

DEFERRED PROSECUTION AGREEMENTS AND WHITE-COLLAR CRIME: A CASE FOR INDIA

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Abstract

White-collar crimes remain a challenge to the economic integrity of India, and the traditional adversarial system of criminal justice has failed to provide effective and deterrent responses. The research problem identified in this paper is whether the criminal justice system in India can assimilate Deferred Prosecution Agreement (DPAs) as an alternative enforcement procedure for corporate offences. The primary research question is- Can DPAs be constitutionally and procedurally assimilated into the Indian legal system to combat white-collar crime, and what measures the Indian legal system to combat white-collar crime, and what measures can be taken to ensure fairness and accountability? Employing a doctrinal and comparative methodology, this paper examines the constitutional validity of DPAs in the Indian Constitution under Articles 14 and 21, the case of *Bharatiya Nagarik Suraksha*, 2023, and special laws like Prevention of Money Laundering Act 2002. A comparative study of the United States of America, the United Kingdom, and Singapore reveals opposite trends: the U.S. model reveals the dangers of unchecked prosecutorial discretion, while the U.K. and Singapore models highlight the need for judicial review. The salient result is that DPAs are not constitutionally banned in India, as long as the prosecutorial discretion is exercised in a transparent manner within a legislatively defined framework. The paper contends that a carefully crafted DPA regime, which includes legislatively defined eligibility criteria, judicial approval, public disclosure, and independent monitoring of compliance, can increase the efficiency of prosecution, overcome delays in the system, and make corporations more accountable.

Keywords- *Deferred Prosecution Agreements, White- Collar Crime, Indian Criminal Justice System, Corporate Criminal Liability, Prosecutorial Discretion.*

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1. Introduction

White-collar crime is still a significant threat to the economic integrity and institutional credibility of India. The Reserve Bank of India found ₹1.85 lakh crore of loan frauds from 2019 to 2022, noting the systemic aspects of risk in the financial and corporate aspects of our economy². Compounding this state of risk is the constant addition of regulatory provisions and provisions for penalties. Enforcement is still haunted by lengthy procedural delays, burden of proof considerations and the adversarial nature of criminal hearings. In response to this situation, the Government of India has begun to establish a new legislative position, one that is represented by the Jan Vishwas (Amendment of Provisions) Act 2023, that is heading towards both decriminalisation and a compliance, or settlement-based system of enforcement³. This shift in legislation has been viewed as an effort to reduce regulatory overlap and enhance processes conducive for business⁴. Because of this shift in position, there is now an interest in Deferred Prosecution Agreements (DPAs), (or Deferred Prosecution Agreements) between prosecuting authorities and corporate offenders as an alternative to standard criminal prosecution. DPAs are established as formal agreements whereby criminal conduct is addressed in a calibrated manner to achieve accountability with delays poor business practices and the collateral consequences associated with successful prosecution. DPAs have now become common in jurisdictions with similar approaches to corporate misconduct, such as the United States and United Kingdom. The ultimate goal of a DPA is to achieve accountability without the desire for capital punishment of convictions. The nature of a DPA is flexible to the needs of the authorities, the corporate entity and the community. Ultimately, DPAs are designed to deliver a compliance commitment without hindering the innocent employee, the security of work and ultimately the principle of respect and after all of this time, it is relatively simple⁵. DPAs are treated in the UK through the Crime and Courts Act 2013, and they have

² Reserve Bank of India, *Annual Report 2022–23* (RBI, 2023) 147 <https://rbi.org.in/Scripts/AnnualReportPublications.aspx>, accessed 1 September 2025

³ *Jan Vishwas (Amendment of Provisions) Act 2023*, No 17 of 2023, Gazette of India, Extraordinary, Part II, Section 1 (11 August 2023).

⁴ Ashneet Hanspal and Guneet Mayall, 'Analysis of the Jan Vishwas (Amendment of Provisions) Act, 2023' (Ahlawat & Associates, 12 September 2023), <https://www.ahlawatassociates.com/blog/analysis-of-the-jan-vishwas-amendment-of-provisions-act-2023>, accessed 1 September 2025.

⁵ Percival Billimoria, Vivan Marwaha and Jhoomar Mehta, 'Combating Corporate Corruption in India through Deferred Prosecution Agreements' (Observer Research Foundation, 23 November 2017) <https://www.orfonline.org/research/combating-corporate-corruption-in-india-through-deferred-prosecution-agreements>, accessed 1 September 2025.

been effectively applied to resolve complex corporate fraud cases⁶. In the US, DPAs have a long history of use by the Department of Justice to negotiate settlements with corporations, often resulting in commitments to pay substantial sums of money and undertaking compliance undertakings⁷. DPAs are recognized for their flexibility and deterrence effect, while criticisms tend to focus on their opacity and the possibility of leniency⁸.

However, the lack of a statutory scheme for DPAs in India raises important questions about their legal regime, constitutionality, and procedural protections. While India has developed negotiated settlements in regulatory contexts, such as SEBI's consent mechanism, and the Competition Commission's leniency programme, criminal law remains predominantly adversarial, conviction-driven⁹. Furthermore, in light of a rise in the incidence of white-collar offending - which may be found in banking frauds, corporate misreporting, etc- the need for a more nimble, restorative prosecutorial approach is desirable¹⁰. This paper considers whether and how DPAs could be incorporated into India's criminal justice architecture to address complex economic offences.

- To examine the conceptual foundations and operational logistics of DPAs in comparative jurisdictions;
- To assess the compatibility of DPAs under the Constitution of India, statutes, and case law;
- To implement a legislative framework for DPAs usage in India, due norms for transparency, fairness and deterrence.

This study aspires to add to the public discussion on criminal justice reform and corporate accountability in India, by investigating statutory provisions, case law and policy.

2. Background

India's legal and regulatory framework to combat white-collar crime has been incrementally developed over the decades; but is still not adequately configured to deal with the sophistication and transnationality of modern economic offences. White-collar crime broadly refers to non-

⁶ C King and N Lord, *Negotiated Justice and Corporate Crime* (Springer 2018) chp 4 https://link.springer.com/content/pdf/10.1007/978-3-319-78562-2_4.pdf, accessed 1 September 2025.

⁷ Michael Bisgrove and Mark Weekes, 'Deferred Prosecution Agreements: A Practical Consideration' (2014) 6 *Criminal Law Review* 416.

⁸ Polly Sprenger, *Deferred Prosecution Agreements: The Law and Practice of Negotiated Corporate Criminal Penalties* (Sweet & Maxwell 2015).

⁹ Indian National Bar Association, *White Collar Crime Survey 2019* (INBA, 2019) <https://www.indianbarassociation.org/wp-content/uploads/2020/01/White-Collar-Crime-Survey-2019.pdf>, accessed 1 September 2025.

¹⁰ Teena Wadhera, 'A Perspective on White Collar Crimes in India' (2019) 2 *Haryana Police Journal* https://www.haryanapolice.gov.in/policejournal/pdf/PERSPECTIVE_WHITE.pdf, accessed 1 September 2025.

violent, financially motivated offences, committed by persons of trust, in the course of performing their daily functions. White-collar crime has exploded, within the economic space, to include virtually every sector including banking, securities, taxation and corporate governance, amongst others. The Indian Penal Code 1860, the Prevention of Corruption Act 1988, and the Prevention of Money Laundering Act 2002, represent India's key statutory framework. The Companies Act 2013, and the SEBI Act 1992, amongst other sectoral laws, represent a number of other statutes which deal with economic offences¹¹. However; the statutes drafted by the legislature are mainly adversarial or punitive, and in the vast majority do not provide for alternate dispute resolution or for negotiating settlements, or indeed restorative justice. The enforcement environment is equally fragmented. The Coordination of the mandates of various Agencies, including the Central Bureau of Investigation (CBI), the Enforcement Directorate (ED), the Serious Fraud Investigation Office (SFIO), and the Economic Offences Wing (EOW), is often discouraged by overlaps with various jurisdictions, causing delays to processes and potentially diverging outcomes. The conviction rate remains very poor for economic offences, as long trials and difficulties with admissibility of evidence curtail deterrence¹². Therefore, the need for other enforcement options that increase accountability and speed has never been more pressing.

Proposed enforcement options such as Deferred Prosecution Agreements (DPAs) have emerged as a practical approach to the enforcement option in the global context. Initial DPAs were designed in the United States in the early 1990s, which allowed a prosecutor to decline criminal charges against corporate bodies (as long as certain conditions, like compliance commitments, penalties and remedial steps had been followed)¹³. The United Kingdom, through the Crime and Courts Act 2013, formalized the ability for the Serious Fraud Office (SFO) to (or to negotiate through a judicially supervised agreement) suspend enforcement if certain steps were taken¹⁴. The value of DPAs is that they enhance prosecutorial efficiency, protect corporate value and achieve internal change¹⁵. However, there is no formal framework for DPAs in India. Some regulatory authorities, such as SEBI and the Competition Commission of India (CCI), have mechanisms for settlement and leniency, but these relate only to civil or

¹¹ Ministry of Finance, *Report of the Committee on Reforms in Criminal Laws* (2020) vol II, chp 6.

¹² National Crime Records Bureau, *Crime in India 2022* (NCRB, 2023) chp 12, <https://ncrb.gov.in/en/crime-india>, accessed 1 September 2025.

¹³ Polly Sprenger, *Deferred Prosecution Agreements: The Law and Practice of Negotiated Corporate Criminal Penalties* (Sweet & Maxwell 2015).

¹⁴ *Crime and Courts Act 2013* (UK), ss 45–50.

¹⁵ C King and N Lord, *Negotiated Justice and Corporate Crime* (Springer 2018) chp 4 https://link.springer.com/content/pdf/10.1007/978-3-319-78562-2_4.pdf, accessed 1 September 2025.

administrative proceedings¹⁶. The criminal justice system is far less innovative, holding fast to its procedures—if only for traditions' sake—and is unimpressed with negotiated resolutions rooted in a retributive mindset, with a clear emphasis on punishment rather than remediation¹⁷. Recent legislative developments—including, notably, the Jan Vishwas (Amendment of Provisions) Act, 2023—however, point to a far greater willingness to decriminalise and implement settlement-based enforcement¹⁸. This demonstrates a willingness to explore whether DPAs have merit in India.

3. Deferred Prosecution Agreements (DPAs): Comparative Insights- US, UK, Singapore

The trajectory of DPAs (Deferred Prosecution Agreements) reflects a worldwide shift in corporate criminal enforcement thinking in favor of negotiated justice. Within the United States, DPAs were a form of prosecutorial innovation in the early 1990s that allowed federal government actors to quickly and efficiently address complex corporate misconduct, without having to devote vast amounts of time and resources to full trials¹⁹. DPAs are negotiated in the U.S. primarily by the Department of Justice and, in their most basic form, they include an admission of criminal conduct, a financial penalty, and compliance obligations²⁰. However, the extent to which the court reviews DPAs in the U.S. is limited, and courts have a very limited role in reviewing the substance of these agreements²¹. Such prosecutorial monopoly of the decision-making process has come under fire for its lack of transparency and leniency, especially in cases involving large multinational corporations²². Nevertheless, DPAs have emerged as a primary method of addressing corporate misconduct in the U.S., allowing agencies to swiftly resolve disputes while incentivising corporations to cooperate with agencies²³. As a further contrast, the United Kingdom adopted a more formal and transparent way through the Crime and Courts Act 2013, through which the UK introduced DPAs with

¹⁶ Securities and Exchange Board of India, *SEBI (Settlement Proceedings) Regulations 2018*, reg 3.

¹⁷ Competition Commission of India, *Lesser Penalty Regulations 2009*, reg 4.

¹⁸ *Jan Vishwas (Amendment of Provisions) Act 2023*, No 17 of 2023, Gazette of India, Extraordinary, Part II, Section 1 (11 August 2023).

¹⁹ Megan Jean Parker and Mary Dodge, 'An Exploratory Study of Deferred Prosecution Agreements and the Adjudication of Corporate Crime' (2022) 30(4) *Journal of Financial Crime* <https://www.emerald.com/insight/content/doi/10.1108/JFC-06-2022-0122/full/html>, accessed 1 September 2025.

²⁰ Brandon L Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (Harvard University Press 2014).

²¹ Fred Davis, 'Judicial Review of Deferred Prosecution Agreements: A Comparative Study' (2023) *Columbia Journal of Transnational Law*, <https://kripoz.de/wp-content/uploads/2023/03/davis-article-on-DPAs-.pdf>, accessed 1 September 2025.

²² Glauco De Vita and Donato Voza, 'The Ethics of Deferred Prosecution Agreements for MNEs Culpable of Foreign Corruption' (2024) 34(4) *Business Ethics Quarterly* 605.

²³ Colin King and Nicholas Lord, 'Deferred Prosecution Agreements: Law and Policy' in *Negotiated Justice and Corporate Crime* (Springer 2018) 67.

judicial oversight²⁴. In this system, the Serious Fraud Office and the Crown Prosecution Service may enter into DPAs with corporate bodies, subject to court approval that this is in the public interest and that its terms are fair, reasonable, and proportionate²⁵. The UK model intentionally prohibits individuals from eligibility and strongly emphasizes public disclosure, with published judgments and agreements in full²⁶. This public disclosure model has been applauded for improving the public's trust in the process, although some have criticized all of these measures for still being incapable of holding individual executives accountable²⁷. The UK's experience shows that judicial involvement can be a great safeguard to arbitrary prosecutorial discretion while still achieving the benefits of negotiated settlements. With the Criminal Justice Reform Act 2018, Singapore's introduction of DPA reflects a hybrid model based on the UK model. The DPA in Singapore is limited to corporate offenders only, and the DPA only takes legal effect after approval by the High Court. The Attorney-General's Chambers manages the negotiation process of the DPA, with the Court responsible for ensuring that the agreement conform to standards of "fairness and proportionality." Singapore's model emphasizes the value of institutional checks and balances- particularly in jurisdictions where prosecutorial discretion is historically poles apart. However, some scholars have expressed that the success of DPA in Singapore will hinge on the courts' continued scrutiny of the DPA agreements, in addition to the creation of robust compliance cultures in corporations²⁸. These comparative experiences provide important lessons for the rule of law in India as it considers a DPA mechanism within its legal system. The U.S. model is a cautionary tale about the need for prosecutorial discretion with little oversight²⁹, while the U.K. and Singaporean DPA regimes show how the use of judicial oversight can increase legitimacy and public trust in DPA agreements, though it is still not clear how to establish individual culpability via a DPA³⁰. For India, a custom DPA regime should have statutory eligibility requirements, require judicial oversight, make DPA

²⁴ Crime and Courts Act 2013 (UK), ss 45–50.

²⁵ Michael Bisgrove and Mark Weekes, 'Deferred Prosecution Agreements: A Practical Consideration' (2014) *Criminal Law Review* 416.

²⁶ Observer Research Foundation, 'Combating Corporate Corruption in India through Deferred Prosecution Agreements' (2017) <<https://www.orfonline.org/research/combating-corporate-corruption-in-india-through-deferred-prosecution-agreements>> accessed 1 September 2025.

²⁷ Polly Sprenger, *Deferred Prosecution Agreements: The Law and Practice of Negotiated Corporate Criminal Penalties* (Sweet & Maxwell 2015).

²⁸ Eunice Chua and Benedict Chan, 'Deferred Prosecution Agreements in Singapore: What Is the Appropriate Standard for Judicial Approval?' (2018) 16(1) *International Commentary on Evidence* 20190002 <https://www.degruyterbrill.com/document/doi/10.1515/ice-2019-0002/html>, accessed 1 September 2025.

²⁹ Simmons & Simmons, 'Singapore Introduces Deferred Prosecution Agreements' (2018) <https://www.simmons-simmons.com/en/publications/ck0bakhe9o1e10b36wqa8b3u3/280318-singapore-introduces-deferred-prosecution-agreements>, accessed 1 September 2025.

³⁰ *Ibid.*

agreements public, and have a provision³¹.

4. Constitutional & Legal Feasibility in India

The test of constitutional and judicial validity of deferred prosecution agreement in India has to be based on the rights and statutory provisions laid out under the Constitution. This question is founded on Articles 14 and 21 of the Constitution which are the two pillars of substantive equality and procedure fairness. Article 14 ensures equality before the law and prohibits the state from taking arbitrary action and Article 21 ensures the right of life and liberty and provides that no person shall be deprived of life or liberty of person except by procedure of law. Legal definition of these two clauses has evolved under Indian constitutional jurisprudence and it now includes the right of fair trial, the right not to be subjected to arbitrariness, the right of being heard³². Any legislative framework that establishes DPAs must be established to withstand constitutional validity by ensuring prosecutorial discretion is based on specific, externally imposed constraints, and is not arbitrary in application. Due to the nature of discretion, transparency, and judicial checks, whatever maxim governs the stipulation of 'prosecutorial discretion' must be seen as internal or global administrative consequences, guided by a statutory regulation that sets out bright line conditions, which must also be consistent with non-arbitrariness as considered by the Supreme Court in *E.P. Royappa v State of Tamil Nadu* stating that no classification or discretion pursuant to a regulatory legislative scheme of conditions for a DPA course of action or step shall be arbitrary and not one founded on intelligible differentia and rational nexus with the objective to be achieved³³.

The benefits and risks of DPAs must also be to interface with issues with India's existing processes for administering criminal justice, as well as administering special regimes for some aspects of criminal justice in India. The Code of Criminal Procedure, 1973 (CrPC) is silent on any negotiated settlement arrangement that happens through a DPA arrangement, however, the CrPC provides an avenue for 'compounding of offences' (s. 320), as well as for the prosecution to withdraw (or abandon) proceedings (s. 321). The issues with this legislative route, however, are that neither have the attachment of a conditionality nor the compliance mechanisms that become part and parcel of DPAs³⁴. When you also add this challenge to the Prevention of

³¹ Global Investigations Review, 'Deferred Prosecution Agreements: Practical Considerations' (2019) <https://globalinvestigationsreview.com/review/the-asia-pacific-investigations-review/2019/article/deferred-prosecution-agreements-practical-considerations>, accessed 1 September 2025.

³² *E.P. Royappa v State of Tamil Nadu* AIR 1974 SC 555.

³³ Ronit Raj, 'Articles 14, 19, and 21: The Golden Triangle of the Indian Constitution' (The Legal Quorum, 2023) <https://thelegalquorum.com/articles-14-19-and-21-the-golden-triangle-of-the-indian-constitution/>, accessed 1 September 2025.

³⁴ Gaurav Mehta, *Guide to LL.M. Entrance Examination* (LexisNexis 2021) 510.

Money Laundering Act, 2002 (PMLA), which is a special regime statute, any discussions regarding any of the legislative aspects of DPAs, the state enforcement agencies, and their unique capacity with doing things for DPAs, emerge from the wholesale Supreme Court assertion of PMLA overriding the CrPC in so far as it relates to procedure, this includes bail with summons, as this precedence is due to the two (2) overriding clauses of PMLA Sections 65 and 71³⁵. The Supreme Court reiterated this unprecedented and cautioned that the coercive elements of PMLA, such as reverse burden of proof and admissibility of statements given during interrogation, must be balanced against constitutional protections³⁶. These elements throw up serious questions about the compatibility of DPAs with the procedural rigour and evidentiary thresholds required by PMLA. As such, any legislative effort to introduce DPAs would need to marry the remedial impulsion of negotiated justice to the deterrent aims of the special statute, without compromising the rights of the accused or undermining the integrity of the prosecution. As this is happening, the roles of both the judiciary and the prosecution in a future DPA regime will also need to be expressly defined to better maintain institutional equilibrium and the rule of law. First, the judiciary ought to be the custodian of constitutional values, thus ought to have the right to assess and approve DPAs to guarantee they are fair, proportionate, and in the public interest. There are already important precedents for such a system in the United Kingdom, where judicial approval is a necessary condition for any DPA to take effect³⁷. Similarly, the judiciary has affirmed a supervisory role over prosecutorial discretion in the contexts of plea bargaining and also the withdrawal of prosecution, and could provide the basis of a constitutional basis for a judicial oversight role in the investigation of a DPA³⁸.

It is necessary to pay closer attention to the appointment and conduct of public prosecutors under sections 24 and 25 of the CrPC in terms of their competence, objectivity, and responsibility³⁹. Publication of DPA terms and court rulings are examples of transparency

³⁵ 'PMLA Prevails Over CrPC' (Drishti Judiciary, 2024), <https://www.drishtijudiciary.com/current-affairs/pmla-prevails-over-crpc>, accessed 1 September 2025.

³⁶ Prateksh, 'The Prevention of Money Laundering Act and the Indian Constitution: A Study of Conflicting Norms' (Legal Service India, 2023), <https://www.legalserviceindia.com/legal/article-20853-the-prevention-of-money-laundering-act-and-the-indian-constitution-a-study-of-conflicting-norms.html>, accessed 1 September 2025.

³⁷ Percival Billimoria et al, 'Combating Corporate Corruption in India through Deferred Prosecution Agreements' (Observer Research Foundation, 2017), <https://www.orfonline.org/research/combating-corporate-corruption-in-india-through-deferred-prosecution-agreements>, accessed 1 September 2025.

³⁸ *Babu v State of Kerala (2010)* 9 SCC 189.

³⁹ Nishka Prajapati, 'Role of Prosecutor and Judicial Officer in Investigation' (Legal Service India, 2023), <https://www.legalserviceindia.com/legal/article-5112-role-of-prosecutor-and-judicial-officer-in-investigation.html>, accessed 1 September 2025.

measures that would help build public trust and discourage abuse. In order to ensure compliance and report to the court or another authority, we can also consider establishing independent monitorship responsibilities, as is the case in some other countries. This would serve as a check and promote public trust in the system. In conclusion, the Constitution and the law do not impose any restrictions on DPAs in India based on established jurisprudence; rather, they merely require a legislative body to provide a legislative framework. It must provide a legal framework that respects the fundamental rights outlined in the Constitution, balances prosecutorial discretion, refrains from asking the courts to become involved, and complies with both specific legislation requirements and common law. We may reestablish the rule of law, increase corporate liability, and improve successful prosecution by implementing a DPA system based on the principles of our own domestic legal system and lessons learned from other regimes.

5. Policy Justifications, Risks, and Safeguards

The question of constitutional and legal space for Deferred Prosecution Agreements (DPAs) in India needs to be assessed in view of the fundamental guarantees contained in Articles 14 and 21 of the Constitution, the process dictated by the Code of Criminal Procedure, 1973 (CrPC), and special laws' impact like the Prevention of Money Laundering Act, 2002 (PMLA). Article 14 prohibits arbitrary State action and provides for equality under law, that checks any act of discretion or discrimination, by encompassing intelligible differentia and a rational nexus to the objective sought. For ensuring DPAs remain consistent with the Constitution, essential is that prosecutorial discretion be used in good faith, transparently, predictably and subject to review by courts. The Supreme Court in *Maneka Gandhi v Union of India* (1978) has confirmed that Article 21 embodies a right to procedural fairness which bears within it the template of just, fair and reasonable denial of personal liberty⁴⁰. Therefore, the idea of a statutory code for DPAs has to include inbuilt safeguards to ensure that constitutional values in Articles 14 and 21 are maintained to the extent that DPAs become neither instrument of selective mercy and executive excesses but rather consistent with constitutional protection. The CrPC doesn't currently contain any provision for the conditional suspension of prosecution through negotiated agreements; these can be recorded pursuant to the CrPC Section 320, which allows the compounding of specified offences, and the CrPC Section 321, which allows withdrawal of prosecution with the leave of the court. However, these two provisions cannot be considered as stand-alone provisions that include the regulatory adhered to mechanisms and remedial

⁴⁰ *Maneka Gandhi v Union of India* (1978) AIR 597 (SC).

regimes which are the hallmark of DPAs⁴¹. The lack of legislative basis in the CrPC for DPAs means that legislation should be amended to effectively enable prosecutors to arrange DPAs, with judicial oversight and defined eligibility. The situation is also complicated by special statutes, especially considering the PMLA as it contains overriding provision concerning procedural requirements as to the CrPC under sections 65 and 71⁴². The PMLA has some very strict provisions, notably reverse onus under section 24 of the PMLA, and statements made to your enforcement officers are admissible, that raises serious questions by compatible with DPAs, which require cooperation and remediation part of the premise of prosecution diversion⁴³. Lastly, the Supreme Court upheld the PMLA provisions constitutionality in *Vijay Madanlal Choudhary v Union of India*, which raises further complication undertaking any possible DPA, especially to harmonise DPA principles with the administrative purpose of the PMLA or any other special statute⁴⁴. The functions of judiciary and prosecution in a prospective DPA regime need to be clearly articulated to protect institutional integrity and the rule of law. Oversight from a judiciary is vital to avoid questions about DPAs becoming a public relations exercise rather than an instrument of law or justice, as it could be cynically perceived as either a method of corporate impunity or political privilege. While in some countries such as the United Kingdom, the judiciary has an evaluative function in approving DPAs to determine whether it is in the interests of justice and the terms are fair, reasonable and proportionate⁴⁵ – an important factor in the course of action. In India, as the judiciary/executive has a supervisory function in plea bargaining and withdrawal from prosecution under the 1973 Code of Criminal Procedure, this provides a constitutional basis for a similar supervisory role in DPA proceedings with prosecutorial discretion⁴⁶. The prosecution function in either DPA or scheme is public litigation and must be carried out objectively from afar. The Law Commission of India has stressed the need for judicial independence in prosecutorial accountability noting the need for structural reform to insulate prosecutors from political influence⁴⁷. The Directorate

⁴¹ Kunal Ambwani, 'Compounding of Offences under CrPC: Scope and Limitations' (SCC Online Blog, 2022), <https://www.scconline.com/blog/post/2022/05/10/compounding-of-offences-under-crpc/>, accessed 2 September 2025.

⁴² 'PMLA Overrides CrPC: Legal Implications for Financial Crimes' (IndiaCorpLaw, 2023), <https://indiacorplaw.in/2023/07/pmla-overrides-crpc-legal-implications.html>, accessed 2 September 2025.

⁴³ Prateksh, 'Reverse Burden of Proof under PMLA: A Constitutional Analysis' (Legal Service India, 2023), <https://www.legalserviceindia.com/legal/article-20853-reverse-burden-of-proof-under-pmla.html>, accessed 2 September 2025.

⁴⁴ *Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 961.

⁴⁵ Michael Bisgrove and Mark Weekes, 'Deferred Prosecution Agreements: A Practical Consideration' (2014) *Criminal Law Review* 416.

⁴⁶ *Sheonandan Paswan v State of Bihar* (1987) AIR 877 (SC).

⁴⁷ Law Commission of India, *Report No 262: The Death Penalty* (2015) ch 7, <https://lawcommissionofindia.nic.in/reports/report262.pdf>, accessed 2 September 2025.

of Prosecution, as the unique institutional arm that discharges responsibility for criminal prosecution, is where the prosecutorial exercise must be given adequate public resources and statutory authority to negotiate a DPA with the support of findings from an investigation and compliance with a settlement⁴⁸. Methods of transparency such as public disclosure of terms of agreement and judicial findings can trust and start deterrents to misuse. The use of independent monitorships (similar to those used in other countries) can also be implemented, with the monitorship monitoring compliance with the agreed terms and reporting to the court, thereby enhancing the credibility of the process. Finally, just as there is no current recognition of DPAs under Indian law, there is such potential at the constitutional and legal level, on condition that we build a robust legislative regime harmonizing prosecutorial discretion and juridical control, in harmony with pre-existing procedural laws and special laws, and not infringing on any Constitutionally safeguarded right. Inspired by international similarities and local case law, India is in a position to devise a regime of DPAs that allow for corporate accountability, aid prosecutorial efficiency, and warrant proper justice administration.

6. Conclusion

India's growing threat from white-collar crime, coupled with the frailty of conventional prosecutorial processes, requires the search for innovative enforcement tools. Deferred Prosecution Agreements (DPAs) as operating in regimes like the United States, United Kingdom, and Singapore offer a framework to address corporate crime, as well as a more practical approach to addressing corporate criminal responsibility. DPAs allow a prosecutor to remain the potential prosecutor of the corporate, while effecting a suspension of the criminal charges and the corporates admission of wrongdoing about the acts that might otherwise be prosecuted. The DPA may include money fines and changes to the corporate compliance program and will allow the company to avoid the consequences of conviction, while maintaining the form of accountability and making changes to avoid further wrongdoing. In the Indian context, current jurisprudence does not oppose the constitutional and legal feasibility of DPAs. Article 14 of the Constitution (the aspect of equality before the law) and Article 21 of the Constitution (the right to life and right to personal liberty) offer a normative framework for prosecutorial discretion if such discretion is made public and open to review by the courts. The Supreme Court has ratified the validity of negotiated verdicts in criminal cases, particularly on the aspect of plea bargain and withdrawal of prosecution, and thereby established the DPAs

⁴⁸ 'Structure and Reform of the Directorate of Prosecution in India' (The Law Institute, 2023), <https://thelaw.institute/criminal-justice-processes/directorate-of-prosecution-india/>, accessed 2 September 2025.

as not incompatible with constitutional ideals. Yet, despite numerous special statutes providing for overriding effect (such as the Prevention of Money Laundering Act, 2002), legislative silence on provision for DPAs in the Code of Criminal Procedure, 1973, makes reform an immediate necessity for enabling DPAs to succeed. Eventually, DPAs need to become institutionalized in such a way as to enhance procedural rights, particularly in instances of economic crime and regulatory breach. Institutional strength and prosecutorial autonomy are key to the effective functioning of the DPA in India. The prosecuting wings should have adequate funds and legislative powers to negotiate and enforce compliance in a DPA. The function of the judiciary will primarily remain that of a review body to ensure that the agreement is proportionate and reasonable and that it is in the public interest. The publicity of the conditions of agreement and the court's decision will enhance the transparency of the process and aid in building acceptance of DPAs by the public at large and diminish abuse. The adoption of included independent monitorships that feature in a few other jurisdictions to enforce compliance and subsequently report to the court would enhance the transparency and integrity of the DPA process.

From a policy standpoint, adoption of DPAs should be in tandem with a broad legislative regime which can give direction regarding eligibility conditions, procedural safeguards, and policy of enforcement. The legislative regime should specify the nature of offences and entities which may be considered for DPAs, situation in which a DPA can be negotiated, and penalty for non-compliance with a DPA. In addition, enforcing agencies like SEBI, CCI, and SFIO should play a role in the process so that there is more cooperation and uniformity in taking enforcement action. Their deployment would be a milestone in the Indian criminal justice system, by moving toward restorative justice and negotiated enforcement and aligning India with the global community. Nonetheless, their success would be ensured only, if there exists a robust statute framework, prosecutorial agencies' independence and expertise, and by the courts' own zeal for defending those constitutional ideals, if introduced well and discretionarily, DPAs can be an indispensable instrument to enforce corporate responsibility, lighten the litigation load and strengthen the rule of law.
