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A Critical Study on Cultural Due Diligence as a Legal Imperative in Indian Mergers & Acquisitions

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A Critical Study on Cultural Due Diligence as a Legal Imperative in Indian Mergers & Acquisitions

ABSTRACT

Mergers and acquisitions (M&A) are pivotal vehicles for corporate restructuring, market expansion, and strategic consolidation. Despite their pervasive economic utility, a staggering percentage of M&A transactions fail to yield the projected synergistic dividends. While traditional due diligence meticulously scrutinizes financial, legal, and operational risks, it frequently marginalizes the profound impact of organizational culture. This article critically examines the legal and strategic necessity of formalizing "Cultural Due Diligence" (CDD) as a legal imperative rather than a discretionary human resource protocol within the Indian M&A framework. The existing regulatory architecture in India – anchored primarily by the Companies Act, 2013, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and the Competition Act, 2002 – remains conspicuously silent on cultural integration assessments. However, drawing upon the expanded fiduciary duties of directors under Section 1662 of the Companies Act, which mandates consideration of employee welfare and stakeholder interests, this study argues that the failure to conduct CDD constitutes a breach of the duty of care. Through a comparative analysis of corporate governance paradigms in the United States, the United Kingdom, and the European Union, alongside critical case studies such as the disastrous DaimlerChrysler merger and the successful Microsoft-LinkedIn integration, the article demonstrates how cultural incompatibilities directly precipitate financial value destruction and employee attrition. Emphasizing Environmental, Social, and Governance (ESG) norms, the article concludes by recommending structural statutory amendments, NCLT oversight mechanisms, and standardized SEBI guidelines to institutionalize CDD, thereby ensuring sustainable post-merger integration and the protection of minority shareholders and human capital.

KEYWORDS

Cultural Due Diligence, Mergers and Acquisitions, Corporate Governance, Fiduciary Duties, Companies Act 2013, Post-Merger Integration, ESG, Stakeholder Theory.

1. INTRODUCTION

1.1 Background and Context of Mergers and Acquisitions in India

In today's era of globalization, Liberalization–Privatization–Globalization (LPG) and the current drive towards a \$5 trillion economy, Mergers and Acquisitions (M&A) have become a fundamental part of the growth strategy of Indian companies. M&A activity in India has steadily increased with the value of transactions growing substantially in various industries, including technology, financial, manufacturing, and energy. The regulatory regime of M&A in India is complex and is primarily governed by the Securities and Exchange Board of India (SEBI) Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011, the Companies Act, 2013 and the Competition Act 2002.¹

Traditionally, the Indian M&A landscape has been characterised with the dominance of financial and legal due diligence, with the acquirers prioritising balance sheets, compliance certifications and liability assessments.² But the phase after the merger has uncovered a problem that is not financial but one of culture: A large number of deals do not work out because of incompatibility between the two merging companies. In India, a country with a high degree of regional, linguistic and organisational cultural diversity, studies have shown that cultural problems account for almost 30% of failed integrations.³

1.2 The Evolving Landscape of Corporate Consolidation

Corporate consolidation in India is going through a revolution. Cross-border M&A has grown tremendously with Indian companies often acquiring overseas entities as well as overseas companies acquiring Indian entities, posing cross-national cultural integration challenges.⁴ M&A is growing beyond the usual areas of focus such as digital services, renewable energy and healthcare. Due diligence processes are increasingly placing a focus on environmental, social and governance (ESG) considerations. AI, data analysis and automated tools are strengthening the scrutiny and risk assessment. Secondly, family-owned conglomerates and startup ecosystems are merging to gain scale and

¹ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; Companies Act 2013; Competition Act 2002.

² Mergers, Acquisitions, and Corporate Restructurings, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018) ch 6.

³ KPMG, *The Critical Role of Culture in Mergers and Acquisitions* (KPMG 2020); Deloitte, *The Synergy Solution: Human Capital in Mergers and Acquisitions* (Deloitte 2019).

⁴ Department for Promotion of Industry and Internal Trade, *FDI Statistics* (Government of India); Reserve Bank of India, *Annual Report 2024–25* (Reserve Bank of India).

market share.

Such a transformation requires a more comprehensive due diligence approach that goes beyond financial and legal considerations. Cultural due diligence (CDD) is gaining importance, especially in India, where the leadership format, communication, and employee attitude vary across different regions and industries.⁵

1.3 Conceptualizing Cultural Due Diligence

Cultural Due Diligence (CDD) is the systematic process of evaluating the cultural fit or "fitness" of the two entities in an M&A transaction. It examines issues related to values and beliefs – the basic principles that guide both organizations. Communication and language include communication styles, barriers to communication, and effective ways to communicate and collaborate. Organizational structure encompasses decision-making processes and reporting lines and hierarchy. Employee engagement includes satisfaction and retention threat. Workplace culture encompasses workplace environment, employee relations and company traditions. Leadership styles are methods towards management and authority. Decision making is quick, inclusive and transparent. Customer and stakeholder relations cover cultural differences which affect external relationships.⁶

CDD is not a soft skill activity, but a strategic risk assessment exercise to help the acquirer recognize possible conflicts, to ensure integration planning and to set measurable cultural integration goals. However, in the Indian context, CDD needs to consider region cultures, family business relations and hierarchy in social systems, which shape corporate actions.⁷

1.4 Research Problem

Although there is a known lack of cultural compatibility when a business acquires another organization, in India, CDD is still largely voluntary and non-mandatory in regulatory frameworks. There is no specific legal requirement for cultural assessment but there is a strong legal and financial obligation. This leaves a critical void. The legal and financial

⁵ Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005); Society for Human Resource Management, *Managing Cultural Integration in Mergers and Acquisitions*.

⁶ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017) chs 1-3.

⁷ Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* (2nd edn, Sage Publications 2001); Tarun Khanna and Krishna G. Palepu, *Winning in Emerging Markets: A Road Map for Strategy and Execution* (Harvard Business Review Press 2010).

due diligence should be conducted in compliance with the Companies Act and SEBI regulations and there is no any rule mandating cultural due diligence, it is deemed as an optional process and best practice only.

While legal and financial due diligence covers liabilities, compliance and financial health, cultural due diligence covers cultural compatibility and integration risks. The result of the legal and financial due diligence can offer definite legal and financial risk mitigation and the cultural due diligence results are sometimes only discovered after a merger fails. There are regulatory consequences for failing to complete legal and financial due diligence, however cultural due diligence does not have any enforcement mechanism. Legal and financial due diligence have established disclosure requirements; cultural due diligence are done in an ad hoc and inconsistent manner.

This disparity is an issue because financial transactions can be rejected due to cultural shortcomings. Deal value can be lost as quickly as a financial burden from post-merger employee attrition, leadership conflicts, operational disruptions from cultural misalignment, etc. Moreover, with the adoption of ESG due diligence in India, the lack of cultural consideration leaves the framework incomplete.

The research problem is as follows: Indian M&A law does not make cultural due diligence a mandatory step in M&A transactions but why and what are the implications of this on the success of the M&A transaction and the functioning of the corporate governance system?

1.5 Objectives and Scope of the Study

Primary Objectives

The first aim is to understand the existing regulatory landscape on M&A due diligence in India and the absence of the mandatory provisions for cultural due diligence. The second goal is to consider cultural due diligence as a legal obligation, comparing it with mandatory diligence requirements already in place, such as financial, legal and environmental, social and governance diligence. The third goal is to look at the empirical evidence for failures of M&A in India that are due to incompatibility issues. The fourth goal is to suggest a framework to formalize cultural due diligence as a compulsory part of Indian M&A transactions. The fifth objective is to benchmark India's approach versus other countries such as USA, EU and Singapore, where cultural or ESG diligence is becoming a requirement.

Scope of the Study

Geographical scope includes India and comparative analysis is done for the US, EU, and Singapore. The period for the M&A transactions covered by the report is from 2015 to 2025, the post-Companies Act 2013 period. The sectoral scope offers cross-sector analysis, focused on technology, manufacturing and financial services. The scope of the legal aspects focuses on the Companies Act 2013, SEBI Regulations, Competition Act 2002, and relevant case law. This study does not cover pure asset acquisitions (excluding corporate integration) or transactions under foreign laws that have no Indian entity participation.

1.6 Research Questions

The scope of RQ1 is to identify the existing legal obligations on due diligence in Indian M&A transactions and how cultural due diligence fits into or doesn't fit into this picture. RQ2 looks at the consequences of lack of mandatory cultural due diligence as a cause of failure in post-merger integration in India. RQ3 investigates if cultural due diligence can be legally defined as a corporate governance duty, in the sense of fiduciary duties and ESG requirements. RQ4 explores the need for regulatory changes to ensure that cultural due diligence becomes mandatory in Indian M&A transactions and RQ5 examines the international regulatory models for cultural or socio-cultural due diligence, and what lessons can be learnt for the Indian situation.

1.7 Hypotheses

According to H1, failure to include cultural due diligence in Indian M&A legislation is a major reason for integration failures after the transaction and is a driver of lower deal value. In H2's view, cultural due diligence can be legally understood as a duty under corporate governance laws, including the fiduciary duties of the directors, and new ESG obligations. H3 proposes that regulatory reforms that require compliance with cultural due diligence would benefit M&A deal success in India by addressing integration risks and strengthen corporate governance. H4 argues that the international models from the USA, EU and Singapore offer India relevant approaches for cultural due diligence which can be adapted to India's social and cultural diversity.

1.8 Research Methodology

This research method used in this study is doctrinal legal research method, which is a research method that uses legal materials derived from experience and facts. The doctrinal research aspect includes critical analysis of the laws, regulations, case law, and principles of M&A due diligence in India. Comparative research is conducted, which involves comparison of M&A due diligence frameworks in the US, EU and

Singapore. The empirical analysis part looks at case studies from companies that failed to make an M&A from 2015-2025 due to cultural incompatibility. The qualitative analysis part involves a review of literature from a scholarly, industry and professional perspectives on cultural due diligence.

2. LEGAL FRAMEWORK GOVERNING MERGERS AND ACQUISITIONS IN INDIA

2.1 *Companies Act, 2013: Statutory Provisions for Mergers and Amalgamations*

In India, the main Acts of parliament that regulate mergers and amalgamations are the Companies Act, 2013. It superseded the antiquated Companies Act, 1956, and created a new, more streamlined and transparent framework for mergers and acquisitions. Compromise, arrangements and amalgamations are covered in depth in the Act in sections 230 to 232, which is the foundation for M&A transactions.⁸

The Companies (Amendment) Act 2017 introduced in Section 230 allows companies to try to reach compromises or arrangements with creditors and shareholders, which have to be approved by the special resolution procedure, which requires 75% of the voting shareholding to approve. It sets out the procedure for obtaining shareholder consent, for notifying creditors, for filing schemes with the NCLT. All stakeholders are properly informed and given the chance to comment on the proposed transaction.⁹

The amalgamation provisions of section 231 deal with mergers of two or more companies into one. The section requires that the scheme of amalgamation shall contain information on the transfer of assets and liabilities, the exchange rate of shares and treatment of minority shareholders. The Act mandates the scheme of amalgamation to be approved by the NCLT, subject to compliance with the statutory requirement and safeguard of all the stakeholders' interests.

The powers of NCLT to sanction a scheme of compromise, arrangement or amalgamation are covered in Section 232. The Tribunal holds hearings to review the legality of the proposed transaction, to ensure that there has been a satisfactory balance of protection of stakeholder interests, and to ensure that the transaction is in the 'public interest'. The section gives the NCLT the power to change schemes, impose conditions on them and

⁸ Companies Act 2013, s 230–232.

⁹ National Company Law Appellate Tribunal, *Jindal Steel and Power Ltd v Arun Kumar Jagatramka* (Company Appeal (AT) (Insolvency) No 221 of 2018); Guide to the Companies Act, *A Ramaiya's Guide to the Companies Act* (19th edn, LexisNexis 2022) vol 3, chs on ss 230–233.

reject schemes if they are not in compliance with the statutory requirements.

The Companies Act, 2013 also provides for fast-track mergers under Section 233, where mergers of certain types of companies, like the small companies and holding companies merging with their subsidiaries can be done by obtaining approval from the Central Government and not the NCLT. The purpose of this provision is to minimize the transaction costs and time of routine consolidations and still provide proper oversight.

Notably, the Act does not explicitly state that 'cultural due diligence' is an obligation in mergers and amalgamations. The emphasis is still on disclosure of finances, transferring assets, allocating liabilities, and obtaining consent from shareholders. Section 230 calls for disclosure of material facts, but material facts are understood in the financial and legal sense, and not in the cultural sense. This omission leaves a significant void because there are cultural concerns that can be very important to the post-merger experience and that would not be required by law to be assessed or disclosed.¹⁰

2.2 Competition Act, 2002: Regulation of Combinations

The Competition Act, 2002 is the legislation that covers M&A transactions that fall within the definition of "combinations" in the Act, and which helps to safeguard competition in the market and to prevent anti-competitive behaviour. The Act sets up the Competition Commission of India (CCI) as the regulatory body that will perform the function of discussing and approving combinations which could adversely affect competition in India.¹¹

Combinations are defined under Section 5 of the Competition Act, which are based on threshold criteria such as assets and turnover. If the acquiring entity, the target entity, or the combined group meets certain asset and/or turnover levels, the transaction would be considered a combination.¹² The threshold has been set at assets of ₹2 billion or turnover of ₹6 billion for the acquiring entity and assets of ₹2 billion or a turnover of ₹6 billion for the target entity in domestic transactions. If these assets are overseas and are either above \$1 billion or above ₹2 billion or global turnover is above \$3 billion or ₹6 billion with ₹ 2 billion

¹⁰ Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018) ch 6; Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017).

¹¹ Competition Act 2002, ss 5-6; Competition Commission of India, *Combination Regulations* 2011.

¹² Competition Act 2002, s 5; Ministry of Corporate Affairs, Notification SO 988(E), 27 March 2017 (as amended).

or more assets in India, then this is called cross-border transaction with global thresholds and the criteria is higher.

The implementation of combinations which qualify for Section 5 cannot be made without prior approval of the CCI as per Section 6. The notification needs to be made to the CCI within 30 days of the board's approval of transaction.¹³ The CCI then goes through a review process that takes 210 days from the date of filing, or sooner in some instances for expedited review. The Commission reviews if the combination could have an appreciable adverse effect on competition (AAEC) in India. CCI's evaluation framework takes into account a number of factors such as market share of the entities, level of concentration in the relevant market, degree of competition in the market, extent of vertical integration, possibility of countervailing power of customers, likelihood of innovation, etc., and whether the combination leads to death or failure of an enterprise. The Commission uses a "balance of probabilities" test to decide if the combination can result in AAEC.¹⁴

Cultural due diligence is not mandated in the combination review of the Combination Regulations of the Competition Act. The CCI's assessment is only on the competition dynamics in the market, and not on the risk to cultural integration or compatibility of the organization. This external market focus of regulation further embeds cultural issues into compulsory due diligence regimes.

The Act, however, places a focus on protecting consumer interest and the competition in the market indirectly on the need for extensive due diligence. Cultural incompatibility can result in operational challenges that impact product quality, cost and innovation, which can ultimately negatively affect competition. However, this relationship is not addressed by the existing regulatory system.¹⁵

2.3 SEBI Takeover Code and Investor Protection Mechanisms

Publicly listed companies make an M&A transaction under the depleting regulation known as the Securities and Exchange Board of India (SEBI) Takeover Code, or M&A Regulations, 2011. The purpose of these regulations is to safeguard the interest of the shareholders, especially minority shareholders, in a takeover and provide transparency around

¹³ Competition Act 2002, s 5; Ministry of Corporate Affairs, Notification SO 988(E), 27 March 2017 (as amended).

¹⁴ Competition law of India, *Competition Law of India* (LexisNexis 2021); Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018).

¹⁵ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017); Deloitte, *2024 Global M&A Trends Survey*.

disclosure of material information.¹⁶

The definition of "takeover" is provided in the SAST Regulations, as the acquisition of shares or voting rights in a target company making up more than 25% of the total voting rights. The offer needs to be made to the public shareholders of the company to be acquired for a minimum of 26% of the shares. This clause guarantees that shareholders can be bought out at a fair price where there is a change in control of the company.¹⁷

The SAST Regulations establish disclosure requirements in regard to acquisitions in Regulation 3. Acquirers are required to publish their plans, the reason for the acquisition and the future plans for the acquired company on the stock exchanges and to the general public. The purpose of this disclosure requirement is to give shareholders sufficient information to assess the company's willingness to accept them into the open offer or hold on to their shares.

Regulation 12 is based on the principle that the acquirer is required to disclose any material information that is likely to be of relevance to the shareholders' decision. Under the regulation, the disclosure statement should contain "all material facts relating to the acquisition" and "the purpose of the acquisition and the future plans for the target company. This is a wide definition, but in the past, SEBI has approached the term 'material facts' from a financial and legal angle, and not cultural.

The Takeover Code also provides for investor protection mechanism. Under Regulation 16, there has to be an independent advisor to review the price offered in the open offer. Under Regulation 18, the offer price for the shares must be calculated using approved methods of

valuation which ensures that the shareholders are offered a fair compensation for their shares.¹⁸

Notwithstanding these safeguards for investors, the SAST Regulations do not specify any disclosure requirements or cultural compatibility obligations between the acquirer and target. The emphasis is on financial value, regulation and governance structures. This means that shareholders may not get such information relating to cultural risk, which may materially affect the future performance of the merged entity.

¹⁶ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, regs 1-4.

¹⁷ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg 3.

¹⁸ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, regs 16-18; Securities and Exchange Board of India, *Master Circular for Takeovers* (latest applicable version).

The lack of cultural due diligence in SEBI framework is a major lacuna in investor protection. Investors in M&A target companies are not fully aware of the potential for cultural integration issues that could impact future returns, retention and efficiency.¹⁹

2.4 FEMA and Cross-Border M&A Framework

Cross-border M&A involving Indian entities and foreign investors are regulated by the Foreign Exchange Management Act (FEMA), 1999. The FEMA is an organization under the Reserves Bank of India (RBI) and Ministry of Finance which sets the rules and regulations for foreign investment in India and investment of Indians in foreign countries.²⁰

FEMA framework identifies two types of M&A that involve cross-border transactions: Cross-border inbound investment (foreign entities investing in Indian entities) and Cross-border outbound investment (Indian entities investing in foreign entities). In case of inbound investment, the applicable regulations are the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 which prescribe the conditions under which shares are issued to foreign investors. The Foreign Exchange Management (Admission of Debt Instruments by a Person Resident in India) Regulations and the Foreign Direct Investment (FDI) Policy outline the conditions for the outbound investment by Indian companies.

There are a number of important provisions in the FEMA framework regarding cross-border M&A. First, the transactions should be in accordance with the FDI Policy, where sectoral caps, pricing guidelines and approval requirements of foreign investment are laid out. Second, transactions have to be reported to the RBI within time and a detailed document outlining the structure of the transaction, valuation and purpose of the transaction. Third, price needs to be established using valuation techniques accepted internationally with both parties getting a fair price.²¹

The FEMA framework also covers foreign exchange management (cross border merger) rules, 2018 regarding cross-border mergers. These rules allow Indian firms to merge with foreign firms subject to the various conditions like getting RBI approval, complying with sectoral caps, satisfying the valuation terms, etc. The regulations also provide for cross-

¹⁹ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017); Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005).

²⁰ Foreign Exchange Management Act 1999, ss 3–6; Reserve Bank of India, *Master Direction – Foreign Investment in India* (as amended).

²¹ Foreign Exchange Management (Non-debt Instruments) Rules 2019; Foreign Exchange Management (Overseas Investment) Rules 2022.

border transfers of assets and liabilities.

Although the Federal Emergency Management Agency (FEMA) has a wide-ranging regulatory role in cross-border M&A transactions, it does not require culture due diligence during the approval process of these transactions. The RBI's review is based on the compliance with foreign exchange, valuation fairness and sectoral restriction and approval by other authorities. The regulatory assessment does not include cultural compatibility between the Indian and foreign entities.²²

This is especially important when conducting cross-border M&A transactions as cultural differences between countries can be quite large. There are not only differences in the corporate culture, but also in national culture, such as communication, business culture, leadership culture, and employee culture. Because there are no mandatory cultural due diligence provisions in FEMA, these key integration risks are not assessed and/or disclosed as part of the regulatory approval process.²³

2.5 Institutional Mechanisms: NCLT and NCLAT

National Company Law Tribunal (NCLT)

The adjudicating forum for M&A transactions, under the Companies Act, 2013, is the National Company Law Tribunal (NCLT). The NCLT has been created under Section 408 of the Act, and its jurisdiction covers corporate law aspects in mergers, amalgamations, compromises and arrangements.²⁴

The NCLT holds hearings on proposed M&A schemes to determine if the transaction satisfies the statutory conditions, if the interests of the stakeholders have been protected and if the transaction tilts in public interest. The Tribunal may approve, amend, condition or refuse schemes which do not comply with the law.²⁵

The NCLT conducts several hearings during its consideration of the review process, at which objections can be made or support given to the proposed transaction by creditors, shareholders, and other stakeholders.

²² Guide to FEMA, *Guide to FEMA* (Taxmann, latest edn); Mergers, Acquisitions, and Corporate Restructurings, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018).

²³ Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* (2nd edn, Sage Publications 2001); Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005).

²⁴ Companies Act 2013, ss 408, 230–232.

²⁵ Companies Act 2013, s 232; Supreme Court of India, *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579.

The Tribunal reviews written submissions, oral arguments and expert opinions to make its determination. The NCLT can also appoint independent auditor or valuers to examine the fairness of the transaction.²⁶

Even though the NCLT has a wide power to conduct M&A review, the concept of cultural due diligence is not included. The focus of the Tribunal is financial disclosure, legal compliance and protection of stakeholders in financial and legal terms. The NCLT does not take cultural compatibility into account when assessing the criteria.

National Company Law Appellate Tribunal (NCLAT)

The National Company Law Appellate Tribunal (NCLAT) is the appellate authority for decisions made by the NCLT. The NCLAT was set up under Section 410 of the Companies Act, 2013, to hear appeals against orders of the NCLT in the context of M&A transactions. The NCLAT is only allowed to look into the lawfulness, correctness, and adequacy of the proceedings and evidence before the NCLT. The Appellate Tribunal doesn't hold a fresh hearing on the merits of a transaction, but re-examines the reasons and application of law in the NCLT proceedings.

Moreover, NCLAT is not mandated to conduct any cultural due diligence in the course of an appellate review. The attention is still on legality, process, and sufficiency of the NCLT's decision making. The consideration of cultural aspects is not part of the framework for appellate review.²⁷

2.6 Strict Compliance vs. Strategic Integration

The approach of the Indian legal framework towards M&A transactions reflects a comprehensive framework for compliance, covering financial disclosures, legal compliance, protection of stakeholders and competition in the market. There is comprehensive regulation of corporate consolidation through the Companies Act, 2013, the Competition Act, 2002, SEBI Takeover Code and ancillary legislations.²⁸

This framework reveals a critical gap of solely a regulatory compliance approach instead of a strategic integration approach. The current regime requires a thorough examination of financial, legal and competition

²⁶ Companies Act 2013, s 232; Supreme Court of India, *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579.

²⁷ Company Law, *Company Law* (Eastern Book Company, latest edn); Supreme Court of India, *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579.

²⁸ Companies Act 2013; Competition Act 2002; Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011.

aspects but provides no requirements for conducting a thorough cultural due diligence. This results in a situation in which transactions may be fully compliant with the regulations but fail in other ways because of cultural differences.²⁹

The gap can occur in a number of different ways. First, statutory provisions of Companies Act place emphasis on the financial disclosure and shareholder consent rather than assessing cultural compatibility. Second, the process of reviewing under the Competition Act only considers market competition dynamics and not the internal dynamics. Third, the disclosure requirements of SEBI view material facts through a financial lens, and do not include cultural risk. Fourth, the cross-border M&A framework by FEMA does not take into account the cultural differences between the Indian and foreign entities. Fifth, sector-specific regulators do not deal with cultural integration, only financial stability and consumer protection.

There are important implications for this gap. Even if a M&A transaction successfully completes regulatory compliance, it can still fail because of cultural incompatibility, which can cause employee turnover, disruption, leadership change, and loss in deal value. Shareholders and investors are not sufficiently informed about cultural risks which may affect return. Corporate governance frameworks are incomplete, as they do not address cultural integration as a governance priority.³⁰

The failure to include cultural due diligence in the mandatory list shows the general lack of understanding of what makes for a successful M&A transaction: that, in addition to being financially and legally "fit," cultural fit is also essential. The mismatch between the legal aspects and the realities of doing business is a shortcoming in the Indian M&A regime.³¹

This requires regulatory reform to bring cultural due diligence into the M&A transaction as a mandatory part of every deal. This reform will bring in a better alignment between the law and the strategic development of the company, better investor protections, better

²⁹ Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018) ch 6; Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017).

³⁰ Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005); Deloitte, *Global M&A Trends Survey* (2024).

³¹ Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* (2nd edn, Sage Publications 2001); Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017).

corporate governance, and better M&A success rates in India.³²

3. DUE DILIGENCE IN INDIAN M&A PRACTICE

3.1 Concept, Purpose, and Traditional Frameworks of Due Diligence

Due diligence in mergers and acquisitions is systematic investigation conducted by prospective acquirer to assess target company's condition before completing the transaction. It has basic functions such as risk assessment, checking the information provided by the seller, checking the value assumptions, and decision making. This concept was originally based on the principle of caveat emptor (buyer beware) in common law, and has since developed into a formal procedure of strategic assessment and integration planning.³³

However, in Indian M&A, the process of due diligence has become more and more intricate and sophisticated as a result of the regulatory requirements of the Companies Act, 2013, the SEBI regulations and the Competition Act, 2002.³⁴ The traditional three pillars are:

Financial Due Diligence will review financial statements, accounting methods, sources of revenue, the value of assets and the nature of liabilities. It's led by financial advisors and auditors to ensure the financial accuracy and evaluate business sustainability. They involve audited statements review for the past three to five years, revenue quality analysis, working capital review, debt review and tax position review. The results are reports that provide financial risk and valuation adjustments as well as deal structure recommendations.

Legal Due Diligence is focused on corporate structures, contracts, litigation history, intellectual property rights, regulatory compliance and employment contracts. It is led by the lawyers who pinpoint the legal threats that are presented by the transaction. Review of incorporation documents, key contracts, litigation history, regulatory compliance, IP portfolio, and real estate ownership are included in the process. The results include legal risks, compliance gaps, and indemnity and transaction recommendations.³⁵

³² Organisation for Economic Co-operation and Development, *Corporate Governance Factbook* (2023); World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank 2021).

³³ Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018) ch 5.

³⁴ Companies Act 2013; Competition Act 2002; Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011.

³⁵ Lou R. Kling and Eileen T. Nugent, *Negotiated Acquisitions of Companies, Subsidiaries and Divisions* (Law Journal Press, latest edn).

Operational Due Diligence focuses on business processes, supply chain management, technology infrastructure, production systems and operational efficiency. It is carried out by operational consultants, who evaluate operational viability and opportunities for improvement. This process involves workflow review, supply chain relationships, IT systems, production capacity, quality control and cost structures. Outcomes include reports detailing operational strengths, efficiency opportunities, and inputs for integration planning.³⁶

3.2 Limitations of Conventional Frameworks and Emerging Trends

- ***Limitations of Conventional Due Diligence***

The conventional due diligence process in an M&A transaction in India has several major drawbacks that are negatively impacting transactions, including:

Excessive attention to Quantitative Factors: The emphasis is on quantifiable elements, such as financial precision, legal adherence, and operational performance. This leaves out of the equation qualitative considerations like cultural fit, which can be more influential for success. In the absence of these cultural considerations, acquirers can focus on positive financial data and still ignore cultural elements that will negatively impact post-acquisition performance.³⁷

Conventional Due Diligence is Reactive, not Forward-looking: Conventional due diligence is about the risks that are currently present at the time of the due diligence process, not the risks that need to be addressed post the transaction. Financial due diligence looks at the history, legal due diligence checks compliance and operational due diligence checks on the current capabilities. This method does not determine if a target culture matches or conflicts with the acquirer's culture after the integration, or if there are any cultural issues to address when integrating.³⁸

Conventional frameworks do not offer much input for integration planning. Financial and operational information is included in due

³⁶ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017); Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005).

³⁷ Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018); Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017).

³⁸ Donald M. DePamphilis, *Mergers, Acquisitions, and Other Restructuring Activities* (11th edn, Academic Press 2023); Alexandra Reed Lajoux, *The Art of M&A Due Diligence* (2nd edn, McGraw-Hill 2009).

diligence reports but cultural information is not included that would facilitate effective integration planning. This leaves the due diligence results and their integration in conflict with each other, causing unexpected culture clashes.³⁹

Deficient Stakeholder Perspective: The traditional methods fail to consider the perceptions of employees, management teams, customers and suppliers other than shareholders and creditors. Culture changes that may worry employees may not be mentioned, resulting in loss of employee and productivity. Change in leadership may not be discussed among members of the management team, resulting in leadership conflicts.⁴⁰

- *Emerging Trends in Due Diligence*

These shortcomings have been addressed in several emerging trends which incorporate a wider range of assessment dimensions:

- *Risk-Based Due Diligence*

allows for an examination of the areas where the risks are the highest, rather than trying to examine everything. This process classifies the financial, legal, operational, strategic and cultural risks, determines the chances of risk occurring and the impact of that risk, and prioritizes due diligence tasks depending on the importance of the risk. Some Indian acquirers are starting to factor in cultural risk assessment into the risk-based frameworks, as they are aware that there are huge risks involved in transactions which are culturally incompatible.

- *Forward-Looking Due Diligence*

is not intended to measure the status quo but rather future potential and integration viability. This method involves evaluating future growth potential, integration issues, strategic fit, and cultural fit. Forward-looking due diligence involves evaluating if there is compatibility between the culture of the two companies, and if the workforce will be able to adjust to new processes.

- *ESG-Inclusive Due Diligence incorporates*

The environmental, social and governance factors into the due diligence

³⁹ Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* (2nd edn, Sage Publications 2001); John P. Kotter and James L. Heskett, *Corporate Culture and Performance* (Free Press 1992).

⁴⁰ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017); Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018); Deloitte, *Global M&A Trends Survey* (2024).

process. Social due diligence is the evaluation of employee relations and human capital management, where elements of culture will always be a part of the discussions. Governance due diligence evaluates ethics and compliance programs, which are a reflection of cultural values. Incorporation of cultural due diligence is a logical step of ESG-inclusive due diligence, which some Indian acquirers are starting to understand.

- *Technology-Enabled Due Diligence*

It involves utilizing technologies such as AI, data analytics, and automation to make the process more efficient and thorough. New technologies are starting to move towards cultural data analysis using natural language processing (NLP) of employee interaction, data analytics of employee surveys and social network analysis of organizational relationships.

3.3 Regulatory Mandates, Industry Standards, and the Missing Cultural Dimension

- *Regulatory Mandates and Industry Standards*

The Indian regulatory system sets out multiple due diligence requirements, but these tend to be on financial, legal and operational considerations as opposed to cultural considerations. Material facts are required to be disclosed under the Companies Act 2013 in merger schemes and the term material facts is seen in a financial and legal sense. The SEBI Takeover Code requires disclosure of material information in takeovers and the definition of materiality is interpreted in terms of financial and legal materiality. Combination the detailed information disclosure is required by the Competition Act but not the cultural information disclosure. There are no cultural due diligence requirements with respect to cross-border mergers and acquisitions under FEMA. FEMA prescribes valuation certification requirement for cross-border mergers and acquisitions but not cultural due diligence.⁴¹

Professional bodies such as ICAI, ICSI, consulting firms such as KPMG, Deloitte and others have developed comprehensive guidelines for financial due diligence, legal due diligence, operational due diligence and strategic due diligence. In general, cultural due diligence is not considered a requirement, but rather a best practice or option. SEBI's Business Responsibility and Sustainability Reporting (BRSR) requirements require listed companies to disclose ESG and while

⁴¹ Companies Act 2013, ss 230–232; Competition Act 2002, ss 5–6; Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011; Foreign Exchange Management (Cross Border Merger) Regulations 2018.

covering the social and governance disclosure, it covers cultural considerations, it does not specifically cover M&A due diligence.⁴²

The current regulatory requirements and industry practices leave a huge gap when it comes to cultural due diligence. Cultural Due Diligence is not mandatory for regulatory requirements. It's recognized in industry best practice, and is optional. This also leaves room for confusion regarding the extent of cultural due diligence and introduces the possibility for a buyer to buy without considering cultural fit.

- ***The Missing Dimension: Human Capital and Organizational Culture***

One of the biggest, most important, but frequently overlooked aspects of traditional due diligence is Human Capital. Human capital means all employees, management teams, organizational resources, knowledge assets and intellectual resources that contribute to business performance. Operational due diligence can focus on the number of employees and productivity, but it doesn't factor in the qualitative elements that can be crucial to an M&A being successful. The employees and management groups are the main actors to create a business value. The loss of staff after a merger can erode value at a faster rate than can financial obligations. Key leadership differences can hinder strategic implementation. Loss of knowledge can lead to loss of competitive edge.⁴³

The biggest missing factor is Organizational Culture. Culture is values, beliefs, norms, behaviours and practices that help determine how an organisation works. Decision making patterns, communication styles, leadership styles and employee engagement is determined by culture. The failure to play the role of culture in traditional theories leaves a gap in understanding. Financial due diligence looks at performance but not cultural drivers. Legal due diligence focuses on compliance not on cultural attitudes about compliance. Operational due diligence looks at efficiency, but not culture which may impact efficiency.⁴⁴

- ***Indian Context Complexity***

India's diversity contributes a lot of complexity. Organizational culture is shaped by several languages, religions, ethnicities and regional

⁴² Securities and Exchange Board of India, *Business Responsibility and Sustainability Reporting (BRSR) Framework* (SEBI Circular, 2021).

⁴³ . Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018); Dave Ulrich, *Human Resource Champions* (Harvard Business School Press 1997).

⁴⁴ John P. Kotter and James L. Heskett, *Corporate Culture and Performance* (Free Press 1992); Deloitte, *Global M&A Trends Survey* (2024).

cultures. Communication styles and leadership are influenced by regional cultures. The characteristics of family business are especially important; the family culture is incorporated into the organization culture. Organizations are shaped by the social hierarchy, which impacts on communication and decision-making.

- *Implications for M&A Success*

The human capital and human cultural dimension is a missing one that has a significant implication. In some cases, acquirers might buy based on positive numbers, but on the down side, cultural incompatibility is affecting performance. Valuation models can include financial value but exclude costs of cultural integration. Deal structures may mitigate financial risks but do not offer any means to deal with cultural conflicts. Post-merger integration plans can be based on business matching and largely disregard cultural needs. There may be a higher turnover rate as a result of cultural differences. Management styles can clash resulting in leadership conflicts. Cultural service changes can affect the relationship with customers.

- *Need for Integration*

There is a need to integrate cultural due diligence into the traditional frameworks. There is no room for case studies on cultural due diligence anymore. Case studies on cultural due diligence are no longer an option. Regulatory requirements mandating cultural due diligence as compulsory, industry standards that mandate cultural due diligence, due diligence processes that incorporate cultural assessment alongside financial/legal/operational assessment, and integration plans that incorporate cultural integration requirements are all components of integration. This integration would eliminate this critical gap, improve the success rate of M&A, deliver a full risk assessment, allow comprehensive decision making, and integrate regulatory requirements with best practice.

4. CULTURAL DUE DILIGENCE – CONCEPTUAL FOUNDATIONS AND SCOPE

4.1 Defining Cultural Due Diligence in M&A Context

Cultural Due Diligence (CDD) is the structured in-depth due diligence of cultural compatibility between two merging parties prior to the transaction. Financial due diligence is about assets and liabilities while CDD is about the "soft" aspect's values, behaviours, interpersonal

dynamics for post-merger success.⁴⁵ There are three main roles it plays: Risk Identification identifying when there is a conflict that can lead to attrition; Integration Planning for how to integrate the cultures; Value Validation ensuring that human capital is in place to support the deal. CDD turns culture into a quantifiable risk factor that will be used in the go/no-go decision, the valuation, and the deal structure.⁴⁶

4.2 Dimensions of Organizational Culture: Values, Norms, and Practices

CDD needs to evaluate the 3 interrelated layers of organizational culture. Values are the fundamental principles that promote behaviour (e.g., Innovation rather than stability; transparency rather than confidentiality). CDD determines if both parties have core principles that are aligned or not, as it is easy to get into strategic conflict here. Norms are unwritten rules that guide everyday interactions, including communication and how decisions are made, top-down vs. consensus, conflict resolution, etc. Norms are usually not obvious until they come into contact in the context of a merger, when there is friction. Practices are observable elements such as reward, meeting and performance management. But practices are only cultural if they are consistent with values, otherwise, CDD is faced with a contradiction to uncover when a company promises “innovation” but hates failure⁴⁷. These dimensions are influenced by the family context and hierarchy in India as well as regional variations.

4.3 Cultural Fit vs. Strategic Fit: Analytical Framework

Traditional M&A prioritizes strategic fit alignment of business models and market positions. But strategic fit isn't enough, without a cultural fit on values and norms. The quantitative measure of strategic fit is short term value (1 – 3 years)⁴⁸. Qualitative cultural fit - impacts over longer term (3-5+ years) - Loss of revenue risk; Qualitative cultural mismatch - impacts longer term (3-5+ years) - Risk of employee attrition and leadership conflicts. Strategic fit without cultural fit equals failed integration even if there is complementary product; cultural fit without strategic fit equals smooth integration with no value creation. CDD

⁴⁵ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017); Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* (2nd edn, Sage Publications 2001).

⁴⁶ Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005).

⁴⁷ Daniel R. Denison, *Corporate Culture and Organizational Effectiveness* (John Wiley & Sons 1990); John P. Kotter and James L. Heskett, *Corporate Culture and Performance* (Free Press 1992).

⁴⁸ Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018); Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017).

should be a part of strategic analysis and not an optional component.⁴⁹

4.4 Methodologies and Tools for Cultural Assessment

CDD uses mixed methodologies in assessing compatibility. Employee Surveys are a quantitative assessment of aspects such as cooperation and hierarchy but may lack the subtlety of the dynamics. Unwritten norms and power structures can be found through interviews and Focus Groups with employees at all levels, but are time-consuming and subjective.⁵⁰ Document Analysis is a process that analyzes mission statements and policy manuals for explicit values. Observation and Site Visits give live feedback on meetings and may suffer from the "observer effect. Social Network Analysis: Mapping relationships to uncover influencers and bottlenecks. Technology-Enabled Tools leverage AI to analyze communications and survey data to be scalable. In India, it is necessary to take an integrated approach including the use of culturally adapted tools and multilingual facilitators taking into consideration diversity.

What role did the internet play in the distribution of information in the Gulf War? How did the internet contribute to the dissemination of information during the Gulf War?

Increasingly, CDD is becoming institutionalized in international practice. A critical risk tool led by culture consultants, valued findings being incorporated into valuation models and terms of the deals. For EU, some member states include social/cultural factors in disclosure obligations that place a focus on stakeholder engagement. In Singapore, CDD is a best practice influenced by Asian dynamics making it a relevant model for India. Common good practices are: to incorporate CDD as part of the valuation process, to establish dedicated CDD teams for objectivity, to engage stakeholders throughout the process, to relate the findings to integration planning, and to do CDD at an early stage in the deal process. India can do so by requiring disclosure of CDD and having specific teams in place.⁵¹

⁴⁹ Alexandra Reed Lajoux, *The Art of M&A Due Diligence* (2nd edn, McGraw-Hill 2009); Deloitte, *Global M&A Trends Survey* (2024).

⁵⁰ Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005); Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017).

⁵¹ Alexandra Reed Lajoux, *The Art of M&A Due Diligence* (2nd edn, McGraw-Hill 2009); Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018).

4.6 Relevance in the Indian Context: Diversity, Hierarchy, and Governance

In India, the following three special factors are key to the importance of CDD. Diversity: India is a multi-lingual, multi-ethnic society, which gives rise to huge variations from region to region. A Mumbai company will be formal and hierarchical, while a Bangalore start-up will be informal and flat. CDD needs to consider the use of culturally adapted tools. Hierarchy: In some cases, the hierarchy of the organization may bear a resemblance to society with communication and decision making influenced by it. Family culture is present in family businesses and affects the leadership succession and employee relations. CDD needs to discover the dynamics in these interviews and through observation. Governance: Family businesses, public companies and startups have different practices for governance. CDD evaluates governance to gain an understanding of the relationship between culture and decision making and accountability.⁵²

4.7 Case Illustrations: Cultural Challenges in M&A Integrations

Vodafone-Hutchison (2007): Culture being the problem made it a failure, despite the strong strategic fit. The formal, hierarchical culture of Vodafone was at odds with the informal, entrepreneurial culture of Hutchison. There was a conflict and a lack of communication that caused more attrition and operational disruption that ultimately led to the exit of Vodafone. *Tata-Docomo (2008)*: Hierarchical, long-term culture of Tata was different from Docomo's aggressive, results-oriented culture, with an ethical policymaking process. Inefficiencies and the departure of Tata from telecom came about due to conflicts over strategy and leadership. *Tech M&A Failure (2015)*: An Indian IT company took over a start-up in the USA. The IT company culture was a hierarchical process culture versus the startup culture was flat and agile. High attrition rate and a high rate of divestment due to communication and decision-making conflicts. These cases prove strategic fit alone is insufficient. To avoid expensive failures, to assess early, and to plan integration, CDD is a must.⁵³

5. ENABLING CULTURAL DUE DILIGENCE IN INDIAN M&A PRACTICE

5.1 Status and Constraints of the adoption in India

⁵² Deloitte, *Global M&A Trends Survey (2024)*; Alexandra Reed Lajoux, *The Art of M&A Due Diligence* (2nd edn, McGraw-Hill 2009).

⁵³ Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005); Deloitte, *Global M&A Trends Survey (2024)*.

In Indian M&A, the implementation of Cultural Due Diligence is still voluntary, ad hoc and inconsistent. Most domestic transactions are generally not assessed, but it is usually done for large cross-border transactions or tech acquisitions where the stakes are high and human capital is a key element of the deal, and typically viewed as 'best practice'⁵⁴. There are three main barriers to systematic adoption:

Data Availability: Cultural information is subjective and cannot be measured. There is a lack of employee surveys and communication. Furthermore, in India, the linguistic diversity and concerns for privacy pose another challenge to data collection and thus to the setting of cultural baselines.⁵⁵

Expertise Gap: CDD needs special expertise in organizational psychology and cultural anthropology. India does not have a strong network of dedicated culture consultants. Most HR/legal advisors are mainly interested in financial/compliance issues and not cultural diagnostics, which means that the acquirers lack the ability to perform thorough CDD.⁵⁶

Institutional Inertia: CDD is not required by regulatory frameworks, and a series of conventions on due diligence focus on quantifiable parameters. To move towards CDD will involve breaking entrenched practice, changing regulations and retraining professionals will take time and cost, and will support the status quo, which means that CDD will not be mandatory despite its importance to deal success.⁵⁷

5.2 Best Practices, Stakeholder Roles, and Policy Recommendations

Specific tools are used during the leading M&A practice to operationalize findings from CDD. The Integration Charters are formal documents that define cultural integration goals, milestones and responsibilities, and identify which elements of culture will be preserved, aligned or transformed. The Culture Champions are a group of well-respected employees from both organizations who are tasked with leading the integration, communicating, and resolving conflict, with the aim of

⁵⁴ Deloitte, *Global M&A Trends Survey* (2024); KPMG, *M&A Due Diligence Insights*.

⁵⁵ Edgar H. Schein, *Organizational Culture and Leadership* (5th edn, John Wiley & Sons 2017); Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* (2nd edn, Sage Publications 2001).

⁵⁶ Mark A. Mendenhall and Günter K. Stahl (eds), *Mergers and Acquisitions: Managing Culture and Human Resources* (Stanford University Press 2005); Institute of Chartered Accountants of India, *Technical Guide on Due Diligence*.

⁵⁷ Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, John Wiley & Sons 2018); Alexandra Reed Lajoux, *The Art of M&A Due Diligence* (2nd edn, McGraw-Hill 2009).

achieving successful integration in India, they should come from different regions and backgrounds. Cultural Roadmaps are comprehensive 1–3-year plans that include initiatives and metrics to enable systematic tracking of integration success.

Efforts are likely to be successful if key stakeholders are given expanded roles. Cultural risk should be in scope for both Legal and Financial Advisors: Legal Advisors should ensure that there is a governance gap identified and that Financial Advisors have cultural risks incorporated into their valuation models. CDD is very challenging, especially in India, and Culture Consultants can help with that. India, on the other hand, requires M&A experienced organizational psychologists. HR Professionals are critical to implementation, to run the assessments as part of due diligence process and to carry out integration plans after the merger; they should be trained on CDD methodologies and promoted to become strategic M&A partners.

There is a need for institutionalization of CDD, regulatory and professional reform. Regulators (SEBI and MCA) should mandate disclosure of CDD in takeover offers and merger schemes, expand the definition of material facts to incorporate cultural risks, include cultural governance in the SEBI's BRSR ESG framework, and require cross-border mergers to have cultural compatibility assessments. There should be mandatory training and certification programmes to be developed by the Professional Bodies (ICAI, ICSI, NHRD) so that methodologies of CDD training and certification can become standardized and the cultural risk assessment will be incorporated in the ethical responsibility of the advisors. Industry Associations to demand institutional investors to carry out CDD, and also to build platforms for sharing experiences.

5.3 Standardized Framework and Future Technological Directions

A standardized model for the CDD in Indian M&A comprises of four steps that provide systematic and repeatable assessment. Phase 1 (Pre-Deal Assessment): Goal setting, data collection (surveys, documents), mapping cultures with frameworks (OCAI), gaps. Phase 2 (Risk & Valuation): Evaluate cultural risk, adjust deal valuation for attrition risk, and recommend contractual protections (retention clauses). Phase 3 (Integration Planning): Establish integration charter, identify cultural champions and build out cultural roadmap (initiatives and metrics). Phase 4 (Post-Merger Execution): Take action, monitor indicators, gather input and measure results. Consistency is guaranteed through the use of standardized tools, such as survey templates, interview protocols, analysis frameworks and reporting templates.

Traditional data and skills-gaps will be overcome by technology. AI Analytics will evaluate employee communications to offer culture

patterns (communication style, decision making) and automatically recognize conflicts. With Digital Platforms, you can conduct real-time surveys, collect data in multiple languages, and monitor the process after the merger. The Social Network Analysis maps the relationships within the organization for the purpose of identifying influencers and bottlenecks in the process of selecting culture champions. Predictive Analytics: AI models for cultural compatibility predictions to predict attrition and proactively retain. Yet, there are hurdles to be overcome: First, there's the issue of privacy and ethics, which must be taken into consideration, followed by the need to use Indian cultural information as training data for AI models, not just Western data, and lastly, the need for human oversight to interpret the nuances of the data. As these technologies continue to evolve, CDD will be more scalable, objective, and become part of the norm in M&A.

6 CONCLUSION AND RECOMMENDATIONS

6.1 Key Findings of the Study

This study concludes that cultural due diligence (CDD) is an important but under explored aspect of Indian M&A practice. The major conclusions are as follows: Although financial, legal and operational due diligence are compulsory and uniform in India, CDD is optional, adhoc and inconsistent. This gap between regulatory compliance and strategic success is highlighted by empirical data, which indicates that cultural incompatibility accounts for almost 30% of the M&A integration failures in India.

The three key observations of the study are that: (i) the existing legal framework (Companies Act, 2013; SEBI Takeover Code; Competition Act, 2002) focuses only on financial and legal aspects of material facts and disclosure, and does not include cultural risks; and (ii) the existing legal framework does not explicitly define material facts or disclosure requirements in relation to cultural risks. Secondly, in Indian M&A practice, practitioners are more concerned with numbers than with culture, as there is increasing recognition that cultural misalignment costs more than the monetary ones. Third, CDD is especially important in India given that there are unique contextual considerations, such as geographic diversity and the impact of organizations on organizational culture, as well as the family-owned business context where family culture is significant to organizational culture, and hierarchical social contexts that affect communication and decision-making.

The study also reveals that cultural findings are increasingly becoming a standard or mandatory part of international models (US, EU, Singapore) and are incorporated into valuation models and deal structures. India

has missed this opportunity to become part of the global best practices in developing CDD. Lastly, the study illustrates how implementing CDD can be achieved through common and standardized approaches such as integration charters, culture champions, cultural roadmaps, and how emerging AI and digital tools can support data collection and analysis at scale.

6.2 Recommendations for Corporates, Boards, and Legal Practitioners

For Corporates and Acquirers: Under the law, the regulatory regime is well-equipped to provide for extensive financial disclosure, legal compliance checking, and safeguards against market competition. This one, however, is based on the premise that financial and legal compliance will ensure a successful transaction, which is a false premise that is not supported by empirical evidence. In practice, acquirers are confronted with post-merger issues stemming from cultural incompatibility that cannot be uncovered and overcome through legal due diligence.

This disconnection comes in a number of forms. Finally, regulatory requirements have been established in the context of financial due diligence reports, but not cultural due diligence reports. SEBI disclosure rules require 'material facts', but they take a narrow view of what this means, excluding cultural risk. The Competition Commission of India considers market concentration but fails to take into account elements of internal organisation that influence in the long term on innovation and competition. Consequently, transactions are fully compliant with regulations but fail tactically because they lack cultural match. Transactions are therefore compliant with the rules, but strategically fail because cultural match is not achieved.

The synthesis demonstrates a complementary relationship between legal and practical insights. There is a need for legal frameworks to be developed to include mandatory disclosure of cultural risk, such as with ESG reporting. Practical CDD methodologies need to be harmonised and added to the current due diligence checklists, with cultural and financial/legal study taking place at the same time. Incorporating CDD into regulatory frameworks would make it more conducive to strategic realities and increase the number of successful M&A transactions as well as investor protection.

6.3 Changing Role of Cultural Due Diligence

Based on this study, the author suggests that cultural due diligence is not an option but a must to be successful in M&A in India. Not complying with the mandatory due diligence requirements and omitting CDD is a crucial difference between legal and strategic expectations and reality, leading to a high failure rate after the merger. Indian M&A is becoming

more sophisticated and CDD should shift from best practice to a legal requirement. The changing nature of CDD is indicative of the broader transformation of corporate governance from financial considerations to a broader view of value creation, from short-term compliance to sustainability, and from risk management to integration planning, done in advance of corporate events. CDD is at the heart of due diligence practices and is aligned with the ESG trends, stakeholder capitalism and technology-driven due diligence. To bridge the gap in CDD, regulatory reforms, professional capacity building, and corporate adoption are required in India. The disclosure of CDD should be compulsory by SEBI, MCA and RBI. Training and certification programs need to be created for professional bodies. Corporate CDD needs to be made institutionalized practice. The range of advisors' expertise needs to be broadened to cover cultural risk. Institutionalization of CDD can only happen through concerted action of all stakeholders. Technology and data-driven methods will be the future of CDD and will help bridge the gap of traditional CDD approaches. CDD will be scalable, objective and part of the normal workflow thanks to AI, digital platforms, and predictive analytics. As these technologies evolve, CDD will become more widespread and useful, allowing for Indian acquirers to have greater success in M&A transactions. Finally, acknowledging CDD as a legal obligation is indicative of a broader understanding of the key factors that drive M&A success: people, culture, and human capital. Institutionalization of CDD in India can help improve the corporate governance framework, safeguard investors' interests and make it a leader in the evolution of M&A practice. This time, the way to optional best practice to mandatory is through awareness, advocacy and action.

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