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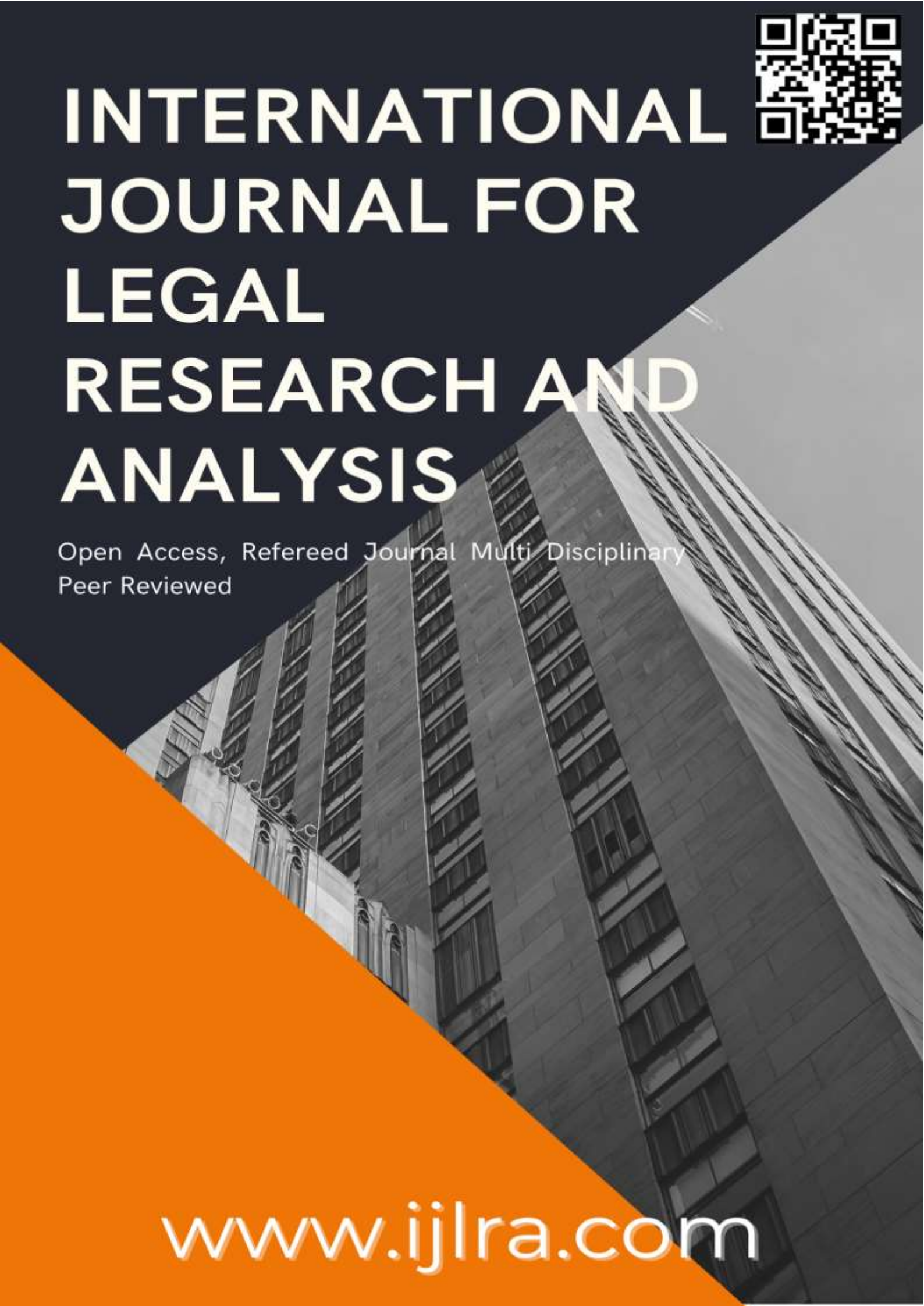

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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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THE LEGAL CHALLENGES OF CROSS-BORDER MERGERS UNDER INDIAN LAW

AUTHORED BY - PRAGYA SARASWAT

I. Introduction

1.1 What is Cross Border Mergers & Acquisitions?

Cross Borders Mergers & Acquisitions takes place when companies situated in different countries want to combine their assets. A merger involves two companies becoming one new company.On the other hand, acquisition involves one larger company acquiring the assets of smaller company, where the smaller company gets completely dissolved in the larger one. Mergers & Acquisitions has long been a common strategy for businesses and an important alternative for strategic expansion. Technological development and globalisation have contributed significantly to the popularity of M&S and out sourcing world wide[1]. In the 1990s[2] (so labeled fifth wave) the popularity of this strategy increased significantly.

1.2 The Growing Importance of Inbound and Outbound M&As in India's Economic Landscape.

Merger and acquisitions (M&S) have proven to be an important tool for corporate strategy in a globalized economy, and India is no exception to this trend. The increasing complexity and complexity of inbound and outbound M&A transactions is strengthening the deeper integration into India's global capital markets and shifting to priority investment targets[3].

Inbound M&S, as a foreign company, with a large consumer base, robust digital infrastructure and a liberalized FDI regime especially in sectors such as fintech, e-commerce, production and renewable energy have gained dynamics by acquiring or merging with Indian companies. These transactions often result in capital inflows as well as improvements in corporate government standards that drive global expertise, technology transfer and domestic economic growth.

[1] See OECD, Trends in Merger and Acquisition Activity, OECD Competition Committee Background Note (2021), https://www.oecd.org/daf/competition/mergers-background-note.pdf (last visited July 3, 2025).
[2] M&A waves and its evolution throughout history: Tilburg University, SCRIBD, https://www.scribd.com/document/491905823/file129395-J-A-Nouwen-685341 (last visited Jul 3, 2025).
[3] India Brand Equity Foundation, FDI and M&A Trends in India, https://www.ibef.org/reports/india-foreign-direct-investment-report (last visited July 3, 2025).

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Meanwhile, M&S also reflects the growing global ambitions of Indian companies[4]. Companies such as Tata Group, Infosys and Bharti Airtel have strategically acquired foreign companies[5] to gain access to senior markets, diversify their businesses and acquire intellectual property. Such expansions will allow Indian companies to become more competitive around the world, while simultaneously contributing to economic diplomacy and national soft power.

Inbound and outbound M&S-Signals demonstrate the shift in protectionism of aggressive globalization. This underscores the need for a consistent legal framework that promotes cross-border transactions while securing national interests.

1.3 Legal Complexities and Strategic Challenges in Cross-Border M&As.

While cross-border mergers and acquisitions offer immense strategic and economic benefits, the pursuit of such transactions is fraught with multifaceted challenges. Firms engaging in cross-border M&As often encounter the "liability of foreignness" (Zaheer, 1995)[6] and "double-layered acculturation" (Barkema et al., 1996)[7], both of which underscore the inherent difficulties of operating in unfamiliar institutional and cultural environments. Differences in national culture, consumer behavior, business norms, and regulatory systems frequently hinder the effective integration of merging entities. As highlighted by Kogut and Singh (1988)[8], and Zaheer (1995), uncertainty and information asymmetry in foreign markets impede a firm's ability to adapt and absorb new knowledge, thus reducing the efficiency of post-merger synergies.

In the Indian context, these strategic barriers are further compounded by a complex and multi-tiered legal framework involving the Companies Act, FEMA regulations, and Competition Law

[4] Jetley, Victor, Cross-Border Mergers by Indian Multinationals: A Strategic Analysis, Harvard Bus. Rev. (2021), https://hbr.org/2021/04/cross-border-m-a-by-indian-mncs (last visited July 3, 2025); see also, Bharti Airtel completes Zain Africa acquisition, The Hindu, June 8, 2010, https://www.thehindu.com/business/Bharti-Airtel-completes-Zain-acquisition/article16241933.ece (last visited July 3, 2025).

[5] World Investment Report 2011 - non-equity modes of international production and development: PUBLICATIONS: UNCTAD investment policy hub, UNCTAD BANNER, https://investmentpolicy.unctad.org/publications/60/world-investment-report-2011---non-equity-modes-of-international-production-and-development (last visited Jul 3, 2025).

[6] OVERCOMING THE LIABILITY OF FOREIGNNESS | ACADEMY OF MANAGEMENT JOURNAL, https://journals.aom.org/doi/abs/10.5465/256683 (last visited Jul 2, 2025).

[7] Harry G. Barkema, John H. J. Bell & Johannes M. Pennings, FOREIGN ENTRY, CULTURAL BARRIERS, AND LEARNING LSE RESEARCH ONLINE (1996), http://eprints.lse.ac.uk/38118/ (last visited Jul 2, 2025).

[8] Bruce Kogut & Harbir Singh, The effect of national culture on the choice of entry mode - journal of international business studies SpringerLink (1988), https://link.springer.com/article/10.1057/palgrave.jibs.8490394 (last visited Jul 2, 2025).

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compliance. Each law introduces its own procedural requirements, approval timelines, and interpretational ambiguities, which can delay or derail M&A deals altogether. As a result, foreign firms entering India or Indian companies expanding abroad must not only navigate cross-cultural complexities but also ensure precise alignment with India's regulatory ecosystem. The interplay of legal constraints with institutional and cultural barriers reinforces the need for a more integrated and responsive legal regime for cross-border M&As.

II. Legal Framework Governing Cross-Border Mergers in India

2.1 Companies Act, 2013

Cross-border mergers in India are mainly administered by the Companies Act, 2013, which gives the auxiliary and procedural framework for both domestic and international amalgamations. A crucial provision in this regard is Section 234[9], presented by the Companies (Amendment) Act, 2017, which outright enables mergers or amalgamations between Indian companies and foreign companies, subject to certain administrative approvals.

Under Section 234, an Indian company is allowed to merge with a foreign company located in a jurisdiction specified by the Central Government in consultation with the Reserve Bank of India (RBI). These jurisdictions must comply with guidelines regarding anti-money laundering and the financing of terrorism, ensuring that cross-border transactions do not compromise India's financial security.

The procedural mechanics of such mergers are further explained in the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016[10]. These Rules prescribe that the terms and conditions of the merger must be approved by the National Company Law Tribunal (NCLT)[11]. Furthermore, the valuation of the merging entities must be conducted by recognized professionals to ensure transparency and fairness to all stakeholders, especially minority shareholders and creditors.

The NCLT[12] plays a central adjudicatory and supervisory role in this process. It examines the

[9] Companies Act, No. 18 of 2013, § 234, Gazette of India, Extraordinary, Part II, Sec. 1 (India)
[10] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Gazette of India, Extraordinary, Part II, Sec. 3(i) (India).
[11] Id. § 230–232.
[12] In re Scheme of Merger between Transocean Offshore International Ventures Ltd. and Transocean Ltd., C.P. (CAA) No. 16/2018, NCLT Mumbai Bench (Order dated July 12, 2018) (approving cross-border merger under Section 234 and interpreting RBI jurisdiction and jurisdictional compliance of foreign company).

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scheme of amalgamation to determine whether the merger is equitable, lawful, and in the public interest. The Tribunal is also responsible for ensuring that the rights of dissenting shareholders are protected[13] and that the merger is not a means of tax evasion or corporate restructuring with mala fide intent.

In practice, the implementation of Section 234 has been cautious and limited, partly due to the complex coordination required between the RBI, NCLT, and sectoral regulators[14]. Additionally, legal professionals and companies have raised concerns over the lack of clarity regarding outbound mergers, particularly around issues of foreign exchange control, repatriation of assets, and post-merger compliance obligations.

Furthermore, while the law theoretically permits both inbound and outbound mergers, most successful transactions have been inbound, with foreign companies merging into Indian entities. Outbound mergers remain constrained by RBI regulations and procedural uncertainty[15] surrounding approvals from host jurisdictions overseas. This legal asymmetry continues to be a challenge in realizing India's full potential in global corporate integration.

The jurisprudence on cross-border mergers is also evolving, with NCLT orders gradually shaping the contours of what constitutes a valid merger under Indian law. As more companies explore cross-border strategies, judicial precedents will play an essential role in resolving ambiguities and building a more robust legal framework for cross-border M&As[16].

2.2 FEMA, 1999

The Foreign Exchange Management Act (FEMA), 1999, plays a central role in regulating cross-border Mergers and Acquisitions in India. FEMA regulates all forex transactions and ensures that such transactions correspond to India's macroeconomic stability, financial security and capital flow management. In connection with Cross-border M&AS, FEMA acts as a

[13] In re Transocean Offshore Int'l Ventures Ltd., C.P. (CAA) No. 16/2018, NCLT Mumbai Bench (Order dated July 12, 2018)
[14] Reserve Bank of India, Foreign Exchange Management (Cross Border Merger) Regulations, 2018, G.S.R. 331(E), Mar. 20, 2018, https://www.rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=11261 (last visited July 3, 2025)
[15] Pratik Datta, Regulating Cross-Border M&A in India: A Case for Inter-Agency Coordination, 31 Nat'l L. Sch. India Rev. 53 (2019), https://www.nlsir.com/issues/volume-31 (last visited July 3, 2025).
[16] Nishith Desai Associates, Cross-Border Mergers: Charting New Frontiers (2019), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Cross-Border-Mergers.pdf (last visited July 3, 2025).

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gatekeeper by regulating the inflow and drainage of foreign investments and ensuring that such mergers are carried out in a controlled and compliant manner.

A major development in this direction was the introduction of the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, issued under Section 6[17] of FEMA. These regulations provide a clear framework for inbound mergers (a foreign company that merges itself in an Indian company) and outbound mergers (an Indian company that merges into a foreign company)[18]. These regulations state that all transactions involved in such mergers must be implemented in accordance with the applicable foreign exchange laws, divisional caps, price guidelines and reporting requirements.

In the case of inbound mergers, the resulting Indian company must comply with the provisions of the Foreign Direct Investment (FDI) policy, including sectoral caps and conditions. Each issue of stock or transfer to non-residents must match pricing guidelines within the FEMA framework. Furthermore, all borrowings or guarantees of foreign transmitting companies that become liabilities for the resulting Indian company must comply with the External Commercial Borrowing Framework (ECB)[19].

For outbound mergers, which are subject to stricter scrutiny, the resultant foreign entity must be incorporated in a jurisdiction notified by the Reserve Bank of India (RBI) in consultation with the Central Government.Indian residents who hold securities of such foreign companies must comply with the Liberalised Remittance Scheme (LRS)[20] and the total amount must remain within the prescribed limits. Furthermore, such mergers may not violate regulations in connection with round tripping, in this case, the funds are routed back to India through several layers.

Certain transactions are automatically permitted under predefined conditions, but some may require prior RBI approval, particularly in complex outbound mergers or sector regulations.

[17] Foreign Exchange Management Act, No. 42 of 1999, § 6, Gazette of India, Extraordinary, Part II, Sec. 1 (India)
[18] Reserve Bank of India, Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Notification No. FEMA 389/2017-RB, G.S.R. 331(E) (Mar. 20, 2018), https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11261&Mode=0 (last visited July 3, 2025).
[19] Taxmann, OVERVIEW OF EXTERNAL COMMERCIAL BORROWINGS (ECB) TAXMANN BLOG (2024), https://www.taxmann.com/post/blog/overview-of-external-commercial-borrowings-ecb/ (last visited Jul 3, 2025).
[20] Reserve Bank of India, https://www.rbi.org.in/commonperson/English/Scripts/FAQs.aspx?Id=1834 (last visited Jul 3, 2025).

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All cross-border merger transactions must be reported to the RBI in the prescribed form within 30 days of approval by the National Corporations Tribunal (NCLT). The overlapping regulatory domains of the RBI, NCLT, and sector-specific regulators like SEBI make cross-border mergers legally intensive. Moreover, the lack of clarity on tax implications and post-merger asset repatriation continues to pose practical challenges, especially for outbound transactions.

Nonetheless, the FEMA (Cross Border Merger) Regulations, 2018 mark a significant shift in India's regulatory posture, from control to facilitation, aiming to promote India's global corporate integration while safeguarding foreign exchange stability.

2.3 Competition Act, 2002

The Competition Law of 2002 plays a central role in assessing and regulating the competitive effects of mergers and acquisitions, including merger & acquisition transactions in the Indian market. The law is administered by the Indian Competition Commission (CCI) and aims to prevent combinations that are likely to have significant adverse effects on Indian Competition (AAEC). This includes not only domestic mergers, but international transactions that are directly or indirectly related to the Indian market.

Under Sections 5[21] and 6[22] of the Act, any combination defined to include mergers, acquisitions, or amalgamations that crosses certain prescribed thresholds of assets or turnover must be notified to the CCI and receive prior approval before taking effect.These thresholds apply both worldwide and in India. It covers many cross-border M&As involving Indian units and obstacles to Indian consumers and markets. Notification is mandatory and failure can lead to penalty of up to 1% of the total turnover or assets of the combination, whichever is higher. The Act lays down a **"Economic reality over legal fiction"** approach**.**This reflects the external jurisdiction of CCI and allows for the assessment of foreign transactions that have a potential impact on the Indian market in accordance with Section 32[23] of the Act. However, this exception does not apply if the party is part of a large group that exceeds the threshold defined by the file.

[21] Competition Act, No. 12 of 2003, § 5, Gazette of India, Extraordinary, Part II, Sec. 1 (India).
[22] Id. § 6.
[23] Id. § 32.

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The merger review process includes a two-phase structure:

- **Phase I (Prima Facie Assessment)** – conducted within 30 working days, where combinations unlikely to harm competition are approved quickly.
- **Phase-II** – initiated if CCI believes further investigation is needed, including market impacts and possible corrective actions. CCI can also search for opinions from departmental regulators such as SEBI and TRAI.

Notable decisions by the CCI in cross-border contexts, such as the Sun Pharma–Ranbaxy merger[24], Microsoft–LinkedIn acquisition[25], and Schneider Electric–L&T Electrical & Automation deal[26], demonstrate the Commission's evolving sophistication in handling complex transactions while ensuring market fairness and consumer welfare.

In adjudicating complex merger assessments, Indian authorities like the CCI often face similar regulatory and evidentiary challenges as seen in foreign jurisdictions. A relevant comparative example is the UK Court of Appeal decision in Cérélia Group Holdings SAS v Competition and Markets Authority[27]. In this case, the CMA extended its statutory timeline for reviewing a merger under the Enterprise Act, 2002, citing "special reasons" due to the investigation's complexity. The companies involved challenged the extension and the CMA's conclusion that third-party competitors could not adequately constrain the merged entity's market power. While the Competition Appeal Tribunal upheld the CMA's decision, the Court of Appeal affirmed that even internal complexities of a case if significant could justify such an extension. It also reiterated that courts should accord deference to expert competition regulators when factual determinations involve multifaceted, non-uniform evidence.

This decision offers comparative insight for Indian merger regulation, where similar issues of timely merger control, market dominance assessments, and judicial review of regulator discretion arise under Sections 5, 6, and 32 of the Competition Act, 2002. It reinforces the principle that procedural extensions and investigative latitude must be weighed against commercial parties' need for predictability in regulatory timelines a balance Indian courts may increasingly face as cross-border M&A activity escalates.

[24] Sun Pharma Ranbaxy Merger: Sun Pharmaceutical Industries Limited, SUN PHARMACEUTICAL INDUSTRIES LTD. (2022), https://sunpharma.com/sun-pharma-ranbaxy-merger/ (last visited Jul 4, 2025).
[25] M&A case study: Microsoft + LinkedIn merger example, WALL STREET PREP (2023), https://www.wallstreetprep.com/knowledge/a-look-at-the-microsoft-linkedin-merger/ (last visited Jul 4, 2025).
[26] Tanya Thomas, L&T sells its electrical and automation business to Schneider Electric for ₹14,000 crore mint (2020), https://www.livemint.com/companies/news/l-t-sells-its-electrical-and-automation-business-to-schneider-electric-for-rs-14-000-crore-11598877278444.html (last visited Jul 4, 2025).
[27] Cérélia Group Holdings SAS and another v. Competition and Markets Authority, [2025] Bus LR 94

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III. Case Study: Cross-Border Mergers and the Indian Regulatory Experience

India's tryst with cross-border mergers has been shaped by a complex interplay of regulatory scrutiny, foreign investment law, competition concerns, and corporate governance issues. Three prominent cases like Zee–Sony, Walmart–Flipkart, and Jet–Etihad, collectively illustrate the evolving contours of India's legal and policy framework for cross-border M&A activity.

The Zee–Sony merger[28], proposed in 2021 and valued at approximately USD 10 billion, represented one of India's most ambitious attempts to consolidate two major players in the entertainment sector. Intended to create a media powerhouse capable of competing with global streaming services, the transaction encountered several regulatory hurdles. The Competition Commission of India (CCI) flagged concerns about concentration in the Hindi general entertainment and advertising markets. The approval was eventually granted in 2022, conditional upon Zee divesting or discontinuing overlapping channels.

Simultaneously, SEBI's bar on Punit Goenka, Zee's Managing Director and proposed CEO of the merged entity, citing ongoing investigations, raised significant governance concerns. Though the National Company Law Tribunal (NCLT), Mumbai, approved the scheme under Sections 230–232[29] of the Companies Act, 2013, the merger's fate turned on non-fulfilment of commercial and regulatory conditions precedent. In January 2024, Sony terminated the agreement, citing unresolved pre-closing conditions. The matter led to litigation before the NCLT and arbitration under the Singapore International Arbitration Centre (SIAC)[30]. By August 2024, both parties withdrew claims and mutually terminated the merger, demonstrating how inter-agency friction, governance risks, and international dispute resolution mechanisms now form an integral part of cross-border M&A landscapes in India.

In contrast, the Walmart–Flipkart acquisition[31], which closed in 2018 for a staggering USD 16 billion, marked India's single largest FDI in the e-commerce sector. Walmart acquired a 77%

[28] Zee Entertainment and Sony merger: Legal service india - law articles - legal resources, Legal Service India - Law, Lawyers and Legal Resources, https://www.legalserviceindia.com/legal/article-21611-zee-entertainment-and-sony-merger.html (last visited Jul 4, 2025).
[29] Companies Act, § 230-232, 2013.
[30] Business Standard, Siac cites lack of jurisdiction, rejects Sony's plea against Zee Ent Business Standard (2024), https://www.business-standard.com/companies/news/siac-rejects-sony-s-emergency-petition-against-zee-entertainment-124020400325_1.html (last visited Jul 2, 2025).
[31] The 'Walkart' of India: A case study on Walmart-Flipkart merger | Indian Business Case Studies Volume I | oxford academic, https://academic.oup.com/book/44472/chapter-abstract/395130240?redirectedFrom=fulltext (last visited Jul 1, 2025).

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stake in Flipkart, gaining access to India's rapidly expanding digital market. While the deal received approval from the CCI, it attracted resistance from local trader bodies, who argued that such consolidation would distort pricing, exploit data asymmetry, and marginalize small retailers. The CCI found no significant adverse effect on competition but was criticized for a perceived under-enforcement of digital market principles, highlighting the regulatory lag in adapting to new-age business models.

This deal also triggered debates on FEMA compliance, FDI norms in multi-brand retail, and indirect control structures since Walmart is a foreign retailer, and direct entry into Indian retail is restricted. Walmart and Flipkart took a structured route involving Flipkart Singapore, sparking questions around round-tripping[32] and beneficial ownership, matters that remain under regulatory lens even years after the deal. It remains a classic example of how creative structuring can meet legal compliance, but not necessarily avoid policy controversies.

The Jet–Etihad deal[33], finalized in 2013, presented an earlier precedent of a cross-border partnership that ran afoul of Indian regulatory clarity. Etihad Airways acquired a 24% stake in Jet Airways, marking the first investment under India's newly liberalized FDI regime in civil aviation. While the Foreign Investment Promotion Board (FIPB) and SEBI cleared the transaction, the CCI's evaluation revolved around whether the commercial cooperation agreement gave Etihad "control" over Jet's operations,an important factor for merger control and FDI caps[34].

The deal also faced opposition from parliamentary committees[35] and civil society groups due to concerns over bilateral flying rights being skewed in Etihad's favour, potentially harming national interests. Later, Jet's collapse[36] and the bankruptcy proceedings brought the spotlight back on the adequacy of due diligence, board independence, and shareholder protection in

[32] Round-tripping (finance), Wikipedia (2025), https://en.wikipedia.org/wiki/Round-tripping_(finance) (last visited Jul 4, 2025).
[33] Business Standard, All you need to know about jet-etihad deal Business Standard (2013), https://www.business-standard.com/article/companies/all-you-need-to-know-about-jet-etihad-deal-113112000302_1.html (last visited Jul 3, 2025).
[34] 2024 Sidhartha / TNN / Updated: Jul 8, Government reviews FDI caps; may help defence, insurance sectors - times of India The Times of India, https://timesofindia.indiatimes.com/business/india-business/government-reviews-fdi-caps-may-help-def-insurance-sectors/articleshow/111561647.cms (last visited Jul 1, 2025).
[35] Standing Comm. on Transport, Tourism & Culture, 213rd Report on Civil Aviation Sector, Rajya Sabha Secretariat (2013) (India)
[36] Business Standard, THE DOWNFALL OF JET AIRWAYS EXPLAINED: HOW INDIA'S PREMIUM AIRLINE CRUMBLED BUSINESS STANDARD (2019), https://www.business-standard.com/article/companies/the-downfall-of-jet-airways-explained-how-india-s-premium-airline-crumbled-119040901138_1.html (last visited Jul 3, 2025).

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cross-border alliances. The deal underlines the regulatory and political risks associated with cross-border deals in strategic sectors.

Taken together, these three case studies provide a multi-faceted view of India's cross-border M&A regime. While each deal succeeded or failed for different reasons, they commonly reveal key gaps lack of coordinated timelines between regulatory authorities, the overhang of governance issues, unclear beneficial control tests under FEMA and SEBI regulations[37], and limited judicial capacity[38] to resolve complex commercial disputes in a time-bound manner.

Moreover, the increasing recourse to international arbitration, as seen in the Zee–Sony and Vodafone tax dispute[39] contexts, indicates that cross-border M&As are no longer confined to Indian regulatory space, but part of a larger transnational legal ecosystem. India's future readiness to handle such deals will depend not only on legal reforms but also on improving inter-regulatory cohesion[40], digital market readiness, and investor protection standards.

IV. Regulatory Challenges

Cross-border mergers in India are subject to an elaborate and often overlapping regulatory architecture. A key impediment to seamless execution of such transactions lies in the multiplicity of approvals[41] required from various statutory bodies, including the National Company Law Tribunal (NCLT), Reserve Bank of India (RBI), Competition Commission of India (CCI), Securities and Exchange Board of India (SEBI), and where applicable, sector-specific regulators such as TRAI or IRDAI. This fragmented approach leads to inconsistencies in compliance expectations and delays[42] in deal closure.

One of the most prominent practical obstacles is the difficulty in synchronizing timelines. Each regulatory body follows distinct procedures, with differing turnaround times and documentary requirements. The absence of a harmonized procedural framework often results in cascading

[37] Afsharipour, A., "Rising Multinationals: Law and the Evolution of Outbound Acquisitions by Indian Companies," (2011) 44 UC Davis Law Review 1029.
[38] Umakanth Varottil, "Corporate Law in India: Evaluating the Impact of Judicial Decision-Making," (2016) Indian Law Review, 1(2): 177–202
[39] Vodafone International Holdings BV v Union of India (2012) 6 SCC 613
[40] Digital Competition Law Report," Committee on Digital Competition Law, Ministry of Corporate Affairs, February 2024.
[41] Pratik Datta, Regulating Cross-Border M&A in India: A Case for Inter-Agency Coordination, 31 Nat'l L. Sch. India Rev. 53 (2019), https://www.nlsir.com/issues/volume-31 (last visited July 3, 2025)
[42] India Brand Equity Foundation, M&A Landscape in India: Regulatory Challenges & Roadmap, https://www.ibef.org/uploads/M-A-Landscape-in-India.pdf (last visited July 3, 2025)

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delays, increased transaction costs, and uncertainty for parties involved, especially in time-sensitive or multi-jurisdictional transactions.

Further, valuation and accounting standards pose technical challenges in cross-border deals. While Indian companies follow Indian Accounting Standards (Ind AS), foreign counterparts may adhere to International Financial Reporting Standards (IFRS)[43]. Aligning these standards becomes critical for consistent valuation, financial reporting, and due diligence[44], particularly where share-swap or equity-based consideration is involved.

Another area of concern is data protection and confidentiality[45], which assumes significance during M&A due diligence. Sensitive information pertaining to intellectual property, customer data, and financials must be shared across borders. However, India lacks a comprehensive data protection law aligned with global standards such as the GDPR, which complicates the secure exchange of information between merging entities.

Lastly, jurisdictional conflicts and the recognition of foreign judgments[46] continue to complicate dispute resolution. The absence of a bilateral treaty or uniform standards on enforcement of foreign court or arbitral awards can prolong post-merger litigation or settlement processes.

V. Recommendations

To enable smoother execution of cross-border M&A transactions, India must undertake regulatory reforms aimed at streamlining approval mechanisms. First, there is an urgent need to integrate the approval processes[47] of RBI, SEBI, CCI, and NCLT, possibly through an inter-regulatory task force or a single-window clearance system. This would reduce duplicative procedures and promote inter-agency coordination.

[43] Anindita Majumdar, Harmonising IFRS with Ind AS in Cross-Border M&As, Econ. & Pol. Wkly., Vol. 55, No. 5 (Feb. 2020), https://www.epw.in/journal/2020/5/harmonising-ifrs-indas.html (last visited July 3, 2025)
[44] Rahul Matthan, India's Data Protection Law and Cross-Border Data Transfer, Trilegal Insights (2023), https://www.trilegal.com/insight/india-data-protection (last visited July 2, 2025)
[45] Ministry of Electronics and Information Technology, Personal Data Protection Bill, 2019, https://www.meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill,2019.pdf (last visited July 3, 2025)
[46] Gauri Subramaniam, Recognition and Enforcement of Foreign Judgments in India: Challenges and Reforms, Ind. J. Int'l L., Vol. 59 (2019), https://www.sas.upenn.edu/~guptar/LawReview_RecognitionForeignJudgments.pdf (last visited July 3, 2025)
[47] Pratik Datta, Regulating Cross-Border M&A in India: A Case for Inter-Agency Coordination, 31 Nat'l L. Sch. India Rev. 53 (2019), https://www.nlsir.com/issues/volume-31 (last visited July 3, 2025)

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Second, the Foreign Exchange Management Act (FEMA) and Income Tax Act[48] should be amended to provide clearer definitions on control, beneficial ownership, and cross-border asset transfer obligations. Regulatory uncertainty in these areas has often discouraged foreign investors.

Third, expanding the scope of automatic approvals under RBI norms[49], especially for inbound mergers in non-sensitive sectors would enhance predictability and reduce administrative burden.

A forward-looking approach demands not just legal harmonization but also institutional reform[50] that aligns India's regulatory ecosystem with global M&A standards.

[48] Ministry of Finance, Report of the Committee on Regulatory Issues Relating to M&A, Dep't of Econ. Affairs (2021), https://dea.gov.in/sites/default/files/M_A%20Committee%20Report.pdf (last visited July 3, 2025)
[49] Reserve Bank of India, Master Direction – Foreign Investment in India, RBI/FED/2023-24/60, Oct. 4, 2023, https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11994 (last visited July 2, 2025)
[50] Invest India, Reimagining India's Regulatory Architecture for Global M&A, https://www.investindia.gov.in/team-india-blogs/reimagining-indias-regulatory-architecture-global-ma (last visited July 2, 2025)