## Index

adoption process actors, 16 compatibility and legitimacy, 27, 144 continuation beyond initial enactment, 43 effect on implementation, 16 engagement of judiciary, 183, 189 India, 53, 148 India and Pakistan. Comparison, 42 institutions, 15–16, 187 Pakistan, 46 Pakistan. Impact, 119 pre-conditions of transfer, 16 Afghanistan, 61 Afghanistan Competition Act 2011, 61 competition enforcement strategy, 61, 209 Constitution of Afghanistan 2004, 76 draft Afghan Act, See Afghanistan Competition Act 2011 India in adoption process, 76 political turmoil, 76, 210 US Department of Commerce, 207 WTO, 76 anti-monopoly legislation constitutional scheme in Pakistan, India constitutional scheme, 31 Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970, See Pakistan Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970 Monopolies and Restrictive Trade Practices Act 1969, See India, Monopolies and Restrictive Trade Practices Act 1969 scheme in the Pakistani Constitution, 33

UK Monopolies and Restrictive Practices (Inquiry and Control) Act 1948, 32 Asian Development Bank (ADB), 74 Bangladesh, 59 adoption strategy, 78 anti-monopoly regime, 69 Bangladesh Competition Act 2012, 59 competition advocacy, 213 competition authority, 60, 212 competition enforcement, 199-200, 205-6 competition enforcement strategy, 60 DFID Report, 70-71 e-commerce policy framework, 232 equitable competition, 70-71 India in adoption process, 70, 72, 79 pre-conditions of transfer, 63, 69-78 World Bank assistance, 71 WTO, 68-69 Bhutan, 61 commercial laws, 65 competition enforcement, 200, 207 Competition Policy 2015, 62 Competition Policy 2020, 62 Consumer Protection Act 2012, 62, 77 e-commerce policy framework, 232 Gross National Happiness (GNH), 75 India relationship, 76-77 India role in adoption, 77 National Competition Council, 62 Office of Consumer Protection. role of, 62 pre-conditions of transfer, 76 bottom-up, participatory and inclusive institutions, 16

bottom-up, participatory, and inclusive institutions Bangladesh, India, Maldives, Sri Lanka, 191 Bangladesh, India, Sri Lanka, 81 Bangladesh, Maldives, Sri Lanka, 214 compatibility and legitimacy, 26 economic growth, 237 legitimacy, 25 role in India, 53, 112, 143, 185, 194 role in Pakistan, 194, 214 theory, 14, 81 CCI, See Competition Commission of India CCI orders abuse of dominance, 100 anti-competitive agreements, 100 bid-rigging, 122-24 challenged before general courts, 100, 106 complaints v. suo motu notices, 102-3 leniency, 131 presumption of AAEC, 139 relevant turnover, 146 reliance on EU and US materials, 130 reliance on materials, 99, 103, 137 sanctions, 99, 104 sectoral distribution, 100, 110 source of initation, 99 vertical agreements, 131-35 CCP. See Competition Commission of Pakistan CCP orders abuse of dominance, 100 anti-competitive agreements, 100 bid-rigging, 122, 125, 129 cartels, 156 challenged before general courts, 100, 106, 156 complaints v. suo motu notices, 102-3 impact of challenges before courts, 179 reliance on EU and US materials, 138-39 reliance on materials, 99, 103, 137 sanctions, 87, 99 sectoral distribution, 100, 110 source of initiation, 99 vertical agreements, 135-37 coercion Bangladesh, 78 Competition Ordinance 2007, 43 contractualisation, 10 definition, 9 impact, 49, 51, 137, 140, 193-94, 215 link with legitimacy, 214 Maldives, 80 Nepal, 78 Pakistan, 46, 112, 144, 150, 189, 214, 219

penal strategies, 147 Sri Lanka, Bangladesh, Maldives, 207 comparative law, xxix compatibility, 21 defining 'context', 3 domestic and international legitimacy, legal transplants, 2, 7 role of actors, 7 significance of context, 4-5 compatibility adoption process, 17 generating compatibility, 1-2, 27 Law and Development movement, 1 meaning, 21 compatibility and legitimacy, 240 connections between, 26 dynamic or static, 26 impact on implementation, 27, 97, 166 interaction between adopted and pre-existing legal systems, 183 penal strategies, 165 qualitative and relative concepts, 27 South Asian Six, 80, 201-2, 207 success in implementation, 194 virtuous cycle, 189 competition advocacy, 240 India, 147, 196-97 Nepal, 213 Pakistan, 50, 159, 197 Raghavan Committee, 47 role in implementation, 240 Sri Lanka, 213 competition authority Afghanistan, 201 Bangladesh, 199 Bhutan, 200 India, See Competition Commission of India Maldives, 209 Nepal, 199 Pakistan, See Competition Commission of Pakistan Sri Lanka, 57, 199, 202, 212 structure, mandate and composition, 86 Competition Commission of India cartels, 120 commencement of operations, 85, 187 composition, 88 decision making process, 90-91 digital platforms, 234-35 e-commerce study, 235 established, 84 interactions with general courts, 97, 178 interpretive strategy, 110, 137-39 mandate, 87

penal strategy, 145 penalties realised, 152-53, 166 performance, 86, 96, 98, 100 sanctioning strategy, 106, 110 structure, 86 structure, mandate, composition, 85-86 types of orders, 89 Competition Commission of Pakistan cartels, 120, 125 composition, 88-89, 194 deceptive marketing practices, 87 decision making process, 90-91 digital platforms, 223-36 established and operationalised, 85 interactions with general courts, 96-97, 178 interpretive strategy, 110, 137-38, 140 mandate, 87 penal strategy, 145 penalties realised, 147, 152, 166 performance, 96, 98, 100, 109 sanctioning strategy, 106, 110 structure, 86 structure, mandate, composition, 85-86 types of orders, 89-90 competition enforcement social objectives, 242 South Asia. Benefits, 225-26 South Asia. Inequality, 225 South Asia. Poverty, 241 South Asia. Scope, 240-42 South Asia. Social objectives, 225 South Asia. Strategies, 240 South Asian Six. Role of government, 197-208 Sri Lanka, 203 competition enforcement pathway effect of Indian Tribunal, 189 India, 92 India and Pakistan, 170 Indian Competition Appellate Tribunal, 44 intervention in India, 111 intervention in Pakistan, 111 interventions in India and Pakistan, 94 Nepal, 59 Pakistan, 92 role of Pakistani Tribunal, 150 role of Tribunals. India and Pakistan, 148-51 Sri Lanka, 57-58 Competition Ordinance 2007, 149, 177, 183-84, 188, 192 constitutionality, 40, 186 enforcement scheme, 149 legislative procedure, 40 legitimacy, 53 Manes Report, 49-51

promulgation, 85, 112, 184 Sindh High Court Bar Association case, 45 Competition Ordinance 2009, 149, 193 Competition Ordinance 2010, 149, 193 Constitution of India 1950, 29 Article 226, 170 Constitution of Pakistan 1973 Article 199, 170 Constitutional petitions grounds for filing. India and Pakistan, 170-84 grounds in first phase Pakistani petitions, 157 India, 94, 180 India adequate alternate remedy, 185 India and Pakistan, 97 Pakistan, 94, 176, 180 Pakistan cement cartel, 178 Pakistan first phase petitions, 176-77 Pakistan second phase petitions, 177 Pakistan. Principle of adequate alternate remedy, 186 Pakistani Tribunal. Impact, 158, 186 response of Indian courts, 107, 174, 180 response of Pakistani courts, 107, 157, 181 deliberation-enactment-implementation continuum adapting, xxvii compatibility and legitimacy, 20 deliberation phase, 19 enactment phase, 19 implementation stage, 20 modular and adaptable, 20 theoretical framework, 16, 18-19 Department for International Development (DFID), 70-71, 76, 80 Nepal, 72 developing countries, xxviii, 224 adopting western laws, xxviii challenges for competition authorities, 222 lessons from the South Asian experience, xxix privacy concerns, 233 Diffusion and transfer, 8 adapting mechanisms for law, 11 coercion, 9, 11 comparative law, 8-9 contractualisation, See coercion convergence, 215 emulation, 11 legitimacy, 12 link with implementation, 219 motivation, 11 pattern finding v. process tracing, 8 pre-conditions of transfer, 21

Diffusion and transfer (cont.) regulatory competition, 11 role of institutions, 17 similarities between, 7–8 *socialisation*, 11 typology of mechanisms, 12, 18

economic growth and development, 240 Bangladesh. Preamble Bangladesh Competition Act 2012, 223 Indian Competition Act 2002. Preamble, 223 South Asia. Preambles of legislation, 223 economic growth competition enforcement South Asia, 242 *emulation*, 10, 41, 43, 46, 78 contrast with learning, mimicry, *socialisation*, copying, lesson-drawing, cost-saving and problem-solving, 10 India, 120 India and Pakistan, 52 international legitimacy, 52 Pakistan, 110

Government of Pakistan 1935, 31

hiatus stage, 196 Brahm Dutt case, See Brahm Dutt case experience in India, 196–97 experience in Pakistan, 197 factors in utilisation, 211–12 links with success, 210–11 utilisation, 213

## India

Brahm Dutt case, 47, 84, 148, 183 Competition Act 2002, See Indian Competition Act 2002 delay in court system, 181 draft Competition Bill 2020, 223-35 e-commerce policy framework, 228-29 e-commerce sector, 226 judicial institutions, 30 legislative institutions, 30 Raghavan Committee, 35, 38, 40, 47-48, 82, 112, 142, 144, 147, 193, 208 India and Pakistan adoption process. Comparison, 192 compatibility and legitimacy, 52-53, 96 competition enforcement pathways, 92-93, 168-70 competition enforcement systems, 148, 165 competition legislations. Comparison, 47 competiton enforcement pathways. Comparison, 93 institutions, 185 interactions with general courts, 169-72, 178

interpretive strategies. Comparison, 140 penal strategies, 143 performance of competition authorities. Comparison, 98-99, 196 pre-conditions of transfer. Comparison, 192 Indian Competition Act 2002, 192 2007 amendment, 44, 48, 148, 183, 196 2017 amendment, 44, 46, 148 adoption process, 41 agreement, 121 appreciable adverse effect on competition (AAEC), 115, 117 Brahm Dutt case, 43-44 cartels, 115 comes into force, 84 Commission Fund, 86 content, 48-49 enactment, 39, 48 horizontal agreements, 117 Indianization, 112, 119-20, 140, 144 international legitimacy, 40, 53 motivations for adoption, 35-36 pre-conditions of transfer, 32 presumption of AAEC, 115, 117, 120-21, 123-25 role of government, 87 section 27, 145 section 3, 115-17, 119-20, 122 Selection Committee, 88 vertical agreements, 117 Indian Tribunal, 87, 97, 148, 158, 160, 185 2007 amendment, 44 appeals from CCI orders, 152 Brahm Dutt case, 148 established and operationalised, 94, 148 interactions with general courts, 168 replaced by NCLAT, 44, 148-49 role in competition enforcement, 154 International Finance Corporation (IFC), 71 International Monetary Fund (IMF), 71, 222 Bangladesh, 74 conditionalities, 223 South Asia. First and second generation reforms, 2.2.2

Jones Day, 119, 144, 188

Law and Development movement, 1, 17 legitimacy, 165 adoption process, 17 attributes, 22 consent, 25, 27 dimensions of, 23 domestic legitimacy, 12, 140, 147, 183, 186, 215 enforcement, 24 formal and functional legitimacy, 23

international legitimacy, 23, 141, 147 justice, 23-24 leveraging, 24 relationship with democracy, 23 reputational effect, 24 significance, 24 sources, 22, 25 South Asian Six, 208 substantive legitimacy, 23 life cycle of a statute, 15, 17 Locke, John, 25 machinery of justice, 6, 21 Maldives, 60 adoption process, 80 Competition Act 2020, 60 competition enforcement, 206-17 Constitution of Maldives 2008, 74 e-commerce policy framework, 232-33 enforcement authorities, 60-61 mandate of the Act, 61 pre-conditions of transfer, 72 Strategic Action Plan 2019-2023, 74 World Bank projects, 74 WTO, 72, 74 multilateral agencies, xxix, 80-82, 119, 191-92, 199, 204, 210, 222 impact in Nepal, 78 role in law reform in South Asia, xxix-xxx Nepal, 58 adoption process, 73, 78 competition advocacy, 213 competition enforcement, 59, 199, 205, 212 Competition Promotion and Market Protection Act 2063, 58 e-commerce policy framework, 231-32 India in adoption process, 72 national productivity, 224 Nepalese Act, See Competition Promotion and Market Protection Act 2063 Nepalese Act. Mandate and powers, 76 pre-conditions of transfer, 72-73 SAWTEE report, 204 WTO, 72-73 New Institutional Economics, 13 adapting institutional blueprints, 14 compatibility, 21 compatible institutions, 13 defining institutions, 13 extractive institutions, 14 inclusive institutions, 14 institutions as technology, 14-15 institutions include legal institutions, 15 North, Douglas C, 13

OECD, 76

Pakistan Competition Act 2010, See Pakistani Competition Act 2010 Competition Appellate Tribunal, See Pakistani Tribunal Competition Ordinance 2009, 45 Competition Ordinance 2010, 45 Constitution of Pakistan 1956, 31 Constitution of Pakistan 1962, 31 Constitution of Pakistan 1973, 33 delay in court system, 181 e-commerce policy framework, 230-31 judicial institutions, 34 legislative institutions, 33 Manes Report, 49, 142 penalties realised, 159 pre-conditions of transfer, 34-36 Sindh High Court Bar Association case, 45, 177 World Bank team, 38–39, 82 WTO, 119, 144 Pakistani Competition Act 2010, 150 agreements. Definition, 117 anti-competitive agreements, 117-18 Commission Fund, 86 economic efficiency, 224 object and effect, 126-28 role of government, 87-88 Pakistani Tribunal, 97, 162, 166 contrast with Appellate Bench, 52, 87 established and operationalised, 94, 150, 186 history, 150 interactions with general courts, 168 performance, 158, 162-63 regulatory competition, 41, 43 impact in Pakistan, 46 in South Asia, 237-40 India and Pakistan, 52 international legitimacy, 41 Rodrik, Dani, 13, 21 Sacco, Rodolfo, xxv socialisation, 218 compatibility and legitimacy, 111 distinct from emulation, 10 India, 45, 119, 147, 189 India. Impact, 47, 143, 193-94 learning as, 10 Maldives, 80 Nepal. Impact, 78 Pakistan, 112 Pakistan. Impact, 51

socialisation (cont.) Sri Lanka, Bangladesh, Maldives, 208 Sri Lanka. Impact, 78 South Asia adoption processes. Comparison, 79 B2B e-commerce, 228 B2C e-commerce, 228 comparing competition legislation across region, 64 competition as consumer protection, 224 competition experience, 218 convergence of competition laws, 215 e-commerce potential, 226 economic growth and development, 220, 240 Gross Domestic Product (GDP), 220 historic relationship amongst countries, xxvi IMF and competition reform, 222-23 impact of regional developments, 237-40 income inequality, 221 pattern of diffusion and transfer, 214 political and economic power, 224 privatisation, 221-22 South Asian Six, 56 state control and central planning, 221 status of competition laws, 63 sustainable and inclusive growth, 240 WTO, 80 South Asian Six, 61 adoption processes, 78 compatibility and legitimacy, 80, 82 competition laws. Success, 81, 83, 209-10 diffusion and transfer mechanisms, 201 e-commerce and privacy, 236 hiatus stage, 211 pre-conditions of transfer, 63 role of India, 215 role of institutions, 207 WTO, 81 Sri Lanka, 57 adoption process, 68-69, 198 competition advocacy, 213 competition legislation, 57 Consumer Affairs Authority Act 2003, See Sri Lanka competition legislation e-commerce policy framework, 230 Fair Trading Commission Act 1987, 68 focus on consumer welfare, 202 pre-conditions of transfer, 63 socialisation, 78 The World Bank. Technical assistance, 68 United States in the adoption process, 68 WTO, 68 success of competition laws benchmarks, 17, 96 India and Pakistan, 166

India. Evaluation of benchmarks, 111 role of governments, 237 role of interaction with genereal courts, 188 Supreme Court of India, 166-67, 181, 189, 193 appeals from Indian Tribunal, 160 competition decisions, 160 role in competition enforcement, 154, 190 Supreme Court of Pakistan, 162, 166, 178-79, 181, 184, 186, 190 appeal in 1-Link case, 163 appeals from orders of Pakistani Tribunal, 163 competition appeals, 158 The World Bank, 37 Bangladesh, 71 Maldives, 73 Pakistan. Adoption process, 144 Pakistan. Manes Report, 49-51 Pakistan. Technical assistance, 38-39, 43, 119, 147, 188, 193 Sri Lanka report, 203 Sri Lanka. Technical assistance, 68 top-down and exclusive institutions, 16 coercion, 49, 214 compatibility and legitimacy, 112, 147, 214 competition enforcement, 219 Nepal, 78 Pakistan, 53, 186, 193-94 Treaty of Functioning of Europe (TFEU), 116 Article 101, 118 Article 101(1), 116 de minimus rule, 116, 126, 138-39 UNCTAD, 37, 76-78 engagement with Bangladesh, 70 Nepal, 72 Sri Lanka review, 203 UNDP, 74 United Nations, 220 US antitrust jurisprudence, 121 per se rule, 126–27, 139 Sherman Act 1890, 115-16 Weber, Max, 24 World Trade Organisation, 191 Afghanistan, 76 Bangladesh, 68-69 India, 36, 40 Maldives, 72, 74 Nepal, 72 Pakistan, 37, 41, 119 role in diffusion of competition laws, 201 South Asia generally, 80 South Asian Six, 198 Sri Lanka, 68