

WRITE TO INFORMATION

Technology, Media, Telecommunication,
December 2021

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ABOUT US

TMT Law Practice is a boutique law firm providing a full suite of services in the TMT sectors. Over time, the firm's practice has expanded from a niche boutique IP practice, to include practice areas such as commercial disputes resolution & arbitration, regulatory litigation & advisory, corporate/commercial advisory and transactional support, and policy and legislative drafting across industry verticals. The Firm represents a broad range of clients including Fortune 500 companies, as well as MSMEs and Start-ups.

The firm engages in the practice of the conventional domains of law, and, is also heavily invested in the niche areas of emerging technology, including space technology and policy; healthcare and ICT; data privacy and protection; and, sports laws.

The Firm stresses on developing well-rounded, solution - oriented professionals, who specialize in client - focused service delivery.



TECH-LAW UPDATES - NATIONAL AND INTERNATIONAL

1. **Madras High Court restrained the Central government from taking coercive action against digital media firms under the new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules**

A Public Interest Litigation petition was filed by Indian Broadcasters and Digital Media Foundation challenging provisions of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules. The bench comprising Chief Justice M N Bhandari and Justice P D Audikesavalu passed an order of injunction restraining the respondent (Central government) from taking any coercive action without seeking permission of the Court.

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2. **Clearview AI - facial recognition technology: while the company is close to receiving the U.S. patent, Privacy Authorities around the globe are passing directions for stopping its usage**

Clearview AI received a go ahead on first-of-its-kind federal patent for its facial recognition technology which the company likes to call "search engine for faces". The technology is proposed to explore the internet to find matches of people's images. The company affirms that it will help law enforcement authorities to match images in government databases/ surveillance footage. After examination and approval by the patent examiner, the U.S. Patent and Trademark Office has sent a 'notice of allowance', i.e., the patent will be approved subject to payment of administrative fees by the company.

However, privacy advocates are viewing this technology as violative of privacy since it uses people's faces without their knowledge/consent. It is likely to negatively impact minority communities and can also lead to false arrests when used by law enforcement agencies. Accordingly, three provincial privacy watchdogs have directed the company to stop collecting, using, and disclosing images of people without consent. The privacy authorities of British Columbia, Alberta and Quebec are also requiring the company to delete images and biometric data collected.

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3. **Indian Parliament considered the joint committee report on Data Protection Bill**

The Joint Parliamentary Committee's final report on India's Personal Data Protection Bill was tabled in both Houses of Parliament for consideration on the proposed law during its Winter Session. The Bill is focused on protection of personal and non-personal data of individuals and proposes to establish a Data Protection Authority.

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4. **California Institute of Technology sues Samsung basis infringement of its Wi-Fi Patents**

California Institute of Technology (Caltech) has sued Samsung alleging that its devices infringed Wi-Fi Patents that were at the centre of a billion-dollars damages case against Apple and Broadcom. Caltech, in its complaint filed in a Texas federal court, stated that Samsung's Galaxy phones, tablets, and watches use Wi-Fi chips that infringe five of its data-transmission patents. The infringement extends to other Wi-Fi-enabled Samsung products including televisions and refrigerators.

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5. **The Dutch DPA fined the Tax and Customs Administration for data processing violations**

The Netherlands' Data Protection Authority - Autoriteit Persoonsgegevens (AP) fined the Tax and Customs Administration to the extent of 2.75 million euros for data processing violations under the EU General Data Protection Regulation (GDPR). The AP deemed administration's processing of dual nationality information belonging to applicants for childcare allowance as 'unlawful, discriminatory and improper'. It noted that administration should have deleted data on dual nationality of Dutch citizens in January 2014 in terms of data minimization principles. However, the Tax and Customs Administration kept and used this information. By incorrectly including data about nationality in all systems, the Tax and Customs Administration acted in a discriminatory manner since nationality of a person is immaterial with respect to right to childcare allowance.

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6. Supreme Court issued notice to Centre on social security cover for gig workers

Pursuant to the case filed by the Indian Federation of App-based Transport Workers and two individuals, the apex court has decided to examine whether gig workers and those working for app-based services can be treated as 'unorganized workers' for social security cover/benefits such as insurance, provident fund, gratuity, maternity benefits, and other welfare schemes that are currently denied to them.

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7. 'Refusing cookies should be as easy as accepting them'

France's data protection authority - Commission nationale de l'informatique et des libertés (CNIL) issued 60 compliance notices and 30 new orders concerning private national and international organisations as well as public bodies with respect to their practices in breach of legislation on cookies i.e., not offering users ability to refuse cookies as easily as accepting them. Recent investigations carried out by the CNIL have found that:

- cookies subject to consent were automatically deposited on user's terminal before acceptance by user, upon arrival on the site;
- information banners are still not compliant as they do not allow user to refuse deposit of cookies as easily as to accept it; and
- while information banners offer users means of refusing cookies as easily as accepting them, but the proposed mechanism is not effective because cookies subject to consent are still deposited after refusal expressed by user.

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8. Ban on cookies management provider by a German court may lead to new data blockage in EU

On December 1, 2021, the Wiesbaden Administrative Court passed first-of-its-kind decision holding that companies cannot use cookie management provider that rely on U.S.-based service to collect data. It is noteworthy that since cookie management requirements apply for all EU websites, adoption of this decision across EU may affect companies both within and outside EU. Although this injunction order was made at interim stage and could be modified, its implications are significant and warrant attention. This decision is a step further

towards broader EU definitions of when data may not be processed by entities connected with third countries, including but not limited to the United States.

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9. European Parliament approved the Digital Markets Act

European Parliament approved the Digital Markets Act (DMA) and will proceed negotiations on final passage with the EU Council, which is planned to start under French presidency of the Council during first semester of 2022. The text includes requirements on use of data for targeted or micro-targeted advertising and interoperability of services. The DMA proposal blacklists certain practices used by large platforms acting as gatekeepers which include online intermediation services, social networks, search engines, operating systems, online advertising services, cloud computing, and video-sharing services. It also enables the Commission to carry out market investigations and sanction non-compliant behaviours. The proposed regulation will apply to major companies providing 'core platform services' which are most prone to unfair business practices. The European Parliament also included web browsers, virtual assistants and connected TV within the scope of the DMA.

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10. Suspension of Amazon-Future Coupons' 2019 deal by CCI

The Competition Commission of India (CCI) temporarily suspended the deal between Amazon.com NV Investment Holdings LLC (Amazon) and Future Coupons Private Limited (Future) and imposed a penalty of Rs. 202 crores on Amazon for its failure to notify CCI about certain crucial details of its acquisition of 49% stake in Future as required under Section 6(2) of the Competition Act, 2002 (Act) and for suppressing actual scope and purpose of the deal. The suspension is operative until Amazon gives notice to CCI of the proposed deal as per Form II under the Act within a period of 60 days and the said notice is disposed of by the CCI.

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11. Amazon moves Delhi High Court against ED probe into Future Group Deal

Amazon Wholesale India Private Limited (Amazon) moved to the Delhi High Court

seeking quashing of investigation by Enforcement Directorate (ED) into its 2019 deal with the Future Group. Amazon has termed the investigation as fishing and roving inquiry. It stated that ED sought details of privileged legal advice and opinions from Amazon and other information not connected with the Future group deal. Amazon has prayed for ad-interim stay on ED's probe and summons pertaining to inquiry initiated by the agency with respect to any violation of FEMA rules by Amazon while investing into Future.

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12. **Apple requests CCI to dismiss case against apps market**

The case filed by Jaipur-based non-profit Together We Fight Society (TWFS) alleging that the fees Apple charges developers for selling apps and in-app items through App Store violates India's competition rules. Apple claims that the complaint may have been a 'proxy filing' i.e., TWFS is acting in concert with parties with whom Apple has ongoing commercial and contractual disputes globally and/or that have complained to other regulators.

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13. **Google moves Karnataka High Court over Play Store billing policy probe**

Google had announced billing policy and gave time till March 2022 to Indian startups to comply with the same. Owing to widespread criticism from Indian startups and the industry body of 422 Indian startups namely Alliance of Digital India Foundation (ADIF) which filed petition before the CCI, seeking interim relief from Google's new Play Store billing policy. Google has filed writ petition before the Karnataka High Court, seeking *inter alia* more time to respond to allegations made by ADIF before the CCI.

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14. **Plea before Madras High Court seeking ban on Cryptocurrency Trade Advertisements**

A Public Interest Litigation petition has been filed before the Madras High Court seeking ban on advertisements about cryptocurrency trading in all media platforms until the government makes proper rules and regulations for Crypto trading. The PIL suggests that illegal trading in cryptocurrencies has aggravated money laundering, terrorist financing

and extortion activities.

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15. **IMF calls for global crypto regulation**

The International Monetary Fund (IMF) has outlined some recommendations for regulation of cryptocurrency, noting that there is an urgent need for cross-border collaboration and cooperation on cryptocurrency regulation.

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16. **Partnership of Uber and WhatsApp**

As a global-first initiative, Uber and WhatsApp announced partnership that will allow people to book ride via WhatsApp. With this integration, riders will no longer need to download or use the Uber app. Everything including user registration, booking ride, and getting trip receipt will be managed within WhatsApp chat interface.

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17. **Tripura High Court directed State Government to frame comprehensive electric vehicle policy for 'Environmental Protection'**

The Tripura High Court directed the State Government to take urgent steps to frame a comprehensive electric vehicle policy for the State of Tripura to achieve the objective of environmental protection through promotion of non-carbon fuel-based vehicles in an efficient and timely manner.

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18. **'WhatsApp group administrator not vicariously liable for objectionable posts by member'**

Endorsing the Bombay High Court's judgment in *Kishore v. State of Maharashtra*, the Madras High Court granted relief to administrator of WhatsApp group in an FIR registered over offensive post posted in a group by a member. The Court directed that the group administrator should be removed as an accused from the chargesheet, if the investigation reveals that he has only played the role of an administrator. (*R. Rajendran v. The Inspector of Police & Kathirvel*)

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MEDIA LAW UPDATES

19. Tis Hazari Court, New Delhi, dismissed TTK's claim of trademark infringement in its judgment in TTK Prestige Ltd v. Hiveloop Technology Private Ltd & Anr., CS (Comm) No. 2480/2019

The Plaintiff, in TTK Prestige Ltd v. Hiveloop Technology Private Ltd & Anr., CS (Comm) No. 2480/2019, stated to have agreements/ contracts with its respective dealers and distributors as per which sale of any of its products through any online or e-commerce mode is barred without its prior written consent. Thus, any online sale of Plaintiff's products under the trademark 'PRESTIGE' and its logo, without the authority of the Plaintiff is completely illegal, unlawful and in breach of contract. The Plaintiff alleged that the Defendants were selling Plaintiff's products without its consent, resulting in trademark infringement, and passing off.

The Court, on December 1, 2021, noted that the Plaintiff had no real prospect of succeeding on the claim of inducement of breach of contract. Thus, there was no compelling reason for the claim to proceed to trial. The Court allowed the application for summary judgment and dismissed Plaintiff's claim of trademark infringement.

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20. Irish DPC submitted Article 60 draft decision on inquiry into Instagram

The Irish Data Protection Commission (DPC) submitted a draft decision in an inquiry into Instagram to other concerned Supervisory Authorities across the EU on December 3, 2021. Following several complaints, the DPC had announced two statutory inquiries into Instagram in October 2020, to investigate the processing of children's information by these companies. It also examined the legal basis Facebook claims for processing children's data on Instagram, and whether there are "adequate safeguards" in place. Article 60 of the General Data Protection Regulation (GDPR) pertains to cooperation between lead supervisory authority and other supervisory authorities concerned to reach a consensus on a decision against a complaint filed. The respective supervisory authorities must file their 'reasoned and relevant objections' within a month to the DPC.

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21. Delhi High Court in support of trademark registration of Agatha Christie's 'And Then There

Were None' 80 years after publication

In January 2021, the Registrar of Trademarks had rejected the application for trademark 'And Then There Were None' filed in 2017 by Agatha Christie Limited (company was set up by Agatha Christie, presently being operated by her grandson) on the grounds of being non-distinctive. The Delhi Court noted that the Trademarks Act, 1999 requires names, words and combinations are marks within the meaning of the said Act and only criteria of a trademark are that it must be capable of being represented graphically and must be capable of distinguishing goods of one person from those of others. The Court held that the impugned order is liable to be set aside as being unreasoned.

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22. Taylor Swift to face trial for 'Shake it Off' copyright lawsuit

The copyright lawsuit was filed by Sean Hall and Nathan Butler i.e., songwriters of American girl group 3LW's 2001 song - 'Playas Gon' Play'. Hall and Butler filed the case in 2017 on the grounds that some of the lines from Swift's 'Shake it Off' were taken from 'Playas Gon' Play'. However, the case was rejected by Judge Fitzgerald in 2018 on the grounds that the lyrics of Playas Gon' Play were 'short phrases that lack the modicum of originality and creativity required for copyright protection'. In 2019, a federal appeals court intervened and reversed Fitzgerald's ruling, saying *inter alia* that 'Playas Gon' Play' was sufficiently creative for copyright protection. The case was sent back to Judge Fitzgerald for fresh proceedings, and he ruled that Taylor Swift must face a jury trial over the copyright infringement accusation.

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23. Only registered copyright societies can grant licenses

The Madras High Court, while dismissing suits filed for violation of licensing rights, examined the preliminary question while passing judgment in *M/s Novex Communications Pvt Ltd. v. DXC Technology Pvt Ltd. & Anr.* C.S Nos. 407 and 413 of 2020. The Common Plaintiff in both the suits is currently engaged in the business of 'protection of copyright subsisting in sound recordings of various film songs', in their capacity as 'assignee', 'licensee' or 'authorized agent' of copyright holders. Pursuant to Plaintiff's alleged rights

for on-ground public performance of sound recordings of songs contained in various films, it initiated suits against the Defendants contending that the Defendants without obtaining license from the Plaintiff and paying fees, had infringed the copyright of the Plaintiff by playing songs at events conducted by them.

The Court *inter alia* held that the Plaintiff does not fall within the meaning of 'copyright society' under Section 33 of the Act. Thus, the entire cause of action for the suits is misconceived in as much as it is predicated on a fictitious assumption that the Defendants have violated rights of the Plaintiff by failing to obtain licenses from it for on-ground performance rights of various sound recordings.

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24. Delhi High Court directed WhatsApp to take down groups illegally circulating e-newspapers owned by Dainik Bhaskar Corp. Ltd.

The Delhi High Court has directed WhatsApp to either take down or block over 80 groups illegally circulating the e-newspapers of the Dainik Bhaskar Corporation Limited (*DB Corp Ltd v WhatsApp LLC and Ors*).

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25. Onus to prove invalidity of patent lies on infringer

The Delhi High Court, in *Novartis AG and Anr v Natco Pharma Limited*, observed that when an infringer seeks to defend patent infringement on the ground that patent is invalid, onus to prove invalidity lies heavily on them and this standard must be met applying the principle of credibility.

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TELECOMMUNICATION LAW UPDATES

26. Germany's telecom privacy law took force

Hamburg's Commissioner for Data Protection and Freedom of Information announced that Germany's Federal Act on the Regulation of Data Protection and Privacy in Telecommunications and Telemedia (TTDSG) took force on December 1, 2021. The term 'tele-media' includes, for example, websites and apps. This law is in addition to the scope of the General Data Protection Regulation (GDPR, Regulation (EU) 2016/679) and is intended to prevent undesired access to information stored on computers, tablets, or mobile phones. Sections 3 to 18 TTDSG contain provisions on data protection and protection of privacy in telecommunications. In particular, there are regulations:

- on confidentiality of communication (Section 9 to 13),
- to traffic and location data (Section 14 to 16),
- for information about telephone number of unwanted callers, number display and suppression, automatic call forwarding (Section 17 to 18) and telephone directories.

Lower Saxony's Commissioner for Data Protection and Freedom of Information published an FAQ on TTDSG which is accessible at:

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27. All broadcasters and distributors of TV channels to implement Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and all such other matters Regulations, 2019, immediately

TRAI issued notice dated December 08, 2021 whereby all broadcasters and distributors of TV channels are required to immediately implement provisions of Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and all such other matters Regulations, 2019, and submit compliance report within 15 days from the date of issuance of the notice, failing which adverse action would be undertaken as per the said regulations and the TRAI Act, 1997.

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28. The Madras High Court directed MIB not to take coercive action as IBDF challenged IT & CTN Rules 2021

Madras High Court has directed the Ministry of Information And Broadcasting (MIB) not to take coercive action against Indian Broadcasting and Digital Foundation (IBDF) and its members for non-implementation of Part III of Information Technology (Intermediary Guidelines and Digital

Media Ethics Code) Rules, 2021 (Code of Ethics and Procedure and Safeguards in Relation to Digital Media) and the Cable Television Networks (Amendment) Rules, 2021, and granted 4 weeks to the Union of India to file counters to the petitions.

The IBDF challenged the constitutional validity of Part III of IT Rules, 2021 and CTN Rules, 2021, which prescribe a three-tier grievance redressal mechanism for OTT platforms and TV channels.

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29. NCLT Mumbai allowed the application by RBI seeking initiation of CIRP against Reliance Capital Limited

The Reserve Bank of India (RBI)'s application

filed under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (FSP Rules), was admitted by NCLT Mumbai on 06.12.2021 after Reliance Capital Limited (RCL) stated that it had no objections to the same. This application differs from other applications seeking initiation of CIRP under the Code because, unlike applications filed by financial or operational creditors, applications under the FSP Rules can only be filed by the regulator, and moratorium begins from the date of filing of the application, as opposed to the date of admission thereof in the case of other applications filed under the Code.

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INSOLVENCY LAW UPDATES

30. NCLT has no authority to ask creditors to settle with defaulter

The Supreme Court, in its decision in *E S Krishnamurthy v. Bharath Hi Tech Builders Pvt. Ltd* dated December 14, 2021, held that NCLT cannot, in its role as Adjudicating Authority under the Code, compel a party to the proceedings to settle dispute. It noted that once there is an admitted default by the corporate debtor, the Adjudicating Authority is statutorily bound to admit the petition. The Supreme Court further observed that, though settlements ought to be encouraged to serve the ultimate objective of the Code, which is rehabilitation and continuance of corporate debtor's business, the authorities under the Code, namely the NCLT and NCLAT, being creatures of the statute, are bound by jurisdiction and powers conferred thereunder and hence, cannot direct settlements by acting as courts of equity.

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31. Adjudicating Authority has power to hear objectors/interveners at the time of admission of application for PPIRP

The National Company Law Appellate Tribunal (NCLAT), on December 21, 2021, passed an order on the issue of whether the Adjudicating Authority/NCLT, while considering an application for commencement of pre-packaged insolvency (PPIRP) under Section 54C of the Code, can, before admission of application, hear objectors/interveners. The NCLAT held that the statutory scheme delineated by Chapter III-A of the Code

as well as the Regulations does not indicate any prohibition on the Adjudicating Authority hearing any objector/intervener before admitting application of PPIRP. In absence of any prohibition, orders passed by the Adjudicating Authority giving time to objectors to file objections cannot be said to be in breach of any statutory provisions.

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32. Banks/Financial Institutions who have advanced loans to homebuyers cannot be included as Financial Creditors in Committee of Creditors

The NCLAT, in its decision dated December 20, 2021 in *Axis Bank Ltd v. Value Infracon India Pvt Ltd*, held that it is not the scope and objective of the Code to include Banks/Financial Institutions who have advanced loans to homebuyers as Financial Creditors in Committee of Creditors, specifically in light of the fact that liability to repay a home loan is on individual homebuyers. The NCLAT noted that allowing such an inclusion would defeat the very spirit and objective of the Code which is aimed at resolution and maximisation of assets of Corporate Debtor. The NCLAT also noted that presence of a mere tri-partite agreement between homebuyer, corporate debtor/developer and the Bank does not change the character of amount borrowed by homebuyer vis-a-vis Bank and corporate debtor.

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33. Power under PMLA to attach assets ceases once liquidation process under IBC starts

The Delhi High Court, in *Nitin Jain Liquidator PSL Limited v Enforcement Directorate*, held that the PML authorities' power to attach assets under the Prevention of Money Laundering Act would cease to be exercisable once the liquidation process under the Insolvency and Bankruptcy Code is set in motion.

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34. Attachment of Bank Account by Tax Authorities during pendency of CIRP violative of Section 14 of the Code

The NCLT Mumbai ruled that attachment by Tax Authorities during pendency of CIRP is violative of moratorium granted under Section 14 of the Code.

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SPORTS LAW UPDATES

35. Status quo on elections to the executive committee of Indian Olympic Association

The Delhi High Court directed maintenance of status quo on elections to the executive committee of the Indian Olympic Association (IOA), which was scheduled for December 19, 2021. The Court was hearing an application filed by senior advocate Mr. Rahul Mehra wherein he submitted that the proposed IOA elections to be held are wholly illegal and unsustainable and ought not to be conducted pending the hearing and final disposal of the petition and various applications pending before it.

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36. Women's Tennis Association (WTA) announced suspension of all its events in China

Ahead of concerns regarding safety of Ms. Peng Shuai who accused a former government official of sexual assault over internet, WTA, which is global leader in women's professional sports based on principles of equal opportunity and safety for women, had previously called out the Chinese Government for a full and transparent investigation, without censorship, into Peng Shuai's sexual assault accusation, however, the same has not been addressed yet.

Other sporting bodies, such as the International Olympic Committee are also in conversation with and support of the athlete. Furthermore, the EU also expressed its desire for China to offer 'verifiable proof' that Peng is safe.

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37. NBA and Viacom18 entered a multi-year partnership to live-broadcast NBA games and programming across television and over-the-top streaming

Viacom18 will distribute live NBA games in English

& Hindi on its channels like Vh1, MTV, Voot & Jio TV.

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38. Karnataka State Chess Association calls for necessary amendments in law for exclusion of skill games from online gaming ban

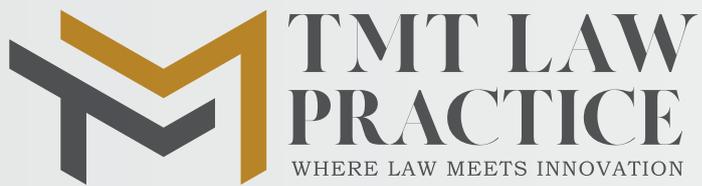
The Karnataka State Chess Association (KSCA) has sought amendments to the law to allow games of skill. According to KSCA, Karnataka government's decision to ban online gaming has adversely affected the chess ecosystem in the State as it has resulted in lack of corporate sponsorship from online skill gaming companies. The gaming ban law was challenged before the Karnataka High Court.

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39. Meghalaya Regulation of Gaming Rules, 2021 passed

The Meghalaya Cabinet passed the Meghalaya Regulation of Gaming Rules, 2021 (Rules) on December 21, 2021. This enables the State Excise Department to implement the Meghalaya Regulation of Gaming Act, 2021 (Act). The Rules impose prohibition of entry of locals into physical gaming premises and requires gaming entities to obtain license which shall be issued only to Indian citizen or legal entity incorporated in India having minimum of 5 years of continuous experience in conducting games of skill or chance. Online games can only be played through intranet terminals which cannot traverse outside Meghalaya.

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