



SIRC MYSURU CHAPTER

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March, 2024
239th Edition

Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इदंकारं कृतं त्वात्के. ब्रह्मैव तेन कृते ज्ञान।

Mission

"To develop high calibre professionals facilitating good corporate governance"

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Inside this Issue

COLUMNS

03 From Chairman's Desk

05 Chapter Activities

27 Food for Thought

29 Tech Corner

31 Students Corner

33 Verdict Vistas

38 Regulatory Update

Check Out the New Column "Verdict Vistas"
Exploring Orders and Judgements

ARTICLES

08 Audit Committee: Ensuring Governance in Related Party Transactions

15 Construction Laws

20 A Brief Overview of India's New Criminal Laws

23 Women Education in India



CS Padmanabha V
CHAIRMAN
MYSURU CHAPTER

P

ear Professional Colleagues

I wish happy women's day to all the women!

My hearty congratulations to all those students who have succeeded in the recently announced December 2023 exam results. And good luck for the students who could not clear the exams at this attempt.

During the month of February 2024 our Chapter has conducted its 21st Batch of One Day Orientation Program on 15th February 2024 at chapter premises, 46 students attended the Orientation programme, and on Saturday the 17th of February, 2024 Study circle meeting was conducted on an interesting topic "Producer Companies" CS. Sangeetha Purushothama, Practising Company Secretary, Mysuru handled the session.

The Mysuru Chapter has participated in Commerce Education Conclave/Fair 2024 at Haranahalli Ramaswamy Institute of Higher Education, located at Hassan for 2 days starting from 23rd February 2024 and 25th February 2024, in order to spread awareness about our Company Secretary course. The managing committee members addressed the students and spoke about the Company Secretaryship Course and the opportunities.

Our Chapter is organising 2 days non-residential seminar on "Role of CS in Financial Services Companies" on 29th and 30th of March 2024. We invite all members and students to attend this seminar and make it a grand success.

The students have already started their preparation for the Annual event of our Chapter, Umang 2024, which is scheduled in the month of April 2024. I request all the students to take part actively in the event. Looking forward to seeing you all at the event in good numbers.

Thanking you,



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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Toastmasters



ICSI Mysuru RoyalPro Toastmasters Club

The Symphony of Eloquence: A Toastmasters Tale

In the heart of every Toastmaster, there's a tale untold, a message unspoken, an experience unshared. The Club Level Speech and Evaluation Contest is not merely an event; it's a grand festival, a jubilant celebration of the spirit of communication and leadership that Toastmasters International cherishes.

The Contest: A Journey of Growth

The journey begins at the club level, where members rise to the occasion, delivering their finest speeches or insightful evaluations. It's a golden opportunity for growth, learning, and showcasing one's skills in a nurturing environment. The champions of the club contests ascend through Area, Division, and District levels, with the International Speech Contest victors advancing to the World Championship of Public Speaking®.

Speech Contest: The Stage of Articulation

The Speech Contest serves as a stage where contestants present a five- to seven-minute speech on a topic of their choosing. It's a trial of their ability to weave a message that is not only lucid and succinct but also compelling and captivating.

Evaluation Contest: The Craft of Constructive Criticism

In the Evaluation Contest, contestants witness a test speech and then present a two- to three-minute evaluation. It's a practice in critical listening, analytical thinking, and delivering constructive feedback that can foster a fellow Toastmaster's growth.

The ICSI Mysuru Royalpro Toastmasters Club Contest

On the 2nd of March 2024, we orchestrated the club level contest as described above, with a diverse array of participants in both the speech and evaluation contest. The entire contest was brimming with enthusiasm from all role players, from the contest chair and the master to the judges, the contestants, and other role players. It fills our club with immense pride to announce that TM Pracheta, TM Parvati and TM Harsha emerged as top three winners. TM Pracheta and TM Parvati will be moving to next level at the Area level contest.

The Audience: The Silent Learners

As a member of the audience, one experiences a spectrum of speeches, each with its unique essence and message. It's an opportunity to learn, not just from the speeches, but also from the evaluations, which offer a kaleidoscope of perspectives on what constitutes an effective speech.

Conclusion: The Toastmasters Experience

The Club Level Speech and Evaluation Contest is more than a competition; it's a cornerstone of the Toastmasters experience. It's the arena where members challenge themselves, hone their skills, and take a stride closer to becoming the communicators and leaders they aspire to be.

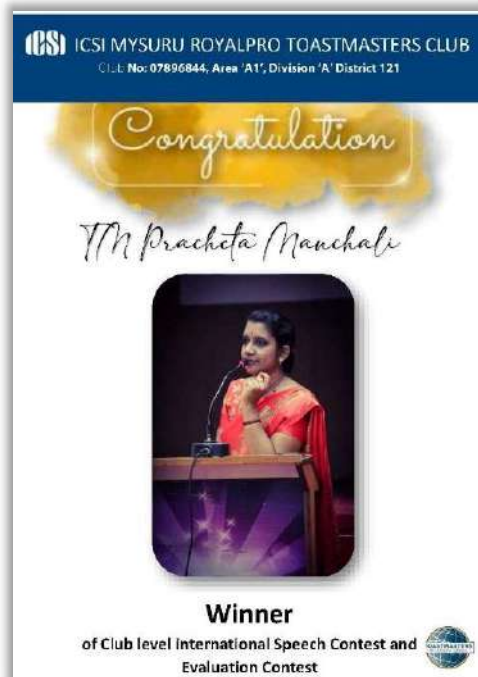
If you are interested in joining our Toastmasters club and reaping its benefits, please do get in touch with the club President TM Harsha A 99868 - 32814 or Chapter Chairman TM Padmanabha V at 99645 - 77199 (only through WhatsApp please). We would love to have you as part of our family!

Club Contest group photo



Winner of ISC and Evaluation contest – TM Pracheta

Level Completion - TM Komal Kumar



Level Completion - TM Harsha A



STUDY CIRCLE MEET SUMMARY

Study Circle meet held at the Premises of Institute of Company Secretaries of India Mysuru Chapter on 17-02-2024 at 4.00 pm in the manifestation of CS Padmanabha V. Chairman of ICSI Mysuru Chapter and with the presence of members and student of the Institute. Event was led by the Speaker CS Sangeetha Purushothama under the concept of the PRODUCER COMPANIES.

The meet started with the introduction of the speaker CS Sangeetha Purushothama. Meet proceeding proceeded as follows:

1. Introduction about the Producer Companies
2. Objectives of the Producer Companies
3. Formation & Membership

For the formation of the producer companies' objectives to be included in the companies document Articles of Association and Memorandum of Associations were explained in detailed with examples.

4. Rights of the members, terms and conditions for the Producer Companies.
5. All the Clauses of the MoA and AoA were explained with the details of the restrictions of the activities of the Producer Company, management of the company.
6. Directors Power, Functions, Vacation of the office, meetings were explained
7. Secretarial status and Secretarial works in the Producer Company.

After the explanations with the examples for each section, the speaker Concluded the Speech and it was followed by the discussion of practical difficulties facing in the documentations of the formation, and continuous working with the Producer Companies by the Company Secretaries in the day-to-day transactions. It was an active participation by all members and students.

The meet is completed the proceedings at 5.30pm, with the cordial show of gratitude to the Speaker for the beautiful and lively session.



One Day Orientation Programme

Mysuru chapter of the ICSI has conducted its 21st ODOP Batch on 15th Feb, 2024 at chapter premises. 46 students attended. CS Krishne Gowda C, Vice Chairman, CS Abhishek Bharadwaj A B, Secretary, and CS Padmanabha V, Chairman and Mr. V.S.Raju, Executive Officer handled the sessions and participation certificates was issued to the Students.



Commerce Education Enclave/Fair 2024

We are happy to inform you all that as part of creating awareness about our Company Secretary course, Mysuru Chapter of ICSI had participated in Commerce Education Conclave/Fair 2024 @ Haranahalli Ramaswamy Institute of Higher Education, located at Hassan for 2 days starting from 23rd February 2024 and 25th February, 2024. Nearly 10 Commerce Educational Institutions participated in the Enclave.

CS Abhishek Bharadwaj A B, Secretary, CS Phani Datta, Immediate past Chairman, CS Padmanabha V, Chairman, CS Krishne Gowda C, Vice Chairman, CS Janhavi A N and CS Arunkumar M G, Members of Managing Committee addressed the students and spoke about the Company Secretaryship Course and the opportunities.



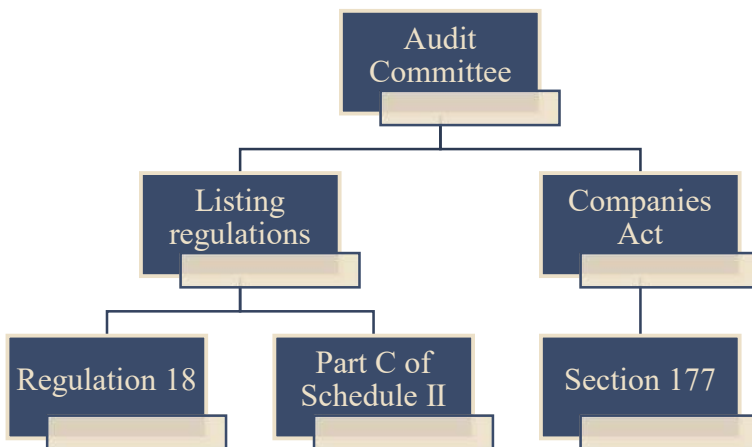
Audit Committee: Ensuring Governance in Related Party Transactions

Introduction:

The Audit Committee, a pivotal arm of the Board of Directors, plays a critical role in enhancing the governance framework of an organization. Endowed with distinct responsibilities, this committee stands apart in its capacity to ensure the integrity and transparency of financial reporting and corporate governance practices.

The effectiveness of the Audit Committee is underpinned by its composition. Members who are independent and possess the requisite qualification as stipulated under SEBI (LODR) Regulations, 2015 ('the Listing regulations') and the Companies Act, 2013 ('the Act'). These regulations ensure that the committee is equipped with Independent Director who provide an independent, objective and effective oversight, a crucial aspect for fostering trust among stakeholders.

In the complex landscape of corporate management, the Audit Committee's vigilance in overseeing related party transaction is paramount importance. Such transactions are prone to conflict of interest, demand scrutiny to prevent mismanagement and uphold corporate ethics. Through its diligent oversight, the Audit Committee ensures that governance practices are not only adhered to but are also effective in safeguarding the organization's interests and maintaining market confidence.



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In order to

demonstrate that the director/s acted in good faith and with reasonable care and diligence, it is very important that Audit Committee documents are reasoned properly, i.e., records in the minutes about the process followed by it while approving related party transactions or while granting any other approvals”

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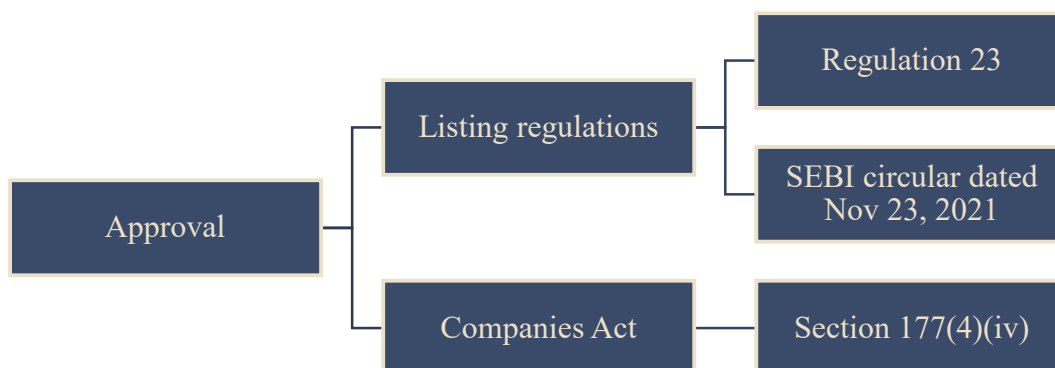
Regulatory provisions on Audit Committee:

Regulation 18 of the Listing regulations and Section 177 of the Act lays down following provisions related to Audit Committee: -

Criteria	Listing regulations	Companies Act
Composition	Minimum three directors as members.	Minimum of three directors
Independence	At least two-thirds of the members shall be independent directors.	Independent directors shall be in majority.
Qualification	All members shall be financially literate and at least one member shall have accounting or related financial management expertise.	The majority of members including its Chairperson shall be persons with ability to read and understand the financial statement.
Frequency of meeting	At least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.	No such requirement
Quorum	Two members or one third of the members, whichever is greater, with at least two Independent Director.	No such requirement
Related party transaction	Only those members, who are Independent Directors shall approve related party transactions.	No such requirement

Approval of Related party transactions:

Regulation 23 of the Listing regulations and Section 177(4) of the Act prescribes role of Audit Committee while approving related party transactions.



Basis	Listing regulation	Companies Act
Kind of approval	All related party transactions and subsequent material modifications shall require prior approval of the Audit Committee of the listed entity.	All related party transactions or any subsequent modification shall require approval of the Audit Committee.
Voting	Only those members of the Audit Committee, who are Independent Directors, shall approve related party transactions.	No such requirement

Audit committee of a listed entity shall define “material modifications” and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions.

Omnibus approval by Audit Committee:

The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely: -

Criteria	Listing regulations	Companies Act
Approval criteria	<ul style="list-style-type: none"> - Criteria in line with policy on related party transactions - Additional information to be reviewed is specified in SEBI circular dated November 22, 2021 	<ul style="list-style-type: none"> - Maximum value of transactions in a year - Maximum value per transaction - Disclosure extent - Review intervals
Factors for approval	<ul style="list-style-type: none"> - Repetitiveness of transactions - Need for omnibus approval - Approval is in the interest of the listed entity 	<ul style="list-style-type: none"> - Repetitiveness of transactions - Need for omnibus approval - Justification for omnibus approval
Omnibus approval content	Names of related party, nature, period, maximum amount of transactions, base price or price variation formula, other conditions as deemed fit	Name of related parties, nature and duration of transaction, maximum amount, base price or price variation formula, any other relevant information
Provision for unforeseen transactions	Yes, up to ₹ 1 crore per transaction	Yes, up to ₹ 1 crore per transaction

Validity	1 year	1 financial year
Exclusion	Not specified	Transactions for selling or disposing of the Company's undertaking.
Review	At least on a quarterly basis	At intervals deemed fit by the Audit Committee

Subsidiary transactions approval by Audit Committee

Regulation 23(2) of the Listing regulations states that a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the Audit Committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary.

For related party transactions of unlisted subsidiaries of a listed subsidiary, the prior approval of the Audit Committee of the listed subsidiary shall suffice.

Exception: Prior approval of the Audit Committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party, but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Ratification of unapproved transactions by Audit Committee

Section 177(4)(iv) of the Act specifies that transaction up to ₹ 1 crore entered by director or officer of the company without the approval of Audit Committee can be ratified within three months. In case if three months gets over, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.

However, there is no provision for ratification of unapproved transactions in Listing regulations, since it mandates prior approval of related party transactions by the Audit Committee.

Exemption from the approval of Audit Committee

Listing regulation	Companies Act
a) Transactions entered into between two government companies; b) Transactions entered between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. c) Transactions entered into between two wholly owned subsidiaries of the listed holding company, whose accounts	Approval of Audit Committee shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

are consolidated with such holding company and placed before the shareholders at the general meeting for approval.	
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Additional requirement under SEBI circular dated Nov 23, 2021

This circular requires additional information is to be reviewed by the Audit Committee of a listed entity for approval of a proposed related party transaction:

- a) Type, material terms and particulars of the proposed transaction.
- b) Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise).
- c) Tenure of the proposed transaction (particular tenure shall be specified).
- d) Value of the proposed transaction.
- e) The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a related party transaction involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided).
- f) If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
- g) Justification as to why the related party transaction is in the interest of the listed entity.
- h) A copy of the valuation or other external party report, if any such report has been relied upon.
- i) Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed related party transaction on a voluntary basis.
- j) Any other information that may be relevant

Important checks while approving related party transactions by Audit Committee (reference: ICSI Charter of Audit Committee)

While approving any related party transactions, the Audit Committee can seek answers to the following:

- i. Whether proposed transaction is promoting the overall objects of the company?
- ii. Whether transaction is beneficial and in the best interest of the company, its members as a whole, its employees, community and environment?
- iii. The transaction is not prejudicial to the minority shareholders of the Company
- iv. The transaction is not beneficial to the related party at the cost of the Company

While approving contracts/arrangements which are covered under Section 188 of the Act, the Audit Committee may additionally evaluate and record whether the transaction is in the ordinary course of business and whether it is an Arm's length transaction, as these are the deciding factors as to whether the transaction should be additionally placed before the Board / Shareholders also.

In western countries, and specifically in USA (Delaware) and Australia, there is a concept of Business Judgement Rule, which can act as a defence for a director who can demonstrate that he has acted in good faith. In case of any litigations, courts will uphold the decisions taken by a director as long as they are made:

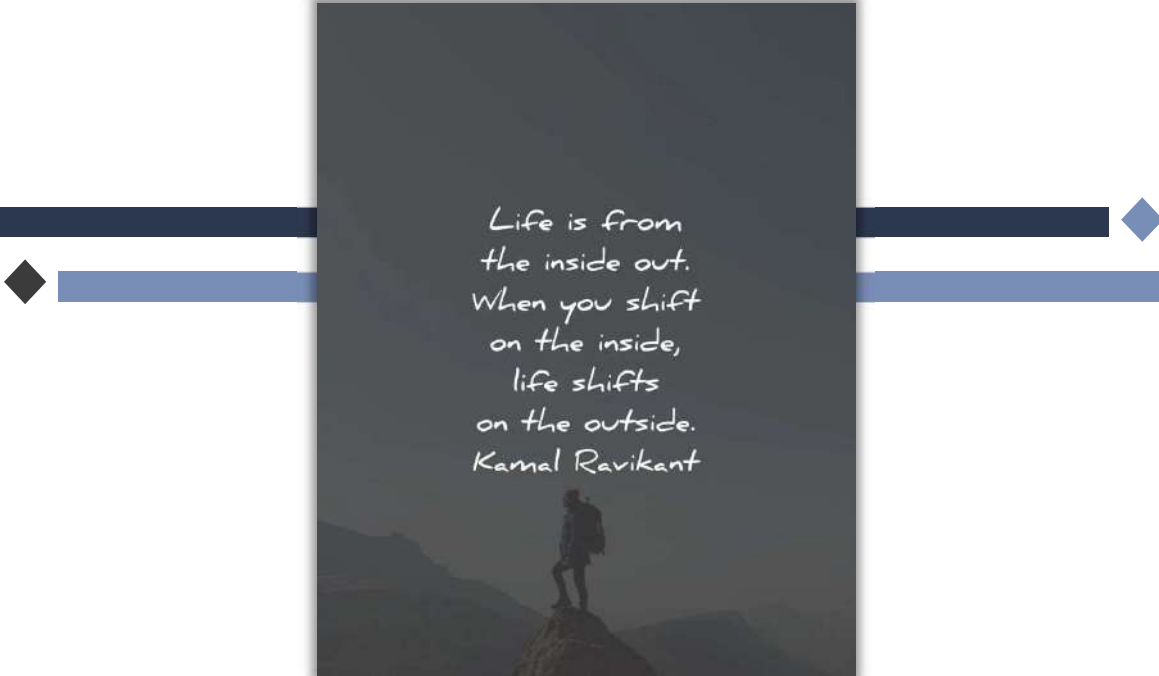
- i. In good faith,
- ii. With the care that a reasonably prudent person would use, and
- iii. With the reasonable belief and diligence that the director is acting in the best interests of the corporation.

In India, similar provisions are also covered under sections 456, 463 and 149(12) of the Act, in which a director can seek relief for acts of omission or commission by a company. Under these sections, courts can hold a particular director liable only if such acts of omission or commission have occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

In order to demonstrate that the director/s acted in good faith and with reasonable care and diligence, it is very important that Audit Committee documents are reasoned properly, i.e., records in the minutes about the process followed by it while approving related party transactions or while granting any other approvals. It may also record the rationale as to why Audit Committee feels that the transaction is in best interest of the company.

Conclusion

The Audit Committee plays a crucial role in upholding corporate governance by overseeing related party transactions with a focus on transparency, fairness and integrity. By incorporating independent members, the Audit Committee ensures that decisions are made without the conflict of interest, safeguarding the company's and stakeholder's interest. The rigorous oversight process reassures the market participants, including shareholders and investors, that all transactions are scrutinized, conducted at arm's length price and in the company's best interest. Such thorough diligence by the Audit Committee not only protects against the financial mismanagement but also boost confidence among stakeholders, reinforcing the company's reputation and contributing to the stability and credibility of the broader stock market.



*Life is from
the inside out.
When you shift
on the inside,
life shifts
on the outside.
Kamal Ravikant*

Construction Laws

The term “Construction Law” generates various types of perceptions amongst various cross section of the general public as well as professionals, depending on their exposure level to the gamut of Construction Industry. For those, not much in know of the Construction Industry, Construction Law is perceived, perhaps, as a stand-alone law which is all encompassing and deals with various aspects of construction, which is not true. For those, who try to explore a little deeper and further, soon realise that there is no single law that is ubiquitous and can be referred to as “Construction Law”. The context of this Article is drawn to the Indian scenario. Therefore, the fundamental question that arises is as to how should one perceive the ‘definition’ of “Construction Law”? This article makes an attempt to address this question and in the process of doing so, endeavours to strike a fine balance to explain the nuances to as wide an audience as is possible – from those wanting to just ‘window-shop’ to get a little exposure to the concept of “Construction Law’ to those that may be ingrained across various proficiency levels pertaining to the BOK (Body of knowledge) in this realm.

Construction Law, in India, is an aggregation of various relevant laws that have some bearing, both direct and indirect, on various activities in Construction. In comparison to other Industries, Construction Industry rates amongst those that cover extremely large segments of both Commercial and Non-commercial activities. The supply chains involved, both on the upstream and downstream side, in a Construction Industry, are vast. In fact, Construction Industry is one such Industry which connects to almost every aspect of life (and non-life) and every segment of society and the environment. When such is the colossal influence that Construction Industry wields across a gamut of areas, it is but natural that, including from legal perspective, it attracts a substantial number of Laws/ Acts, Rules, Regulations, Statutes etc.

The over-arching reach of Construction Law and therefore the wide arena of Laws/Legislations/Norms that it attracts can be fathomed by simply understanding its basic tenets, which is that, any Construction, no matter the magnitude, deals with the following fundamental aspects:

- Statutory compliances
- Safety, Health, Environment
- Labour
- Material

“

In addition to being cognizant of Laws applicable to construction, it would be prudent for a Construction professional to also be acquainted with appurtenant body of knowledge and information such as on Insurances, Deeds required to be executed (such as Indemnity) as well as important contractual clauses such as on Ascertained and Liquidated Damages.”

HR Girish
C.B.E. (Civil Engg.), LL.B, PGADR (NALSAR),
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- Commerce and Law

Therefore, when one refers to ‘Construction Law’, it is just not one stand-alone Law or Statute, but an aggregation of all such Acts, Rules, Regulations, Statutes etc., that have a direct and indirect connect to the world of Construction.

In order to further understand the substantial influence of various laws that converge and become pertinent to be referred to generically by a single term as Construction Law, its essential to understand the basic nuances and “pedagogy” of the world of Construction. The term: “World of Construction” encompasses a mammoth and diverse arena and hence, for the sake of brevity, this article ties to keep the understanding simple by referring to the ‘World of Construction’ in the common realm of activities.



Normally, the word ‘Construction’ is perceived as relating to physical work(s) or activities that one witnesses/ sees on-site, such as the excavation being carried out, foundations being built, superstructure/ Building(s) under construction, ‘renderings and finishings’ being installed and opening the facility to intended usage. But in reality, the term Construction encompasses large backward and forward integration of activities that are either unknown or not seen on-site by an ordinary observer. It encompasses large proportion of works and efforts that precede as well as succeed the on-site physical activities. Lets ‘dive’ a little deeper

to understand what are these activities the precede or succeed the actual Construction works on site.

The activities that precede an on-site Construction, are referred to as ‘Pre-construction Activities’ and the one that succeed, are referred to as ‘Post-construction’ activities. Albeit the fact that there is an exhaustive definition Technically that ‘rat-holes’ further into the aspect of Pre and Post construction activities, this article intends to keep these terms simple so as to ensure a decent grasp of the terms and thereby is not intended to give an exceptionally accurate definition like is the case in Technical documents nor provide a comprehensive BOK (Body of Knowledge) leading to detailed definition of the same, so as not to overwhelm the reader.

Pre-construction activities entails the following:

- Conception of a Project and its intended use
- Viability (that includes Technicality, Commerical, Sustainable aspects amongst other parameters.
- Alternative options
- Design Development – Civil Engineering, Architecture, Technical, Services, EIA, EHS etc.
- Statutory approvals (before commencement on ground)
- On-site preconstruction activities (de-shrubbing, relocating Trees, Site infrastructure viz., site-offices, warehouse, Services, perimeter fencing, noise/dust attenuation, signages, Welfare-infrastructure etc.)
- Off-site preconstruction activities
- Documentation

Construction or On-site Construction activities entail the following:

- Setting out the structure/building – Survey/ Benchmarks/Markers.
- Statutory approvals (during the process of and conclusion of Construction)
- Excavation for substructure construction
- Building and finishing activities
- Testing, Commissioning, Handover
- Documentation

Post-Construction activities:

- Statutory compliances (post-construction, during life-cycle of facility)
- Periodic Technical Inspection and Maintenance
- Remedial measures, sustainability, mitigative measures in case of perceived effects
- Enhancing useful life
- Recyclability
- Documentation

Having understood the nuances of the Pre-construction, Construction and Post-construction activities, it becomes evident as to how over-arching the span of Construction Law is. It attracts various provisions of legislations that deal with the following:

- Legislations related to statutory Compliances; this includes Building approval/ Sanction procedures/ Bye-laws, Environment impact norms, Town and Country Planning, Codal provisions etc.
- Legislations related to Labour welfare and management
- Legislations related to Commerce and Taxation
- Legislations that are not directly connected but immediately get attracted in specific cases of evasion, Dis-honouring of payment instruments etc.
- Legislations introduced/ amended/ updated from time to time that are pertinent to the realm of Construction.

A few prominent Acts/Legislations that profoundly influence and govern the aspect of Construction in India, include the following:

- The Indian Contract Act, 1872
- The Law of Torts
- The Limitation Act, 1963
- The Arbitration and Conciliation Act, 1996
- The Mediation Act, 2023
- The Building and Other construction Workers Act (BOCW), 1996
- The Real Estate (Regulation and Development) Act, 2016 (RERA)
- The Labour Code, 1995
- The Contract Labour (Regulation and Abolition) Act 1988
- The Workmen Compensation Act, 1923
- The Employees Provident Fund Act, 1952

- The Employees State Insurance Act, 1948
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Factories Act, 1948
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Interstate Migrant Workmen (RE&CS) Act, 1979
- The Industrial Dispute Act, 1947
- The Protection of Women from Sexual Harassment Act (PoSH Act), 2013
- The Mines Rules, 1955
- The Dock Workers (Safety, Health and Welfare) Act, 1986
- State-specific Laws and regulations including Municipal Laws

The above is not an exhaustive list of Laws applicable to the activity of Construction but is a representative sample and includes the latest amendments to the respective Act and Rules, all of which come under the ‘umbrella’ of an aggregation that is commonly referred to as the Construction Law.

In addition, the following legislations, though not directly impacting Construction, connect somewhere to the larger realm of ‘Construction Law’:

- The Registration Act, 1908
- Indian Easements Act, 1882
- The Transfer of Property Act, 1882
- The Indian Stamp Act, 1899

In addition to being cognizant of Laws applicable to construction, it would be prudent for a Construction professional to also be acquainted with appurtenant body of knowledge and information such as on Insurances, Deeds required to be executed (such as Indemnity) as well as important contractual clauses such as on Ascertained and Liquidated Damages.

Concepts such as Extension of Time or enhanced Cost or both, change in scope of work, delay in payment etc., would definitely add to the well-endowed nature of the body of knowledge of a Construction professional.

In addition to aforesaid legislations, the latest developments with respect to enhanced focus on ESG-Environment Social Governance – has opened up a whole wide area in two broad aspects: Environment and Societal Impact. Though ESG has been around since time immemorial, the wide ramifications due to rapid damage caused to Environment and fast-pace decline of Natural materials due to over-exploitation on one side and the huge spurt in population across the world, cultural geographies and socio-economic parities on the other hand, have lead to imminent requirement and focus on a whole new set of Legislations and Statutes. While the new set of Rules and legislations continue to be formulated ‘by the day’, the race is against time to ensure ‘saving whatever can be saved’ of the Natural resources, without waiting for the legislations or rules to come into effect. The approach is to adopt a proactive role and contribute to arresting further rapid decline in Environment, natural resources as well as addressing better governance initiatives and actions.

The Coastal Regulation Zones and similar environment protection initiative of both Central and State Governments are notable initiatives towards Environment accountability of Corporates and individual entities. The aspects of Green Building Ratings are yet another welcome initiative where there is enhanced voluntary compliance, given the ESG approach. It is pertinent that Laws and Rules in these domains are well understood, as these too come under the realm of Construction Law.

Similarly, enhanced focus on safe working environment, focus on Women-in-Workplace, Welfare measures, PoSH etc., are commendable and growing initiatives on the Social governance front, the knowledge of which are vital to Construction Industry.

Construction Law, therefore, is an aggregation of all such Legislations, provisions, Rules, Regulations, procedures that are directly and indirectly connected to the World of Construction/ Built environment. Having said so, it would be prudent to take cognizance of the fact that Law is dynamic; it gets created, updated, 'meta-morpho sized' depending on the needs of Society, situations, Environment and the "World-order". Not all laws/ legislations mentioned herein, get attracted to every Construction project. One's discretion through experience, knowledge and juris-prudence is required to understand and identify those legislations and Rules that become relevant to a specific Construction Project.

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Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Vision
"To be a global leader in promoting
good corporate governance"

Motto
सत्यं वद। धर्मं चर।
Speak the truth. Obey the law

Mission
"To develop high calibre professionals
facilitating good corporate governance"

#IntlGovCon

ICSI 3rd International Conference
**Theme: Building Resilient &
Sustainable Economies**
5-6 April 2024 | Orchard Hotel, Singapore
Co-Host: ICSI Overseas Centre, Singapore

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A Brief Overview of India's New Criminal Laws

Introduction

From July 1, 2024, the criminal legislation in India; previously implemented by the erstwhile colonial rule, will be superseded by the government's newly enacted criminal laws. The latest criminal laws overhauling the previous ones are as follows:

1. The Bharatiya Nyaya Sanhita, 2023 [BNS] – replacing the Indian Penal Code, 1860 (IPC)
2. The Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS] – replacing the Code of Criminal Procedure, 1973 (CrPC)
3. The Bhartiya Sakshya Adhiniyam, 2023 [BSA] – replacing the Indian Evidence Act, 1872

Background

These laws were first introduced as new bills in the Parliament on August 11, 2023 and were referred to the Standing Committee i.e. the Parliamentary Standing Committee on Home Affairs for a detailed evaluation. The Committee was headed by MP Brij Lal and had thirty members in it. Based on the Committee's recommendations, the Bills were withdrawn and reintroduced with changes. These second versions of the Bills were then passed by the Parliament on December 21, 2023. They received the President's assent on December 25, 2023. The date of effect has recently been notified by the Ministry of Home Affairs, in the Official Gazette, as July 1, 2024.

Need for Reform

The need to take cognizance of the evolving nature of crimes and the changing societal norms can be considered as the primary basis for this overhaul of the criminal laws. The previous Codes were enacted by the British for the society and crimes that were untouched by technology. The modern day crimes are perpetrated through digital medium more often than not. The new laws also take into cognizance the contemporary lifestyles of the people of India and the growing dynamics of societal systems. These laws are not only a change from the archaic rules but also a transformation of some existing legal systems in alignment with modern times.

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The Bharatiya Nyaya Sanhita, 2023 [BNS – Penal Offenses]

- With 20 Chapters and 358 sections, the BNS shall be effective, except for section 106(2) pertaining to culpable homicide by rash and negligent driving [i.e. hit and run cases].
- The law does retain most of the offences under IPC and conforms to some specific rulings of the Supreme Court; especially pertaining to adultery and Sec 377 of IPC.
- The law defines “organised crime” and includes offences like kidnapping, extortion, contract killing, cyber or financial crimes etc., and raises punishment to the maximum extent of death or life imprisonment.
- Community service has been introduced for minor cases in certain offences instead of punishment.
- The law has also defined “child” and added transgender to the definition of “gender”.
- The law further introduces new definitions for terrorism and offences such as mob lynching, abetment to crime outside India, beggary as a trafficking exploitation etc.
- Sections that focus on acts of threatening sovereignty, unity and integrity of the nation have been introduced. Sedition and suicide have been removed as offences.

The Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS – Criminal Procedure]

- With 39 Chapters contained in 531 sections and 2 Schedules, the BNSS shall be effective, except for provisions relating to section 106(2) of the BNS.
- The BNSS permits all trials, inquiries, and proceedings to be held in electronic mode. It also allows for electronic devices to be produced for investigation, enquiry or trial in the likelihood that they contain digital evidence.
- In addition to signatures or handwriting or finger impressions, voice samples can also be collected for investigation or proceedings; even if a person has not been arrested.
- Forensic Investigation has been mandatory for offences that can be punishable with a minimum of 7 years of imprisonment.
- If a proclaimed offender is absconding, the Court can permit trial and pass judgement without the offender’s presence.
- While many of the provisions of CrPC have been retained, the BNSS has introduced changes in terms of detention of undertrials, medical examination in rape cases and timelines for procedures.

The Bharatiya Sakshya Adhinyam, 2023 [BSA – Evidence Laws]

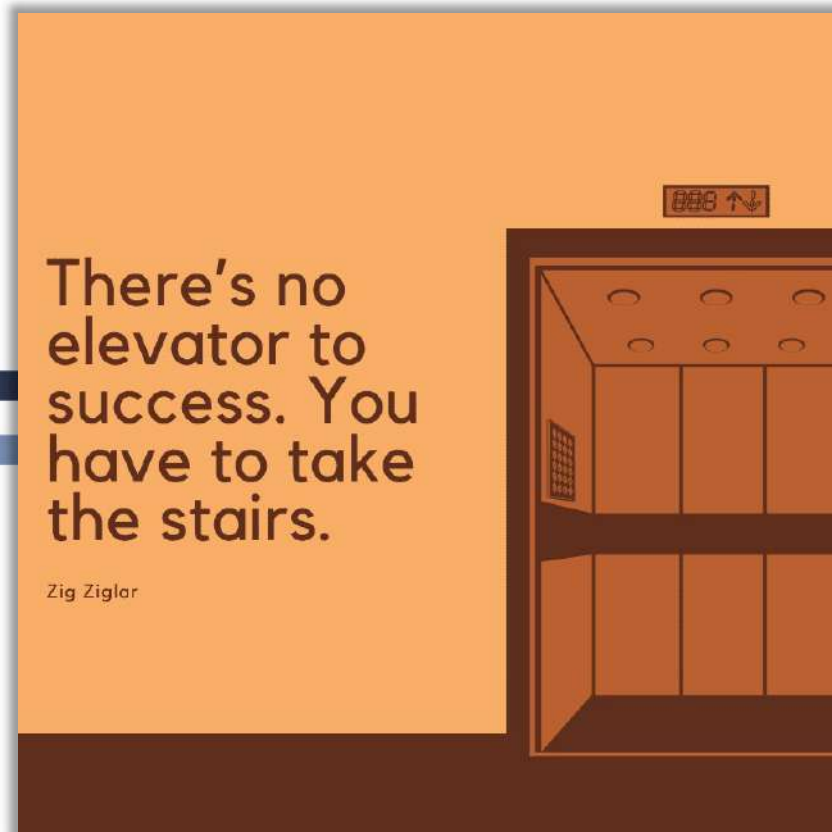
- With 4 Parts and 12 Chapters amongst them, the BSA contains 170 sections and a single Schedule.
- The Act has introduced "electronic and digital records" in the definition of a "Document", thereby permitting information in electronic media in the form of emails, server logs, text messages, stored data etc., as primary evidence.
- Oral evidence can now be given electronically as well, depending on requirement or permission of the Courts.
- The section pertaining to “secondary evidence” has been amended to include oral and written evidences as well testimony of an expert who has examined the submitted documentary evidences.

Conclusion:

From July 1 of this year, any new crimes shall be tried as per the BNS, BNSS and BNA. The new penal laws however cannot be applied retrospectively, unless the government so decides at a later point in time. All pending criminal cases and offences shall be tried under the existing Criminal Code only.

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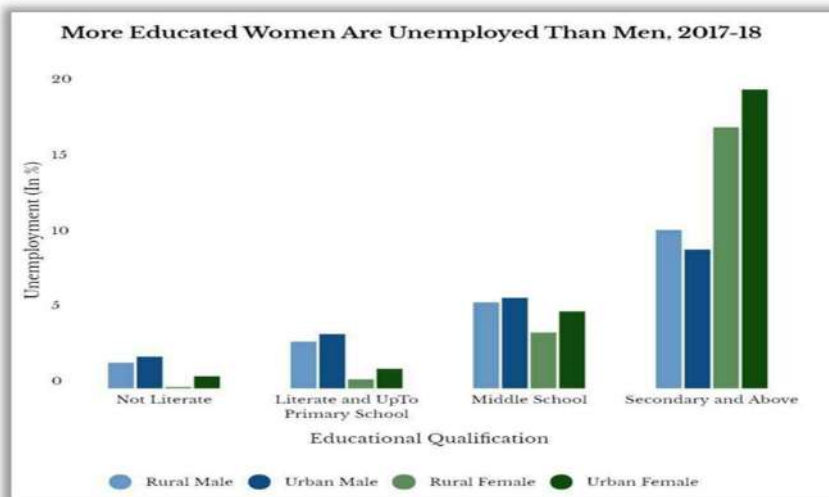


Women Education in India

Introduction

The Indian government has expressed a strong commitment towards education for all, however, India still has one of the lowest female literacy rates in Asia. In 1991, less than 40 percent of the 330 million women aged 7 and over were literate, which means today there are over 200 million illiterate women in India. This low level of literacy not only has a negative impact on women's lives but also on their families' lives and on their country's economic development.

Numerous studies show that illiterate women have high levels of fertility and mortality, poor nutritional status, low earning potential, and little autonomy within the household. A women's lack of education also has a negative impact on the health and wellbeing of her children. For instance, a recent survey in India found that infant mortality was inversely related to mother's educational level.



Lack of an educated population can be an impediment to the country's economic development. Women education is an essential need to change their status in the society

The Women and Higher Educational Institutions in India: A Challenges Ahead

Women in Indian society have been the subjects of a long-standing and ongoing debate. Several gender perspectives have been brought to bear upon the issue regarding education, polity and economic etc. Some sociologists have gone beyond a community and looked into status and power relations among men and women. This concentrates on the detailed analysis of the different determining factors in education and its linkages to higher education in general and women in particular. Here, it is concluded that women's

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Women in Indian

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participation in various fields in India is still relevant in all aspects of human life. As a sociological-drawbacks, It is not only manifested in social discrimination but also the higher educational attainment.

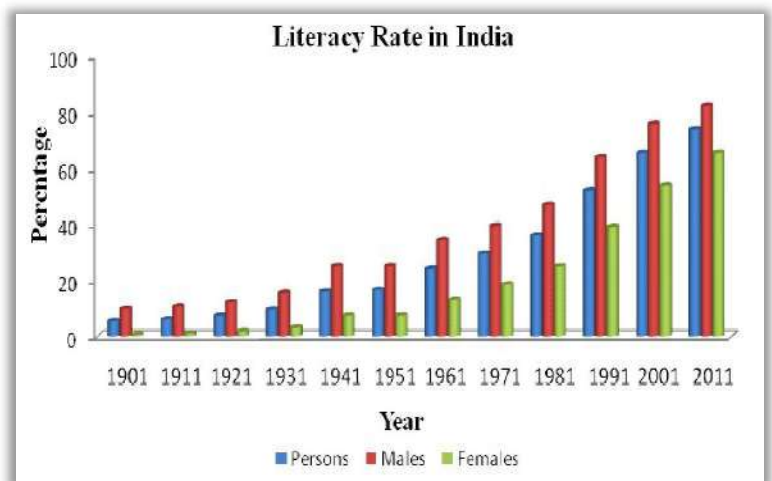
The history of Indian economic development of the last half-century witnessed a lot of changes. The status of India has changed from a less developed country to that of a developing one. But in the literature, severe criticism exists concerning the measures taken up by the Government of India, particularly in the social sector. The critics argue that since independence, the performance of India in the social sector has been far from satisfactory, and more could have been achieved if a proper policy measure had been adopted. As far as policy measures are concerned, the actions taken up in the education sector since 1990, like cost-share financing in public universities or encouraging privatization.

Higher Education is considered the most valuable investment in human resources, and it yields definite returns in the form of a skilled workforce geared towards development. Higher Education is an indispensable tool for personal and social improvement. Higher Education not only enriches the life of an individual but also enriches the whole nation. A nation cannot have developed only if a few of its elite groups are educated. It is considered to be created if education is imparted to all sections of society. Thus, to make higher education inclusive, equity and equality should be promoted, and discrimination and structural inequalities in gender inequalities form should be removed. A gender perspective should be integrated into the education system, and equal opportunities should be provided to both men and women to participate in and benefit from education. The education system should aim at mainstreaming gender and should include women in a meaningful way through improving access to higher education and promoting equity.

Problems and Issues of Women Education in India

The main problems facing their education are

- Development of immorality;
- Suitable Curriculum for the education of girls;
- Lack of social consciousness among women;
- Scarcity of lady teachers;
- Lack of proper physical facilities;
- Unwillingness of lady teachers to serve in rural areas;
- Financial difficulties;
- Problem of transport;
- Problem of wastage and stagnation;
- Problem of co-education;
- Lack of enthusiasm and interest of the officials in charge of education



The education of girls and women is an integral part of national development. Steps that are being taken to improve and expand their education will not recede to the background due to lack of finance. It must be remembered that there is still a big gap to be filled between the education of the boys and girls, further; mother is the pivot of family life in India. Our way of life depends on her. It is essential; therefore, that at least the programs for girls and women that have already been included in the current plan are not disturbed.

The lack of coordination that existed between the home, the school and the life outside had to be remedied; and a close integration must be secured between the process of education and the social and economic life of the country. Everyone should be trained to make an adequate living and fill effectively her appropriate place in life.

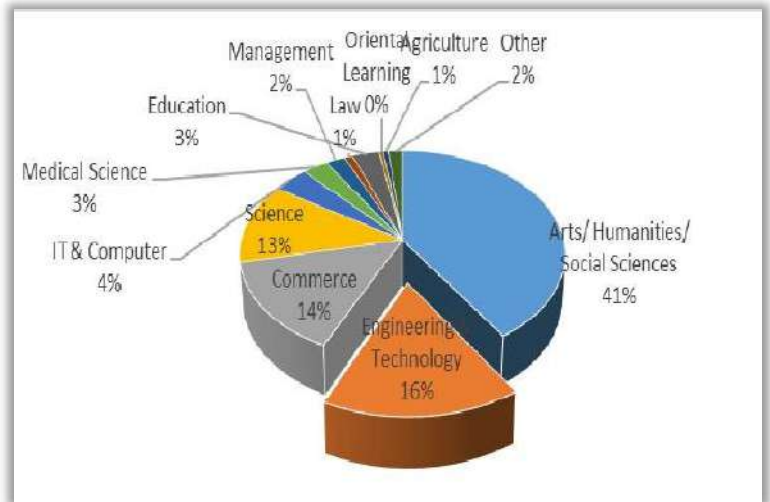
Women’s Education: Challenges in 21ST Century

Beti Bachao Beti Padhao is an excellent initiative to preserve and educate female children. It is a project operated by the Indian government with the goal of raising awareness and increasing the effectiveness of social services for girls. On January 22, 2015, Prime Minister of India Shri Narendra Modi inaugurated the Beti Bachao Beti Padhao program. This plan is a solid start for the lives of girl children since it incorporates some practical efforts on the part of the Government of India. The country's ever-decreasing child sex ratio has necessitated the implementation of this initiative. Beti Bachao-Beti Padhao is a social awareness campaign that encourages parents to rejoice the birth of a new born girl rather than be disappointed. Many Families do not rejoice the birth of a female child for hundreds of years, This applies to both rural and urban areas. On top of that, orthodox households used to resort to female feticide or abandoning the girl child, if she was born at all. Due to social and family limitations, the girls were unable to attend school or pursue further education. BBBP is operated by women for women, with a focus on women's empowerment and development. The decreasing proportion of girls in the Child Sex Ratio (CSR) is a key indicator of women's disempowerment. CSR encompasses both pre-birth inequalities as manifested by gender favored sex selection and post-birth discrimination against female children. Social prejudice against girls, as well as the ease of access to and misuse of diagnostic technology, have caused in a significant increase in female child feticide, lowering the ratio of girls in CSR.

Beti Bachao Beti Padhao

Brief Description:

Beti Bachao, Beti Padhao (Save the female child, educate the girl child) is a Central Government-sponsored initiative run by the Government of India. The primary objective of this plan is to raise awareness and improve the efficiency of women's welfare services. It also strives to honour the girl child and make education possible for her. The Beti Bachao Beti Padhao initiative aims to halt the fall in female child sex ratios and promote women's empowerment in order to enhance the country's women's status. To address the issue of decreasing Child Sex Ratio, the Beti Bachao Beti Padhao (BBBP) Scheme was launched (CSR). This plan is being launched through a nationwide campaign and targeted multi-sectoral action in 100 low-CSR districts across all states and territories. This plan



is being implemented as a collaborative initiative of the Ministries of Women and Child Development, Health and Family Welfare, and Human Resource Development. The objectives of this scheme are as follows:

1. To prevent gender biased sex selective elimination.
2. To ensure survival & protection of the girl child.
3. To ensure education of the girl child.

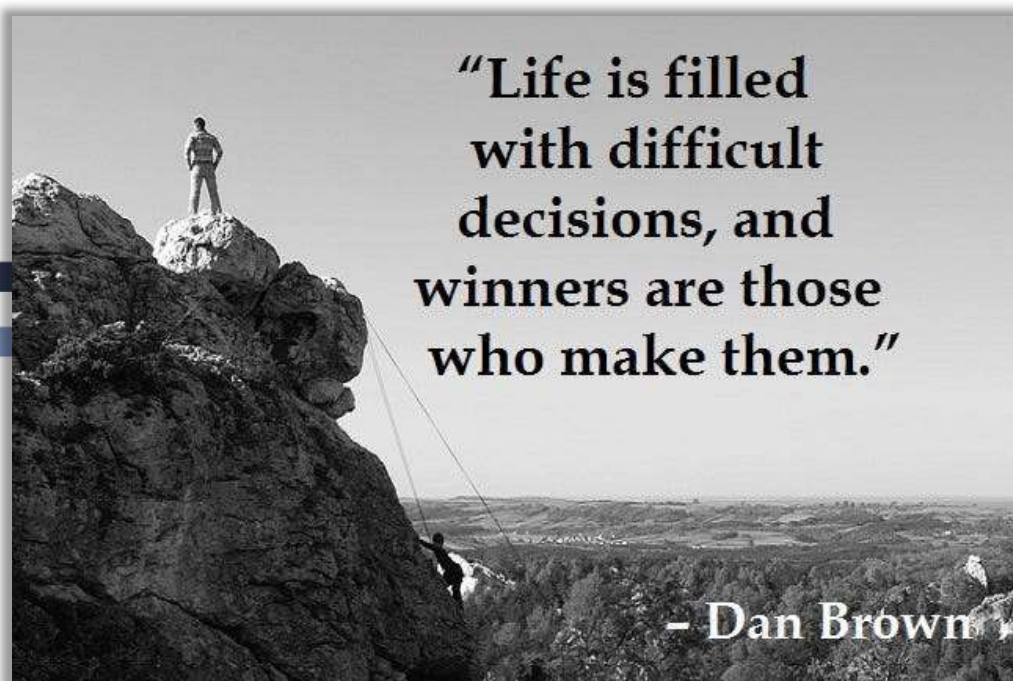
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Help Yourself

Food for Thought

The Power of Silence

by Kelvin W. Nathan

Disclaimer: This article does not endorse any book and is not sponsored by any author or publication. Content shared here is for knowledge and learning purposes only.

When was the last time you sat in silence? How did it make you feel?

Observing silence is often seen as a way of meditation in our country. As our land has a rich spiritual treasure trove of Yoga, Vedas, Upanishads and so on, a good chunk of people of this country are well-versed in some form of meditation or the other, or aware of their immense benefits at least.

But the book we discuss today is a gentle reminder that silence is necessary for the growth of people of all walks of life, not only the spiritual seekers. This is my biggest takeaway from this book, because I realized I had tucked away this practice. Owing to our lifestyle, we equate productivity with constantly working on something or the other. Rest and restfulness are often compromised. Therefore, it may feel like we are wasting time by sitting idle as we are so used to the constant noises of work and productivity. As a result, we lose sight of the immense benefits silence can bring.

Self-Help Books aren't a magic wand that'll cast a spell on someone to become optimistic, motivated and successful in one go. None of these are guaranteed for readers. More often than not, they don't tell us something we don't know. Then why should we keep reading them? This book, again, does not present some extraordinary teaching. Yet, it is important for us to keep reading such books

so that we bring various aspects of ourselves to our mental spotlight. It helps us to focus and contemplate areas that need our attention for improvement and thus progress on our path to excellence.

If you are here for the first time, this column intends to impart bite sized knowledge from self-help books, biographies, autobiographies, and other related genres, relevant specifically to corporate professionals and aspiring professionals. Not every learning that a book enshrines can be fit in here, so writing a summary or a book review is not the aim of this column. The intent is to give you a touch of acquaintance with a book, in every issue of this e-magazine, hoping that it will make you want to grab it and read for yourself. So, help yourself with food for thought.

This book reminded me to withdraw myself from everything for a bit, much like a tortoise its limbs, and see what happens.

The book talks about the direct benefits of observing silence regularly, in our lives. I was under the misconception that the benefits are only indirect and take a long time to actually bear fruit.

One such example is the expansion of a part of the brain named Hippocampus that is responsible for increasing our memory. There are many such proven facts that the book talks about which I will leave it to you to explore.

If you are under the impression that you must seek out a completely silent environment to practice silence and mindfulness, then let me clear out what the book underlines. It is about finding mental silence, a space where thoughts can exist without judgment or reaction. So, it is a lot easier than we imagine. If it does not seem so, the book is a great way to get started. So, what are you waiting for? Grab this book and give your mind a gift of silence for you to thrive!

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Tech Corner

Digital Deception: Navigating the Dark Side of Online Shopping

All of us are heard of different scams. It varies at different level. One of the most dangerous scams is our bank account getting hit. Doesn't matter how careful we are scammers come up with different ideas and we get caught off guarded.

I came across with one such scam recently. One of my friends and my cousin became a victim for this scam.

What was the scam and how they operate, here is the brief picture so that you can keep yourself safe and what are the measures that can be taken by you if in case you become a victim of this kind of scam.

This is almost like carding, if in case you want to know what is carding, please read the article published on 218th Edition which was published in the month of June, 2022.

These scammers operate in the social media platforms like Instagram and Facebook, where you see a unique product with some discounted/unbelievable price for a limited time, you think that it's worth the money and try to purchase it. At this point there are chances that they only have online payment option but not cash on delivery, if you pay the money on the website, then you might receive the product, or you might not, or the product you receive might be an old one, or the different one compared to what you have seen in the website. If you have made the online payment, there are fair chances that you can trace where the money finally went and get the refund back.

If there is a cash on delivery option is available then, the situation becomes a bit tricky, to this kind of scam itself my friend and my cousin fell. They paid the amount to the delivery boy and got the product, but the products were different and old as well. In my cousin's case the delivery person even warned not to take the product as it came from an unknown source.

When they opened the package, they got surprised, here both of them took different approach to solve this.

My friend called the delivery person and asked to stop transferring the funds to the company, but that was already made by them, when they started to search for the website they ordered from, the website was not even there. Like it never existed in the 1st place. Their funds were gone and they couldn't do anything.

In my sister's case the story gets a bit interesting, she got the phone number of the customer care person, and she asked to return the product, but the customer care person wanted an OTP and the bank password picture to be submitted to them in order to process the

transfer. The OTP was for the transfer of funds from her account to the person sitting in the other end. Fortunately, she didn't share the OTP and confronted the person, he disconnected the call. After that the phone was switched off and she reported this to the Cyber-cell.

Not every product which you come across in the social media platforms are the official one, or genuine. Due to such incidents, many businesses are suffering, people are not willing to order online.

The Measures to take before Ordering Anything Online: Notice these things in their website, if it is there, then you can take a chance, it's not likely to be 100% of surety but you can take a chance.

1. URL's: check if the website is using the secure connection, check for "https://" instead of http://, if its https:// then you can be sure that your data is secured and encrypted.
2. URL Accuracy: Be cautious of misspelled or slightly altered URLs, as these may be indicative of phishing attempts. Always double-check the URL to ensure you are on the official website.
3. Padlock Icon: Look for a padlock icon in the address bar. This indicates that the website uses SSL (Secure Socket Layer) encryption to secure your data during transmission.
4. Contact Information: Ensure that website provides clear and easily accessible contact information, including a physical address, email address, and phone number. Legitimate businesses are transparent about their location and ways to reach them. You can cross check the same in the maps.
5. User Reviews and Ratings: Look for customer reviews and ratings on the website or third-party review platforms. Real user experiences can provide insights into the reliability and quality of the products or services offered.
6. Return and Refund Policies: Review the website's return and refund policies. A reputable site will have clear and fair policies for returns and refunds, providing you with assurance in case of any issues with your purchase.
7. Professional Design: Evaluate the overall design and layout of the website. Legitimate and trustworthy sites typically invest in a professional appearance, while suspicious or poorly designed sites may be indicative of scams.

Please do check for the things mentioned above before you purchase anything online, it reduces the chances of becoming victims. Be vigilant, and Be safe, update your passwords and security regularly, stay informed about the common scams and protect yourself and your loved ones.

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Students Corner

A BRIEF ON MUTUAL FUNDS

If one wants to start investing in stock Market the best option will be investing in mutual fund as it is considered as the safest way for investing your money and it can fetch a good amount of return as compared to the returns one get on keeping fixed deposits with the banks.

In India there are about 44 Mutual fund house with each of them having their own investment scheme, the most common ones are;

1. Growth Schemes -Dealing in Equity Shares
2. Fixed income securities -Consisting of Debt Securities
3. Hybrid Schemes- Mix of both Equity and debt securities
4. Money market Schemes- like Treasury Bills, Commercial Paper
5. Fund of fund scheme- investing in units of other mutual funds

Mutual funds are set up as trusts, with four main organs; they are neither a company nor a partnership firm. I.e. the sponsor, the Asset management company, the custodian and the unit holders.

The Sponsor - Has the direct control and Supervision over the Asset management company and the custodian.

The Asset management Company-they are the Fund Managers of the schemes (often referred as the brains of Mutual fund scheme).

The Custodian- its duty is to hold and safeguard the securities invested

The Unit Holders-who are given units against the funds provided by them for investments in the Mutual fund schemes.

Each of these four organs is essential to the mutual fund's operation.

Every new fund offer (offer document) launched by the asset management company should contain the investment objective of the concerned mutual fund scheme, and as a result of this, the unit holders are aware of how their funds will be invested by the Asset management company in various securities and in turn the units of the mutual fund are issued to the investors (unit holders) which can be open ended one or an close ended one.

In case of open-ended, the units are redeemable at the current NAV (net asset value) on a daily basis as there is no maturity period.



Verdict Vistas

Exploring Orders and Judgements

IMPLICATION OF SEC.32A ON ATTACHMENT OF PROPERTIES BY ENFORCEMENT DIRECTORATE - IMMUNITY TO ASSETS OF CORPORATE DEBTORS

In the High Court of Bombay

Mr. Shiv Charan & Others Vs. Adjudicating Authority, U/PMLA

WP (L) No.9943/2023

Along with

WP(L) No.29111/2023

Decided on: 11.03.2024

The Law on the Jurisdiction of the National Company Law Tribunals to decide on issues relating to attachment of Assets of the Corporate Debtor by the Enforcement Directorate under against Prevention of Money Laundering Act (PMLA, 2002), and the supremacy of the I & B Code, 2016 against PMLA, 2002 or vice versa has been a matter of much debate. The said debate has been enthused by a plethora of conflicting judgments passed by the Courts and the Company Law Tribunals, leading to an unsettled position. However, after the inclusion of Sec.32 A in the Code on 28th December, 2019, the position of Law in this context has emerged to uphold the supremacy of the I & B Code, 2016.

2. The Hon'ble Division Bench of High Court of Bombay on 1st March 2024 in **Mr. Shiv Charan & Others Vs. Adjudicating Authority under the Prevention of Money Laundering Act 2002 & Anr (Writ Petition (L) No.9943 of 2023**, have passed a very important judgment on the implications of Sec.32A of the I & B Code, 2016 for Corporate Debtors and their assets, upon approval of Resolution Plans.

3. It is to be noted that Sec.32A of the I & B Code, 2016 provides for immunity to the Corporate Debtors and their assets, upon approval of resolution Plan, subject to certain conditions stipulated in that provision.

4. Facts: M/s. DSK Southern Projects Pvt Ltd., (Corporate Debtor) was under Corporate Insolvency Resolution Process since 09.12.2021 pursuant to a Sec.7 application filed by a Financial Creditor. In the said CIRP, the Resolution Plan submitted by Mr. Shiv Charan, Ms. Pushpalata Bai and Ms. Bharti Agarwal (Resolution Applicants) was approved by the NCLT, Mumbai vide its Order dated 17.02.2023 under Sec.31 of the I & B Code, 2016.

5. And almost four years prior to commencement of CIRP under I & B Code, 2016, a First Information Report was file don 20.10.2017 against the Corporate Debtor and its erstwhile promoters were filed interalia, for offences of Cheating, Criminal Breach of Trust, which are categorised as “Schedule Offences” under PMLA 2002. The Enforcement Directorate filed Enforcement Case Information Report under ECIR/01/MBZO-II/2018 on 08.03.2018, estimating the “Proceeds of Crime” to be around Rs.8522.27 Crores. And pursuant to the ECIR, an Original Complaint under O.C.No.1104/2019 was filed by the ED. And subsequently vide a Provisional Attachment Order (PAO) dated 14.02.2019 passed under Sec.5 of the PMLA, 2002 the assets of the Corporate Debtor including Bank accounts and immovable properties were attached. The said PAO was confirmed on 05.08.2019, by the Adjudicating Authority under Sec.8 of the PMLA, 2002.

6. In the pending CIRP, the Resolution Professional had filed IA/383/2022 on 10.01.2022 before NCLT, Mumbai seeking direction against the Enforcement Directorate to release the Attached Properties, on the ground that such attachment should abate owing to the Moratorium under Sec.14 of the I & B Code, 2016. During the pendency of the said Interim Application, the Resolution Plan was approved and the Resolution Applicants approached the NCLT seeking for release of the Attached Property relying upon Sec.32A of the I & B Code, 2016, which was permitted by an “Approval Order”. And subsequently NCLT, Mumbai, had passed Order on 28.04.2023 in the application earlier filed by the Resolution Professional, that once the moratorium commenced, the attachment must abate, but nevertheless took note of the final approval in the Approval Order and ruled that by reason of Sec.32A, the attached properties must be released.

7. The Enforcement Directorate challenged the Order dated 28.04.2023 of NCLT, Mumbai vide Writ Petition No.29111/2023, but had not challenged the Approval Order.

8. Simultaneously, the Resolution Applicants filed Writ Petition No. 9943/2023 before the High Court of Bombay seeking to quash the Original Complaint, the ECIR and the Orders of Attachment under PMLA, 2002 specifically relating to the Corporate Debtor and its assets. The Resolution Applicants also sought for release of the Attached Properties pursuant to the Approval Order passed by the NCLT, Mumbai relying upon Sec.32A of the I & B Code, 2016.

9. The Hon’ble High Court, on hearing both sides, decided the Core Issue of both the Writ Petitions to be

- a. Whether NCLT has jurisdiction to direct ED to release the Attached Properties invoking Sec.32 A of the I & B Code, 2016.
- b. Whether any attachment of assets is at all permitted to be continued once a moratorium commencing owing to initiation of a CIRP.

Findings:

10. The Hon’ble High Court, at the outset ruled that the second core issue, though it raises a larger issue, need not be gone into at this stage since the issued has been rendered moot by the final approval of the Resolution Plan leading to jurisdiction of Sec.32 A

being attracted. With this ruling, the High Court proceeded to deal with Sec.32 A of the I & B Code, 2016. Having in detail gone into the provisions of Sec.32 A, the High Court held the following in respect of the said Sec.32A:

- a. Sec.32A is a non-obstante provision, and it will be attracted only when a Resolution Plan gets approved under Sec.31.
- b. Further, the immunity conferred by Sec.32A is available if and only if the approved Resolution Plan results in a complete change in the character of ownership and control of the Corporate Debtor.
- c. That in terms of Sec.32A the liability of the Corporate Debtor for an offense committed prior to commencement of the CIRP shall cease, and the Corporate Debtor is explicitly protected from being prosecuted any further for such an offense, with effect from approval of the Resolution Plan
- d. Further Sec. 32 A disentitled the Corporate Debtor from such immunity if the promoters or those in management or control of the Corporate Debtor prior to the CIRP, or any related party of such persons, continues in the management or control of the Corporate Debtor under the approved resolution plan.
- e. Likewise, the Corporate Debtor would be disentitled from immunity, even if third parties who come into the management by virtue of the Resolution Plan, who were in no way connected to the Corporate Debtor, but who the Investigating Authority has reason to believe that such parties had involved in abetment or conspiracy for commission of offense in question.

Discharge of Corporate Debtor

11. From the said decision of the High Court, it can be seen, that if the ingredients of Sec.32 A are satisfied then the Corporate Debtor is entitled for an automatic discharge from prosecution, however, such protection is not made available to any other person who was in management or control or was in any manner, in charge of, or responsible to, the Corporate Debtor for conduct of its business or was in any manner involved in the commission of an offense, which is a Scheduled Offense under the PMLA, 2002. It may also be noted that that a prerequisite of such immunity to become available is a complete disassociation of the individuals involved in the management and control at the time of Commission of the alleged offense.

12. Further, Sec.32A also protects the property of the Corporate Debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP. The judgment categorically rules that once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan the property of the corporate debtor would get immunity from further prosecution of proceedings.

13. Clause (i) in the Explanation to Section 32A(2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an “action against the property” of the corporate debtor, from which immunity would be available, “shall include the attachment, seizure, retention or confiscation of such property under such law” as applicable. The reference being to any action against the property under any law would evidently bring within its compass, attachments made under the PMLA, 2002. And, extending the said protection, such immunity also granted where there is no successful resolution, but the asset of the Corporate Debtor is sold under the Liquidation process.

14. Duty of NCLT while passing Order under Sec.31(1): The Hon’ble High Court has pointed out that in terms of the Proviso to Sec.31(1), the NCLT is enjoined with a duty to ensure that before passing any order for approval of the resolution plan, it should be satisfied that the resolution plan has provisions for its effective implementation. Hence, in the present case for the success of implementation of Resolution plan, it is necessary that the attachment Order passed by the ED be lifted, and hence, it has rightly

directed the ED to release the property from attachment. Accordingly, the High Court ruled that it cannot be right to say that NCLT does not have power to direct the ED to raise its attachment that had been levied under the provisions of PMLA, 2002.

15. The High Court has gone further ahead to consider the difficulties of approaching a PMLA Court by the affected parties, and has ruled that it is unnecessary to drive a successful Resolution Applicant to file appeal under Sec.26(1) of the PMLA, 2002 in order to raise the attachment, since such attachment has been rendered impossible by Sec.32 A of the Code.

16. Further, the High court has recognised the powers of NCLT to deal with the attachment of the Enforcement Directorate under PMLA 2002, and has recorded that it shall be untenable to contend that the NCLT, which is the Adjudicating Authority constituted under I & B Code, 2016, is incompetent and/or powerless to either interpret or to give effect to the provisions of the very Act under which it was constituted.

17. The High Court went on to deal with Sec.60(5) of the I & B Code, 2016, and recorded that both Sec.32A and Sec.60(5) are non-obstante provisions that operate notwithstanding anything contained in any other law, including the PMLA, 2002. Further, it should also be noted, that the NCLT, Mumbai, while passing the Approval Order, did not attempt to interpret Law, but based only on fact and on the grounds that the ingredients of Sec.32 A were met exercising its jurisdiction under Sec.60(5) had directed the ED to release the properties of Corporate Debtor from attachment.

18. Most importantly the Hon'ble High Court has relied on the "Clean Slate Policy" impounded by the Hon'ble Supreme Court Manish Kumar Vs. Union of India (2021) 5 SCC 1, wherein the Apex Court had ruled that the immunity under Sec.32 A is a conscious and valid legislative conferment by Parliament. Recognising the said intent of Law, the High Court proceeded to state that when a resolution plan with the ingredients that qualify for immunity under Section 32A comes to be approved, quasi-judicial authorities including the Adjudicating Authority under the PMLA, 2002 must take judicial notice of the development and release their attachment on their own. This is the only means of ensuring that the rule of law as stipulated in Section 32A of the IBC, 2016 runs its course.

19. In the said Writ Petitions, most interestingly, the ED had come out with a proposition that the "Proceeds of Crime" against which enforcement action is initiated by the Directorate is an "Operational Debt", and hence the claim of the ED should also be considered in the CIRP/ Resolution Plan. However, the said proposition was negated by the High Court on the ground that once a Corporate Debtor is eligible for immunity, the Corporate Debtor and its properties are outside the pale and reach of ED's jurisdiction. No element of PMLA, 2002 would be applicable once Sec.32A of the code is invited. Hence, the ED cannot be considered as a Creditor or operational creditor for that matter.


20. Having dealt in detail with the various issues including the Core Issues raised in the said Writ Petitions, the High Court inter alia, concluded that (1) the National Company Law Tribunal is empowered to declare that the Corporate Debtor is discharged from the Offences alleged to have been committed prior to the CIRP and the Properties of Corporate Debtor attached under PMLA 2002 will become free of attachment from the time of approval of the Resolution Plan, which is eligible for benefit under Sec.32 A. (2) The protection afforded by Sec.32 A would become available only if all the ingredients of the said section is met by the Resolution Plan. (3) As a consequence of Sec. 32 A of the code, the ED must release the attachment on the Attached Properties. (4) Quasi-Judicial Authorities wielding powers of a civil court such as the ED, and functioning within the Territory of India, must act consistent with the law declared by the Hon'ble Supreme Court rather than disobey the rule of law.

Thus, the above judgment of the Hon'ble High Court of Bombay, had upheld the Rule of Law, and has set quietus to the issue which was in much debate on whether or not the NCLT would have jurisdiction to decide on the issues relating to the attachment of the ED under the PMLA, Act. With this judgment, which intends to apply the "Clean Slate Policy" propounded by the Hon'ble Supreme Court, the Resolution Applicants would be enthused to present their proposals without the fear of being chased by the criminal action for the offences committed by the Corporate Debtor prior to the CIRP. Further, with the assurance that the properties of the Corporate Debtor would be released from attachment on the Resolution Plan being approved, the CIRP would attract genuine and sizeable number of interested parties to present their Resolution Plans, thus enabling the I & B Code, 2016 to achieve its objective enshrined in its preamble.

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Venue: ICSI Mysuru Chapter

CPE- 8 (Structured) PDP-16

Sub topics

- ❖ Incorporation and Management of Nidhi Companies
- ❖ Role of CS in Managing Various form of NBFCs including Microfinance Companies
- ❖ Practical Aspects of Finance related Activities by FPO and Section 8 Companies
- ❖ Managing Non-Corporate forms of Financial Service Organizations

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CS Padmanabha V
 Chairman
 ICSI Mysuru Chapter


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	Rs.	Rs.
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Corporates	3000	3200

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 Account No: 110015601635
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 ICSI Mysuru Chapter

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Regulatory Updates

Companies Act, 2013

Updates on Circulars

MCA has introduced the Change Request Form (CRF) and the form has been made available on the V3 portal. The form caters to the exceptional circumstances where the existing forms/services/functionality may not cover a specific issue.

This form shall not be used as a substitute to any existing reporting/application/registry requirements and shall be liable to be summary rejection.

This Form primarily is intended to be used for purposes like Master Data correction and to comply with certain directions of Courts/Tribunals, which ordinarily cannot be complied with through existing functionality of forms or services on MCA-21 system.

The Form should be processed by ROCs within 03 days of its filing, after which it should be forwarded to Joint Director (e-governance cell), who shall process and decide the matter within a maximum time of seven days.

General Circular No. 02/2024

Updates on Notifications

MCA has amended Companies (Registration Offices and Fees) Rules, 2014 which shall be known as Companies (Registration Offices and Fees) Amendment Rules, 2024.

In the principal rule 10A shall be inserted after rule 10.

10A. Central Processing Center:

(1) The Registrar of the Central Processing Center established under sub-section (1) of section 396 shall examine or cause to be examined every application or e-Form or document required or authorised to be filed or delivered as provided under sub-rule (3), for approval, registration or taking on record by the Registrar.

(2) The Registrar shall take a decision on the application, e-forms or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required.

A list of applications, e-Forms or documents has been released by MCA, which comes the jurisdiction of the Registrar of the Central Processing Centre.

G.S.R 107(E)

SEBI Act, 1992

Updates on Circulars

Repeal of circular(s) outlining procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer / allotment of securities to more than 49 but up to 200 investors in a financial year

The SEBI through circular Circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 and Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016, stating that in respect of cases under the Companies Act, 1956, involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and receive the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to the investors.

As per the above circulars, the companies were given a chance to escape penal action, if the required conditions as specified above was fulfilled. Now it has been decided to repeal the aforesaid circulars and the same shall stand rescinded with effect from 6 months from the date of issue of this circular, without prejudice to the operation of anything done or any action taken under the said circulars.

However, the said option shall be available under the circular only to those companies who have completed the entire procedure and submitted the certificate accordingly.

SEBI/HO/CFD/PoD-1/P/CIR/2024/ 016

CENTRAL GOODS AND SERVICES TAX ACT, 2017/ INTEGRATED GOODS AND SERVICES ACT, 2017

Notification on CGST Act, 2017

Seeks to notify “Public Tech Platform for Frictionless Credit” as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the Central Goods and Services Tax Act, 2017.

S.O...(E)– In exercise of the powers conferred by section 158A of the Central Goods and Services Tax Act, 2017

(12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies “Public Tech Platform for Frictionless

Credit” as the system with which information may be shared by the common portal based on consent under subsection (2) of Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017)

Notification No. 06/2024 Dt. 22-02-2024

[F. No. CBIC-20001/1/2024-GST]

No Circular issued for the period 01-02-2024 to 13-03-2024 for both CGST & IGST

No Notification on GST (rate) issued for the period 01-02-2024 to 13-03-2024 for both CGST & IGST

No Notification issued under Integrated Goods and Services Tax Act, 2017 for the period 01-02-2024 to 13-03-2024

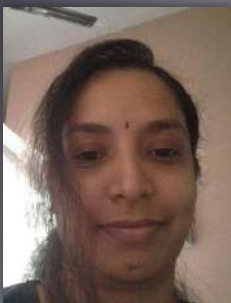
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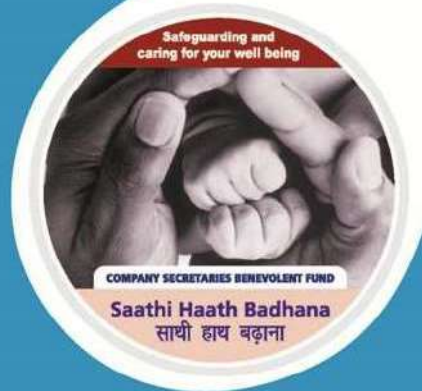
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CSBF
COMPANY SECRETARIES
BENEVOLENT FUND



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The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

Advantages of enrolling into CSBF

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- 2 To finance your children's education and other needs
- 3 To ensure that you have extra resource during serious illness or accident
- 4 Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

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