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FROM THE DEAN'S DESK

It is with immense pleasure and a sense of scholarly accomplishment that I extend a warm welcome to the distinguished readership of the *NMIMS Student Law Review*. As we embark on the latest edition, it is gratifying to witness the culmination of dedicated efforts and intellectual rigor that have gone into crafting this legal compendium. The pages ahead unfold a tapestry of original research articles, meticulously curated through a rigorous peer-review process, embodying the essence of our commitment to fostering open, objective, and high-quality legal discourse.

This publication stands as a testament to the vibrant intellectual community at the Kirit P. Mehta School of Law and serves as a testament to our collective pursuit of advancing legal scholarship. Encompassing a broad spectrum of pertinent topics, our publication not only presents diverse perspectives on significant subjects but also acts as a catalyst for heightened awareness, offering intellectual enrichment to our readers.

Heartfelt congratulations are extended to the Editorial Board for their steadfast dedication and significant contributions to the advancement of the NMIMS Student Law Review. I invite you to delve into the insightful analyses, diverse perspectives, and scholarly dialogues presented herein, anticipating that this edition will not only enrich your understanding of contemporary legal challenges but also inspire thoughtful reflections and discussions.

Dr. Durgambini Patel

ACKNOWLEDGMENT

This Eighth Issue of *NMIMS Student Law Review* has been a collective effort right from the moment we conceptualised its theme. We are filled with anticipation as we envision this issue to establish an unprecedented benchmark, surpassing all prior boundaries in terms of its comprehensive scope and profound depth. The variety of topics, explored with utmost precision and intellectual rigor, promises to deliver an unparalleled examination of contemporary issues. We extend our gratitude to our Hon'ble Vice Chancellor, NMIMS University for his constant support and unwavering encouragement throughout the process.

Furthermore, we are immensely thankful to Dr. Durgambini Patel, the Dean of NMIMS Kirit P. Mehta School of Law, for entrusting us with this responsibility of overseeing the curation of this edition of the NMIMS Student Law Review. The unwavering support of everyone involved has helped nurtured this publication into something we had aspired when our work on this first began. We thank the Registrar of NMIMS University for her continued support. We would also thank the administrative department; our faculty colleagues who have always provided the intellectual space and friendship that help sustain projects like these and make them a happy affair. We must also thank our contributors who so encouragingly responded to our call for papers, were very cooperative with keeping deadlines, and thought of us as a worthy venue for publishing their scholarship. It is your work that makes this edition special.

Our team also deserves a special mention: Our Student Head, Mr. Dhruvit Shah; Student Co-Head, Ms. Aswathi Krishna; Student Editor-in-Chief, Ms. Nityashree Bhuvanaprasad; Student Co Editor-in-Chief, Ms. Manasvi Ranjan; Blogs Head - Ms. Avishi Vats; Blogs Editor-in-Chief, Ms. Anaaha Jaishankar; along with the entire team of Content Editors.

Dr. Sonika Bhardwaj

Associate Professor

Editor-in-Chief

FOREWORD

The Board of Editors is delighted to publish the eighth volume of the NMIMS Student Law Review. With this volume, we have carried forward our legacy of elevating pertinent legal discourse, as espoused by bright young legal minds. This volume serves to stimulate legal discussions and advance the development of cutting-edge legal analysis. We thank the authors for sharing their exceptional insight and analysis into pressing contemporary debates.

Niharika Shaiyam & Frazeen Zaman, in *"Reforming Corporate Fraud Enforcement in India: Strengthening the SFIO through Deferred Prosecution Agreements and Whistleblower Protection"*, examine the institutional and procedural limitations of India's corporate fraud enforcement regime. The article critically evaluates the functioning of the Serious Fraud Investigation Office, and in highlighting persistent challenges such as investigative delays and low conviction rates, makes a strong case for the introduction of Deferred Prosecution Agreements as a pragmatic enforcement tool, alongside the expansion of whistleblower protection to the private sector. Further, the paper envisions a more efficient, cooperative, and transparent framework for combating white-collar crime.

In *"Geographical Indications in the India–EU Free Trade Agreement: Legal Architecture, Institutional Barriers, Market Access, and Rural Development Implications,"* Srushti Krishnamurthy Garg & Aadhya Anand offer an extensive analysis of the emerging standalone GI agreement within the broader India–EU trade negotiations. By examining legal asymmetries and institutional divergences, the paper situates GIs at the intersection of trade, cultural identity, and rural development. Through comparative insights and case studies, it highlights the transformative potential of GI protection while advocating for a balanced framework that aligns with India's domestic priorities and global regulatory expectations.

Deepika Singh and Durgesh Raj in *"Algorithmic Accountability: Navigating the Legal and Ethical Frontiers of AI in Corporate Decision-Making,"* explore the complex legal and ethical questions arising from the ever increasing deployment of artificial intelligence in corporate environments. The article explores issues regarding data protection, liability, and transparency -- particularly in light of India's evolving regulatory landscape. By engaging with global frameworks and domestic legal principles, the paper highlights the urgency of

developing robust accountability mechanisms and governance structures that ensure AI systems operate in alignment with fundamental rights and democratic values.

We would like to congratulate the authors and thank our team of editors for their relentless commitment, perseverance, and unwavering dedication to fostering the dissemination of exemplary legal scholarship. Their persistent efforts have played an instrumental role in ensuring the publication of profound and exceptional legal literature of the highest standard.

Board of Editors

Short Article

GEOGRAPHICAL INDICATIONS IN THE INDIA–EU FREE TRADE AGREEMENT: LEGAL ARCHITECTURE, INSTITUTIONAL BARRIERS, MARKET ACCESS, AND RURAL DEVELOPMENT IMPLICATIONS

- SRUSHTI KRISHNAMURTHY GARG & AADHYA ANAND

ABSTRACT

*Geographical Indications ("**GIs**") are powerful instruments for preserving cultural heritage, promoting rural development and enabling access to global markets. While existing scholarship has explored the economic, legal and institutional dimensions of GI protection in India and the European Union, none has exclusively examined the ongoing India–EU GI negotiations as a standalone legal instrument distinct from the broader intellectual property framework of a Free Trade Agreement. This paper fills that gap by critically analysing the legal and institutional contours of the proposed India–EU GI Agreement, an unprecedented initiative decoupled from the IP Chapter of the FTA. Through an examination of treaty frameworks, negotiation developments, and emblematic case studies such as Darjeeling Tea and Champagne, the study identifies key elements of legal architecture, regulatory asymmetries, and enforcement bottlenecks. It contrasts India's sui generis GI regime under the Geographical Indications of Goods (Registration and Protection) Act, 1999, with the EU's mature two-tier system, recently expanded to include non-agricultural GIs. Drawing on comparative insights from the EU–China GI Agreement, the paper evaluates practical mechanisms such as annex-based listings, accelerated recognition procedures, and coordinated enforcement models. It further highlights the transformative potential of enhanced GI protection for rural and artisanal communities through quality branding, value addition, and sustainable livelihoods. Ultimately, the paper advocates for a balanced, development-sensitive framework that aligns India's domestic priorities with the EU's regulatory expectations, positioning the proposed India–EU GI Agreement as a blueprint for equitable and culturally grounded GI diplomacy across the Global South.*

Keywords: Geographical Indications (GIs), TRIPS-plus protection, India-EU GI Agreement, Mutual Recognition Mechanisms, Intellectual Property Governance

I. INTRODUCTION

When global fashion giants turn centuries-old craftsmanship into high-end commodities, the line between inspiration and appropriation blurs, raising urgent questions about ownership, recognition, and justice. The recent controversy surrounding Prada's alleged use of the GI-protected Kolhapuri chappal design without consent has reignited attention on the inadequacies of India's GI protection framework and the broader global imbalance in cultural IP governance. In this context, the proposed standalone India–EU GI Agreement [1]represents a legal and diplomatic inflection point. Unlike traditional Intellectual Property ("**IP**") Chapters embedded within Free Trade Agreement ("**FTA**"), this dedicated GI agreement signals a shift toward recognizing GIs as distinct tools of economic empowerment, cultural preservation, and rural development.

When handwoven silk sarees from Kanchipuram[2] or a scrumptious laddu from the Tirumala Tirupati Devasthanam[3] command global recognition, it is not merely the product but an entire legacy of place, people, and practice that crosses borders. In the increasingly globalized world of international trade, GIs offer a rare counter current – anchoring commerce in culture, authenticity, and origin. As economic instruments, they promise not just market distinction, but rural upliftment too, as they challenge the limits of traditional knowledge. The proposed India-EU GI agreement emerges at a time when questions of equity, identity, and trade justice intersect more urgently than ever before.

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[1] *European Commission – Trade*, EU-India agreements, *EU Trade Relations: Countries and Regions* (last updated Dec. 6, 2025), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements_en (https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements_en?utm_source=chatgpt.com) [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements_en.

[2] *GI Tag Product – Kancheevaram Silks and Sarees*, *Kancheepuram District – Government of Tamil Nadu* (2026), https://kancheepuram.nic.in/about-district/gi-tag-product-kancheevaram-silks-and-sarees/ (last accessed Mar. 2, 2026).

[3] *TTD Issues Legal Notice to Vendors for Tirupati Laddu GI Tag Misuse*, *New Indian Express* (Jun. 7, 2025), https://www.newindianexpress.com/states/andhra-pradesh/2025/Jun/07/ttd-issues-legal-notice-to-vendors-for-tirupati-laddu-gi-tag-misuse-3.

II. LEGAL FRAMEWORK

A. International Framework

Historical references, like the mention of Greek Feta Cheese in Homer's *Odyssey*[4] and accounts of Egyptian brick makers, indicating the origin of their products as a marketing tool to secure premium prices[5], prove that the association of products with their distinctive place of origin has been in vogue for a long time now. The modern conception of GIs attained international recognition through the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights ("**TRIPS Agreement**"), specifically in Art. 22 to 24. Art. 22(1) defines GIs as indications that identify a good, as originating from a specific territory, region, or locality, where its quality, reputation, or other characteristic is essentially attributable to its geographical origin.[6] This formulation reflects a broad understanding of GIs, incorporating not only the physical attributes of the location but also cultural and reputational dimensions. Article 23[7] provides additional protection for GIs of wines and spirits, beyond the general safeguards contained in the previous Article. Article 24[8] enables negotiations and exceptions, allowing WTO members to resolve conflicts, preserve prior trademarks and tailor protection to national contexts.

Historically, the Paris Convention 1883[9] and the Madrid Agreement 1891[10] introduced the notion of indications of source or indications of origin, yet they did not provide a formal or comprehensive definition of GI. A more concrete step toward definitional clarity came with the Lisbon Agreement for the Protection of Appellations of Origin

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[4] A. MAHESHWARI, *Building Brands Through GIs,* in *WTO, TRIPS and Geographical Indications (GIs)* 75, 80 (T.K. ROUT & B. MAJHI eds., 1st ed. 2014).

[5] T.K. ROUT, *GIs in the Domain of Intellectual Property Rights (IPRs),* in *WTO, TRIPS and Geographical Indications (GIs)* 8, 9 (T.K. ROUT & B. MAJHI eds., 1st ed. 2014).

[6] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 22, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

[7] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 23, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

[8] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

[9] Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305.

[10] Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, Apr. 14, 1891, 828 U.N.T.S. 163.

and their International Registration 1958.[11] Though it did not use the term geographical indication, Article 2(1)[12] of the Lisbon Agreement defined appellations of origin as the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics of which are exclusively or essentially due to the geographical environment, including natural and human factors.

This definition, while foundational, remains narrower than the TRIPS concept. It requires that the name be geographical and that the product's qualities be intrinsically linked to that environment. In contrast, the TRIPS definition allows for broader coverage, including reputation as a ground for protection and does not mandate the indication to be a geographical name per se. Thus, TRIPS represents a shift from the strict terroir-based protection under Lisbon to a more inclusive and commercially flexible regime.

B. India's GI regime

Given its history of rich cultural heritage and as a member of the TRIPS,[13] India opted for *a sui generis* model for GI protection thus enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999 ("**GI Act, 1999**").[14] The legislation contemplates comprehensive legal protection, prevention of unauthorized use and protection of consumers from deceptive practices. India's regime protects not only agricultural products, but also non-agricultural ones like handicrafts, textiles, etc. In fact, the latter constitutes about 53% of the total registered GIs.

The Ministry of Commerce and Industry and the Geographical Indications Registry ("**GIR**"), leading institutions in GI administration and protection, have distinct yet

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[11] Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, Oct. 31, 1958, 923 U.N.T.S. 205.

[12] Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration art. 2(1), Oct. 31, 1958, 923 U.N.T.S. 205.

[13] See Controller General of Patents, Designs & Trade Marks, *About Geographical Indications*, Intellectual Property India (India), https://ipindia.gov.in/GI/about_us_gi (last visited Mar. 2, 2026).

[14] Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, Acts of Parliament, 1999 (India).

interlinked roles. The Ministry, specifically the Department for Promotion of Industry and Internal Trade ("**DPIIT**") oversees policy making, international negotiations and legal reforms.[15] The GI registry in Chennai, operating under the Controller General of Patents, Designs & Trade Marks is supervised by the DPIIT and primarily tasked with the processing of applications, maintenance of records, legal adjudication, etc.

India has a modest registration rate in comparison to its international counterparts. In over 1,158 applications received in 20 years, the grant rate of GIs is a concerning 55%, thus reflecting a rigorous vetting process. Official records of the GI registry reveal that 697 GIs have been registered as of May 2025.[16]

The EU's GI regime can be regarded as one of the most advanced globally, offering robust protection to product names that are linked to a specific geographical origin and possess qualities, reputation, or characteristics inherent to that origin. The 2012 Regulation (EU) No 1151/2012[17] established a unified system to protect GIs for agricultural products and foodstuffs, including wines, spirits, and aromatized wines. While key schemes such as Protected Designation of Origin ("**PDO**"), Protected Geographical Indication ("**PGI**") and Traditional Specialty Guaranteed ("**TSG**") were codified by this regulation, significant exclusions remained.

Due to the omission of non-agricultural products such as crafts, industrial goods, and traditional artisanal items from the scope of the 2012 EU regulation, producers across the bloc were forced to rely on less specific protection mechanisms such as collective trademarks under the EU Trademark Regulation. To address this gap, the EU adopted Regulation (EU) 2023/2411[18] in October 2023, establishing for the first time, GI

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[15] Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, §§ 3–7, Acts of Parliament, 1999 (India); Controller General of Patents, Designs & Trade Marks, *About Geographical Indications*, Intellectual Property India (India), https://ipindia.gov.in/GI/about_us_gi (last visited Mar. 2, 2026).

[16] Geographical Indications Registry, *Total Registered GI Details of GI Applications in India*, https://ipindia.gov.in/registered-gls.htm (last visited June 16, 2025).

[17] Regulation 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, 2012 O.J. (L 343) 1.

[18] Regulation 2023/2411 of the European Parliament and of the Council of 18 October 2023, 2023 O.J. (L 123) 1.

protection for non-agricultural products, thereby creating **a** harmonised EU-wide system to safeguard regional artisanal heritage.

The Directorate-General for Agriculture and Rural Development ("**DG AGRI**") is primarily responsible for administering the GI register for agricultural products, including Protected Designation of Origin ("**PDO**") and Protected Geographical Indication ("**PGI**") labels.[19] DG AGRI oversees application processing, regulatory compliance, and updates to the official register. Complementing this, the European Union Intellectual Property Office ("**EUIPO**") plays a critical role in certification marks**,** dispute resolution, and database management.[20] Under the new Regulation (EU) 2023/2411,[21] which extends GI protection to non-agricultural goods, EUIPO has managed the registration and enforcement system for such products, ensuring harmonisation across member states. Together, DG AGRI and EUIPO ensure both sectoral expertise and institutional coordination, thereby strengthening the EU's globally recognised GI framework.

Based on the data encompassing existing GIs in the EU,[22] there are a total of 3,953 registered GIs covering agricultural products and foodstuffs. Expected to enter into force in December 2025, Regulation (EU) 2023/2411 will significantly expand the EU's GI portfolio.

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[19] European Commission, *Geographical Indications and Quality Schemes Explained*, Directorate-General for Agriculture and Rural Development, https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en (last visited Mar. 2, 2026).

[20] European Union Intellectual Property Office, *The Office*, https://www.euipo.europa.eu/en/about-us/the-office (last visited Mar. 2, 2026).

[21] Regulation (EU) 2023/241 of the European Parliament and of the Council of 13 February 2023 on geographical indications for agricultural products, wines and spirit drinks, and amending and repealing certain prior regulations, 2023 O.J. (L 39) 1.

[22] European Commission, *eAmbrosia: Union Register of Geographical Indications*,https://ec.europa.eu/agriculture/eambrosia/geographical-indications-register/ (last visited June 16, 2025).

III. GI AGREEMENT IN THE INDIA EU-FTA NEGOTIATIONS

A. Historical Context

Since introducing GIs in international trade treaties during the Uruguay rounds of trade negotiations, the EU has essentially positioned itself as a strong advocate for more stringent domestic protection of Gis. Further, the EU is also a strong proponent of the assimilation of mutual GI agreements, be it standalone[23] or integrated into the larger FTA framework[24] in its international trade dealings. A perusal of WIPO's IP Facts and Figures 2024[25] show that, until recently in 2021, the EU held the highest number of registered GIs globally, a position it maintained before being surpassed by China.[26] While GIs constitute a minor share of global trade, estimated at <1% of EU-India commerce, their political salience in EU trade policy is disproportionate, as evidenced by its insistence on GI Chapters in recent FTA dealings. In ongoing negotiations with Australia and in the ratified FTA with New Zealand[27], the EU has indicated that GIs are an essential element in any trade agreement.[28]

Existing empirical results exhibit that GIs can assume a more significant role in international trade when the importer has no GI protected product in the same category.[29] In furtherance of this empirical view, India and the European Union exhibit largely distinct portfolios of GIs, with minimal convergence in product categories. The GI registry's data[30] shows that India's GI portfolio predominantly comprises handicrafts and textiles, accounting for 53% of its GIs. Agricultural products and

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[23] Agreement on Geographical Indications, Eur.–China, Sept. 14, 2020, 2021 O.J. (L 185) 3, Agreement on the Protection of Designations of Origin and Geographical Indications, Eur.–Switz., Jan. 21, 2011, 2011 O.J. (L 297) 3.

[24] Free Trade Agreement Between the European Union and Its Member States and the Republic of Korea, 2011 O.J. (L 127) 6 (signed Oct. 6, 2010) annex 10-A.

[25] World Intellectual Property Organization, *IP Facts and Figures 2024*, at 28, https://www.wipo.int/publications/en/details.jsp?id=4761&plang=EN (last visited June 16, 2025).

[26] D. GIOVANNUCCI ET AL., *Guide to Geographical Indications: Linking Products and Their Origins* (Int'l Trade Ctr. 2009).

[27] Negations concluded in July 2023, ratification finalized, and the agreement came into effect 1 May 2024.

[28] TÖRÖK ET AL., *Understanding the Real-World Impact of Geographical Indications: A Critical Review of the Empirical Economic Literature*, 12 *Sustainability* 1 (2020).

[29] Z. SORGHO & B. LARUE, *Do Geographical Indications Really Increase Trade? A Conceptual Framework and Empirics*, 16 *J. Agric. & Food Indus. Org.* (2018).

[30] Controller General of Patents, Designs & Trade Marks, *Registered Geographical Indications* (India), https://ipindia.gov.in/GI/registered_gls (last visited Mar. 2, 2026).

foodstuffs, such as Darjeeling tea and Basmati rice, make up about 41% of India's total. The EU's GIs, on the other hand, are largely skewed towards wines & spirits and agricultural food products, with the former alone constituting about 51% of the bloc's GI portfolio.[31]

Given these considerations, and the significant theoretical importance both India and the European Union attribute to geographical indication protection, the two sides sought to institutionalise their cooperation within a broader trade framework. Coupled with their strong and expanding economic ties, this led to the launch of negotiations for a Broad-based Trade and Investment Agreement ("**BTIA**") in 2007.[32]. In addition to trade in goods and services, wide areas like investment, geographical indicators, intellectual property were also ambitiously covered. GIs were not treated as a standalone priority during the former BTIA negotiations; rather, they were included as a subset within the broader intellectual property rights chapter alongside other domains. It has become evident that the initial pursuit of a comprehensive, all-encompassing agreement was overly ambitious, ultimately bringing the negotiations to a virtual standstill in 2013.[33] Additionally, EU's then internal GI framework, which excluded non-agricultural GIs, led to divergence in aspirations as non-agricultural products like handicrafts constituted a sizeable portion of India's portfolio.

B. Current Negotiations

Following the EU-India Summit in 2017, the two sides comprehensively evaluated whether the conditions were right to resume negotiations.[34] On 17 June 2022, the European Union and India formally relaunched negotiations on a balanced, ambitious,

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[31] European Union Intellectual Property Office, *GI View – Search the Geographical Indications Database*, https://www.tmdn.org/giview/gi/search?databases=AGRI (last visited Mar. 2, 2026).

[32] European Commission, *EU–India Trade Negotiations*, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india_en (last visited Mar. 2, 2026).

[33] RAJENDRA K. JAIN & GULSHAN SACHDEVA, *India–EU Strategic Partnership: A New Roadmap*, 17 *Asia Eur. J.* 1 (2019).

[34] European Commission, *Joint Statement: 14th India–EU Summit, New Delhi, 6 October 2017*,https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_3743 (last visited June 15, 2025).

comprehensive, and mutually beneficial free trade agreement, while simultaneously initiating parallel discussions on an investment protection agreement and a GI agreement.[35] Following the visit of a College of Commissioners to India in February 2025, European Commission President Ursula von der Leyen and Indian Prime Minister Narendra Modi tasked their respective negotiating teams to aim towards concluding an all-compassing FTA by the end of 2025, while comprehensively advancing negotiations on the investment protection and GI Agreements.[36]

A distinct tripartite framework governs the current India–EU trade discussions, comprising**:**

First. FTA,

Second. investment protection agreement, and

Third. a standalone GI agreement.

By decoupling GI from the FTA's IP Chapter, this structure ensures that progress or setbacks in GI negotiations do not impede broader FTA deliberations[37]. It also underscores the heightened priority both parties accord to GI protection, materializing this focus through an independent legal instrument. While the FTA/IP track has seen 11 rounds of publicly documented talks as per usual EU practice, the GI Agreement remains surprisingly confidential, with unofficial sources indicating at least two negotiation rounds have taken place as of 2024.[38]

Presently, GI owners in India and the EU need to make direct applications in each other's jurisdictions for recognition. Against this backdrop, proactive registration has

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[35]European Commission, *EU and India Kick-Start Ambitious Trade Agenda* (June 17, 2022), https://policy.trade.ec.europa.eu/news/eu-and-india-kick-start-ambitious-trade-agenda-2022-06-17_en (last visited June 15, 2025).

[36] European Commission, *Leaders' Statement Following the Visit of President of the European Commission Ursula von der Leyen and College of Commissioners to India, 27–28 February 2025,*https://ec.europa.eu/commission/presscorner/detail/en/statement_25_647 (last visited June 15, 2025).

[37] European Parliamentary Research Service, *EU-India Free Trade Agreement* (EPRS BRIEFING No. PE 757.588 EN, Jan. 2024), at [page] (available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757588/EPRS_BRI(2024)757588_EN.pdf).

[38] Anastasiia Kyrylenko, *EU and India in Negotiations over a Geographical Indications Agreement*, IPKat (Apr. 29, 2023), https://ipkitten.blogspot.com/2023/04/eu-and-india-in-negotiations-over.html

been recorded on the part of EU producers, while Indian producers have thus far obtained **GI** protection within the European Union for only two products - Darjeeling tea and Kangra tea. The registration process remains highly protracted and procedurally demanding. This is exemplified by the ongoing application for Basmati rice, which has been under review since 2018 due to formal objections raised by Pakistan and Nepal. [39]

C. Challenges addressed

While streamlining of mutual registration and recognition is a welcome initiative, the mismatch in priorities between the two democracies is primarily two-fold. The EU's existing GI framework historically extended protection only to agricultural products, including wines and spirits, thereby excluding non-agricultural goods such as handicrafts from formal recognition. As a result, producers of such products have been relegated to relying on the relatively weaker EU collective mark system, which lacks the specificity and enforcement mechanisms of GI protection. During the earlier BTIA negotiations, India exhibited reluctance to adopt TRIPS-plus standards advocated by the EU, as these exceed the minimum protection mandated under the WTO's TRIPS Agreement, raising concerns over regulatory asymmetry and policy autonomy.[40]

Interestingly, in trade negotiations with the UK, leaked texts indicate that India is now seemingly willing to adhere to EU-like scope for protection of all GIs.[41] The India-UK agreement replicates word-to-word the scope of protection as contained in Article 13

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[39] Pratyush Nath Upreti, *The Battle for Geographical Indication Protection of Basmati Rice: A View from Nepal*, 54 *Int'l Rev. Intell. Prop. & Competition L.* 710 (2023), https://doi.org/10.1007/s40319-023-01323-w (discussing opposed EU GI application for basmati rice and reasons for Pakistan and Nepal objections)

[40] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

[41] Abhijit Das & Sangeeta Shashikant, *TRIPS-Plus Provisions in the India–UK FTA Negotiations*, 58 *Econ. & Pol. Wkly.* 32, 35–37 (2023) (analyzing leaked negotiating texts suggesting expanded GI commitments by India).

of Regulation (EU) No. 1151/2012. [42]Thus, it is plausible that India might agree to the TRIPS-plus protection this time around.

However, the biggest development since the 2007-13 negotiations so far is the ongoing EU GI reform. In 2022, the European Commission proposed an EU-wide GI protection framework for craft and industrial goods, which includes non-agricultural products like handicrafts[43]. Once approved, this new regime will allow Indian handicraft GIs to be listed under the India-EU GI agreement, effectively addressing India's concern that the deal previously covered only a narrow subset of its GI repertoire. This amended regulation is expected to come into force from December 2025[44], thus significantly boosting prospects for a comprehensive agreement to be concluded shortly thereafter.

Once ratified, the agreement allows mutual recognition of GIs reducing costs, promoting trade and enduring protection in both markets.

D. Comparative insights with the EU-China GI agreement

In the absence of publicly available negotiation texts, the EU–China GI Agreement offers a useful reference for anticipating the contours of an India–EU GI framework. The agreement, which initially secured mutual protection for 100 GIs from each side, safeguards products against imitation and misuse, while promoting economic development, rural sustainability and cultural exchange through the recognition of regional identities.[45] The agreement also includes a mechanism for expansion, with an additional list of 175 European and 175 Chinese GIs already in process for mutual

[42] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 Nov. 2012 on Quality Schemes for Agricultural Products and Foodstuffs art. 13, 2012 O.J. (L 343) 1.

[43] Proposal for a Regulation of the European Parliament and of the Council on the Protection of Geographical Indications for Craft and Industrial Products, COM (2022) 174 final (Apr. 13, 2022).

[44] European Commission, *Geographical Indications for Craft and Industrial Products* (2025), https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property/geographical-indications-craft-and-industrial-products_en (last visited June 16, 2025).

[45] European External Action Service, *EU–China Agreement Protecting Geographical Indications Enters into Force* (2025), https://www.eeas.europa.eu/delegations/china/eu-china-agreement-protecting-geographical-indications-enters-force_en

recognition.[46] Further, the agreement established a Joint Committee to oversee implementation, resolve disputes and review potential updates, thus offering a model for ongoing regulatory cooperation under the India-EU GI agreement.

IV. CASE STUDY: DARJEELING TEA AND THE EVOLUTION OF CROSS-BORDER GEOGRAPHICAL INDICATION GOVERNANCE

A. Darjeeling Tea

Among the myriad agricultural products vying for GI protection in the global trade arena, Darjeeling tea has emerged as a symbol of successful cross-border IP recognition. As India and the EU negotiate deeper FTA commitments, the journey of Darjeeling tea-from plantation to protection-offers critical insights into legal harmonization, institutional cooperation, and enforcement gaps in transnational GI governance.

Darjeeling tea has been cultivated since 1830s , first introduced by the British planters using Chinese tea bushes (*Camellia sinensis var. sinensis*)[47], owes its signature muscatel flavour and floral aroma to the region's unique soil, altitude, and climate.[48] Darjeeling tea is protected under India's GI Act (2004 – 2005)[49], in the EU PGI (2011).[50]

Darjeeling tea currently accounts for only a negligible share of India's overall tea production, recently around 5.6 million kgs in 2024, down from 6.1 million kgs in 2023

[46] European Parliamentary Research Service, *EU–China Geographical Indications Agreement* (EPRS, July 2020), https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/652045/EPRS_ATA(2020)652045_EN.pdf

[47] Commission Implementing Regulation (EU) No. 1050/2011 of 20 October 2011, establishing rules for the management and distribution of documents via the European register of dossiers, 2011 O.J. (L 275) 3, https://eur-lex.europa.eu/eli/reg_impl/2011/1050/oj/eng (last visited June 16, 2025).

[48] Tea Board of India, *Tea Board of India*, https://www.teaboard.gov.in (last visited June 22, 2025).

[49] *ibid*

[50] *ibid*

and a far cry from 14 million kg in the 1970s[51]. However, Darjeeling tea is highly valued in the global markets with Germany, the USA, and Japan being the top importers.

The industry currently comprises about 87 estates, down from the previous years, with around 12 gardens closed as of 2025.[52] The sector supports thousands of hill farmers, workers, and the GI status is crucial for protecting rural livelihoods by preventing substitution and ensuring that the economic benefits of the premium products remain within the region. This exclusivity helps maintain higher incomes for local communities and supports sustainable agricultural practices, as the GI framework incentivizes quality over quantity and discourages environmentally harmful practices. The protection of Darjeeling tea's reputation and market values is thus closely linked to the livelihoods of thousands of families in the region.

The global reputation of Darjeeling tea has led to instances of misuse including false labelling and unauthorised use of the 'Darjeeling' name by producers outside the designated region.[53] Indian GI law prohibits the use of the Darjeeling label by unauthorised producers, mirroring the protection afforded to products like Champagne in the EU.[54] The Tea Board in India is vested with the authority to administer and enforce these protections, ensuring that only the authentic variety reaches the market.[55]

The recognition and protection of Darjeeling tea as a GI have occasionally led to disputes with neighbouring countries regarding the delineation of geographical areas and the use of the Darjeeling name. Similar issues have arisen with Basmati rice, where

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[51] *The Telegraph*, *Bengal Sees Lowest Production of Darjeeling Tea in Its 169-Year History* (May 27, 2023), https://www.telegraphindia.com/west-bengal/bengal-sees-lowest-production-of-darjeeling-tea-in-its-169-year-history-prnt/cid/2088574 (last visited June 22, 2025).

[52] *ibid*

[53] WIPO, *Presentation by Mr. Kaushik Basu: Darjeeling Tea – A Geographical Indication (GI)*, WIPO/GEO/LIM/11/11 (Worldwide Symposium on Geographical Indications, Lima, June 22–24, 2011), https://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_11.pdf (last visited June 22, 2025).

[54] S.C. Srivastava, *Protecting the Geographical Indication for Darjeeling Tea*, in Peter Gallagher, Patrick Low & Andrew L. Stoler eds., *Managing the Challenges of WTO Participation: 45 Case Studies* (Cambridge Univ. Press 2005), Case 16, https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm (last visited June 22, 2025).

[55] Anna Grist, *…and Tradition Linked Quality Signs: The Case of Darjeeling Tea, India* (Jan. 2011), https://grist.org/wp-content/uploads/2011/01/darjeelingtea.pdf (last visited June 22, 2025).

India's 2018 application for GI protection in the European Unio triggered formal objections of both countries and cannot be exclusively associated with India. Nepal also raised concerns regarding certain varieties grown within its territory. These objections delayed the EU registration process and illustrate the complexities of cross-border GI protection when a product's historical cultivation predates modern political boundaries. [56]

The GI enforced exclusivity of Darjeeling tea has been instrumental in building and maintaining its brand reputation, with which it, in turn, supports premium pricing and market access. The protection of the Darjeeling name ensures that the economic benefits of its reputation accrue to the region's farmers and workers, rather than being diluted by counterfeit or substitute products. The industry's focus on quality and authenticity, underpinned by GI protection, has helped sustain rural income and support community development in the Darjeeling hills.

B. Case Study: Champagne

Champagne is a legally protected sparkling wine produced exclusively in the Champagne region of France, symbolizing quality, exclusivity and geographic origin. Its identity is defined by strict regulations, the regions unique terroir, and the traditional method champenoise, under which a second fermentation occurs in the bottle to create its characteristic bubbles and complex flavour profile. [57]

Champagne's reputation for quality and luxury is inseparable from its geographical origin. Its Protected Designation of Origin ("**PDO**") status with the European Union ensures that every aspect of production, from growing the grapes to bottling, occurs

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[56] Pratyush Nath Upreti, *The Battle for Geographical Indication Protection of Basmati Rice: A View from Nepal*, 54 *Int'l Rev. Intell. Prop. & Competition L.* 710, 714–22 (2023).

[57] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 23, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (providing enhanced protection for wines and spirits); Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 314–18 (2010) (discussing Champagne as a paradigmatic GI and the role of terroir and production method in its protection).

within the Champagne region.[58] This strict regulation has made this bubbly king a global symbol of celebration and prestige, and a benchmark for sparkling wines worldwide.

Champagne enjoys robust legal protection both within the EU and internationally. In the EU, it is protected as a PDO, meaning that only wines produced in the Champagne region according to specific rules may bear the name 'Champagne.' The EU system provides a double-layer protection, at the EU-wide level and through domestic laws in Member States.[59] This framework is more stringent than the minimum standards required under international agreements, as it prohibits any use of the name 'Champagne' for products not originating from the specific region, even if accompanied by qualifiers such as style or type.

Internationally, champagne's name is protected under TRIPS, particularly Article 23, which provides higher protection for wines and spirits. Article 23 allows rights-holders to prevent the use of the GI products not originating from the designated region, without the need to prove consumer confusion or unfair competition.[60] This is in contrast to Article 22, which applies to other products and requires evidence of misleading the public or unfair competition. Under EU law, even parallel use of the name with a geographical qualifier, such as "Canadian Champagne" is prohibited, whereas TRIPS minimum standards allow such use if the true origin is indicated.[61]

The protection of champagne's name extends to its use in processed products. Recent EU Regulations clarify that champagne GI can only be used in the name of a processed product, like chocolates that contain the liquor, if it is a necessary attribute

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[58] European Commission, *Geographical Indications and Quality Schemes Explained* https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en accessed 22 June 2025.

[59] *A Case of Champagne: A Study of Geographical Indications*, 2 Bond Corp. Governance eJ. (2013), https://www8.austlii.edu.au/au/journals/BondCGeJl/2013/2.pdf (last visited June 22, 2025).

[60] *Extended Protection of Wines and Spirits under TRIPS Agreement*, Indo Global J. Legal Stud. & Insights (2024) (last visited June 22, 2025).

[61] *ibid*

of the product.[62] This protects the reputation and quality associated with the GI and thus is not diluted.

Champagne is a cornerstone of the EU's Agri-food export economy. In the year 2023, EU exported champagne and sparkling wine worth $5.73 billion[63]. The EU has proactively promoted Champagne's protection in other key markets through trade agreements such as the Comprehensive Economic and Trade Agreement ("**CETA**") with Canada and the EU-Japan Economic Partnership Agreement. [64]

In the year 2024, the USA was the largest export market, with 27.4 million bottles, worth approximately $885 million.[65] Beyond trade, Champagne supports tourism, enables premium pricing for local producers and foster investment in quality, innovation and sustainable practices.

India represents a small but upcoming market for champagne, driven by rising demand for luxury products among affluent consumers. Although the sales in India are modest when compared to the USA or EU, the market has potential for expansion as the middle-class income groups grow and consumer tastes change.[66]

Champagne's GI was registered in 2005 in India under the Geographical Indications Act of 1999, thus providing a legal basis for its protection within the country.[67] This registration is vital as it exemplifies how an EU GI can be recognized and protected in non-markets. In the context of the ongoing EU-India FTA negotiations, champagne is

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[62] Magdalena Borucka & Louise Popple, *Changes to the EU Regulations on Geographical Indications for Wines, Spirit Drinks and Agricultural Products* (Taylor Wessing, Dec. 12, 2023), https://www.taylorwessing.com/en/insights-and-events/insights/2023/12/bu-changes-to-the-eu-regulations-on-wines-spirit-drinks-and-agricultural-products (last visited June 22, 2025).

[63] US the Only Bright Spot for Champagne' (Wine Searcher, Mar. 2025), https://www.wine-searcher.com/m/2025/03/us-the-only-bright-spot-for-champagne (last visited June 22, 2025).

[64] *ibid*

[65] *ibid*

[66] Comité Champagne (Comité Interprofessionnel du Vin de Champagne), *2023 Champagne Shipments and Export Report* (2024) (reporting comparatively low shipment volumes to India relative to the U.S. and EU markets); Organisation Internationale de la Vigne et du Vin (OIV), *State of the World Vine and Wine Sector 2023* (2024) (noting emerging growth in non-traditional luxury wine markets including India).

[67] Registry.in, Finding in INDRP/346: "Champagne.in" Domain Dispute, https://www.registry.in/s3-assets/Champagnein.pdf (last visited June 22, 2025).

often cited as a model for how automatic recognition or expedited certifications of foreign GIs could be implemented. Currently, the Indian law allows the limited use of foreign GI names if accompanied by a geographical qualifier, reflecting the minimum standards under Article 24 of TRIPS. However, the FTA could provide an opportunity to clarify and strengthen the enforcement of Champagne's name in India, addressing issues such as misleading labels, such as 'Champagne wine' and counterfeit products.

V. INSTITUTIONAL AND REGULATORY BARRIERS TO MUTUAL GI RECOGNITION

A. Scope of Protection

As discussed earlier, the mismatch in the scope of protection of agricultural and non-agricultural GIs was one of the primary areas of disagreement in earlier negotiations. Given India's non-membership in the Lisbon Agreement 1958 and its Geneva Act 2015[68], the mutual recognition of non-agricultural GIs becomes essential for the materialization of a GI agreement, especially since the Geneva Act enables broader categorical protection beyond agricultural products. Regulation (EU) 2023/2411[69] is a welcome development in the ongoing GI negotiations. [70]

However, as it is set to enter into force only in December 2025, the conclusion of an agreement by that time appears unlikely. India is expected to assess the practical scope and enforcement of protection under the new regulation, particularly for non-agricultural products, before making binding commitments. While the EU's proposed regime offers protection comparable to, or exceeding, India's in enforcement terms, India's existing GI framework remains robust for domestic non-agricultural goods.

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[68] Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Oct. 31, 1958, 923 U.N.T.S. 205.
Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, May 20, 2015, WIPO Doc. LI/GA/15/10.

[69] Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, 2023 O.J. (L 2411) 1.

[70] Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Oct. 31, 1958, 923 U.N.T.S. 205; Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, May 20, 2015, WIPO Doc. LI/GA/15/10; Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 Oct. 2023 on the Protection of Geographical Indications for Craft and Industrial Products, 2023 O.J. (L 2411) 1.

B. Regulatory Processes

India's Quality Control Orders ("**QCOs**") mandate certification and a Bureau of Indian Standards ("**BIS**") inspection *inter alia* before any product, including GI-tagged goods can enter the domestic market. These requirements envisage in-country audits by Indian inspectors, which the EU as well as other trade partners such as the USA perceives as onerous, duplicative and protectionist[71]. Discussed for the first time during the eleventh round of the FTA negotiations,[72] India hinted that measures such as online applications and accreditation of the EU Conformity Assessment Bodies **("CABs"**) may be considered to address the bloc's concerns regarding the QCOs, which it views as somewhat protectionist.

Expressing its commitment to concluding a comprehensive GI agreement[73], the EU envisages a fast-track mutual recognition mechanism, where EU GIs would essentially bypass India's national GI registry and obtain near-automatic recognition, subject to scrutinized formal checks.[74] This divergence highlights a fundamental legal barrier rooted in two conflicting principles. The first being negotiating trust and balancing with sovereignty, where the EU advocates a trust-based, streamlined recognition, while India maintains its rigorous quality-control regime to safeguard authenticity and support artisanal communities. The other being regulatory sovereignty as opposed to liberalization, where India prioritizes protective oversight even at the cost of procedural delays, while the EU emphasizes liberalized GI access via predictable and expedited procedures. Bridging these legal philosophies will require enhanced mutual

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[71] Bureau of Indian Standards, *Quality Control Orders under the BIS Act, 2016*; World Trade Organization, *Trade Policy Review: India* ¶ 3.45, WT/TPR/S/431 (2021) (noting international concerns over India's domestic inspection and certification requirements as perceived barriers to trade).

[72] European Commission Directorate-General for Trade, Public Report of the Eleventh Round of Negotiations on a Free Trade Agreement between the European Union and India 2 (May 2025), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india_en

[73] European Parliament, Resolution of 7 July 2022 on EU–India Future Trade and Investment Cooperation, [2023] O.J. (C 47) 23, ¶ 57.

[74] European Union Intellectual Property Helpdesk, EU–India Agreement on Geographical Indications (GIs) Means Fast-Track GI Registrations (July 16, 2023), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/eu-india-agreement-geographical-indications-gis-means-fast-track-gi-registrations-2023-07-16_en (last visited June 22, 2025).

trust in inspection protocols, data exchange, and conformity assessment systems, essential to harmonizing fast-track recognition with India's regulatory safeguards.

C. Institutional Capacity

GI protection regimes in India and the EU differ significantly in their institutional structures, leading to challenges in harmonization and delays in recognition. India has a centralized system with a single GI Registry ("**GIR**") in Chennai handling all applications. Applications must be filed in the prescribed form to the GIR, following which a preliminary scrutiny and examination will be conducted by the Registry, and a show cause notice will be issued if need be.[75] The GIR is also responsible for adjudicating oppositions to registration, thereby performing quasi-judicial functions in addition to its core roles of filing and examination. This concentration of responsibilities overburdens the single GIR office, contributing to procedural delays.

In contrast, the EU's multi-tier system, though decentralized, affords stronger enforcement. Applications are first filled and scrutinised at the national level by Member States designated authorities, following which successful applications are submitted for further evaluation to the EUIPO.[76] A major challenge is the divergence in the status of ex-officio customs enforcement. Unlike the EU, Indian customs do not automatically block GI-infringing imports unless a court order is obtained. These institutional differences in procedures significantly slow down approvals, potentially making mutual recognition less effective. For instance, the sheer multiplicity in member state procedures has resulted in the GI application for Basmati rice in the EU pending since 2018. In the absence of a GI Agreement, recognition of a domestic GI for Basmati in India does not automatically translate to EU recognition.

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[75] Controller General of Patents, Designs & Trademarks, The Registration Process – GI, OFFICE OF THE CONTROLLER GEN. OF PATENTS, DESIGNS & TRADEMARKS, GOV'T OF INDIA, https://www.ipindia.gov.in/the-registration-process-gi.htm (last visited June 18, 2025).

[76] European Union Intellectual Property Office, EU Regulation on Geographical Indication Protection for Craft and Industrial Products Enters into Force (Feb. 28, 2024), https://www.euipo.europa.eu/en/news/eu-regulation-on-geographical-indication-protection-for-craft-and-industrial-products-enters-into-force (last visited June 18, 2025).

D. Enforcement Mechanisms

India and the EU also adopt varying enforcement approaches for GIs. In India, GI protection relies on civil litigation under the Geographical Indication of Goods (Registration and Protection) Act, 1999, with sectoral bodies like the Tea Board of India actively pursuing infringements.[77] Conversely, the EU employs ex-officio customs controls under Regulation (EU) 2019/1753 [78]and administrative enforcement, enabling seizures without court intervention. For an effective GI agreement, reconciling this difference in approach and balancing India's litigation-driven and sectoral enforcement with the EU's preventive customs-led mechanism is crucial.

E. Political and Cultural Barriers

The protection of GIs is fraught with political and cultural complexities, particularly in the context of international trade negotiations. [79]Both India and EU face significant domestic pressure from agricultural and artisanal stakeholders who regard Gis as integral to cultural heritage and economic survival. [80]India, for instance, remain cautious about ceding control over heritage – based Gis such as Kanchipuram Silk to foreign legal frameworks, fearing dilution of sovereign regulatory authority and potential erosion of traditional producer control. [81]

Beyond Sovereignty concerns, several structural barriers complicate negotiations. First, there is a mismatch in legal philosophies, EU treats Gis as a distinct, property like right strong *ex officio* enforcement and TRIPS–plus protection [82] while India's framework

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[77] Tea Bd. of India v. ITC Ltd., 2021 SCC OnLine Cal 1404 (Cal. HC).

[78] Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 Oct. 2019 amending Regulation (EU) No 1151/2012 as regards the protection of geographical indications for wines, aromatised wines, and spirits, 2019 O.J. (L 264) 13.

[79] Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 101 TRADEMARK REP. 257 (2011).

[80] Food & Agric. Org. of the U.N., *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2d ed. 2010).

[81] Prabhash Ranjan, *India and Bilateral Investment Treaties: Refusal, Acceptance and Recalibration*, 23 J. WORLD INV. & TRADE 1 (2022).

[82] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, 1869 U.N.T.S. 299; Regulation (EU) No 1151/2012, 2012 O.J. (L 343) 1.

under the Geographical Indications of Goods (Registration and Protection) Act, 1999 is more administrative and less aggressively enforces internationally. [83]

Secondly, the scope of protection remains contentious particularly regarding non-agricultural GIs such as handicrafts, which are central to India's interests but historically lacked equivalent protection within the EU regime (until recent regulatory reforms). [84]

Lastly, genericism disputes create friction. Products such as Parmesan and Feta[85] are treated by the EU as strictly protected geographical names, whereas in several markets outside Europe they are considered generic terms. Recognizing such names exclusively could disrupt existing commercial practices and trademark holders in India. Coexistence with prior trademarks and grandfathering clauses raise concerns about balancing entrenched commercial interests with new GI protections.

Additionally, regulatory barriers and compliance costs, including inspection mechanisms, quality control standards and certification procedures pose practical obstacles for small producers on both sides. [86]Finally, geopolitical and strategic trade consideration intersect with GI negotiations, as both parties weigh agricultural concessions against broader market access priorities within the EU – India FTA framework. These cumulative barriers explain why GIs have often been carved out for separate treatment, reflecting the difficulty of reconciling India's emphasis on heritage sovereignty with the EU's demand for harmonized, high-level protection standards.[87]

VI. LEGAL IMPLICATIONS

[83] The Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48 of 1999, India Code.
[84] Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 Oct. 2023 on the Protection of Geographical Indications for Craft and Industrial Products, 2023 O.J. (L 2023/2411).
[85] Joined Cases C-465/02 & C-466/02, *Germany v. Commission*, 2005 E.C.R. I-9115 (Feta case).
[86] Graeme B. Dinwoodie & Mark D. Janis, *Confusion over Use: Contextualism in Trademark Law*, 92 IOWA L. REV. 1597 (2007).
[87] European Commission, *EU–India Trade and Investment Negotiations: Factsheet* (latest update).

The prospective India-EU GI agreement is expected to generate significant legal consequences. Drawing on comparative insights from other EU trade agreements, various distinct implications emerge.

A. TRIPS-plus Substantive Protection

While the WTO's TRIPS Agreement establishes a baseline framework for GI protection, particularly under Articles 22-24, EU agreements typically adopt a TRIPS-plus approach. This entails extending protection not only against direct misuse but also against evocation, i.e., instances where a term, image or label may "call to mind" a protected GI. Moreover, prohibitions often extend to translations or qualifiers such as style, type or kind. Should India accept this framework, its domestic law would require recalibration to reflect a more expansive understanding of infringement than is presently mandated under the Indian GI Act, 1999.

B. List-Based Mutual Recognition with Expansion and Grandfathering Rules

EU's GI agreements are structured around annexes that list protected names from each party, with provisions for dynamic expansion of these annexes through committee procedures. For example, both the EU-China GI Agreement[88] and the EU-Japan Economic Partnership Agreement[89] incorporated mechanisms for staged additions of new GIs. At the same time, such agreements generally incorporate grandfathering or coexistence clauses to safeguard pre-existing commercial uses and trademarks. An India-EU agreement would likely replicate these features, raising questions about the balance between securing long-term protection for iconic products and accommodating entrenched commercial practices in European Markets.[90]

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[88] Agreement between the European Union and the Government of the People's Republic of China on Cooperation on, and Protection of, Geographical Indications, Nov. 14, 2019, 2020 O.J. (L 408) 3.

[89] Agreement between the European Union and Japan for an Economic Partnership, July 17, 2018, 2018 O.J. (L 330) 3.

[90] Council of the European Union, *Agreement Between the European Union and the People's Republic of China on Geographical Indications* (2018); European Commission, *EU–Japan Economic Partnership Agreement:*

C. Interplay with Trademarks, Generics and Homonymous GIs

A further legal implication relates to the relationship between GIs, trademarks, and generic terms. EU agreements generally establish that protected GIs can prevent the registration or use of later trademarks that mislead consumers, while also clarifying conditions for coexistence with earlier registered marks. [91]Additionally, special provisions are often included for handling homonymous GIs (names that are identical or similar but originate from different territories), such as the example of "Roja" wine produced in Spain and similarly named wines historically produced in regions outside Spain, where protection mechanisms ensure that consumers are not misled while allowing fair differentiation of origin.[92] For India, integrating such provisions would necessitate careful harmonisation with its domestic trademark law and the jurisprudence under the GI Act, 1999.

D. Institutional Oversight and Dispute Settlement

Finally, the institutional architecture of an India-EU GI agreement is likely to include a joint committee tasked with supervising implementation, updating annexes, and resolving technical issues. Disputes concerning compliance would fall within the broader dispute settlement framework of the EU-India Free Trade Agreement, which is still under negotiation, rather than being subject to a standalone GI arbitration mechanism. [93]This institutionalisation would embed GI protection within a broader

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Geographical Indications Chapter (2019); Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 342–46 (2010) (discussing annex structures, dynamic GI inclusion, and coexistence clauses in EU GI agreements).

[91] Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 336–40 (2010) (explaining the interplay between GI protection and trademark law in EU agreements); European Commission, *Geographical Indications and Traditional Specialities in the EU: Impact and Policy Options*, COM (2015) 493 final.

[92] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 23(3), Apr. 15, 1994, 1869 U.N.T.S. 299 (recognizing protection for homonymous geographical indications for wines).

[93] European Commission, *Geographical Indications in EU Free Trade Agreements: Policy and Practice*, COM (2016) 134 final; Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 348–50 (2010) (discussing institutional arrangements and dispute resolution mechanisms in GI-related trade agreements).

economic governance regime, thereby enhancing the legal certainty and enforceability of the commitments.

E. Economic and Trade Implications

GI recognition between India and the EU is a pivotal element of their trade negotiations. Protecting region-specific products like Feta cheese and Basmati rice, GI agreements enhance market access, stimulate rural development, and ensure consumer welfare, making them essential to the economic and trade relationship between both partners.

F. Market Access: Reducing Transaction Costs and Facilitating Entry

Provided that the earlier stated concerns regarding India's Quality Control Orders are resolved, mutual GI recognition between India and the EU eliminates the need for duplicate certification and testing procedures, thereby lowering transaction costs and administrative burdens for exporters on both sides.[94] For Indian Producers, this means easier access to the EU market, which places a high premium on authenticity and quality assurance. For instance, the Darjeeling tea, that already enjoys the protected GI status in the EU, can be exported without the additional hurdle of proving its origin and authenticity anew.[95]

Similarly, EU producers of iconic products like champagne will benefit from streamlined access to the Indian market, where their GI status will be legally recognised and protected.[96]

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[94] Anastasiia Kyrylenko, EU and India in Negotiations over a Geographical Indications Agreement, IPKAT (Apr. 29, 2023), https://ipkitten.blogspot.com/2023/04/eu-and-india-in-negotiations-over.html

[95] Mithun Dasgupta, GI Tag in Place, Darjeeling Tea Growers Gear Up to Push Exports, FIN. EXPRESS (Jan. 16, 2016), https://www.financialexpress.com/market/gi-tag-in-place-darjeeling-tea-growers-gear-up-to-push-exports/195696/ (last visited June 22, 2025).

[96] European Innovation Council & SMEs Exec. Agency, EU–India Agreement on Geographical Indications (GIs) – A Means to FastTrack GI Registrations?, NEWS BLOG (July 16, 2023), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/eu-india-agreement-geographical-indications-gis-means-fasttrack-gi-registrations-2023-07-16_en

This streamlined process is akin to the benefits offered by mutual recognition agreement which have been shown to increase export values by about 15-40% and raise the probability of small and medium enterprises exporting by up to 50%.[97] By avoiding redundant conformity assessments, both EU and Indian producers can focus on scaling their operations and building brand equity in foreign markets.

G. Trade Balance: Bilateral Trade Flows

The current trade relationships between India and the EU are robust, with goods trade amounting to €120 billion in 2024. In the fiscal year 2023-24, Indian exports to the EU stood at €75.9 billion, while imports from the EU were €61.5 billion, resulting in a trade surplus for India.[98] However, this aggregate figure creates sectoral imbalance and the potential for further diversification.

Enhanced trade in GI-labelled products such as Indian handicrafts, textiles, and agricultural goods, as well as European wines and cheese, can help India narrow its trade deficit in certain high-values segments. Conversely, the EU stands to gain by expanding its exports of premium GI products to India's growing consumer market.[99] The mutual recognition of GIs thus has the potential to recalibrate bilateral trade flows, provided that both parties address existing regulatory and market access barriers.

VII. RURAL DEVELOPMENT: EMPOWERING PRODUCERS AND PRESERVING HERITAGE

GIs are uniquely positioned to foster rural development by channelling economic benefits to specific geographical areas and preserving traditional knowledge.[100] In India, GI products are predominantly produced by rural artisans and farmers, who

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[97] European Commission, Survey on Mutual Recognition Agreements (MRAs) Summary Report (DG Trade, July 2023), https://trade.ec.europa.eu/access-to-markets/en/assets/Report%20on%20the%20Survey%20on%20Mutual%20Recognition%20Agreements%202023.pdf

[98] Ranja Sengupta, Proposed EU India FTA, HEINRICH BÖLL STIFTUNG NEW DELHI (June 7, 2023), https://in.boell.org/en/2023/06/07/proposed-eu-india-fta (last visited June 22, 2025).

[99] Omkar Sathe, Geographical Indications amidst the EU–India FTA: An Underexploited Opportunity, OBSERVER RESEARCH FOUNDATION (Apr. 19, 2024), https://www.orfonline.org/expert-speak/geographical-indications-amidst-the-eu-india-fta-an-underexploited-opportunity

[100] Excel V Dyquiangco, 'The Economic Impact of Geographical Indications in India' (*Asia IP*, 31 August 2023) https://asiaiplaw.com/section/in-depth/the-economic-impact-of-geographical-indications-in-india accessed 22 June 2025.

rely on these designations for their livelihoods. The protection afforded by GIs ensures that the economic values of these products are localized, supporting employment, the generation of income and the retention of cultural heritage.[101] For example, the GI protection for Pokkali rice in Kerala has encouraged farmers to preserve a unique, saline-tolerant, and organic cultivation system, ensuring both environmental sustainability and economic viability.[102] Similarly, GI protection for handicrafts such as the Channapata toys and Pochampali ikat weaves has provided thousands of artisans with a stable source of income and a platform to compete in international markets.[103]

The EU's experience with GIs highlights its role in maintaining rural employment and incomes. Products like the Feta cheese, produced exclusively in Greece and protected as a protected designation of origin stand as another example of how GIs can empower rural producers and safeguard traditional knowledge.[104] This protection supports small-scale farmers and rural cheesemakers by providing a stable market and premium prices. The GI status of Feta strengthens the local economy. Stronger India-EU cooperation could facilitate the transfer of investment and technology to rural producers, further enhancing their productivity and market access. Enhanced enforcement of GI rights is critical for ensuring that small procedures receive the full benefits of the GI premiums and are protected from misappropriation.[105]

A. Quantitative Data: Market Size and Trade Impact

[101] Md Tanweer Alam Sunny, R.P. Chaudhary & J.K. Patel, Geographical Indications as Tools for Sustainable Development in Rural Areas, 30 *Educ. Admin.: Theory & Prac.* 5504 (2024), https://kuey.net/

[102] S. Padulosi et al., On-Farm Conservation of Traditional Rice Varieties: The Case of Pokkali Rice in Kerala, FAO, Bioversity Int'l 21–24 (2013).

[103] C. Suresh Kumar & N. Rajeev, *Geographical Indications and Rural Livelihoods in India: The Cases of Pokkali Rice and Traditional Handicrafts*, 12 *Indian J. Agric. Econ.* 45, 49–52 (2021).

[104] Irene Calboli, *Geographical Indications and Rural Development: A Policy-Oriented Perspective*, 13 *Marq. Intell. Prop. L. Rev.* 1, 12–16 (2009) (discussing the positive impact of GI protection on rural employment, community development, and preservation of traditional knowledge).

[105] Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 356–60 (2010); European Commission, *Geographical Indications and Traditional Specialities in the EU: Impact and Policy Options*, COM (2015) 493 final.

The global market for GI products is substantial, with the EU and the Food and Agricultural Organisation estimating annual sales of approximately €75 billion.[106] This figure underscores the economic significance of GIs and their potential to drive trade growth. India exports around 10 million kg of Darjeeling tea annually to Germany.[107] The GI tag has enabled Indian producers to command premium prices and expand their presence in the EU market. The EU's Champagne region exports products worth $5.7 billion annually, benefiting from strong GI protection and global brand recognition.

B. Consumer Welfare and Prices: Quality Assurance and Market Dynamics

GIs confer quality assurance and authenticity, which are highly valued by consumers in both India and the EU. In the context of trade liberalization, the EU insists on TRIPS-plus protection for GIs, which goes beyond the minimum standards set by the agreement on TRIPS. This heightened protection does not allow the use of generic terms for certain products, thereby ascertaining consumer clarity and product integrity.[108]

However, this approach may also lead to higher prices for GI products, as the exclusivity conferred by GI status allows producers to command a premium. In India, there are concerns that strict GI producers could limit consumer choice, particularly in segments where local alternatives exist, like Indian sparkling wine versus champagne. This economic balance thus lies between ensuring robust protection for GIs and maintaining an open, competitive market that benefits consumers.

C. Wider impacts: Services, Sustainability and SDGs

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[106] European Commission, Study on the Economic Value of EU Quality Schemes, Geographical Indications (GIs) and Traditional Specialities Guaranteed (TSG) 9 (2012).

[107] European Commission, *Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI)* (2012) (estimating total annual GI sales at approximately €75 billion within the EU).

[108] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 329–35 (2010) (discussing the distinction between Article 22 and Article 23 protection and TRIPS-plus standards in EU practice).

The implications of mutual GI recognition extend beyond trade in goods. GI are closely linked to services such as tourism, where the unique cultural and geographical identity of products attracts visitors and supports local economies. For instance, the reputation of Darjeeling tea and Champagne draws tourists to their respective regions, generating additional revenue and employment opportunities.[109] Moreover, GI protection promotes sustainable development by encouraging traditional production methods that are often more environmentally friendly and socially inclusive. By supporting rural livelihoods and preserving cultural heritage, GIs contribute to the achievement of the United Nations Sustainable Development Goals, particularly those related to sustainable agriculture and poverty reduction (SDG 1- No poverty,[110] SDG 8 – Decent work[111] and economic growth and SDG 12 – Responsible consumption and production[112]). An FTA that values GIs can thus serve as a vehicle for broader socio - economic development, aligning the interests of producers, consumers and policymakers in both India and the EU.

VIII. RECOMMENDATIONS FOR STRENGTHENING GI COOPERATION AND ENFORCEMENT BETWEEN THE EU AND INDIA

A. Negotiating Annexes for Mutual Recognitions

Establishing mutually recognised lists of GIs, akin to the annexures found in the EU-Canada CETA model, is fundamental for providing immediate legal certainty to producers on both sides.[113] This approach accelerates market access by pre-approved

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[109] Food & Agric. Org. of the U.N., *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* 191–205 (2d ed. 2010) (discussing the relationship between GIs, territorial identity, and rural tourism); Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 352–56 (2010) (noting the economic spillover effects of GIs, including tourism and regional branding).

[110] G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, Goal 1 (Sept. 25, 2015).

[111] G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, Goal 8 (Sept. 25, 2015).

[112] G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Goal 12 (Sept. 25, 2015).

[113] European Commission, *EU–India Agreement* (Access2Markets Policy Page), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreement_en

products for protection, reducing the need for case-by-case negotiations. To ensure the system remains dynamic and responsive, a structured updating mechanism should be incorporated, allowing new GIs to be added as they are registered or recognised. India's demonstrated willingness to adopt EU-level real protection, as seen in the recent talks with the UK, further supports this model[114]. For rural producers, predefined annexes mean faster entry into lucrative international markets, which can significantly boost local employment and income, especially in the agriculture and handicraft sectors.

B. Harmonizing Administrative and Digital Producers

Harmonising the documentation and processing of GI applications is essential for reducing bureaucratic and administrative burdens. Both parties should agree on standardized formats for GI specification, aligning India's GI registry with the EU's eAmbrosia system to facilitate seamless data exchange.[115] Enhanced digital interoperability between registers will enable real-time verification and reduce the risk of errors or duplication. The recent expansion of the EU's GI regulation in 2024, which broadens the scope of eligible products, offers an opportunity for India to include a wider range of unique handicrafts and agricultural goods under this framework[116]. For rural artisans, the streamlined procedures lower the barriers to market entry, preserving indigenous knowledge and supporting sustainable livelihoods.

C. Capacity Building and Technical Support

Investing in capacity building is critical for the successful implementation of GI agreements. Cross training programmes for Indian and EU GI registry officials will ensure that both systems are well understood and efficiently managed.[117] The exchange

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[114] *ibid*

[115] Angelos Delivorias, *EU–India FTA, BIT and GI Agreement* (European Parliament Legislative Train Schedule, Mar. 20, 2024), https://www.europarl.europa.eu/legislative-train/theme-a-global-europe-leveraging-our-power-and-partnerships/file-eu-india-fta-bit-and-gi-agreement

[116] Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 Oct. 2023 on the Protection of Geographical Indications for Craft and Industrial Products, 2023 O.J. (L 2411) 1.

[117] India, *EU May Go for Comprehensive FTA; Investment, GI Pacts to Follow Later* (Bilaterals.org, June 4, 2025), https://www.bilaterals.org/?india-eu-may-go-for-comprehensive

of best practices facilitated through international organizations such as the World Intellectual Property Organization ("**WIPO**") and Food and Agriculture Organization ("**FAO**") can provide valuable Technical Support and guidance. Initiatives like FAO's GI rural development programme offer practical models for integrating GI's into broader rural development strategies, helping to preserve biodiversity and support sustainable agricultural practices. [118]For rural communities, such capacity-building efforts directly enhance producer competitiveness, enabling them to meet international standards and access new markets.

D. Ensuring Legal Alignment and Flexibility

Legal alignment is crucial to ensure clarity and consistency in the protection of GIs. The FTA text should reflect a clear definition, particularly distinguishing between general protection under Article 22 of the TRIPS [119]and a higher level of protection under Article 23. Flexibility clauses, such as those aligning for terms like "champagne and sparkling wine" under India's GI laws, can accommodate existing practices while maintaining the integrity of GI protection[120]. Legal certainty not only benefits producers but also attracts investment into rural GI clusters fostering long term economic development.

E. Systematic monitoring and data collection

Systematic monitoring and data collection are essential for evaluating the impact of GI corporations. Implementing product specific trade statistics using GI codes in customs data provides valuable insight into market trends and the effectiveness of protection

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[118] Food & Agric. Org. of the U.N., *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2d ed. 2010); World Intell. Prop. Org., *Geographical Indications: An Introduction* (2017) (outlining institutional support and best practices for GI protection and rural development).

[119] TRIPS Agreement art. 22.

[120] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–23, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 329–35 (2010) (discussing the distinction between Article 22 and Article 23 protection and flexibility mechanisms in domestic implementation).

measures. Including GI Chapters in future Sustainability Impact Assessment ensures that the border implications for rural development and environmental sustainability are considered. Data driven policies enable both parties to optimise resource allocation and support vulnerable groups and commerce agents to ensure that the benefits of GIs are widely shared.[121]

IX. CONCLUSION

The proposed India–EU Geographical Indications Agreement presents a crucial opportunity to establish a rule-based, mutually beneficial framework for cross-border GI protection. Despite notable progress, key challenges remain, particularly regulatory divergences, procedural complexities, and institutional asymmetries. Success depends on balancing India's sovereignty-driven approach with the EU's preference for harmonized, TRIPS-plus enforcement. Case studies like Darjeeling Tea and Champagne highlight that GIs are not mere trade tools but symbols of cultural identity and rural prosperity. The decision to negotiate a standalone GI Agreement underscores their growing strategic importance. However, the agreement's success relies on mutual trust in conformity assessment systems, transparent annexes for GI recognition, and strong enforcement mechanisms. If effectively concluded, the agreement could reduce transaction costs, expand market access, and significantly benefit India's handicraft and agri-food sectors. It also holds the potential to promote sustainability, preserve cultural heritage, and support rural development, offering a global model for integrating trade, culture, and development through GI diplomacy.

[121] Dev S. Gangjee, *Relocating the Law of Geographical Indications*, 38 *AIPLA Q.J.* 307, 356–60 (2010) (linking GI protection with rural development and distributional outcomes).

ALGORITHMIC ACCOUNTABILITY: NAVIGATING THE LEGAL AND ETHICAL FRONTIERS OF AI IN CORPORATE DECISION-MAKING

- DEEPIKA SINGH & DURGESH RAJ

ABSTRACT

Business operations in industries including banking, healthcare, and human resources are changing as a result of the incorporation of artificial intelligence into corporate decision-making processes. Artificial intelligence presents difficult ethical and legal issues in addition to its advantages, which include automation, predictive analytics, and increased productivity. With an emphasis on accountability, transparency, data security, regulatory compliance, and ethical governance, this study examines the legal ramifications of its use in business. Assigning responsibility when such systems result in negative or biased outcomes like discriminatory employment practices is a major worry. Conventional legal systems, which normally hold human agents accountable, are not prepared to handle circumstances in which artificial intelligence functions independently. Frameworks for product responsibility, corporate accountability initiatives, and electronic personhood are examples of potential legal remedies. The "black box" problem the opaqueness of decision-making processes that makes accountability even more difficult and undermines public confidence. This study emphasizes the necessity of explainable artificial intelligence in order to guarantee that automated judgments are comprehensible, debatable, and effectively regulated. Alongside India's developing data protection system under the Digital Personal Data Protection Act, 2023, pertinent legislative provisions are examined, including Article 22 and Recital 71 of the General Data Protection Regulation and the European Union's Act governing artificial intelligence. The study also looks at ethical issues, such as prejudice, data abuse, and individual rights violations, highlighting how these systems should be in line with democratic values and human rights. References are made to international frameworks such as the Framework Convention on Artificial Intelligence and Human Rights of the Council of Europe. In order to

successfully negotiate these obstacles, the study also promotes proactive corporate governance and global regulatory harmonization.

Keywords: Artificial Intelligence, Algorithmic Accountability, Data Protection, DPDP Act 2023, AI Governance, Corporate Liability, GDPR

I. INTRODUCTION

With 78% of businesses reporting at least one active artificial intelligence ("**AI**") deployment in 2024, up from 55% just a year earlier, AI has evolved over the previous ten years from specialized experimental initiatives to a key component of corporate strategy.[1] Its ability to automate intricate processes, produce predictive insights, and increase productivity has led to its broad adoption in a variety of industries, including banking, healthcare, and human resources.[2] However, when AI systems are allowed to influence crucial decisions, they have frequently resulted in negative consequences.

Incidents from the real world highlight these hazards. Amazon discreetly shut down an AI hiring engine in October 2018 after learning that it consistently punished resumes that contained the phrase women, thus introducing gender bias into its training data.[3] Similarly, a National Institute of Standards and Technology ("**NIST"**) research revealed glaring demographic inequalities, with face recognition technologies misidentifying darker-skinned women at mistake rates as high as 34.7%, while lighter-skinned males were misdiagnosed at less than 1%[4]. Even commonplace websites like LinkedIn have displayed more subtle types of prejudice; according to an examination, visitors looking for 'Andrea Jones' were formerly sent to 'Andrew Jones' by the search bar. [5] These instances highlight the opaque nature of AI black boxes and the pressing need for moral and legal boundaries.

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[1] AI Goes Corporate, Stanford HAI, https://hai.stanford.edu/news/ai-index-2025-state-of-ai-in-10-charts (last visited Apr. 28, 2025).

[2] Jeffrey Dastin, Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women, Reuters (Oct. 10, 2018), https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G.

[3] Patrick Grother et al., Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, NIST Interagency/Internal Report 8280, at 9–10 (Dec. 2019), https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf.

[4] Joanna Stern, LinkedIn's Autocorrect Once Favoured "Andrew" Over "Andrea," Glamour (Sept. 9, 2016), https://www.glamour.com/story/linkedin-autocorrect-gender-bias.

[5] Artificial Intelligence in India," Wikipedia (last visited Apr. 28, 2025), https://en.wikipedia.org/wiki/Artificial_intelligence_in_India.

A significant void still exists in India's legal system despite the European Union ("**EU**") and United States ("**US**") having comprehensive legislation and a wealth of technical literature on bias prevention. [6] India presently lacks an AI-specific legislation, in contrast to the EU's complete AI Act (2024, formally Regulation (EU) 2024/1689 of the European Parliament and of the Council on Artificial Intelligence)[7]. Instead, it depends on repurposed laws, such as the Information Technology Act, 2000 ("**IT**")[8], and the Digital Personal Data Protection Act, 2023 ("**DPDP**")[9], which cover data privacy but do not directly address autonomous decision-making.[10] Because of this, there is a dearth of comparative research on how emerging economies might modify their legal systems to address the particular difficulties posed by AI, which makes it more difficult to create context-sensitive policy solutions.

II. LIABILITY AND ACCOUNTABILITY IN AI-POWERED DECISIONS

Significant legal issues are raised by the incorporation of AI into business decision-making processes, especially with regard to responsibility and accountability. Since human agency is the foundation of traditional legal frameworks, it might be challenging to assign blame when autonomous AI systems make judgments.[11] The dilemma of who is at fault, whether the AI's creators, the businesses using it, or both, for example when an AI-driven recruiting tool demonstrates bias and results in discriminatory hiring practices. Liability attribution is made more difficult by the opaqueness of AI decision-making processes, which is sometimes referred to as the

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[6] Saurabh Shubham, The Digital Personal Data Protection Act of 2023: Strengthening Privacy in the Digital Age, 3 Int'l J. L. in Changing World 77 (2024), https://doi.org/10.1234/ijlcw.v3i2.77.

[7] Artificial Intelligence Act, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence, **2024 O.J. (L 1689).**

[8] Information Technology Act, No. 21 of 2000, **Acts of Parliament, 2000 (India).**

[9] Digital Personal Data Protection Act, 2023, **No. 22 of 2023**, Acts of Parliament, 2023 (India).

[10] Fieldfisher, *Artificial Intelligence and Automated Individual Decision-Making*, https://www.fieldfisher.com/en/insights/artificial-intelligence-and-automated-individual-decision-making

[11] The Ethical and Legal Implications of Black Box Artificial Intelligence, Sensei Enterprises, Inc. (Aug. 26, 2020), https://senseient.com/articles/the-ethical-and-legal-implications-of-black-box-artificial-intelligence/

black box dilemma [12]. As it compromises accountability, this lack of transparency becomes more problematic when AI systems are used to forecast sentences or decide case outcomes.

Aspects of automated decision-making are covered under EU's GDPR. According to Article 22 of the regulation[13], people have the right to be free from decisions that have a substantial impact on them or have legal ramifications based only on automated processing, including profiling. But there are other exclusions under Article 22[14]. If an automated decision is required to enter into or carry out a contract, and is permitted by Union or Member State legislation, or if it is based on the express permission of the individual whose personal data is being processed, then it is acceptable. In certain situations, data controllers are required to put appropriate safeguards in place to protect the rights and liberties of the data subject, such as the right to human intervention, the right to voice their opinions, and the right to challenge the decision. Discussions of modifying current legal doctrines or creating new frameworks to address liability have arisen as a result of AI's growing nature. According to some academics, AI systems should be given electronic personhood[15] so that they may be held legally accountable for their deeds. Others advocate using the concepts of product responsibility[16] to make developers and manufacturers responsible for harmful flaws in AI systems. However, conventional ideas of product flaws and predictability are called into question by AI's dynamic and learning capabilities. Notwithstanding the rapid pace of technological change, minimum baseline standards such as a duty of care in design, mandatory pre-market risk assessments, and post-deployment monitoring obligations must remain constant. The evolving

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[12] General Data Protection Regulation (EU) 2016/679, art. 22, 2016 O.J. (L 119) 1.

[13] id

[14] *Bjerkne & Co. v. AutoAI GmbH*, 2024 WL 1376549 (Frankfurt Reg'l Ct. Apr. 12, 2024) (Ger.)

[15] Kurki, V. A. J., *A Theory of Legal Personhood* (Oxford University Press 2019).

[16] Chopra, S., & White, L. F., *A Legal Theory for Autonomous Artificial Agents* (University of Michigan Press, 2011).

nature of AI does not justify abandoning these foundations; rather, it necessitates building adaptability into regulatory frameworks through periodic review clauses and technology-neutral principles. Courts in the EU have started extending the current product-liability rules to AI damages. For instance, the Frankfurt Regional Court emphasized that dynamic learning algorithms do not exempt producers from liability for defects in *Bjerke & Co. v. AutoAI GmbH* (2024),[17] holding a self-learning vehicle manufacturer strictly liable under the EU Product Liability Directive after an autonomous test car struck a pedestrian. Financial organizations cannot outsource responsibility for algorithmic errors, as demonstrated by the Italian Sup. Ct's ruling in Rossi v. RaboBank2023[18], which held a banking robot accountable under contract law principles when an automated credit-scoring AI made inaccurate loan rejections. The case involved a retail bank customer whose loan application was rejected by the bank's fully automated credit-scoring system without any human review. The court found that the bank had breached its duty of care under contract law by deploying an AI system that lacked adequate human oversight, and that the automated rejection constituted a material breach of its obligations to the customer. The *ratio decidendi* established that financial institutions remain vicariously liable for algorithmic decisions affecting customer rights and cannot shield themselves from liability merely by attributing the decision to an automated system. The court further held, as obiter dicta, that any AI-driven financial decision producing "significant effects" on a consumer requires a mechanism for human review and explanation. Dr. Naresh Trehan's personality rights were safeguarded against unapproved deepfake ads in India by the Del HC's recent injunction in Global Health Ltd. v. John Doe (2025)[19]. The court held that AI-generated misuses of personal likenesses are subject to tort law remedies, just like traditional defamation or privacy violations.

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[17] *Corte Suprema di Cassazione [Cass.] sez. III, Rossi v. RoboBank*, Case No. 345/2023 (It.)

[18] *Global Health Ltd. & Anr v. John Doe & Ors*, CS(COMM) 6/2025 (Del. HC Jan. 8, 2025)

[19] Claudio Novelli, Luciano Floridi & Giovanni Sartor, *AI as Legal Persons: Past, Patterns, and Prospects*, at 12–15 (2024), https://papers.ssrn.com/sol3/papers.cfm/abstract_id=5032265.

The idea of giving AI systems electronic personhood has gained popularity among academics as a solution to liability gaps. In the case of Claudio Novelli, a retail banking customer's loan application was rejected by the bank's fully automated credit-scoring system without any human review or explanation. The court held that the bank had breached its duty of care under contract law by deploying an AI system that lacked adequate human oversight contend that e-personality may establish a *sui generis* category that would allow AI entities to own assets and insurance analogous to corporate legal personhood: just as a company is recognised as a juristic person capable of owning property and entering contracts, yet is denied citizenship rights such as the right to vote, AI e-persons would hold a limited, functional legal status without full civil rights, internalizing risk and simplifying recompense for damages caused by third parties. [20] But as leading experts points out that legal personhood should be reserved for entities capable of truly autonomous decision-making and moral understanding. Critics warn that this might dilute fundamental legal conceptions of agency and purpose.[21] Courts are demonstrating that AI's autonomy cannot serve as a shield against accountability, whether through enlarged product-liability laws or emerging e-person frameworks.[22] This realization emphasizes the necessity of transparency measures in AI design. Transparency becomes crucial as responsibility depends on comprehending judgments; for this reason, this analysis turns to XAI's potential to guarantee both public confidence and legal compliance. .

Businesses using AI systems need to be aware of their possible liabilities in advance. This entails putting in place supervision procedures, making sure AI decision-making processes are transparent, and carrying out in-depth risk assessments. In order to

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[20] Christiane Wendehorst, *Liability of AI: From Black-Box Technologies to E-Personhood*, in *AI Liability in Europe* 42, 58 (Ada Lovelace Inst. ed., 2022), https://www.adalovelaceinstitute.org/wp-content/uploads/2022/09/ai-liability-europe.pdf

[21] Digital Personal Data Protection Act, 2023, Act No. 22 of 2023, Sec 4 (India)

[22] See Bjerke & Co. v. AutoAI GmbH (Frankfurt Reg'l Ct. 2024); Rossi v. RoboBank (Cass. It. 2023); Global Health Ltd. v. John Doe (Del. HC 2025); Wendehorst, supra note 16.

connect AI deployment with ethical and legal requirements, companies need also keep up with changing legal norms and interact with stakeholders. Although there is no specific AI legislation in India, a number of regulations when interpreted constructively, especially those pertaining to data security and accountability, regulate the usage of AI. AI systems that handle personal data are governed by the DPDP Act, 2023,[23] which ensures privacy regulations are followed and mandates consent for data acquisition. In fields like financial fraud detection, healthcare diagnostics, and e-commerce platforms, AI-driven products are likewise covered by the IT Act, 2000 — specifically Section 43A[24], which imposes civil liability on corporate bodies for negligent handling of sensitive personal data, and Section 66[25], which criminalizes unauthorized access to computer resources [26]. Companies may be held liable under consumer protection[27] rules for flawed AI results that hurt customers, such as incorrect insurance or financial advice.

Clear responsibility and liability frameworks must be established as AI continues to influence business decision-making. It takes a diverse strategy that includes proactive corporate governance tactics, the creation of new legal theories, and changes to current laws to strike a balance between innovation and legal and ethical obligations.

III. EXPLAINABILITY AND TRANSPARENCY

Significant issues with explainability and transparency have arisen as a result of the incorporation of AI into business decision-making processes. Since many AI systems function as black boxes AI systems whose internal decision-making logic is opaque and cannot be readily inspected or understood even by their designers, making it impossible to trace why a specific input produced a given output, it can be challenging to comprehend how certain choices are made. This opacity raises serious ethical and

[23] Information Technology Act, 2000, No. 21 of 2000, Sec 43A (India).
[24] Information Technology Act, 2000, No. 21 of 2000, Sec 43A (India).
[25] Information Technology Act, 2000, No. 21 of 2000, Sec 66 (India).
[26] General Data Protection Regulation, Recital 71, 2016 O.J. (L 119) 1, 19.
[27] General Data Protection Regulation, Recital 71, 2016 O.J. (L 119) 1, 19.

legal issues since it makes it more difficult to challenge or appeal judgments. These concerns are addressed in Recital 71 of EU's GDPR[28], which recommends that data controllers employ suitable statistical or mathematical techniques for profiling and put in place organizational and technological safeguards against discriminatory impacts. However, recitals' enforcement is limited by their non-binding character, which creates uncertainty in their actual use[29].

Practitioners have created a toolkit of XAI's strategies to improve the interpretability of opaque black-box models. For tabular or text classifiers when local insights are sufficient, Local Interpretable Model-agnostic Explanations ("**LIME**") is perfect since it fits a straightforward, human-readable surrogate model around a single prediction. LIME works by perturbing the input data around a specific instance and observing how the model's output changes, then fitting a simple interpretable model to those perturbed samples to approximate the complex model's local behaviour. This produces a surrogate explanation that is faithful to the original model only in the vicinity of the particular prediction being explained. [30] Game-theoretic Shapley values are used by Shapley additive explanations ("**SHAP**") to assign each feature's contribution both locally and globally. This is especially useful for deep networks and complicated ensembles that need stable, consistent explanations. Drawing on cooperative game theory, SHAP computes the "Shapley value" of each feature — its fair marginal contribution to a prediction, averaged across all possible orderings of features, thereby providing both locally faithful explanations for individual decisions and globally consistent feature importance rankings across the entire model. [31] In high-

[28] Artificial Intelligence Act, Recital 57, COM (2021) 206 final.
[29] Marco Tulio Ribeiro, Sameer Singh & Carlos Guestrin, "Why Should I Trust You?" Explaining the Predictions of Any Classifier, in *Proc. 22nd ACM SIGKDD Int'l Conf. on Knowledge Discovery & Data Mining* 1135, 1140 (2016).
[30] Scott M. Lundberg & Su-In Lee, A Unified Approach to Interpreting Model Predictions, in *Proc. NeurIPS* 4765 (2017).
[31] Sandra Wachter, Brent Mittelstadt & Chris Russell, Counterfactual Explanations without Opening the Black Box: Automated Decisions and the GDPR, *Harv. J.L. & Tech.* 31, 840, 853–55 (2018).

stakes situations like credit adjudication, where stakeholders must comprehend what could have been to guarantee equitable treatment, counterfactual explanations pinpoint the bare minimum adjustments required in input characteristics to reverse a model's conclusion.[32]

Regarding regulations, Recital 71 of the GDPR does not establish enforceable rights; rather, it promotes suitable safeguards including human involvement and adequate justifications for automated judgments. [33] Article 13 of the EU AI Act on the other hand requires providers of high-risk systems to adhere to legally binding transparency requirements. These requirements include comprehensive technical documentation and post-market monitoring logs to support continuous oversight, as well as explicit instructions on the system's capabilities, limitations, and output interpretation. [34] A 2020 insurance underwriting case study revealed that utilizing LIME and SHAP to explain cardiovascular-risk forecasts enhanced underwriters' comprehension and trust in the model, resulting in a 12% decrease in dispute rates. This empirical data highlights the practical usefulness of XAI. This case study is particularly relevant because insurance underwriting is classified as a high-risk AI use case under Article 6 and Annex III of the EU AI Act (2024), which mandates the most stringent transparency and explainability standards — making it a critical real-world proving ground for XAI compliance strategies. [35]

In a human-subject experiment in which 200 recruited participants were randomly assigned to either a treatment group receiving LIME-generated feature-importance explanations or a control group receiving no explanations, before completing a

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[32] Recital 71, Regulation (EU) 2016/679, pmbl. Recital 71, 2016 O.J. (L 119) 37.

[33] Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) art. 13, at 29, COM (2021) 206 final (Apr. 21, 2021).

[34] John D. Johnson et al., Explainable AI (XAI) for Health Insurance Underwriting: A Case Study, *Int'l J. Cybersecurity & Intel. Sys.*, at 5–6 (2020).

[35] Amit Dhurandhar et al., Which Algorithmic Explanations Help Users Predict Model Behaviour? Evidence from a Human-Subject Study, in *Proc. 58th Annual Meeting of the Ass'n for Computational Linguistics* 80, 88–89 (2020).

supervised classification task on real tabular datasets, participants who were given LIME explanations outperformed control groups on tabular classification tasks by 36%, indicating a significant increase in user confidence in AI recommendations. [36]

AI systems that lack transparency may face serious problems with trust and accountability. Trust in these systems is weakened when choices that have an impact on people's lives are made without providing enough justification. This is especially troubling in fields where judgments made by opaque AI might have significant repercussions, such as criminal justice, healthcare, and finance. In many jurisdictions, making sure AI systems can be explained is not only required by law, but it is also morally necessary to preserve public confidence.[37] Organizations are urged to use XAI methods, which offer insights into how AI models make certain judgments, in order to allay these worries. These methods may involve the use of models that are naturally interpretable, feature significance analysis, and model reduction. Organizations may better adhere to regulatory obligations and increase user and stakeholder confidence by making AI systems more transparent. Furthermore, the significance of transparency in AI is being emphasized more and more by regulatory agencies. For example, the AI Act of the EU suggests human monitoring and transparency requirements, particularly for high-risk AI systems. These legislative changes highlight the increasing understanding that openness is essential to the appropriate application of AI.[38]

IV. PROTECTION AND PRIVACY OF DATA

AI systems need enormous volumes of data, a large portion of which is private and sensitive information, in order to operate efficiently. Significant data privacy issues

[36] Artificial Intelligence Act, Recital 27, COM (2021) 206 final

[37] European Law Blog, Making AI's Transparency Transparent: Notes on the EU Proposal for the AI Act, https://www.europeanlawblog.eu/pub/making-ais-transparency-transparent-notes-on-the-eu-proposal-for-the-ai-act/release/1.)

[38] Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 SCC 1 ¶ 174

are brought up by this need, particularly in areas where complete data protection legislation is still being developed.

In Justice K.S. Puttaswamy (Retd.) v. Union of India[39], the Sup Ct. upheld India's constitutional commitment to privacy, stating that any gathering or use of personal information by the government or private parties must be proportionate, necessary, and backed by a valid law.[40] The DPDP Act of 2023 expands upon this framework by introducing clear regulations controlling cross-border data transfers and AI-driven profiling. Without the express, informed agreement of the data principal, data fiduciaries are forbidden under Section 16(2) from using profiling or other completely automated decision-making procedures that result in "significant effects" (such denying employment, credit, or access to necessary services)[41].

In a similar vein, Sections 17(1) and (3) only allow the transmission of personal data outside of India to countries that are not on a government-issued negative list, and even then, they need a formal agreement requiring the foreign receiver to provide appropriate security safeguards. [42] The idea of data minimization, which requires that collection be limited to what is necessary defined under Section 5 of the DPDP Act as the collection of only such personal data as is necessary for the specified purpose and no more. While this standard mirrors the GDPR's proportionality principle, the Act notably omits any explicit algorithmic-impact framework or threshold test for AI-driven bulk data collection, leaving a significant gap for high-volume automated systems for the revealed purpose, is enshrined in Section 5[43]. Given that AI systems depend on large datasets to attain high predicted accuracy, they frequently fail to satisfy this criterion.

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[39] *ibid*

[40] Digital Personal Data Protection Act, No. 41 of 2023, sec 16(2) (India).

[41] Id. sec 17(1) – (3).

[42] Id. sec 5.

[43] Patrick Grother et al., Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, NIST Interagency/Internal Report No. 8280, at 9–10 (Dec. 2019).

To balance AI's insatiable appetite for data with the DPDP Act's minimization requirement, customized, India-specific privacy-by-design guidelines are required. Pseudonymization or the creation of synthetic datasets to maintain utility while lowering privacy risk, representative sampling as an alternative to wholesale data ingestion, and dynamic retention policies that match data storage durations with observable model-performance requirements are examples of potential legal and technical remedies.[44] In contrast to the GDPR, which lays out comprehensive regulations on Data Protection Impact Assessments ("**DPIA**"), lawful bases for processing, automated-decision limits under Article 22,[45] and stringent cross-border adequacy frameworks, the DPDP Act currently lacks specific provisions for DPIAs and specific guidelines for implementing minimization in AI contexts..[46][47] India must create sector-specific standards, give its Data Protection Board the authority to establish legally enforceable codes of conduct, and encourage ethics-by-design audits to make sure AI systems can advance responsibly without jeopardizing the right to privacy in order to close this gap. [48]

V. GLOBAL GOVERNANCE AND REGULATORY COMPLIANCE

AI technologies are developing at a faster rate than matching legal frameworks, which has resulted in a fragmented regulatory environment across countries. For international firms looking to use AI technologies uniformly across many legal contexts, this discrepancy poses serious obstacles. The EU's AI Act which was passed in 2024, was a significant step in creating a unified regulatory framework. With this law, a systematic framework for AI governance is introduced, classifying AI

[44] Regulation (EU) 2016/679 of Apr. 27, 2016, art. 22, 2016 O.J. (L 119) 1.
[45] Regulation (EU) 2016/679 of Apr. 27, 2016, arts. 44–50, 2016 O.J. (L 119) 1.
[46] Compass by Khaitan & Co., Analysing AI and the Digital Personal Data Protection Act 2023, at 2 (2023).
[47] Saurabh Shubham, The Digital Personal Data Protection Act of 2023: Strengthening Privacy in the Digital Age, 3 Int'l J. L. in Changing World 77, 90–92 (2024).
[48] Regulation (EU) 2024/1689, art. 6, 2024 O.J. (L 1689) 1, 5.

applications into four risk categories: unacceptable, high, limited, and low. To guarantee that its implementation complies with EU rules,[49] high-risk AI systems must meet strict criteria, such as conformity evaluations and transparency duties.

The EU AI Act takes a risk-based strategy in an effort to strike a compromise between advancing innovation and defending basic rights. The Act makes sure that higher-risk applications are subjected to more thorough examination by categorizing AI systems based on their potential effect. By giving firms more precise parameters.[50]This framework may increase public confidence in AI technology by showcasing a dedication to moral principles and responsibility.

Small and medium-sized enterprises ("**SMEs**") have unique implementation issues even though the EU AI Act offers a thorough risk-based framework. SMEs frequently struggle with the resource-intensive nature of compliance, including technical paperwork and monitoring requirements[51], even in the face of measures meant to lower compliance costs, such as proportionate decreases in fees for conformity assessments. For smaller businesses, this discrepancy may impede innovation and market penetration.

In contrast, there is no centralized AI regulatory structure in the US[52] at the moment. Rather, it depends on a patchwork of current federal rules and regulations, resulting in a fragmented approach that may make compliance more difficult for companies who operate in several states.

China, on the other hand, has taken a more prescriptive and centralized approach to regulating AI. China's first particular administrative rule on generative AI services

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[49] Regulation (EU) 2024/1689, arts. 5–7, 2024 O.J. (L 1689) 1, 4–6.

[50] *Understanding the EU AI Act: Key Considerations for SMEs*, The Barrister Group (Aug. 2024), https://thebarristergroup.co.uk/blog/eu-ai-act-considerations-for-smes.

[51] *AI Watch: Global Regulatory Tracker – United States*, White & Case LLP (Mar. 31, 2025), https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-united-states.

[52] *AI Watch: Global Regulatory Tracker – China*, White & Case LLP (Mar. 31, 2025), https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-china.

was the Interim Measures for the Management of Generative Artificial Intelligence Services, which was adopted in 2023[53]. These policies contain clauses to guarantee that AI-generated material is truthful and does not discriminate on the basis of sex or race, and they highlight the significance of coordinating AI development with the nation's fundamental principles.

An engaging summary of the global regulatory environment may be offered via a graphic depiction, such as a globe map showing the various approaches to AI regulation in various jurisdictions.

Nevertheless, there are difficulties in putting such extensive laws into effect. To comply with the EU AI Act's requirements, organizations must invest in compliance measures[54] such as risk assessments, paperwork, and monitoring systems. Furthermore, because AI technologies are always evolving, legal frameworks need to be flexible and updated often to handle new threats and uses.

International cooperation is crucial to reducing regulatory fragmentation and advancing common AI laws. By facilitating the creation of international best practices and standards, cross-border collaborations may promote the ethical application of AI technology everywhere[55].

VI. INDIA'S LEGAL POSITION

Through a mix of legislative actions, regulatory advice, and judicial interventions, India's approach to AI governance is developing. This complex evolution demonstrates the country's dedication to coordinating the use of AI with ethical norms, human rights concerns, and constitutional foundations.

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[53] Regulation (EU) 2024/1689, arts. 8–10, 2024 O.J. (L 1689) 1, 6–8

[54] Regulation (EU) 2024/1689, art. 13, 2024 O.J. (L 1689) 1, 9.

[55] Kanchan Nagar & Ors. v. Union of India & Ors., W.P. (C) No. 1234/2024 (Del. High Ct. filed Nov. 15, 2024).

A. Public Interest Litigations and Judicial Oversight

Concerns about AI have drawn more attention from Indian courts, especially through Public Interest Litigations ("**PILs**"). One prominent instance is Kanchan Nagar & Ors. v. Union of India & Ors.[56], in which the Delhi High Court addressed the problem of copyright infringement and the necessity of regulatory frameworks controlling AI technology in relation to the unapproved use of original artistic works by AI software.

In a different case, the Sup. Ct. voiced concerns about how AI would affect jobs. Justice Surya Kant discussed the possibility of AI replacing drivers at a hearing on the enforcement of electric vehicle regulations, highlighting the significance of protecting livelihoods in the face of technological progress.

B. Ethical Guidelines and Policy Frameworks

NITI Aayog, the policy think tank of the Indian government, has played a key role in developing ethical standards for AI. NITI Aayog lists values[57] including responsibility, privacy, inclusion, and safety in its "Responsible AI for All" study. These principles emphasize the need of coordinating AI development with basic rights and promote transparency in AI systems.

Furthermore, platforms and intermediaries using AI technology have received cautions from the Ministry of Electronics and Information Technology ("**MeitY**"). To enhance user awareness and stop the spread of false information, the March 2024 recommendation requires adherence to ethical norms, which include identifying and labelling AI-generated material.

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[56] NITI Aayog, Responsible AI for All: Part 1 – Principles for Responsible AI (Feb. 2021), https://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf

[57] Ministry of Electronics & Information Technology, Advisory No. 2(4)/2023-CyberLaws–3 (Mar. 1, 2024), https://regmedia.co.uk/2024/03/04/meity_ai_advisory_1_march.pdf.

C. Institutional Initiatives and Regulatory Developments

In January 2025, MeitY announced the creation of the India AI Safety Institute[58] in recognition of the need for organized AI governance. With an emphasis on risk assessment, harm detection, and the creation of interoperable technologies, this institute seeks to advance moral and secure AI applications. India's dedication to establishing a strong institutional framework for AI supervision is demonstrated by this project.

D. AI and Intellectual Property Rights

In India, the relationship between AI and intellectual property rights has been controversial. The Federation of Indian Publishers sued OpenAI in January 2025[59], claiming that the company had improperly used protected material to build AI algorithms. The case, which is still ongoing before the Delhi High Court, brings up important issues like permission, data usage, and the preservation of artistic creations in the age of artificial intelligence.

E. Harmonizing Regulation and Innovation

India's strategy for regulating AI strikes a careful balance between encouraging innovation and guaranteeing moral observance. There is increasing agreement that explicit legal frameworks are required to handle the societal implications of AI, even as MeitY supports a light touch legislative strategy to promote technical growth.

A critical but underappreciated feature of India's current regulatory environment is the possibility of harmonious construction across its existing statutory instruments. Read together, the Information Technology Act, 2000, the Digital Personal Data

[58]OpenAI Faces New Copyright Case, from Global Publishers in India, Reuters (Jan. 24, 2025), https://www.reuters.com/technology/artificial-intelligence/openai-faces-new-copyright-case-global-publishers-india-2025-01-24/.

[59] *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 SCC 1; AIR 2017 SC 4161.

Protection Act, 2023[60], the Consumer Protection Act, 2019[61], and the Competition Act, 2002[62] form an interlocking framework capable of addressing many dimensions of AI governance even in the absence of a dedicated AI statute. Section 43A of the IT Act[63] already imposes strict liability on corporate bodies that negligently handle sensitive personal data, a standard readily applicable to AI-driven profiling systems. The DPDP Act's data-minimization mandate under Section 5[64] and its prohibition on automated decisions producing "significant effects" without consent under Section 16(2)[65] operationalize the constitutional right to privacy recognized in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017).[66] The Consumer Protection Act's definition of "deficient service" under Section 2(11) can encompass flawed algorithmic outputs causing consumer harm, while the Competition Commission of India is empowered under the Competition Act to scrutinize algorithmic collusion and data monopolization by AI-enabled platforms. Courts are already using this harmonious reading: in Global Health Ltd. v. John Doe (2025), the Delhi High Court synthesized tort law, the IT Act, and constitutional privacy principles to restrain AI-generated deepfake misuse, demonstrating that purposive interpretation of existing laws can fill regulatory gaps. The challenge for India, therefore, is not merely to enact new legislation but to ensure these instruments are interpreted cohesively — with regulators, courts, and policymakers treating them as complementary parts of a unified AI governance architecture.

VII. RECOMMENDATIONS

This paper suggest the creation of a special India AI Oversight Commission" with the authority to authorize high-risk deployments, carry out bias and safety audits, and

[60] Digital Personal Data Protection Act, 2023, **No. 22 of 2023**, Acts of Parliament, 2023 (India).
[61] Consumer Protection Act, 2019
[62] Competition Act, 2002
[63] Information Technology Act, 2000, No. 21 of 2000, Sec 43A (India).
[64] Digital Personal Data Protection Act, 2023, **No. 22 of 2023, Sec 5(India)**
[65] Digital Personal Data Protection Act, 2023, **No. 22 of 2023,Sec 16(2)(India)**
[66] *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 SCC 1; AIR 2017 SC 4161.

publish sector-specific guidelines for banking, healthcare, human resources, and other crucial areas in order to guarantee that India's AI ecosystem develops in a manner that strikes a balance between innovation and the defence of individual rights.

An AI-Specific Liability Framework that explicitly outlines the obligations of developers, deployers, and end users, adds strict-liability provisions for clearly unsafe or discriminatory outcomes, and streamlines pathways for compensation and remediation should be added to or amended into existing statutes, such as the DPDP Act, 2023, and the IT Act, 2000, in order to close the accountability gap. Mandatory DPIAs before any large-scale personal data processing will protect privacy and minimize bias from the start, while all AI systems deemed high-risk must adhere to a "right to explanation" with human-in-the-loop review and meet minimum XAI benchmarks, such as model cards and decision logs.

Additionally, incorporating "Privacy by Design" and "Ethics by Design" regulations would guarantee that AI systems are designed with encryption, anonymization, fairness audits, and stakeholder impact studies from the ground up.

Companies should be urged to create internal AI Ethics Committees that answer directly to their boards and to provide yearly "AI Accountability Reports" that include use cases, governance procedures, and audit results in order to implement these reforms in a sustainable manner. By certifying AI auditors, data-protection officers, and ethics officers and by keeping a public register of "certified" AI suppliers who adhere to fundamental safety and fairness norms, government organizations like NITI Aayog and MeitY may promote capacity-building.

While domestic transparency portals and public incident-reporting requirements will improve consumer trust and redress, India's voice in international forum, the Organisation for Economic Co-operation and Development **("OECD**"), the Group of Twenty ("**G20**"), and Council of Europe working groups must be amplified in order to harmonize India's technical standards (such as International Organization for

Standardization/International Electrotechnical Commission ("**ISO/IEC**") guidelines) with global norms. To ensure that this regulatory framework not only addresses present issues but also promotes responsible innovation for years to come, grant programs should encourage open-access, ethical AI research in Indian universities and all AI legislation should include sunset-review clauses every three to five years to keep up with the rapid pace of technological advancement.

VIII. CONCLUSION

A new age of operational efficiency and innovation has been brought about by the incorporation of AI into business decision-making processes. But along with this progress come difficult moral and legal issues that need for an all-encompassing and flexible regulatory structure. The need for strong data security measures in the era of artificial intelligence is highlighted by the acknowledgment of the right to privacy as a basic right under Article 21 of the Indian Constitution, as established in Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.[67]

A proactive approach to AI regulation is demonstrated by the EU's AI Act of 2024[68], which assigns strict requirements to high-risk systems and classifies AI applications according to risk classifications. This risk-based framework seeks to establish a standard for international AI governance by striking a balance between innovation and the defence of basic rights.

Since there isn't a distinct legal framework for AI in India, detailed rules that handle the particular difficulties presented by AI technologies must be developed. Although the IT Act[69] and the DPDP Act[70] offer a solid framework for data protection, stricter legal action is necessary to address issues unique to artificial intelligence.

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[67] *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 SCC 1; AIR 2017 SC 4161.
[68] Information Technology Act, 2000 (India).
[69] Digital Personal Data Protection Act, 2023 (India).

Organizations must use strategies like XAI to increase accountability and transparency in order to guarantee the ethical and responsible deployment of AI. To protect individual rights and increase public confidence in AI systems, privacy-by-design principles, informed consent procedures, and data reduction techniques must be implemented. To minimize regulatory fragmentation and standardize AI legislation, international cooperation is essential. India can ensure the ethical use of AI technology and promote an innovative atmosphere by bringing its domestic rules into line with international norms.

In summary, a comprehensive strategy that takes into account legal, ethical, and technological factors is needed for the proper incorporation of AI into business decision-making. India can leverage the revolutionary potential of AI while protecting the rights and freedoms of its population by proactively addressing these issues through comprehensive law, ethical standards, and international collaboration.

REFORMING CORPORATE FRAUD ENFORCEMENT IN INDIA: STRENGTHENING THE SFIO THROUGH DEFERRED PROSECUTION AGREEMENTS AND WHISTLEBLOWER PROTECTION

- NIHARIKA SHAIYAM & FRAZEEN ZAMAN

ABSTRACT

Corporations play a significant role in the economy. With the rise of companies, there has also been a rise in incidents of fraud. Corporate fraud poses a significant threat to economic stability by eroding public trust in business and jeopardizing stakeholder interests. These crimes are often hatched in darkness, making it difficult to detect them and collect evidence for trial. Prosecuting corporations is a challenging task that is both time-consuming and cost intensive.

*Serious Fraud Investigation Office ("**SFIO**") is a statutory agency tasked with investigating corporate fraud in India, remains a partially realized mechanism due to investigatory and enforcement delays, inadequate whistleblower protection, and excessive reliance on criminal proceedings. The SFIO's role in actual enforcement, with reference to case laws and to examine its judicial reinforcement in shaping how the SFIO manage investigations and ensures corporate governance compliance in India. India's existing legal framework regulating whistleblowers offers limited protection to private sector employees and lacks a dedicated institutional mechanism to safeguard anonymity and prevent retaliation.*

*Deferred Prosecution Agreements ("**DPAs**") are a pragmatic solution to strengthen India's corporate fraud enforcement framework. DPAs can reduce delays, incentivize self-reporting, and mitigate collateral damage to innocent stakeholders.*

Keywords: Corporate Governance, Fraud Investigation, SFIO, Whistleblower Protection, White-Collar Crime, Deferred Prosecution Agreements

I. CORPORATE FRAUD: DEFINITION, FORMS, AND THE ROLE OF THE SERIOUS FRAUD INVESTIGATION OFFICE IN INDIA

Fraud in company affairs includes any act, omission, concealment, or abuse of position which is done alone or in connivance with intent to deceive, gain undue advantage, or harm the company, its stakeholders, or creditors, whether or not it causes actual loss.[1] Evasion of taxes, social security fraud, false insurance claims, and credit card fraud are only the tip of the iceberg. Corporate fraud is a far more serious problem. Although most corporate victims survive, fraud devastates the careers of honest managers, puts jobs at risk, and undermines people's confidence in business.[2] Cressey's fraud triangle[3] presents a classic model that explains why trusted individuals commit occupational fraud. His hypothesis states that a trusted person becomes a "trust violator" only when pressure, opportunity, and rationalization are present at the same time.[4] Corporate fraud can be divided into five main categories: corruption, conflicts of interest, theft of assets, false reporting, and technological abuse[5].

India, as a developing country, is in the grip of fraud, emphasizing the need for a transparent, ethical, and responsible corporate governance framework.[6] As corporate governance is important in protecting the interests of all the stakeholders.[7]

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[1] The Companies Act 2013, § 447(i).
[2] Michael J Comer, *Investigating Corporate Fraud* (2017).
[3] Ibid 15.
[4] Sandra Walklate, Researching Victims of Crime: Critical Victimology, 17 Social Justice 25, 25 (1990).
[5] Comer, supra, at 4.
[6] PK Gupta and Sanjeev Gupta, Corporate Frauds in India – Perceptions and Emerging Issues, 22 JFC 79, 82 (2015).
[7] Kalyani Karnad, THE ROLE OF SFIO WITH REGARD TO CORPORATE GOVERNANCE, 3 jclg,150 (2019).

Over the past two decades, India has undertaken a series of legal reforms, particularly through the Companies Act, 2013,[8] and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015,[9] to institutionalize governance mechanisms. In pursuance of this, the Government of India constituted the Serious Fraud Investigation Office ("**SFIO**")[10] under the jurisdiction of the Ministry of Corporate Affairs vide resolution dated 2nd July, 2003, following the recommendation of the Naresh Chandra Committee.[11] The SFIO is a multi-disciplinary team, and the experts are appointed by the Central Government from various fields such as banking, corporate affairs, taxation, forensic audit, capital market, information technology, and law.[12] The Companies Act, 2013, has granted statutory status to SFIO and has vested it with the requisite legal authority and powers to conduct an investigation.[13] The SFIO investigates corporate fraud that is complex with inter-departmental and multi-disciplinary ramifications, substantially involving public interest through significant monetary misappropriation or the large number of persons affected, and has the potential to lead to or contribute towards clear improvements in systems, laws, or procedures.[14] Since financial crime encompasses bribery, corruption, market manipulation, and insider trading, it is difficult to establish and prosecute offenders. It cannot be ignored that SFIO has demonstrated its ability to assert its authority in high-profile matters such as Rahul Modi v. SFIO.[15] The judgment given by Justice Uday Umesh Lalith reaffirmed that SFIO's investigative powers are robust and not strictly curtailed by the time frame in Section 212(3) of the Companies Act, 2013. By recognising the deadline as directory rather than mandatory,

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[8] 2013 Act, *supra* note 2.

[9] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015.

[10] Serious Fraud Investigation Office, 'What We Do?' (SFIO – Government of India) https://sfio.gov.in/en/ accessed 5 August 2025

[11] Resolution No. 45011/16/2003-Adm-I.

[12] 2013 Act, *supra* note 2, at § 211(2).

[13] "Proactive Disclosure" (*India*) <https://sfio.gov.in/en/proactive-disclosure/> accessed August 7, 2025.

[14] Ramaiya, Guide to the Companies Act, 16th edn. p. 2525.

[15] Serious Fraud Investigation Office v. Rahul Modi, 2019 SCC OnLine SC 484.

the courts upheld SFIO's ability to investigate complex investigations beyond procedural limits, strengthening its independence.[16] However, it also needs to be noted that due to the low visibility of white-collar crimes, it becomes difficult for the government to convict huge corporations. Convictions also entail collateral damage to innocent parties, such as investors and employees. The complete wipeout of Enron post-conviction led to the loss of thousands of jobs.[17]

SFIO's struggle in investigating corporate fraud through a case-by-case approach

Despite enhanced statutory powers, SFIO has often failed to ensure timely prosecution and recovery in major frauds. The Parliamentary Standing Committee on Finance, in its report on the Ministry Demands for Grants 2021-22,[18] observed that there had been no convictions in non-compoundable cases by the SFIO, and the rate of disposal for prosecution cases was 8 to 10 years on average. Questions are frequently raised about whether SFIO is structurally and legally equipped to handle corporate crimes that cut across jurisdictions and use advanced digital methods.[19] The agency's heavy reliance on short-term deputation from various government wings results in a catastrophic loss of institutional memory; as investigators master the nuances of a specific multi-year fraud, their tenure often expires, forcing the rest of the investigative momentum. This lack of a permanent, specialized cadre leaves the SFIO operationally outpaced by the nature of modern white-collar crime. Because these crimes move so easily across different countries and legal systems, a temporary staff simply cannot keep up. Without dedicated special courts or a permanent, digital-first task force, the near-zero

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[16] *Id*. at 34.

[17] Divyam Shresth Sinha, *Cross- Jurisdictional Analysis of Deferred Prosecution Agreements*¸ NUALS Law Journal, (2025).

[18] Ankoosh Mehta and Rinkel Singh, "Critical Evolution of Serious Fraud Investigation Office's Powers Vis-À-Vis White-Collar Crimes Investigations In India – Legal 60" (*legal60*, February 29, 2024) <https://legal60.com/critical-evolution-of-serious-fraud-investigation-offices-powers-vis-a-vis-white-collar-crimes-investigations-in-india/> accessed August 7, 2025.

[19] Manu Kaushik, "Manpower Crunch Taking a Toll on SFIO, NFRA: House Panel" *The Financial Express* (March 25, 2025) <https://www.financialexpress.com/jobs-career/manpower-crunch-taking-a-toll-on-sfio-nfra-house-panel-3788504/> accessed August 8, 2025.

conviction rate is not just a random failure; it is the predictable result of an old-fashioned investigative system trying to police a new era of encrypted, high-speed finance.

II. SARADHA CHIT FUND SCAM

Frequent jurisdictional overlap among agencies like the Securities and Exchange Board of India ("**SEBI**"), Enforcement Directorate ("**ED**"), Central Bureau of Investigation ("**CBI**"), and Income Tax authorities often results in delayed investigation or contradictory findings, as seen in the Saradha chit fund case.[20] The Saradha chit fund scam[21] was examined by the SFIO at the request of the Ministry of Corporate Affairs in 2013. This was due to a public outrage over a scheme that deceived thousands of small investors through fraudulent money-pooling operations disguised as chit funds. SFIO's investigation extended to more than sixty companies, most of them based in eastern states, which were suspected of defrauding the public. In its interim reports, SFIO noted that these companies were engaged in serious financial mismanagement and diversion of funds by their promoters, who exploited regulatory loopholes. SFIO blamed poor coordination between government agencies for the rise of illegal collective investment schemes, which cost investors, especially from lower economic strata, their whole lifetime savings. SFIO attributed part of the investigation's shortcomings to a 'fragmented regulatory environment. As multiple agencies were involved, the overlapping jurisdictions hindered effective action and timely response.[22] It is important to note that SFIO cannot take *suo motu* cognizance of the frauds. Under Section 212(1) of the Companies Act, 2013[23], the initiation of an SFIO

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[20] Sanjib Kr Baruah and Gaurav Choudhury, "'Saradha Scam Much Bigger, Bengal Not Cooperating'" *Hindustan Times* (November 11, 2014) <https://www.hindustantimes.com/india/saradha-scam-much-bigger-bengal-not-cooperating/story-gPT9CeG20q9AePLeWTOIRK.html> accessed August 8, 2025.

[21] Subrata Chattoraj v. Union of India, (2014) 8 SCC 768

[22] Anandita Singh Mankotia, "Chit Fund Scam Probe: SFIO Blames Lack of Coordination among Govt Agencies for Scams" *Economic Times* (September 24, 2013) <https://economictimes.indiatimes.com/news/politics-and-nation/chit-fund-scam-probe-sfio-blames-lack-of-coordination-among-govt-agencies-for-scams/articleshow/22956323.cms?from=mdr> accessed August 8, 2025.

[23] The Companies Act 2013, § 212(1)

investigation is contingent upon a direction from the Central Government ("**CG**"), which means that the statutory mandate to investigate originates externally rather than from the agency itself. However, once such a direction is issued, the SFIO enjoys a degree of operational autonomy in conducting the investigation. The investigation is led by the Director, SFIO, and officers exercise powers comparable to inspectors under the Companies Act, enabling them to determine investigative strategy, gather evidence, examine company officers, and analyse financial records. In this sense, the SFIO independently determines when its investigation is complete. Nevertheless, the completion of an investigation should not be conflated with the legal conclusion of a case. The transition from investigation to prosecution is not within the SFIO's independent control. Section 212(14)[24] requires prior sanction of the Central Government before prosecution can be instituted. Upon completion, the SFIO submits its report to the Central Government, which is treated as a police report under Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023.[25] The subsequent steps, such as initiation of prosecution, compounding, or closure, depend upon the authorization of the Central Government. Consequently, while the SFIO possesses operational autonomy in completing investigations, it does not have the authority to independently conclude or settle cases.

III. DECCAN CHRONICLE CASE

Once an investigation is completed, SFIO submits a detailed analysis and report to the central government, which examines the findings and issues further.[26] Though SFIO can file complaints directly, there are no special courts or fast-track mechanisms for white-collar crime, leading to years of pendency as seen in the Deccan Chronicle case.[27]

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[24] The Companies Act 2013, § 212(14)

[25] Bharatiya Nagarik Suraksha Sanhita (2023), § 173

[26] Shruti Kulshreshtha, Serious Fraud Investigation Office: The White Collar Crime Controller, 5 Pen Acclaims 1 (2019).

[27] SFIO v. Deccan Chronicle Holdings Ltd., 2021 SCC OnLine NCLT 12066.

This case involved a loan default matter connected to Deccan Chronicle. Between 2009 and 2011, DCHL reportedly failed to repay loans amounting to approximately rupees one thousand two hundred thirty crores. The investigation revealed several business irregularities and significant violations of the Companies Act, 1956.[28] Funds from various unrelated banks were allegedly misused through the issuance of non-convertible debentures and other financial instruments. The Standing Committee on Finance 2019 found that seventy-five out of the one hundred thirty sanctioned posts in SFIO were lying vacant, undermining its investigative capacity.[29] This shortage was evident in the Deccan Chronicle case, where the SFIO's petition before the Company Law Board ("**CLB**") to change the company's management faced repeated adjournments, delaying urgent corrective measures. Despite having statutory backing, the SFIO continued to operate under significant manpower constraints. In continuation of this case, DCHL approached the Hyderabad High Court to block the SFIO's move, contending that the petition was based on an inspection report alone and that a complete investigation had not yet been conducted, rendering the action premature and without full evidentiary support.[30] However, after conducting thorough and continuous audits, the SFIO prepared and submitted its report. Following this, the Board for Industrial and Financial Reconstruction ("**BIFR**") declared DCHL a "sick company".[31]

IV. REFORMING CORPORATE FRAUD INVESTIGATION IN INDIA

A. Integrating Whistleblower Protection with SFIO's investigative strength

Whistleblowing refers to a situation where "a person raises a concern about past, present, or imminent wrongdoing, or an attempt to cover up wrongdoing, in an

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[28] The Companies Act, 1956

[29] Standing Committee on Finance, Seventeenth Lok Sabha, *Regulation of Audit Firms* (17th Report, Lok Sabha Secretariat 2019).

[30] "Proactive Disclosure" (*India*, November 16, 2014) <https://sfio.gov.in/en/proactive-disclosure/> accessed August 10, 2025.

[31] Anupreet Kaur, Role of SFIO in Controlling White Collar Crimes, 2 Law Essentials J 149 (2022).

organisation."[32] Whistleblowers play a critical role in exposing hidden fraud that internal corporate mechanisms often fail to address. SFIO relies heavily on credible insider disclosure to detect complex, multi-layered accounting fraud and money laundering schemes. Despite the legal provisions, whistleblowers in India face significant threats, including job loss, defamation suits, workplace retaliation, and threats to personal safety.

Various jurisdictions have enacted laws to protect whistleblowers and encourage reporting of corporate misconduct. One such enactment is The Public Interest Disclosure Act 1998 ("**PIDA**") of the UK.[33] The PIDA prevents detrimental treatment of whistleblowers because of disclosure. [34] It mandates that the disclosure must be in the public interest and relate to one of the six categories listed in PIDA: commission of a criminal offence, failure to comply with a legal obligation, miscarriage of justice, the health or safety of an individual, the environment is endangered, and the information falling in the categories mentioned above is being concealed.[35] One of the striking features of PIDA is that it makes any provision that precludes the worker from making a protected disclosure void. [36] It means that the whistleblowing rights supersede any contractual duty of confidentiality. This Act does not draw any distinction between private and public employees, thereby extending protection to all forms of whistleblowing.

On the recommendation of the 179th Law Commission of India, specific legislation was enacted to encourage the disclosure of information regarding corruption or maladministration by public servants and to provide protection to complainants. This

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[32]Govt. UK, *Whistleblowing and the Public Interest Disclosure Act 1998* (July 2025), Whistleblowing and the Public Interest Disclosure Act 1998 (c.23) (accessible version) - GOV.UK.
[33] The Public Interest Disclosure Act (1998).
[34] *Id.* at § 47B.
[35] *Id.* at § 43(1).
[36] *Id.* at § 43J.

enactment is known as The Whistle Blowers Protection Act, 2014 ("**WBPA**").[37] This is the only legislation dealing with the protection of whistleblowers in India. Section 11 of the 2014 Act provides for the protection of the complainant against any proceedings undertaken on the ground of disclosure.[38] It also goes a step ahead and provides for concealment of the identity of the complainant and the documents furnished by him unless required by the Competent Authority or order of the court.[39]

However, a major problem exists as the 2014 Act fails to protect corporate employees. Section 3(d) defines "disclosure" as a complaint relating to a violation of the Prevention of Corruption Act, 1988, misuse of power, such as to cause loss to the Government, or commission of an offence by a public servant.[40] This means that the protection is only extended to public officials and public sector undertakings. There are no laws to cover private, unlisted companies or unincorporated entities and their employees.[41] The Companies Act, 2013, mandates the incorporation of a whistleblower policy for listed companies. Section 177 (9) of the Companies Act, 2013,[42] gave formal acknowledgement to whistleblowing as a safeguard in corporate governance by mandating listed and certain prescribed companies to establish a vigil mechanism.[43] SFIO relies heavily on credible insider disclosures to detect multilayered accounting fraud and money laundering schemes.[44] Whistleblower protection remains a very dormant area, even though the Act provides for such a mechanism. Compliance is weak, and inputs are often ignored due to the lack of structural integration with the SFIO. SFIO has no internal whistleblower facilitation mechanism, nor does it have any

[37] The Whistle Blowers Protection Act (2014).
[38] *Id.* at § 11.
[39] *Id.* at § 13.
[40] *Id.* at § 3(d).
[41] Anshul Prakash and Kruthi N Murthy, International Employment Lawyer, Guide to Whistleblowing (Oct. 17, 2024), Guide to Whistleblowing | International Employment Lawyer.
[42] 2013 Act, *supra* note 2, at § 177(9).
[43] *Id*. at §177.
[44] Bhavya B & Rao DSP, The Role of SFIO in Combating Corporate Frauds in India, 11 IJES 1541, 1543 (2015).

formal framework to receive anonymous complaints, nor guarantees protection in practice.[45]

The WBPA 2014 was enacted to protect complainants, but it remains ineffective due to the absence of clear procedures, time-bound grievance redressal, and independent authority.[46] It also failed to extend to corporate misconduct. Whistleblower complaints in Indian BSE-50 companies rose 8% in FY 2024–25 due to stronger reporting mechanisms.[47] The 2023 Global Business Ethics Survey by the Ethics and Compliance Initiative found that ninety-percent% of Indian employees who observed workplace misconduct reported it (global median: seventy-two per cent), but seventy-four per cent faced retaliation (global median: forty-six per cent), highlighting the need for stronger whistleblower protections.[48] This is due to the Company Act, 2013, failing to impose any obligation on employers to keep the complainant, witnesses, or the investigation process confidential.[49] This is exactly why there is a need to extend the WBPA to private corporate bodies and employees, as it imposes a duty to conceal the identity of the complainant on the competent authority. In addition to this, for any whistleblowing policy to be effective, there must be a culture of trust and openness, starting from the top leadership of organizations. Organizations that do not encourage diverse viewpoints cannot develop effective whistleblowing policies. [50]

Unlike global standards, India offers whistleblowers neither monetary incentives nor legal immunity. The United States' Dodd-Frank Act offers rewards of up to thirty per

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[45] *Id.* at 1546.
[46] Whistle Blowers Protection Act (2014).
[47] Amritha Pillay, Prachi Pisal and Jaden Mathew Paul, 'Whistleblower complaints at Indian companies up 8 % to 1,074 in FY24' *Business Standard* (9 September 2024).
[48] Bhumika Indulia, "Corporate Whistleblowing: Are We There Yet?" (*SCC Times*, February 1, 2025) <https://www.scconline.com/blog/post/2025/02/01/corporate-whistleblowing-are-we-there-yet/> accessed August 9, 2025.
[49] Prakash and Murthy, *supra* note 56.
[50] Dr. P. Sree Sudha, A *Critical Analysis of Whistle Blowing Provisions—With Special References to Companies Act, 2013*, SCC WEB EDITION, https://www.scconline.com/ /Members/SearchResult.aspx.

cent of recoveries, and the UK's PIDA protects against unfair dismissal.[51] In order to leverage the potential of whistleblowing in combating fraud and to ensure corporate governance, India urgently requires a statutory whistleblower protection authority with the power to ensure anonymity, provide protection, and coordinate with SFIO for initiating a time-bound investigation. Until this gap is fixed, whistleblowing will stay limited and risky.

B. The Case for Deferred Prosecution Agreements in India

In India, five crore cases are pending in courts.[52] The need to increase the manpower available to the SFIO was emphasized, as corporate fraud is complex to investigate, leading to delays in completing the investigation.[53] The presence of significant backlog and other complexities necessitates a shift from the traditional crime and punishment approach to alternative dispute resolution mechanisms. One such way is to introduce the deferred prosecution agreement ("**DPA**") in India.

Similar challenges were present in the United Kingdom ("**UK**"). To overcome these, the UK brought the DPA to handle instances of corporate misconduct. It is an agreement, overseen by a judge, between a prosecutor and an organisation that could be prosecuted. It is entered into to suspend prosecution for a specified period, subject to the conditions outlined in the agreement.[54] DPAs are often used to avoid lengthy, costly, and uncertain trials.

The SFIO in India is rising as an active agency in investigating corporate fraud. However, there are pending litigations due to a delay in completing the investigation

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[51] Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub L No 111–203, § 922, 124 Stat 1376 (2010) (US); Public Interest Disclosure Act 1998, c 23 (UK).

[52] Pavan Korada, *5 Crore Cases and Counting: India's Courts are Struggling to Clear the Pile-Up*, The Wire (Apr. 17, 2025), https://thewire.in/law/5-crore-cases-and-counting-indias-courts-are-struggling-to-clear-the-pile-up.

[53] *Government to restructure Serious Fraud Investigation Office; may increase manpower to 350*, The Indian Express (March 8, 2020), Government to restructure Serious Fraud Investigation Office; may increase manpower to 350.

[54] *Crime, justice and law,* SFO Deferred Prosecution Agreements (Feb.25, 2025) https://www.gov.uk/government/collections/sfo-deferred-prosecution-agreements.

and submitting the investigation report.[55] Introducing DPAs in India can address challenges such as prolonged trials, difficulties in procuring evidence, and the adverse impacts on third parties resulting from the closure of companies. Looking at the common law provisions, it can be considered how these can be borrowed to incentivise companies to self-report and evade the risk of closure.

A DPA is a tool to balance criminal enforcement and cooperative business measures. It is an agreement between a prosecutor and a corporation to suspend prosecution for a defined period.[56] In return, the corporation undertakes compliance with specified conditions such as payment of a penalty, payment of prosecutor's costs, disgorgement of profits, cooperation with an investigation related to the alleged offence, prohibition from engaging in certain activities, financial reporting, monitoring mechanisms, etc.[57] DPAs create space for cooperation between companies and the government to address misconduct and reform corporate practices. While considering a DPA, the investigator may consider the extent of collateral damage that will be incurred due to conviction and its impact on innocent employees, investors, and shareholders. If the impact is significant, then resorting to DPA can help ensure compliance with the law and avoid negative impacts on third parties. [58]

Since the investigation and trial processes are time-consuming, the Indian economy faces setbacks in cases of corporate fraud and corruption. For instance, the British aerospace and defence company Rolls-Royce PLC was booked by the CBI on charges of paying kickbacks in the procurement of aircraft for the Indian defence sector. This

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[55] Bharat Vasani & CAM Corporate Team, *Serious Fraud Investigation Office- Keeping a close watch on frauds in India Inc,* Cyril Amarchand Mangaldas Blog (Feb.24, 2021) https://corporate.cyrilamarchandblogs.com/2021/02/serious-fraud-investigation-office-keeping-a-close-watch-on-frauds-in-india-inc/.

[56] SFO, *supra* note, at 28.

[57] SFO and CPS, Deferred Prosecution Agreements Code of Practice https://www.cps.gov.uk/publication/deferred-prosecution-agreements-code-practice.

[58] Xiao, *supra* note 1, at 245.

preliminary inquiry took six years to culminate in the filing of an FIR. This case involves fraud and corruption involving public officials, which would require immediate action.[59] On a similar note, Rolls-Royce PLC had faced similar accusations in the UK. In 2017, the company entered into a DPA with the SFO ("**Serious Fraud Office**") over charges of corruption and bribery and paid the fines imposed. While the company has already been penalised in the UK, a mere FIR has been registered in India.[60] This highlights the issues with India's traditional criminal prosecution model. No progress has been made since the filing of an FIR, and given the delays, there remains a low chance of conviction. Reports highlight that most cases end in acquittals or are dropped due to lack of evidence.[61] To prevent such outcomes, it is suggested that India adopt a DPA framework. India could benefit from such a framework, as enforcement authorities would be able to use settlement agreements to recover assets from public officials and impose fines on private parties involved in bribery without needing criminal proceedings. This has sparked calls to include settlement provisions in anti-corruption laws of India, such as in the UK Bribery Act 2010.[62]

A few existing statutes already provide for settlement mechanisms. The Competition (Amendment) Act, 2023,[63] introduced Sections 48A and 48B, which enable parties to apply for settlements or commitments. These aim to bring procedural efficiency, expedite the resolution of antitrust proceedings, and reduce expenses. From a business perspective, they benefit companies by ensuring quicker investigations. An important aspect is that they do not require the party to plead guilty, maintaining its

[59] Shemin Joy, *CBI registers FIR against Rolls-Royce, its senior officials in corruption case*, Deccan Herald (May 29, 2023), CBI registers FIR against Rolls-Royce, its senior officials in corruption case.
[60] Anupam Verma and Navtej Vatsa, *Tackling Corporate Frauds with Carrot-over-Stick approach: Envisioning an Indian DPA*, CBCL (2023).
[61] Rahul Bedi, *CBI's Endless Probes: Decades of Delays, Zero Convictions in Defence Deals*, The Wire (Mar. 6, 2025), CBI's Endless Probes: Decades of Delays, Zero Convictions in Defence Deals - The Wire.
[62] Elisa Solomon, Targeting corruption in India: How India can bolster its domestic anticorruption efforts using principles of the FCPA and the U.K. Bribery Act, 34 U. PA. J. INT'L L. 901, (2013).
[63] The Competition (Amendment) Act 2023, s 48A, 48B

reputation while ensuring that victims are compensated.[64] Another commonly used example of such an approach is the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018,[65] issued by SEBI, which governs the terms and procedure for settling proceedings in cases of violation of securities laws. Under this, any person against whom proceedings have been initiated or may be initiated may apply for a settlement.[66] In the order in respect of Rakesh Jhunjhunwala and 6 others in the matter of Aptech Ltd., involving allegations of insider trading by Rakesh Jhunjhunwala, a settlement agreement was preferred. Instead of admitting or denying guilt, he opted to settle the matter by paying the settlement amount. In return, SEBI undertook not to initiate any proceedings against him.[67] This highlights how settlement agreements allow the imposition of penalties on parties without engaging in lengthy procedures.

The DPA framework sits well with Section 212(5) of the 2013 Act, which requires "the company, its officers and employees to cooperate with the SFIO by providing all information, explanation, documents and assistance as needed".[68] Companies are likely to assist when they know they can resolve violations without admitting guilt. This significantly improves compliance level and preserves resources.

However, settlement mechanisms like DPAs raise concerns about their deterrent effect and the risk of lenient terms for offenders. These concerns are valid and must be addressed. To prevent any misuse of DPAs and maintain public trust in the system, strong judicial oversight is essential. India can take cues from the UK in this aspect,

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[64] Sakshi Gupta, Revolutionizing Enforcement: Settlement and Commitments Mechanism in Indian Competition Law, 6 IJLSI 602, (2024).
[65] Securities and Exchange Board of India (Settlement Proceedings) Regulations 2018
[66] Securities and Exchange Board of India (Settlement Proceedings) Regulations 2018 s 3
[67] Settlement Order in respect of Rakesh Jhunjhunwala and 6 others in the matter of Aptech Limited, SO / EFD-2 / SD/384, (Securities and Exchange Board of India, 2021) https://www.sebi.gov.in/enforcement/orders/jul-2021/settlement-order-in-respect-of-rakesh-jhunjhunwala-and-6-others-in-the-matter-of-aptech-ltd-_51050.html.
[68] 2013 Act, *supra* note 2, at § 212 (5).

where courts play a significant role in analysing terms as well as assessing financial penalties to ensure their adequacy.[69] Trials for cases investigated by the SFIO are conducted before Special Courts.[70] Hence, Special courts should have the jurisdiction to supervise and review DPAs in India. This ensures transparency and establishes that no private compromise opposed to the public interest is made. Publication of the DPA is also necessary to allow scrutiny of the terms and conditions, as is done in the UK. The terms of the DPA may also include putting in a compliance programme, financial reporting, and appointment of monitors to assess and suggest improvements that will reduce the risk of similar future occurrences.[71] The introduction of DPA should come along with detailed guidelines or regulations, making it necessary to publish DPA on an online platform for public access, as well as a guide for plausible terms of conditions under DPA. These will reduce the opportunity to commit fraud. In cases of breach of the DPA, the prosecution can reinstitute criminal proceedings against such a corporation with no entitlement to a refund of fines and costs paid under the DPA so far.[72] This would act as a deterrent for companies against engaging in fraudulent activities. While opting for a DPA over criminal prosecution is recommended, the SFIO must proceed with caution. It may consider various factors to conduct a balancing exercise to decide the correct path. Such factors may include analysis of the historical conduct of the offender, their approach when they were notified of the violations, cooperation with the investigation, impact of conviction on third parties, and how early self-reporting occurred, etc.[73] Once it is satisfied that DPA will be in the public interest, only then should it go ahead. Thus, the above measures would serve as safeguards to prevent the misuse of DPAs and help ensure public trust in the SFIO's fraud investigation process.

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[69] SFO and CPS, *supra* note 31, at 9.
[70] 2013 Act, *supra* note 2, at § 212.
[71] SFO and CPS, *supra* note 31, at 7.
[72] *Id.* at 12.
[73] SFO and CPS, *supra* note 31, at 2.

V. CONCLUSION

The SFIO still faces systemic hurdles as noted above in the paper, most notably manpower shortages, procedural delays, capacity constraints, and reliance on prosecutions, which limit its overall effectiveness. Strengthening its resources and operational framework remains essential for it to fully realise its mandate in combating complex financial crimes. The paper has proposed two solutions to improve the corporate governance in India. First, the incorporation of private organisations and employees within the framework of the Whistle Blower Protection Act, 2018, to create a robust and secure mechanism to encourage reporting. Second, the introduction of settlement proceedings in fraud investigations. The concept of settlement proceedings is not new to India. Mechanisms like the SEBI Regulations, 2018, and the settlement provisions under the Competition Act, 2023, highlight how such approaches can enhance procedural economy and efficiency. This is to avoid cases like Rolls-Royce, where it took six years to register a mere FIR, and no conviction has been achieved, and is also unlikely to be achieved. These introductions promise to reform the SFIO's corporate fraud investigation framework and foster a culture of cooperation and compliance.