INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor
School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

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.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

REGULATING WALLED GARDENS: A COMPARATIVE STUDY OF INDIA'S DIGITAL COMPETITION LAW AND GLOBAL APPROACHES

AUTHORED BY - STUTHI V SOLANKI[1] & HARISHRI S[2]
LAW STUDENT, SASTRA

Abstract:

Imagine being an Apple user and you always pay to download certain apps from their App Store. Now, you have decided not to pay for those services anymore and want to change the service provider, but the same is not allowed by Apple as you have already entered their ecosystem. This effect is called 'walled garden'. Walled garden is a digital maze where the entry is clear and easy but the exit isn't. Intermediaries like Facebook and Instagram get you in and show you contents based on your watch history and activities that are likely to your interest. So you end up scrolling and scrolling endlessly watching the content based on their algorithm and staying inside the walls created by it. Google's snippets and Gemini AI's summaries now are mostly the only thing users bother reading, causing revenue loss for website owners and authors whose work is conveniently summarised by the AI for our benefit.

The problem of algorithmic bias in search engines is sometimes not obvious since the algorithm is opaque. Some websites pay more (unfair trade practice) to get their content to appear on top of the search results. This issue of algorithm, algorithmic bias and sponsored content, amongst other issues, is not addressed in the Indian legislations.

This paper takes a look into the gaps in Information Technology Act, 2000, Digital Data Protection Act, 2023 and Competition Act, 2002 and how it falls short in addressing these digital competition practices.

This paper comprises doctrinal and comparative analysis while adding case studies and suggestions. It emphasises the need for fair ranking guidelines, revenue-sharing models and

[1] 5th year BBA LLB student
[2] 5th year BBA LLB student

ISSN: 2582-6433

urging for changes in the current approach based on Indian and foreign laws. These changes will ensure that a new law on Digital Competition will effectively protect consumers and competitor rights in cyberspace.

Keywords: Walled Gardens, Digital Competition Bill, EU Digital Markets Act, Digital Anti-competitive Practices

Introduction

In the cyber world, Walled garden is defined as an environment that controls the user's access to network-based content and services.[3] A walled garden refers to a boundary set by service providers online and the user is stuck inside with the flowers and treasures presented by the service provider[4]. It may not seem so bad and the concept does indeed come with advantages[5] but in the end, the user is nothing but a prisoner confined within that boundary. That's why it is also known as a walled prison to aptly show its effect.

In this closed digital ecosystem, the service providers basically provide you with everything you need– be it information (on Google) or content (on streaming platforms like Netflix or social media apps like Facebook or Instagram). By 'everything' here we only mean content based on the user's past activities, search histories and preferences. The algorithm works that way.

Although, prima facie, it seems like a good idea– personalized content, but the underlying point is that it restricts scope for exploration and experimentation. Users would only be seeing what the algorithm shows them and not be able to try out different things– be it inside the platform or outside. Their freedom to explore the platform freely and have diversity in content is taken away.

Example

The reels section on Instagram is tailored to users' interest so much that users don't get an

[3] Andrew Froehlich. (2021, November 30). *What is a walled garden?* techtarget. https://www.techtarget.com/searchsecurity/definition/walled-garden
[4] What is a Walled Garden? (n.d.). adjust. https://www.adjust.com/glossary/walled-garden/
[5] What Are Walled Garden Publishers? Exploring Their Roles and Benefits in Digital Advertising (n.d.) Incrementx https://www.incrementx.com/what-are-walled-garden-publishers-exploring-their-roles-and-benefits-in-digital-advertising/distribution

ISSN: 2582-6433

overall, complete experience of everything that various content creators offer but only enjoy the app within the self-restricted space they unintentionally signed up for. The platform blocks different, unique contents so as to not risk users losing interest and exiting the app. But the content based on the algorithm is not the only type of content they like.

1. Background and Conceptual Framework

1.1. Evolution of Walled Gardens

The term "walled garden" was first used by the founder of Tele Communication inc., John Malone[6]. He used it to describe closed cable TV networks in the 1970s where the content was controlled entirely by the service provider.

In the early internet era(1990s), companies like America Online(AOL) began to offer services within a closed environment. Users were allowed to access content, email, chat and searches but only with AOL's controlled ecosystem rather than the World Wide Web[7]. They restricted access to external websites and services and provided tools that were approved by the operator. It took a huge turn when tech companies like Google, Facebook, Apple and Amazon began to gain more market power. They offered better experiences through social media feeds, app stores and personalised suggestions. Instead of keeping these services as an option to the available alternatives, these firms built 'walled gardens' where users can only access services and products approved by these platforms[8].

1.2. Concept of "Walled Garden"

1.2.1. User lock-in

When a user first chooses a particular platform, he/she shares user data, sets up preferences, gets personalized content, etc. It becomes a comfortable spot, a consistently used platform. And when these platforms start to dominate the market and leave only fewer, unfamiliar alternative channels, the user is trapped/ locked into their ecosystem as bearing the cost of switching and setting up a personalized space all over again is not something humans like to do.

[6] Andrew Freehitch. (2021, November 30). *What is a walled garden?* techtarget. https://www.techtarget.com/searchsecurity/definition/walled-garden *1,000*

[7] Matthew Lewis. (2025, July 24). *The Concept of a Digital Walled Garden: Understanding its Implications and Effects*. Foreveryard. https://foreveryard.com/what-is-a-digital-walled-garden/

[8] Lauren Neels. (2024, September 5). *Breaking down ad-tech walled gardens and their impact on digital advertising.* marinsoftware. https://www.marinsoftware.com/blog/breaking-down-ad-tech-walled-gardens-and-their-impact-on-digital-advertising

ISSN: 2582-6433

1.2.2. Vertical integration

It is when a company both operates the platform and competes on it. This creates incentives for self-preferencing and suppressing rivals.

Example: Amazon is now starting to make and sell its own products (goods and an app), Prime and Netflix have started producing in-house content, Google has apps like Youtube, Maps, Meet, etc.

1.2.3. Algorithmic self-preferencing

It is when the platform's algorithm favours its own products/services over third parties. Economically, this constitutes exclusionary conduct, raises barriers to entry for competitors, and can be an abuse of dominance under competition law.

1.4. Algorithmic Bias & Ranking Fairness

1.4.1. What is algorithmic bias?

Algorithmic bias is when an algorithm favours or prejudices any site or content for either its own benefit or for any monetary consideration. Bias could be by way of ranking the platform's own creation or sponsored content above the site or content that actually matches the user preferences. This causes a shift from personalization or relevance to commercialization.

1.4.2. Organic ranking

Google employs an algorithm wherein the search results are based on the search queries– that is the keywords contained in them. The websites that contain those keywords or string of words would appear on the screen– ranked based on relevance. For example, if someone searches '10 good lifestyle habits', the algorithm catches on to those articles with '10' and 'habits' in the title and displays them first because they are highly relevant. Then it displays articles with the word 'habit' or 'lifestyle' alone. Then about 'health' and 'fitness'. And so on with decrease in relevance so that most of the users get their answers in the top 2-3 articles.

1.4.3. Sponsored ranking

Google search engine's results sometimes lack fairness when sponsored links are displayed on top of the search results even if they are not most relevant among others. Some website hosts pay Google to display their webpages on top of the search results to get visibility and gain more users/readers (if it's blogs or articles). With more clicks, they get user traffic, making their sites popular, ultimately making more money to be able to continue such sponsorship. For example,

ISSN: 2582-6433

a health website publishing an article about workout routines sponsored by a fitness company may appear on top of the search results if the query had 'workout', 'routine' or 'fitness' in it. Sponsoring happens more on Meta platforms and Snapchat. It is basically those ads you see between Instagram Stories or on Snapchat as a chat.

According to the WARC Global Ad Trends: The State of the Open Internet 2023 report, companies that are not dominant in the markets accounted only for 22% of the global advertising expenditure in the year 2023. The rest 78% was concentrated within big walled-garden platforms, highlighting how user choices remain limited as the influential gatekeepers consolidate market power.

Although clearly marked as "sponsored" or the like, the point is, certain brands/websites get an unfair advantage by paying more to big intermediaries like these. It nudges the users in those brands' direction not because it is the best for its users but because the service provider got paid to do so.

Sponsored websites or news sites may spread misinformation and could nudge the users in wrong directions. Since it appears on top of the search results, it gets more traffic (wide reach), and a huge population can easily be influenced and manipulated just by paying more.

1.5. Google's "snippets" and Gemini AI's summaries

All android mobiles come with Google as a built in search engine. Many android buyers are happy with that and use Google without realising that their right to choose a search engine has been taken away. They accept and use what has been presented to them. In India, Google has 98.76%[9] of mobile search traffic, which makes it clear that it enjoys a dominant position in the market– so close to monopoly.

There is also the issue of "zero-click searches" where search results pages or AI summaries give the answer directly without sending the user to external websites. In 2024, about 59.7% of EU Google searches ended without a click & 58.5% in the US.[10]

[9] Mobile Search Engine Market Share India.(n.d.). statcounter. https://gs.statcounter.com/search-engine-market-share/mobile/india

[10] Rand Fishkin. (2024, July 1). *2024 Zero-Click Search Study: For every EU Google Searches, only 374 clicks go to the Open Web. In the US, it's 360.* SparkToro. https://sparktoro.com/blog/2024-zero-click-search-study-for-every-1000-us-google-searches-only-374-clicks-go

ISSN: 2582-6433

Google snippets decrease almost half the amount of traffic for websites.[11] "Traffic" here means how many times a webpage has been accessed or clicked into. For websites, a good amount of traffic is required to make profit and continue posting content. Unfortunately for content creators, it has been reported that Google's AI Overviews increased zero-click news searches from 56 % to 69 %[12]. Because users don't go externally, creators lose traffic and end up with fewer choices of platforms.

Gemini AI conveniently collates all the information available in Google and presents a summary on top of the search results. And many users tend to read only the summary and not the actual, complete articles that appear under the overview– accessible only on further scrolling. This causes loss of traffic as well as revenue to the content creators. But Google benefits out of their hard work and generates income.

Relying solely on AI summary can be dangerous and problematic because we are not aware of the algorithm employed in collection and collation of information that is presented before us. We don't know all the sources, how reliable those sources are. AI summaries can't guarantee accuracy and take no responsibility for any errors. You can see "AI responses may include mistakes" in the bottom left.

By generating and displaying AI summaries on the top, Google is competing with the Business Users.[13] It is being anti-competitive and engaging in self-preferencing by doing so.

1.6. Constitutional Relevance

Gatekeeping by popular digital platforms and walled garden practices are violative of fundamental rights of the competitors and the consumers. Especially the freedom to trade and carry on business and the right to privacy.

-to-the-open-web-in-the-eu-its-360/

[11] Chaithanya. (2025, April 1). *The Rise of Zero-Click Searches: How Google Is Reshaping the Web in 2024.* Medium. https://medium.com/@chaithanya2506/the-rise-of-zero-click-searches-how-google-is-reshaping-the-web-in-2024-7b215a8395f9

[12] Dileep Thekkethil. (2025, October 29). *SimilarWeb: Zero-Click Searches Surge to 69% Since Google AI Overviews Launched.* StanVentures. https://www.stanventures.com/news/similarweb-zero-click-search-surge-google-ai-overviews-3562/

[13] Section 2(3) in DCB reads– '"Business user" means any natural or legal person supplying or providing goods or services, including through Core Digital Services'

ISSN: 2582-6433

Article 19(1)(g) provides every citizen the right to practice any profession, to trade and to carry on any business activities unless they do not fall under the category of reasonable restrictions[14]. When companies like Google or Apple impose strict policies like exclusive app store access or self-preferencing, they limit market entry for smaller companies and narrow down consumer choices. This brings in anti-competitive barriers and it affects the liberty of businesses and users. These activities prevent alternative payment providers and app developers from competing fairly and thus it leads to unreasonable violation of Article 19(1)(g).

Article 21 provides for the right to life and personal liberty which includes digital privacy[15], right to choose and access digital platforms and services. In the case of *Amar Jain v. Union of India*[16], the Supreme Court held that the right to digital access is a component of Article 21[17]. Walled Garden limits platform interoperability and informational diversity and promotes algorithmic bias and mandatory data sharing in platforms. Inside the walled garden ecosystem, users don't have a full range of available information. SSDEs control our access to knowledge. This affects the right to access diverse and unbiased sources. Right to information in a democracy is recognized as a fundamental right in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*[18].

2. Legal Framework and Gaps in India

Indian laws do not have specific provisions for algorithmic ranking, self-preferencing, gatekeeper regulation, or transparency obligations.

2.1. Competition Act, 2002

The Competition Act, 2002, is the primary statute that governs market competition in India. It established the Competition Commission of India (CCI) to ensure fair trade practices by preventing anti-competitive activities, dominance of powers and anti-trust behaviour of the companies.

Dominant digital platforms that restrict user choice through platform control usually fall under

[14] Article 19(1)(g), The Constitution of India, 1950
[15] Article 21, The Constitution of India, 1950
[16] Amar Jain v. Union of India W.P.(C) No. 49 of 2025
[17] Case: Amar Jain V. Union of India & Ors. (n.d.). Dhyeya Law. https://www.dhyeyalaw.in/amar-jain-v-union-of-india-and-ors
[18] AIR 1986 SC 515

ISSN: 2582-6433

Sections 3 and 4 (Anti-competitive agreements and Abuse of dominant position).

Section 3: This Section prohibits agreements that are likely to cause an appreciable adverse effect on competition[19]. Any agreement of this nature is void unless they are related to intellectual property rights or export activities. This includes any collaborative agreement between gatekeepers to restrict user options and limit rival's role in the market.

Section 4: No enterprise or company shall abuse its dominant position[20]. When a company directly or indirectly imposes unfair conditions, limits production, denies market access to any competitor in any manner or uses its dominant position in one market to enter into another, it constitutes abuse of dominant power. The Companies that have market power can be investigated if the CCI believes that they are restricting interoperability, bundling services or using algorithmic bias as a tool to practice self-preferencing of their products and services.

For example, CCI imposed a penalty on Google for alleged forced bundling, app pre-installation in Android mobiles–stifling competition and entering the mobile apps market.[21]

Loopholes:

While this Act has laid the ground rules to regulate competition, they lack in certain aspects that give way for the concept of walled garden in the digital economy.

This Act follows an ex-post enforcement model. It means that this Act only addresses anti-competitive activities after harm occurs. This leads to slow enforcement which is unsuitable for this dynamic digital market where new issues emerge rapidly.

This Act lacks focus on the digital side of competition. It does not have clear provisions on algorithmic bias, transparency, prevention of automated self-preferencing and fairness in ranking which are the core problems of walled gardens. This Act does not adequately address the power digital platforms exert over user data, interoperability between services which are key contributors to the issue this paper deals with.

[19] S. 3, Competition Act of India 2002
[20] S.4, Competition Act of India 2002
[21] Aishwarya Agrawal. (2024, November 6). *Abuse of Dominant Position in Competition Law [Section 4]*. LawBhoomi. https://lawbhoomi.com/abuse-of-dominant-position-in-competition-law/

ISSN: 2582-6433

Unlike the EU's Digital Markets Act, the 2002 Act has no designation for gatekeepers or ex-ante obligations to prevent walled garden problems before they cause harm to the consumers and the competitors. The Competition Act was heavily criticized for delayed action (penalizing) and drawing from this criticism for being ex-post, DCB was an ex-ante regulation.

2.2. IT Act, 2000

Section 79: Intermediary liability, not ranking fairness.

Section 79 talks about the liability of intermediaries *"for any third party information, data, or communication link"*[22] shared by the intermediary under certain conditions/ situations. In walled gardens, sharing of user data or information does not happen as that is what the intermediary thrives on here. The problem is that the scope of liability is a bit too narrow. The intermediary should be liable for biased ranking and anti-competitive behaviour like self-preferencing, if either is proved. This issue is foreseeable and likely to increase but the current law does not reflect the modern issues.

The intermediaries rely on algorithms for ranking in search engines and for personalized recommendations in streaming platforms. It is the one in control of what information is displayed to the users. It selects the data to be presented based on the receiver's preference histories. Fairness and healthy competition is crucial here. And the intermediary choosing what the users see gives scope for bias through sponsored content or self-made content being displayed on top of the search results or in the home screen of streaming services.

There is no provision mandating algorithmic transparency to keep the intermediaries in check and ensure no abuse of market dominance takes place in the name of algorithm. There is no concept of "digital gatekeeper" or "self-preferencing" either.

Why IT Act is insufficient

Though the IT Act is the primary statute that deals with the issues that arise in cyberspace, it is clearly insufficient when it comes to the consumer part of the cyber world. The IT Act deals with cybersecurity, prevention of data breach, and other cyber offences[23]. It does not have any provisions to deal with markets, consumer choice, anti-competitive behaviour or perform

[22] Section 79 of the Information Technology Act 2000
[23] Mayashree Acharya. (2025, August 7), *IT Act 2000: Objectives, Features, Amendments, Sections, Offences and Penalties*. cleartax. https://cleartax.in/s/it-act-2000

ISSN: 2582-6433

interoperability which are the central issues in the concept of walled garden.

The IT Act does not provide any rules or directions on how platforms should create their ecosystems or contribute to the betterment of competition through permissible business practices. This Act does not have any provisions mandating data portability and interoperability of services which makes the Act ineffective to govern the digital market system.

The IT Act does not have any specific authority for market competition regulation as it deals with content and cybersecurity enforcement. And the wall garden problems are issues that fall under the domain of the CCI.

2.3. Digital Personal Data Protection (DPDP) Act, 2023

DPDP Act mainly focuses on data protection, privacy and duties of data fiduciaries[24]. It provides for how personal data should be collected, processed, stored and transferred/shared. The DPDP Act is relevant to the walled garden aspect indirectly by having provisions about consent, purpose limitation and data minimization.

Section 6(1) talks about data minimisation when it says processing of personal data should be "*limited to such data as is necessary for such specified purpose*."

Big platforms have mandatory data sharing requirement for any service. Consent is Section 6(1) also says that the consent should be *"free, specific, informed, unconditional and unambiguous."* But the wordings about consent requirement in Section 7 blatantly favour the service providers. It says that the data can be processed for: (i) the purpose consent has been given and; (ii) other 'legitimate purposes' if the user has "*not indicated.. that she does not consent to the use of her personal data"* for those purposes specifically.

This kind of double-negative condition leaves scope for exploitation. It leaves a gap for the company to argue about the permissibility of data usage that contributes to their walled garden practices. The burden falls on the user to be vigilant and smart enough to explicitly deny processing of data when they might not even know that their data could be used for other purposes.

[24] Supratim Chakraborty & Siddharth Sonkar. (2025, January 9). *Decoding India's draft DPDPA rules for the world.* IAPP. https://iapp.org/news/a/decoding-india-s-draft-dpdpa-rules-for-the-world

ISSN: 2582-6433

Personal data collected on social media could be used to filter out and show targeted ads only to those specific users who are most likely to be interested. They generate additional revenue by marketing and helping in sales. User data could also be used to train AI, manipulate algorithms, etc. Data shared in one meta app is accessible to other meta apps without explicit consent.

It does not have provisions on data portability, it does not mandate interoperability.

2.4. Digital Competition Bill (DCB), 2023

Currently withdrawn, DCB was the first ever legislative proposal made for regulating the actions of dominant technology platforms and protecting fair competitions in digital markets[25]. Recognizing the limitations of the Competition Act, 2002, the DCB had introduced ex-ante regulations for Systematically Significant Digital Enterprises (SSDEs), i.e, core digital firms like Google, Apple, Amazon, Meta (Facebook), Microsoft, ByteDance, Reliance, parent Alphabet[26]— who would have been regulated by DCB if it had been enacted into an Act.

It aimed to prevent big firms from dominating the country's digital market by making the digital space more fair and contestable.[27]

The main objective of the DCB is to protect consumer interest and a fair competition among the firms that provide similar products and services in the digital space[28]. Instead of only punishing the anti-competitive behaviour, the DCB required SSDEs to abide by the obligations provided by it.

The DCB had prohibited SSDEs from misusing the private data of Business users to compete in the same market with them.[29]

[25] Ashutosh Shukla. (2024, August 4). *Data Portability and the Digital Competition Bill*. irccl. https://www.irccl.in/post/data-portability-and-the-digital-competition-bill
[26] Kavya Pradeep. (2024, June 27). *The Digital Competition Bill, 2024: What's the fuss about?* FRONTLINE. https://frontline.thehindu.com/science-and-technology/digital-competition-bill-2024-big-tech-google-amazon-facebook-reliance-digital-advertising/
[27] ibid
[28] Lokesh Bulchandani. (2024, August 8). *Overview of India's Digital Competition Bill, 2024.* The GW Competition & Innovation Lab. https://competitionlab.gwu.edu/overview-indias-digital-competition-bill-2024
[29] Committee Report Summary. PSR Legislative Research. https://prsindia.org/policy/report-summaries/digital-competition-law

ISSN: 2582-6433

This ex-ante Bill was intended to prevent harmful, anti-competitive practices and also to speeden the process of identifying violations and penalizing heavily.

Relevant provisions & insufficiencies

2.4.1. Core Digital Services

According to Schedule I, "Core Digital Service" included the following;

Online search engines, online social networking services, video-sharing platform services, interpersonal communications services, operating systems, web browsers, cloud services, advertising services, and online intermediation services.[30]

2.4.2. SSDEs

Unlike Section 4 of the Competition Act, DCB had set clear rules on how dominance can be understood. It had aimed to pre-emptively regulate SSDEs that provide CDSs if they met certain financial thresholds every year in the last 3 years; Having more than or equal to–

1. INR 4,000 crore turnover in India
2. USD 30 billion global turnover
3. INR 16,000 crore gross merchandise value in India
4. USD 75 billion global market capitalisation

User thresholds to be met every year in the last 3 years; Having more than or equal to–

1. One crore users
2. Ten thousand business users

Even if certain enterprises did not meet the requirements, they could be treated as SSDEs if CCI decided to treat it like one based on factors like economic power, volume of commerce, barriers to entry, dependency of users and network influence[31].

Vague definitions for the terms like 'significant presence' and 'economic power' would give room for companies to escape designation.

Only those companies whose influence in the market is openly visible, can be made

[30] Digital Competition Bill
[31] Ref. 29

ISSN: 2582-6433

accountable. To avoid S.3, large companies could have also split their business lines so that each of them would have slipped off the threshold for designation.

DCB did not identify any company as SSDE but only gave thresholds on how to identify them, unlike DMA, which has a list of 'gatekeepers'.

The designation of a SSDE was based on its size and the thresholds were too high and rigid. CCI's power to designate SSDE based on qualitative factors are vague. This could have led to arbitrariness, ambiguity and inconsistency[32]. The threshold was so broad that they could have designated companies that weren't actually harmful.

2.4.3. Self-reporting

Section 4 of the Bill was about Self-reporting i.e., the SSDE must co-operate and disclose it themselves if they meet the S.3 criterias. Dominant companies could have manipulated the actual revenue and user counts just to avoid crossing the threshold. The reliability of the reports produced would be highly questionable. In the Satyam Computer Services case, the company inflated revenues and profits by creating complex invoices with fictitious clients and transactions. The fraud included reduced actual turnover to conceal financial position and business scope. Similarly, dominant companies could underreport turnover to stay below the line. It cannot be detected except with extensive auditing and investigation.

2.4.4. Self-preferencing

According to Section 11, *"A SSDE shall not, directly or indirectly, favour its own products, services, or lines of business.. in any manner."*

This means a SSDE cannot give biased treatment, promotion and any other advantages to its own services in comparison to its competitors on its platform.

But the Bill neither provides clear legal or evidentiary standards for proving self-preferencing nor defines what activities fall under indirect favouring. The Section is unclear about algorithmic ranking unlike the approach of EU's Digital Markets Act. This gap gives companies the space to defend their activities, stating that it was done to ensure quality and

[32] Pankhudi Khandelwal. (2024, November 27). *The story of data portability in India: a lack of clarity under data protection, competition law and other frameworks.* Law School Policy Review. https://lawschoolpolicyreview.com/2024/11/27/the-story-of-data-portability-in-india-a-lack-of-clarity-under-data-protection-competition-law-and-other-frameworks/

ISSN: 2582-6433

efficiency– and is not self-preferencing.

By using the phrase "in any manner", the legislation had put a complete ban over self-preferencing. But it is also possible that the algorithm does genuinely give recommendations of content that matches the user's preferences but just happens to be a product created by the SSDE. So, instead of a complete ban over self-preferencing, the criteria for holding SSDEs liable for pushing its own products should be that the algorithm should have been fair and must be explainable, not opaque– if and when such need arises to justify self-preferencing.

It was an ex-post enforcement. It means that harm may stay untouched for a long time before action occurs. Companies would still be practicing self-preferencing during the CCI's investigation stage, still affecting the marketing rights of the competition.

2.4.5. Data usage

Section 12 was about usage of end users' and Business users' data by SSDEs with their consent. 'Consent' of the end user was given the same meaning as provided in Section 6(1) of the DPDP Act, 2023. And for business users, the definition would be prescribed by CCI.

The requirement for consent will be of no use if consent is acquired through any opaque means like bundling or purposefully burying it in the terms and conditions.

Consumers and small businesses lack bargaining power since most SSDE use the "Take it or Leave it" policy, allowing forced data sharing.

The *Explanation* part under subsection 1 gives the definition of the term "non-public data" but it is broad and the real enforcement challenges will arise when identifying what data is truly non-public. Aggregated data might still be used in a way that gives the SSDE a competitive advantage as the Bill was still silent about using non-personal and derived data to gain an upper hand without technically violating the provision.

2.4.6. Anti-steering

An anti-steering obligation means the business owners are not allowed to 'steer' away, advise, suggest or tell users to use any alternate platform even though it would be better, cost-

ISSN: 2582-6433

effective and more useful to the end users.

Although Section 14 restricted SSDEs from imposing anti-steering obligations on business users, it gave SSDEs an exception i.e., allowed anti-steering practices if it was "*integral to the provision of the Core Digital Service."*

The *Explanation* part had left it up to CCI to decide what constitutes "integral". This would leave plenty of room for inconsistent, subjective or possibly differing decisions for similar cases due to lack of clear definition or explanation on what actions are "integral" to core services. Such law/rule making power should not have been left up to the CCI as it is a quasi-judicial body.

The SSDEs could argue that their actions were necessary and that they fell under the exception. This makes it prone to arbitrariness and bias.

Explicit anti-steering activities include demotion of third-party services and reducing their visibility. It is difficult to prove, detect and regulate these activities as it is done through an algorithm and it is usually defended in the name of quality standards. SSDEs can still design their interface in such a way that the business users cannot use other platforms to promote their services. And the action for these practices often come after complaints and investigations, failing to prevent such activities in the first place.

2.4.7. Tying and Bundling

Section 15 restricts SSDEs from requiring or incentivising its users to use one or more of its products or services along with the CDS. Such practise of tying and bundling is not allowed to encourage freedom of users to choose. But if the other products or services are "*integral"* to the CDS, tying and bundling could be done.

This section has the same problem as the previous one with the meaning of the word 'integral'. It always gives space for the SSDEs to argue and claim that their actions, activities and features qualify as integral. It slows down the legal process as the monitoring and proving anti-competitive bundling requires market and technical analysis.

The Section focused only on explicit incentives but failed to address indirect nudges from the

ISSN: 2582-6433

SSDEs that lead users into bundled services/products without a real choice.

2.4.8. What was lacking in DCB

DCB was a good first step but it lacked clarity in certain provisions as discussed above and also lacked in detailed, enforceable algorithmic fairness provisions. It did not impose algorithmic ranking transparency obligations (e.g., how ranking works, disclosures, audit).

If and when a new law is decided to be enacted, we hope the insufficiencies stated above will help draft a stronger, tight law– not leaving any scope of circumventing the accountability by companies practising anti-competitive practices.

The DCB's vague standards for self-reporting, self-preferencing, data use, anti-steering, and tying and bundling left substantial gaps that could have led to exploitation of the same, hindering regulation of market power and consumer choice. algorithmic bias, ranking manipulation and lack of choice.

The Bill lacked technical specificity which might have led to continuous lock-in.[33]

2.4.9. Withdrawal of the DCB

Many big techs raised concerns about the possible hindrance in innovation and investments if those digital platforms are closely regulated.

Companies did not want to be subjected to restrictions on how to work and how not to work when no harm has been caused. They were against ex-ante regulations. In 2024, the Information Technology and Innovation Foundation report shared the same point of view. According to them, market failure is to be proved first to justify taking any regulatory action. Companies and start-ups feared too much power was at the hands of CCI– Section 3(3) gives power to designate any company as an SSDE when it did not fall under the thresholds in Section 3(2), whether the activities or restrictions exercised by SSDEs were 'integral' to CDS, etc. Concerns were raised about the possibility of arbitrary decisions.

[33] Priyansh Verma. (2025, August 11). *Centre mulling to drop 'ex-ante' regulations from revised Digital Competition Bill amid concerns of stifling innovation.* moneycontrol. https://www.moneycontrol.com/news/business/government-mulling-to-drop-ex-ante-regulations-from-revised-digital-competition-bill-amid-concerns-of-stifling-innovation-13431472.html

ISSN: 2582-6433

Dissatisfaction over the thresholds fixed was expressed.

News publishers wanted Bargaining Code for revenue sharing– like the Australian model.

They did not agree to adopting the EU's DMA model stating that Indian competition enforcement mechanism was good.

When put in such a tough spot where there was a choice between safeguarding competition and promoting innovations and getting investments, India decided to withdraw the Bill to undergo comprehensive study– collect market data before coming with another Bill. There is a discussion on bringing in ex- post regulation after observing the conduct of SSDEs.

Stats on one of the aspects of walled garden i.e., how much the "zero-clicks" reduce traffic is not widely available in India, unlike EU and the US. It has been estimated to be around 60% but exact market data would need to be collected.[34]

2.5. Standing Committee on Finance (SCF)

In 2022, SCF listed certain Anti-Competitive Practices (ACPs). The ones addressing Walled Garden were– Anti-steering, Self-preferencing, Bundling and Tying, Data usage, Search and ranking preferences, restricting third-party application, Advertising policies.[35] Most of these were attempted to be restricted/ prevented by DCB.

3. Unfair SSDE practices & Case Studies

3.1. Apple

Apple, being the owner of App Store and Safari, restricts users from installing apps from any other third-party stores and it enforces exclusive systems within apps, limiting the scope for competition. And you'd also have to pay for certain apps. High commissions are charged to the detriment of developers and users, forced tying up and bundling i.e., when you sign up for Apple iOS, you can only use Apple Store, buy the unique charger of the company separately. Such a compulsion to use only the service provider's products is not only to the detriment of

[34] Cecilia Decima. (2025, September 10). *The Google Click Crisis: 60% of Searches Now End Without a Visit.* WSI. https://www.wsiworld.com/blog/the-google-click-crisis-60-of-searches-now-end-without-a-visit
[35] Ref. 26

ISSN: 2582-6433

the consumer but also an unfair trade practise/ anti-competitive practise i.e., detriment of other service providers– especially small businesses. For this reason, Apple has attracted various legal issues and set precedents for the enforcement of digital consumer rules.

3.1.1. Epic Games v. Apple (US, 2021)[36]

This was a high-profile case that challenged the strict control of Apple over app distribution and in-app payments in its IOS ecosystems.

Epic Games, the maker of games like Fortnite, sued Apple for removing Fortnite from its App Store. The in-app purchase system charged a 30% commission to the developers. But Epic Games bypassed Apple's payment policy, enabling a direct payment option in its app. As a response to this action, Apple removed the game, prompting this suit. Epic Games claimed that Apple has illegally monopolized trade in the app distribution sector. This anti-steering practice prevented developers from notifying users about the alternatives options for in-app purchases.

The Federal Court favoured Apple and did not find them to be an illegal monopolist as it did not amount to unlawful dominance. It was also stated that "success is not illegal."

But it was also held that anti-steering practice was anti-competitive under California's Unfair Competition Law. Apple was directed to allow developers to notify users about the availability of alternative payment options. The courts highlighted that walled gardens (closed eco-system) raises serious concerns regarding competition.

3.2. Google

Google acts as a gatekeeper through its dominance over other search engines and advertising services. It decides which websites users should access by controlling algorithmic rankings and sponsored content placement. Google's control over the market, with its Google Search and Google Ads, gives it the opportunity to practice self-preferencing and this has raised concerns about fair competition.

[36] Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR (N.D. Cal. Sept. 10, 2021)

ISSN: 2582-6433

3.2.1. Matrimony.com v. Google, 2012[37]

Google was found guilty for abusing its dominant position under Section 4 of the Competition Act, especially when it comes to online search and advertising. This case was raised as Google search results excluded competing matrimonial sites and that this unfair leverage of market power was held to be anti-competitive.

3.2.2. Google Search (EU Fine, 2017)[38]

The Google Shopping self-preferencing case is a landmark judgment that demonstrates how Google abused its dominant position as a search engine by favouring its own services in comparison over rivals.

The European Commission investigated Google's practices after several complaints that its search results are not being neutral but are biased towards Google Shopping. The alternative competitors appeared much lower even when their content was more relevant than Google's. Google displayed its service in a box with an image and prices in a visually prominent place. This attracted more user clicks while diverting traffic away from rival sites in 13 European countries.

The Commission held Google guilty of violating Article 102 of the Treaty on the Functioning of the European Union (TFEU) for demoting rival services regardless of merit and giving themselves a prominent placement. This was held to be a clear form of self-preferencing abuse. This has restricted consumers from getting better deals and options, denying the rights of the European consumers to choose.

In June 2027, the commission imposed a fine of €2.42 billion on Google. It was considered to be the highest antitrust fine of that time[39]. Even though Google appealed, the Court of Justice reconfirmed that self-preferencing by dominant firms is indeed abusive under Article 102 of TFEU. This case has set a precedent for future cases against self-preferencing in digital markets.

[37] Matrimony.com Limited v. Google LLC & Others, Case Nos. 07 & 30 of 2012
[38] European Commission, Case AT.39740
[39] PRESS RELEASE. (2017, June 27). *Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service.* European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_17_1784

ISSN: 2582-6433

3.2.3. CCI v. Google Android (India, 2022)[40]

The CCI conducted an investigation against Google for abuse of dominant position relating to Android devices, violating Section 4 of the Competition Act. Some of them include pre-installation of apps, distribution of applications through Play Store, and payment mechanisms within Android phones.

CCI found that pre-installation, setting Google as the default browser and bundling activities conducted by Google in accordance with its Mobile Application Distribution Agreement (MADA) leverages Android's dominance to constrain competition and limit alternative's ability to survive in the market.

In the year 2022, the CCI concluded that there was an abuse of dominant power and it imposed a fine of INR 936.44 crores for anti-competitive practices related to Android and Play Store[41]. Google filed for an appeal in the National Company Law Tribunal (NCLT). It partly upheld the CCI's decision regarding bundling and mandatory billing practices. But the penalty was reduced to INR 216 crores. In 2025, on review, the NCLAT (Appellate Tribunal) gave directions to Google to ensure transparency in policies.

Both Google and the CCI have appealed to the Supreme Court and the final decision has not been issued yet. But this judgment will determine the obligations on high-profile tech companies and it will affect not only the market regulation in India but also set a precedent for future digital competition.

3.3. Amazon

Amazon, the largest online marketplace, acts as a gatekeeper by prioritizing its own products, regulating seller access and controlling prices. The German Federal Court of Justice confirmed Amazon's gatekeeper status under national competition law for its power to influence competition.[42]

[40] Competition Commission of India v. Google LLC, Case No. 37 of 2022
[41] Abhishek Singh. (2023, January 23). *Google Fined Crores by Indian Supreme Court*. CyberPeace. https://www.cyberpeace.org/resources/blogs/google-in-indian-courts
[42] Silke Heinz. (2024, September 13). *German Federal Court of Justice Confirms Amazon as Gatekeeper Under National Competition Law.* Kluwer Competition Law Blog. https://legalblogs.wolterskluwer.com/competition-blog/german-federal-court-of-justice-confirms-amazon-as-gatekeeper-under-national-competition-law/

ISSN: 2582-6433

4. Comparative Analysis

Table no. 1

Jurisdiction → Parameters ↓	**EU**	**South Korea**	**Japan**	**Australia**	**India (Before withdrawal of DCB)**
Legislation	Digital Market Act	Monopoly Regulation and Fair Trade Act[43]	Act on Improving Transparenc y and Fairness of Digital Platforms	Australia's News Media Bargaining Code	Digital Competition Bill, Competition Act, 2002
Governed by	European Commission	Korean Fair Trade Commission	Ministry of Economy, Trade and Industry[44]	Australian Communicat ions and Media Authority	Competition Commission of India
Designation	Gatekeepers	Online Platform Operators	Specified Digital Platform Providers	News Media and Digital Platforms	Systematical ly Significant Digital Enterprises

[43] Sangyun Lee. (2025, January 31). *Main Developments in Competition Law and Policy 2024 - Korea.* Kluwer Competition Law Blog. https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2024-korea/

[44] Act on Improving Transparency and Fairness of Digital Platforms (the Transparency Act). (2025, August 12). METI. https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html

ISSN: 2582-6433

Self-preferencing	Bans Self-preferencing and ranking	Self-preferencing is recognized as a major concern	Requires disclosure of preferencing procedure. Does not explicitly ban but it lays down obligations to report.	Bans preferential ranking	Has a provision but it lacks the clear evidentiary standards for proving the same. It also lacks the penalty provisions[45].
Algorithm bias	Mandates an explanation on how their algorithm works	Emphasises algorithm fairness in ranking. Mandates disclosure	Requires disclosure of procedure of ranking and submission of annual report to METI.	Includes obligation to disclose ranking for app stores. Transparency on algorithmic ranking mandated	Neither provides a definition for algorithmic bias nor mandates transparency
Tying & Bundling	Ex-ante rules limit tying and bundling	Prohibits forced bundling by large platforms	Does not ban bundling explicitly like the EU. But the Act expects fair contract terms and conditions.	Prevents forced pre-installation and bundling in apps	Explicitly lists tying and bundling for designated entity
Data usage	Limitation on using business	Prevents big tech companies	Mandates transparency	Has rules to prevent	Provides for non-exploitat

[45] About Digital Markets Act. (n.d). European Commission. https://digital-markets-act.ec.europa.eu/about-dma_en

ISSN: 2582-6433

	user/ third-part data	from exploiting accumulated data	regarding how the collected data is used by the big companies.	misuse of data and improve data portability	ion of non-public data provided by the business users. Doesn't talk about data sharing consent acquired through bundles
Usage of third-party apps	Allows the user to access third-party platforms	Focuses on allowing alternative apps. Prevents forced use of in-app payment	Only directs on having fair terms for business users. Does not openly state about third party apps.	Restricts forced in-app payment system, enabling installation of third party apps	Section 13 says no SSDEs can restrict users from using third party apps. But no enforcement protocol or security exemption is defined.
Anti-steerin g	Explicitly restricts anti-steering practices. EU has already held Apple liable under this provision	Has restrictions on activities that block users from steering away	Doesn't talk about Anti-steering directly. Focuses more on unfair blocking.	Prevents platforms from blocking users from steering to alternative apps	Has provisions for anti-steering. The definition of "integral" ambiguous and entire deciding power is with the CCI

ISSN: 2582-6433

Revenue Sharing	-	-	-	Mandates compensation to the news media for the revenue made by using other authors' efforts[46].	-

5. What can India adopt?

India can adopt different aspects from these countries and tailor a suitable statute according to its necessity.

The EU's DMA has a clear threshold for "gatekeepers", clear bans on anti-competitive behaviours and strong penalties for non-compliance. It gives certainty for definitions without ambiguity or just leaving it to be governed by the discretion of the authorised authority. It will make the law predictable and effective.

South Korea's algorithm transparency and mediation system between the big tech company and its business users can help India. Mandating platforms to detailed criteria for how rankings are done and establishing a CCI mediation unit will ensure fairness without a long litigation process[47].

Japan follows a transparency-first approach. Similarly India can begin with mandatory transparency reports to be submitted annually by major tech companies. It can be based on data usage, algorithm impact and preferencing procedures. It can be checked by an external authority to examine the genuinity of the same.

[46] News Media Bargaining Code. (n.d). ACCC. https://www.accc.gov.au/by-industry/digital-platforms-and-services/news-media-bargaining-code/news-media-bargaining-code

[47] Prerika Narang. (2025, February 13) *Should the CCI Rethink its Stance on Mediation? – Analyzing the Judgement of JCB Pvt. Ltd. v. CCI.* Center for Corporate Law Studies. https://corporatelawilnu.wordpress.com/2025/02/13/should-the-cci-rethink-its-stance-on-mediation-analyzing-the-judgement-of-jcb-pvt-ltd-v-cci/

ISSN: 2582-6433

From Australia, India can adopt its revenue sharing method. It can make changes to its laws to make such a mutually beneficial arrangement possible– wherein the blogs' and articles' authors whose content is used by Google in generating AI summaries or displayed in snippets are compensated.

6. Reforms and Suggestions

India's current framework is reactive, fragmented, not technologically aligned. So this paper suggests:

1. **Legal clarity:** Clearly define & provide for "algorithmic ranking", "self-preferencing", "interoperability" and "data portability" in the new Digital Competition Law.
2. **Algorithmic audits:** Require annual independent fairness audits. It must be ensured that only independent and competent auditors conduct algorithmic audit. It may also help rectify any unintended algorithmic bias or errors.
3. **Fair ranking guidelines:** Mandate disclosure of top ranking parameters. This will guarantee that only the relevant links appear on top based on their query, not intermediaries' manipulations.
4. **Revenue-sharing models:** Compensate publishers/authors whose content is used for generating AI summaries or for showing Google snippets.
5. **Institutional reforms:** Create a Digital Market Regulatory Authority under the CCI.

7. Conclusion

The "walled garden" effect restricts freedom, innovation, and information diversity. Entering walled gardens is not an option, it becomes a necessity, a social mandate. Apps like Whatsapp and Amazon become unavoidable. Apple is viewed as a status symbol. Google is the most familiar and highly user search engine. In today's world, a lot of important information-sharing and communication happens only via Whatsapp. Even if a person wants to use other messaging apps, he can't do so since it is a two-way connection. Amazon is the biggest e-commerce platform. Apple has its own appeal and uniqueness. In such cases, it has to be the moral and legal duty of these big giants to not break our trust and commercialize it by trying to make additional profit for itself. Our freedom to quit the walled garden must be intact.

The DCB should evolve from a withdrawn policy draft to a rights-based regulatory framework.

ISSN: 2582-6433

With platforms increasingly controlling what users see and how content is distributed (via summaries, for example), India needs technology-neutral, proactive regulation (ex-ante) rather than reactive (ex-post) enforcement. India should adopt a hybrid approach — ex-ante like the EU, but flexible for innovation like the US. Algorithmic transparency and fair ranking are the next constitutional frontiers in digital governance — essential to preserve both competition and user autonomy in cyberspace.