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## LEGAL BLACK SWANS & ORGANISATIONAL RESILIENCE: MANAGING UNFORCEABLE LEGAL RISKS

*Iram khan*

### INTRODUCTION

In today's volatile legal environment, a single judgement or policy shift not only disrupt your business but threatens the survivability of the entire organisation. This is the new world of Legal Black Swans that are those rare and unpredictable legal events with a mountain of consequences behind them. As coined in the context of financial systems by Nassim Nicholas Taleb, described 'Black Swan' as events that exist outside the regular expectations and carry impact of such surmount that can only be explained in hindsight. In his very own words he called these events as "outliers".<sup>1</sup> When applying such concepts to the legal world, the emergence of these events come in the form of unanticipated regulatory changes, unprecedented judgements, or sudden policy action, which in hindsight the organisations fail to interpret, often due to systematic ignorance or perhaps overreliance on more traditional models. This article attempts to explore the outlines of this concept and attempt in perhaps exploring methods to build organisational resilience against such unforeseeable legal risks.

### UNDERSTANDING LEGAL BLACK SWANS

Unlike predictable legal risks in form of legal breaches or contractual disputes, events that can be termed as legal black swans are such events that seem implausible until they actually step up on your doorstep and when they do they disrupt entire legal strategies or organisational frameworks in place. Recent judgements illustrate how legal black swans often emerge from judicial creativity, sudden and aggressive legal and regulatory shift, typically riding the wagon of changing public and political scenarios. One such judgment is the 2024 Supreme Court

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<sup>1</sup> Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable* (2d ed. 2010).

judgment on declaring entire electoral bond scheme as unconstitutional, unsettling the unsuspecting corporate donors and political stakeholders.<sup>2</sup>

### **WHAT MAKES LEGAL BLACK SWANS SO DANGEROUS?**

Perhaps the first and foremost reason to fear the legal black swans are the standard risk tools and their continued use and focus on what had gone wrong in the past as they still can't assume that a future unprecedented event like a legal black swan can take place which make these events as rare yes, but extreme as well. Secondly such events have a sort of ripple effect. The impact of these events are not limited just one area but cause a chain reaction. They disrupt everyday operations, damage reputation of the organisation and lead to major financial losses at once. Thirdly the corporate mind-set where the companies often think that as long as they follow the current law, they are safe from such unlikely events but they fail to realize that laws are dynamic which means that simply following the rules might not be enough. This very well establishes itself to the concept of global developments as well, a sudden policy change in perhaps in one country can quickly affect businesses operating globally, even if they are based in the other country.

### **ORGANISATIONAL RESILIENCE: A LEGAL IMPERATIVE**

A resilient organisation must form a perspective that is proactive in its legal strategy. Organisational resilience is the capacity of the systems created in order to mitigate risk, absorb shocks and eventually adapt while continuing to function. While the concept of such resilience is already well established in disaster management and cybersecurity its application however is still embryonic.

#### **1. Scenario-Based Legal Forecasting**

What is required is for the legal practitioners to apply hypothetical methodology and create scenarios where such legal black swans can emerge and through such scenario planning they can mitigate these risks and save the organisation from disaster. This very method was seen in action in proactive companies like Microsoft and Amazon already adopting standard contractual clauses when the European Court of Justice invalidated the EU-US privacy shield in schrems II, effectively anticipating the shift.<sup>3</sup>

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<sup>2</sup> Ass'n for Democratic Reforms v. Union of India, W.P. (C) No. 880/2017 (Supreme Court of India, decided Feb. 15, 2024).

<sup>3</sup> Facebook Ireland Ltd. (Schrems II), 2020 E.C.R. I-559.

## 2. Cross-Functional Legal Risk Committees

In the unprecedented walk of such situations, often stemming from product design, marketing claims, or vendor and other contracts are the very areas where the lawyers appear too late to save the situation. It's very crucial to understand that resilience is not just the responsibility of the legal department alone. The lawyers and legal teams alone don't carry the burden of such events as it is important for organisations to create cross-functional risk committees, bringing together legal, and compliance strategy and technology teams.

## 3. Legal Tech & Real-Time Compliance Tools

Applying advanced AI-based legal research platforms such as Manupatra AI, or CaseMine allow lawyers to spot early warning signs of changing legal interpretations. Often using Natural Language Processing (NLP) to analyse court rulings and draft laws, allowing organisations to identify upcoming trends in legal world before they become part of the law. For example consider the new Draft India Bill which highlights a growing focus on holding algorithms accountable. In this context, companies that use AI must actively examine how they collect and manage data to prepare for future legal scrutiny.<sup>4</sup>

## 4. Shadow Regulation & Informal Law Awareness

Today regulatory changes often emerges not just through laws or court rulings, but via informal signs such as press briefings, circulars, and policy papers. Though not legally binding, these forms of "Soft Law" or grey literature have heavily influenced future legal developments. The consultation paper and working group reports issued frequently by SEBI and RBI have an active role in shaping upcoming rules. Similarly, NITI Aayog's strategy documents often work as guidance to national policy on emerging issues like AI and digital governance.

# **INSTITUTIONALISING LEGAL RESILIENCE: LESSONS FROM INDIAN & GLOBAL JURISPRUDENCE**

## A. India's Environmental Jurisprudence

The case in 2023 that of T.N. Godavarman, the Supreme Court of India restricted several infrastructure and mining projects in eco-sensitive zones under the 'precautionary principle.'<sup>5</sup> The important aspect to learn from this case is that environmental and social risks must be baked into legal due diligence and not treated as peripheral.

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<sup>4</sup> Ministry of Electronics & IT, Digital India Bill: Consultation White Paper (2023), <https://www.meity.gov.in>.

<sup>5</sup> T.N. Godavarman Thirumulpad v. Union of India, (2023) SCC Online SC 97.

## B. U.S. Abortion Ruling Case.

It came as a huge surprise when the U.S. Supreme Court reversed *Roe v. Wade*, and in the hustle bustle American companies were unprepared to navigate employee welfare, relocation, and benefits policy.<sup>6</sup> Though not a corporate ruling, the sudden reversal of a 50-year precedent forced major companies to revise health benefits, relocation policies, and internal codes of ethics. And those companies that had a flexible HR legal framework seemed to adjust faster to the event. We can understand that legal resilience isn't just about compliance and legal shifts are rooted in socio-political ideology that can change or reshape organisational ethics and the operational law overnight.

### **RESILIENCE FOR ADVOCATES AND LAW STUDENTS: GAINING A PROFESSIONAL**

In the legal landscape defined by unpredictability and fast paced transformation, the ability to anticipate legal black swans is an invaluable asset for young lawyers and law students. Those who can foresee such legal disruptions such as Landmark judgements, regulatory overhauls, or emerging grey areas can gain an advantage, positioning themselves as not just competent practitioners but critical thinkers who are prepared for the unforeseen.

### **HOW CAN THIS RESILIENCE BE CULTIVATED?**

1. To understand and effectively anticipate complex legal risks, the new age lawyers must broaden their academic horizons. The integration of legal studies with interdisciplinary learning methods consisting of subjects like geopolitics, climate change, behavioural economics, technology policy, and even psychology helps build a holistic understanding of the forces that shape the legal development.
2. Another important skill-set to integrate are the mastery in legal analytics. Tools such as CaseMine, and SCC Online can reveal trends in judicial reasoning, successfully identifying shifts in legal doctrines offering a predictive insight that go beyond manual legal research.
3. Instead of focusing only on the settled part of law, students must allow themselves to be challenged and participate in moot problems and mock policy challenges that tackle speculative or future-facing questions, such as AI rights or climate change and litigation for instance.

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<sup>6</sup> *Dobbs v. Jackson Women's Health Org.*, 597 U.S. \_\_\_\_ (2022).

4. And what better way to develop such skills than to engage and work with platforms like Vidhi Centre for Legal policy, J-PAL, or Nyaaya exposing law students to real-world legal policy making. These fellowships allow them to contribute to the design of laws and frameworks that pre-empt future legal crises.

Now as we establish that such resilience could be holistically built, by embracing these approaches, aspiring legal professionals can build the resilience and foresight necessary to thrive in a future where legal certainty is no longer guaranteed.

## **CONCLUSION**

Legal black swans are not just academic curiosities; they are real, recurring, and increasingly disruptive in a world where law, technology, and politics are in constant flux. While we cannot predict the exact nature of the next legal upheaval, we can — and must — build institutional and professional resilience to absorb their shocks. For law students, this means training not just for the next exam or moot, but for the next doctrinal earthquake. For organisations, it means investing in legal foresight as a strategic imperative, not a regulatory afterthought. In a future shaped by uncertainty, those who anticipate and adapt will lead. The ability to absorb shocks, adapt quickly, and lead through uncertainty will define the next generation of legal professionals and institutions. Preparedness isn't optional—it's essential.