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Metaverse - Legal Complications and Efficacious Remedies: An Indian Perspective

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ABSTRACT

The definition of the term “reality” is subject to change from time to time with the advancements in technology. Earlier people saw the world in two dimensions and later it evolved into 3D to give viewers an immersive experience. Immersive experience can be defined as one where movies allow people to submerge into the character’s life and the way the story pans out to produce an otherworldly perspective and an experience like never before. From the late 20th century till date, people have become weary of social interactions and they do not have the dynamism to indulge in real life conversations with people they meet in their day-to-day lives. This was also due to the limits put forth in the actuality. But with the introduction of Metaverse and crypto currency reality has now shifted to an online world where one can indulge in boundless communication with people around the globe by negating physical distance and upgrading the social media platform. No matter what the advancements are, there arises a need for a balance between maintaining the interests of the social community and development in technology. Problems originate in multifarious forms when people from diverse ethnic groups intermingle together in a single online interactive media platform. Discrimination on the basis of caste, creed, sex and religion could easily be instigated. Metaverse could potentially be so realistic so as to create complete suits which could enable viewers to have a complete perspective of the happenings in the virtual reality and this could cause criminal activities such as rape and molestation to occur. Data piracy is the next big threat whereby loads and loads of information are stored using block-chain technology which although companies claim it be safe, is always susceptible to piracy. So addressing legal issues in this particular field is of preliminary importance. This paper is an empirical attempt to realize the legal issues from experts in the field and do extensive research on the advancements that Metaverse could potentially bring into communities across India.

Keywords: *Metaverse, technological advancements, legal issues, analysis, Indian point of view.*

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I. INTRODUCTION

The field of entertainment is constantly met with mind blowing technological updates that could possibly reshape the way one perceives reality. When the argument is about how beneficial such technological updates are to society, one has to talk about positive development for both mankind and the environment. When the whole point of such futuristic technology is leisure, one does not need to take deep care about potential legal problems that may arise. But when the technology is built in such a way that it involves monetary transactions like trading land and digital assets and commerce where products can be tried out in the virtual world before being sold and delivered to in the real world, one has to note keenly on the legal threats it could bring with its advancements. To understand key concepts regarding the functioning of Metaverse, one has to understand the components that make it whole.

Since its introduction in 2021, Metaverse has been the talk of the year as people around the globe wanted to experience the virtual world but nobody really knew what Metaverse actually meant. Metaverse is a system of interconnected virtual worlds for the purpose of easing real time interactions where people can carry on with their day to day activities such as work, interconnect, buy or sell goods in an online mode negating external interruptions. But the Metaverse was not brought up in a single day. Decades earlier, before the invention of virtual reality, when drama artists had to thrive only by creation of new ideas due to the increase in the amount of viewers craving fantasy movies, the idea of creating movies where characters would escape from the real world to a virtual world was talked about. Later, discussions continued and inventions poured in as 3D glasses paved way to VR glasses to provide viewers to immerse themselves in the surroundings of the cinematic universe. These were purely for the purposes of leisure and entertainment. Now development has soared to great heights enabling followers or subscribers to completely use the virtual world for their daily purposes. Of course this could lead to serious complications in the form of legal issues as people from the real world are rapidly shifting to the Metaverse.³ Through this empirical research paper, we study the understanding of the general public about the legal complications through a questionnaire and evaluate the opinion of experts both in the field of law and those who are in close contact with evolving technology.

³ The metaverse: three legal issues we need to address February 1, 2022 - The Conversation - Author - Pin Leau Lau

II. COMPONENTS OF METAVERSE

(A) Virtual and augmented reality:

Vision is the most used sense by humans out of the other six senses and hearing comes next. When images are in 2D, users cannot completely experience the immersive nature that the game can offer which leads to loss of user interest. When senses like our vision and hearing are enlightened or tuned in such a way that we could experience the completeness that the game has to offer, it thereby produces a sense of gratification. VR headsets have their origin way back in the 1990s but gathered attention only in the recent past. Oculus is a brand which primarily had the idea of manufacturing virtual reality headsets for viewers to have an in person experience and it succeeded in doing so, becoming the first company to reach heights in sales of VR gears. Later Facebook acquired the company in 2014. Virtual reality is basically a place where people can use avatars to navigate in a simulated world completely based on the personal ideas of the users or a virtual world constructed by gaming companies to give a three-dimensional experience. Augmented reality on the other hand simulates or morphs objects in the real world through computer generation which can be more accessible than VR. Pokemon Go is an example of how augmented reality works where game characters are simulated into the real world. Metaverse needs both AR and VR to become complete and provide viewers with an experience of a lifetime and therefore these are some of the basic components that frame the pillars of Metaverse.

(B) 3D-Reconstruction:

Construction of a multi-story building or a skyscraper is not a trouble-free task for engineers as a simple or minor error in calculations can lead to collapse of the entire project. When project designs can be looked into multiple times through a simulation or hologram to identify errors, it could be lifesaving. Similarly surgeons, before conducting a major operation, if they had the tech or model to practice the surgery on, could provide a sense of safety, security and could be beneficial for them and the patient. 3D reconstruction comes into play in these areas and many more whereby objects in the real world can be projected or simulated through holographic images where experts can lay their hands on for a trial before entering into operations.

(C) Artificial Intelligence:

AI is the root of advancements in the current generation and Metaverse is no stranger to that. In this particular field AI can help people with disabilities, it can help in translation of foreign language into the local one which the user could understand to interact. It can help counter abuse, defamation or hate speech. AI can help transcribe thoughts in people with extreme

communication disabilities. Unperturbed interaction is the preliminary purpose of Metaverse and that can be fulfilled when exoskeletons enhanced by artificial intelligence are attached to the human body to communicate effectively. AI is also used in building avatars by analyzing the 2D or 3D replicas of a person.

III. LEGAL ISSUES AND SOLUTIONS IN ADHERENCE WITH EXISTING LEGISLATION

There are a plentitude of problems that can have their origin with the introduction of Metaverse. Addressing them in detail could be a mind bending task. Therefore we take into consideration some threats that can have serious implications.⁴ Currently there exists no specific legislation to promptly govern these legal implications however the existing legislation tends to provide a fora for analyzing and applying rules with respect to cases similar to the current question of law. The list of Sections that are about to be mentioned below is not exhaustive and does not cover all problems and aspects with respect to governing the legal implications of Metaverse and related technology.

(A) Discrimination:

Diversity, equity and inclusion (DEI) is a term that is mainly used in the context of initiatives that aim to improve and maintain the level of diversity, inclusion, and equity in organizations, especially in workplaces, educational settings and can now include the virtual world.⁵ Diversity refers to the presence of differences within a given setting, such as race, ethnicity, gender, sexual orientation, age, disability, etc. Equity refers to the fair treatment for all people, so that the norms, practices, and policies in place ensure identity is not predictive of opportunities or outcomes. Inclusion refers to the practice of making people feel a sense of belonging, so that they can be their authentic selves and contribute fully.⁶ The virtual world can suffer from two kinds of discrimination. Primarily, there are concerns about racial and gender representation in the Metaverse, as some users may prefer certain types of avatars over others, or face discrimination based on their appearance or identity. There are also issues of harassment and abuse in the Metaverse, as some users may experience unwanted or offensive behaviors from other users, such as groping, stalking, verbal attacks even to the extent of sexual harassment. Secondly, there are questions of accessibility and affordability of the Metaverse, as some populations may not have the resources or skills to participate in the virtual world, or may face

⁴ Avatars in the Metaverse: Potential Legal Issues and Remedies International Cybersecurity Law Review 2022 - Ben Chester Cheong

⁵ What Is Internet Governance? | Internet Governance Project by School of Public Policy

⁶ Metaverse vs employment law: the reality of the virtual workplace - the Financial times

barriers due to their physical or mental conditions.⁷

a. **Section 66A** of the Information Technology Act, of 2000 made it a punishable offense for any person to send offensive information using a computer or any other electronic device. However the Section was declared unconstitutional and struck down by the court in a landmark judgment on March 24, 2015. Several incidents occurred where Section 66A was misused to target individuals for expressing their opinions or making comments on social and political issues. This led to public outcry and concerns about the law's potential misuse to stifle dissent and curtail freedom of speech. In response to a series of petitions challenging the constitutionality of Section 66A, the Supreme Court of India ruled that it violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution. The court held that the section was ambiguous, over-broad, and conferred excessive power on law enforcement authorities. The judgment emphasized the importance of protecting free speech in the digital age and the need for clear and narrowly defined restrictions on speech. As a result of the Supreme Court's ruling, Section 66A was struck down, and it is no longer a valid law in India. The judgment was seen as a significant victory for freedom of speech and expression in the country's online space. The reason for inclusion of this Section is because it criminalized sending of offensive or menacing messages through communication services.⁸

b. **Section 67** however compensates for the gap that arises with the scraping down of Section 66A. Section 67 of the Information Technology Act, 2000 deals with the punishment for publishing or transmitting obscene material in electronic form. It aims to address the issue of the dissemination of explicit or pornographic content through digital platforms. Accordingly, **any person who publishes or transmits or causes to be published or transmitted**, in electronic form, **any material that is lascivious or appeals to prurient interests**, or contains sexually explicit acts, etc., **with the intent to outrage or offend the recipient**, can be punished with imprisonment for a term that may extend up to three years and a fine that may extend to five lakh rupees. This provision although it is intended to deter the dissemination of explicit or obscene material through electronic means and protect individuals from exposure to offensive content it is not exhaustive and can be applied depending on the specific facts and circumstances of each case.

c. **Section 354A** of the Indian Penal Code (IPC) deals with the offense of sexual harassment and provides legal provisions to address various forms of harassment, including

⁷ Virtual Worlds, Real People: Human Rights in the Metaverse by Katitza Rodriguez, Kurt Opsahl, Rory Mir, and Daniel leuferdecember 9, 2021 - Electronic Frontier Foundation

⁸ Metaverse: Legality & Regulatory Concerns In India By - Prashant Kataria on May 19, 2022

online sexual harassment. It was introduced in 2013 through the Criminal Law (Amendment) Act, 2013, as a response to growing concerns about sexual offenses against women. Section 354A defines several acts that constitute sexual harassment, including Physical contact and advances involving unwelcome and explicit sexual overtures, making sexually colored remarks or showing pornography against the will of the person, any act that intrudes upon the privacy of a person's body, attempting to coerce or forcefully establish a sexual relationship against the person's consent and most importantly in our context **Making sexually explicit electronic communications, such as sending unwelcome sexual messages, emails, or any other online content.** These provisions can be applied to address online sexual harassment cases, where individuals face harassment through various digital platforms, such as social media, messaging apps, or email. The section recognizes the importance of consent and ensures that any unwelcome sexual advances or explicit communications without consent are considered offenses. If a person is found guilty of online sexual harassment under Section 354A⁹, they can be punished with imprisonment for a term ranging from one to five years, along with a fine. The severity of the punishment depends on the nature and gravity of the offense.

d. **Section 509** of the IPC can be applied to online sexual harassment cases. This provision states that a person who posts sexual remarks, pictures or videos with sexual insinuations on social media with the intent to harass or annoy a woman is liable to three years of imprisonment along with a fine. Section 153A of the IPC states that a person who promotes enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and does acts prejudicial to the maintenance of harmony is punishable with imprisonment up to three years, or with fine, or with both. Ketaki Chitale, a Marathi Actor was arrested by the Thane Crime Branch for a Facebook post that was allegedly derogatory against NCP chief Sharad Pawar.¹⁰ She was booked under IPC sections 500 (defamation), 501 (printing or engraving defamatory matter) and 153A (promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) of the Indian Penal Code.

(B) Data Protection and privacy:

The primary complication - Collection of data (is it consensual?): The Metaverse, unlike other virtual media platforms, will generate incomprehensible amounts of personal data from users, such as biometric data, behavioral data, location data, preferences and emotions. After

⁹ Legal provisions and steps to report online harassment against women Published: Aug 30, 2022 - Forbes India

¹⁰ The Marathi actor arrested for posting derogatory remarks against Sharad Pawar - Ketaki Chitale - The Indianexpress

collection, this data, similar to other social media platforms, can be used for multiple purposes such as personalization, advertising, analytics and security.¹¹ This in turn raises questions about the consent, transparency, accountability, and security of data collection and processing. Users may not be aware of how their data is collected, used, shared, or stored by different entities in the Metaverse. They may also not have control over their data or the ability to exercise their rights, such as access, correction, deletion, etc. **The Secondary complication - Anonymity:** The Metaverse will enable users to interact with each other in various ways which may also expose users to privacy risks from other users.¹² For example, there could rise questions on how users will protect their identity and anonymity in the Metaverse? How will users prevent unwanted or harmful interactions from other users? How will users deal with harassment, bullying, stalking, or cybercrime in the Metaverse?¹³

a. **The Constitution of India** grants the right to privacy as a fundamental right under Article 21, which protects the life and personal liberty of every citizen. The Supreme Court of India has interpreted this right to include the protection of personal data and information in several judgments. The most important one being **Justice K.S. Puttaswamy (Retd.) vs Union of India (2017)** which held the right to privacy as a fundamental right under Article 21 of the Constitution. The court held that privacy includes the protection of personal data and information, and laid down certain principles and tests for determining the validity of any law or action that infringes upon privacy. The court also recognized the need for a robust data protection regime in India and directed the government to enact a comprehensive legislation on this subject.

b. **The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011** are framed under the IT Act and prescribe the obligations of entities that collect, process, or store sensitive personal data or information (SPDI), such as financial, medical, biometric, or sexual information. The SPDI Rules require such entities to obtain consent, provide notice, ensure security, and comply with transfer restrictions for SPDI.¹⁴

(C) Intellectual Property Rights:

The legal status of intellectual property rights (IPRs) in relation to the Metaverse in India

¹¹ How we can mitigate the potential threat to data privacy in the metaverse - Shigraf Aijaz - April 12, 2022

¹² The metaverse: privacy and data protection challenges
Clayton Utz - Australia August 18 2022

¹³ The Matrix of Privacy: Data Infrastructure in the AI-Powered Metaverse - Harvard Law & Policy Review, Posted: 24 Feb 2023

¹⁴ The evolution of India's data privacy regime in 2021 - March 17 2022 - IAPP

remains uncertain, creating a legal gray area. Conducting research to explore the opportunities and challenges that the Metaverse presents for IPRs, specifically addressing the Indian context is of the essence.

Similarly on a global scale, there is a lack of regulations and treaties that specifically or directly address the issues arising from the Metaverse and non-fungible tokens (NFTs).¹⁵ Although experts propose that existing IP laws can be adapted and clarified to encompass the Metaverse, implementing these laws poses challenges and risks concerning data protection, privacy, consumer rights, antitrust regulations, and taxation for users, players, and platform owners in the Metaverse. Therefore, it seems that there is still a lot of room for development and innovation in the field of IPR laws and international treaties for the Metaverse.¹⁶

Some of the issues that arise in the Metaverse and can be addressed through existing intellectual property rights (IPR) laws in India include:

- **Cybersquatting:** This refers to the act of registering domain names that are similar or identical to established trademarks or brands, usually with the intent to sell them at a higher price or divert traffic from the legitimate owners. Trademark rights under the Trade Marks Act, 1999 and domain name registration rules can be enforced to prevent such practices. For instance, in the case of **Tata Sons Ltd. v. Manu Kosuri & Ors.**, the Delhi High Court ruled in favor of the plaintiff and ordered the transfer of domain names containing the word "TATA" that were registered without authorization.
- **Infringement of IP rights:** This involves the unauthorized use or reproduction of protected works or signs within the Metaverse, such as avatars, buildings, landscapes, logos, etc., that belong to someone else. Copyright, trademark, or patent rights can be invoked under the relevant laws to address such infringements and seek remedies such as injunctions, damages, or other appropriate actions.¹⁷ For example, in **Disney Enterprises Inc. & Ors. v. Kimcartoon.to & Ors.**, the Delhi High Court granted an interim injunction against websites that were streaming unauthorized copies of Disney's animated content.
- **Misappropriation of data:** This refers to the unauthorized collection, use, or disclosure of personal or sensitive data belonging to users or players in the Metaverse, including

¹⁵ The Rise of Metaverse: Challenges for the Indian Laws- Swarnendu Das - Metacept February 14, 2022

¹⁶ Intellectual property rights and the metaverse: An Indian perspective -Shinu Vig - The Journal of World Intellectual Property.

¹⁷ INDIAN JOURNAL OF CORPORATE LAW AND POLICY - Intellectual Property Rights in the Metaverse by Ashish Deshmukh

biometric data, location data, preferences, etc. **The Information Technology Act, 2000**, along with its associated rules, and the proposed **Personal Data Protection Bill, 2019**, can regulate such activities. These laws aim to safeguard the privacy and security of data subjects and impose obligations on data fiduciaries and processors.

However, there are several challenges that are not adequately addressed by the current intellectual property rights (IPR) laws of India, including:

- **Ownership of virtual assets:** Determining the ownership rights of virtual objects or creations generated or acquired in the Metaverse, such as NFTs, virtual land, and virtual goods, poses a significant issue.¹⁸ The absence of a clear legal framework in India creates uncertainties and potential conflicts among users, creators, platforms, and regulators regarding the ownership and control of these virtual assets.
- **Jurisdictional issues:** Resolving disputes in the Metaverse becomes complex, especially when involving parties from different countries or regions. The absence of a uniform international treaty or convention governing the Metaverse results in challenges in determining which laws and courts have jurisdiction over such matters. Disparities in legal systems and standards across jurisdictions further compound these issues.¹⁹
- **Ethical and social concerns:** Balancing the rights and interests of various groups and individuals in the Metaverse, such as minorities, women, and children, and addressing issues like discrimination, harassment, violence, and addiction, presents ethical and social challenges. Developing comprehensive ethical guidelines and codes of conduct specific to the Metaverse and its participants is necessary to ensure a safe and inclusive environment.²⁰

IV. EXCERPTS TO BE ADDRESSED, ADDED AND GIVEN CONSIDERATION TO WHILE FRAMING A LEGISLATION GOVERNING THE METAVERSE

1. Laws to incorporate accessibility to everyone, especially people with disabilities - To start with, in the ever-changing and constantly upgrading dynamic world, there are communities still trying to grasp the entirety of what the virtual world means and how it works. Accessibility has always been a substantial issue for the creators. The Metaverse should be accessible to

¹⁸ India: Metaverse: Legality & Regulatory Concerns In India - 23 May 2022 - by Prashant Kataria and Dhaval Bothra- Mondaq

¹⁹ India: Content, Intellectual Property & The Metaverse - 25 July 2022 by Tanu Banerjee and Ishan Johri - Khaitan & Co LLP

²⁰ Protecting intellectual property in the metaverse: Challenges, opportunities, and recent case laws” May 6, 2023, Gayathri Prajit in Voices, Tech, Times Of India

everyone regardless of their physical abilities. This means that companies will need to develop new technologies that can help people with disabilities to cruise through virtual environments.

2. Laws to moderate content that is created - The Metaverse should have a system for content moderation to prevent harmful content from being created or shared. Companies will need to develop new technologies that can detect harmful content and remove it from virtual environments.

3. Laws for Data protection - The Metaverse will make new types of personal data available for processing. This might include facial emotions, gestures, and other behaviors that an avatar might have during Metaverse encounters. The EU's General Data Protection Regulation (GDPR) and the UK's Data Protection Act may apply to the Metaverse.

4. Laws invoking Privacy as a key feature - Privacy is a major concern for Metaverse companies, developers, and users alike. For users, it could mean violating their personal privacy, potential identity theft, and other types of fraud. Companies that fail to factor in data protection and privacy rights in the Metaverse could face heavy penalties in the long term .

5. Laws to keep the Metaverse a secure place - The Metaverse will require new security measures to protect users from cyber attacks. Companies will need to develop new security protocols that can protect users from hacking attempts and other types of cyber attacks.

6. Laws for defining and enforcing ownership of virtual assets: A clear legal framework is needed to determine ownership rights for virtual objects or creations in the Metaverse, including NFTs,²¹ virtual land, and virtual goods. This framework should establish mechanisms for transferring, licensing, and registering such rights, as well as resolving disputes related to ownership.

7. Laws for harmonizing IP protection across jurisdictions: A uniform international treaty or convention is needed to govern the Metaverse, covering various issues such as IP rights, data protection, privacy, consumer rights, antitrust, and taxation. This will ensure compliance with laws and standards across different countries or regions where Metaverse platforms and users operate.²²

8. Laws for developing ethical guidelines and codes of conduct for the Metaverse: Specific laws are required to establish ethical principles and norms for the Metaverse and its

²¹ The metaverse, NFTs and IP rights: to regulate or not to regulate? - June 2022 By Andy Ramos, Partner at Pérez-Llorca, Madrid, Spain- WIPO Magazine

²² Metaverse: A jumpstart guide to Intellectual property, Antitrust, and International considerations - August 26, 2022 - Morgan Lewis

participants, emphasizing aspects such as human dignity, diversity, inclusion, and fairness. Mechanisms should also be established for monitoring, reporting, and sanctioning violations of these principles and norms.²³

V. CONCLUSION

The emergence of the Metaverse has ushered in a new era of virtual reality and immersive experiences, revolutionizing the way people interact, socialize, work, and entertain themselves. However, along with its vast potential, the Metaverse also brings about a multitude of legal complications that need to be addressed to ensure a safe, inclusive, and sustainable virtual environment.

To ensure effective governance of the Metaverse, it is imperative to establish dedicated, contemporary and comprehensive legislation that specifically addresses the legal complexities arising from virtual reality, artificial intelligence, and blockchain technologies. Existing laws can serve as a foundation, but a specialized legal framework is essential to regulate aspects such as accessibility, content moderation, data protection, privacy, and security in the Metaverse.

In conclusion, as the Metaverse undergoes continuous evolution and transforms human interaction, it becomes essential for lawmakers, technologists, and stakeholders to join forces in crafting a strong legal framework. This framework should encourage innovation while safeguarding the rights and welfare of individuals in the virtual realm. By proactively and thoughtfully establishing such legislation, the Metaverse can fully unlock its potential, seamlessly integrating the digital and physical worlds for the greater benefit of society.

²³ Future of Indian IP rights in the Metaverse - 4 March 2022 - Asia Business Law Journal