ESCALATING CORPORATE AND MANAGERIAL CRIMINAL LIABILITY UNDER PROGA AND THE CASE FOR DPAS IN INDIA

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ABSTRACT

*India's Promotion and Regulation of Online Gaming Act, 2025 (hereinafter referred to as **"PROGA"**) passed recently, shows a potential escalation in already congested corporate criminal enforcement, now extending to the gaming sector, as it explicitly expands liability for online gaming while criminalising previously regulatory breaches. The PROGA also imposes liabilities on finance facilitators, with a grey area between 'in-app purchase' and 'money for gambling,' and this widening of the statutory severity collides with India's*

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current structural enforcement crisis. Currently, white-collar crimes achieve a mere twenty-nine % conviction rate, with around ninety-four % case pendency; this reflects the drawback of overreliance on punitive prosecution without other mechanisms for ensuring self-accountability, restitution, or systemic compliance among corporations.

We argue that PROGA's stringent provisions will potentially exacerbate judicial congestion and be enforced with less efficiency, as online gaming is a fast-changing sector, and till the traditional method enforces its liability, a lot will have changed. Therefore, we argue that India can adopt Deferred Prosecution Agreements (hereinafter referred to as ***"DPAs"****) as a structured middle-path enforcement mechanism.*

We do the doctrinal analysis of PROGA's liability provisions and comparative examination of DPA regimes in other regimes. We demonstrate that DPAs can simultaneously secure accountability while unlocking investigative and prosecutorial resources for cases requiring traditional criminal

adjudication for individuals to mandatory judicial approval; we argue that with a tailored DPA for India, the transparency requirements and individual liability can both be balanced. We also attempt to legally analyse the potential challenges for implementing DPA in India and propose solutions accordingly. We propose a limited Indian DPA model bounded by non-negotiable safeguards, including factual admissions, restitution mandates, and compliance monitoring. This approach can allow online gaming sector entities to self-report or accept negligence and pay damages.

Keywords: *India's Promotion and Regulation of Online Gaming Act, 2025, Deferred Prosecution Agreements, White Collar Crimes, Gaming Sector*

I. INTRODUCTION

Between FY20 and FY23, the Online gaming sector in India has recorded a twenty-eight % Compound Annual Growth Rate and is estimated to be valued at INR thirty-three thousand two hundred forty-three crore by FY28.[1] However, the rapid monetisation of the sector has intensified regulatory scrutiny, particularly in relation to real-money gaming platforms. The big worries? Fraud, money laundering, tax evasion, and the risk that gaming platforms end up fuelling shady activities.[2] According to the Press Information Bureau, these apps are luring users, resulting in criminal profits of over four hundred crore.[3]

To address these issues, Parliament enacted the central law, i.e., the Promotion and Regulation of Online Gaming Act, 2025 (hereinafter referred to as **"PROGA"**). This law covers the whole online gaming scene, e-sports, educational games, all of it, but comes down hard on "online money games." The act also aims to curb the unchecked expansion of online money gaming services, including financial fraud, money laundering, tax evasion, and the financing of terrorism. PROGA goes further than existing laws by claiming extra-territorial jurisdiction and attempts to clarify the ambiguity regarding state gambling laws,

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[1] 'New frontiers: Navigating the evolving landscape for online gaming in India' (*Ernst & Young India*, December 2023) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/news/2023/12/ey-new-frontier-online-gaming-report.pdf> accessed 5 January 2026.

[2] Jay B Sykes and Nicole Vanatko, 'Virtual Currencies and Money Laundering: Legal Background, Enforcement Actions, and Legislative Proposals' (*Congressional Research Service Report R45664*, 3 April 2019) <https://www.congress.gov/crs-product/R45664> accessed 6 January 2026.

[3] Press Information Bureau, 'Curbing Cyber Frauds in Digital India' (*Ministry of Home Affairs*, 8 October 2025). <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2176146> accessed 5 January 2026.

and IT rules that previously covered online gaming. For example, some states follow the PGA,[4] which allows both games of skill and chance, while other state governments have passed laws that prohibit both.[5]

A particularly significant feature of PROGA is its shift toward criminal enforcement within a rapidly expanding digital industry. Sections 7,[6] 10,[7] and 11,[8] make it clear: financial intermediaries and corporate management can now be held criminally liable, so a lot of business and compliance activities are suddenly under the microscope as potential white-collar crime. Currently, the Supreme Court is reviewing the Act, with arguments about whether Parliament had the power to pass it, if the law is fair, and whether it makes the right distinction between skill and chance. Still, this article sticks to one main focus: what PROGA's new criminal penalties mean for enforcement.

Deferred Prosecution Agreements (hereinafter referred to as "**DPAs**") are negotiated enforcement mechanisms through which a corporate entity may avoid full criminal prosecution by admitting wrongdoing, disgorging unlawful gains, paying financial penalties, cooperating with investigations and implementing compliance reforms under

[4] The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022 (Ordinance 3 of 2022).
[5] The Karnataka Police (Amendment) Act, 2021 (28 of 2021).
[6] The Promotion and Regulation of Online Gaming Act 2025, (32 of 2025) s 7.
[7] The Promotion and Regulation of Online Gaming Act 2025, (32 of 2025) s 10.
[8] The Promotion and Regulation of Online Gaming Act 2025, (32 of 2025) s 11.

prosecutorial and judicial supervision.[9] Widely used in jurisdictions such as the UK and the US in cases involving corporate fraud, bribery and financial misconduct, DPAs attempt to balance deterrence with institutional efficiency by prioritising restitution, cooperation and regulatory reform over prolonged criminal trials.

This article examines whether PROGA's expansion of corporate criminal liability, particularly through Sections 7, 10 and 11, justifies the adoption of a controlled DPA framework in India. While existing Indian scholars have explored DPAs primarily in the context of corruption and general corporate fraud enforcement, this paper uniquely situates the debate within the online gaming sector and analyses how negotiated enforcement mechanisms may respond to the structural enforcement burdens created by PROGA's criminalisation model.

Methodologically, the paper undertakes a doctrinal and comparative analysis of PROGA alongside existing Indian corporate liability frameworks, including the Companies Act, the Prevention of Money Laundering Act and the Negotiable Instruments Act, while also drawing comparative lessons from DPA regimes in the UK, the US, Canada and Singapore. The paper first analyses the criminal enforcement architecture created under PROGA, followed by an

[9] Petter Gottschalk, 'Deferred Prosecution Agreements as Miscarriage of Justice: An Exploratory Study of Corporate Convenience' (2024) 4 Journal of Economic Criminology 100059 <https://doi.org/10.1016/j.jeconc.2024.100059\> accessed 29 May, 2026.

evaluation of the structural limitations of India's existing white-collar enforcement framework and finally proposes a controlled, judicially supervised DPA model tailored to the Indian online gaming context.

II. ANALYSING PROGA AND THE ESCALATION OF CORPORATE CRIMINAL LIABILITY

PROGA signals a significant shift in the way the Indian government regulates the online gaming sector. This piece, in particular, notes that Sections 7, 10 and 11 increase corporate & white-collar criminal liability. These Sections achieve the same by transforming regulatory breaches into offences and by expanding the range of individuals who are accountable within a company. This has major consequences for the way companies are governed and for the responsibilities of their managers and prosecutors.

A. PROHIBITION OF TRANSFER OF FUNDS

The PROGA prohibits "*any bank, financial institution, or any other person facilitating financial transactions or authorisation of funds …towards payment for any online money gaming service*."

The main problem arises due to the 'grey area' left in the PROGA law akin to the previous IT Rules 2021;[10] the Section 2(f) defines the 'online gaming' as *"any game, which is played on an electronic or a digital device…electronic communication"*[11] and the Section 2(g) defines *"online money gaming" as "[a]n online game where a user makes a deposit money or other stake with the expectation of earning winnings on that deposit."*[12] Notably, there is no clear distinction between these two, especially when gamers pay for free-to-play games that incorporate in-app purchases. Since online money games are only prohibited, it will be up to banking institutions to check whether the payment is made for in-app purchases in free-to-play games or for gambling purposes. This burdens them with more scrutiny, and for any mistake under the strict Section 7, they will be penalised.

Prior to the PROGA Act, banks and financial institutions involved in facilitating financial transactions and money earned/obtained through matters of chance, such as gambling and lotteries, were governed by several statutes and rules. Similar violations have attracted civil liability under FEMA Rules,[13] and reporting obligations,[14] as well as verification obligations,[15] under the PMLA. Contrary to these

[10] Information Technology (Intermediary Guidelines and Digital Media Ethics) Rules 2021, G.S.R. 139(E).
[11] The Promotion and Regulation of Online Gaming Act, 2025 (32 of 2025) s 2(f).
[12] The Promotion and Regulation of Online Gaming Act, 2025 (32 of 2025) s 2(g).
[13] Foreign Exchange Management (Current Account Transactions) Rules, 2000, G.S.R. 381(E) r 3.
[14] The Prevention of Money Laundering Act, 2002 (15 of 2003) s 2(1)(wa).
[15] The Prevention of Money Laundering Act, 2002 (15 of 2003) s 11A.

provisions, Section 10 of the PROGA provides for *criminal liability* with an overriding clause over the BNSS.

B. CRIMINALISATION OF REGULATORY BREACHES UNDER SECTION 10

Section 10 of the PROGA provides an overriding provision over BNSS and reads *"…offences under Section 5 and Section 7 shall be cognizable and non-bailable."*[16] This means the police can arrest without a warrant, and it's up to the judge to decide whether bail should be granted. That's a real shift from how the BNSS handles things, where economic offences usually get careful scrutiny from judges, and there's less pressure before trial.

In this way, Section 10 gives enforcement agencies significantly more authority. However, it's not just about having more authority; it also places prosecutors in the realm of criminal law, where they require stronger evidence beyond a reasonable doubt and take more time to conduct investigations. Courts, meanwhile, get stuck sorting through complicated facts that take ages to untangle. For companies dealing with finance or digital gaming, especially those with tangled corporate

[16] Abhinav Sekhri, 'Separating Crime from Punishment: What India's Prisons Might Tell Us About Its Criminal Process' (2021) 3(2) National Law School of India Review <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1433&context=nlsir> accessed 6 January 2026.

setups and endless transactions, this means more uncertainty, longer delays, and sheer exhaustion from the process.[17]

More importantly, this penal exposure does not extend merely to the operators of the online money gaming platform; rather, ancillary operators, advertisers, promoters, and intermediaries who merely provide exposure or access to such services are also within the prosecutor's ambit. What would otherwise be a regulatory infraction is now within the state's consideration, potentially leading to an expansion of prosecution. In a justice system that's already overloaded, the reliance on criminalisation under Section 10 risks exacerbating existing enforcement bottlenecks without necessarily improving substantive compliance outcomes.[18]

C. EXPANSION OF CORPORATE AND MANAGERIAL LIABILITY UNDER SECTION 11

Section 11 codifies a framework under which companies and their associated individuals can be held criminally responsible for offences under the Act. Specifically, Section 11(1) holds both the company and *"**every person** who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of that*

[17] Shubhi, 'Promotion and Regulation of Online Gaming Act 2025 Explained' (*SCC Online Times*, 24 August 2025) <https://www.scconline.com/blog/post/2025/08/24/promotion-regulation-online-gaming-act-2025-legal-reform/> accessed 5 January 2026.

[18] Pavan Korada, '5 Crore Cases and Counting: India's Courts are Struggling to Clear the Pile-Up' (*The Wire*, 2025) <https://thewire.in/law/5-crore-cases-and-counting-indias-courts-are-struggling-to-clear-the-pile-up> accessed 6 January 2026.

part of the business" to be liable. Subsections (2) and (3) further allocate liability to directors, managers, secretaries, and other officers where offences occur with their "consent or connivance" or are attributable to neglect, subject only to a narrow due diligence defence and limited exceptions for independent or non-executive directors not involved in decision-making. Contrary to this, the Companies Act relies on the concept of the "***officer who is in default.***"[19] Liability attaches to specific individuals designated by the board (e.g., Whole-time Directors, Key Managerial Personnel) rather than a blanket application to everyone "in charge."

Furthermore, Section 11, read with Section 10, contradicts the general principle followed until now under the Companies Act, which defines offences generally as non-cognizable,[20] with the major exception of Fraud (Section 447), which is cognizable.[21]

Additionally, Section 11(3) of the PROGA provides for liability for "any neglect" on the part of a director, manager, etc., setting a lower threshold for criminal liability compared to acts requiring only "wilful" intent.[22] On the contrary, the Companies Act often focuses on "wilful" contraventions or specific failures to comply with statutory duties.

[19] The Companies Act, 2013 (18 of 2013) s 2(60).
[20] The Companies Act, 2013 (18 of 2013) s 439.
[21] The Companies Act, 2013 (18 of 2013) s 212(6).
[22] The Promotion and Regulation of Online Gaming Act, 2025 (32 of 2025) s 11(3).

The Companies Act, 2013, prioritises civil penalties and regulatory adjudication, and only resorts to criminal sanctions for cases of fraud and 'wilful' misconduct that have been approved by a higher authority and can be reviewed by a judge.[23] By exposing various tiers of potential managerial personnel, with no requirement that such persons even be hands-on with the conduct at issue, criminal liability creates a reactionary environment of over-compensation of compliance and over-internal controls, resulting in a chilling effect on entrepreneurship and growth in exchange for risk management and less creative approaches to business operations.

This shift has teeth, especially in the world of online gaming and other digital businesses. These companies have scattered teams, automated systems, and complicated decision-making. Section 11 pushes enforcement agencies to cast a wide net, charging not just the masterminds, but also managers and compliance folks, even if the problem came from a technical glitch or system failure, not intentional misconduct. In this environment, DPAs don't look like soft options. They become essential tools, letting authorities hold companies accountable, get restitution, and push for real compliance changes, all without crushing the system under the weight of endless prosecutions.

[23] Ankoosh Mehta, Mansi Chheda and Rupal Dugar, 'Ambiguities in Regulatory Thresholds for Rectifying Breaches under the Companies Act, 2013' (*Dispute Resolution Blog*, 2024) <https://disputeresolution.cyrilamarchandblogs.com/2024/08/ambiguities-in-regulatory-thresholds-for-rectifying-breaches-under-the-companies-act-2013/> accessed 6 January 2026.

Consequently, Sections 7, 10, and 11 of the PROGA Act, 2025 shift the online gaming industry from a space of civil regulation into the domain of white-collar crime. It qualifies what were previously viewed as high-stakes business risks as sophisticated economic offences, where gaming enterprises are viewed through the same lens of criminal scrutiny as the perpetrators of financial fraud and institutional embezzlement.

III. WHITE-COLLAR CRIME, DPA AND THE POLICY GAP IN ENFORCEMENT

White-collar crimes are committed by individuals in high-profile positions and involve a breach of trust. These crimes often involve unethical business practices to achieve unfair financial gain. Individual status or position is a crucial factor in these types of crimes, which differ from traditional crimes.[24] Another parallel term is corporate crime, while white-collar crime is committed by individuals, corporate crime is perpetrated by individuals on behalf of a company to achieve financial gain.[25]

[24] 'White Collar Crime Survey' (*Indian National Bar Association*, 2019) <https://www.indianbarassociation.org/wp-content/uploads/2020/01/White-Collar-Crime-Survey-2019.pdf> accessed 6 January 2026.

[25] Akhila Veeraganta, 'White Collar Crime: Corporate Criminal Liability' (2022) 5(3) International Journal of Law Management & Humanities 459 <https://ijlmh.com/wp-content/uploads/White-Collar-Crime-Corporate-Criminal-Liability.pdf> accessed 6 January 2026.

These crimes account for a good percentage of the overall crimes. According to the changing dynamics of white-collar crime in India, the Central Bureau of Investigation (hereinafter referred to as **"CBI"**) has identified a total of six thousand five hundred thirty-three corruption cases over the decade from 2009 to 2019.[26]

One of the solutions followed in some countries is the Deferred Prosecution Agreements (hereinafter referred to as "**DPA"**). DPAs are a type of agreement between companies and prosecutors,[27] where the company is alleged to have committed white-collar, corporate economic, and environmental crimes, as well as sometimes criminal offences.[28] The companies agree conditionally to pay the financial penalty/compensation for the wrong and fully cooperate in the alleged offence, and act as whistleblowers by flagging any issues. The companies agree to certain actions, but not in the event of violating the laws; in return, the guilty party is not to undergo a criminal trial. There is a negotiation between the companies and the prosecutors to ensure that the charges are suspended and no further progress is made.[29]

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[26] 'White Collar Crime Survey' (*Indian National Bar Association*, 2019) <https://www.indianbarassociation.org/wp-content/uploads/2020/01/White-Collar-Crime-Survey-2019.pdf> accessed 6 January 2026.

[27] Tina Søreide and Abiola Makinwa (eds), *Negotiated Settlements in Bribery Cases: A Principled Approach* (Edward Elgar Publishing 2020).

[28] Crown Prosecution Service, 'Deferred Prosecution Agreements' (*CPS*) <https://www.cps.gov.uk/deferred-prosecution-agreements> accessed 6 January 2026.

[29] MoloLamken LLP, 'What's a Deferred Prosecution Agreement?' (*MoloLamken*) <https://www.mololamken.com/knowledge-Whats-a-Deferred-Prosecution-Agreement> accessed 6 January 2026.

It is essential for companies and prosecutors alike, as corporate crimes are costly and inflict great personal, social, and environmental harm;[30] prosecuting and combating these crimes is a challenging task. This is due to their low visibility,[31] at every stage of the trial, from detection to evidence collection. Even in jurisdictions with DPA provisions, their prosecutors *sometimes* find it challenging or can't hold companies, which are so valuable to the economy, accountable for past crimes.[32] So, without such DPA arrangements, the current traditional method will not be able to prosecute the 'Too Big to Jail' Companies in the *fast-changing gaming sector*, resulting in either clogging due to pendency of cases or more acquittal.

Therefore, DPA setup could prove to be a better solution than the present one for both parties. Especially when the conviction rate in a traditional judicial trial setup is far lower than the pendency rate.[33] For example, the NRCBs 'Crime in India' reports that a total of two hundred four thousand nine hundred seventy-three cases of economic offences were registered in 2023 alone, with a six % increase from the

[30] Michael Yangming Xiao, 'Deferred/Non Prosecution Agreements: Effective Tools to Combat Corporate Crime' (*Cornell Journal of Law and Public Policy*, Vol 23, 2013) <https://ww3.lawschool.cornell.edu/research/JLPP/upload/Xiao-note-final.pdf> accessed 6 January 2026.

[31] David O Friedrichs, *Trusted Criminals: White-Collar Crime in Contemporary Society* (Wadsworth Publishing Company 1995).

[32] Brandon L Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (The Belknap Press of Harvard University Press 2014).

[33] Brandon L Garrett, 'The Corporate Criminal as Scapegoat' (2015) 101 Va L Rev 1789, 1804 <https://scholarship.law.duke.edu/faculty_scholarship/3847/> accessed 6 January 2026.

previous year.[34] Notably, the criminal breach of trust, FCF (forgery, cheating & fraud) and counterfeiting amount to maximum reporting. However, the conviction rate drops to a mere twenty-nine % with a pendency of around ninety-four %.[35]

IV. THE POLICY GAP

Indian courts still primarily rely on the *doctrine of attribution (also known as the alter ego theory)* in determining the mens rea,[36] despite acknowledging the concept of corporate criminal intent. This theory attributes the mindset of a business to its top-level decision-makers. This approach to the *dual persona model* assumes that there is a single governing authority. However, in complex organisational corporations, esp. in the gaming sector, it is increasingly difficult to identify a single individual exercising effective control over the impugned conduct. This is because the company/corporation comprises multiple departments, each of which operates independently and has its own management methods. In such circumstances, the prosecution's task of

[34] National Crime Records Bureau, *Crime in India 2023: SNAPSHOTS (States/UTs)* <https://www.ncrb.gov.in/uploads/files/9ACII2023Snapshots-StateandUTs4.pdf> accessed 6 January 2026.

[35] National Crime Records Bureau, *Crime in India 2023: Part II* <https://www.ncrb.gov.in/uploads/files/2CrimeinIndia2023PartII2.pdf> accessed 6 January 2026.

[36] Vishal Kumar and Aishwarya Mukherjee, 'Doctrine of Attribution in Corporate Criminal Liability' (*Lakshmikumaran & Sridharan*, 2024) <https://www.lakshmisri.com/insights/articles/doctrine-of-attribution-in-corporate-criminal-liability/> accessed 6 January 2026.

proving intent beyond a reasonable doubt becomes very difficult. This makes court cases longer and less predictable.

Vicarious liability has been enhanced by successive Indian legislation, and this shift is reflected in the PROGA. The explicit application in online gaming shows the intention of the legislation, i.e., to prevent corporate accountability from being diluted by extending criminal liability not only to companies, but also to individuals who manage them. This expansion of the sphere of liability results in corporate officers and managerial personnel being exposed to severe penal consequences for procedural infractions. This not only affects them individually but also negatively affects the prosecution of gaming corporations, as dual prosecution will increase the technicalities.

V. DPAS: CONCEPT AND GLOBAL PRACTICE

Globally, the DPAs are explicitly followed in a few countries, including the United States, the United Kingdom, Canada, France, and Singapore, and are indirectly followed or have similar provisions in Japan, Brazil, Germany, Italy, and Kenya.

A. UNITED STATES (US)

The US uses DPAs extensively in corporate crime cases. As per the recent report, the federal efforts to prosecute white collar criminals have also declined.[37] The DPA didn't have any direct statutory basis in the USA; rather, it is guided by the guidelines of the Department of Justice,[38] and prosecutorial discretion for excluding time during the deferral.[39]

Under a typical DPA, the government files charges that trigger the Speedy Trial Act, but agrees to dismiss them if the company fulfils its obligations. The charging instrument and factual statement are public, and the Department of Justice publishes redacted agreements on its website. It is essential to note that judges have a limited role in the approval of DPAs under the Speedy Trial Act, as it is the executive's domain to prosecute and bring charges.[40] The judges can't 'second-guess' the executive's exercise of discretion over initiation or dismissal of the charges. Furthermore, the federal courts don't have the authority to supervise the implementation of DPA.[41]

B. UNITED KINGDOM (UK)

In the UK, DPAs were introduced by the Crime and Courts Act for corporate fraud and bribery cases.[42] This is introduced in the Schedule,

[37] Transactional Records Access Clearinghouse, 'Federal Prosecution of White-Collar Crimes Receiving Less and Less Attention' (TRAC Reports, 2025) https://tracreports.org/reports/760/ accessed 6 January 2026.
[38] United States Department of Justice, *Justice Manual* § 9-28.000 – Principles of Federal Prosecution of Business Organizations (updated May 2024) <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations> accessed 6 January 2026.
[39] 18 USC § 3161(h)(1)(D) (Speedy Trial Act).
[40] *United States v Fokker Servs B V*, No 15-3016 (DC Cir 2016).
[41] *United States v HSBC Bank USA, N A*, No 16-308 (2d Cir 2017).
[42] The Crime and Courts Act 2013, Sch 17.

not in the main body, suggesting it as a procedural mechanism, not as a substantive criminal offence or defence. Till the enforcement of the DPA, proceedings were automatically suspended as soon as initiated by the prosecutor. During this time, the criminal process remains alive but dormant and can be reinforced either after the end of the time or by the prosecutor before the completion of the time by requesting the Court to reinitiate the charge proceedings.

Notably, in the UK, the approval of the Crown Court is crucial for giving valid force to the DPA, and this is required at two levels (preliminary and final). The Court only allows this when the DPA is in the interest of justice, and the terms are fair, reasonable and proportionate.[43] The Court's role continues even after approval, in the form of supervision to determine breaches (para nine) and to re-approve in case of variations (para ten).

Another important feature is the absolute exclusion of individuals from entering into DPA. Individual criminal liability remains fully intact and prosecutable; it aims to strike a balance between punishment and corporate rescue. There are provisions to prevent DPAs from becoming 'discount justice', such as mandatory components that include a statement of facts, expiry date, financial penalty, compensation, etc., to ensure transparency. The publication of the DPA as the default rule also contributes to ensuring transparency.

[43] Yuan Zhou, 'Raising the Deterrent Effect of the U.S. Deferred Prosecution Agreement: New Perspectives on the U.S. from the U.K. and Jersey' (2025) 10 Journal of Economic Criminology 100189 https://doi.org/10.1016/j.jeconc.2025.100189\ accessed 29 May 2026.

C. CANADA

DPAs in Canada are referred to as *Remediation Agreements*, codified in Part XXII.1 of the Criminal Code.[44] They are available only to organizations (not individuals) facing economic crimes (fraud, corruption, bribery, money laundering, environmental offences, etc.). It is notable that there is no discretion with the prosecutors, and they may negotiate a remediation deal if the following conditions are met.[45] a) a reasonable prospect of conviction, b) the offence falls outside the excluded categories of offences, c) Public Interest and appropriateness and d) Attorney General's consent.

The agreement's terms (such as fines, restitution, community projects, and compliance measures) must be approved by a court as fair, reasonable, and proportionate for legal effect.[46] During the agreement period, the prosecution is stayed. If the company fulfils its obligations, the charges are permanently stayed (resulting in no conviction); if not, the charges are reinstated. It is essential to note that decisions made in the exercise of prosecutorial discretion are not subject to judicial review.[47]

[44] Criminal Code (RSC 1985, c C-46), s 715.32 (conditions for remediation/deferred prosecution agreements) <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-715.32.html> accessed 6 January 2026.
[45] Criminal Code (RSC 1985, c C-46), s 715.32(1), Part XXII.1.
[46] Criminal Code (RSC 1985, c C-46), ss 715.3–715.43, Part XXII.1.
[47] *SNC-Lavalin Group Inc v Canada (Public Prosecution Service),* 2019 FC 282 (CanLII).

D. FRANCE

France's Convention Judiciaire d'Intérêt Public (hereinafter referred to as **"CJIP"**) was enacted to resolve corporate corruption and related offences. It is similar to the DPA provisions of the US and the UK, under which, prior to the prosecution, the prosecutor can negotiate terms with the company, typically a monetary sanction (up to thirty % of turnover), victim compensation, and supervised compliance obligations and in return for non-pursuit of criminal charges.[48] This jurisdiction also requires the judges' approval, and companies can withdraw from the CJIP within ten days of approval. In case of non-fulfilment of the conditions, the prosecution resumes.

Some examples of agreements between the National Financial Prosecutor of Paris and other entities, like SARL GOOGLE FRANCE,[49] with a fine of 500 million euros, or HSBC PRIVATE BANK,[50] with a total € three million payment. Under these agreements, Airbus SE pay the sum of two billion eighty-three million one hundred

[48] Agence Française Anticorruption, 'Convention Judiciaire d'Intérêt Public' (*Agence-française-anticorruption.gouv.fr*) <https://www.agence-francaise-anticorruption.gouv.fr/en/convention-judiciaire-dinteret-public> accessed 6 January 2026.

[49] Agence Française Anticorruption, *English Translation - Convention Judiciaire d'Intérêt Public* <https://www.agence-francaise-anticorruption.gouv.fr/files/files/ENGLISH%20TRANSLATION%20-%20GOOGLE%20CJIP.pdf> accessed 6 January 2026.

[50] Agence Française Anticorruption, *Convention Judiciaire d'Intérêt Public* <https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/CJIP_English_version.pdf> accessed 6 January 2026.

thirty-seven thousand four hundred fifty-five euros.[51] These examples demonstrate the effectiveness of the agreements in securing monetary value restoration, along with the swift resolution of the offence by prosecuting the individual separately from corporate offences and providing conditional exclusion from prosecution to corporates.

E. SINGAPORE

Singapore's DPA regime is outlined in the Criminal Procedure Code,[52] and the offences are described in the Sixth Schedule of the Act. Like the global trend, only corporate bodies (including partnerships and LLPs, but not individuals),[53] charged with specified offences (e.g., bribery under the PCA, money laundering, and certain types of fraud) are eligible for the DPA.

Under a DPA, the accused corporation agrees to conditions (financial penalties, seizure, compliance program, monitorship) and admission of facts; the Public Prosecutor then applies to the General Division of the High Court for approval. The Court conducts a ***private hearing*** [149F (4)] to determine if the agreement is 'in the interests of justice' and the terms are 'fair, reasonable and proportionate.' Furthermore, Singapore publishes an anonymized summary of each approved DPA in the Government Gazette. This is a distinct feature and might reduce the

[51] Agence Française Anticorruption, *Convention Judiciaire d'Intérêt Public (CJIP) between the French National Prosecutor's Office and Airbus SE* <https://www.agence-francaise-anticorruption.gouv.fr/files/files/CJIP%20AIRBUS_English%20version.pdf> accessed 6 January 2026.
[52] Criminal Procedure Code 2010, ss 149A–149M.
[53] Criminal Procedure Code 2010, s 149D.

transparency. In our opinion, private hearings should be exceptional and allowed only in cases involving sensitive information of corporate bodies.

If approved, the Court issues a declaration and orders a discharge (with no criminal conviction). Any breach of the DPA voids the agreement, and prosecution will proceed. This aligns with the procedures of other countries.

F. AUSTRALIA

Australia attempts to pass legislation with an explicit DPA provision for serious corporate crimes, such as foreign bribery.[54] Under the current legal framework, companies have few incentives to voluntarily report potential cases of foreign bribery identified within their operations. However, there is a lack of clarity regarding whether cooperation during a criminal investigation will yield meaningful benefits.[55] Apart from this, the Prosecution Policy of the Commonwealth also provides certain flexibility, allowing the Commonwealth Director of Public Prosecutions (hereinafter referred

[54] Crimes Legislation (Combatting Corporate Crime) Bill 2017 (CCC Bill).

[55] Attorney-General's Department, 'Improving enforcement options for serious corporate crime: Consideration of a Deferred Prosecution Agreements scheme in Australia' (*Public Consultation Paper*, March 2016) p 3 <https://www.ag.gov.au/consultations/Pages/Deferred%E2%80%91prosecution%E2%80%91agreements%E2%80%91public%E2%80%91consultation.aspx> accessed 6 January 2026.

to as **"CDPP"**) to grant immunity,[56] albeit in limited cases.[57] Under this scheme, the sole discretion rests with the CDPP, so there is no direct influence of the corporations.

It is essential to note that the proposed Australian DPA is available only for corporations, not for individuals. This will avoid criticism for shielding individuals from criminal accountability and undermining public trust via DPA, as seen in the US case.[58]

Another important safeguard proposed is the inclusion of certain non-negotiable mandatory elements, and, most importantly, a pre-consent provision that allows prosecution without committal if the company provides inaccurate, misleading, or incomplete information.[59] This creates a hybrid, middle-path model that provides a more structured approach than the US system, but less judicialized than the UK model.

Across these jurisdictions, common themes emerge. DPAs are voluntary but supervised settlements that trade off a formal conviction for concrete compliance actions and payments. Crucially, judicial oversight is universal; courts vet the fairness and adequacy of the deal.

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[56] Neville Tiffen, Submission 16, p 7, in Australian Parliament Senate Economics Committee, *Foreign Bribery in International Business* (Report, Chapter 5).

[57] Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth: Guidelines for the Making of Decisions in the Prosecution Process* pp 12–14, 20–23 <https://www.cdpp.gov.au/sites/g/files/net391/f/Prosecution-Policy-of-the-Commonwealth_0.pdf> accessed 6 January 2026.

[58] Gordon Bourjaily, 'DPA/DOA: How and Why Congress Should Bar the Use of Deferred and Non-Prosecution Agreements in Corporate Criminal Prosecutions' (*Harvard Law School Forum on Corporate Governance*, 2015) <https://journals.law.harvard.edu/jol/wp-content/uploads/sites/86/2015/10/HLL201_crop.pdf> accessed 6 January 2026.

[59] Crimes Legislation (Combatting Corporate Crime) Bill 2017, Sch 2, item 7, new ss 17C(1).

Conditions often include non-negotiable terms, fines significantly higher than statutory maximums and also require compliance programs and auditing.

VI. SHOULD INDIA ADOPT DPAS?

With the trend of criminalizing corporate offences on the rise,[60] and new acts like the PROGA coming into force, the long-standing policy debate in Indian criminal law has been revived, which raises the question discussed globally of whether prosecution is the best or only practical answer to complex economic and corporate crimes.[61] As demonstrated earlier, DPAs emerge as a potential institutional mechanism capable of recalibrating corporate criminal enforcement without diluting deterrence.[62] The question, therefore, is not merely whether DPAs are compatible with Indian law, but whether they are *necessary* to address its structural enforcement deficits.

[60] Cyril Amarchand Mangaldas, 'Investigations and White Collar Crimes Enforcement Trends' (*Handbook*, updated January 2023) <https://www.cyrilshroff.com/wp-content/uploads/2020/09/Investigations-and-White-Collar-Crimes-Enforcement-Trends.pdf> accessed 6 January 2026.

[61] Nick Werle, 'Prosecuting Corporate Crime when Firms Are Too Big to Jail: Investigation, Deterrence, and Judicial Review' [Yale LJ] <https://yalelawjournal.org/pdf/Werle_6rys3t3n.pdf>accessed 1 January 2026.

[62] Lisa Kern Griffin, 'Compelled Cooperation and the New Corporate Criminal Procedure' [2007] 82(2) New York University Law Review <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/2562/&path_info=Compelled_Cooperation_and_the_New_Corporate_Criminal_Procedure_1.pdf> accessed 4 January 2026.

A. ADDRESSING THE STRUCTURAL DEFICITS OF INDIAN ENFORCEMENT

There are practical difficulties in prosecuting online gaming operators with rigorously imposed criminal regimes, as the transactions involved multiple layers of cash, cross-border servers and players, and indirect payment methods, all of which reflect the complexity of the evidence required to prove Section 7 violations of PROGA. If they engage in these activities with no agreed-upon settlement mechanism, their usual legal process results in lengthy litigation, resulting in dreadful restitution.

The urgency of the settlement on forfeiture, victim reimbursement, and transfer of assets to fulfil obligations underscores the possibility that negotiated enforcement may have the economic rehabilitation effects that are often absent in criminal prosecutions alone.[63]

The case of April 2011, where federal agents placed indictments against PokerStars, Full Tilt Poker and related entities for violating the Unlawful Internet Gambling Enforcement Act of 2006 and for pursuing elaborate schemes to treat online gambling transactions as legitimate purchases made through fictitious merchants and use them

[63] Faraaz Mahomed and Anele Gacoin, 'The Urgency of Enacting Asset Forfeiture Legislation in Relation to Criminal Offences: A Perspective of Justice and Utility' (*ResearchGate*, April 2023) <https://www.researchgate.net/publication/398331303_The_Urgency_of_Enacting_Asset_Forfeiture_Legislation_in_Relation_to_Criminal_Offenses_A_Perspective_of_Justice_and_Utility> accessed 6 January 2026.

to place billions of dollars in wagers on US bank accounts,[64] and charged with misrepresenting the safety and availability of player funds, continuing to operate while due hundreds of millions to players all over the world.[65]

In July 2012, the US Department of Justice announced a seven-hundred-thirty-one-million-dollar settlement on the civil forfeiture and fraud complaints. Under this agreement, PokerStars agreed to pay the US government five hundred forty-seven million, which would be spent in part on compensating victims of the alleged abuse and refunding Full Tilt roughly one hundred eighty-four million for foreign players.

Importantly, while this settlement was not viewed as a criminal plea and no formal offer of plea on behalf of the corporations, it does reflect several qualities of a DPA, i.e., a compromise outside of an intractable trial, substantial legal remediation, and provisions that could serve consumer interests and restore confidence in the online gaming industry. The settlement allowed victims to seek compensation for lost money and allowed the business to continue under strict financial conditions.

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[64] '$731 Million Settlement in Money Laundering and Forfeiture Complaint' (*US Immigration and Customs Enforcement*, 20 July 2012) <https://www.ice.gov/news/releases/731-million-settlement-money-laundering-and-forfeiture-complaint> accessed 6 January 2026.

[65] 'Statement by Acting U.S. Attorney for the Southern District of New York on the Resolution with PokerStars and Full Tilt Poker' (*US Department of Justice*, October 2012) https://www.justice.gov/archive/usao/nys/pressreleases/October12/chadelie.html accessed 6 January 2026.

Applying the logic of this settlement to the Indian context, a structured DPA regime under PROGA could allow gaming companies accused of unlawful fund transfers or cognizable offences to negotiate financial redress and compliance reforms under judicial supervision, rather than facing drawn-out criminal proceedings that may never secure timely restitution for affected users or systemic compliance change. A lack of alternative dispute resolution mechanisms, like a DPA, diminishes enforcement and timely accountability in India's framework on white-collar crime.[66]

This seems like a good option; however, many commentators also warn of potential abuse. Critics call DPAs "elite deals" if they seem to let large companies buy their way out of prison terms. Any Indian DPA model must anticipate and guard against these pitfalls by institutional design.

VII. ISSUES & CRITICS OF DPA

A. INCENTIVISING COOPERATION AND INFORMATION ASYMMETRY REDUCTION

A key reason to allow DPA agreements is to promote corporate self-policing and reporting.[67] Corporations under DPA frameworks can

[66] Pratham Bali, 'White-Collar Crimes in India: An Analysis of Corporate Criminal Liability' (*ResearchGate*, June 2025) <https://www.researchgate.net/publication/392506947_White-Collar_Crimes_in_India_An_Analysis_of_Corporate_Criminal_Liability> accessed 5 January 2026.

[67] House of Lords Select Committee on the Bribery Act, *The Bribery Act 2010: Post-Legislative Scrutiny* (HL 303, 2017–19).

escape prosecution by compliance mechanisms and by cooperating with investigations. It is designed on the premise that the corporate entity, due to its internal structure, is the only entity that can identify and disclose wrongdoing that regulators cannot otherwise access.[68]

Yet, this premise is questionable. While the entity is in the best position to know the wrongdoing and the evidence, its cooperation is legally and strategically bound by fiduciary and legal obligations. Corporate defence counsel, with definitional ethical obligations to the corporate client, may elect not to share information or freely disclose information available to the enforcing authority and may omit information about other wrongdoing (even if pertaining to the same employee).[69] This means that the DPA agreements breach the premise of being the most relevant conduit of information, leaving self-regulators to identify and disclose other wrongdoing.[70]

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[68] Gottschalk P, 'Deferred Prosecution Agreements as Miscarriage of Justice: An Exploratory Study of Corporate Convenience' (2024) 4 Journal of Economic Criminology <https://doi.org/10.1016/j.jeconc.2024.100059> accessed 5 January 2026.

[69] Observer Research Foundation, 'Combating corporate corruption in India through Deferred Prosecution Agreements' (*Special Report*, 23 November 2017) <https://www.orfonline.org/research/combating-corporate-corruption-in-india-through-deferred-prosecution-agreements> accessed 5 January 2026.

[70] G De Vita and D Vozza, 'The Ethics of Deferred Prosecution Agreements for MNEs Culpable of Foreign Corruption: Relativistic Pragmatism or Devil's Pact?' (2024) 34 Business Ethics Quarterly 605–33 <https://www.cambridge.org/core/journals/business-ethics-quarterly/article/ethics-of-deferred-prosecution-agreements-for-mnes-culpable-of-foreign-corruption-relativistic-pragmatism-or-devils-pact/0DB5462663CDA6F8930E705767C0C70B?utm_campaign=shareaholic&utm_medium=copy_link&utm_source=bookmark> accessed 5 January 2026.

B. RESTITUTION, SYSTEMIC HARM, AND THE LIMITS OF RETRIBUTIVE PROSECUTION

The traditional criminal system is simply not designed to deal with the unique consequences of corporate and economic retaliation. White collar crimes, unlike those associated with traditional crimes, cause diffuse, systemic harm to employees, shareholders, consumers, creditors and the rest of society.[71] But, retribution and incarceration are still the primary reasons for Indian criminal law to prioritize restitution and institutional reform.[72] Yet even when convictions are forthcoming, victims rarely receive timely or adequate compensation, and the economic consequences of prosecuting large corporate entities are often ignored.[73]

This limitation is particularly acute in cases involving systemically important firms. Such groups could collapse or be shut down after being charged, resulting in widespread job losses, market instability and disruption of basic services for innocents, collateral harm to

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[71] Susan F Shapiro, 'Thinking About White Collar Crime: Matters of Conceptualization and Research' (*National Institute of Justice, US Department of Justice*, December 1980) <https://www.ojp.gov/pdffiles1/nij/71090.pdf> accessed 6 January 2026.

[72] Swaraj Dongre, 'Retribution to Reformation: Analysis of the New Penal Law' (*Khurana & Khurana*, 15 November 2023) <https://www.khuranaandkhurana.com/2023/11/15/retribution-to-reformation-analysis-of-the-new-penal-law> accessed 6 January 2026.

[73] Dorothy S Lund and Natasha Sarin, 'Corporate Crime and Punishment: An Empirical Study' (2021) 285 Texas Law Review 100 Texas L Rev <https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/5028/&path_info=Lund_Corporate_Crime_and_Punishment.pdf> accessed 6 January 2026.

innocent participants.[74] The Indian enforcement history provides a few cases where long-term prosecution has intertwined with corporate insolvency, leaving little scope for victim restitution or recovery of economic value. But in such cases, the expressive function of criminal law is preserved, but the corrective and restorative intentions of criminal law are undermined.[75]

DPAs provide a second enforcement strategy that sees economic repair in line with accountability.[76] DPAs require disgorgement of the unlawful gains, victim compensation and structural compliance reforms so that regulators can win tangible remedial outcomes that prosecution often fails to deliver. Importantly, these procedures permit corporations to continue as independent contractors, saving jobs, the stock market and investors while failures in internal governance are remedied. In this sense, DPAs do not dilute deterrence, but they

[74] Michael Yangming Xiao, 'Deferred/Non Prosecution Agreements: Effective Tools to Combat Corporate Crime' (2013) 23 233 Cornell Journal of Law and Public Policy https://ww3.lawschool.cornell.edu/research/JLPP/upload/Xiao-note-final.pdf accessed 6 January 2026.

[75] Vidhi Centre for Legal Policy, 'Insolvency and Bankruptcy Regime in India: A Narrative' (October 2020) <https://vidhilegalpolicy.in/wp-content/uploads/2020/10/2020-10-01-210733-43cms-9224c9b668aac0d6149a5d866bfb4c79-1.pdf> accessed 6 January 2026.

[76] Yuan Zhou, 'Raising the Deterrent Effect of the U.S. Deferred Prosecution Agreement: New Perspectives on the U.S. from the U.K. and Jersey' (2025) 10 Journal of Economic Criminology <https://www.sciencedirect.com/science/article/pii/S294979142500065X> accessed 6 January 2026.

recalibrate it, ***shifting*** the focus away from symbolic punishment towards quantifiable compliance and restitution.[77]

For India, where enforcement delays erode the useful value of prosecution in practice, DPAs are a means of reintegrating corporate criminal law with economic justice and regulatory efficiency. By enabling timely recovery of public and private losses and embedding compliance reform within enforcement outcomes, DPAs can address harms that punitive prosecution alone is structurally incapable of remedying.

C. RISKS OF ELITE IMPUNITY AND THE "TOO BIG TO JAIL" CRITIQUE

DPAs do have their drawbacks, but they have normative implications. One of the most persistent critiques of negotiated corporate settlements is that they risk leading to a two-tier system of criminal justice, one where powerful corporations can negotiate out of prosecution while individuals and small businesses cannot escape the full force of criminal law.[78] This criticism is especially significant in countries where economic and political power are intertwined.

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[77] Lucian A Bebchuk and Scott Hirst, 'The Effect of Deferred and Non-Prosecution Agreements on Corporate Governance' Harvard Law School Forum on Corporate Governance (23 September 2014) https://corpgov.law.harvard.edu/2014/09/23/the-effect-of-deferred-and-non-prosecution-agreements-on-corporate-governance/ accessed 6 January 2026.

[78] Stefano V Schütze and Emma Auerbach, 'Deferred Prosecution Agreements and Corporate Compliance: A Comparative Assessment' (2021) 21 Journal of Financial Crime <https://www.tandfonline.com/doi/full/10.1080/10439463.2020.1808650> accessed 6 January 2026.

Experiments conducted in foreign countries show the ways in which DPAs can inadvertently distance guilty executives from their own accountability. In many cases of high-profile misconduct, a DPA fine is ultimately the responsibility of shareholders and not the individuals who orchestrated or authorized the misconduct.[79] In addition, if companies are "too big to fail," governments may not be willing to fine corporations severely enough to significantly inhibit wrongdoing in future, fearing economic contagion or market destabilization.[80] This dilemma is illustrated by the Airbus DPA, which relied largely on concerns over macroeconomic fallout, with adverse effects significant on enforcement.[81]

This also explains patterns of corporate recidivism among multinational corporations, with violations of this norm repeated by the large financial and pharmaceutical firms.[82] Without individual

[79] Petter Gottschalk, 'Deferred Prosecution Agreements as Miscarriage of Justice: An Exploratory Study of Corporate Convenience' (2024) 4 Journal of Economic Criminology <https://www.sciencedirect.com/science/article/pii/S2949791424000113> accessed 6 January 2026.

[80] Matthew J. Feeley, 'In Search of Guiding Principles of Transnational Anti-Corruption Investigations and Resolutions' [2021] 54(2) JSTOR <https://www.jstor.org/stable/27305134> accessed 4 January 2026.

[81] US Department of Justice, 'Airbus Agrees to Pay over $3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case' (*Office of Public Affairs*, 31 January 2020) <https://www.justice.gov/archives/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case> accessed 7 January 2026.

[82] Denis G Arnold, Oscar Jerome Stewart and Tammy Beck, 'Financial Penalties Imposed on Large Pharmaceutical Firms for Illegal Activities' (2020) 324(19) JAMA Network Open <https://pmc.ncbi.nlm.nih.gov/articles/PMC7672515/> accessed 7 January 2026.

prosecution and ongoing compliance monitoring, DPAs might become more of a regulatory convenience than a source of accountability.[83] For a country like India that is already grappling with public perceptions of elite impunity and selective enforcement, an unregulated DPA regime could exacerbate legitimacy deficits rather than resolve them.

These concerns underscore a critical point: the question is not whether DPAs are inherently flawed, but whether their design incorporates sufficient safeguards to prevent misuse. Without robust judicial oversight, transparency, and the preservation of individual criminal liability, DPAs may undermine, rather than strengthen, the credibility of corporate criminal enforcement.

Such an analysis reveals that although DPAs could provide a formidable alternative to India's ineffective enforcement systems by enabling restitution, encouraging cooperation, and preventing systemic damage, they also pose a serious threat of elite capture, reduced deterrence, and loss of public trust if not implemented with the necessary safeguards. So, the debate shouldn't be considered to be a binary one between prosecution and settlement. Instead, the key question is whether India can craft a DPA that requires accountability and ensures more effective enforcement. In this way, the following section explains how a controlled and constitutionally compatible DPA model could be developed for India, by drawing a specific line from

[83] Petter Gottschalk, 'Deferred Prosecution Agreements as Miscarriage of Justice: An Exploratory Study of Corporate Convenience' (2024) 4 Journal of Economic Criminology <https://www.sciencedirect.com/science/article/pii/S2949791424000113> accessed 6 January 2026.

comparative practice while remaining responsive to institutional contexts in India.

The experience of the US highlights the shortcomings, as in 2014, PricewaterhouseCoopers was ordered to pay twenty-five million USD for modifying a report for its client, the Bank of Tokyo-Mitsubishi, which was being investigated for breaching US economic sanctions.[84] Despite the severity of the infringement, US regulators have been very hesitant to issue complete criminal charges against "Big Four" accounting firms, due to the firms' perceived systemic importance to the financial markets.[85] This shows how DPAs are in the absence of full enforcement, and to the extent that they do not seek the whole truth, they will raise the problem of accountability gaps in the enforcement."

VIII. DESIGNING A "CONTROLLED" DPA MODEL FOR INDIA

India cannot simply transplant a foreign DPA framework and expect it to function effectively within its own enforcement ecosystem. The success or failure of DPAs depends not merely upon statutory design, but upon their compatibility with a country's institutional structure,

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[84] Karen Freifeld, 'PwC to Pay NY $25 Million Over Work With Bank of Tokyo-Mitsubishi' (*Reuters*, 18 August 2014) <https://www.reuters.com/article/business/pwc-to-pay-ny-25-million-over-work-with-bank-of-tokyo-mitsubishi-idUSL4N0QO1UH/> accessed 5 January 2026.

[85] Paul M Healy and George Serafeim, 'Who Pays for White-Collar Crime?' (*Harvard Business School Working Paper*, June 2016) https://www.hbs.edu/ris/Publication%20Files/16-148_fdda8213-730c-4929-bf3b-bf077666c1a3.pdf accessed 6 January 2026.

constitutional framework, prosecutorial culture and enforcement realities. Consequently, India needs its own tailored, "controlled" DPA model, one that addresses the weak spots in its approach to handling white-collar crime, rather than repeating mistakes made elsewhere. Take the US, for example. Their DPA setup, while effective in securing rapid corporate cooperation, is ill-suited to Indian conditions. In the US, DPAs are run almost entirely by the executive branch, with courts playing a minimal role. Judges usually don't check whether the deals are fair or the punishments are proportionate in nature.[86] In India, prosecutors already face criticism for being arbitrary or politically influenced. Vesting comparable unchecked authority in enforcement agencies would raise serious constitutional and legitimacy concerns.[87] By contrast, the DPA system in the UK under the Crime and Courts Act is a more normatively acceptable approach than that in India.[88] DPAs in the UK are not a substantive defence, but a procedural mechanism; this will not compromise the integrity of criminal law, but

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[86] Elizabeth Daniels, 'Getting DPA Review and Rejection Right' [2018] Connecticut Public Interest Law Journal 1 <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2018/10/16.1-Getting-DPA-Review-and-Rejection-Right-by-Elizabeth-Daniels.pdf> accessed 9 January 2026.

[87] Vishrut Rathore, 'The Quest for Prosecutorial Independence' (*Vidhi Centre for Legal Policy*, 9 January 2026) <https://vidhilegalpolicy.in/research/the-quest-for-prosecutorial-independence/#:~:text=However%2C%20as%20a%20result%20of,government%20to%20withdraw%20the%20prosecution> accessed 9 January 2026.

[88] Nicholas Lord, 'Prosecution Deferred, Prosecution Exempt: On the Interests of (In)Justice in the Non-Trial Resolution of Transnational Corporate Bribery' (2023) 63(4) British Journal of Criminology 848 <https://academic.oup.com/bjc/article/63/4/848/6653191> accessed 9 January 2026.

will allow enforcement flexibility.[89] Judicial oversight is not symbolic but substantive: Crown Court approval is required at the initial and late stage of the agreement, and courts must decide for themselves whether it is in the "interests of justice" and whether the terms are "fair, reasonable and proportionate."[90] Crucially, this oversight is front-loaded and substitutive rather than cumulative, replacing years of fragmented trial-stage judicial engagement with a bounded, threshold review at the outset. This two-stage examination ensures that DPAs are not turned into negotiated impunity yet retain procedural legitimacy.

Equally as important is the categorical exclusion of individuals from DPA eligibility in the UK model. Corporate DPAs do not eliminate personal criminal liability of directors, officers or employees; rather, individual charges are to be pursued on their own.[91] This design choice addresses one of the most persistent criticisms of DPAs: they protect culpable executives and punish shareholders. In India, where concerns over elite impunity and selective prosecutions are particularly acute, the preservation of full personal accountability is critical to preserving

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[89] Herbert Smith Freehills, *UK Deferred Prosecution Agreements* (*Herbert Smith Freehills*, 9 January 2026) <https://www.hsfkramer.com/insights/2019-01/UK-Deferred-Prosecution-Agreements> accessed 9 January 2026.

[90] CPS, 'Code of Practice for Deferred Prosecution Agreements' (*UK Crown Prosecution Service*, 2019) <https://www.cps.gov.uk/sites/default/files/documents/publications/DPA-COP.pdf> accessed 9 January 2026.

[91] Suzanna Sherry and Michael C Dorf, 'The Language of Law School: Oral Advocacy' (2013) 8(1) Journal of Legal Analysis 191 <https://academic.oup.com/jla/article/8/1/191/1752200> accessed 9 January 2026.

the expressive and deterrent function of criminal law.[92] There's also the risk of "discount justice," cutting deals that are too soft.[93] That's why India's DPAs have minimum requirements: companies must admit to their wrongdoing, hand over any illicit profits, pay fines, and improve their compliance systems. All of this should be transparent, except in rare cases where secrecy is justified.

The UK's 2023 DPA with Entain plc, a global online betting and gaming operator, offers a particularly instructive model for designing sector-specific DPAs in the online gaming context.[94] Entain admitted to systemic failures to prevent bribery in its overseas betting operations and agreed to pay a financial penalty exceeding five hundred eighty-five million, alongside disgorgement of profits and the imposition of sweeping compliance reforms, including enhanced anti-money laundering controls, governance restructuring, and independent monitoring.[95] Crucially, the DPA permitted Entain to continue operating as a going concern under strict judicially supervised

[92] Arunabh Saikia, 'Citizens and the State: Policing, Impunity and the Rule of Law in India' (*The Hindu Centre for Politics and Public Policy*, 9 January 2026) <https://www.thehinducentre.com/incoming/citizens-and-the-state-policing-impunity-and-the-rule-of-law-in-india/article67887312.ece#:~:text=Executive%20powers%20pertaining%20to%20search,corrupt%20officials%20and%20police%20officers> accessed 9 January 2026.

[93] *Hawaii Futures* (Hawaii Judiciary, State of Hawaii 1994) <https://www.metafuture.org/Books/Hawaii-Futures-1991a.pdf> accessed 9 January 2026.

[94] Crown Prosecution Service, 'First-Ever CPS Deferred Prosecution Agreement – £615 Million' (*CPS*, 9 January 2026) <https://www.cps.gov.uk/cps/news/first-ever-cps-deferred-prosecution-agreement-ps615-million> accessed 9 January 2026.

[95] Elaine Mooney, 'Ladbrokes Owner Entain Close to Drawing a Line under Bribery Inquiry' (*The Guardian*, 10 August 2023) <https://www.theguardian.com/business/2023/aug/10/ladbrokes-owner-entain-close-to-drawing-a-line-under-bribery-inquiry> accessed 9 January 2026.

conditions, while preserving full criminal liability for individuals implicated in the misconduct.[96] This balance between corporate remediation and individual accountability is directly relevant to India's enforcement dilemma under the PROGA regime. A PROGA-aligned DPA could similarly require a gaming operator accused of violating Sections 7 or 10 to admit facilitation of unlawful money flows, disgorge illicit gains, implement robust KYC-AML and transaction-monitoring systems tailored to high-volume micro-transactions, and submit to court-supervised compliance audits.[97]

However, the Entain model also highlights a critical limitation unique to India: PROGA's blanket prohibition on online money games under Section 5 and the absolute embargo on financial facilitation under Section 7 leaves no lawful operational space for post-agreement compliance unless accompanied by a regulatory carve-out or licensing pathway.[98] Unlike the UK, where regulated betting remains lawful, an Indian DPA would otherwise merely defer prosecution without resolving the underlying illegality of continued operations.

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[96] Radhika Anilkumar and Milla Nissi, 'Ladbrokes owner Entain reports higher half-year profit' (*Reuters*, 10 August 2023)<https://www.reuters.com/business/ladbrokes-owner-entain-reports-higher-half-year-profit-2023-08-10/> accessed 10 January 2026.

[97] Press Information Bureau, 'Promotion and Regulation of Online Gaming Bill, 2025' (*Government of India*, 21 August 2025) <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/aug/doc2025821618101.pdf> accessed 10 January 2026.

[98] Manishi Pathak and Ranjan Jha, 'Decoding The Promotion And Regulation Of Online Gaming Act, 2025' (*Mondaq*, 28 August 2025) <https://www.mondaq.com/india/gaming/1670760/decoding-the-promotion-and-regulation-of-online-gaming-act-2025> accessed 10 January 2026.

Canada's approach offers another lesson. To qualify for a DPA, a company must demonstrate genuine cooperation, have no prior convictions, and show that the deal serves the public interest. Prosecutors decide who's eligible, but courts get the final say, acting as a constitutional safeguard that doesn't bog down the system.[99] Ultimately, DPAs shouldn't stand alone; they need to be complemented by prosecutions, civil fines, and effective regulation.[100] If India gets this right, a controlled DPA system could help shift enforcement toward real restitution, deterrence, and lasting compliance, all without compromising broader commitment to combating white-collar crime.

IX. CONCLUSION

The introduction of the PROGA represents a major pivot in India's regulatory attitude towards the digital markets. It has redefined regulatory non-compliance as a cognizable criminal act and has spread accountability across the entire corporate structure and financial intermediaries.[101] Through heavy-handedness in punishment, the law

[99] Government of Canada, 'Expanding Canada's toolkit to address corporate wrongdoing: The deferred prosecution agreement stream discussion guide' (*Canada.ca*, 2017) <https://www.canada.ca/en/public-services-procurement/services/standards-oversight/supplier-integrity-compliance/consultations/expanding-canadas-toolkit-address-corporate-wrongdoing/deferred-prosecution-agreements-consultation/stream-discussion-guide.html> accessed 10 January 2026.

[100] 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 10 January 2026.

[101] S Chandrasekhar and A Varma, 'The Velvet Glove and the Iron Fist (A comparison of the new online gaming law with DPDPA)' (*Lexology*, 9 January 2026)

aims to discourage any wrongful acts. However, this paper finds that such criminalisation is being imposed upon an already overburdened enforcement architecture marked by investigative delays, low conviction rates, fragmented regulatory coordination, and judicial backlog. In the context of online gaming, an industry characterised by cross-border transactions, technological opacity, and rapid digital innovation, reliance on prosecution alone is likely to produce symbolic rather than effective enforcement, with limited accountability, restitution, or systemic compliance reform.[102]

DPAs provide an alternative that is based on principles of institutional justice. Well-designed DPAs do not take away the power of criminal law but rather adjust it: moving law enforcement from litigation that wears down the parties to that of admitting guilt in an orderly fashion, giving back the proceeds of crime, compensating the victim, and reforming the whole system. However, the experience from different jurisdictions shows that DPAs are not automatically justified. They

<https://www.lexology.com/library/document?tk=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzUxMiJ9.eyJleHAiOjE3NjgwNTc5MjcsImRhdGEiOnsiRG9jdW1lbnRHdWlkIjoiZTA1YjM4N2UtZmI1MC00OWEwLTkxOGYtOThkZGQyNTViY2Y0IiwiQ29udGFjdEd1aWQiOiIwMDAwMDAwMC0wMDAwLTAwMDAtMDAwMC0wMDAwMDAwMDAwMDAiLCJCeXBhc3NMb2dpbiI6dHJ1ZX19.9qXA78Z5ZSre2uqn5W1WBwT8Az_-2r18rcjQNKFfH0TmmjoMowwkX0wyla_am9Y1XI9YrKZ0SWxoxodu1Cj4Zg> accessed 9 January 2026.

[102] Prof (Dr) Mohammad Asad Malik and Hina Iliyas, 'Unveiling the Blur: Examining Online Gambling within Contemporary Regulatory Frameworks- Distinguishing Between Gaming and Gambling' [2024] Army Institute of Law Journal 344 <https://ail.ac.in/pdf/ail-journal-2024.pdf> accessed 9 January 2026.

may, without judicial supervision, transparency, and the maintenance of individual criminal claims, become a source of protection for the elite and a cause of public trust erosion. Thus, we recommend a carefully controlled Indian DPA model that is judicial, transparent, and aware of the sector's specificities.

Accordingly, the central hypothesis of this paper stands substantially affirmed: PROGA's expansion of corporate criminal liability justifies the adoption of a narrowly tailored and judicially supervised DPA framework capable of reconciling enforcement efficiency with constitutional accountability. By situating the DPA debate within the emerging online gaming economy and the enforcement architecture created by PROGA, this paper argues that negotiated enforcement mechanisms, if carefully constrained, may offer India a more institutionally sustainable model for regulating complex digital corporate misconduct without abandoning the deterrent function of criminal law.