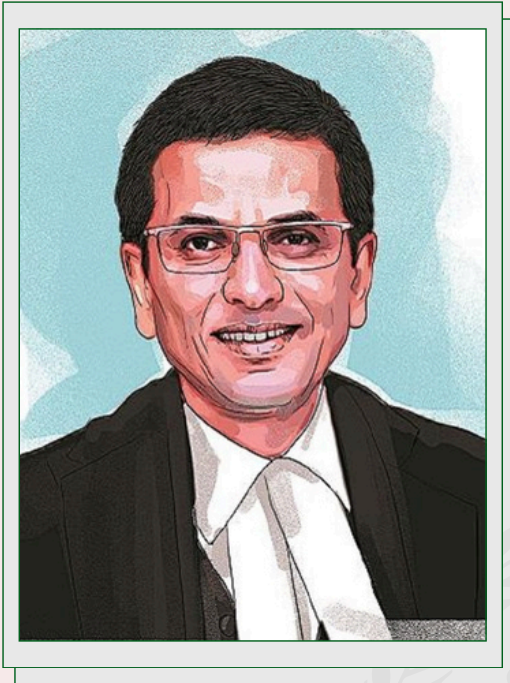


MONTHLY
Legal
Update
November | 2024



MADRAS CHAMBER OF COMMERCE & INDUSTRY

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Former CJI D.Y. Chandrachud tenure as Chief Justice of India concluded on November 8, 2024. Chandrachud's tenure which began on November 9, 2022, was marked by significant judicial contributions which included critical issues such as the Ayodhya land dispute, the abrogation of Article 370, and the decriminalization of consensual same-sex relationship.

His time as a Supreme Court Judge saw several landmark judgments, with the outgoing CJI authoring 613 judgments, 500 of which were written as a puisne judge.

Justice Sanjiv Khanna has been sworn in as the 51st Chief Justice of India

Landmark Judgments by D.Y. Chandrachud

- **Right to Privacy:** In the landmark case of *Justice K.S. Puttaswamy v. Union of India* (2017), Chandrachud authored the majority opinion affirming that the right to privacy is a fundamental right under Article 21 of the Constitution. This ruling laid the groundwork for subsequent challenges against the Aadhaar scheme and reinforced individual autonomy and dignity
- **Decriminalization of Homosexuality:** In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court struck down Section 377 of the Indian Penal Code, decriminalizing consensual same-sex relationships. Chandrachud's judgment emphasized that sexual orientation is an essential aspect of individual identity and dignity.
- **Sabarimala Temple Entry:** In *Indian Young Lawyers Association v. State of Kerala* (2018), the Court ruled that women of all ages should be allowed to enter the Sabarimala temple, declaring that the ban on women was discriminatory and violated their fundamental rights.
- **Same-Sex Marriage Case:** In *Supriya Chakraborty v. Union of India* (2023), while rejecting a plea to legalize same-sex marriages, Chandrachud acknowledged the need for equality but stated that there was no fundamental right to marriage for sexual minorities at that time.
- **Electoral Bonds Scheme:** In *Association for Democratic Reforms v. Union of India* (2024), Chandrachud led a bench that struck down the Electoral Bonds Scheme, stating it violated voters' right to information under Article 19(1)(a) of the Constitution.
- **Sub-classification within SC/ST Categories:** In *State of Punjab v. Davinder Singh* (2024), he ruled that states could create sub-classifications within Scheduled Caste and Scheduled Tribe categories based on empirical evidence, emphasizing fairness in affirmative action policies.

Recent Legal Development Insights

1. MADRAS HIGH COURT DIRECTS BAR COUNCIL TO ENSURE LAWYER'S SAFETY

The Bar Council of Tamil Nadu and Puducherry has filed a petition seeking the installation of surveillance systems and other protective measures to safeguard lawyers. This is coming in light of the recent attack on an advocate with a sickle in broad daylight near the Court premises. While hearing the PIL, the Madras High Court on 21.11.2024 suggested that the Bar Council of Tamil Nadu and Puducherry discuss with the state home secretary and the DGP ways to ensure safety of lawyers. The recent attack is part of a troubling trend of violence against lawyers in the region, raising alarms about their safety and the integrity of the judicial system.

W.P. No. 35962 of 2024

2. PROPERTY OF PERSONAL GUARANTORS CANNOT BE SOLD UNDER SARFAESI ACT DURING MORATORIUM PERIOD U/S 96 OF IBC: NCLT MUMBAI

The NCLT Mumbai ruled that during the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code (IBC), the property of personal guarantors cannot be sold under the SARFAESI Act. This decision arose in the case of Raghavendra Joshi v. Indian Bank, where the personal guarantor challenged the sale of his property by Indian Bank, initiated under SARFAESI, after the filing of a petition under Section 95 of the IBC. The tribunal affirmed its jurisdiction, noting that once a petition under Section 95 is filed, the interim moratorium kicks in, halting all legal actions against the guarantor's debt. Despite the auction notice being issued before the moratorium, the tribunal held that the sale, concluded during the moratorium, was invalid. It emphasized that the IBC provisions override the SARFAESI Act, citing Section 238 of the IBC. Consequently, the sale was set aside.

Raghavendra Joshi v. Indian Bank I.A. No. 2247/2023 IN C.P. NO. 575(IB)/MB/2022

3.. SC DISMISSES PETITIONS CHALLENGING INSERTION OF "SOCIALIST" AND "SECULAR" IN THE PREAMBLE VIA 42ND CONSTITUTIONAL AMENDMENT.

The Supreme Court dismissed petitions challenging the inclusion of "socialist" and "secular" in the Preamble by the Constitution (Forty-second Amendment) Act, 1976. The Court held that these terms are widely accepted and their meanings understood by the people of India. It emphasized that Parliament has the power to amend the Constitution under Article 368, which extends to the Preamble. "Secular" represents the State's commitment to equal respect for all religions, while "socialist" reflects the State's dedication to welfare and equality of opportunity, without restricting economic policies. The Court found no justification for revisiting the amendments after 44 years, dismissing the petitions.

Dr. Balram Singh and Ors v. Union of India and Anr W.P. Civil No. 645 of 2020 and 1467 of 2020

4. COMPETITION COMMISSION OF INDIA PENALTY ON META INC.

The Competition Commission of India (CCI) has imposed a fine of ₹213.14 crore on Meta for abusing its dominance through WhatsApp's 2021 privacy policy update. The CCI found that the policy imposed unfair conditions by mandating data sharing with Meta's other applications, violating the Competition Act. This practice restricted user choice and created barriers for competitors in online advertising. As part of the ruling, the CCI ordered Meta to halt user data sharing for advertising purposes between its companies for five years and required WhatsApp to clarify what data is shared and allow users to opt out of sharing for non-WhatsApp services. Meta plans to appeal the decision, asserting that the policy did not compromise user privacy. Alongside the financial penalty, the CCI issued a cease-and-desist order preventing WhatsApp from sharing user data with Meta for advertising purposes for five years. The regulator also mandated that all users be given an option to opt-out of data-sharing arrangements through an in-app notification



5. MADRAS HIGH COURT DIRECTS STATE GOVERNMENT TO FRAME PoSH RULES

The Madurai POSH case revolves around the enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act) in Tamil Nadu. Recently, On November 22, 2024 the Madras High Court directed the state government to frame rules for effectively implementing the PoSH Act, highlighting a lack of action and awareness among government officials regarding the Act's provisions. Justice R.N. Manjula emphasized that while the state did not lack intention, there was a noticeable indifference toward establishing necessary frameworks for addressing workplace sexual harassment. The court mandated that the State Women Commission submit a comprehensive draft of rules within two weeks for government approval and publication. Additionally, it called for the creation of an official website to enhance transparency regarding complaints and their resolutions. The court also suggested incorporating gender sensitization into competitive exams and establishing a gender sensitivity audit squad to ensure compliance with the PoSH Act across various sectors. This ruling underscores the urgent need for structured implementation of the PoSH Act to protect women's rights in the workplace.

HIGHLIGHTS OF TAMIL NADU

STRONG EXPORT PERFORMANCE BY TAMIL NADU

Tamil Nadu has distinguished itself as a leader in India's export landscape, achieving a 7.1% growth in merchandise exports for the FY 2024, totaling 43.6 billion USD. This increase has raised the state's share of India's total merchandise exports from 8.3% to 10%. The state's export basket is primarily composed of high-value industrial goods, such as telecom instruments and motor vehicles, which are less susceptible to fluctuations in commodity prices. Tamil Nadu has been ranked first in the NITI Aayog's Export Preparedness Index 2022 demonstrating excellent performance in the pillars of export promotion policy and has been also ranked as top-ranked state in the latest edition of NITI Aayog's India Innovation Index.

INVESTMENT IN GREEN TECHNOLOGY:

The Government of Tamil Nadu is negotiating with Foxconn to establish a Battery Energy storage system (BESS) plant on approximately 200 acres near Chennai. This facility would mark Foxconn's second global BESS unit and is part of the state's strategy to enhance its capabilities in sustainable energy technologies.

TAMIL NADU TOPS THE TABLE IN GROWTH OF SGCT COLLECTIONS

Tamil Nadu has seen a 20.12% growth in State Goods and Services Tax (SGST) collections in the first half of the 2024-2025 fiscal. It is regarded as the highest growth rate among key comparable states. As per the provisional figures from the CAG, Tamil Nadu's SCGST collections increased to Rs. 35,414.05 crore in the first half of 2024-25 from Rs. 29,481.97 crore in the first half of 2024-2025 from R. 29,481.97 crore in the comparable period last year.



HIGHEST NUMBER OF OPEN ACCESS CONSUMERS ON POWER EXCHANGES

Tamil Nadu has emerged as a leader in the open access power market, boasting the highest number of open access consumers in India. This trend reflects the state's progressive approach to energy regulation, allowing consumers, particularly industrial and commercial entities, to purchase electricity directly from power exchanges or private generators rather than relying solely on state utilities.

The Direct Tax Code 2025: A Win for Business or a Loss for Development

-By Subathra Mysamy

Introduction:

The new Direct Tax Code is set to replace the existing Income Tax Act of 1961. The necessity for a revised framework has emerged due to the considerable ambiguity and complexity present within the current legislative structure. These factors have resulted in numerous legal disputes, a diminished tax collection rate, and the exploitation of loopholes within the law, ultimately undermining the objectives of the Income Tax Act of 1961. Furthermore, the existing legislation has not adapted to contemporary conditions and modern taxation systems, lacking adequate provisions for international taxation. Consequently, the introduction of the new Direct Tax Code is imperative to address these challenges and establish a more efficient taxation framework.

Timeline:

The journey of the Direct Tax Code (DTC) began with the release of its first draft on August 12, 2009, aimed at replacing the outdated Income Tax Act of 1961. In 2010, the DTC Bill was introduced in the Lok Sabha following a revised discussion paper that incorporated public feedback. To ensure comprehensive consultation, a Standing Committee on Finance was established to engage with various stakeholders, ultimately submitting its report to Parliament in March 2012. After considering this feedback, further revisions were undertaken in 2013. A significant step occurred in 2017 when a committee was formed to draft a new Direct Tax Law, reflecting ongoing efforts to modernize India's tax framework. Recently, in 2024, the Finance Minister announced plans for the introduction of a New Direct Tax Code regime. The DTC is expected to be formally presented in Parliament alongside the Finance Bill in 2025, marking a pivotal moment in India's tax reform history.

Changes to Legislation:

The upcoming Direct Tax Code (DTC) aims to significantly reform the current Income Tax Act of 1961, which consists of 298 sections, by consolidating and streamlining it into 319 sections for easier navigation. A notable change includes the adjustment of residency status, where individuals residing in India for over 120 days will be considered residents, aligning with international standards. The DTC will incorporate OECD guidelines to combat Base Erosion and Profit Shifting (BEPS), targeting tax evasion by multinational corporations. Additionally, the taxation of non-profits will be scrutinized to curb abuses of tax laws. The separate Wealth Tax regime will be dissolved, integrating its provisions into the new code, while distributed income will now be taxed at 5%.

The new regime will also eliminate many deductions and exemptions that have led to legal disputes. Furthermore, it will unify taxation for domestic and foreign companies, treat capital gains as regular income tax, and apply TDS and TCS across all income forms. Tax audits can now be conducted by Company Secretaries and Cost Management Accountants, enhancing efficiency. The General Anti-Avoidance Rules (GAAR) will also be included to prevent tax evasion tactics. Overall, the DTC is designed to simplify tax compliance through technology integration, reduce compliance costs, and establish strict timelines for tax administration, promising a more taxpayer-friendly system.

OP.ED (CONT'D)

The Effects of Direct Tax Code

- **A Bane for Individual Taxpayers**

The proposed changes under the Direct Tax Code (DTC) could present challenges for individual taxpayers. While the DTC plans to increase deductions from ₹1,00,000 to ₹3,00,000 under Section 80C, it also introduces higher income tax slabs, with rates climbing to 30% and 35%. This structure primarily benefits high-income earners, especially those making over ₹5,00,000. However, the elimination of specific deductions related to salary components like perquisites and medical reimbursements may disproportionately affect lower and middle-income taxpayers, ultimately skewing the fairness of tax distribution.

- **Boon for the Corporate Sector**

The proposed Direct Tax Code (DTC) aims to reduce corporate tax rates from 33% and lower the surcharge from 25%, potentially benefiting many companies, though FMCG and banking sectors may not see similar gains. While this reduction could provide significant financial relief to various industries, it may also lead to decreased government revenue, impacting funding for public welfare programs. The DTC seeks to eliminate several incentives and exemptions, including sector-specific tax benefits for exports and infrastructure development, which previously allowed companies greater flexibility in managing losses. Additionally, the DTC promotes investment by offering up to 150% deductions for corporate expenditure on research and development, and allows tax liability deferral for infrastructure-related companies until full capital recovery, potentially enhancing India's infrastructure.

- **Untaxed to Taxed**

The proposed Direct Tax Code (DTC) aims to increase the number of taxed citizens from 1% to 2% and enhance compliance by simplifying the tax system. Key provisions include implementing Compliance Systems (CS) and Compliance Management Applications (CMA) to facilitate accessible tax auditing, particularly benefiting small businesses and individuals. The integration of technology is expected to lower compliance costs, encouraging those outside the tax system to register. While some may view the inclusion of previously untaxed individuals as a burden, it serves a broader purpose for national welfare. Ultimately, integrating these entities into the tax framework and promoting self-reporting will benefit both the country and its citizens.

- **Enhancing Legal Clarity and Tax Disputes**

The Direct Tax Code (DTC) aims to clarify tax legislation and reduce disputes by introducing the General Anti-Avoidance Rule (GAAR), which prevents individuals from exploiting artificial arrangements to evade taxes. This reform addresses loopholes and tackles the misuse of tax treaties by multinational enterprises, aligning India with G20 standards set by the OECD. Additionally, the DTC simplifies complex issues like dividend stripping and tax shelters, promoting timely dispute resolution through clearly defined processes. Overall, these changes enhance transparency and efficiency in the tax system, fostering public trust and encouraging compliance.

Conclusion: The Direct Tax Code (DTC) aims to consolidate and reform India's direct tax system to enhance economic efficiency and equity while increasing the tax GDP ratio. Although it introduces several positive reforms, such as simplifying tax legislation and improving compliance, it may also favor higher-income groups, raising concerns about economic equality. The DTC's provisions must be thoroughly deliberated nationwide to minimize loopholes before finalization, ensuring that it serves the interests of all taxpayers effectively.

IN THE COURT ROOM : LANDMARK JUDGMENTS OF THE SUPREME COURT OF INDIA



In the case of *State Bank of India And Ors v. The Consortium of Mr. Murari Lal Jan and Mr. Florian Fristch and Anr Civil Appeal Nos. 5023-5024 of 2024*, the Supreme Court has ordered the liquidation of Jet Airways, citing the failure to implement its resolution plan for over five years. Using its powers under Article 142, the Court overturned an NCLAT decision that allowed the airline's ownership to be transferred to the Successful Resolution Applicant (SRA), Jalan Kalrock Consortium (JKC), without fulfilling payment obligations under the plan. The Court directed the NCLT, Mumbai Bench, to appoint a liquidator and begin liquidation proceedings. It also ruled that the SRA's Rs 200 crore investment is forfeited, and lenders can encash the Rs 150 crore Performance Bank Guarantee. This decision reinforces the importance of timely and complete adherence to resolution plans under the Insolvency and Bankruptcy Code (IBC).

SUPREME COURT ORDERS LIQUIDATION OF JET AIRWAYS ON FAILURE OF RESOLUTION PLAN



SUPREME COURT ISSUES STRINGENT GUIDELINES OVER DEMOLITION OF PROPERTIES OF ACCUSED PERSONS :



In *Re: Directions in the matter of Demolition of Structures, W.P. (Civil) No. 295 of 2022* challenging the 'bulldozer actions' against the properties of accused persons, the Supreme Court condemned such actions and held that the properties of accused persons cannot be demolished by the State machinery solely on the ground that they are accused or convicted of a crime. Accordingly, the Court has laid down stringent guidelines to curb such 'bulldozer actions' and stated that if such actions with regards to the demolition of property take place without following the process of law, the family members of the accused will be entitled to compensation. If any officers are found to be found violating any of the guidelines laid down by the Court would face initiation of contempt proceedings in addition to the prosecution. The Court considered 'right to shelter' is one of the facets of Article 21 and observed that punishing persons who have no connection with the crime by demolishing the house where they live is nothing but an anarchy and would amount to a violation of the right to life guaranteed under the Constitution.

IN THE PARLIAMENT



PRESIDENT UNVEILS SANSKRIT AND MAITHILI TRANSLATIONS OF INDIAN CONSTITUTION ON 75TH ANNIVERSARY OF SAMVIDHAN DIWAS

On November 26, 2024, President Droupadi Murmu officially released the Sanskrit and Maithili translations of the Indian Constitution while addressing a joint sitting of both Houses of Parliament. A year-long campaign titled "Hamara Samvidhan, Hamara Swabhimaan" was launched to celebrate the contributions of the Constitution's framers and promote the core values of the Constitution across the country. The Government of India has undertaken an ambitious project to translate the Constitution into all 22 scheduled languages in the 8th Schedule of the Constitution. This initiative underscored the nation's commitment to inclusivity, making the Constitution accessible to people in their native languages.

THE WAQF (AMENDMENT) BILL, 2024


The Waqf (Amendment) Bill, 2024 has been a significant topic of discussion in the Parliament. The bill proposes to rename the Waqf Act to the "United Waqf Management, Empowerment, Efficiency, and Development Act, 1995" (UWMEEDA). The bill removes provisions that allow the Waqf Board to determine whether a property is classified as Waqf. Instead, this authority would shift to local collectors which could lead to increased government control over these properties. The bill allows for non-Muslims to be appointed to key positions within waqf management structures, which critics see as an infringement on Muslim governance of their religious affairs. Currently, an extension has been sought by the Joint Parliamentary Committee to finalize the report before the bill is tabled in the Lok Sabha. The Lok Sabha adopted the motion seeking the extension of the deadline, and the new deadline is to be the last day of the next budget session of the Parliament.


ADANI BRIBE ALLEGATIONS DISRUPT INDIAN PARLIAMENT, OPPOSITION DEMANDS PROBE


India's Parliament faced chaos for days in a row as opposition parties protested allegations against billionaire Gautam Adani. The uproar followed Adani's recent indictment in the U.S. for securities fraud and bribery. Opposition members, particularly from the Congress party, disrupted the lower house, accusing Prime Minister Narendra Modi's government of protecting Adani, a coal tycoon with close ties to Modi. Speaker Om Birla expressed disapproval of the protests and adjourned the session multiple times before ending it for the day. The upper house also experienced disruptions, with Congress calling for an independent investigation into Adani's companies. Leaders from the opposition demanded a joint parliamentary committee to investigate Adani's diverse business interests, which include renewable energy and infrastructure. Adani, 62, is under scrutiny after U.S. prosecutors accused him of a \$265 million bribery scheme related to a solar project in India. The charges include securities fraud and conspiracy, alleging that he misled investors by hiding the bribery.





LEGAL NEWS

 The Madras High Court on November 9 upheld the validity of **Tamil Nadu's Prohibition of Online Gambling and Regulation of Online Games Act, 2022**, but, in a significant setback for the state government, ruled that the ban will be restricted only to games such as betting and gambling whereas it does not extend to games like rummy and poker. This decision emerged from a series of petitions filed by online gaming companies challenging the constitutionality of the Act.

 Effective November 1, 2024, the Securities and Exchange Board of India (SEBI) is enforcing stringent regulations to combat insider trading within mutual funds through the SEBI (Prohibition of Insider Trading) Regulations 2015. The new **Prohibition of Insider Trading Regulations** means that insiders at fund houses cannot sell their investments when privy to confidential information about potential challenges. This aims to foster greater investor confidence and transparency, which will impact compliance obligations for firms.

 The **Reserve Bank of India (RBI)** has introduced significant changes to domestic money transfer regulations, also effective November 1, 2024. These changes enhance Know Your Customer (KYC) requirements, mandating payment system operators to maintain detailed records of beneficiaries, including names and addresses. Additionally, every transaction initiated by a remitter will require validation through an additional factor of authentication (AFA). These measures aim to bolster security and improve the integrity of cash payout services, particularly for recipients without bank accounts.

 On November 11, 2024, **Justice Sanjiv Khanna** has taken office as **India's 51st Chief Justice**, marking a pivotal transition in the Supreme Court. With a tenure of only six months before retirement on May 13, 2025, he will need to address a case backlog exceeding 82,000 cases, including sensitive constitutional issues concerning sedition and marital rape.

 The **Competition Commission of India (CCI)** has implemented new regulations following amendments to the Competition Act in 2023. These regulations aim to provide clarity for businesses, streamline merger processes, and ensure fair competition. The CCI emphasized its commitment to promoting voluntary compliance and raising awareness about the benefits of a competitive market environment.



The Bombay High Court has confirmed and made the interim bail order absolute for Naresh Goyal, the founder of Jet Airways, who was arrested on charges of laundering approximately Rs. 538.62 crore related to loans taken from Canara Bank. The Bail order was made permanent as he is seeking treatment for cancer.





PROGRAMMES

A SEMINAR ON UNDERSTANDING WRITS: EMPOWERING LEGAL RIGHTS AND REMEDIES



LEGAL TRIVIA

Sheldon Cooper has been working as a theoretical physicist since 2009 at the Indian Institute of Science (IISc) situated in Bangalore. IISc is one of the premier public educational and research institutions which is funded by the State. There are 100 professors, 300 assistant professors, 200 administrative officials, 50 canteen workers, 60 mess workers, 120 cleaning staff, and 90 security guards. This university functions towards fulfilling its vision of imparting scientific education of the highest standard as well as it engages in scientific research for contributing to the nation's overall development.

On 2nd day of March 2021, Sheldon was suspended from the university due to allegations of misbehavior and unofficial conduct arising out of complaints filed by a few administrative officials. Sheldon found his suspension to be unreasonable and the allegations to be baseless. He approached the Industrial Tribunal cum Labour Court in Bangalore seeking remedy against his unfair suspension. The case was decided in favour of the university wherein it was held that Sheldon did not have the locus standi to raise this matter before the labour court or industrial tribunal because university cannot be classified as an 'industry' under IDA. Sheldon challenges this decision in the High Court of Karnataka.

**Assume you are one of the judges
who is hearing the above matter
and
adjudicate upon the same
in 200-250 words?**



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