty overrides under income tax legislation and the territoriality test in terms of legislative competence to levy income tax.

Nonetheless, it seems that some businesses may have put the cost on customers in one way or

another instead of bringing a constitutional challenge to this fee. Technology businesses are now battling the problem of Permanent Establishment (PE) and its tax repercussions in light of the 2021 IT Rules and the need for the employment of certain officials on Indian soil.

Although problems of legality are sure to be brought up, the attitude of Indian tax authorities as well as digital firms on PE will become evident in the days to ahead.

The proposed Digital India Act, 2023:

India's newest legislation and legal framework for governing the nation's online environment and digital data protection policies is anticipated to be the forthcoming Digital India Act (or Digital India Bill). By early 2023, the Information Technology Act (IT Act) of 2000, which has come under fire for its antiquated policies and inadequacy in addressing contemporary technological issues, will be completely replaced by the Digital India Act.

Since the passage of the IT Act of 2000, numerous revisions and amendments have been made (IT Act Amendment of 2008, IT Rules 2011), all with the aim of defining the digital space that the act regulates and emphasising the data handling policies. However, because the IT Act was initially only intended to safeguard e-commerce transactions and outline cybercrime offences, it did not adequately address either data privacy rights or the nuances of the current cybersecurity landscape.

The IT Act would not be able to keep up with the increasing sophistication and frequency of cyber-attacks without a comprehensive overhaul of the governing digital laws. The new Digital India Act is intended to "act as catalysts for Indian economy by enabling more innovation, more startups, and at the same time protecting the citizens of India in terms of safety, trust, and accountability," according to Rajeev Chandrasekhar, Minister of State for Electronics and Information Technology.

The Digital India Act, which could potentially oversee all digital laws in India for the next ten or twenty years, will be the most important piece of IT legislation to emerge from India in its history. The nation hopes to future-proof its digital laws with this new law and make it possible for companies to compete on a global scale. In order to ensure that the rules and framework enable a comprehensive IT ecosystem within the country for at least the next ten years, the Indian government also tried to involve and consult as many stakeholders (citizens) in the

drafting of the Digital India Act. The Digital India Act will be created to boost the digital economy for Indian businesses and transform the country into a global digital powerhouse as the world's most populous country, but the goal is not just to ensure stronger laws for citizen privacy rights and increase trust in the government. According to Chandrasekhar, the Digital India Act can help India build a trillion-dollar digital economy by 2026.

The Digital Personal Data Protection Bill, 2022:

The Digital Personal Data Protection Bill, 2022, which was initially put forth in November 2022, will be implemented alongside the Digital India Act by the Indian parliament. The Digital Personal Data Protection Bill, which is only concerned with the processing of personal data in India, will complement the other two pieces of legislation.

The goal of the bill is to address "the processing of digital personal data in a manner that recognises both the right of the individuals to protect their personal data and the need to process personal data for lawful purposes," according to the legislation. The General Data Protection Regulation (GDPR) of the EU has been compared to the Digital Personal Data Protection Bill, 2022, which focuses on regulating user privacy, user consent, and data processing.

The Digital India Act is only a small component of a much larger framework that governs all facets of the digital world, not just data processing laws. Although both pieces of legislation are still being revised, it represents a significant advancement for India.

What are the Digital India Act's Key Points?

The Digital India Act emphasises the following areas in addition to a brand-new legal framework for data and information security:

1. Developing new laws to cover emerging technology, such as 5G, IoT, cloud computing, metaverse, blockchain, and cryptocurrency:

The Internet was barely mentioned when the IT Act of 2000 was written, making it noticeably out of date. As India gets closer to becoming the most connected nation in the world to the internet, the Digital India Act aims to establish new regulations surrounding the newest, most relevant technology today.

Additionally, the IT Act makes no reference to cybersecurity and is not intended to regulate the still-developing sector. The Digital India Act seeks to address security and privacy concerns with new technology rather than just regulating it for responsible use, especially with regard to business-critical technologies like the cloud, IoT devices, and social media.

2. Reclassifying online intermediaries into distinct categories with their own rules rather than assigning them a single general intermediary label:

The IT Rules of 2021 introduced the concept of intermediaries but only provided guidelines for social media platforms. Any business or website that promotes information sharing or offers online services is considered an intermediary. The other web-based services were categorised as "pure intermediaries" and compiled into one group.

The fact that digital intermediaries have been categorised by user base and company size rather than by the features or services they offer, however, is one of the main issues with IT Rules. It is challenging to regulate an industry as a whole because one business may provide several services.

3. Removing online intermediaries' "safe harbour" immunity from liability for wilful misinformation or other content violations by third parties

In the past, online intermediaries, like social media platforms, were granted a "safe harbour" legal immunity, effectively shielding them from third-party content posted on their individual platforms because they had no control over it. However, since the intermediaries were granted immunity, they were unable to moderate third-party content, which frequently resulted in a dearth of fact-checking and the failure to remove content violations.

Each intermediary category will be subject to new rules under the Digital India Act, with a strong emphasis on fact-checking to prevent misinformation or data misuse. Also, any content violations or cybercrimes that take place on these platforms' websites will now be held accountable. Major social media companies like Facebook and Twitter are now legally required to moderate and remove prohibited content instead of relying on the government to flag these violations.

4. Establishing laws and standards for digital machine learning (ML) and artificial intelligence (AI) technology

With AI and ML technology set to inevitably take over businesses, the Digital India Act seeks to forge ahead of the curve by emphasising accountability.

India is ready to take the lead in creating global initiatives to support the responsible use of AI technology when it takes over the GPAI (Global Partnership on Artificial Intelligence) in 2023 with Chandrasekhar serving as chairman. Although AI offers countless opportunities for invention and development, it also opens up new possibilities for abuse and harm.

The Digital India Act, which aims to adequately address and monitor the use of AI in today's world, will continue to place user safety and privacy protection at its core.

5. Making identity theft, cyberbullying, and the unauthorised sharing of personal information without authorization crimes

New cybercrimes like cyberbullying, impersonation, identity theft, identify fraud, doxxing, and malicious unauthorised sharing of personal information will be added as new criminal offences under the Digital India Act, according to the Ministry of Electronics and IT (MeitY). Previously, these offences were only subject to fines and were not made crimes under the IT Act.

In fact, the IT Act of 2000 copied many of the penalties for cybercrime from real-world incidents, which are no longer relevant due to the development of online-facing experiences like online gaming and dating. The Digital India Act can future-proof itself against any innovation and technological developments that may come in the ensuing years by focusing the laws on user protection and criminalising user harm.

6. Controlling how advertising technology (AdTech) companies monetize content creation and its creators

The Digital India Act seeks to re-examine the lopsided relationship between large AdTech companies and their control over monetization and revenue sharing in order to support the development of Indian content creators and their digital platforms. It has become very challenging for Indian content creators to negotiate revenue sharing and establish themselves on a global level as a result of the dominance of large global adtech companies like Amazon and Google in the advertising space.

Chandrasekhar follows in the footsteps of former Australian communications minister Paul Fletcher, who took on major tech firms and persuaded them to make more substantial business agreements with Australian content producers. However, just like online intermediaries, content creators will now also face penalties for disseminating false information.

7. Dissolving digital monopolies (big tech), allowing fair competition from local startups, and giving users more options

The Digital India Act aims to stop big tech companies from dominating the digital space in a manner like how big AdTech companies are regulated. Indian digital policies are largely unregulated, which has deterred many domestic and international startups from operating in the Indian tech sector.

The Indian government wants to overthrow the dominance of big tech and give room for smaller companies to start developing the necessary infrastructure and niche e-commerce market. Additionally, this gives Indian citizens the option to select the best service for them rather than being limited to one or two options from the big businesses.

According to Chandrasekhar, one of the objectives is to strengthen India's cyber resilience and sovereignty so that the nation will be able to access all technology and platforms without being overly dependent on foreign services.

Conclusion:

Technology analyst Don Tapscott first used the phrase "digital economy" in 1995, at the dawn of internet commerce. In "Digital Economy: Promise and Danger in the Age of Networked Intelligence," Tapscott foresaw how the internet would fundamentally alter how business was conducted and lead to the development of a networked economy. The fact that the internet economy of only the G-20 nations is anticipated to exceed US$4.2 trillion in 2016 provides proof that this prognosis was accurate. No company, industry, or government can afford to ignore the effects of such growth given its size and rate of change on the internet.

Governments have unique issues in identifying their position in regard to the business given how quickly things change.

[8]For the last several years, the Indian government has also struggled with difficulties of a similar kind. Indians used the internet in 278 million numbers as of October 2014, according to the Internet and Mobile Association of India (IAMAI). Just three out of every hundred Indians use cellphones, despite the fact that they are the country's main method of internet access. This indicates that a sizeable portion of the population still needs to contribute to the development of the digital economy. Hence, guaranteeing and expanding access to the internet and promoting it as a fundamental human right are duties of internet governance. The dual problems of increased market rivalry and more internet access must be balanced in a startup economy built on the government's "Digital India" plan.

[8] Regulating the Digital Economy NOEL JOHNS, available at: https://www.orfonline.org/wp-content/uploads/2015/12/SR_06.pdf (Visited on April 8,2023)