Consilience 2021

Business, Tech & Law

Concept Note

About Consilience

Consilience is an annual academic conference that explores the intersection of legal issues and technology. It was started in the year 2000 and was the first of its kind in India. It is a one-off opportunity for scholars, students, academicians, and practitioners alike to learn about pertinent policy-based issues concerning law and technology through its high-quality discussions.

In the past, the conference has been graced with the opportune presence of eminent personalities such as: Anirudh Rastogi (Founder, Ikigai Law; Founder and Managing Partner, TRA Law); Antony Taubman (Director, Intellectual Property Division of the World Trade Organisation); Arun Prabhu (Partner, Cyril Amarchand Mangaldas); Carl Malamud (President, Public.Resource.Org); Deepali Liberhan (Manager of Public Policy, Facebook); JA Chowdary (Special Chief Secretary and IT Advisor to the Chief Minister, Information Technology, Electronics & Communication Department, Government of Andhra Pradesh); Nehaa Chaudhari (Partner, Ikigai Law); Nikhil Narendran (Partner, Trilegal); Sandeep Kapoor (Founder and Managing Partner, Algo Legal); Smarika Kumar (Researcher, ALF), etc.

To continue this legacy, Consilience 2021 will invite esteemed speakers on the emerging interface of business, law, and technology. The discussion will range from the interesting and popular field of **Competition Law and Tech** to an equally fascinating aspect of **Legal Tech Start-ups.** Both the topics will be dealt by eminent panels of experts in what promises to be an extremely insightful discussion. Since it will be held organized online, we look forward to a wider participation from all over the nation.

Theme 1

Competition Law & Tech

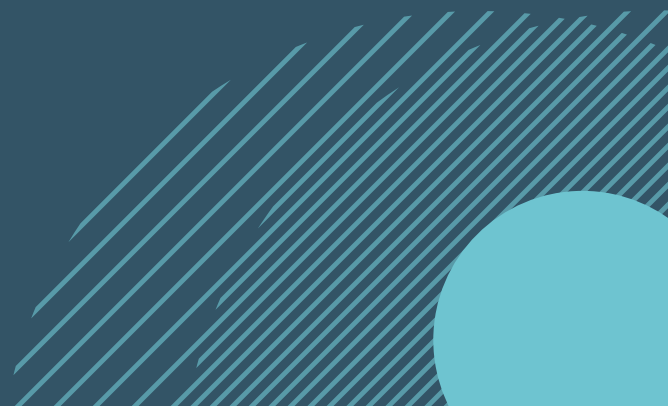# Panel 1: Dominion Over Data: An Analysis of Modern Market Supremacy

By the time you will finish reading this sentence, thousands of comments will be made on Facebook and millions of new e-mails will be sent. According to a study by Forbes Magazine, 2.5 quintillion pieces of data content are created every day. Quite evidently, we now live in the age of datafication and data has supremacy over all commodities.

Prima facie, all these commodities & services are offered free of cost! As the 70s US telemarketing saying goes, "If you're not paying for it, you're the product". Data is the new oil, and personal data is now the world's most valuable commodity. Big Tech makes use of intricate and detailed optimization and commodification of the personal data of their millions of users. Although targeted advertising directly by the company collecting the data is the most common, there are various other commercial uses that personal data can be put to.

In this surveillance capitalism, data has become the X-factor for market dominance and an organization's profitability. How a company organizes and optimizes data better than its competitors determines its financial future and survival in the cut-throat market. This is all the more true in the ongoing pandemic, when most of the world has gone online and the generation of data has increased exponentially with greater online engagement from billions of people. On account of this increasing importance of big data, privacy concerns are also blending in with the antitrust issues.

To keep pace with these technological changes, competition regulators around the globe are brainstorming on how to prevent abuse by digital goliaths. To supplement the ongoing discussion, it will be interesting to look at the following questions for discussion:

1. Is there a need to revisit the basics of defining relevant market to deal with the tech products that are globalized, zero-priced, data-reliant, multi-sided, hopefully interoperable, etc.?

2. What are various ways in which data can lead to dominance in terms of competition law?

3. What are various new ways through which the tech-based platforms abuse their dominant position? Is the competition law jurisprudence developed enough to tackle such abuses or should we look for remedies such as data portability that doesn't strictly fall under the purview of competition law?

4. Should the laws of developing and developed nations treat these issues differently?

5. With respect to big data, are the goals of privacy laws in line with the goals of competition law? If yes, in what ways can they reinforce each other?

Panel 2: Anti-competitive Algorithms and the Challenges in Antitrust

Ever wondered why the prices of flight tickets of different airlines tend to rise simultaneously for your route? Or how algorithmic trading platforms have at times been found to artificially raise stock prices to each other's benefit? While such experiences are understandably enraging, one often stops to think who is to blame. Unfortunately, the answer is not very clear. While the pricing is done automatically by supercomputers working on big data; the secret sauce is the use of advanced algorithms made by top computer scientists and mathematicians that give efficient mechanisms for the pricing system to earn the company higher profits.

Even though such AI brought with it the promise of multiplying human intelligence manifold and solving our biggest problems; it is now often touted to be the modern Frankenstein's monster. This title seems to be fitting in the arena of competition law, as this technology is believed to have enabled complex cartels that can surreptitiously hamper public interest and consumer welfare. While this tech has the capability of sabotaging and hindering healthy competition in this manner, it will be tough to regulate such cartels as too much regulation might lead to a chilling effect on innovation and might unfairly hamper an organization's right to earn legitimate profit.

To dive deep into such complex but necessary issues, it is important to analyze the following questions:

1. Can algorithms collude in terms of competition law? How have various jurisdictions dealt with this issue?

2. What is the extent of the liability of the human agents behind collusive algorithms?

3. How do laws related to collusion interact with blockchain and smart contracts?

4. With a continuously evolving algorithm that is using more and more of machine learning, are the antitrust laws enough to keep such regularly developing technology under check? How can these and other challenges related to tacit collusion by such technologies be tackled?

5. What would be the terms of a fair trade-off between legitimate appropriability and antitrust regulation? Similarly, to achieve a fair balance between innovation and competition law goals, should the regulation be light-touch or more robust?

6. Can algorithms and regulators have a friendly relationship where the algorithms may enforce the competition law in ways that were never possible before?

THEME 2

Legal
Tech
Startups

Panel 1: Legal Tech Start-Ups and the (Promising?) Future Business Prospects

Heard about the sonic boom in Bangalore last year? Well, even if you missed that one, one can't miss the 'start-up boom' in India. The legal tech start-ups are increasing at an unprecedented pace in India with nearly 100 start-ups being founded in the last few years. These startups make the right blend of law with technology, thus allowing the legal field to keep up with changing times. So, technology is doing what lawyers are supposed to do, seems pretty straightforward, right? Well, it is not.

Legal tech being a relatively new field in India is vastly unexplored and all start-ups encounter the market risk with uncertain returns. This makes one wonder about the scope and sources of funding for start-ups and their ability to serve the best interests of their client with the available funds, "customer satisfaction" you know. Even an optimist who thinks that legal tech start-ups can replace lawyers and result in better litigation is wary if the same start-ups can perform the adjudicatory function.

Since almost all businesses and start-ups have borne the brunt of the Covid-19 fiasco, it is important to analyze whether legal tech start-ups share the same fate.

To know what promises does the future hold for these start-ups, it becomes pertinent to consider the following questions:

1. What is the size and state of innovation in the Indian legal market?

2. What is the status of legal tech startups? Are they understanding the clients' needs? Does the market have the potential to provide them sufficient funding?

3. What does the future of such startups look like? Is it different in India and abroad? How is COVID-19 likely to affect such startups?

4. To what extent will tech replace lawyers? How can legal tech aid judiciary?

Panel 2:
Legal Tech Startups:
Transforming the Practice of Law in the 2020s

In an audacious bid to transform the legal profession, it is being integrated with cutting edge technology. With the use of Artificial Intelligence, Machine Learning etc., legal tech start-ups are slowly gaining ground in India.
Already a significant presence in the West, they are coming to be seen as an indispensable part of the future of the practice of law in India as well. Whether the growth trajectory of the West can be imitated in India is still a looming uncertainty.

With the economy in peril, it becomes important to understand what additional challenges these startups face. They might also have to turn to government for favorable policies in order to alleviate their growth in India. With legal tech startups destined to be the next big thing in the legal sector, even law schools will have to acclimatize themselves to their requirements.

Since these startups rely on AI and modern technology, which is alien to most law students and the legal fraternity, it would be interesting to see how lawyers and the legal tech industry adapt to the changing circumstances.

To understand the complexities involved and explore possible solutions, it is important to consider the following questions:

1. Are the lawyers adapting to change? What are the benefits/ drawbacks of adapting?

2. What kind of legal tech do different kinds of lawyers (GC, Litigating lawyer, M&A lawyer, PQE, Paralegals, etc.) need?

3. What are the largest costs for legal startups? Is there any government support?

4. Is law school education appropriate in this disrupted market? What other skills do they need?

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