VOL 47 | NO. : 12 | Pg. 1-124 | DECEMBER 2017 | ₹100/- (Single Copy)

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

Anti-bribery and Charity Governance

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THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
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ISSN 0972-1983

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[Registered under Trade Marks Act, 1999]

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QR Code/Weblink of Chartered Secretary Journal
https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx

Annual Subscription

'Chartered Secretary' is normally published in the first week of every month. ■ Non-receipt of any issue should be notified within that month. ■ Articles on subjects of interest to company secretaries are welcome. ■ Views expressed by contributors are their own and the Institute does not accept any responsibility. ■ The Institute is not in any way responsible for the result of any action taken on the basis of the advertisements published in the journal. ■ All rights reserved. ■ No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. ■ The write ups of this issue are also available on the website of the Institute.

Edited, Printed & Published by

Dr. S.K.Dixit for The Institute of Company Secretaries of India,
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Phones : 41504444, 45341000, Grams : 'COMPSEC'
Fax : 91-11-24626727
E-Mail : info@icsi.edu
Website : http://www.icsi.edu

Mode of Citation: CSJ (2017)(12/--- (Page No.)

Design & Printed at
M. P. Printers
B-220, Phase II, Noida-201305
Gautam Budh Nagar, U. P. - India
www.mpprinters.co.in

45th National Convention of Company Secretaries
(November 22-24, 2017) held at Thiruvananthapuram, Kerala

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1. Curtain raiser to ICSI Golden Jubilee Year 45th National Convention of Company Secretaries at Thiruvananthapuram- Shaping New India 2022 Through Good Governance- Sitting on the dais from Left: CS Dinesh C Arora, CS Ahalada Rao V, CS Ramasubramaniam C, CS (Dr.) Shyam Agrawal, CS Makarand Lele, CS Gopalakrishna Hedge and CS Rakesh Rajan.
2. Pinarayi Vijayan (Hon'ble Chief Minister of Kerala) inaugurating ICSI's Golden Jubilee Year National Convention of Company Secretaries.
3. Opening Plenary Session : CS (Dr.) Shyam Agrawal in conversation with Sadhguru (Founder, Isha Foundation).
4-5. Address by Pinarayi Vijayan (Hon'ble Chief Minister of Kerala), Dr. B K Modi (Founder Chairman, Smart Group) during the 45th National Convention of Company Secretaries.
6. CS (Dr.) Shyam Agrawal presenting to Prof. P. J. Kurien (Deputy Chairman, Rajya Sabha) Certificate of 'ICSI - Shaheed Ki beti' initiative which aims to fund the education of the daughters of India's martyrs.
7. Release of the ICSI IPA Insolvency and Bankruptcy Journal.
8. Session on - GST – Good & Simple Tax- Sitting on dais from Left: Jai Kumar Mittal (CEO, J K Mittal & Associates), Dr. T M Thomas Issac (Hon'ble Minister of Finance, Government of Kerala), Gurinder Singh (Head, L & T Power), B Sriram (Partner, Ernst & Young), Ambarish Datta, (Managing Director & CEO, BSE Institute Ltd. & Founder Director, BFSI Sector Skill Council of India), Abbas Mohammad Ishaq Surve, (Senior Product Market Manager at Tally Solutions Pvt. Ltd.).
9. Group photo of International delegates at the 45th National Convention of Company Secretaries.
10. Valedictory Session – Standing from Left: CS G.M Ganpathi, CS Ahalada Rao V, CS Ramasubramaniam C, Amogh Lila Dass (Vice-President, ISKCON Dwarka and Director, ISKCON Youth Forum, Dwarka), CS (Dr.) Shyam Agrawal, CS Gopalakrishna Hedge, CS Rakesh Rajan and CS Dinesh C Arora.
11. Address by: Amogh Lila Dass (Vice-President, ISKCON Dwarka and Director, ISKCON Youth Forum, Dwarka).

Competition Law Month
(Images of Programmes held)

12. Half day seminar on competition Law at NIRC – Sitting from Left: Gaurav Kumar (IES, Director, Competition Commission of India), CS Nitesh Sinha, CS Dhananjay Shukla, Y.K. Dubey (Dy. Director, Competition Commission of India) and G R Bhatia (Partner- Competition Law Practices, Luthra & Luthra Law offices).

13. Seminar on competition Law at NIRC Chandigarh- Sitting from Left: CS G.S. Sarin, Dr. Raj Singh (Registrar of Companies, Himachal Pradesh, Punjab and Chandigarh), Nandan Kumar (Joint Director, Competition Commission of India) and CS Nitin Kumar.

14. Address by Dr. Raj Singh (Registrar of Companies, Himachal Pradesh, Punjab and Chandigarh) on competition Law at NIRC Chandigarh.

15. Seminar on Competition Law held at Pune – Address by Pranav Satyam (Deputy Director (Eco). Combination Divison, Competition Commission of India).

16. Programme on Overview of Competition Law held at Coimbatore - CS A R Ramasubramania Raja addressing, Among others sitting Anil (Deputy Director, Competition Commission of India), Mohan Rao Ronanki (Deputy Director, Competition Commission of India).

17. Programme on Competition Law at Ranchi Chapter- Sitting from Left: CS Rajiv Kumar and CS Puja Kumari.

18. Programme on Competition Law at Bengaluru Chapter - Group photo of the dignitaries.

19. Joint Seminar with CCI on Competition Law - Dr. Prof.Srikrishna Deva Rao (Vice-Chancellor, National Law University, Cuttack) addressing Others sitting on the dais from Left: Dr.Bidyadhar Majhi, (Director, CCI), CS Priyadarshi Nayak and CS Rajendra Kumar Kar.

20-21. Programme on Competition Law held at Kolkata - A view of the dais and the speakers.

22. ICSI Western Region Convocation held at Ahmedabad - Standing from Left: CS Prakash Pandya, CS Ashish Garg, CS (Dr.) Shyam Agrawal, Dr. C. Gopalkrishnan (Director, Pandit Deendayal Petroleum University (PDPU) and Rakesh Sharma.

23. Address By: Dr. C. Gopalkrishnan (Director, Pandit Deendayal Petroleum University (PDPU).

24. ICSI Western Region Convocation held at Ahmedabad - Standing from Left: CS Prakash Pandya, CS Ashish Garg, CS (Dr.) Shyam Agrawal, Dr. Himanshu A Pandya (Vice Chancellor, Gujarat University), Rakesh Sharma and CS A. K. Dixit.

25. Address By Dr. Himanshu A Pandya (Vice Chancellor, Gujarat University).

26-27. Dr. C. Gopalkrishnan (Director, Pandit Deendayal Petroleum University (PDPU)) & Dr. Himanshu A Pandya, (Vice Chancellor, Gujarat University) seen presenting the Certificates.

28. Address by Ashishkumar Chauhan (MD & CEO of BSE Limited) at ICSI GRKF Director's Orientation programme.

29. ICSI President CS (Dr.) Shyam Agrawal addressing the media on Corporate Anti-Bribery Code and Model Governance Code for meetings of Gram Panchayats.

30. Rajasthan State Conference on the theme Corporate Laws - Reforms and Ease of Doing Business - Standing from Left: CS Sushil Daga, CS Pradeep Debnath, CS Dhananjay Shukla, Ajay Rastogi (Hon'ble Judge Rajasthan High Court, Jaipur; Former Company Judge, Rajasthan High Court), CS (Dr.) Shyam Agrawal, CS Ranjeet Kumar Pandey and CS Deepak Arora.

31. Inauguration of New Chapter building at Udaipur : Sitting among others Arjun Ram Meghwal (Hon'ble Minister of State of Parliamentary Affairs; and Ministry of Water Resources, River Development and Ganga Rejuvenation), Kiran Maheshwari (Hon'ble Minister of Technical Education, Higher Education, Sanskrit Education, Science & Technology, Rajasthan) and CS (Dr.) Shyam Agrawal.

32. ICSI President CS (Dr.) Shyam Agrawal inaugurating the new Chapter premises of the ICSI Kochi Chapter.
33. Kiran Bedi {IPS (Retd.), Lt. Gov.Puducherry} launching the ICSI Classroom Teaching Fee Waiver Scheme that ensures quality education for students of Union Territories including Puducherry.
34. Meeting of the ICSI President CS (Dr.) Shyam Agrawal with Shri Farooq Khan (Administrator of Lakshadweep).
35. K Buzar Jamhar {Director (Education) of Lakshadweep} launching the Coaching Fee Waiver Scheme for students of Lakshadweep.
36. Group photograph of Jury Meeting of Corporate Governance Award function 2017.
37. Five days Residential ICSI Strategic Leadership Program (SLP) starting held at Hyderabad - Vice Chancellor, NALSAR university of Law Hyderabad addressing during the inaugural session.

Dear Valued Members,

As I sit to pen down my communication to you, the memories of those three days, of each moment of the mega event are still fresh; the words of wisdom from the spiritual leaders, Sadhguru and Shri Amogh Lila Dass still ringing inside. The Golden Jubilee Year National Convention (45th National Convention of Company Secretaries) held during November 22-24 in the heart of God's own country, Thiruvananthapuram (Kerala) was significant not only because it was the Convention of the Golden Jubilee year but also because it was the first event of such a huge magnitude and scale after the inaugural ceremony of the Golden Jubilee Year which was graced by Hon'ble Prime Minister, Shri Narendra Modi himself.

'Enlightening' would be an understatement, if I am to describe my side of the story as far as the events of National Convention are concerned. For me, not only for the designation that I presently hold, but as a member of this esteemed organization, I was not only intrigued but amazed as I sat awestruck listening to the addresses of the spiritual leaders, who very coolly and calmly, sometimes with a serene smile on their face and sometimes with their guffaw made all of us realise how deeply soiled our roots have been. We may be boasting of our global acceptance or pan-India presence, envisioning goals and plans as to where we want to see ourselves 5 years down the lane in the 75th year of independence, but the pleasing reality is that, the profession we belong to has been in every moment of time, at every step, in every kingdom, across the length and breadth of the nation, existed, and not just existed but flourished, gained respect and adulation for the services provided and carved our names in history and etched many in the hearts for doing what we do and being what we are...

While all of this may sound poetic, there is no denying the fact that from kings of the likes of Lord Rama, Janak and Dashratha, to those of the stature of Chandragupta and Krishnadevaraya have texts dedicated to them giving ample regard to their secretaries or sachivs. In the modern day too, though the name, the nomenclature of the profession reads 'Company Secretary', the role, responsibilities and capabilities have always exceeded the same. We have always proudly yet humbly been the Secretaries of the nation, partnering with the government at every step, in every initiative possible, to garner growth and development in the economy. It is for the fact that corporates play a key role in nation building that governance in these enterprises takes front seat and for that the Company Secretaries have to come forth to guide and steer these enterprises in the right direction, a direction which invariably points towards holistic national economic development.

But while catering to governance needs of the corporates, the rest of the nation, too, has never been an alien land. It is with this intent that the Institute has continuously focussed its energy, resources and forces on understanding the needs of other sectors and entities. The process of Demonetisation brought to light various issues pertaining to the manner in which corporate as well as allied vehicles were being misused for siphoning of funds which was a fine eye-opener of sorts. The inaugural ceremony of the Golden Jubilee Year witnessed the release of a dedicated publication towards the misuse of corporate vehicles; however the governance of allied entities still remained an area of contention.

Code for Charity Governance

दातव्यमिति यद्दानं दीयतेऽनुपकारिणे।
देशे काले च पात्रे च तद्दानं सात्विकं स्मृतम्।।

The above shloka from Shrimad Bhagwad Gita sums up the real text and context of charity in these two lines. According to the shloka, the gift which is given to one who does no service in return, with the feeling that it is one's duty to give and which is given at the right place, in right time and to a worthy person is considered as "Saattvika Daana". Charity has always found ample space not just in our religions and conduct but has been engraved in the societies as well, and each ancient or religious text, while mentioning and discussing charity, does not deter from this very meaning. It is the sanctity of this very act that specific entities had been established under a variety of formats to put efforts in undertaking dedicated activities towards public interest in totality while utilizing funds received from sources such as grants and donations, etc. The past decades witnessed the corporates resorting to these entities for the purpose of dispensing with their social responsibilities. However, the misuse of these entities opened doors to areas requiring immediate endeavours in strengthening the governance frameworks of these entities. Understanding the same, the Institute steadfastly formed a Core group on Charity Governance headed by CS (Ms.) Preeti Malhotra, Past President, ICSI. The result of these efforts was visible at the Opening Plenary of 45th National Convention when the Code for Charity Governance was unveiled by Sadhguru, Founder Isha Foundation. We are very much hopeful that the Code shall give an all new direction to the manner in which the charitable entities have been governed until now, putting to rest various contentions pertaining to this form of organizations.

Golden Jubilee Year National Convention of Company Secretaries

While we are gladly sharing the point-by-point report of the Convention in the pages that follow, I am more than pleased to share some intriguing facts about this recently culminated convention and how was it tad bit different from its predecessors. From undertaking the green protocol seriously, saying no to plastics at an event of such grand a scale, to doing away with the ceremonial introductions and vote of thanks and pursuing panel discussions on an international format, the intent was to make the event more value generating for the members. The knowledge that we all brought back home was not limited to the subjects and issues entailing but also matched our present with our past and showed us a clear path towards our future. Reduction in usage of paper seemed a fair call and to give effect a Mobile 'App' for the delegates was created. The plethora of releases during the three-day event, were made available on both the App and the website of the Institute for use by the members as well as all our stakeholders. Our achievement on the green front can be measured from the fact that the fraternity witnessed the Institute being accolade by way of a certificate from the Government of Kerala

ICSI New Syllabus and Vision 2022

It goes without saying that the plant and the fruits you reap is a result of the seed you sow and the strength of the tree is wholly dependent on the nutrients nurtured in its roots. Drifting a bit from the natural world, and understanding the role of right education and training in the building up of the professionals and the profession, ICSI is proud to having unveiled its New Syllabus for both the Executive and Professional Programme. While the number of subjects in both the Programmes under each module has remained the same, the composition of the Modules has been altered to suit the modern changing business environment as well as the transforming roles and responsibilities of the professionals. The queries and suggestions received on the documents were duly resolved and noted for further action.

ICSI Registered Valuers Organization

It was midway through the Opening Plenary of the National Convention on 22nd November, 2017, that we received this heartening news of receiving the Certificate of Incorporation of the ICSI REGISTERED VALUERS ORGANISATION (ICSI-RVO). The recently notified section 247 of the Companies Act, 2013 provides that where a valuation is required to be made in respect of any assets it shall be valued by a person having such qualifications and experience and registered as a valuer. Accordingly, to enable the members of the Institute/others to practice as Registered Valuers, the Institute incorporated ICSI-RVO. We are very much hopeful that this will open up plethora of opportunities in the area of valuation under various Acts for members of the Institute.

Unveiling of new chapter building at Udaipur

It was indeed a delightful moment for ICSI marked by the presence of Shri Arjun Ram Meghwal, Hon'ble Union Minister of State for Water Resources, River Development & Ganga Rejuvenation and Parliamentary Affairs, Government of India and Smt. Kiran Maheshwari, Hon'ble Minister for Higher & Technical Education, Government of Rajasthan at Udaipur with whose benign blessings the new Chapter Building of ICSI at Udaipur was inaugurated. The words of Shri Meghwal that with the nation progressing, professional Institutes like ICSI need to take on a new role in the development of skills, technology and manage its adoption to deal effectively with a rapidly evolving business environment has infused amongst the members and the Institute a greater enthusiasm towards the achievement of our higher objectives of empowering national governance.

17th ICSI National Awards for Excellence in Corporate Governance and 2nd ICSI CSR Excellence Awards

Nearing finality, the Jury meeting for the 17th ICSI National Awards for Excellence in Corporate Governance and 2nd ICSI CSR Excellence Awards was held on 30th November, 2017. The Jury comprising eminent personalities from various corridors of life was chaired by Hon'ble Justice Shri R. M. Lodha, Former Chief Justice of India. The presentation ceremony of the awards is scheduled to be held on December 16, 2017 at Jaipur (Rajasthan).

Membership of various Government Committees

It is indeed a moment of pleasure for the Institute that its initiatives and efforts are gaining due recognition. The past month has witnessed the presence of ICSI being felt at multiple forums. Be it the newly constituted Insolvency Law Committee or the Working Committee for streamlining working under the Companies Act, 2013 with respect of filing of various documents with ROC/ CRC, the nomination of members of this Institute were solicited without fail. The Department of Industrial Policy and Promotion in its attempt to maintain momentum of business intends to gather feedback from the end users and analyse the on-ground implementation of reform measures implemented by the Government; and for the purpose of the same it has called for the participation of the Institute. In another instance, the Ministry of Corporate Affairs has constituted a Committee for drafting Appendix to the Investigation Manual of the Serious Fraud Investigation Office wherein the nomination from ICSI was solicited.

Convocation Ceremony of the Western Indian Regional Council

In an attempt to align the non-metro cities in the mainstream activities of the Institute, it was decided that the convocation of the members of various regions shall be held at cities other than metro cities of that region. In line with the decision, the Convocation of the Western region was held at Ahmedabad on 29th November, 2017. The moment was one of pride for some 400 newly qualified members hailing from the State of Maharashtra, Madhya Pradesh, Goa, Gujarat and Chhattisgarh, when at the Convocation ceremony held at the Sardar Vallabhbhai Patel National Memorial, Ahmedabad they received their certificates of Associate membership. The event was marked by an even greater feat when during his address, Shri Himanshu A. Pandya, Vice Chancellor, Gujarat University, assured that the University would like to associate itself with the Institute by giving Company Secretaries an opportunity to enrol for and pursue Ph.D. courses at their esteemed University. Dr. C Gopalkrishnan, Director, Pandit Deen Dayal Petroleum University who was also gracing the ceremony, congratulated the newly qualified members for their exemplary performance and motivated them to remain inquisitive throughout their lives, saying this would ensure constant growth of their knowledge.

Looking back and reminiscing the moments of the past month, if the month of October was marked by celebrations, the month of November was more about gaining knowledge from whatsoever source possible. At this juncture, I would like to share a small shloka.

विद्या ददाति विनयं विनयाद्याति पात्रताम् ।
पात्रत्वाद्धनमाप्नोति धनाद्धर्मं ततः सुखम् ॥

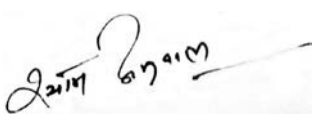
(Knowledge imparts modesty. Through humbleness comes worthiness. By worthiness one gets prosperity and from prosperity (one does) good deeds and thereupon Good deeds lead to happiness.)

It goes without saying that the wealth of knowledge cannot be taken away once achieved and the happiness that follows is one of enlightenment. The company of wealthy men or so to say knowledgeable men has been an enlightening experience. It is with this enlightenment that I urge all the members to strengthen themselves with the weaponry of knowledge to gain wisdom and the significance of their role in nation building. Then and only then shall the nation tread on the path of unstinted growth and development!!

Happy Reading!!

Best wishes.

Yours Sincerely



December 04, 2017
New Delhi

सी एस (डॉ.) श्याम अग्रवाल
अध्यक्ष, भारतीय कंपनी सचिव संस्थान

RECENT INITIATIVES TAKEN BY ICSI

In furtherance to our earlier communications, we are pleased to share the following initiatives taken by the Institute during the month of November, 2017:

1. Golden Jubilee Year – 45th National Convention of Company Secretaries, 2017

Apt in the time when India is moving forward with the historic transformation of New India, 2022 through the gates of Good Governance, the Institute as a premier national body for serving professional excellence in governance has celebrated the annual congregation of its stakeholders as the Golden Jubilee Year – 45th National Convention of Company Secretaries from November 22-24, 2017 at Thiruvananthapuram, Kerela. The spectacular three day long event witnessed the presence of various dignitaries of national and international repute at its opening plenary, various technical sessions as well as the closing plenary.

The detailed proceeding of the Convention have been provided elsewhere in this issue.

2. Publication and Releases at Golden Jubilee Year – 45th National Convention, 2017

To venerate the celebration of our Golden Jubilee Year – 45th National Convention of Company Secretaries, 2017, the Institute has come out with various publications and releases touching upon the varied areas of Good Governance and Role of CS in Shaping New India through the best practices of Good Governance. The Publications and Releases include:

- **Golden Jubilee Year – 45th National Convention Souvenir**
  The foundation of New India 2022 is grounded with various parameters including among others in sustainable governance. Company Secretaries as thought leaders in the arena of governance, are committed in shaping New India through Good Governance. To commemorate 45th National Convention of Company Secretaries with the Theme: Company Secretary: "Shaping New India 2022 Through Good Governance", the Institute brought out a Souvenir containing theme articles, messages of towering personalities, programme details and other interesting features.
- **ICSI New Syllabus**
  As you aware that sufficing the objective of imparting a 360 degree rounded set of education and development of our students, the Syllabus Review Board of the Institute has come up with a revisited and projected curriculum for the students at the stage of Executive and Professional Program ensuring the cutting-edge contours of professional excellence making parallel way of New ICSI 2022 with a sustainable and empowered governance of New India 2022. As a 'Pole Star' guiding the 'Governance Professionals-in-Making to reach their desired destination and attain excellence in their career, the ICSI New Syllabus was released at the convention.
- **Code for Charity Governance**
  ICSI formed a Core Group to look into the grey areas in functioning of charitable entities and propose a Code for Charity Governance. The Code envisages 9 Principles which touch upon different activities of these entities and aims to provide the governance mechanism. This Code will fill a long overdue gap in their governance to ensure that they remain true to their purpose and achieve the ultimate goal of empowering national governance.
- **Virtual Platform for Members**
  In view to facilitate the advanced intellectual deliberation among the members of the Institute through the one touch facility supported by digital transformation, a dedicated Virtual Platform for Members has been released in the convention.
- **Insolvency and Bankruptcy Code, 2016 - A Simplified Guide - Hindi Version**
  This booklet has been prepared to sensitize the stakeholders about the Code in a simplified manner incorporating broad framework of the Code, Institutional Mechanism provided under the Code, Insolvency Resolution Process for Corporate and Individuals and Exit Route provided under the Code in Hindi so as to create the much needed awareness and education on the Code.
- **Pronouncements under the Insolvency and Bankruptcy Code, 2016 Issue Analysis**
  The Publication provides analysis of various issues, settled through judicial pronouncements by Supreme Court, High Courts, National Company Law Appellate Tribunal (NCLAT), various benches of National Company Law Tribunal (NCLT).
- **GST Practitioner's Guide**
  Company Secretaries can practice as a GST Practitioner under the novel indirect tax regime. To facilitate and provide elementary guidance to the Company Secretaries, ICSI has come out with GST Practitioners' Guide. Its main objective is to provide guidance to the practicing professionals for discharging their role as GST practitioner under GST Law and intends to assist in understanding the relevant provisions and enhance the understanding of role as GST Practitioner.
- **GST Educational Series**
  The Institute, as a capacity building initiative, started a daily GST Educational Series which are being very well received by all the stakeholders as well as public at large. The series has been successful and academically useful. The book is a compilation of 100 daily GST Educational Series by ICSI which are also available on the GST Corner of the ICSI website.
- **Indian Banking Sector - IPO Scenario and its Impact**
  Banking Sector being the backbone of an economy generates mammoth academic and research interests to delve deep into its capital raising process through IPO. This book makes an endeavor to explore the significant facets of IPO of Indian Banking Sector.
- **Foreign Direct Investment - A Practitioner's Guide**

With a view to educate professionals and corporate executives to facilitate FDI and opening of Industries and offices in India by foreign companies, banks and insurance companies, the Institute has brought out this publication primarily focusing on Foreign Exchange Management Act, Foreign Direct Investment (FDI) in India, Establishment of Branch Office (BO)/Liaison Office (LO)/Project Office (PO) in India, Liberalized Remittance Scheme (LRS), Remittance of Assets outside India, Compounding of Contraventions under FEMA.

- **Whistle Blowing - Balancing on a Tight Rope**
  A Knowledge Paper on Whistle Blowing – Balancing on a Tight Rope was released at the convention in view to advance the acumen of the readers on the basic concepts of whistle blowing and the laws protecting whistle blowers in India as well as in other jurisdictions.
- **FAQs on Limited Liability Partnership**
  "FAQ's on Limited Liability Partnerships" is a compilation of various frequently asked questions related to Limited Liability Partnerships. This booklet consists of various questions as to law and procedures regarding formation and registration, management, compliance requirements, compromise, arrangement or reconstruction, strike-off, winding up and dissolution of limited liability partnerships.
- **FAQs on Producer Companies**
  "FAQ's on Producer Companies" is a compilation of various frequently asked questions related to Producer Companies. This booklet consists of various questions as to law and procedures regarding formation and registration, management, share capital and member's rights and accounts audit loans and investments of the Producer Companies.
- **Reminiscences of ICSI National Conventions**
  The Institute compiled the Reminiscences of ICSI National Conventions covering around forty-five years of National conventions to venerate the antiquity of Conventions. It offers a valuable insight into the yesteryears of ICSI National Conventions and gives a glimpse of every Convention and highlights the excerpts from the speeches of the distinguished speakers.
- **Secretarial Standard on Dividend (SS-3)**
  Secretarial Standards integrate, harmonize and standardize the diverse secretarial practices followed by the corporates so as to promote uniformity and consistency, and to adopt the best prevalent practices. In this direction and after the successful implementation of Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2), ICSI has issued the Secretarial Standard on Dividend (SS-3). Adherence to this Standard is recommendatory.
- **ICSI IPA Insolvency and Bankruptcy Journal**
  The pioneer issue of the monthly Journal titled "ICSI IPA Insolvency and Bankruptcy Journal" comprises of the recent regulations and notifications brought out by the Regulator on the Code, the gist of the landmark judgments pronounced by the Hon'ble Supreme Court, NCLAT and the various benches of NCLT, articles from experts in the field and the contemporary advancements taking place globally in the field of insolvency and bankruptcy.
- **Insolvency and Bankruptcy Manual**
  The publication is divided into two Parts. Part I *inter alia* comprises of Report of Bankruptcy Law Reforms Committee, Parliamentary Standing Committee Report as well as the provisions of the Code, Rules, Regulations, Notifications, Circulars under the Code. Part II strives to equip readers with a ready reckoner covering *inter alia* practical aspects of corporate insolvency resolution process including formats of notices, agenda of meeting of committee of creditors, formats of application before National Company Law Tribunal for initiating corporate insolvency resolution process, model application to NCLT, model information memorandum, model resolution plan etc.

3. Golden Jubilee Year National Convention App

In enduring our pace with the digital transformation, the Institute launched the Golden Jubilee Year National Convention APP for enabling the delegates of our Golden Jubilee Year – 45th National Convention of Company Secretaries to access the intellectual resources, publications, releases, minute to minute information and other related details of the convention on Real Time Basis.

4. Green Protocol at Golden Jubilee Year – 45th National Convention, 2017

In view to motivate the society to become more nature-friendly, the Institute during the celebration of its Golden Jubilee Year – 45th National Convention, 2017 adopted Green Protocol – a major movement in Kerala which defines the form of an enviro-cultural revolution. With the implementation of the protocol, plastic and other non-biodegradable articles including disposable glasses and plates and thermocol decorations were kept at bay from the convention. This movement is instrumental in changing the way we live in this country and on this planet certificate of appreciation was awarded to the Institute by the Government of Kerala for observing green protocol.

5. Online Access of Releases Made at Golden Jubilee Year – 45th National Convention, 2017

In order to build the capacities of the members of the Institute, the soft copies of the publications released during the Golden Jubilee Year National Convention of Company Secretaries (45th National Convention, 2017) has been placed on ICSI website at the link https://www.icsi.edu/45nc/Home.aspx

6. ICSI and NSDC to Develop GST Accounts Assistant

As you are aware that recently, the Hon'ble Prime Minister of India, Shri Narendra Modi, while inaugurating Year-Long Golden Jubilee Celebrations of the ICSI on October 4, 2017 at New Delhi, has emphasized on the need to spread the awareness and benefits of GST and making the GST services easily accessible to traders, businesses, industries and other stake holders, especially those in towns and mofussil areas. In subsuming our utmost dedication to kind words of the Hon'ble Prime Minister, Institute proudly undertook the responsibility to impart training to the youth with the deep precepts, edicts and principles of GST.

Accordingly, the Institute entered into a MoU with National Skill Development Corporation (NSDC) to organize Training Programs on GST for our students in order to develop them as the GST Accounts Assistants and to enable them render their services in GST after the training.

7. Incorporation of ICSI Registered Valuers Organisation

In exercise of the powers conferred by section 247 read with sections 458, 459 and 469 of the Companies Act, 2013, the Companies (Registered Valuers and Valuation) Rules, 2017 were notified by the Ministry of Corporate Affairs on October 18, 2017. Section 247 of the Act provides that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provisions of this Act, it shall be valued by a person having such qualifications and experience and registered as a Valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of directors of that company.

Accordingly, to enable the members of the Institute/others to practice as Registered Valuers, the Institute has incorporated 'ICSI Registered Valuers Organization' on November 22, 2017. We are hopeful that it will open up plethora of opportunities in the area of valuation under the Companies Act, 2013 as well as other Acts.

8. ICSI represented at Working Committee for streamlining working under the Companies Act, 2013

The Ministry of Corporate Affairs vide its Office Order under reference no. 16/65/2017-Legal dated November 21, 2017 has constituted a Working Committee for streamlining working under the Companies Act, 2013 with respect to filing of various documents with ROC/ CRC, the RDs and the Ministry under the chairmanship of Shri Manmohan Juneja, DII (I/C). ICSI also has representation at the Committee.

9. ICSI-BSE Directors' Orientation Program

In the light of provisions of Companies Act, 2013 and Listing Compliances, directors need to understand and to exchange views on emerging areas of responsibilities. Keeping this in mind, ICSI Governance Research and Knowledge Foundation in association with BSE Limited has organized a one day Directors' Orientation Programme (DOP) on November 20, 2017 at Mumbai, duly inaugurated by Shri Ashishkumar Chauhan, MD & CEO of BSE Ltd. as the chief guest of the Programme.

10. ICSI Corporate Leadership Development Program (CLDP) – Second Batch

As you are aware that the Launch of 45 days residential Corporate Leadership Development Program (CLDP) has opened a new chapter in the history of ICSI in furthering the aim of transforming students/persons into corporate professionals.

After the launch to the grand success of the First Batch of CLDP in Delhi from August 1, 2017 to September 14, 2017, we at ICSI were sure that we had taken the step in the right direction to achieve our vision, which will reap its results in the future batches to come. Thus the Institute decided to launch CLDP in all the four regions and has recently launched the second batch of CLDP at ICSI-CCGRT, Belapur, Navi Mumbai on November 30, 2017.

11. Webinar on Secretarial Standards

Two panel discussion webinars on Secretarial Standards on General Meetings (SS-2) and Meetings of the Board of Directors (SS-1) were organised on November 18, 2017 and November 20, 2017 respectively, to apprise the members about the amendments in revised SS-1 & SS-2.

12. ICSI Quest-e-Assist

In the sustenance of the initiative towards knowledge building under the digitalized platform, the Institute had launched ICSI Quest e-Assist at 18th National Conference of Practicing Company Secretaries held at Shillong, Meghalaya on June 24-25, 2017.

This is an online platform for members of the Institute where they can seek responses on the queries and difficulties pertaining to the Companies Act, 2013 and Rules and Notifications thereunder as well as issues related to e-filing. Till November end, around 850 queries of the members have been successfully replied by the experts at par.

13. Videos on GST

In view to enrich professionals about the diverse facts and facets of Goods and Services Tax and build capacity of stakeholders in the area of GST, the Institute is dynamically undertaking various initiatives. In a step forward, to equip the students in the new indirect taxation regime and to update and enhance their knowledge, the Institute recorded the video lectures and uploaded the same on ICSI website under Academic Corner for free access to students.

14. GST Educational Series

As you are aware that the Institute as a capacity building initiative, started a daily GST Educational Series with an aim to advance the knowledge of the public at large about the fact and facets of GST. It is worthy to note that they are well received by all the stakeholders as well as public at large. The series have been successful and academically useful. Till date ICSI has brought out 130 issues of GST Educational Series which are also available on the GST Corner of the ICSI website at https://www.icsi.edu/GSTEducationalSeries.aspx.

15. GST Point

As you are aware that to thoroughly assist in the successful implementation of GST, the Institute has launched a GST Point, as a consolidated platform to reply to the queries, difficulties and challenges faced by consumers, manufacturers, traders, MSMEs, public at large, professionals, etc. in understanding and effectively executing the Goods and Services Tax Laws. In the month of November, ten (10) more sessions have been completed successfully making a total of forty five (45) sessions under GST Point. The queries received and answered by the experts cover wide range of topics including registration, filing, and input tax credit along with other GST modalities.

16. Training Programme to empanel Peer Reviewers

In order to ensure that the objectives of the Peer Review are achieved in letter and spirit and the Reviewers are duly equipped with the thorough understanding and indulgence of the procedure, manner, prescriptions, guidelines and other related aspects of conducting Peer Review, the Institute persistently conducts training programmes to empanel more Peer Reviewers. In the month of November also, Training Programme to empanel Peer Reviewers was conducted at Ghaziabad on November 11, 2017.

17. ICSI Western Region Convocation

The Institute's Convocation for Western Region was held on November 29, 2017 at Sardar Vallabhbhai Patel National Memorial, Ahmedabad in two sessions to award the certificate of membership of the Institute to the members of the Western Region admitted during the period from April 1, 2017 to September 30, 2017 and medals/certificates/cheques to national level award winning students. It is for the first time that the Convocation of the western region was held away from the regional centre Mumbai. A total of 330 members and 4 award winning students participated in the programme. The Chief Guest on the occasion was Dr. C. Gopalkrishnan, Director, Pandit Deendayal Petroleum University (PDPU) in session-I and Dr. Himanshu A. Pandya, Vice Chancellor, Gujarat University in Session-II.

18. Inauguration of New Chapter Building in Udaipur

In order to strengthen the pan India presence of the Institute and to provide cutting edge infrastructure to the members and students, a new chapter building in Udaipur was recently inaugurated at the gracious hands of Shri Arjun Ram Meghwal, Hon'ble Union Minister of State for Water Resources, River Development & Ganga Rejuvenation and Parliamentary Affairs in the august presence of Smt. Kiran Maheshwari, Hon'ble Minister for Higher and Technical Education, Government of Rajasthan and CS (Dr.) Shyam Agrawal, President ICSI.

19. ICSI Golden Jubilee Year Scheme for 100% Fee Refund for Meritorious and Economically Backward Students registering in CS Course in December 2017

In the Golden Jubilee Year Initiative, Institute in order to bring the economically backward and meritorious students to mainstream has launched a Scheme ensuring 100% Fee Refund for Meritorious and Economically Backward Students registering in CS Course in December 2017. This scheme aims to provide an opportunity to the meritorious and penurious students to pursue higher education in the form of Company Secretaryship course along with subsuming an equitable empowerment of Youth. The Scheme would initially be opened for one month, i.e., December 2017. The scheme would include a 100% refund of the admission fee the meritorious students who have attained 70% marks in 10+2 examinations for Foundation Stage and have attained 60% in Graduation for Executive Stage along with the economically backward students who have attained 55% marks in 10+2 examinations for Foundation Stage and 50% in Graduation for Executive Stage. This waiver shall be through SEFT (Students Education Fund Trust) and all subsequent benefits for conditional fee waiver thereafter shall be given to such students.

20. Career Counselling at Puducherry and Lakshdweep

In order to motivate the students, CS (Dr.) Shyam Agrawal, President, ICSI held a Press Conference cum interview at AIR during his visit to Puducherry and Lakshdweep. At Puducherry, he also met Hon'ble Governor, Dr Kiran Bedi and briefed her about the initiatives of the Institute.

21. Impact of Launch of Class Room Teaching fee Waiver Scheme in Puducherry Study Centre

As you are aware that the Institute has initiated a new scheme under the title of "Class Room Teaching Fee Waiver Scheme" to reach out to the students of the Union Territories excluding Delhi and Chandigarh where awareness of the Profession is insignificant. The opening of the Study Centre and launch of Class Room Teaching fee Waiver Scheme in Puducherry has given new heights to the Profession. Puducherry Study Centre is one of the Union Territories, where the presence of students joining the course is increasing. It is also significant to note that around 500 schools have registered from Puducherry for CS Olympiad Competition for both the academic sessions.

22. ICSI Study Centre Scheme

In the month of November, a new study center at Kavaratti, Lakshadweep was inaugurated by the CS (Dr.) Shyam Agrawal, President, ICSI under the Study Centre Scheme, which was launched by the Institute to break the distance barrier for students belonging to cities / locations in which the representative offices of the Institute are not in existence. Till November, 57 Study Centres have been established in collaboration with reputed colleges in different locations.

23. ICSI Signature Award Scheme

As you are aware that the Institute launched an ICSI Signature Award Scheme in January, 2016 under which top rank holders in B.Com. Final Examinations in reputed universities and also specialised programmes/ papers of IITs / IIMs are awarded a Gold Medal and a Certificate. So far, ICSI Signature Award has been instituted in 17 Universities and Total (09) Gold Medals have been awarded under this scheme.

In the month of November 2017, gold medal was awarded at Maharaja Ganga Singh University, Bikaner, Rajasthan on November 28, 2017.

24. Admit cards for students appearing in December 2017 examination

The admit cards for the students appearing in December 2017 examination will be uploaded on Institutes' website around ten to twelve days prior to the Commencement of examination. Students can download the same from the website of the Institute.

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

17TH ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE

&

2ND ICSI CSR EXCELLENCE AWARDS

Carrying forward the legacy of enthusing the corporates in focusing on corporate governance practices in corporate functioning and according recognition for the same, the felicitation of corporates reaching pinnacles in governance practices has entered its 17th year as ICSI continues with the celebration of Golden Jubilee Year.

The ICSI CSR Excellence Awards, too, turn 'two'.

In this mega event of fostering corporate governance and promoting continued extraordinary efforts in social responsibility ICSI cordially invites you on *Saturday, December 16, 2017, 4.30 PM onwards* at *Hotel Clarks Amer, JLN Marg, Jaipur-302018, (Rajasthan).*

The presentation ceremony shall be precede by a panel discussion on the topic *India 2022: The Global Edifice.*

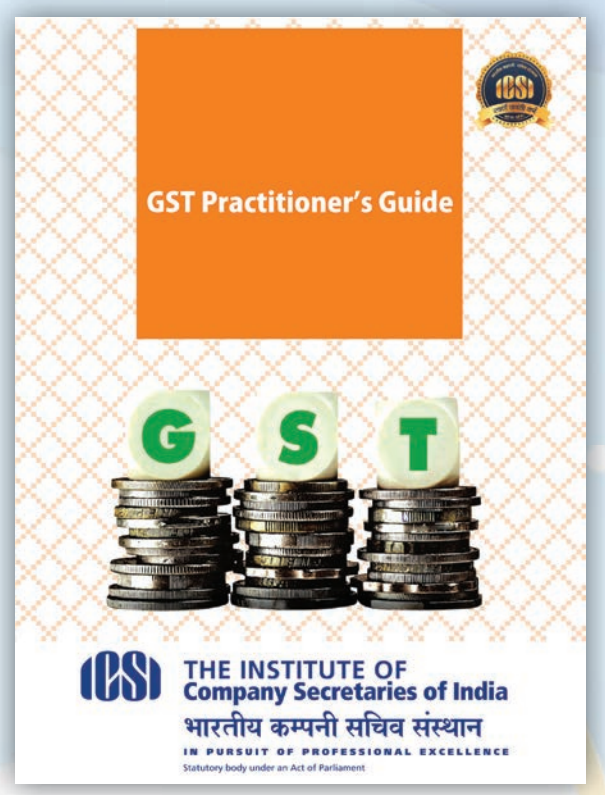
The Pink City of Jaipur awaits you!!

CS (Dr.) Shyam Agrawal
President
The Institute of Company Secretaries of India

Vision	*Motto*	*Mission*
"To be a global leader in promoting good corporate governance"	सत्यं वद। धर्मं चर। Speak the truth. abide by the law	"To develop high calibre professionals facilitating good corporate governance"

www.icsi.edu https://www.facebook.com/ICSI/ https://twitter.com/ICSI_CS https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/

GST PRACTITIONER'S GUIDE



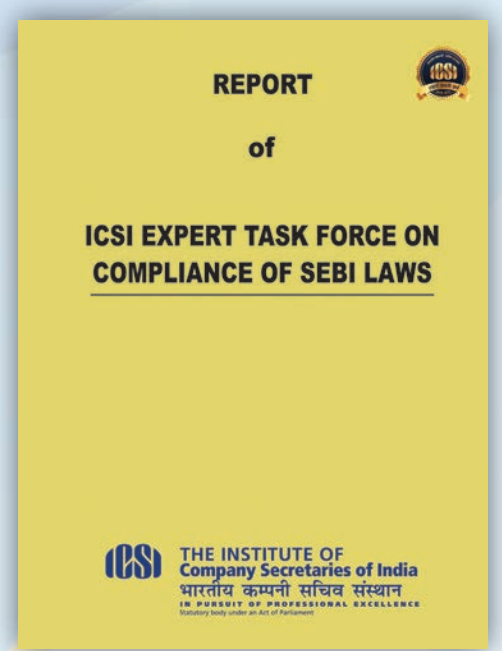
With a view to render an out and out association with the government initiatives of *One Nation, One Tax* in the form of GST, the professional fraternity of the country including Company Secretaries are playing a more than significant role in ensuring maximum benefits of GST to the populace.

The GST Practitioner's Guide rolled out by ICSI is one such step to facilitate and guide the Company Secretaries in effectively performing the role of GST Practitioners under the law.

The various aspects covered under the Guide include:

- Meaning of Goods and Services Tax Practitioner
- Framework of GST Practitioners Registration
- Eligibility and Qualification for GST Practitioner
- Registration Provisions for GST Practitioner
- Removal due to guilty of misconduct
- Appeal to the Commissioner
- Activities/Functions of GST Practitioner
- Responsibility of Registered person and of GST Practitioner
- Appearance by Authorised Representative
- Dress Code for appearing before judicial/quasi-judicial bodies and Tribunals
- GST Practitioner Forms

REPORT OF ICSI EXPERT TASK FORCE ON COMPLIANCE OF SEBI LAWS



Six months ago, the ICSI Task Force on Compliance of SEBI Laws to study in detail proposition of an exhaustive compliance audit mechanism on SEBI Laws applicable to listed entities and to work out modalities for such audit.

The Task Force made the following suggestions for implementation of Compliance Report:

A. Compliance Report and Compliance Checklist

The Task Force recommended that a detailed checklist of all the points should be the base for the independent third party governance professional for making the Compliance Report. The three categories of Compliance Level in the Checklist would confirm upon:

- Policy/documents/Books and Records being in place
- Procedures/key controls being documented
- Implementation or Compliance with the said procedures

B. Periodic Updation of Compliance Report and Compliance Check list

(a) The Compliance Report would be submitted to the Stock Exchange on an bi-annual basis within 45 days from the end of the Half Year.

(b) The detailed Checklist would not be filed with the Exchanges but would be placed before the Audit Committee.

C. Guidance Note on Compliance Report and Compliance Check List

ICSI to develop a Guidance Note for carrying out Compliance Reporting by the practising members of the Institute.

RELEASE OF ICSI IPA INSOLVENCY AND BANKRUPTCY JOURNAL

AT THE 45TH NATIONAL CONVENTION OF COMPANY SECRETARIES

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CS Alka Kapoor
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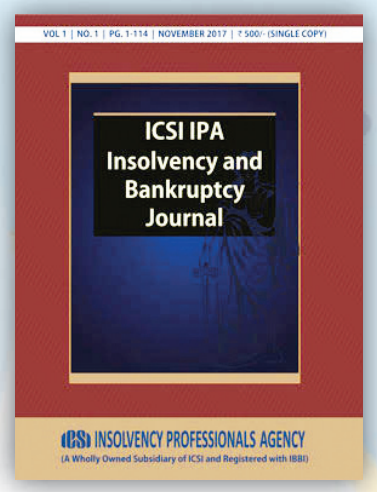


Highlights of the Journal

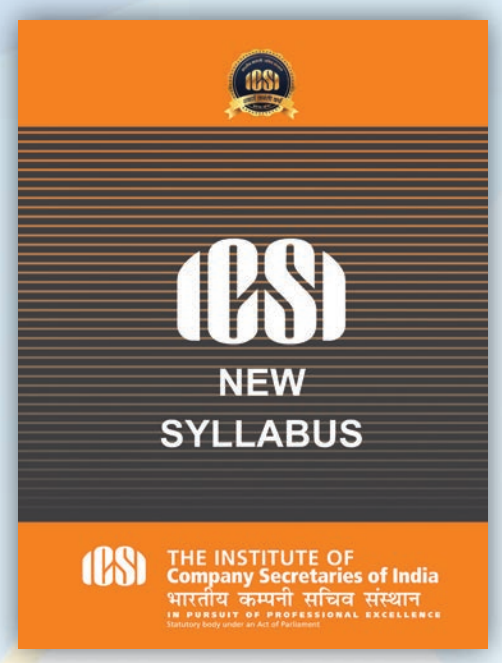
The Journal, a maiden initiative and the very first of its kind to incorporate the latest in the insolvency law intends to keep abreast its readers of the new jurisprudence which is rapidly evolving around the provisions of the landmark legislation i.e. the Insolvency and Bankruptcy Code, 2016 (Code). The coverage of the Journal encompasses:

- ***Insights - Articles from the experts in the field of***
- ***Insolvency and Bankruptcy Law.***
- ***Judicial Pronouncements - Full case reports from Supreme Court, NCLAT and different benches of NCLT with excerpts.***
- ***Policy Updates - Recent rules, regulations, notifications issued by the Government, IBBI and other regulators bearing impact on Insolvency law.***
- **Global Arena - Contemporary advancements taking place globally in the field of insolvency and bankruptcy**

The ICSI IPA Insolvency and Bankruptcy Journal shell be published on monthly basis.
Annual Subscription (Jan - Dec 2018) – Rs 5,500/-
(Subscriber will get Nov and Dec 2017 issues complimentary)

BUY ONLINE
You can also send your order by post
Send payment in favour of **"Jus Scriptum Magnus Pvt. Limited"** at CLA House,
B-365, Sector 19, Dwarka, New Delhi 110075. Email : info@claonline.in Tel : 011- 48004100

ICSI NEW SYLLABUS (2017)



The ICSI New Syllabus (2017) was unveiled on 22nd of November, 2017 on the occasion of Golden Jubilee Year National Convention of Company Secretaries (45th National Convention).

The significant facets of the ICSI New Syllabus are- While revising the syllabus, the expected profile of Company Secretaries was kept in view; Metamorphosis from theoretical to practical approach can be observed in the New Syllabus; Imbibing of innovative concept of Core Areas for Company Secretaries, Ancillary to Core- Areas allied to Core Areas and Hybrid- Combination of Core and Allied areas; Introduction of new subjects in Executive Programme and Professional Programme, like, Jurisprudence, Interpretation and General Laws; Setting up of Business Entities and Closure; Financial and Strategic Management etc. to cater to the professional needs of future Governance Professionals; Part-wise learning objectives of various subjects covered under Executive Programme and Professional Programme have been clearly explained in the New Syllabus; Keeping in view the importance and contemporayness; Elective Subjects have been included in the New Syllabus. Elective subjects focusing on Banking, Insurance, Valuation, Business Modelling, Insolvency, Labour Laws and Forensic Audit will go a long way in enhancing the professional opportunities for Company Secretaries; Inclusion of extremely relevant Post Membership Qualification and Certification Courses for the Company Secretaries who could not pursued a particular course of their choice when they were students; A judicious allocation of marks to different parts / components of the subjects of New Syllabus (Executive Programme and Professional Programme) and To provide fillip to Simulation Learning Approach, the subject titled, 'Multidisciplinary Case Studies' have been introduced in order to develop requisite knowledge and expertise among the students pursuing Company Secretaryship Course to tackle various Corporate Issues in their professional career.

It can be said without an iota of doubt that the New Syllabus will play a crucial role in creating a brand value for Company Secretary Profession. Further, it will assist the Governance Professionals-in-Making to secure gainful employment opportunities in the era of cut throat competition.

ICSI UNVEILS NEW CHAPTER BUILDING OF ICSI HOUSE, UDAIPUR

A new feather was added in the cap with the inauguration of new Chapter of ICSI House at Udaipur, Rajasthan by Shri Arjun Ram Meghwal, Union Minister of State for Water Resources River Development & Ganga Rejuvenation and Parliamentary Affairs, Government of India. Amongst the august gathering present at the inauguration was Smt. Kiran Maheshwari, Hon'ble Minister for Higher & Technical Education, Government of Rajasthan.

Shri Arjun Ram Meghwal, Union Minister of State for Water Resources River Development & Ganga Rejuvenation and Parliamentary Affairs Government of India in his inaugural address, congratulated ICSI for its new Chapter building at Udaipur. He also appreciated the efforts the institute is taking to contribute towards initiatives of nation building of the Government of India. To quote him "As the nation progresses towards 'New India', professional Institutes like ICSI need to take on a new role in the development of skills, technology and manage its adoption to deal effectively with a rapidly evolving business environment".

Smt. Kiran Maheshwari, Hon'ble Minister for Higher & Technical Education, Government of Rajasthan said, "Rajasthan is rapidly evolving in terms of higher education and we appreciate the efforts ICSI is taking to ensure that students in every nook and corner of the country can pursue this fast evolving course".

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Golden Jubilee Year National Convention of Company Secretaries (45th National Convention)

AL Saj Convention Centre, Thiruvananthapuram (Trivandrum), Kerala
22-24 November, 2017 | Wednesday-Thursday-Friday

Company Secretary : Shaping New India 2022 Through Good Governance

Dear Professional Colleagues,

Sub. : Online Access of releases made at Golden Jubilee Year National Convention

Greetings from ICSI

We are pleased to share with you that the Golden Jubilee Year National Convention Company Secretaries, 2017 (45th National Convention) organised during November 22-24, 2017 at Thiruvananthapuram, Kerala on the theme Company Secretary: Shaping New India 2022 Through Good Governance was a great success.

The Institute followed a Green Protocol, to make the occasion more nature friendly, for which Certificate of Appreciation was awarded to the Institute by the Government of Kerala. The Convention also witnessed releases of many publications and virtual platform for members.

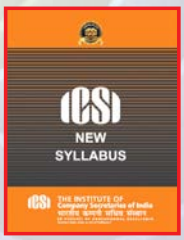
In order to build the capacities of the ICSI Members, the soft copies of the publications released during Golden Jubilee Year National Convention of Company Secretaries (45th National Convention) has been placed on ICSI website at the link : https://www.icsi.edu/45nc/Home.aspx

We request all the members to access these Publications.

CS (Dr.) Shyam Agrawal
President

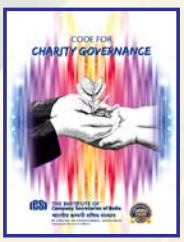
Souvenir

To commemorate 45th National Convention of Company Secretaries with the Theme: Company Secretary: "Shaping New India 2022 Through Good Governance", the Institute brings out a Souvenir containing theme articles, messages of towering personality, programme details and other interesting features.



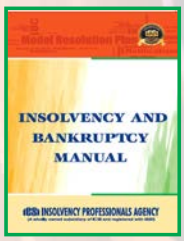
ICSI Syllabus

The Institute released its revised syllabus of Executive Programme and Professional Programme. To provide practical perspective to the New Syllabus, an innovative concept of Core, Ancillary and Hybrid were embraced while designing the structure and contents of the syllabus of various subjects.



Code for Charity Governance

ICSI formed a Core Group to look into the grey areas in functioning of charitable entities and propose a Code for Charity Governance. The Code envisages nine Principles which touches upon different activities of these entities and aims to provide the governance mechanism. This Code will fill a long overdue gap in their governance to ensure that they remain true to their purpose and achieve the ultimate goal of empowering national governance.



Insolvency and Bankruptcy Manual

The publication is divided into two Parts. Part I inter alia comprises of Report of Bankruptcy Law Reforms Committee, Parliamentary Standing Committee Report as well as the provisions of the Code, Rules, Regulations, Notifications, Circulars under the Code. Part II strives to equip readers with a ready reckoner covering inter alia practical aspects of corporate insolvency resolution process including formats of notices, agenda of meeting of committee of creditors, formats of application before National Company Law Tribunal for initiating corporate insolvency resolution process, model application to NCLT, model information memorandum, model resolution plan etc.

ICSI IPA Insolvency and Bankruptcy Journal

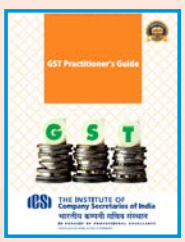
The pioneer issue of the monthly Journal titled "ICSI IPA Insolvency and Bankruptcy Journal" comprises of the recent regulations and notifications brought out by the Regulator on the Code, the gist of the landmark judgments pronounced by the Hon'ble Supreme Court, NCLAT and the various benches of NCLT, articles from experts in the field and the contemporary advancements taking place globally in the field of insolvency and bankruptcy.

IBC Simplified Guide- Hindi version

This booklet has been prepared to sensitize the stakeholders about the Code in a simplified manner incorporating broad framework of the Code, Institutional Mechanism provided under the Code, Insolvency Resolution Process for Corporate and Individuals and Exit Route provided under the Code in Hindi so as to create the much needed awareness and education on the Code.

Pronouncements under the Insolvency and Bankruptcy Code, 2016- Issue Analysis

The publication provides analysis of various issues, settled through judicial pronouncements by Supreme Court, High Courts, National Company Law Appellate Tribunal (NCLAT), various benches of National Company Law Tribunal (NCLT).



GST Practitioner's Guide

Company Secretaries being legal experts can practice as a GST Practitioner under the novel indirect tax regime. To facilitate and provide elementary guidance to the Company Secretaries, ICSI has come out with GST Practitioner Guidelines. Its main objective is to provide guidance to the Company Secretary for discharging their role as GST practitioner under GST Law and intends to assist in understanding the relevant provisions and enhance the understanding of role as a CS GST Practitioner.

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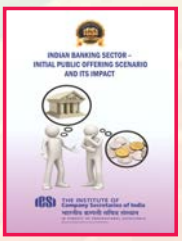
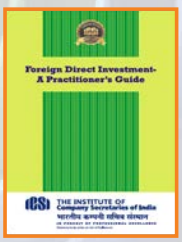
GST Educational Series

The Institute as a capacity building initiative, started a daily GST Educational Series which are being very well received by all the stakeholders as well as public at large. The series have been successful and academically useful. The book is a compilation of 100 daily GST Educational Series by ICSI which are also available on the GST Corner of the ICSI website.



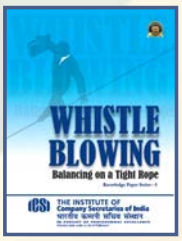
Indian Banking Sector- Initial Public Offering Scenario and its Impact Bankruptcy Manual

Banking Sector being the backbone of an economy generates mammoth academic and research interests to delve deep into its capital raising process through IPO. This book makes an endeavor to explore the significant facets of IPO of Indian Banking Sector.



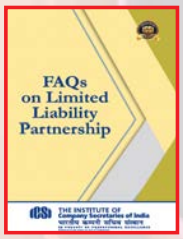
Foreign Direct Investment – A Practitioner's Guide

With a view to educate professionals and corporate executives to facilitate FDI and opening of Industries and offices in India by foreign companies, banks and insurance companies, the Institute has brought out this publication primarily focusing on Foreign Exchange Management Act, Foreign Direct Investment (FDI) in India, Establishment of Branch Office (BO)/Liaison Office (LO)/Project Office (PO) in India, Liberalized Remittance Scheme (LRS), Remittance of Assets outside India, Compounding of Contraventions under FEMA.



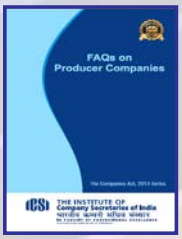
Whistle Blowing – Balancing on a Tight Rope- Knowledge Paper

Whistle-blower protection is essential to encourage the reporting of misconduct, fraud and corruption. Whistleblower protection has been recognised by all major international institutions concerning corruption. In this backdrop, this knowledge paper provides the basic concepts of whistle blowing and a snapshot of laws protecting the whistle blower in India as well as in other jurisdictions.



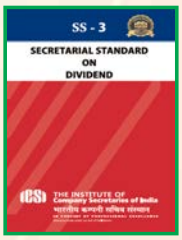
FAQs on Limited Liability Partnership

"FAQ's on Limited Liability Partnerships" contains frequently asked questions related to Limited Liability Partnerships. Since the enactment of Limited Liability Partnership Act, 2008, and Limited Liability Partnership Rules, 2009, This booklet consists of various questions as to law and procedures regarding formation and registration, management, compliance requirements, compromise, arrangement or reconstruction, strike-off, winding up and dissolution of limited liability partnerships.



FAQs on Producer Company

"FAQ's on Producer Companies" is a compilation of various frequently asked questions related to Producer Companies. This booklet consists of various questions as to law and procedures regarding formation and registration, management, share capital and member's rights and accounts audit loans and investments of the Producer Companies.



Secretarial Standard on Dividend

Secretarial Standards integrate, harmonise and standardise the diverse secretarial practices followed by the corporates so as to promote uniformity and consistency, and to adopt the best prevalent practices. After the successful implementation of Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2), ICSI issues Secretarial Standard on Dividend (SS-3). Adherence to this Standard is recommendatory.

Reminiscences of ICSI National Conventions- Golden Jubilee Year National Convention

The Institute compiled the Reminiscences of ICSI National Convention covering around forty-five years of National conventions to venerate the antiquity of Conventions. It offers a valuable insight into the yesteryears of ICSI National Conventions and gives a glimpse of every Convention and highlights the excerpts from the speeches of the distinguished speakers.

Virtual Platform for Members

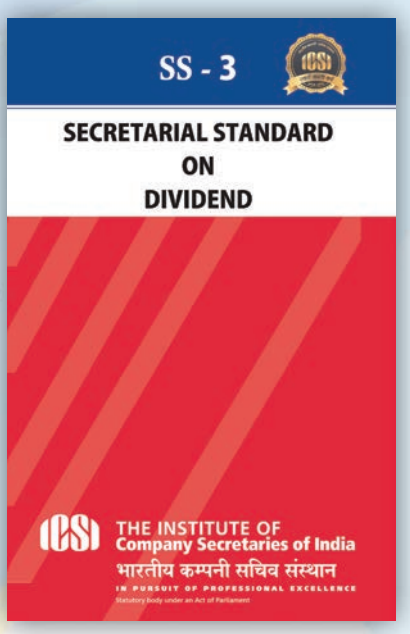
Virtual Platform is specifically designed for CS professionals, wherein they can freely exchange ideas, express themselves within the fraternity, without exposing to the outside world.

The platform would allow the users to anywhere anytime search for their fellow members; offers features like Blog post, Debate, Scheduling events, sharing idea, Media, organizing Quizzes, surveys,

Launch video for Virtual platform can be downloaded from the following link:

https://www.dropbox.com/s/s0xtne3o1878e8f/ICSI_Edited%20FinalAV_21-11-2017Final.mp4?dl=0

SECRETARIAL STANDARD ON DIVIDEND (SS-3)



After implementation of Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2), ICSI released the Secretarial Standard on Dividend (SS-3) at its Golden Jubilee Year National Convention of Company Secretaries (45th National Convention). The SS-3 will be effective from 1st January, 2018 for voluntary adoption by companies.

The text of SS-3 is available on ICSI website at the link https://www.icsi.edu/ssb/Home.aspx and the same is published here for reference of all the stakeholders.

SECRETARIAL STANDARD ON DIVIDEND

The following is the text of the Secretarial Standard-3 (SS-3) on "Dividend", issued by the Council of the Institute of Company Secretaries of India.

Adherence to this Secretarial Standard is recommendatory.

(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal type. Both the Standard portions and the background material have equal authority).

INTRODUCTION

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest.

In commercial usage, the term "Dividend" refers to the share of profits of a company that is distributed amongst its Members.

The term "Dividend" has been inclusively defined in the Act to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between Interim and Final Dividend.

For the purposes of this Standard, capitalization of profits in the form of bonus shares is not Dividend.

Companies licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof are prohibited by their constitution from paying any Dividend to its Members.

SCOPE

This Standard prescribes a set of principles in relation to the declaration and payment of Dividend and matters related thereto.

The principles set out herein relate to declaration and payment of Dividend on equity as well as preference share capital in accordance with the provisions of the Act and are in respect of Dividend as it relates to a going concern. These are equally applicable to Final as well as Interim Dividend unless otherwise

stated.

The principles enunciated in this Standard are in conformity with the provisions of the Act. In addition, the provisions of the Securities Contracts (Regulation) Act, 1956 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are applicable to listed companies. Any specific provision relating to Dividend in the Income-tax Act, 1961 or under any other statute shall also be applicable. If due to subsequent changes in the Act or other applicable laws, a particular Standard or any part thereof becomes inconsistent with the Act or other applicable laws, the provisions of the Act or such applicable laws shall prevail.

This standard shall not apply to a company limited by guarantee not having share capital and does not deal with Dividend, if any, declared by companies under liquidation.

DEFINITIONS

The following terms are used in this Standard with the meaning specified:

"Act" means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Dividend" means a distribution of any sums to Members out of profits and wherever permitted out of free reserves available for the purpose.

"Final Dividend" means the Dividend recommended by the Board of Directors and declared by the Members at an Annual General Meeting.

"Interim Dividend" means the Dividend declared by the Board of Directors.

"Free Reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as Dividend. However, the following amount shall not be treated as free reserves:

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as reserve or otherwise, or
(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.

"Member ", in relation to a company, means –

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

"Preference Shareholder" means a holder of such shares which carry a preferential right, in respect of payment of Dividend, of a fixed amount or an amount calculated at a fixed rate and in respect of capital, to repayment of capital.

"Shareholder" means a Member as defined above and, where the context requires or admits, includes a Preference Shareholder.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act or other applicable laws.

1. Ascertainment of amount available for payment/ distribution as Dividend.

1.1 Out of profits

1.1.1 Dividend shall be paid out of the profits of the financial year for which such Dividend is sought to be declared and/or out of profits for any previous financial year(s) which remains undistributed after providing for depreciation in accordance with the provisions of the Act. Dividend may also be declared out of money provided by the Central Government or a State Government in pursuance of a guarantee given by such Government for this purpose.

Dividend shall not be declared unless carried over previous losses and depreciation not provided in the previous year(s) are set off against the profit of the company for the current year. The company may, before declaration of Dividend, transfer such percentage of profits for that financial year, as it may consider appropriate, to its reserves.

Dividend, being a portion of the profits of the company, is distributable amongst the Members of the company in accordance with the provisions of the Act. The Act requires a company to prepare a statement of profit and loss, which should give a true and fair view of the profit or loss of the company for a financial year. The terms 'profit' and 'true and fair' have not been defined by the Act. Therefore, these terms should be understood in their natural and proper sense. The statement of profit and loss shall be prepared in accordance with the generally accepted accounting principles, applicable accounting standards and presented in conformity with the requirements set out in the Act or other applicable laws.

Depreciation, as computed in accordance with Schedule II to the Act, shall be provided in the books of account of the company.

1.1.2 A company shall not declare Dividend on its equity shares in case of non-compliance of provisions relating to the acceptance of deposits under the Act, till such time the deposits accepted have been repaid with interest in accordance with the terms

and conditions of the agreement entered with the depositors.

A company shall also not declare any Dividend, if it has defaulted in –

(a) Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve,

(b) Redemption of preference shares or creation of capital redemption reserve,

(c) Payment of Dividend declared in the current or previous financial year(s), or

(d) Repayment of any term loan to a bank or financial institution or interest thereon,till such time the default is subsisting.

No Dividend shall be declared by the company during the extended time, if any, granted by the Tribunal/Court for repayment of above liabilities.

1.1.3 Dividend shall not be declared out of the Securities Premium Account or the Capital Redemption Reserve or Revaluation Reserve or Amalgamation Reserve or out of profits on re-issue of forfeited shares or out of profits earned prior to incorporation of the company.

1.1.4 Interim Dividend shall be declared and paid out of the surplus in the profit & loss account and/ or out of profits of the financial year in which such Dividend is sought to be declared.

The Board of Directors of a company may declare Interim Dividend during any financial year or at any time during the period from closure of financial year till holding of the Annual General Meeting.

While declaring the Interim Dividend, the Board shall consider the financial results for the period for which Interim Dividend is to be declared and should be satisfied that the financial position of the company justifies and supports the declaration of such Dividend.

The financial results shall take into account –

(a) depreciation for the full year,

(b) tax on profits of the company including deferred tax for full year,

(c) other anticipated losses for the financial year,

(d) Dividend that would be required to be paid at the fixed rate on preference shares.

(e) the losses incurred, if any, during the current financial year upto the end of the quarter, immediately preceding the date of declaration of Interim Dividend.

Further, in case of clause (e) above, Interim Dividend shall not be declared at a rate higher than average Dividend declared during the immediately preceding three financial years.

1.1.5 Where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue.

In case Interim Dividend is declared on only one class of equity shares, the Board shall ensure that the profit as shown in the financial results is adequate to meet the Dividend that would have to be paid on the other classes of equity shares in accordance with the terms of issue.

Where a company has issued equity shares with differential rights as to voting only, no differentiation shall be made in the declaration of Interim Dividend on such shares, unless the terms of issue provide otherwise.

1.2 Out of Free Reserves

1.2.1 In a year in which the profits are inadequate or there are no profits, the company may declare Dividend out of Free Reserves subject to the fulfilment of the following conditions:

(a) The rate of Dividend declared by the company shall not exceed the average of the rates at which Dividend was declared by it in the three financial years immediately preceding the financial year of declaration of Dividend. This shall not be applicable where a company has not declared any Dividend in each of the three preceding financial years.

(b) Total withdrawal from the accumulated profits shall not exceed one tenth of the sum of the paid up share capital and free reserves of the company as per the latest audited financial statements.

(c) The amount so withdrawn shall first be utilised to set off the losses, if any, incurred in the financial year in which Dividend in respect of equity shares is proposed to be declared.

(d) The balance of Free Reserves after such withdrawal shall not fall below 15% of the paid up share capital of the company as per the latest audited financial statements.

The above conditions shall not apply to a Government Company in which the entire paid up

share capital is held by the Central Government or State Government(s) or jointly by both.

1.2.2 Interim Dividend shall not be declared out of Free Reserves.

In the event of a loss or inadequacy of profits during a financial year, no Interim Dividend shall be declared/ paid out of Free Reserves. However, Final Dividend may be declared/paid out of Free Reserves subject to the conditions set out in paragraph 1.2.1 above.

2. Declaration of Dividend

2.1 Dividend shall be declared only on the recommendation of the Board, made at a meeting of the Board.

Unless the Dividend has been recommended by the Board, Members in Annual General Meeting cannot on their own declare any Dividend.

Where a company has an Audit Committee, this Committee shall consider the annual financial statements before submission to the Board. Dividend shall be recommended by the Board after consideration and approval of said financial statements. All requisite approvals shall be obtained before declaration of Dividend. Dividend shall not be declared subject to any condition such as the approval of financial institutions/ banks or foreign collaborators or compliance with any other contractual obligation.

2.2 Dividend shall be declared only at an Annual General Meeting.

Dividend shall relate to a financial year and shall be declared by the Members at the Annual General Meeting of the company after adoption of the financial statements of the company. Members may declare a lower rate of Dividend than the rate recommended by the Board but have no power to increase the amount or rate of Dividend recommended by the Board.

The Members may also decide not to declare the Dividend recommended by the Board. The Dividend, if declared, should be disclosed on per share basis.

2.3 No Dividend shall be declared on equity shares for previous years in respect of which annual financial statements have already been adopted at the respective Annual General Meetings.

Arrears of Dividend on cumulative preference shares for previous years may, however, be declared and paid.

2.4 Interim Dividend shall be declared at a meeting of the Board.

While Final Dividend is recommended by the Board and declared by the Members, approval of Members is not required for declaration of Interim Dividend. Where a company has an Audit Committee, this Committee shall consider the financial results which shall thereafter be submitted to the Board for its consideration and declaration of Interim Dividend.

2.5 Distribution of discount coupons to all the Shareholders shall not be treated as deemed Dividend.

2.6 A company is prohibited to issue Bonus shares in lieu of Dividend.

3. Entitlement to Dividend

3.1 Dividend to be paid only to the registered holders of shares entitled to Dividend or to their order or to their bankers.

Dividend shall be paid (i) in respect of shares held in electronic form, to those Members whose names appear as beneficial owners in the statement of beneficial ownership furnished by the Depository(ies) as on the record date fixed by the company for this purpose; (ii) in respect of shares held in physical form, to those Members whose names appear in the company's Register of Members after giving effect to all valid share transfers in physical form lodged with the company before the date of book closure or as on the record date, as the case may be.

The Dividend may also be paid to the order of the Member or to his banker.

3.2 Preference Shareholders shall be paid Dividend before Dividend is paid to the equity Shareholders of the company.

Preference shares carry a preferential right as to Dividend in accordance with the terms of issue. However, this right is subject to the availability of distributable profits. Since the Dividend on preference shares is governed by the terms of issue already approved by the Shareholders, the Board may declare Dividend on such shares in accordance with the terms of issue.

If there are two or more classes of preference shares, the holders of the class which has priority are entitled to their preference Dividend before any Dividend is paid in respect of the other class, if the terms of issue so provide. However, if the terms of issue are silent, Dividend shall be distributed on pro-rata basis.

In the case of Interim Dividend, while Preference Shareholders need not necessarily be paid Dividend before Interim Dividend is paid to equity Shareholders, the Board should take into account such sum as would be necessary to pay Dividend to the Preference Shareholders before consideration of Interim Dividend.

3.3 Arrears of Dividend on cumulative preference shares shall be paid before payment of any Dividend on equity shares.

Preference shares may be cumulative or non-cumulative. Dividend in arrears on cumulative preference shares can be paid in a later year where there are profits to justify such payment. In the case of non-cumulative preference shares, if no Dividend is paid in a year, there is no right to receive the same in future years.

After paying the Dividend on preference shares and any arrears of Dividend on cumulative preference shares, residual profit may be utilised for payment of Dividend to equity Shareholders. However, where participating preference shares have been issued, the holders thereof also have the right to participate in such residual profit, subject to the terms of issue of such shares.

3.4 Dividend on equity shares shall be paid in accordance with the rights of the respective classes, if any, of such shares.

Where a company issues equity shares with differential rights as to Dividend, the terms of issue of such shares shall govern the rights of each such class of holders as to receipt of Dividend.

4. Dividend in Abeyance

4.1 The amount of Dividend in respect of shares for which an instrument of transfer has been delivered to the company but which have not been registered for a valid reason shall be transferred to the Unpaid Dividend Account.

Members may authorise the company in writing to pay the Dividend to the transferee specified in the instrument of transfer and the company shall act upon such authorisation. However, where such instrument is not valid for any reason, the company shall not act upon such authorisation and intimate the concerned Member accordingly.

In case of shares which have not been transferred because the ownership thereof is in dispute, or where specific prohibitory orders have been passed by a court or statutory authority, Dividend should be kept in abeyance and be transferred to the Unpaid Dividend Account, as and when it becomes due.

5. Payment of Dividend

5.1 Dividend shall be deposited in a separate bank account within five days from the date of declaration and shall be paid within thirty days of declaration. The intervening holidays, if any, falling during such period shall be included.

The amount deposited in such bank account shall be utilised only for the payment of Dividend or for transfer to Unpaid Dividend Account/Investor Education and Protection Fund and for no other purpose.

The requirement of deposit of Dividend amount in a separate bank account within five days from the date of its declaration, shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government or State Government(s) or jointly by both or by one or more Government Company.

5.2 Taxes as applicable on distribution of Dividend shall be paid by the company within the prescribed time.

5.3 Dividend shall be paid in cash and not in kind.

Dividend payable in cash may be paid through payable at par cheque or warrant or in any electronic mode of payment approved by the Reserve Bank of India.

To curb the practices of fraudulent encashment of Dividend, the company shall endeavour to pay Dividend directly to the bank accounts of the Members through any one of the electronic modes specified by the Reserve Bank of India viz. electronic clearing services (local, regional or national), direct credit, real time gross settlement, national electronic funds transfer etc. Where Dividend is remitted through electronic mode, the company shall send to the Member, a statement in writing showing the amount of Dividend paid.

Where payment of Dividend is not possible through any electronic mode, such Dividend shall be paid by way of cheque payable at par or Dividend warrant.

The cheque or warrant shall be sent to the registered address of the Member and, in the case of joint holders, to the registered address of the Member named first in the Register of Members or to such person or to such address as the Member or the joint holders have directed, in writing.

When payment is made by Dividend warrant, the name of the bank and account number, if available, shall be mentioned in the warrant after the name. In case these are not available, address of the Member shall be printed after the name.

In case of payment of Dividend through warrant or cheque payable at par, if the amount of Dividend exceeds one thousand and five hundred rupees, the company shall ensure to despatch such Dividend warrant or cheque either by speed post or registered post to the concerned Member at his registered address.

In case of a Nidhi company, where the Dividend payable to a Member is one hundred rupees or less, it shall be sufficient compliance if the declaration of Dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.

5.4 Initial validity of the Dividend cheque or warrant shall be for three months.

A cheque or warrant for payment of Dividend shall be valid for a period of three months from the date of issue. Where such cheque or warrant remains unpaid after the initial period of validity, a fresh instrument shall be

issued in lieu thereof, within fifteen days of the receipt of a valid request in this regard and such instrument shall also have a validity of three months from the date of its issue.

Particulars of every fresh cheque or warrant issued by the company shall be entered in a Register of Dividend Warrants kept for the purpose indicating the name of the person to whom the instrument is issued, the number and amount of such instrument and the date of issue.

5.5 A duplicate Dividend cheque or warrant shall be issued only after obtaining requisite indemnity/ declaration from the concerned Member and after ascertaining the encashment status of the original Dividend cheque or warrant.

In case of defaced, torn or decrepit Dividend cheque or warrant, a duplicate instrument may be issued on surrender of such defaced, torn or decrepit instrument to the company.

In case of non-receipt of Dividend warrant by the Shareholder and if the same is not returned undelivered to the company, a duplicate warrant may be issued by the company after verifying the encashment status.

Particulars of every duplicate Dividend cheque or warrant issued as aforesaid shall be entered in a Register of Duplicate Dividend Warrants kept for the purpose, indicating the name of the person to whom the instrument is issued, the number and amount of the instrument in lieu of which the duplicate instrument is issued and the number & date of issue of such duplicate instrument.

5.6 The Dividend cheque or warrant shall be accompanied by a statement in writing showing the amount of Dividend paid, Folio no./DP ID and Client ID nos., number of shares held by the concerned Member as on the record date, amount paid up on each share and the financial year to which the Dividend pertains.

5.7 Dividend shall be paid proportionately on the paid-up value of shares.

Unless the Articles provide otherwise, Dividend shall be paid in proportion to the amount paid-up on the shares and for the portion of the period of the financial year in respect of which it is paid. If any shares are issued in between the financial year on the terms that they shall rank for Dividend from a particular date, Dividend on such shares shall be paid accordingly.

5.8 Calls in arrears and any other sum due from a Member in relation to the shares of the company may be adjusted against Dividend payable to the Member.

In the case of listed companies, calls in arrears or any other sum due from a Member in relation to the shares of the company, may be adjusted against the Dividend payable to him after giving such notice, as may be required. In the case of other companies, if the Articles so provide , any other sums due from a Member, in a capacity other than as a Member, may also be adjusted against the Dividend payable to him.

5.9 No Dividend shall bear interest against the company except in case of default in payment of Dividend or despatch of Dividend warrant/cheque within the prescribed period.

However, no default shall be deemed to have been committed, if –

(a) the Dividend could not be paid by reason of the operation of any law;

(b) a Shareholder has given directions to the company regarding the payment of Dividend and those directions cannot be complied with and the same has been communicated to the concerned Shareholder;

(c) there is a dispute regarding the right to receive the Dividend;

(d) the Dividend has been lawfully adjusted by the company against any sum due to it from the Shareholder; or

(e) for any other reason, the failure to pay the Dividend or to post the cheque or warrant within the prescribed period was not due to any default on the part of the company.

6. Unpaid Dividend

6.1 The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of its declaration shall be transferred to a special bank account titled as 'Unpaid Dividend Account' to be opened by the company in that behalf with any scheduled bank. Such transfer shall be made within seven days from the date of expiry of the thirty days period from the date of declaration of Dividend. The company shall within a period of ninety days of transferring such amount to 'Unpaid Dividend Account' prepare a statement containing the names, last known addresses and the amount of Dividend to be paid to each of the Members. Such statement shall be uploaded on the website of the company, if any, and also on the website specified by the Central Government for this purpose. Such statement shall remain on the website(s) till such time the unpaid or unclaimed Dividend is transferred to the Investor Education and Protection Fund (the Fund) and be updated by the company at regular intervals.

Any person claiming to be entitled to any amount transferred to the Unpaid Dividend Account may apply to the company for payment of such amount.

In case of a Nidhi company, any Dividend payable in cash may be paid by crediting the same to the account

of the Member, if the Dividend is not claimed within 30 days from the date of declaration of the Dividend.

6.2 Any amount in the Unpaid Dividend Account of the company which remains unpaid or unclaimed for a period of seven years from the date of transfer of such amount to the Unpaid Dividend Account, along with interest accrued, if any, shall be transferred to the Investor Education and Protection Fund.

Any transfer to the Fund shall be made within thirty days from the expiry of seven years from the date of transfer of unpaid or unclaimed Dividend to the Unpaid Dividend Account.

With respect to transfer of unpaid or unclaimed Dividend to the Fund, the company shall ensure compliance with the following requirements:

(a) It shall send a statement to the Investor Education and Protection Fund (IEPF) Authority in the prescribed form containing the details of transfer of unpaid or unclaimed Dividend to the Fund and obtain a receipt from the IEPF Authority in evidence of such transfer. Such statement shall be furnished within thirty days of transfer of unpaid or unclaimed Dividend to IEPF.

(b) It shall maintain record consisting of name, last known address, amount, Folio no., DP ID / Client ID no., certificate number, beneficiary details etc. of the persons in respect of whom unclaimed or unpaid Dividend is transferred to the Fund.

(c) It shall not transfer any Dividend to the Fund where there is a specific order of Court or Tribunal or any other statutory authority restraining such transfer. It shall furnish details of such unpaid Dividend to the IEPF Authority in the prescribed form within thirty days from the end of the financial year.

(d) It shall file with the IEPF Authority within thirty days of the end of each financial year, a statement in the prescribed format containing the details of the unclaimed or unpaid Dividend due to be transferred to the Fund in the next financial year.

(e) Within thirty days of closure of financial statements for a financial year, the company shall furnish another statement to the IEPF Authority stating therein reasons for deviation, if any, between the unclaimed or unpaid Dividend detailed in the earlier statement under (d) above and the actual Dividend transferred to the Fund.

Any claimant of unpaid or unclaimed Dividend transferred to the fund, shall be entitled to apply for refund from the Investor Education and Protection Fund, after following the prescribed procedure.

6.3 Before transferring any unclaimed or unpaid Dividend to the Investor Education and Protection Fund, the company shall give an individual intimation to the Members in respect of whom such unclaimed Dividend is being transferred, at least three months before the due date of such transfer.

The company shall intimate the concerned Members individually of the amount of Dividend remaining unclaimed or unpaid which is liable to be transferred to the Fund and advise the Members to claim such amount of Dividend from the company before such transfer.

6.4 Any interest earned on the Unpaid Dividend Account shall also be transferred to the Investor Education and Protection Fund.

If the Unpaid Dividend Account is kept as a fixed deposit or in any account on which interest is earned, the interest earned shall also be transferred to the Fund.

6.5 All shares in respect of which Dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund.

In case any Dividend is paid or claimed for any year during the said period of seven consecutive years, such shares shall not be transferred to the Fund.

Before transfer of such shares to the Fund, the company shall send individual notice to the concerned Members at least three months in advance at his latest available address registered with the company giving details of the Members and the shares due for transfer to the Fund. Such details shall also be uploaded on the website of the company, if any.

A notice shall also be simultaneously published in leading newspapers in English and regional language having wide circulation in the place where the registered office of the company is situated, informing the concerned Members that the names of such Shareholders whose shares are due for transfer and their folio number or DP ID - Client ID are available on company website duly mentioning the website address.

Any claimant of shares transferred to the Fund, shall be entitled to claim such shares in accordance with such procedure and on submission of such documents as prescribed.

The company shall not transfer any shares or Dividend amount to the Fund, where there is a specific order of Court or Tribunal or any other statutory authority restraining any transfer of shares and payment of Dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996.

7. Revocation of Dividend

7.1 Dividend, once declared, becomes a debt and shall not be revoked.

8. Preservation of Dividend Cheques, Warrants and Dividend Registers

8.1 Dividend cheques or warrants returned by the Bank, after payment thereof, and the Dividend Registers shall be preserved by the company for a period of eight years.

Where the company has given an undertaking to the Bank for preservation or safe keeping of paid Dividend cheques or warrants for a specified period, the said instruments shall be preserved for such specified period or eight years from the date of the instrument, whichever is longer.

The Dividend cheques or warrants so preserved shall be destroyed only with the approval of the Board or in accordance with the policy approved by the Board for this purpose.

9. Disclosure

9.1 Notes to Accounts forming part of the financial statements of the Company shall disclose the aggregate amount of Dividend proposed to be distributed to equity and Preference Shareholders for the financial year and the related amount of Dividend per share. Arrears of fixed cumulative Dividend on preference shares shall also be disclosed separately.

9.2 The Balance Sheet of the company shall also disclose under the head 'Current Liabilities and Provisions', the amount lying in the Unpaid Dividend Account together with interest accrued thereon, if any.

9.3 The amount of Interim Dividend, if any, paid during the financial year and final Dividend recommended by the Board of directors shall be disclosed in the Board's Report.

9.4 The Annual Report of the company shall disclose the total amount lying in the Unpaid Dividend Account of the company in respect of the last seven years and when such unpaid Dividend is due for transfer to the Fund. The amount of Dividend, if any, transferred by the company to the Investor Education and Protection Fund during the year shall also be disclosed.

10. Additional Compliances for Listed Company

In addition to the above, a Listed Company shall ensure compliance with the requirements covered under Annexure 'A'.

EFFECTIVE DATE:

This Standard shall come into effect from 1st January, 2018

Annexure 'A'

Additional compliances applicable to Listed Companies

A Listed Company shall conform to the following:

(i) The equity shares allotted by the company shall rank pari passu with the existing equity shares for the purpose of payment of Dividend, if the same are in existence as on the record date/ book closure.

(ii) The company shall not issue shares in any manner which may confer on any person, superior rights as to voting or Dividend vis-à-vis the rights on equity shares that are already listed.

(iii) The company shall give prior intimation to the Stock Exchange(s) about the Board Meeting in which Dividend is proposed to be recommended / declared, atleast two working days in advance excluding the date of the meeting and the date of the intimation.

(iv) The company shall intimate the Stock Exchange(s), the record date fixed for the purpose of payment of Dividend at least seven working days in advance excluding the date of the intimation and the record date.

(v) The company shall recommend or declare Dividend at least five working days before the record date fixed for the purpose. The said period of five working days is excluding the date of declaration/recommendation of Dividend and the record date fixed for the purpose.

(vi) The company shall disclose the outcome of the Board Meeting held to consider the Dividend matters, to the Stock Exchange(s) within 30 minutes of closure of the meeting. In case of recommendation / declaration of Dividend, the intimation shall also include the date on which such Dividend shall be paid or Dividend warrant shall be despatched.

(vii) In case of payment of Dividend through warrant or cheque payable at par, if the amount of Dividend exceeds one thousand and five hundred rupees, the company shall despatch such Dividend warrant or cheque by speed post to the concerned Member at the registered address.

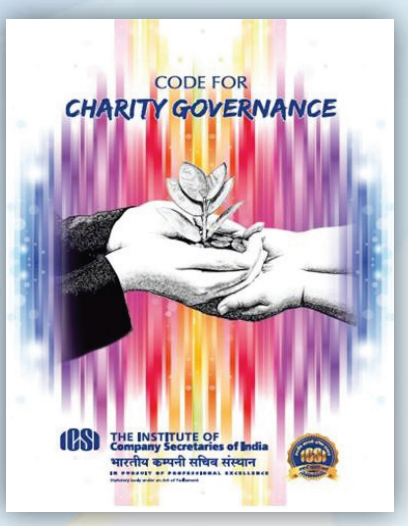
(viii) The company shall declare and disclose Dividend on per share basis only.

(ix) The company shall not forfeit unclaimed Dividends before the claim becomes barred by law and such forfeiture, if effected, shall be annulled in appropriate cases.

(x) Top five hundred Listed Companies based on market capitalisation as on 31st March every financial year, shall formulate a Dividend Distribution Policy covering the prescribed parameters by Securities and Exchange Board of India (SEBI). Such policy shall be disclosed in the Annual Report of the company and also be placed on its website.

(xi) The company shall disclose in its Corporate Governance Report the Dividend payment date under the General Shareholder Information Section.

CODE FOR CHARITY GOVERNANCE



Charitable Entities have been in the limelight for reasons more than one. The recent allegations as regards their misuse for siphoning of funds has led to realisations that for a nation to boast of good governance in totality, it is imperative that each segment of the economy is best governed and having full disclosures and transparency in their activities.

For an entity formed with the intent of carrying out activities in public interest or the benefit of the community, it becomes all the more significant that certain principles of good governance are formulated and followed diligently. The Code of Charity Governance is the Institute's way of fulfilling its responsibility in promoting and enhancing national governance. The objectives of forming the Code include the following:

- To provide for a set of guiding principles and standards for the entities established for charitable purposes irrespective of their format of establishment.
- To provide a set of principles to streamline the existing systems and procedures in place thereby bringing about discipline in the functioning of charitable entities.
- To strengthen transparency, accountability and the internal control systems in these entities.
- To develop a level of comfort and enhance trust for various stakeholders dealing with the charitable entities including corporates and regulatory authorities.
- To urge the Regulators to make appropriate arrangements to facilitate effective monitoring through online filing and digitisation.

The Code comprises a total of nine (9) guiding principles pertaining to the following areas:

- Vision and Mission
- Adherence to Laws
- Effective Governing Body
- Diversity
- Conflict of Interest
- Disclosures and Transparency
- Community Engagement
- Integrity
- Sustainability.

The Code for Charity Governance is available at the following link:
https://www.icsi.edu/WebModules/Code_Charitygovernance.pdf

CODE FOR CHARITY GOVERNANCE

INTRODUCTION

Charity and philanthropy have formed the core of every society across the globe. The Indian scenario is no different. But what had started with the giving away of alms, establishment of inns for travellers or even arrangements of drinking water on highways has outgrown into something much more humongous. The formation of foundations, trusts, societies, and companies not-for-profit go a long way in justifying the above statement.

Existence of a strong and independent not-for-profit sector is essential for weaving the social, cultural, environmental and economic fabric of our society. Charitable Entities can influence and bring societal changes for a better future. They provide needed services, paves way for people to participate in bringing the societal changes as citizens and volunteers, represent the unrepresented and also pioneer solution to social problems.

For a nation to achieve the highest standards of governance, it is imperative that each of its constituent segments abides by principles of good governance in true letter and spirit. Charitable Entities or non-government organizations are vehicles for undertaking activities of charitable and philanthropic nature which seek to promote the goals of inclusive growth and development in the economies globally.

While on one hand, government undertakes a variety of initiatives, the non-government organizations act as a support system by taking care of, serving and addressing certain pressing issues in the society. Protection of childrens rights, women empowerment, senior citizens, enabling persons with disabilities, promoting education, health, natural resource management, supporting development of agriculture, promoting art and craft, preserving the cultural heritage, etc. are just an indication of the vast variety of areas in which charitable entities work to bring about a difference in the society.

As mentioned earlier, a diverse set of entities carry out charitable activities in India ranging from Trusts registered under Indian Trusts Act, 1882 and relevant statutes formulated by the respective States, Societies registered under the Societies Registration Act, 1860 / Multi-State Cooperative Societies Act, 2002, and Companies with charitable objects registered under Section 8 of the Companies Act, 2013. Unlike Societies or Section 8 companies, which are primarily formed for the benefit of "society at large" and / or charitable purposes; Trust is a form of organisation which is formed by obligation annexed to the ownership of the property, and arising out of confidence reposed by the owner. If the objective of the trusts in property is to benefit common public or for community at large, it is called a public trust. Public trusts are governed by public trust Acts of respective State and the Indian Trusts Act, 1882. In the instant Code all forms of NGOs, Societies, Charitable Entities, Trusts, etc. are referred to as Charitable Entities irrespective of its constitution and / or form, however, the test remains that the objective / purpose of the said charitable entity and the resources of the said charitable entity are deployed for the society/ public at large and / or the community at large. The Income-tax Act, 1961 gives all categories of Charitable Entities equal treatment, in terms of exempting their income and granting 80G certificates, whereby donors to non-profit organizations may claim a rebate against donations made. Foreign contributions to non-profit organisations are governed by the Foreign Contribution (Regulation) Act, 2010 and the Ministry of Home Affairs.

Since charitable entities rely on money from various sources, including individual donors, foundations, corporations, and governments, it devolves upon them the utmost responsibility of ensuring highest standards of good governance in managing and carrying out their affairs. The proposed Code will enable the charitable entities to be effective in achieving their respective missions and be accountable to their stakeholders – their community, constituents, donors, governing body, members, staff, volunteers, collaborators, the Government, etc. Though the Code does not attempt to enlist all applicable legal requirements for charitable entities, yet it is intended at prescribing a set of principles and standards which may be adopted by such entities
initially on a voluntary basis to ensure enhanced levels of transparency and good governance in their functioning.

Charitable entities adopting the Code shall be required to mention the same in their Annual Reports along with a Certificate from an Independent Professional stating that all the principles of the said Code have been duly complied with.

The Companies Act, 2013 ('Act') has recognised charitable entities undertaking activities for public good to be a channel for implementing Corporate Social Responsibility (CSR) activities as
mandated under the Act. Thus, a statutory recognition has been conferred upon the charitable entities which qualify the parameters as stipulated under the Act and Rules made thereunder.

Since the substantial part of nation's wealth and assets are held by these charitable entities and also a large number of corporates carry out their CSR activities through such entities, therefore, it may be important that there is some kind of accreditation process in place for such entities. If these entities adopt the Code of Governance and take a certificate from an independent professional, it will go a long way in giving comfort to the various stakeholders.

Governance is not upto the standard in these entities today because of lax monitoring as disclosures and transparency in such entities is a grey area. Moving forward, online filing and complete digitization should be mandated in relation to all disclosures for such entities so that they can be effectively monitored for enabling a good corporate governance regime in India.

Taking an example today, MCA-21 has facilitated corporates to file their documents online which provide better transparency and boosts the confidence of various stakeholders dealing with them. Therefore, it is urged that the Regulators may take necessary steps for enabling an e-filing regime for such entities.

OBJECTIVES OF THE CODE

As stated above, the charitable entities in the Indian scenario are formed, established and registered under various Acts. Each such regulatory framework governing their respective body is strikingly dissimilar with its relevant counterparts. However, the fact that these organizations exist to support the cause of upliftment of the segments of the society which have not been able to participate and contribute in the growth of the economy provides the raison d'être to delve into the development of a uniform code, not of practices, but of principles and standards which shall hold significance across the length and breadth of the nation, for all forms of charitable entities.

Even with variety in thought, difference in objectives, the ultimate

common goal needs to be provided with a strong foundation which is stabilised with principles. The very concept of 'charity' denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. *This direction of thought and effort and not the result of what is done in terms of financially measurable gain is what determine that it is charitable.*

The objectives of forming a Code can be summarised in the following five points:

- To provide for a set of guiding principles and standards for the entities established for
- charitable purposes irrespective of their format of establishment.
- To provide a set of principles to streamline the existing systems and procedures in place
- thereby bringing about discipline in the functioning of charitable entities.
- To strengthen transparency, accountability and the internal control systems in these
- entities.
- To develop a level of comfort and enhance trust for various stakeholders dealing with the
- charitable entities including corporates and regulatory authorities.
- To urge the Regulators to make appropriate arrangements to facilitate effective monitoring
- through online filing and digitisation.

APPLICABILITY OF THE CODE

The Code shall be applicable on all registered entities receiving grant, donations, privileges, subscriptions and receipts of the like nature (by whatever name called) for carrying out charitable activities keeping in view the public interest and / or for the benefit of public at large and / or for community.

DEFINITIONS

In this Code unless the context otherwise requires:

'Affiliate or Group entities' means an charitable entity in which the member of the Governing Body of the charitable entity or his relative is a member of the Governing Body or trustee or promoter or director or partner or holding not less than twenty five per cent of its voting power in any company, either individually or along with other promoter(s), director(s), partner(s), or relative(s) or trustee.

'Charitable Entity' (hereinafter also referred to as the entity) by whatever named called means any entity registered under any Central or State law of India or if registered outside India under the law as may be applicable with primary objective of philanthropy and social well-being like for relief of the poor, education, medical relief and the advancement of any other object / purpose of general public utility or common good or for a class of the public.

'Conflict of Interest' means any situation in which a member of the Governing Body or any of his relative may have financial and/or other interest which may impair his independence or objectivity in discharging his fiduciary duties.

'Governing body' means Board of Trustees, Management Committee, Board of Directors or group of persons entrusted with the responsibility of management and governance of the entity by whatever name called.

'Key Management Executive' means the person performing the role of Chief Executive /Managing Trustees, Chief Financial Officer/ Treasurer and a Secretary, singularly or multifariously for the entity.

'Relatives' mean the members of family of a person who influence or may influence the person in carrying out the fiduciary duties of the person and would include:

a) Spouse;
b) Children;
c) Brother / Sister;
d) Parents; and
e) Dependants.

GUIDING PRINCIPLES

PRINCIPLE NO.	PRINCIPLES
PRINCIPLE 1	Vision and Objectives
PRINCIPLE 2	Adherence to laws
PRINCIPLE 3	Effective Governing Body
PRINCIPLE 4	Diversity
PRINCIPLE 5	Conflict of Interest
PRINCIPLE 6	Disclosures and Transparency
PRINCIPLE 7	Community Engagement
PRINCIPLE 8	Integrity
PRINCIPLE 9	Sustainability

PRINCIPLE 1

VISION AND OBJECTIVES

Justification:

Every entity, irrespective of their purpose of establishment must have a clear line of sight. No entity can function without direction. It is this very rationale that is the guiding light of the said Principle.

Guidelines:

1.1. The entity should have a well-defined, clear and concise Vision and Mission statements duly approved by the Governing Body and communicated to the public.
1.2. Such Vision and Mission statements must be reviewed on a regular basis to adapt to the ever-changing environmental scenarios.
1.3. The goals for which the entity has been established should be well-chalked out and encased together to be called the Charter of Objectives.
1.4. The Charter of Objectives shall act as a guiding light for the Governing Body in effective decision-making as well as in resolution of contention arising during selection or otherwise of a particular project or programme.
1.5. The entity shall not be required to draft a separate Charter of Objectives, in case the same forms part of bye-laws of the entity. The Governing Body of the entity should ensure that its operations and programmes are in line with its Vision and Mission directed towards the achievement of its objectives as listed in the Charter in pursuit of the public good.

PRINCIPLE 2

ADHERENCE TO LAWS

Justification:
As far as the entities are concerned, it has been witnessed that with every State, the list of applicable laws alters drastically, not to mention the laws applicable to a specific entity by virtue of being established or formed in a certain format. It goes without saying that the set of laws applicable to a 'Trust' shall diverge to a large extent from those applicable to a 'Society'. In such a scenario it is very much imperative that every entity takes due care of the laws, bye-laws, rules and regulations encasing it and strive to adhere to them in true letter and spirit.

Guidelines:

2.1. Every entity must prepare a list of all the laws including Acts, bye-laws, rules and regulations applicable to it at a given time.

2.2. Such list must be placed before the Governing Body of the entity at its meeting on a periodic basis.

2.3. A certificate should be obtained by an independent professional stating that the entity has duly complied with the provisions of all the applicable laws.

PRINCIPLE 3

EFFECTIVE GOVERNING BODY

Justification:
The roles and responsibilities that may be affixed with the Governing Body of an entity in general and designation of the member of the Governing Body in particular must be well chalked out in black and white. Not only does this demarcates their area of authority but also provides them with an idea regarding the expectations of stakeholders as well as regulatory authorities. It is a good practice to prepare a written charter enlisting the terms of reference which clearly set out the roles, responsibilities and duties of the Governing Body of the entity.

Guidelines:

3.1 Roles and Responsibilities:
The roles and responsibilities entrusted with the Governing Body should include the following:

3.1.1 Drafting the Vision and Mission statements, setting the entity's values and standards (including ethical standards).

3.1.2 Providing leadership, both entrepreneurial and strategic, to ensure the achievement of the objectives of the entity.

3.1.3 Ensuring the availability, effective and efficient deployment of the financial and human resources for the achievement of the objectives of entity.

3.1.4 Establishment of an effective and prudent control framework enabling the assessment and management of possible risks, including safeguarding of the assets of the entity.

3.1.5 Reviewing the performance of the entity and its various constituent segments.

3.1.6 Identifying the key stakeholder groups, recognising the obligations towards each of them and ensuring that the objectives are met.

3.1.7 Managing sustainability issues, e.g., environmental and social factors, as part of its strategic formulation for the long-term presence, functioning and operations of the entity.

3.1.8 Appointment of Key Management Executives for day to day operations of such entity.

3.2 Policy framework:
The entity should be guided by a well formulated policy framework covering the various areas of activity in the entity including but not limited to:

- Sustainability;
- Fund raising and investments;
- Project implementation;
- Whistle blowing;
- Sexual Harassment; and
- Remuneration of members of the Governing Body and Key Management Executives.

Such Policies should be duly approved by the Governing Body and be made available in the public domain.

3.3 The entity should ensure that the outlay and the proposed outcome of each programme are placed before the Governing Body before operationalization and the same are monitored on a regular basis. A suggestive list of the matters that may be placed before the Governing Body is placed at **Annexure A.**

PRINCIPLE 4

DIVERSITY

Justification:
The members of Governing Body are responsible for carrying out the affairs of the entity, devise strategies through analysis and effective problem solving. Having an optimal mix of skills, expertise and experience is paramount to ensuring that the Governing Body is equipped to make appropriate decisions. Diversity in the Governing Body has been considered from a number of aspects, including but not limited to gender, age, cultural, religion, region, educational background, professional experience, skills and knowledge. Given the diversity of expertise, information, and availability that is needed to understand and govern an entity, it is unrealistic to expect an individual member to be knowledgeable and informed about all aspects requiring decision making.

The objectives behind promoting diversity in the Governing Body include but are not limited to the following:

- Enhancement in the quality of performance;
- Effective decision-making;
- Adequate gender representation; and
- Harnessing of unique individual skills, experiences, knowledge of the members in a collective way.

Guidelines:

4.1. Optimum composition:
The Governing Body must have an optimum combination of independent, executive and non-executive members possessing appropriate skills, knowledge and experience.

4.2. Gender Diversity:

Women members bring in their own perspective in decision making and it is proven that gender neutral and diverse Boards lead to better Board performance. It is therefore recommended that the Governing Body should have at least one women member. This will go a long way in improving the creativity and quality in the decision making.

PRINCIPLE 5

CONFLICT OF INTEREST

Justification:
A conflict of interest arises when an individual's private interests compete with his fiduciary obligations, which may result in the exercise of partial and biased judgment. Such situations can have potentially damaging consequences and reputation of the entity. It can also arise when an individual's decisions and/or actions actually have, or have the appearance of, being influenced by considerations of personal financial gains. This does not mean that a member of Governing Body can never have dealings/transactions of commercial/financial nature with affiliate or group entities. Rather, such transactions shall be subject to a higher degree of disclosure and scrutiny, if required.

Guidelines:

5.1 If a member of the Governing body or the Chairman thereat is interested in any item of agenda, such fact shall be disclosed by him/her at the meeting of Governing Body before the consideration of such item.

5.2 The disclosure of interest by a member having such conflict in a subject matter of consideration at the Meeting and their abstinence from the discussion/voting at the meeting on the said matter shall be recorded in the Minutes.

5.3 The Chairman shall leave the Chair to any non-interested Member for discussion in respect of the item of agenda wherein he/she is interested.

5.4 A member of the Governing Body having disclosed his conflict of interest shall neither be counted for determining the quorum nor shall the member participate during discussion and vote on the item in which such member is interested.

5.5 Every member of the Governing Body and Key Management Executive shall at the beginning of each financial year disclose the entities in which he/she is holding the position of promoter, director, partner, member of the Governing Body and other information declaring his conflict of interest, if any. A sample format of such declaration is placed at Annexure B.

5.6 All transactions involving conflict of interest undertaken by an entity should be on an arm's length basis. Such transactions must be duly approved by the Governing Body and the details of transactions with affiliate or group entities must be made available in the Annual Report.

PRINCIPLE 6

DISCLOSURES AND TRANSPARENCY

Justification:
The Governing Body of an entity, alike every other entity, is accountable to stakeholders more than one. It is highly unlikely that putting the interests of one stakeholder at stake for the benefit of other may yield good governance. Herein, care must be taken to disclose information to the stakeholders while undertaking programmes. The compliance with this principle shall have multi-dimensional effects of enhancing the overall integrity of the Governing Body by bringing about transparency in operations.

The fact that transparency and disclosures form the basis of good governance has been reiterated across the length and beyond of every corporate governance code developed to guide the respective entities. As far as the entities are concerned, the scenario is no different. The responsibility of maintaining transparency in selection of and disclosures pertaining to the implementation of projects falls within the ambit of the role of the Governing Body. More so, the sources of funds, the record-keeping of donations received in a timely and orderly manner goes a long way in ensuring that the highest principles of good governance are maintained in the entity.

Guidelines:

6.1 All the documents and records relating to the functioning and operations of the entity shall be properly maintained.

6.2 The information regarding every programme or project undertaken by the entity should be disclosed at relevant intervals on a continuous basis.

6.3 The entity should make necessary filing at the online platform as and when made available by the Regulator.

6.4 Charities and donations:

6.4.1 A record of all the donors and members shall be prepared whether in electronic format or otherwise.

6.4.2 The donations, charities, receipts, subscriptions, grants and the like should be placed before the Governing Body at its subsequent meeting.

6.4.3 The entity should ensure that all donations, charities, receipts, subscriptions, grants and the like are properly accounted for and are put to use for the intended purpose.

6.4.4 A certificate shall be obtained from an independent professional governed by the code of conduct of their respective bodies stating that all the donations, charities, receipts, subscriptions, grants and the like received during the year have been utilized towards the respective projects and programmes.

6.5 Disclosures in the Annual Report:

- Composition of the Governing Body
- Number of meetings of the Governing Body of the entity
- Attendance of members of the Governing Body in the meetings held
- Overview of the projects and programmes
- Remuneration of the members of the Governing body, Key Management Executives and their relatives
- Transactions undertaken by the entity with its affiliates or group entities
- Confirmation of compliance of code of conduct by the members of Governing Body
- List of major donors during the year along with other relevant details
- Certificate by an independent professional stating that the entity is in compliance with this Code.

6.6 Disclosures on website:

The following items should be placed on the website of the entity which should be updated at regular basis, atleast on

quarterly basis:

- Vision and Mission
- Brief updated profile of the members of Governing Body and Key Management Executives
- Overview of the projects and programmes
- Policies approved by the Governing Body
- Annual Report along with Audited Financial Statements
- Awards and Recognitions; if any
- Transactions undertaken by the entity with the members of Governing Body, their relatives and Key Management Executives
- Any event or information which, in the opinion of the Governing Body is material.
- Confirmation of compliance of code of conduct by the members of Governing Body
- Certificate by an independent professional stating that the entity is in compliance with this Code.
- List of major donors along with relevant details for past three years.

PRINCIPLE 7

COMMUNITY ENGAGEMENT

Justification:

At the heart of every entity is the ultimate goal of benefitting certain sections of the society for whom the projects and programmes have been initiated. In light of this, the significance of engagement with the community, the stakeholders and more so the target group of the project, increases manifold. It is imperative for the entity to realise, assess and understand the impact of the projects, programmes and activities undertaken by the entity.

Guidelines:

7.1 The Governing Body should by itself or through its dedicated personnel engage in community interactions on a regular basis

7.2 Such engagement and interaction shall include assessment on atleast two fronts:

7.2.1 Base-Line & end-of-project; and

7.2.2 Event-based.

7.3 The Base-Line & end-of-project assessment shall be conducted to gauge the eventbased interaction with the aim of pursuing impact assessment of the projects undertaken by the entity analysing whether the outcomes are in line with the ones proposed and expected at the time of taking up a project and helps an entity to maintain a proper tracking mechanism.

PRINCIPLE 8

INTEGRITY

Justification:

Honesty and integrity form the basis and foundation of leadership, the role of which in an entity is played by the Governing Body. The modern day scenario, wherein issues of misuse of corporate vehicles and even foundations and trusts for siphoning of funds hogs the limelight, it becomes way more than imperative that the Governing Body, at all times, in all their decisions, maintains a very high level of honesty and integrity. It goes without saying that an ethical and professional entity is the best safeguard against risks to integrity, including improper conduct, misconduct and corruption in any economy.

Therefore, it is imperative for such entities to have a code of conduct. A code of conduct is a set of rules outlining the apposite practices pertaining to the ethics, morals and values belonging to a certain individual or entity. An entity and more so the Governing Body thereat are no different, rather in this case the significance of the Governing Body further heightens.

The code of conduct need not be a prodigious document containing elaborate policies but a simple basis of the expectations from those signing and confirming to it.

Guidelines:

8.1 The Governing Body should ensure transparency and honesty in all its decisions and disclosures towards its stakeholders, thereby enhancing its accountability manifold.

8.2 The Governing Body should promote a working environment that values respect, fairness and integrity.

8.3 Code of conduct:

8.3.1 The entity should propagate the highest standards of integrity thereby giving a message both to the stakeholders outside and the members inside that divergence from the Code of Conduct shall be dealt with seriously.

8.3.2 A Code of Conduct shall be laid down for the members of the Governing Body. A Model Code of Conduct for the members of the Governing Body is placed at **Annexure C** of this Code.

8.3.3 The Code of Conduct should be duly signed by every member of Governing Body on the date of appointment or on the date of the enforcement of this Code, as the case may be.

8.3.4 The entity should also strive to put in place a Code of Conduct for Key Management Executives and employees.

8.3.5 Adherence to the Code of Conduct may be ensured by all the members of the Governing Body and Key Management Executives and adequate mechanisms must be put in place to deal with divergence to the said Code.

PRINCIPLE 9

SUSTAINABILITY

Justification:

Sustainability is the capacity of an enterprise to endure or to maintain a process or situation over time. A system or an entity is considered sustainable when it is supportive of not just itself but its surroundings as well. An entity, which is generally formed with the intent of serving public at large, is required to be more sustainable than any other organization prevailing in the economy and more so precisely on three fronts – financial, organizational and programmatic.

While being sustainable is need of the hour for the entity, its significance cannot be regarded any less for the stakeholders and donors for the development of faith and trust in the entity.

Guidelines:

9.1 Sustainability of the projects undertaken by the entity simply implies the continuation of project activities and outcomes after the initial/primary grant expires. In this regard, the entity should ensure steady and continuous flow of funds and generating revenue for maintaining continuity in the projects.

9.2 The entity should not depend on traditional inflow from donors but diversify its donor/ subscription base, accept financial support in kind, develop long term partnerships and explore new opportunities as well.

9.3 The entity should have a communication strategy that can help in showcasing the outcome of project results to the public. It can be achieved by releases on social media, journals, webpage, etc.

9.4 The entity can sustain its projects through engaging volunteers as human resource for performing activities, which would help in continuity of mission without financial outlay.

9.5 The entity can involve local agencies and government to ensure improved access to the government initiatives in the projects, which would help in sustaining the project activities to meet the objectives.

Such checks and balances go a long way in stabilizing the foundations of the entity, thereby making its presence and operations sustainable.

Annexure A

MINIMUM INFORMATION TO BE PLACED BEFORE THE GOVERNING BODY

1. Structure and report of the periodic appraisal of projects;
2. Outlay and proposed outcome of projects prior to initiation;
3. Proposed appointment and removal of the members of the Governing Body and Key Management Executives;
4. Disclosure of Conflict of Interest made by members;
5. Annual report, annual financial statements, annual plan and budget;
6. Audit Report;
7. Acquisition or disposal of immovable property, if any;
8. Minutes of meetings of Governing Body and its committees;
9. All transactions / dealings by the entity on a periodic basis in which the disclosure of conflict of interest has been made by the member of Governing Body;
10. Show cause, demand, prosecution notices and penalty notices, materially important.
11. Annual compliance of Code of Conduct by the members of Governing Body.
12. Certificate of compliance of applicable laws by the Key Management Executives.
13. Certificate by an independent professional stating compliance with this Code.
14. Certificate by an independent professional stating that the funds, grants, etc. obtained has been utilized for the intended purpose.

Annexure B

NOTICE OF INTEREST BY MEMBER OF GOVERNING BODY

To

The Members of Governing Body
(Name of the Entity)
(Address)

Dear Sir / Madam

I, _____, son/daughter/spouse of _____, resident of _____, being a Member of the Governing Body of _____ having its registered office at _____ hereby give notice of my interest or concern in the following entities:

Sl. No.	Names of Company/body corporate/ firm/ association of persons	Nature of interest or concern/ Change in interest or concern	Shareholding	Date on which interest or concernarose/ changed

Place:
Date: Signature

Annexure C

MODEL CODE OF CONDUCT FOR THE MEMBERS OF GOVERNING BODY

The Members of the Governing Body shall :

i) discharge their duties ethically, professionally, with due diligence, efficiency and to the best of their abilities;

ii) exercise the powers granted to them for the purpose of enhancement of the best interest of the entity and its stakeholders only and refrain from overstepping the powers;

iii) utilize the resources of the entity for promotion of the interest of entity only;

iv) endeavour to comply with applicable laws of the land alongwith the bye-laws of the entity;

v) avoid situations which may give rise to conflict of interest and disclose the same to the Governing Body at the earliest possible moment;

vi) respect the obligation of confidentiality in respect of information received in the course of their duties and continue to be bound by this obligation after the termination of their mandate;

vii) not divulge any confidential information or data coming to their knowledge during the performance of their duties to persons or bodies outside the entity, other than what is required in the due discharge of their official duties;

viii) refrain from disclosing the proceedings of meetings of Governing Body and the voting behaviour of individual members to persons or bodies outside the entity;

ix) never divert, to himself or any other person, any opportunity which has arisen in relation to the entity;

x) not to accept gifts, entertainment or hospitality other than where they are in normal expression of courtesy, where they do not compromise the entity's reputation, and where it is not likely to be regarded as compromising the ability of the member of Governing Body to act in an impartial manner;

xi) not be discourteous or make personal attacks towards fellow members and staff, etc.;

xii) devote such time as is necessary to carry out the duties as member of Governing Body;
an

xiii) exercise utmost precaution in issuing public statements relating to the entity.

GOLDEN JUBILEE YEAR NATIONAL CONVENTION OF COMPANY SECRETARIES

(45th NATIONAL CONVENTION)

COMPANY SECRETARY: Shaping New India 2022 Through Good Governance

DAY 1:

OPENING PLENARY: The Opening Plenary of the 45th National Convention of Company Secretaries, the second mega event after the inaugural ceremony of the Golden Jubilee Year of the Institute of Company Secretaries of India in the heart of God's Own Country at Thiruvananthapuram began on a cloudy afternoon of the 22nd November, 2017 amidst hints of sunshine. While the venue was adorned in colours aplenty, depicting the varied cultures of the beautiful state of Kerala, the presence of guests from spiritual, political and business world was a dream-come-true of sorts for professionals reaching from across the nation.

What began with the auspicious sound of drumbeats gained momentum with the smile and hour-long address of the man renowned for his mysticism, Sadhguru, Founder, Isha Foundation. It was delightful to have an insight into his views not only about the nation but the profession as well. His words that "When you cannot build a family of four without investing your emotions, how can you build a nation without investing your emotions?" left the audience both speechless and pondering. Knowing his take on the profession was more than heart warming. To quote him, "Almost all businesses need a Company Secretary today. The fundamental duty is to bring integrity into the business system in the country". Not to forget the fact that the 'Code for Charity Governance' was released by his gracious hands only.

The Chief Guest for the event, Shri Pinarayi Vijayan, Hon'ble Chief Minister of Kerala, not only congratulated ICSI for attaining institutional

excellence and being a torch bearer for the cause of good Corporate Governance for the last 50 years but also appreciated the selfless contribution and dedication of the institute and its stakeholders towards shaping New India 2022 through good governance.

The next in line was a smart session by the Founder Chairman of Smart Group, Dr. B K Modi, who while emphasising on the role of Company Secretaries as Governance Professionals, stated that they can lead India into becoming a world leader in terms of ease of doing business, and also stressed upon the fact that Corporate Secretaries have to align themselves to manage disruptions coming to corporate sector via changing technology.

Giving an apt Conclusion and beginning to the technical sessions scheduled to follow, CS (Dr.) Shyam Agrawal, President, ICSI said, "At ICSI, our efforts have always been to redefine the way our corporate practices are undertaken, specifically with stress on improving corporate governance norms. The Institute has pioneered the conceptualisation of the 'International Corporate Governance Code' and envisions playing a lead role in corporate governance". He emphasised that the Golden Jubilee Year National Convention of Company Secretaries will discuss the basic tenets of achieving zero tolerance by adopting good governance practices for a pragmatic and progressive outlook of any company. Sharing his views on the Green protocol, a major movement in Kerala, he expressed his pleasure and pride that such a movement would be instrumental in changing the way we live in this Country and on this planet.

TECHNCAL SESSION – I: The Insolvency and Bankruptcy Code 2016 - Bestowing a Fresh Lease of Life to Corporates: Chaired by Dr. M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India, the session was an eye-opener and problem resolver for the professional fraternity. Sharing the fact that the Insolvency and Bankruptcy Code, 2016, is about to complete its first year and the Government has proposed some amendments in certain provisions of the Code Dr. Sahoo, thanked professionals like Company Secretaries for their contribution in moving the country in better position from 136 to 130 on ease of doing business parameters. He also emphasized that the fair competition and innovation is necessary element for the development of a country.

T K Vishwanathan, Chairman, Bankruptcy Law Reforms Committee and Director, International Centre for Alternative Dispute Resolution informed that Insolvency and Bankruptcy Code, 2016, has provided professionals to the country in the field of Insolvency Practice.

B2B Session: A B2B Session was organized to ensure that the members of the Institute are aware of the prevalent technologies and the implications on adopting the same.

While B2B session marked the early evening, the late evening was no less eventful. The much needed respite from the professional hassles was provided by the music from Band by Job Kurian and Sayonora and the colours in the evening were filled by a dance program by Kalanilayam Family Group, all of which was more than necessary as well as sufficient to provide the members with the energy for the sessions of the day to follow.

DAY 2:
The second day was when knowledge and thoughts, information, facts, figures and views were made to free flow. Three technical sessions, each covering a different aspect, touching upon pressing issues and followed by a separate session on the International Perspective on

Governance provided the much called for comprehensiveness to the Convention.

TECHNCAL SESSION – II: GST – Good and Simple Tax — A Progressive Reform Towards Economic Growth: It was during this session that the political who's who shared their opinions and views on this much talked about, discussed and deliberated topic all across the nation.

Putting across his views, Dr. T. M. Thomas Issac, Hon'ble Minister for Finance for Government of Kerala, stated that the goods and services tax is a new change and anything new takes time to percolate down to the functioning of setup of any kind and same is the case with GST. Putting forth the government's perspective on the new taxation regime, the Minister urged to the people to give GST time as well.

Sharing his thoughts on similar lines, Shri Ambarish Datta, Managing Director & CEO, BSE Institute Ltd. and Founder Director, BFSI Sector Skill Council of India said that, "It is under the Pradhan Mantri Kaushal Vikas Yojana (PMKY) that a target has been assigned to create GST Account Assistants who would help professionals file returns. The programme under the MOU intends to encourage students to apply for the skill development programme."

TECHNICAL SESSION – III: Life Skills / Management Skills-Governance Professional – Driving your Business to Success: The session which could be considered nothing short of life changing was praised by one and all for the enlightening speech by Mr. Paresh Rughani, International Motivational Speaker, London

TECHNICAL SESSION – IV: New India – Vision 2022: Intended at covering topics of the likes of Demonetization and Good Governance Paradigm of New India, 2022, the session was graced by Shri Arjun Ram Meghwal, Hon'ble Minister of State for Parliamentary Affairs and Ministry of Water Resources, River Development and Ganga Rejuvenation. Shri Meghwal while sharing his opinions said that New India is the Buzz word today and the concept is to become a reality in 2022 when India will be celebrating Amrut Mahotsava – 75 years of Independence. Explaining why the 75 years of Independence celebration was given the name of 'Amrut Mahotsava', he said that the idea is that every individual, irrespective of their caste, creed, culture, profession or other diversities, gets the best that they deserve. Sharing the Prime Minister's vision, Shri Meghwal, said, "India needs to raise itself on Development and Good Governance and eradicate the six diseases – Dirt, Poverty, Terrorism, Communalism, Casteism, and Corruption". The panel discussion that revolved around New India – Vision 2022 brought forth several issues and opportunities related to the vision.

CORPORATE GOVERNANCE – INTERNATIONAL PERSPECTIVE: The concluding session of the second day of the 45th National Convention generated healthy discussion reflecting upon the International perspectives on Corporate Governance. Ms. Savithri Parekh, Sr. Vice President-Legal and Secretarial, Pidilite Industries Ltd. modrated the session. The Kenyan, Malaysian, Islamic, Indian and global dimensions of Corporate Governance were discussed by eminent panellists that included Tn. Hj. Osman bin Ujang, President, Malaysian Association of Company Secretaries (MACS), Malaysia, Shri Tom Omariba, EXCO Member, CSIA and Chairman, Institute of Certified Public Secretaries of Kenya (ICPSK), Shri S. Abdur Rashid, President, Institute of Chartered Secretaries of Bangladesh (ICSB) and

Ms. Zahra Cassim, CEO, CSIA, South Africa, among others.

TECHNICAL SESSION – V: NCLT - New Horizons of the Profession and Tasks Ahead: It was in this session that the man behind the New Economic Policy of 1991 shared his views. Prof. P J Kurien, Deputy Chairman, Rajya Sabha said that Golden Jubilee year is the perfect time to introspect, identify weaknesses and move forward with better and corrective measures. Appreciating the ICSI members for focusing on the country's progress and working towards shaping a New India, Prof. Kurien observed that New India is in the making. It is a process and we all are a part of this process. We can call ourselves progressive if every year we are able to say that this year is better than the last, he added. Company Secretaries are very powerful and if they stay strong and stick to the ICSI motto – *Satyam Vada, Dharmam Chara*, corruption and other defaulting activities will be curbed. Further, congratulating ICSI for the achievement of Malaysia accepting India's Secretarial Standards and introducing the Anti-bribery Code, Prof. Kurien said that corporates are vital to the development of any nation and the Company Secretaries are key players in the corporate arena, so, if they stick to the commitments and duties, the country will definitely grow.

Technical Session – VI: Learning Governance from Ancient Indian Scriptures: Getting back to our roots was the intent behind planning a session such as this one and considering the thought shared, it could well be considered as an accomplishment of the basic intent. During the course of this session, the discussions revolved around glory and power of Ancient Indian scriptures which could fill the void in the existing Corporate Governance framework. CA Sreeraman V, Practising Chartered Accountant from Salem while revealing the fact that 'Indian scriptures are beyond mastery', made a comparison between Globalisation, a modern Concept with that of the Ancient Indian value system of *Vasudheva Kutumbakam*. According to him, "The idea of *Vasudheva Kutumbakam* is a cultural and spiritual concept which gives more importance to individual interest integrated to collective interest". The focal point of discussion was giving priority to the idea of 'Re-inventing the thought process' where the motto of ICSI: *'Satyam Vada Dharmam Chara'* (Sloka from Taittiriya Upanishad) stressing the importance of thinking good, speaking truth and acting on the path of Truth was given ample space.

CLOSING PLENARY: VALEDICTORY SESSION: Continuing with the fervour of ancient scriptures and Indian religion and their significance in corporate governance, the valedictory session felt more than complete with the strong and motivating words of Shri Amogh Lila Dass, Vice-President, ISKCON, Dwarka and Director, ISKCON Youth Forum. It is during his address that he said that, "There are many kinds of crises. Root cause of any crisis is ineffective leadership; due to immature leadership, growth crisis occurs. Hence, the person at the helm of affairs needs to observe sound knowledge about right and wrong and then practice 'Karma'. It's indeed good to know that ICSI is developing a governance code based on ancient scriptures and principles and it will be interesting to see amalgamation of both and the difference it will bring to our current corporate governance norms".

Concluding the event by thanking one and all and giving ample motivation and food for thought to those present, CS (Dr.) Shyam Agrawal, President, said that, "ICSI is the only institute that is present in the entire country across the length and breadth of India, which could rightly be termed as Pan-india presence. We are not only Company Secretaries but Secretaries to the Nation and with this our responsibility becomes even more enormous. Let's join our hands together and capitalize the momentum and create a New ICSI 2022 with the PM's vision of New India 2022."

AT A GLANCE

ARTICLES P-45

Charity Entitites in India: Legal Framework, Disclosure and Transparency P-47

Dr. Sasikalapushpa & Dr. B. Ramaswamy

Charitable organization is an organization which has an objective of charitable purpose. Trusts, foundations, unincorporated associations and in some jurisdictions specific types of companies, may be established for a charitable purpose or may acquire such purpose after establishment. Charitable organizations are non-profit organizations; however, not all non-profit organizations are charitable organizations. Some charitable organizations may be established by companies as part of tax planning strategies. The primary function of a charitable organization is to give benefit to the public by performing worthy causes that helps the public at large. Also all the operations performed by those organizations are legal and their policy goes in tune with the general public policy.

Institutional framework for Charities in India, Anti-corruption Measures and Charity Transparency Framework & Trends P-53

Sunil Sharma

Transparency and accountability is the need of hour for Charities in absence of robust Institutional and Legal Framework presently. In India, towards the middle of the 19th century numerous organisations were established on contemporary issues of politics, literature, arts, science etc. giving birth to Charities laws. However, colonial laws continue even today without much amendments and still are non-intrusive that leads to freedom in governance of Charities by its promoters. Largely, a mere registration and obtaining a tax exemption status from Federal Tax department suffice. Unlike governance and administration of a company under relevant Companies laws where reporting is mandatory to bring about transparency and accountability, Charities have no such requirement that gives rise to corrupt practices, malpractices and also wastage of tax exempt resources to large extent in the garb of such entities. The article provides for the existing Institutional Framework, Anti-corruption laws and attempts to provide suggestions for robust framework for effective governance.

Overview of Governance & Board of NGOs P-58

Dr. Manoj Fogla

Starting with ownership and governance of Voluntary Organisations, the present article covers technical overview of governance in a Voluntary Organisation, importance of general body and Board, the roles, responsibilities and composition of the Board, presence of employees on the Board, election and selection of the Board Members, etc. The article also briefly discusses closely and widely held Voluntary Organisations and deals with permanent or long term board members, executive and legislative leadership, advisory committees and independent directors.

Enhancing NGOs Governance for Improving Human Development Index P-63

Dr. S K Gupta & Shukla Bansal

NGOs are community organizations that work for public benefit. NGOs exist in virtually all societies and the rise of NGOs as an economic force in today's society is well documented. There are roughly 3 million of them in India. They are emerging to be a credible force in catalyzing the nation's social and economic growth, particularly for the masses at the 'bottom of the economic pyramid'. Some NGOs in India have come under the red scanner and their functioning has been seen with suspicion. NGOs need strong governance, with robust structures, processes and good behaviors to best serve their beneficiaries and their cause viz. provide assurance to all stakeholders that the NGOs operates in a just and equitable manner, be accountable to the ultimate target beneficiaries, employ efficient and effective risk management processes and practices and ensure charity organization's prosperity in terms of stake holder value.

How to Counter the Mind-set of Bribery P-68

Om Prakash Dani & M. S. Srinivasan

Bribery has become a part of popular and official culture in India, which has created a mind–set among the public that without giving bribes, you cannot get things done. How to counter this mindset. Most of the current thinking on corruption tends towards this kind of external remedies which are necessary but not sufficient .For a more long–term solution we have to tackle the deeper psychological factors. This article examines the problem in this deeper perspective.

Anti-bribery and Anti-corruption Legislations, Institutional Framework in India and International Trends P-70

Hema Gaitonde

Corruption is a form of dishonest or fraudulent conduct by those in power and it typically involves bribery. It is abuse of entrusted power by those in occupying a position, for private gain. An attempt has been made in this article to cover the various legislations and the institutional framework in India and two other countries, to counter corruption and bribery.

Prevention of Corruption Act, 1988 (With Special Reference to Gratification) P-76

Parthasarathy R

Corruption is a bane of our country. In fact, much of the economic planning and industrialization though materialized has not ensured that the benefits go to the society at large. This is largely due to corruption at all phases. Gratification or accepting of bribes for doing or refraining from doing a particular thing that benefits a particular individual or a segment without caring for the overall accrual of benefits to the society proves to be a hindrance to the social, political and economic objectives of the country. Though penalties were prescribed in all the legislations for non-compliance, a separate legislation dealing with corruption directly, was the need felt by all sections of the society and it is on these lines, government has promulgated the Prevention of Corruption Act, 1988. This article throws light on the provisions of the Act dealing with gratification or acceptance of bribes.

Is Corruption Inevitable?– Assessing the Measures Taken and Role of Spirituality for Better Future P-80

Bhavesh A. Kinkhabwala & Dr. Ravi Gor

Corruption is a complex, multi dimensional concept and has become a highly topical, international policy issue and a subject matter of

spectacular research work for the scholars of various disciplines. Corruption in India has an ancient history and after studying the same it seems that corruption in human being is as old as the civilization itself. OECD estimates that at least 5% of world GDP is spent annually on Corruption. From time to time policy makers, rulers across the globe have taken sincere legislative measures to curb the decease of corruption but, due to one or another reason corruption has remained a big challenge so, this has posed a big question mark against the policies, implementation thereof, system, administration and so on. One striking point which seems the very root of all complications is the quality of human being. The world has tried enough to take decisions and tackling human issues on the basis of market driven ideology but, a deeper insight is required with a flare of spiritual dimension. Perhaps this is the only way left to take a try and which can be a source of hope for a sustainable living.

Anti-bribery Measures in India

P-85

Mandar Karnik

India is a country on the path to Developed Status from under-development as it stands today. In effect we as a country are moving from having very small GDP in comparison to our resources and population to building our own fortune. As the saying goes, "Behind every great fortune there is a crime". There is a lot of crime being perpetrated in the form of bribery, fraud and tax avoidance in the garb of charity and philanthropy. This article aims to address these issues of bribery and corruption while taking a look at the various laws that govern bribery in India. In India, the law relating to corruption is broadly governed by the Indian Penal Code, 1860 ('IPC') and the Prevention of Corruption Act, 1988 ('POCA'). A glance at these two legislations will show that the Penal Code enacted in 1860 by the British Raj and the POCA of 1988 have been horribly outdated.

Anti-corruption Laws in India

P-89

Meenu Gupta

Given that India is increasingly attracting the international business community with its extensive regulatory, legal and diplomatic manoeuvres, companies cannot underestimate the multitude of challenges in business operations in India particularly with reference to vastly divergent risk landscape the country offers. Corruption and bribery has been one of the risks the country is facing and in the wake of numerous scams being unearthed in India over the past decade, the enforcement agencies have been increasingly proactive in terms of monitoring compliance under relevant anti-corruption and bribery laws and taking action against violations thereof. For instance, in 2015 the Central Vigilance Commission (CVC) opened a *suo motu* (ie, of its own accord) inquiry against a private company for the first time, amid allegations that the company had bribed public servants in order to obtain certain clearances and permits in India.Further, Serious Fraud Investigation Office has also investigated cases of alleged fraud in 258 companies in the past four years, of which 116 investigations have concluded.

RESEARCH CORNER

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ICSI – CCGRT ANNOUNCES Unique Competition on Analysis of the ICSI-Premier on Company Law (Vol.-1)

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LEGAL WORLD

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- **LMJ 26:12:2017** Whenever any creditor seeks to prove his debt against the company in liquidation, the rule enacted in Section 46 of the Provincial Insolvency Act should apply and only that amount which is ultimately found due from him at the foot of the account in respect of mutual dealings should be recoverable from him and not that the amount due from him should be recovered fully while the amount due to him from the company in liquidation should rank in payment after the preferential claims provided under S. 530. [SC]
- **LW 87:12:2017** The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act. [SC]
- **LW 88:12:2017** On a careful consideration of the matter, the Commission is of the opinion that the allegation made by the Informant does not make out any specific case of bid rigging in any State tender post-2009. [CCI]
- **LW 89:12:2017** We are in agreement with the findings of the inquiry officer which were accepted by the disciplinary authority and approved by the appellate authority and the labour court that the Respondent had committed the misconduct in collusion with the conductor. It is no more *res integra* that acts of corruption/ misappropriation cannot be condoned, even in cases where the amount involved is meagre. [SC]
- **LW 90:12:2017** This Court does not find any good ground to interfere in the discretion exercised by the two Courts and accordingly uphold the orders impugned herein calling no interference. [SC]
- **LW 91:12:2017** It has already been seen that none of the customers of the assessees are located in India or have received any services in India. This being the case, it is clear that the very first ingredient contained in Article 5(2) (l) is not satisfied. [SC]

FROM THE GOVERNMENT

P-105

- Designation of Special Court
- Companies (Accounts) Amendment Rules, 2017
- Companies (Filing of documents and Forms in extensible business reporting language), Amendment Rules, 2017
- Online Registration Mechanism and Filing System for Clearing Corporations
- Securities and Exchange Board of India (International Financial Services Centres)Guidelines, 2015 – Amendments
- Investments by FPIs in Hybrid Securities
- Review of Securities Lending and Borrowing (SLB) Framework
- Modification to Enhanced Supervision Circular
- Clarification to Circular on Prevention of Unauthorised Trading by Stock Brokers
- Enhancing fund governance for Mutual Funds

OTHER HIGHLIGHTS

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- Members Restored
- Certificate of Practice cancelled
- Ethics & Sustainability Corner
- GST Corner
- CG Corner
- Announcement : Empanelment of Resource Persons

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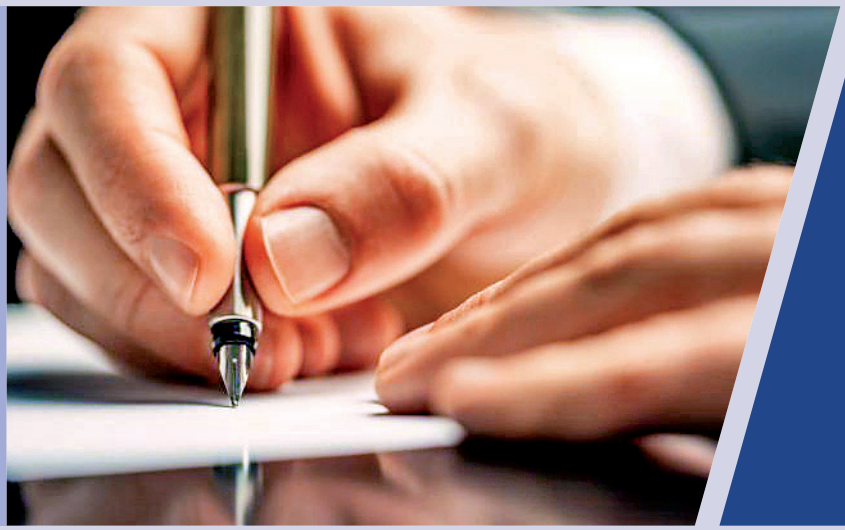
1 ARTICLES



- CHARITY ENTITITES IN INDIA: LEGAL FRAMEWORK, DISCLOSURE AND TRANSPARENCY
- INSTITUTIONAL FRAMEWORK FOR CHARITIES IN INDIA, ANTI-CORRUPTION MEASURES AND CHARITY TRANSPARENCY FRAMEWORK & TRENDS
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- ANTI-CORRUPTION LAWS IN INDIA

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(Signature)

Charity Entitites in India: Legal Framework, Disclosure and Transparency

Dr. Sasikalapushpa
Member of Parliament (Rajya Sabha)
sasikalapushpamprs@gmail.com

Dr. B. Ramaswamy
Former Pro Vice Chancellor
APG Shimla University, Himachal Pradesh

MEANING AND DEFINITION OF CHARITY AND CHARITABLE ORGANIZATION

The word "charity" derived from the old French word "charité" which was derived from the Latin word "caritas". Originally in Latin the word caritas meant preciousness, dearness, high price. From this, in Christian theology, caritas became the standard Latin translation for the Greek word agape, meaning an unlimited loving-kindness to all others, such as the love of God.

The role of a charities regulator should be to effectively secure compliance with the charity laws of the land in a fair, transparent and non-partisan manner, free from political influence to enhance public trust and confidence in both the regulator and the charities. In order for it to be effective in fulfilling its role, there should be clarity in the scope and mandate of the regulator. The office should have adequate autonomy and integrity in its operation and the capacity to educate the public. It must also have the authority and the competence to review and interpret charity law to meet the needs of an evolving society.

Charity is giving voluntarily to those in need. It covers the giving of both money, and of the self through service to the needy. Charity is defined as - relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. The term is also used to denote an institution or organization, which helps those in need.

Charitable organization is an organization which has an objective of charitable purpose. Trusts, foundations, unincorporated associations and in some jurisdictions specific types of companies, may be established for a charitable purpose or may acquire such purpose after establishment. Charitable organizations are non-profit organizations; however, not all non-profit organizations are charitable organizations. Some charitable organizations may be established by companies as part of tax planning strategies. The primary function of a charitable organization is to give benefit to the public by performing worthy causes that helps the public at large. Also all the operations performed by those organizations are legal and their policy goes in tune with the general public policy. Charitable organizations usually have an active way to raise funds through a campaign or conducting programmes. Its functions can range from helping others in times of disaster, giving financial aid, medical services, public works and conducting human right activities. They generally function as a welfare organization and work for the improvement of the society through their charitable function.

EVOLUTION AND GROWTH OF CHARITABLE ORGANISATIONS IN INDIA

Though the roots of charity are to be found in religious belief and practice, charitable trusts and voluntary organizations are India's secular and institutional manifestation. India has a long history of civil society. Voluntary organizations were active in cultural promotion, education, health, and natural disaster relief as early as the medieval era.

Religious organizations, especially Christian missions, also took up work to help the poor to improve their condition. This was the genesis of what came to be referred to as voluntary organizations. With the freedom struggle and Gandhiji's advocacy of voluntary constructive work to improve the lot of the masses, many more voluntary organizations were formed. Those who were unable to serve society directly, but were able to provide money and other

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The broadening of the definition of charity thus brought within its ambit a very wide range of organizations working for both welfare and development, and not only those working for relief of distress.

material resources, either established charitable institutions like dharamshalas, schools, orphanages, women's homes and the like, and donated funds to run them, or established endowments to provide monetary help in perpetuity to some charitable cause. The beginning of the industrial revolution in India led to establishment of large fortunes, and gave a fillip to the establishment of endowed foundations to support welfare and development work. Later, inspired by Gandhiji's message that rich businessmen should look upon themselves as trustees of society and hold their wealth in trust for the less fortunate, many wealthy families and businesses added to the numbers of foundations and trusts, just as his message of constructive work to bring about national development led to the formation of many voluntary agencies.

During the 19th and early 20th century such organizations received legal recognition through the enactment of laws such as the Registration of Societies Act 1860, and the Indian Trusts Act 1882. Such enactments gave public recognition to the intention of the founders and extended the protection of the law to their income and property, and to their office bearers. The British Government in India also recognized that it could not, by itself, provide for all the welfare and development needs of society, and therefore sought to encourage private charitable contributions for public purposes by giving incentives. This included award of official titles and exempting donated income from the income tax. The Income Tax had been introduced in 1860, and in 1922, the government granted 50% tax exemption to individuals on donations for charitable purposes. After Independence the numbers of voluntary organizations expanded to meet national development goals, especially when it became apparent that the governmental programs were inadequate to respond to the development needs of the deprived sections of the society.

The Government of independent India continued and extended the tax concessions given earlier, fully aware of its own limitations in meeting social needs. The Finance Act of 1948 extended the exemption, earlier given only to individuals, to companies making charitable contributions. The Companies Act of 1956 introduced Sec 25 (Section 8 of 2013 Act) to enable individuals and corporations to set up nonprofit companies for charitable purposes. The Income Tax Act of 1961 broadened the definition of charitable purpose, which is in force today. Charity is now defined as "relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."
The broadening of the definition of charity thus brought within its ambit a very wide range of organizations working for both welfare and development, and not only those working for relief of distress. These measures, coupled with high tax rates, led to the formation of several charitable trusts and organizations. Collectively all such organizations are today referred to as the nonprofit sector, (NPO sector) which has grown almost exponentially over the last few decades.

Today the non-profit sector comprises organizations that donate money for charitable causes (trusts and foundations), charities for the welfare of the poor and the needy (charitable organizations). Organizations that are development oriented, Organizations engaged in advocacy, protection of human rights, research and resource centers, environmental conservation etc. (intermediary support organizations, umbrella groups, networks) and associations of all kinds, including chambers, associations of lawyers and chartered accountants, who are not public benefit but mutual benefit organizations, though nonprofit making. Traditionally many of them would not have come within the ambit of "charity".

CHARACTERISTICS OF A CHARITABLE ORGANISATION

Charitable organizations have certain common characteristics. These are

- Formal: A charitable organization should be institutionalized and registered, and should have well defined program objectives as well as rules and regulations of governance.
- Private: It is important that a charitable organization be institutionally separate from the Government.
- Self-governing: A charitable organization is usually managed by 'Board of Trustees' or 'Governing Council' and not controlled from the outside. Key participants in the management of a charitable organization are supposed to act in fiduciary capacity.
- Not for profit: A charitable organization cannot distribute profits. It can earn and retain a profit, which is referred to as surplus.
- Voluntary: Some meaningful voluntary participation in the activities and management of the organization is important for an organization to be classified as charitable organization.
- Non-religious: A charitable organization should not be involved in promoting religious worship or religious education. However, pure service oriented organizations affiliated to religious organizations can be covered.
- Non-political: A charitable organization cannot be affiliated to any political party.

THE LEGAL FRAMEWORK

Charity is on the concurrent list of subjects where both the Center and the States are competent to legislate. Accordingly some of the laws are Central and applicable all over India, while others are enacted by individual states. There are five main laws governing the non-profit sector, each of which is administered by an agency specifically created for the purpose.
These are:

- The Registration of Societies Act of 1860, a Central Act, and its versions enacted by different states, with a Registrar of Societies in each state to register and regulate organizations registered under this Act.
- There is no Central Act for registering or regulating public charitable trusts. A variation of the Indian Trusts Act of 1882,

which applies only to private trusts, is in force in different states. Maharashtra and Gujarat have offices of the Charities Commissioner, created under the Bombay Public Trusts Act, 1950, to oversee charities in these states; Tamil Nadu has a Department of Religious and Charitable Endowments, and other states have some similar organization for charitable trusts.

- Section 25 of the Companies Act 1956, deals with nonprofit companies. It is administered by the Registrar of Companies (Now section 8 of the Companies Act, 2013)
- The Income Tax Act, 1961, again a Central Act applicable all over India, provides fiscal benefits to NPOs.
- The Foreign Contributions Regulation Act, (FCRA) a Central Act applicable all over India, was essentially a security measure to control external funds flowing to nonprofit organizations, which could be used to threaten national security. In practice it has come to regulate the receipt and spending of all foreign funds going to nonprofit organizations, irrespective of security concerns. This basic legislative framework sets out the parameters within which the nonprofit sector can operate. During a hundred plus years of growth, rapid economic and social changes have changed the conditions under which the sector operates but the laws and institutional frameworks have not changed commensurately, though some attempts at change have been made sporadically.
- Another such effort was the establishment in October 2000, by the Planning Commission, Government of India, of a Task Force to review, analyse and suggest ways in which the present Acts, rules and procedures can be modified or simplified to facilitate the growth and development of the voluntary sector. The problem, the Task Force noted, is not only of lacunae in the laws, but also of the way the laws are interpreted and implemented by the various administrative agencies created to enforce the laws.

  Unfortunately, in spite of many sound suggestions by the various expert committees, there has been very little appreciable change on the ground.

Main laws governing the charity sector

- Constitution of India Articles 19(1)(c) 2)
- Indian Trusts Act, 1882 (applicable for private trusts)
- Public Trusts Acts of various states in India.
- The Societies Registration Act, 1860
- The Companies Act, 2013
- Income Tax Act, 1961
- Foreign Contribution (Regulation) Act, 2010.
-

Constitutional Provisions with regard to Charitable Organizations:

The Indian Constitution provides a distinct legal space to social capital / civil society institutions:

- Article on the right to form associations or unions – Article 19 (1)(c);
- Article 43 which talks of States making endeavor to promote cooperatives in rural areas

  The Entries in the Seventh Schedule to the Constitution are as follows:

The Union list (List I)

Entry 43 – "Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies".

Entry 44 – "Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities".

The State list (List II)

Entry 32 – "Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies".

The Concurrent List (List III)

Entry 10 – "Trusts and Trustees"

Entry 28 – "Charities and charitable institutions, charitable and religious endowments and religious institutions".

Since forming Associations is a Constitutional right under Article 19(1)(c) of the Indian Constitution, it is quite feasible to set up a non-profit/voluntary organization without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organizations like village committees, small religious groups and many Resident Welfare Associations function in this manner. However, when it comes to claiming exemptions under the Income Tax Act, 1961 and for availing of other benefits from the Government, there is insistence on formal registration.

FOREIGN CONTRIBUTIONS TO CHARITABLE ORGANISATIONS

Organizations having a definite cultural / social/ educational/ religious /economic object were allowed to accept foreign contribution only after registering itself with the Central Government as per the provision of the Foreign Contribution (Regulation) Act, 1976 (FCRA). The main purpose of the Act was to curb the use of foreign funds and hospitality for nefarious and anti-national purposes. However, the Foreign Contribution (Regulation) Act 2010 (FCRA 2010) was passed to replace the Foreign Contribution (Regulation) Act 1976. The Foreign Contribution (Regulation) Act, 2010 came into effect from May 1, 2011.

Foreign Contribution (Regulation) Act

During the emergency period, the civil and political rights of the citizens were suspended. In those days, the prohibited voluntary organizations advocating political rights were seen by the government making attempts to overthrow the government with the aid of the foreign donors. With this backdrop, the FCRA was enacted in 1976 to maintain strict control on political associations and voluntary organisations that receive foreign fund.

In 1980, an amendment was brought in the FCRA in 1984 whereby it was made obligatory for all NGOs to register themselves with the home ministry. This amendment empowered the state to ban any organization receiving foreign contribution, should the state considered the organisation to be political instead of neutral. This Act was repealed in 2010 and instead, a new Act was enacted with more stringent provisions.

Salient Features of 2010 Act

The 2010 Act made further improvement in the existing Act and it introduced the more stringent provisions.

Important changes are as follows:

- In the 2010 Act, the provision was made for suspension as well as cancellation of registrations granted to NGOs. Such provision was not there in previous Act.
- Under the repealed Act, there was no time limit regarding the validity of registration certificate granted to the associations etc. for accepting foreign contribution. FCRA, 2010 provides

that the certificate granted shall be valid for a period of five years.
- A new provision was introduced to the effect that the assets of any person who has become defunct shall be disposed of in such manner as may be, specified by the Central Government.
- No funds, other than foreign contribution shall be deposited in the FC account to be separately maintained by the associations etc. Every bank shall report to such authority, as may be prescribed, the amount of foreign remittance received, sources and manner and other particulars.
- Provision has been made for inspection of accounts if the registered person or person to whom prior permission has been granted fails to furnish or the intimation given is not in accordance with law.

As per FCRA 2010, the following organizational individuals are debarred from receiving foreign contribution
- candidate for election
- cartoonist, editor, publishers of registered newspaper
- Judge, government servants or employee of any corporation
- Member of any legislature
- Political parties.

The FCRA defined the companies as foreign if they have 50% foreign shareholding. To do away this treatment, the FCRA was amended to allow the political parties to receive donations from companies which are now treated as "Indian" for the purpose of FCRA. This would not only help foreign-origin companies to fund NGOs but has also cleared the way for them to give "donations to political parties."

Foreign Exchange Management Act (FEMA)
- There are certain NGOs which are registered under FEMA and they disburse foreign funds to various associations within the country.
- According to FEMA, these NGOs are regulated by Finance Ministry.

Issues with FCRA and Charitable organizations

There are some loopholes in the existing law:

Firstly, the FCRA has duplicate mandate already given to several other legislations such as Prevention of Money Laundering Act 2002, Unlawful Activities Prevention Act 1967, Foreign Exchange Management Act, 1999 and Income Tax 1961 (for auditing propose).

Secondly, it has failed to address the root cause of the problem.

> Proper regulation of NPOs for tax and other legal compliance is very necessary. People will support charities if they can see that charities are meeting their legal obligations. Regulatory effectiveness, in turn depends on charities perceiving distinct advantages of complying with legal regulations; or its converse, see distinct disadvantages of not complying with legal requirements.

Though the stated objective of the Act is to strengthen internal security, it addresses only the voluntary sector and only foreign funding. Interestingly, this constitutes less than one per cent of gross inflow of foreign funds into India.

Thirdly, the Act has been used to intimidate those NGOs also which take up development works. Many NGOs work as a bridge between state and the people and ensure effective delivery mechanism. They play an effective role in strengthening of democracy.

Fourthly, as per some experts, the law is a contravention to the International Covenant on Civil and Political Rights, to which India is a party. This covenant says that access to funding is a part of right to freedom of association. Some other critics say that FCRA violates the universal declaration of human rights, where right to freedom of association is a part of it.

Lastly, the FCRA's broad and vague terms such as 'political nature', 'economic interest of the State' or 'public interest' are overly broad; do not conform to a prescribed aim.

There are instances where NGOs has violated FCRA but escaped penalty under the pretext of FEMA which falls under Finance Ministry. FCRA seeks to monitor fund which is not a capital but under FEMA fund is being accorded the status of capital.

TRANSPARENY AND PUBLIC ACCOUNTABILITY

Though inadequate in terms of need, the resources mobilized by the charities sector are still sizable. Not only do charitable organizations receive funds directly from the public, but they are also indirect beneficiaries of public benevolence. They receive grants from government out of the tax revenues contributed by society. Besides, government foregoes tax by offering exemptions on income tax and other taxes such as excise, as well as land at concessional rates. Therefore the public, apart from the government and the sector, has an important stake in seeing that charities are transparent and credible in terms of their governance and use of funds. Instances of misuse of tax provisions, fraud, and poor governance by some sections of the sector appear to be increasing, and have brought issues of ethics and values underlying voluntary work, and the accountability of voluntary organisations to the government and the public.

In particular, there are two categories of misuse, which need to be checked. One is that by large hospitals and educational institutions, which by claiming to be charitable, or promising to reserve a certain percentage of their services for the poor, have availed of benefits like land at nominal or concessional rates, exemption from excise duties and the like, apart from exemption of income from tax, but have gone back on their promises. They are running these organizations as business ventures. A second category is organizations, which exist only on paper, and have been established only to launder black money or to avail of grant funding. If the misuse is not checked, public trust in the nonprofit sector will be eroded, and because of a few black sheep the whole sector stands to have its image tarnished. This will also affect the chances of NPOs receiving funds from the public as well as donors. The possibility of increasing private charitable resources is not only a function of tax incentives and education of potential donors on the need to give, but also of accountability of nonprofit organizations. If the public perceives that charitable

resources are not being properly used, it will reduce, not increase the flow of private resources to the nonprofit sector.

Therefore proper regulation of NPOs for tax and other legal compliance is very necessary. People will support charities if they can see that charities are meeting their legal obligations. Regulatory effectiveness, in turn depends on charities perceiving distinct advantages of complying with legal regulations; or its converse, see distinct disadvantages of not complying with legal requirements. Nonprofit organizations will comply with the law if they see that the regulator acts with integrity; is open about its decisions and performance; is committed to high standards of service and is willing to work with the sector in seeking knowledge and innovation and if compliance is not burdensome with complex and time consuming procedures. They will not comply if they feel that they can get away with wrongdoing and there will be no adverse consequences for them. Though self-regulation of the charities sector to ensure good governance and accountability is very necessary and better than heavy state regulation, there will still be a need for an effective state mechanism to enforce the law in case of transgression of a code of good conduct. A self-regulatory body cannot administer legal sanctions, or adjudicate in disputes regarding property of trusts, or give protection of the law to office bearers discharging their official duties.

NEED FOR ADMINISTRATIVE REFORM

The non-profit sector has grown within this basic legislative framework, which sets out the parameters within which it can operate. However, during a hundred plus years of growth, rapid economic and social changes have changed the parameters within which the sector operates. On the one hand, both state and society expect it to take on much more than was initially expected, and for which it is not well prepared either in terms of financial, human or organizational resources. On the other, the state has not fully recognized this need for more resources and for a more liberal and facilitative approach to enable charities to operate more effectively. In short, the laws have not kept pace with changed circumstances or with need. The problem is not only with the formulations of the laws but also in their administration, with either cumbersome procedures or lack of understanding on the part of those who administer the charity laws, of the unique nature of the charities sector.

There are also other lacuna which do not lie in the realm of laws as such, but in the administrative sphere, which if remedied could enhance the functioning of the sector. These are:

- A need to review and redefine accepted definitions of popularly used concepts – “charity”, “non-profit”, “voluntary”, “civil society”, “development organizations” and so on, especially for interpretations of the laws and regulations.
- Lack of authentic official statistics pertaining to the sector and lack of access for bonafide purposes, to information collected by the government;
- The lack of a mechanism for redressing grievances without recourse to the courts;
- Lack of a permanent forum for ongoing interaction between civil society and government so as to find a voice in policy making;

To achieve socio economic and sustainable development an effective state is necessary and there are growing pressures on governments and organizations round the world to be more responsive to the demands of internal and external stakeholders for good governance, accountability, effectiveness and achievement of tangible results.

RECENT INITIATIVES TAKEN BY GOVT.OF INDIA

The government has taken a slew of measures to regulate the charities/NGOs especially those receiving foreign funding. As a part of the measures, registration of more than 10,000 NGOs was suspended for non-filing of annual returns as per the FCRA and more than 1,300 were denied renewal over the past three years owing to various violations committed by these NGOs. In 2016, government had directed around 11,000 NGOs to file applications for renewal before February 28, 2017. Out of 11,000, only 3,500 NGOs had filed applications for renewal before the expiry date. As a result of all the above measures, there are only 24,000 active NGOs as against 40,000 in 2014-15.

Under the new guidelines, NITI Aayog has been appointed as the nodal agency for the purpose of registration and accreditation of VOs/NGOs seeking funding from the Government of India. The Aayog has been also tasked with maintaining of data-base systems to manage and disseminate information relating to NGOs/VOs.

The existing portal at Niti Aayog (NGO-Darpan) shall be strengthened and aligned with accreditation-like functions which should also provide a snapshot of the NGO with regard to its ongoing and past work, particularly with respect to public and foreign funds so as to facilitate grant making authorities on the bonafides.

All VOs/NGOs, aspiring to be funded by the government, shall register themselves in NGO-Darpan through online process which would enable them to get a unique ID.

In future, all funds to NGOs/VOs should be released through the public fund management system (PFMS), and a three-tier monitoring system shall be instituted uniformly for the Central Government and Ministries.

Recently, the Home Ministry has instructed 5,845 NGOs to open their accounts in banks having core banking facilities. The NGOs are also required to furnish the account details for real time access of security agencies in case of any discrepancy. The move is aimed at checking “errant” NGOs especially those organizations receiving foreign funding.

The Home Ministry has mandated the NGOs registered under the Foreign Contribution Regulation Act to have their accounts in either nationalized banks or in a few private banks that has core banking facilities. Around 3,768 NGOs have been told that their accounts in banks does not have core banking facilities. Another 2,077 NGOs have been instructed to furnish their bank accounts details as such details are not available with the Home Ministry. The significance of the move is that the core banking system with all of the branches of the networked banks interconnected would allow the security agencies to access the accounts of the NGOs on real time basis.

SOME INTERNATIONAL MODELS

International Charitable organizations/NGOs have varied roles in development cooperation, and have varied approaches based on different models of development practice. However, there are strong similarities in the objectives they aim to achieve, and in

their overall mandates. Key objectives for INGOs typically include the reduction of poverty and inequality, realization of rights, promotion of gender equality and social justice, protection of the environment and strengthening of civil society and democratic governance. For example, three of the largest INGOs have primary objectives based on poverty reduction:

- CARE International "shares a common vision to fight against worldwide poverty and to protect and enhance human dignity."
- Oxfam International is a "global movement for change, to build a future free from the injustice of poverty."
- World Vision is "dedicated to working with children, families and communities to overcome poverty and injustice."

International voluntary organizations work with a wide range of target groups and sectors to achieve their development objectives. While some have a special focus, many work in similar areas. Save The Children and Plan International, as their names suggest, have a specific focus on children and undertake programmes in health, nutrition, education, protection and child rights.

Action Aid works on food rights, women's rights, democratic governance, education, climate change and HIV/AIDS.

Many voluntary organizations, such as World Vision International or Oxfam International, are involved in humanitarian assistance as well as long term development programmes. One of the world's largest International organizations, Médecins sans Frontières works only on humanitarian assistance, delivering emergency aid "to people affected by armed conflict, epidemics, healthcare exclusion and natural or man-made disasters".

Some other voluntary organizations

Jessie's Fund, UK: Jessie's Fund helps children with additional and complex needs learn, express themselves and communicate through music. Initially a small charity, it's grown to operate on a national scale. The charity goes into special schools and hospices to teach children musical skills.

Straight Talking, London: A charity which uses a peer education approach to tackle teenage pregnancies and teenage parenthood, Straight Talking employs those with the relevant knowledge and experience of teen parenthood – teenage parents themselves – to run secondary school courses to inform and educate young pupils on the realities of being a young parent.

Food Train, Scotland: Food Train delivers support and services for older people with the aim of helping them live independently at home for as long as possible. After a community survey of elderly people in 1995 showed many had difficulty with their weekly grocery shop, the idea for Food Train was born and this year marks its 20th anniversary.

RECENT COURT JUDGEMENT

Recently, The Supreme Court directed the government to audit nearly 30 lakh NGOs which received public funds but consistently failed to explain how they spent the money.

A Bench of Chief Justice of India J.S. Khehar and Justices N.V. Ramana and D.Y. Chandrachud was hearing a writ petition filed by advocate Manohar Lal Sharma.

It ordered that any NGO found to have cooked its books or indulged in misappropriation should be subject to immediate criminal prosecution. Besides, the government should initiate civil recovery proceedings against such rogue organisations. The judicial order is unprecedented because defaulting NGOs so far have been only blacklisted by the government. The apex court ordered that the government should have framed guidelines for their accreditation, the manner in which these organisations should maintain their accounts and the procedure for recovery in case they fail to submit their balance sheets.

CONCLUSION

The role of a charities regulator should be to effectively secure compliance with the charity laws of the land in a fair, transparent and non-partisan manner, free from political influence to enhance public trust and confidence in both the regulator and the charities. Moreover, it should make the regulatory process as simple and cost effective as possible.

In order for it to be effective in fulfilling its role, there should be clarity in the scope and mandate of the regulator. The office should have adequate autonomy and integrity in its operation and the capacity to educate the public. It must also have the authority and the competence to review and interpret charity law to meet the needs of an evolving society. However, the country should have a comprehensive central law to incorporate non-profit organizations, perhaps along the lines of the Charities Act in the UK.

In England and Wales, the Charity Commission administers the Charities Act, which gives it jurisdiction over all matters concerning charities, including regulatory powers, that in Canada and the US fall under provincial jurisdiction.

The main difference between the UK, the US and Canada's institutional arrangement is that while in UK registration is done by the Charity Commission, in the US-Canada model, it is the income tax department which has the main regulatory responsibility. The Charity Commission concerns itself not only with the financial aspects, but also with the administrative aspects of organizations, modernizing them to keep abreast of new developments. CS

Institutional framework for Charities in India, Anti-corruption Measures and Charity Transparency Framework & Trends

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INTRODUCTION

As community organisations Charities are accountable to the public. Good Governance for Charities is important as it indicates how a Charity organisation is being run. Governance in the charity sector refers to "the framework and processes concerned in managing the overall direction, effectiveness, supervision, accountability and compliance with legislation of a charitable organisation".

The article aims to provide a broad insight into the Institutional framework for Charitable entities ("Charities") in India and internationally. The article also details the prevalent Anti-corruption Framework in India and abroad. However, the anti-bribery and/or anti-corruption laws are not directly related to Charities, which lead to malpractices and diversion of resources. The article also touches upon the importance of Good Governance, Charity Transparency Framework and Trends. Though Charities own huge assets and are entitled to preferential tax treatments and exemptions the article suggests that the Institutional Framework for governance of Charities is lax being a concurrent subject under the Constitution of India and leaves scope for Charities for poor governance that needs new code for governance and administration.

Good governance holds the key to sustainability and growth of the charity sector. Aspiration of a well-governed and thriving charity sector can be realised with good governance encompassing transparency and accountability as key cornerstones. Thus, Good Governance is the foundation for building trust – a key commodity for charities.
Charities differ greatly in size, activity and circumstances, however, even small charities must have minimum and necessary benchmark for governance as their resources being either donated or exempt from tax, which tax collection could otherwise have been used for public good.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR CHARITIES IN INDIA

Charity is on the concurrent list of subjects where both the Centre and the States are competent to legislate. They are subject to a mix of federal, state/provincial/territorial, and local regulation. Accordingly some of the laws are Central and applicable all over India with State amendments on these laws, while others are enacted by individual states.
The law concerning Societies, Trusts, Waqfs and other endowments in India can be broadly grouped as under:

(i) Societies registered under the Societies Registration Act, 1860 and various States amendments on it after 1947;
(ii) The Religious Endowments Act, 1863; the Charitable and Religious Trusts Act, 1920; the Waqf Act, 1995 and similar other State Acts (Those engaged in pure religious and charitable work);
(iii) Trusts and charitable institutions registered under the Indian Trusts Act, 1882; Charitable Endowments Act, 1890; the Bombay Public Trusts Act, 1950; and similar other State Acts.

In addition charitable organisations are also required to follow the provisions of law as applicable to their functional areas like those Charities working on environment protection will have to abide by the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Forest (Conservation) Act, 1980, etc.

Towards the middle of the 19th century a number of organisations and groups were established in the country on contemporary issues of politics, literature, arts and science. Thus the above laws were enacted partly to give such organisations a legal standing and partly, to enable the colonial government to maintain a watch on them. But, the laws were and still are largely not intrusive at all and it gives full freedom to the Societies/Charities which chose to register with the government. Many States created separate authorities for registering and supervising such Societies. Trusts, Endowments and Waqfs are legally created as modes of property arrangement/ settlement dedicated for definite charitable and religious purposes.

INTERNATIONAL INSTITUTIONAL & LEGAL FRAMEWORK ON CHARITIES

Although all the countries particularly Australia, Canada, Ireland, the United Kingdom (England and Wales), and the United States share an Anglo legal tradition, the researchers recognize there are differences of institutional framework for Charities amongst the countries in terms of physical and population sizes, structures of government, legal competencies of national government and provinces/states, the sizes of government and regulatory agencies and the structures of administrative systems. The United Kingdom, the USA, Canada, France and other countries of Europe have a fairly well developed system for regulation and promotion of Charities.

In a majority of these countries, revenue officials initially decide on the "charitable" character of an organisation. This approach is based on the assertion that tax authority is in the best position in determining which organisations are eligible for tax exemption. The Charity Commission administers the Charities Act in England and Wales. In the USA and Canada, registration of a charity is a State responsibility but financial and tax regulation is through the Inland Revenue, which is a federal agency.

There is easy access to data on charities in USA, UK, Canada and European Countries as: (i) Public Register of Charities are established under law (ii) supply of information to regulators is mandatory for Charity organisation and (iii) An effective grievance redressal system is in place against action of administrative agencies including provisions for appeals against decisions.

A brief of Charities institutional framework in major countries is as under:

USA

In the United States, charities are created under the State Law but they are subject to control by both Federal and the State Governments. The charity administration is managed at the Federal level under the Federal Tax Code by way of preferential tax treatment. Charities are granted tax exemption status under the Federal Tax Code subject to organisational and operational conditions. Organisations claiming tax exemption must adhere strictly to their intended charitable objectives as provided in the governing document. The Tax Code makes a distinction between Public Charities and Private Foundations for the purpose of regulations. The Internal Revenue Service (IRS) is responsible for enforcing federal regulations with regard to the administration and governance of charitable organisations.

> Since Charities' main source of funding is donations, grants and receipts of such nature that are either from the public exchequer and/or exempted from tax liability, an effective framework for transparency and accountability is a must for resource funding and its deployment. Accordingly, Provisions on Measurement, Reporting, and Verification (MRV) are central to the transparency system.

U.K.

The main piece of legislation is the Charities Act 2011, which consolidates existing charities legislation into a single Act of Parliament. The Charities Act, 2006 provided for the establishment of an autonomous body called Charity Commission to regulate and support the functioning of Charity organisations across England and Wales, which is continuing under the new law. There is also a Charity Tribunal to entertain appeals against the orders of the Charity Commission.

CANADA

The Charities Directorate of the Canada Customs and Revenue Agency (CCRA) administers the Charities in Canada. The application is reviewed by a Charities Directorate examiner before granting registration. If an organization is registered as a charity, its name appears on the list of charities that is maintained on the CCRA website. Any member of the public has the right to ask the Charities Directorate for a copy of a registered charity's application for registration.

SINGAPORE

In Singapore the Charities are governed by the Charities Act, 1994, as amended, which provides for appointment of Commissioner of Charities and various provisions governing Charities. In addition, the Charity Transparency Framework (CTF), Singapore helps Charities enhance their disclosure and governance practices. The CTF is a scorecard for charities' self-assessment purposes and non-mandatory in nature. To encourage charities to be more transparent and to recognise charities for their disclosure efforts, the Charity Council has introduced the Charity Transparency Awards as well.

Singapore has also established a Charity Council, which has developed the Code of Governance in 2007, to set out principles and best practices in key areas of governance and management. Code has been refined in January 2011 April 2017 to provide greater clarity and relevance of good governance to the charity sector.

AUSTRALIA

Australia Government has established a national regulatory authority — the Australian Charities and Not-for-profits Commission (ACNC) in 2012 — and the law for Charities Governance in Australia is the Charities Act 2013.

Registration as a charity does not automatically confer tax-deductibility for gifts or donations received. That coveted privilege is restricted to organizations executing specific categories of public benefit activities such as health, education and welfare that have been endorsed by the Australian Tax Office.

IRELAND

The status of charitable organizations is governed by the Charities Act 2009, which replaced the previous 1961 legislation. The 2009 Charities Act both created a legal definition of what constitutes a charity and created the Charities Regulatory Authority (CRA) which maintains a register of recognized charities in Ireland. However, "charitable status" under the 2009 Act does not automatically confer tax exempt status on an organization. Thus the various tax laws (most notably the 1997 Taxes Consolidation Act) are also relevant because they confer the power to grant tax exemption on the grounds of charitable status to the Irish Revenue Commissioners.

CHARITY TRANSPARENCY FRAMEWORK & NEW TRENDS

Since Charities' main source of funding is donations, grants and receipts of such nature that are either from the public exchequer and/or exempted from tax liability, an effective framework for transparency and accountability is a must for resource funding and its deployment. Accordingly, Provisions on Measurement, Reporting, and Verification (MRV) are central to the transparency system. The transparency framework help provide stakeholders with the information and feedback needed on actual progress, improved efforts and promote efficient & cost-effective resources deployment for larger/public good.

A robust Charity Transparency Framework helps charities enhance their disclosure and governance practices and also serves as a public education tool for charities and public by highlighting key areas of disclosure that will aid in "informed giving".

The central legal actors in this process tend to be the national tax authorities as the main challenge for Charities/NGOs/not-for-profits resides in the assessment of the charitable status or eligibility for tax-exempt status. A legal obstacle to obtaining tax exempt status resides in the outdated approach of tax authorities to the Charities sector. The not-for-profit requirement/nature imposed on Charities in many countries does not mean that not-for-profit organizations are entirely precluded from engaging in profitable activities, but limitations may be imposed.

Charitable and tax exempt status issues becoming increasingly important due to the growing political attention on this aspect and Governments all across will need to be attuned to the regulatory developments surrounding them. While explicitly set out in various legislation across the world, the framework around charity law is progressive: what can be a charity is subject to change, as the economic and social context shifts. It can adapt to the contemporary values of society. The current descriptions of charitable purposes were determined by what the government at the time thought and reflected the popular view. Demonstrating the public benefit of the charity's purpose is a crucial part of the application: it must be clearly shown and demonstrable through description, even if non-quantifiable or measurable.

In the US, the not-for-profit sector has received a number of designations in the last decades so as to reflect its different dimensions and activities (e.g., philanthropic sector, private sector, voluntary sector, and third sector). For-profit and not-for-profit entities can both generate profits but the latter is limited in how much profit it can generate. Not-for-profit organizations that seek a tax-exempt status are not allowed to use any part of its net earnings for the benefit of any private shareholder or individual (private inurement doctrine). Tax-exempt organizations are sub-sets of not-for-profit organizations. Although the not-for-profit sector is often associated with charitable activities, a charitable organization is only a category of not-for-profit organizations. Charitable organizations are sub-sets of tax-exempt organizations which are eligible to receive tax-deductible gifts.

Summarily, it can be concluded that whatever could be the form of constitution or nomenclature of a Charities like not-for-profit or charitable; these organizations are granted a tax-exempt or a similar preferential tax regime and thus they must operate exclusively or primarily to accomplish charitable or not-for-profit activities or objects.

ANTI-CORRUPTION FRAMEWORK IN INDIA

There are no separate laws in India to curb or check corruption that relates to Charities. Although India has fairly stringent anti-corruption laws, the implementation of such laws, particularly in reference to Charities has been lax. However, the political and social climate in India in recent times sees a strong public sentiment against corruption.

India, though, has ratified the UNCAC in 2011 and is a member of ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, the APG and the FATF; according to the Transparency International Corruption Perception Index, India is ranked 76 out of 167 nations. The researchers have concluded that Indian Government, in addition to its sovereign functions, is also a significant market player in a number of sectors. Thus, Charities in India amongst other entities have to frequently interact with the government at different levels as a regulator, as a donor, as a vendor, service provider, owner of land, financial service player, licensor etc. All of this makes India a complex regulatory environment to operate in and this environment is seen as a breeding ground for corruption.

There is recent trend in India particularly after laws in USA and UK to have an Anti-Bribery and Corruption Policies ("ABC Policies") for all sort of organisations including NGOs/ Charities prohibiting such practices while dealing with Public offices and/or with private parties. However, in absence of a strong deterrent mechanism enforcing the laws for bribery and corruption particularly for "facilitation payments" or "speed money" is rampant in India. Though good governance is expected of Charities, the challenges in governance of Charities while their dealings with "Pubic offices" can also not be ignored at the same time that needs stringent implementation of ABC laws particularly relating to speed money.

KEY ANTI-CORRUPTION LAWS IN INDIA

The main Indian legislation dealing with bribery and corruption offences are the:

1. Prevention of Corruption Act, 1988 (the **PCA**);

2. Lokpal and Lokayukta Act, 2013 (the **LLA**); and
3. Indian Penal Code, 1860 (the **IPC**).

In addition to above investigating agencies and prosecution machinery, there are also various agencies and laws that prohibits and/or regulate the corruption namely:

1. The Comptroller and Auditor General ('CAG');
2. The Central Vigilance Commission ('CVC');
3. The Foreign Contribution Regulation Act, 2010 ('FCRA') that regulates foreign contribution and and foreign hospitality;
4. The Benami Transactions (Prohibition) Act, 1988 that prohibits benami transactions;
5. The Prevention of Money Laundering Act, 2002 that provides for offence of money laundering;
6. The Companies Act encompassing the vigil mechanism for directors and employees;
7. The Whistle Blowers Protection Act, 2014 that establishes mechanism for complaints relating to corruption by public servants and prevent the victimization of the complainants.

In India, while compliance framework is primarily designed for the "supply side" of bribe payments, there is an increasing focus on attempting to deter the "demand side". It is imperative that transparency in the processes, procedures and also digitisation is brought in the working of public offices in India to achieve this objective. Deterrence on demand side require States to enact and enforce laws in true spirits to regulate the conduct of public officers.

INTERNATIONAL TRENDS ON ANTI-CORRUPTION

The growing concerns on corrosive political and economic effects of corruption have given impetus to multinational conventions designed to combat corruption. This started with the 1996 Inter-American Convention against Corruption, accelerated with the 1999 Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, and was expanded significantly with the UN Convention against Corruption in December 2005. As an impact of these initiatives, many countries enacted significant laws that focused specific attention on these issues. One such law is the US Foreign Corrupt Practices Act (FCPA), enacted in 1977.

Most recently, in October 2016, the International Organization for Standardization (ISO) issued a new standard for 'anti-bribery management systems', called ISO 37001. The goal of ISO is to create an internationally recognised standard for such compliance systems that would allow for certification by third-party auditors. By mid-2017, only Singapore, Peru and the Philippines have formally adopted ISO 37001. Enforcement officials, however, have warned companies, that ISO certification should not be considered as a safeguard against prosecution.

INTERNATIONAL ANTI-CORRUPTION FRAMEWORK

UK

The UK's Bribery Act 2010 represents a strengthening of the UK position on bribery and corruption. It is an important piece in global anti-bribery legislation. In keeping with the US Foreign Corrupt Practices Act (FCPA), the law makes bribery of foreign public officials an offence and extends beyond company employees. This Act covers all bribery, not just those that involve public officials, makes no exception for facilitation payments to expedite routine governmental actions, makes it a corporate offence failing to prevent bribery, and makes it an offence not only to give but also to receive a bribe. The UK's Serious Fraud Office (the SFO), is tasked with enforcing the Act.

"In India, while compliance framework is primarily designed for the "supply side" of bribe payments, there is an increasing focus on attempting to deter the "demand side". It is imperative that transparency in the processes, procedures and also digitisation is brought in the working of public offices in India to achieve this objective. Deterrence on demand side require States to enact and enforce laws in true spirits to regulate the conduct of public officers.

The Act specifies four offences:

1. The general offence of offering, promising or giving a bribe;
2. The general offence of requesting or agreeing to receive a bribe;
3. A separate offence of bribery of a foreign public official; and
4. A corporate offence of failing to prevent bribery (applies automatically if anyone associated with the organization has paid a bribe).

The Act is designed to have the maximum deterrent effect. The definition of what constitutes a bribe is extremely broad and covers any financial or other advantage offered (not just given) to someone to induce them to act improperly.

USA

The FCPA, enacted in 1977, prohibits making — or offering to make — a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. It applies to a broad range of persons and businesses, including US citizens and resident aliens, businesses organized under US law or having a principal place of business in the US and their officers, directors, employees, and agents (regardless of their citizenship). These provisions also apply to foreign persons and organizations that take any action in furtherance of such a corrupt payment while in the United States as well as third parties that act on behalf of any person or organization covered by the FCPA.

SINGAPORE

Singapore's main anti-bribery legislation, the Prevention of Corruption Act ("PCA") covers both public and private bribery and targets both recipients and givers of bribes. The PCA defines a bribe by reference to the term "gratification", which broadly covers both financial and non-financial benefits. The PCA expressly states that evidence that any gratification is customary in any profession, trade, vocation or calling is inadmissible in any civil or criminal proceedings under the PCA.

PCA prohibit bribery in general and makes active and passive bribery by individuals and companies in the public and private sectors an offence. The term 'gratification' is interpreted broadly.

NEED FOR A STRENGTHENED LEGAL FRAMEWORK FOR CHARITIES

The multiplicity of charity laws in India has prevented evolution and growth of a proper institutional framework for Charities sector. While, Charities often feel harassed in complying with various legal obligations, institutions of the government too have not been effective in regulating the sector and securing legal compliance. Instances of misuse of preferential tax provisions, fraud and poor governance have become frequent in Charities. There is need to create an effective institutional mechanism which would provide a supportive environment for the growth and development of charities in this country. India being a federal Union, a decentralized institutional setup for charities similar to that existing in USA, seems to be appropriate. The power of registration and oversight needs to lie with the State Governments.

Based on the international experience of institutional framework, an effective framework for Charities in India could or could be a mix of:

1. A unified code framed by the Union Government at federal level establishing comprehensive model covering all sort of Charities for public purposes like NGOs, Public Trusts, Societies, Wakf, Endowments, Charitable institutions, etc.
2. If unified code is not possible for any valid reasons, in that case, while keeping the existing institutional framework, enhanced performance of structure be achieved for a more facilitative interface with the public, greater transparency of the regulatory process, measures for securing better compliance.

   The ICSI has recently released the Code for Charity Governance, which are voluntary in nature today. The code has been released with the objective of streamlining the existing systems and procedures thereby bringing discipline in the functioning of charitable entities for strengthening the transparency, accountability and the internal control systems in these entities.
3. In addition or as part of 1 and/or 2 above, an effective Federal Charities Directorate be created within the revenue department alongside the State level registering and administrative authorities. The Federal Charities Directorate be designated as prime regulatory agency for monitoring and compliance as in Canada and the USA, while the State level registering agencies should manage registration and other administrative functions.
4. A smart and digital portal of all charities on the lines of MCA for corporate entities under the Companies Act, must be created, which will not only help effective regulation of Charities but also serve purposes like "informed giving", proper implementation of CSR and educational purposes like research and social impact studies.

   Digital platform *inter-alia* to mandate for filings of constitutions, interest conflicts, audits, financials, programmes, donations, grants and receipts and its deployment for achieving maximum transparency, which will be a hallmark of governance.
5. Role of representatives of the NPOs and professionals such as lawyers, Company Secretaries and Chartered Accountants should be enhanced in ensuring compliance and transparency in the workings of Charities. It will help provide policy guidance, obtain feedback from the sector and set up review mechanism for achieving compliance and transparency.
6. In place of the present charity administration system at State level a new governance structure be established as existing structure does not consider Charities administration a serious job being burdened with other revenue related administrative or functional responsibilities.
7. A powerful Charities Tribunal be set up in each State or at the Centre to exercise appellate powers over the orders of the Charities Commission/Registrars, which presently function in a poorly manner.
8. A system of accreditation/certification for Charities which seek funding from government agencies or Charities whose Income is exempt from tax must be in place. Government should take initiative to enact a law to set up an independent national accreditation council towards this objective.
9. Dissemination of Public information and education must be given a priority by the Federal and State Government for Charities. Presently, though the procedure for registration by itself, not being complicated, the problematic factor is lack of information about the process. Currently, Charities get verbal information from the offices of the registering agencies and that also after repeated visits. There is no published Information booklets. Even if found at some places, either these might be available in vernacular language at few Charities registering offices or there has been no proactive dissemination by any agency.

CONCLUSION

There is an urgent need for reforms in charities administration, governance as well as institutional and policy improvements so that Charities being a voluntary sector plays an effective role in nation building, their resources are effectively utilised, preferential tax treatment is not misused, malpractices are curbed, CSR is properly implemented and trust of public, volunteers, donors and government is instilled in the Charities. Presently, the institutional framework in India places Charity on the concurrent list of subjects where both the Centre and the States are competent to legislate. This demands a unified code for Charities at federal level with strong regulator within the revenue framework as Charities amass huge assets & funds that come with tax exemptions, preferential tax treatments & tax benefits and that a powerful appellate tribunal or redressal mechanism be also established at federal level for effective administration of Charities.

To facilitate the non-profit sector in realising its potential, particularly to represent the unrepresented, it is necessary to create an environment, which is conducive that includes a legal and fiscal framework which allows voluntary non-profit organizations to come into existence without restraint and in a manner that is easy and inexpensive; to operate free of undue interference; and to have direct and indirect access to funds through tax benefits while at the same time it is imperative that a robust institutional and legal framework needs to be established to bring strong governance and transparency in the workings and administration of Charities. Also, there is a need for anti-bribery and anti-corruption landscape in India for Charities and role of compliance professionals like Chartered Accountants, Company Secretaries and Lawyers be recognised for Charities Compliance and to enable Charities to stay compliant of extant laws. CS

ARTICLE

Overview of Governance & Board of NGOs

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OWNERSHIP & GOVERNANCE OF VOs

Voluntary Organisations (VOs) deal in public money for public utility purposes, however for legal and practical purposes the ownership of all funds lie with a group of people. In other words, VOs are privately held and privately managed organisations for public purposes.

A good VO should exemplify openness & transparency by having desirable criteria for selection and rotation of Trustees/Board Members.

Starting with ownership and governance of Voluntary Organisations, the present article covers technical overview of governance in a Voluntary Organisation, importance of general body and Board, the roles, responsibilities and composition of the Board, presence of employees on the Board, election and selection of the Board Members, etc. The article also briefly discusses closely and widely held Voluntary Organisations and deals with permanent or long term board members, executive and legislative leadership, advisory committees and independent directors.

The VO law normally varies from country to country and normally within the country also there are various kinds of registration which permit different Board and trustee structure. For instance a public charitable trust can be formed with two[1] or more trustees who are permanent in nature. Such law belong to an era when charities were entirely based on the funds/assets bequeathed by a particular donor/author. But when such trust is registered for fund raising and donor based projects, it raises a serious question on the public ownership of the VO. Similarly various other forms & registration also provide the possibility of the ownership being in the hands of a private group of persons.

VOs also struggle in defining the role and responsibilities of the Trustees which results in a governance imbalance where the Board may hinge from being dormant to overactive and interfering.

The different forms of registration also create different ownership structures, for instance under trust law there is no provision for General Body, but in case of a society there can be a General Body which appoints the Board.

The diversity of skills and the ability of the Board member to assume and exercise authority also require careful support from the policies and norms. This article endeavours to address some such issues.

TECHNICAL OVERVIEW OF GOVERNANCE IN A VO

Adrian Cadbury Committee Report[2] defined governance as a system which directs and controls an organisation. A VO is an artificial legal person therefore, it is governed by various group of people having a very clearly defined role to play.

All registered voluntary organisations are a distinct legal entity and therefore an artificial

1. In law there can even be a sole trustee, however for public trust the statutory authorities particularly the Charity Commissioner, Mumbai generally insists on min 3 trustees
2. In 1992 Adrian Cadbury Committee submitted a report on Corporate Governance and the social responsibilities of corporate organisations. In this report the issue of effective and fair governance was raised internationally. Consequently, raising the quality and standards of corporate governance has been taken as a very serious issue throughout the world and lot of legal and managerial changes have come in order to ensure that the governance in an organisation is just and fair to all stakeholders. In the VOs sector similar efforts for reform are also underway.

legal person. It may be noted that a trust is not considered as legal person under the general law and the trustees collectively are recognised. However, for income tax and FCRA purposes a trust is also considered as a legal entity. The legal status of an organisation comes with legal obligations such as:

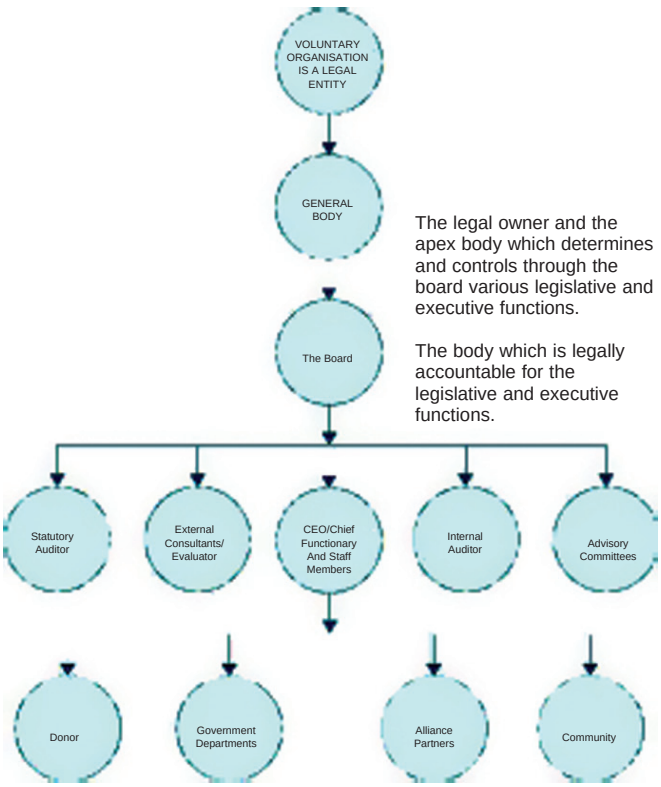
i) Statutory audit of accounts
ii) General & Board Meetings
iii) Filing of Returns
iv) Adhering to the Bye-laws
v) Area of operation
vi) Election of office bearers etc.
vii) Working only for the definite objectives

The above mentioned are some of the de jure aspects of the governance system of a voluntary organisation. An organisation has to complement and add upon these aspects to build a sound governance system, keeping in view the size and the nature of the activities. The flow chart depicts an overall picture of various persons/committees which go on to build an effective governance system.

All VOs are accountable to the laws under which they are enacted and avail subsequent registration. Some of such statutes in India are:

i) Societies Registration Act, 1860 (along with state enactment)
ii) The Companies Act, 2013 (for Section 8 company)
iii) Income Tax Act, 1961
iv) Foreign Contribution Regulation Act, 2010
v) Various others statues as and when applicable.

Flow Chart Showing the Organisational Structure



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GENERAL BODY AND ITS IMPORTANCE

General Body is the ultimate body which regulates and controls through the Board. A General Body is like the people of a democratic country who can determine or replace the Parliament, but cannot assume the functions of the Parliament. General Body constitutes and reconstitutes the Board and keeps control over certain statutory issues and key functions of the Board. Major legislative and statutory decisions are taken by the General Body, however, all key issues are normally recommended by the Board for the approval of the General Body.

Important and statutory nature decisions are taken at the General Body level. Some of such decisions could be as under:

(i) Annual General Meeting
(ii) Appointment of Auditor
(iii) Election of Office Bearers
(iv) Amendment of bye-laws
(v) Purchase of large properties, etc.
(vi) Approval of Annual Secretaries Report
(vii) Such other decision as may be provided in th Memorandum of Association

The general members play a very effective role in the governance of an organisation. A large and empowered General Body can only ensure that the organisation functions on democratic principles. Many organisations have a very small General Body or even a co-terminus committee i.e. both the Board and the General Body comprise same set of persons. Such organisations do not reflect sound democratic structure of governance.

THE BOARD AND ITS IMPORTANCE

The Board happens to be the de facto most powerful body of an organisation and in the absence of an effective Board it is very difficult to ensure good governance in any organisation. The Board is legally accountable for the legislative and executive functions. The Board is responsible for determining all the policies, systems and processes. The Board is also responsible

for the safeguard and optimum utilisation of the funds, assets and resources. All decisions of enduring nature are taken at the Board level and the Board delegates authority and responsibilities to the CEO and other managerial persons.

ROLES & RESPONSIBILITIES OF BOARD

- The Board should formulate the mission statement of the organisation and should revisit it every three years in order to ensure that the programmes and resources are in consonance with it.
- The Board should formulate the structure of authority and responsibility to be delegated to the CEO and other staff.
- The Board should determine the procedure of electing/ selecting the CEO and the compensation thereof.
- The Board should formulate important policy documents and guidelines on gender, human resource, finance etc.
- The Board should appoint the statutory auditor and the internal auditor if required. Both the auditors should directly report to the Board. The appointment of statutory auditor should be finally approved by General Body on recommendation of the Board.
- The Board should determine and approve the annual budget and allocations.
- The Board should determine and approve the bank accounts to be operated and the signatories thereof.
- The Board should develop proper policy and systems regarding the title, safeguard, location and verification of fixed assets.
- The Board should ensure strict adherence with all statutory compliances. It should also ensure that requirements/ obligations towards other stakeholders is diligently done.
- The Board should constitute Advisory Committees for special functions or for specific purposes.
- The Board should review the performance of the CEO and other senior management staff on annual basis.
- The Board should prepare a position paper every three years on issues such as (i) Resource Mobilisation (ii) Financial and Institutional Sustainability, (iii) Programmatic relevance, reach and impact, (iv) Risk and contingencies.
- The Board should carefully position its involvement in the management of the affairs of the organisation. Generally the Board should not be interfering in nature, however, certain powers of approval should be retained by the Board depending on the size of the VO. A suggested list of the additional functions of Board could be as under:
- approval of projects and activities to be undertaken
- periodical perusal of the reports from the Secretary/CEO and other key functionaries
- approval of purchase of assets for large financial transactions
- approval of project budgets and investments
- finalising annual financial statements
- appointment of staff
- internal control measures
- resource mobilisation, etc.
- control over admin. expenses
- corpus and institutional sustainability

COMPOSITION OF THE BOARD

The Board should be ideally between 5 to 12 members unless the legal requirements are different.

The Board should, normally, not have members who are permanent in nature except the case of institutional nomination. In case of a trust normally a clause regarding permanent trustees is found, in such instances it is desirable that the total voting right of the founder trustees is less than 50%.

The composition of the Board should be clearly defined in terms of the diversity of the skills required for discharge of the Board functions. The balance of the Board should be maintained in terms of gender, finance & other specialised skills, stakeholders and distance & availability.

PRESENCE OF EMPLOYEES ON THE BOARD

Not more than 2-3 employees should be Board members with voting rights or at any point the employees' participation should not exceed 40-50% of the Board members. If two or more employees are on the Board then they should not be relatives. The main issue is to keep the Board independent of the execution functions. If people involved in execution and implementation are dominating the Board then the Board shall cease to be an independent body.

In the context of the issue of employees on Board it is generally misunderstood with participation of employees on Board as a stakeholder. However, this issue is much larger than inviting representatives from the employee fraternity on Board. This issue is about the presence of members who are compensated for the services rendered on whole time basis. Such members could be:

- Representatives of employees who become Board member by virtue of being an employee.
- Elected Board members who are in whole time service in terms of the bye laws.
- Pre-defined executive heads like CEO or ED who find an ex-officio position in the Board.

One or more of the above circumstances may be relevant depending on the bye laws and governance structure of the organisation.

It may be noted that the sum total of all such Board members should not have any material influence on the decision making of the Board. Further there should be a clear & written policy on conflict of interest where trustees and staff (or any stakeholder) are involved.

ELECTION/SELECTION OF THE BOARD MEMBERS

There should be a clearly defined policy for recruitment, election, selection of trustees or Board members. The induction of new trustees should be through an open process providing the opportunity of being elected / selected to a wider group of stakeholders. The process should include use of methodologies such as advertising for new trustees through various medium.

The Board members should retire and be re-elected on the basis of rotation. For instance every two years a third of the Board can retire. Though the Board members usually get re-elected but the technical possibility of replacing the entire Board in an election process should be avoided.

BOARD PROCESSES

There should be a process for orienting and sensitising of the trustees regarding their responsibilities in particular as well as in general.

There should be a process through which clear distinction between strategic matters and operational matters should be made and a position paper should be drafted and revisited annually.

> All accountable VOs should have a conflict resolution and grievance mechanism within the organisation. It could be through constitution of 'grievance committees'. However, it has to be ensured that all employees and stakeholders have an equal opportunity in representing themselves in such committees. If the complaints are against the CEO or any Board member then there should be a mechanism in place to ensure a fair trial to the complainant.

The Board should set key performance indicators for themselves. The Board should, ideally, meet once in every quarter, however, it is recommended that the Board should meet at least twice in a year i.e. once in every six month.

An annual report on the financial or other contributions of the Board members should be prepared to assess the stakes and ownership of the Board members.

LEGISLATIVE AND EXECUTIVE FUNCTIONS

A legislative body or function generally pertains to something legal or statutory in nature. In our country, Parliament is the legislative body and the bureaucracy generally implements or executes the legislations passed by the Parliament. However, in context of a VO a legislative body does not imply creating statutory legislations which in any case are binding on everybody. The legislative functions imply creating legislations and policies for the organisations which may or may not be statutorily required by the law of the land. Some legislative documents of a VO are:

- Memorandum of Association
- Articles of Association
- Various policy documents
- Various resolutions passed by the General Body and Board etc.

The General Body is the highest body for legislative decisions and the Board is the highest body for executive decision making. However, for all practical purposes both the legislative and executive functions are held by the Board, though certain key and statutory legislative decisions are approved by the general members only. The legislative functions cannot be delegated, they include:

- Legal compliances
- Custodian of assets and functions
- Amendment and Compliance with the stated Memorandum of Association, Trust Deed, etc.
- Compliance with the stated Articles of Association, By laws etc.
- Laying down policies and norms of execution.

The Board is also responsible for effective and optimum execution of all the activities and responsibilities of the VO. Normally the management team headed by the CEO is delegated the executive functions. The Board plays an oversight role in the execution. The Board delegates the executive functions depending on the size of the VO and operations. In very small organisations the Board may play a more proactive role in the execution/implementation. However, it is generally expected that the Board should play the role of controlling and directing the various activities and processes without itself being involved in the direct execution.

GRIEVANCE AND JUDICIAL FUNCTION

The governance structure, as per the registration, provides the legislative and executive powers to the Board. However, inherently the Board also possesses judicial or conflict resolution powers which are generally not very well articulated.

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CLOSELY AND WIDELY HELD VO

When an organisation has a Board of less than 7 members and General Body of less than 12 members for long periods, (say 7 years) it can be considered as a closely held organisation. A closely held organisation is legally permissible, however, such structure are generally created when a corporate, family or group of people create a VO for public purposes from their internal properties and funds. A VO which accesses donations and grants from organisations and public at large should not be closely held by a small group of people.

PERMANENT OR LONG TERM BOARD MEMBERS

As discussed in the above para organisations should not have a majority of long term or permanent Board members unless it is privately funded. The name and percentage of trustees or Board members who have served for more than 15 years on the Board either continuously or through intermittent tenures should be

separately declared.

EXECUTIVE LEADERSHIP & LEGISLATIVE LEADERSHIP

A good governance structure should maintain a clear distinction between executive leadership and legislative leadership. The examples of such distinctions are:

- The Chairman should not be the Executive Director or CEO
- The employees should not have an influencing impact on the Board decision making.

DIFFERENCE BETWEEN A CEO & GENERAL SECRETARY

A General Secretary of a VO is the legal representative of the Board as far as its legislative functions are concerned. The General Secretary may or may not retain the executive functions. A CEO is the highest executive position and it does not possess legislative powers. The General Secretary is an integral part of the Board of a VO. A CEO may or may not be provided an ex-officio position on the Board as the representative of the employees responsible for execution and implementation.

ADVISORY COMMITTEES

The Board is normally supported by advisory committees which consists of members possessing specialised expertise and mandate. An organisation may have, for example, committees on finance, purchase, specific programme, etc. Certain VOs also have advisory Boards which are independent and external.

CEO AND MANAGEMENT STAFF

The CEO and staff members are responsible for the day to day management of the organisation. The CEO happens to be the focal point around which the entire organisation revolves. He is the executive head of the organisation, the CEO generally does not possess legislative powers. The CEO interacts with most of the stakeholders such as donors, alliance partners, communities and also with the Board, etc.

CONFLICT OF INTEREST

There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The issues which may be regarded as material interest are as under:

- Appointment of relatives in Board or senior management.
- Ownership or partial ownership in organisations which are engaged or may seek business or consultancies.
- Payment of fees and remuneration.
- Directorship or management position in other VOs.
- Providing consultancies in personal capacities.
- Having commercial interest in any decision or resolution.
- Having direct or indirect relationship with the donor or donee organisations.
- When contracts are awarded to relatives of the Board members.
-

The Board of Directors of the trustees should declare such interests. The interested trustees and directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

> “General Body constitutes and reconstitutes the Board and keeps control over certain statutory issues and key functions of the Board. Major legislative and statutory decisions are taken by the General Body, however, all key issues are normally recommended by the Board for the approval of the General Body.

INDEPENDENT DIRECTORS

The term ‘independent director’ is more relevant in the corporate world. In the voluntary sector most of the directors are in any case expected to be independent. Regulation 16(1)(b) of the SEBI Listing Regulations on corporate governance defines independent directors as follows: “For the purpose of this clause the expression ‘independent directors’ means directors who apart from receiving director’s remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors during the two immediately preceding financial years or during the current financial year.”

The non-executive independent directors are not supposed to receive any financial consideration except the sitting fees. In case of VOs all the directors are not supposed to take any kind of benefit or privilege from the organisation. Therefore, in letter and spirit all the directors in case of VOs are independent in nature. However, as a concept it needs to be ensured that the directors or trustees are not enjoying any undue benefit or are not involved in any conflict of interest transaction. One of the ways of keeping the independence of the Board is to have a well articulated ‘conflict of interest’ policy.

EX-OFFICIO BOARD MEMBERS

The memorandum of association of the society can be suitably drafted so as to have provision regarding Ex-officio Board members. An Ex-officio Board member denotes the right of a particular formal position holder to participate and vote in the Board proceedings. For instance, a VO may provide that the District Magistrate will be one of the Board members, then whoever is the District Magistrate will automatically have the right of a normal Board member. An ex-officio board member normally would not be subject to the restrictions regarding minimum board meetings to be attended, etc.

GENERAL MEMBERS

The VOs registered under the Societies Registration Act or under the Companies Act or any other law which require both the General Body and the Board, should ensure that there is a transparent & appropriate policy regarding general members and general meetings. The General Body should be the body of general members with equal voting rights. The membership should be open to all section of stakeholders. The size of the General Body is determined by the nature of VOs work, generally movement based VOs have larger General Body. However normally the size of General Body should vary between 10 to 30 members. The General Body should always be larger than the Board, ideally 3 times or more the size of the Board. CS

Enhancing NGOs Governance for Improving Human Development Index

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THE PERSPECTIVE

Development does not only mean economic development but also includes promoting social equality, gender equality, improving quality of life etc. It is not possible for government alone to effectively undertake such multifarious and complex development activities. So, there is essentiality of other groups or organizations to support the government on various fronts. This essentiality paved way for the emergence of Non-Government Organizations (NGOs).

NGOs have been playing a very active role in the developmental process of our country. NGOs working with enhanced accountability, by providing alternative solutions to the development, in collaboration with the government and market promise a sustainable and inclusive development structure which will elevate the Human Development Index of the people in India.

NGOs are private organizations characterized primarily by humanitarian or cooperative, rather than commercial, objectives that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development. Non-Government organizations (NGOs) are the groups or institutions or organizations that are not reducible to the administrative grasp and work on 'non-profit' basis with the principles like social equality, altruism and human development as their foundations. Social service is associated with India since ancient times. NGOs with the support given by the government have been instrumental in accelerating development activities by taking up specific issues like Poverty alleviation, child rights, caste stigma and discriminations, women rights, child labor, rural development, water and sanitation, environmental issues, etc.

NGOs are community organizations that work for public benefit. NGOs differ greatly in size, activity and circumstances. NGOs exist in virtually all societies and the rise of NGOs as an economic force in today's society is well documented. Typically, NGOs are involved in activities that are of common concern to members and donors, but which normally benefit people beyond that membership. NGOs are non-profit organizations; however, not all non-profit organizations are NGOs. Some NGOs may be established by companies as part of tax planning strategies.

The primary function of an NGO is to give benefit to the public by performing worthy causes that help the public at large. They generally function as a welfare organization and work for the improvement of the society through their charitable function. There are three basic legal forms of charitable entities under Indian law: Trusts, Societies, and Section 8 companies. The legal framework governing the charitable institution will depend on the purpose and scope of the activities which NGO would desire to engage in.

Worldwide, NGOs undertake a wide array of activities. They often develop and address new approaches to social and economic problems that governments cannot address alone. Indeed, NGOs exist to represent virtually every cause imaginable. Non-profit organizations operating in different countries are exposed to different environments, socio-demographic composition of the population, structure of the non-profit system, community participation, taxation structure and different regulations, still Non-profit organizations around the world have grown considerably over a period of time. There are roughly 4 million NGOs worldwide with an estimated 3 million of them in India. These organizations play a crucial role in the growth of a nation. They are emerging to be a

credible force in catalyzing the nation's social and economic growth, particularly for the masses at the 'bottom of the economic pyramid'. The potential for this is well apparent from the experience of other developed and developing economies. If India is to achieve, as is predicted, the living standards of the developed world by 2050, then the NGOs would need to play a critical role, and must grow at a pace much higher than that required of the overall Indian economy.

The steady rise of NGOs has captivated the imagination of some policymakers, activists, and analysts leading some observers to claim that NGOs are in the midst of a "quiet" revolution. The most highlighted success of NGOs could be seen in their achievement in influencing government to bring out various development-oriented policies and laws. Few of such laws and policies include: Right to Information, Integrated Child Development Scheme (ICDS), Integrated Child Protection Scheme (ICPS), MNREGA, Juvenile justice, Nirmal Gram Initiative, Rastriya Swasthya Bima Yojna (RSBY), various policies on women development, forest and environment development, anti-trafficking, people with disability, etc.

EFFECTIVENESS OF NGOs

Official agencies often see NGOs as the 'magic bullet' for addressing the world's most pressing problems. The rapid increase in funding and number of NGOs represent both an opportunity and a danger. While it is clear that NGOs can do positive work, there are relatively few detailed studies of what is happening in particular places or within specific organizations. There are few analyses of the impact of NGO practices on relations of power among individuals, communities, and the state, and little attention to the discourse within which NGOs are presented as the solution to problems of welfare service delivery, development, and health. Thus, it is not clear how and under what circumstances NGOs are effective and why some are more influential than others. Many NGOs are influential through their technical expertise or analysis of existing problems and pragmatic solutions. Other NGOs may be fragmentary voices, contributing to a cacophony of isolated programs that represent only narrow special interests.

NGOs undoubtedly have been playing proactive role in protecting the interests of the poor and destitute and are also essential for upholding the democratic values of the country. However, many NGOs in India have come under the scanner and their functioning has been seen with suspicion. This is majorly because of loss in credibility and lack of accountability with NGOs in India. Although this is not true with all the NGOs but it is certainly true that the red spot is on many NGOs across various regions in the country due to unsustainability, incompetency and inconsistency.

NGOs AND GOVERNANCE

NGOs are helping men and women shape their own destinies in freedom, and by so doing, helping to build a safer, better world for all of us. NGO activism will likely become an even greater fixture on the world stage. It is welcomed by those who view the world as a global village. NGO accountability and best practices need to keep pace with the other two civil society sectors/ government and private business.

Good Governance is important in NGOs because it affects how a charity is run and the services that the organization provides. The survival of these NGOs depends on donors and funders. The competition among NGOs and the desire to cultivate

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multiple revenue streams to resist donor capture requires these organizations to be transparent and accountable. NGOs that have a better quality of governance will be better in gaining public trust, and, hence, will be in a better position to secure donations from the public. Despite its size and complexity, there is a dearth of academic research in the not-for-profit sector on issues of governance. Effective governance practices are critical for nonprofits of all sizes. Governance is about:

- agreeing to the purpose and objects of the charity
- ensuring that policies and activities help in achieving those objects
- formulating broad strategies to carry out the charity organization's purpose effectively
- monitoring charity organization's performance
- ensuring that it operates within the law.
- Ensuring the charity is run in a way that is legal, responsible and effective
- Being accountable to those with an interest or 'stake' in the charity.

NGOs need strong governance with robust structures, processes and good behaviors to best serve their beneficiaries and their cause. Proper corporate governance not only ensures that non-profit organization meets legal and ethical standards, but it improves the overall strength of the organization. A focus on rules and procedures increases efficiency in the workplace. When new potential projects or hurdles arise, a responsive and proactive structure with proper procedures ensure the non-profit organization has the right framework to succeed and expand.

CHALLENGES FACED BY CHARITY ORGANIZATIONS

The most common governance challenges facing nonprofit organizations today are: conflicts of interest, risk management, outcome measurement, investment oversight, and ethics, ineffective leadership, lack of trained manpower, lack of public participation, and scarcity of funds. Non-governmental organizations seem to represent the best of private citizens responding to global inequities. But behind the characteristics inherent to an NGO model of development are lurking several challenges Most of the NGOs haven't been able to achieve their objectives in a significant way due mainly to the following factors:

- **Lack of Funds**: Most of the NGOs in India are suffering from paucity of funds. Government does not give cent

percent grants in aid and there are delays in sanctions of grants. NGOs have to make matching contributions which they are sometimes unable to manage and are, therefore, unable to avail themselves of the grants

- **Leadership Crisis:** The leadership is concentrated in the hands of elderly people. The style of functioning of these elderly people exhibits authoritarianism and frustrates younger people who are embodiments of new ideas, initiatives and innovation which are not allowed to be expressed and practiced
- **Inadequate Trained Personnel:** it is very difficult to get trained persons who are willing or trained to work in the rural society where most of NGOs work. Moreover, most of NGOs lack funds for providing the requisite training to the personnel employed in the organization
- **Misuse of Funds:** It is the matter of fact that some unscrupulous elements have made fortunes by floating NGOs for their personnel gains and misappropriating grants received from the government. These NGOs tarnish the image of other NGOs who are working with dedication and commitment
- **Transparency Woes:** Many NGOs in India are not transparent in matters pertaining to their finances and activities, and such lack of transparency more often than not leads to loss of contributions from many who might have contributed or supported a cause
- **Absence of Strategic Planning:** Few NGOs have strategic plans which would enable them to have ownership over their mission, values and activities. This leaves them vulnerable to the whims of donors and makes it difficult to measure their impact over time
- **Monopolization of Leadership:** It has been observed that there is a growing tendency towards monopolization and interlocking of leadership at the top level of voluntary action groups and organizations as is reflected in the same person being the president in one organization, secretary in the other, treasurer in the third and a member of the executive in the fourth. The greatest disadvantage of such leadership structure is that fresh blood is not allowed to flow into the organization and leadership
- **Centralization in Urban Areas:** NGOs are more developed and concentrated in urban areas as compared to rural areas. The backwardness and ignorance of the rural people and lack of enthusiasm among social workers to engage with charity organizations in the absence of availability of minimum comforts are the two important reasons for the inadequate presence and action of the NGOs in rural areas
- **Limited Capacity:** NGOs recognize that many of them have limited technical and organizational capacity viz. in fund raising, governance, technical areas of development, and leadership and management. Few NGOs are able or willing to pay for such capacity building
- **Poor Networking:** Poor Networking was identified as a major challenge. It is the cause of duplication of efforts, conflicting strategies at community level, a lack of learning from experience and an inability of NGOs to address local structural causes of poverty, deprivation and underdevelopment.

FRAMEWORK FOR IMPROVING GOVERNANCE IN NGOs

The coming decade will hold unprecedented challenges for NGOs to respond creatively and resourcefully to overcome hurdles and seize opportunities and in that scenario good governance will not be a matter of checklist practices but ensuring organizations don't stand still, and that they remain relevant. The media attention on governance issues, increased stakeholder awareness and vigilance makes it imperative for NGOs to create and imbibe effective governance mechanism and structure.

In the literature reviewed, there is no model of good corporate governance that is common to all. Nonetheless, there is agreement on the following four pillars:

1. Provide assurance to all stakeholders that the NGOs operate in a just and equitable manner, which is ultimately required to protect the long-term future of the entity.
2. Be accountable to the ultimate target beneficiaries of the charity organization.
3. Employ efficient and effective risk management processes and practices in all aspects and domains of the charity organization.
4. Ensure charity organization's prosperity in terms of stakeholder value.

The literature reviewed for this study repeatedly emphasizes, as Miles et al. argue, that "organizations must adopt practices and

accepted principles in their respective organizations in the context of their philosophy, culture, needs and resources". However, regardless of which governance model a charity uses, adherence to certain core principles is essential for good governance which include • **leadership** (providing strategic direction) • **oversight** (holding management and staff to performance targets) • **responsibility** (ensuring compliance at all levels) • **ethics** (ensuring that delivery and conduct comply with moral values) • **accountability** (evaluating work against the organization's mission) • **transparency** (keeping the public and others informed about the work) and • **succession planning** (the recruitment, orientation and capacity building of new board members).

- **Strategic Planning:** The charity is set up to achieve certain aims for the benefit of the society and / or its members. The vision and mission of the charity should be clearly expressed and the charitable work should be carefully planned and implemented. The Board should, from time to time, review and approve the objectives of the charity. This is to ensure that the charity's objectives and work are relevant to the needs of the public. The programs and activities conducted by the charity determine the charitable work that the charity sets out to accomplish. They should be carefully planned, tracked and reviewed to ensure that they are relevant to the mission and vision of the charity. The charity should ensure that its operations and programs are directed towards achieving its objectives
- **Human Resource Management:** Human resources are important assets of the charity. The charity should have policies in place for staff and volunteers who run its operations and programs
- **Financial Management and Controls:** The charity should have sound financial management and comply with applicable laws and regulations, to ensure that its resources are used legitimately and can be accounted for
- **Operational Controls:** The charity should ensure that basic operational controls are in place with documented procedures for financial matters in key areas, including: • Procurement procedures and controls; • Receipting, payment procedures and controls; and • System for the delegation of authority and limits of approval
- **Disclosure and Transparency:** The charity should be transparent and accountable in its operations. The charity should provide information about its mission, structure, programs, activities and finances, as well as be responsive to requests for information. The charity should ensure that its fundraising activities preserve the integrity and transparency of the charity. The charity should make information available to its members and donors about its: • Programs; • Activities; • Financials; and • Board members and executive management
- **Public Image:** The charity should build up its image to be consistent with its objectives. The charity should accurately portray its image to its members and donors
- **Conflict of Interest:** Management and staff should act in the best interests of the charity. Clear policies and procedures should be set and measures be taken to declare, prevent and address conflict of interest. The charity should set in place documented procedures for Board members and staff to declare actual or potential conflicts of interest at the earliest opportunity
- **Program Management:** The programs and activities conducted by the charity determine the charitable work that the charity sets out to accomplish. They should be carefully planned, tracked and reviewed to ensure that they are relevant to the mission and vision of the charity. The charity should ensure that its operations and programs are directed towards achieving its objectives and the outcomes of each program are clearly defined
- **Budget Planning and Monitoring:** An annual budget should be prepared for the charity's plans. It should be regularly monitored. Financial statements with comparative budget figures should be presented at the Board meeting, with analysis and explanations given for major differences. Conducting surveys and analyzing data is key. It takes time to interpret the data in a way that makes it usable for the sector. Keep a checklist for each event, fundraising campaign, etc. to help measure your outcomes against goals
- **Investment Management:** The process should be over looked by a finance or investment committee. The legal and fiduciary responsibilities of managing investment assets pose a significant challenge for NGOs of all sizes and complexity
- **Time Keeping:** Like an advertising agency that is accountable for how staff time is spent, a nonprofit organization is accountable to its funders for tracking operational time. This becomes a challenge when timesheets are required for grants and funding or when employees question the number of hours they work. Organizations can provide excel spreadsheet, use Google drive, or various online time tracking programs. Time tracking is important and often overlooked in the pace of just working so hard
- **Culture of Ethics and Accountability:** Losing public confidence erodes the very foundation upon which the charity organization is built. A great place to start is with a code of ethics that is rooted in the values, vision, and mission of the charity. The adoption of a formal code provides staff, board, volunteers, and stakeholders with clear guidelines for making ethical choices. At the heart of the charity and stakeholder relationship is trust. Goodwill earned by responsible governance practices ensures that donors give, volunteers serve, and the public benefits

> NGOs need strong governance with robust structures, processes and good behaviors to best serve their beneficiaries and their cause. Proper corporate governance not only ensures that non-profit organization meets legal and ethical standards, but it improves the overall strength of the organization. A focus on rules and procedures increases efficiency in the workplace. When new potential projects or hurdles arise, a responsive and proactive structure with proper procedures ensure the non-profit organization has the right framework to succeed and expand.

- **Board Governance:** The charity is run by a group of individuals called the Board. Members of the Board are people elected or appointed based on the rules of the charity's governing instrument. The Board is responsible to comply with its governing instrument and all relevant laws and regulations. The Board makes sure the charity is run well and responsibly, so that the charity would continue to be effective, credible and sustainable
- **Board Roles and Composition:** Board members should know their responsibilities and the charity's work, to ensure that the charity is well-managed and fulfils its objectives. All Board members of the charity should exercise independent judgement and act in the best interests of the charity. There should be governing instruments on issues such as: • The Board's composition; • Election or appointment process; a clear distinction should be made between their Board role and their operational work. The Board may consider setting term limits for all Board members to ensure steady renewal of the Board. These may be set out in the charity's governing instrument.
- **Board Committees:** The Board should have committees with documented terms of reference – stating how, when, who and what has to be done – to oversee Audit, program and services, Investment, risk management. Proceedings and decisions of Board and committee meetings should be minuted and circulated to the members as soon as practicable
- **Service Delivery:** In the decision to financially support a charity organization, the service delivery is one of the most important factors that influences donors/financial supporters to back the charity organization. NGOs often tell their stories by illustrating their impact on the lives of a single individual, family or member. While powerful, it doesn't replace a solid performance tied to specific, measurable outcomes
- **Risk Management:** Effective risk management plan including inter-alia, risk identification, risk assessment, risk mitigation and risk control is key for a charity organization. From executive staff to volunteer leadership, proactive steps taken to mitigate risk improve the likelihood that the charity organization won't be derailed by an unanticipated event

SUGGESTIONS FOR IMPROVING NGO ECOSYSTEM

- The government should liberalize the rules and regulations of grants-in-aid and should appoint commissions of enquiry or committees to cross check the misuse of funds by NGOs
- Young graduates from universities, colleges should conduct public seminars, meetings, symposia etc., and use the local media to advertise the importance of volunteerism, share success stories of NGOs and encourage people to participate in charity organizations
- Universities, colleges should collaborate with NGOs and conduct campus interviews for the young graduates who are interested in getting associated with the social sector
- Co-ordinating organizations like Association of Voluntary Association for Rural Development (AVARD), Coordination Council of Voluntary Association (CCVA) etc. should actively facilitate the exchange of information between the government and the NGOs and a congenial eco system for the NGOs
- In India, 65% of population lives in rural areas. NGOs, therefore, need to operate in rural areas on a bigger scale and enlist the co-operation of village people for making their lives better
- NGOs harness the altruistic (and sometimes non-altruistic) energies of many individuals. However, this model of development is not without challenges. Not only is the delivery of goods and services contracted to private actors, but agenda-setting may likewise be delegated. Decentralized and multi-layered decision-making can create inefficiencies. As NGOs increasingly produce their own funding and develop their own professionalized class, it seems appropriate to expose them to greater market forces beyond donor preferences
- NGOs being welfare organization are expected to maintain high standard of quality in service. The government should recognize those NGOs, by giving awards or rewards with additional grants. This would motivate the other NGOs to work efficiently
- NGOs should use technologies like internet, websites etc., for raising of their funds, to have mutual associations, to advertise their products , selection of project partners and for monitoring and evaluation of the schemes and projects undertaken by them.

CONCLUSION

NGOs have been playing a very active role in the developmental process of our country because there are certain areas in the growth process which always need extra attention and consideration and that is also why these setups have emerged as the pioneer planners, catalysts, facilitators and coordinators. Over the years, NGOs have found a place in the Five Year Plans of the government. NGOs working with enhanced accountability, by providing alternative solutions to the development, in collaboration with the government and market promise a sustainable and inclusive development structure which will elevate the Human Development Index of the people in India.

REFERENCES

- Bradshaw, P., Hayday, B., Armstrong, R., Levesque, J. and Rykert, L. (1998) Non-profit Governance Models: Problems and Prospect. Paper presented at ARNOVA Conference, Seattle, Washington. Available online at [13 January 2009]
- Department of Social Development (DSD). (2005) An Impact Assessment of the NPO Act, No. 71 of 1997. Pretoria: Government Printers
- Gill, M. (2001) Governance Do's and Don'ts. Lessons from Case Studies on Twenty Canadian Nonprofits. Institute on Governance. Available online at
- Lloyd, R. (2005) The Role of NGO Self-Regulation in Increasing Stakeholder Accountability. Oneworld Trust. Available online at
- Preston, J. B., and Brown, W. A. (2004), Commitment and performance of nonprofit board members. Nonprofit Management and Leadership, 15(2), 221-238.
- Schmitz, H.P., Raggo, O., Vijfeijken, T.B. (2011), Accountability of transnational NGOs: Aspirations vs. practice. Nonprofit and Voluntary Sector Quarterly, 41(6), 1175-1194.
- Wilke, B. (2003), Monitoring NGOs: Criteria and Assessment Methods, Paper Presented at the OECD/DAC Workshop Development Partners in Evaluation, 25-26 March 2003, Paris
- Wyngaard, R., Mellet, P. T. and Gastrow, S. (2005) Governing Boards in the Non-Profit Sector. Cape Town: Inyathelo – The South African Institute for Advancement and the Non-Profit Consortium

How to Counter the Mind-set of Bribery

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Bribery has become a part of popular and official culture in India, which has created a mind–set among the public that without giving bribes, you cannot get things done. How to counter this mindset. This article examines this question in a deeper perspective.

THE DUBIOUS MINDSET

Before coming to the remedy let us examine briefly the causative factors behind the mindset of bribery. The first factor is the inefficiency, incompetence, and lack of accountability. The second factor is the greed on the part of the official. The third factor is the lack of will on the part of the public to counter it. The fourth factor is an attitude of tolerance for corruption. The first factor is a matter of outer administration and Management. The other factors are more psychological. What are the antidotes and solutions? How to counter it?

THE REMEDIAL MINDSET

As we have mentioned earlier the remedy for the first factor lies in better management and administration, which is quick, responsive, efficient and accountable. Anti-graft institutions like lokpal and vigilance departments act as deterrents. But none of these outer remedies can lead to any lasting solution. Most of the current thinking on corruption tends towards this kind of external remedies which are necessary but not sufficient. For a more long–term solution we have to tackle the deeper psychological factors. Let us now examine the remedies for the other three factors behind bribery and how to counter them.

The first factor is greed. There is no short term solution to greed. It requires a change of mindset which wants more and more pleasure, comfort and acquisition from outside to a quest for inner richness and fulfillment, which can be achieved only through education. The second factor of lack of will on the part of the public has to be countered by highlighting example of the opposite-individuals and groups who display a firm and persistent will not to succumb to the corrupt trend. Instead of taking the quick and easy solution through bribes, if individuals and groups take a firm stand against it with a readiness to bear the hardship involved and persist in the struggle for the sake of truth it contributes immensely for the progress of truth in the world. Here are some illustrative examples.

A building contractor, persuaded by his spiritually inclined wife and his Guru, decided not to give bribes and conduct his business with an entire honesty. The initial impact of the decision was negative. His business began to collapse. His financial condition deteriorated. But still he persisted in his resolution to be honest. His reputation for honesty spread in business and government circles. Again he started getting contracts; business flourished and became better than what it was when he was doing it without any scruples.

Another example is from the housing division of a mega city-based firm well known for its value-based policies. The company was not able to hand over the flats to the customer at the promised date because of prolonged delays in getting sanction for electrical works from the electricity board. The company was determined not to take

> At the outer level on the part of the system, there has to be a conscious and concerted attempt to create an outer environment which encourages truth, honesty and transparency in every activity and transactions and zero–tolerance to corruption.

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> A culture of beauty, goodness and harmony facilitates and sweetens the practice of truth. We have to build a system of education and inner awakening which helps individuals to first internalize these values in their consciousness and flow out spontaneously in behavior and action.

the easy and customary path of greasing the officials. The company wrote letters to the authorities of the electricity board and also explained their principled position to the customer. A small group of understanding and sympathetic customers wrote letters to the highest authorities, demanding immediate action. And finally the moral force behind the company's decision triumphed. The company got the sanction for the electrical works without compromising on its principles.

In this task collective bodies like the associations of citizens, consumers and companies can play an important role because a collective action like the one in the second example is more effective than that of an individual. But this is from an external point of view. From a deeper perspective, every individual and collective effort against corruption has a subtle positive impact on the inner psychological atmosphere. When an individual or a collectivity battles against corruption and gains a victory, it sends a vibration which awakens a similar positive will in other human centers; it creates a new capacity in the mental atmosphere which makes possible similar victories and strengthen those who are engaged in this battle.

The third factor of tolerance for corruption exists not only among the public but also in big corporates. A young IT graduate joined as a trainee in a big corporate group respected for its values. He was shocked when a senior executive of the group said in a lecture that in the present competitive environment it is difficult to get business without a certain amount of bribing and we have to accept it. No amount of outer remedies can counteract this kind of corruption. It requires a radical change in culture, values and consciousness. Such a change can come only through a system of education which awakens the young mind in school to the importance of truth, honesty and transparency, not by preaching, but through stories, images and examples. The young mind have to be awakened to the long–term benefits of truth and honesty…… and the need to bear, persist and endure and fight in order to uphold truth….. and how his individual victory has positive consequences for the whole of humanity.

At the outer level on the part of the system, there has to be a conscious and concerted attempt to create an outer environment which encourages truth, honesty and transparency in every activity and transactions and zero–tolerance to corruption. The Government should initiate and promote a massive research effort to collect examples of truth, honesty and transparency in every activity of national life ….. recognize and reward them….. and highlight these examples through the mass–media. In fact modern media can do this work much better than the government. Every media organisation must have an anti-corruption wing where people can report cases of corruption and help and give guidance to fight corruption.

TOWARDS A CULTURE OF VALUES

No virtue or value stands alone in isolation. All basic values like truth, beauty, goodness, harmony are interrelated. A culture of beauty, goodness and harmony facilitates and sweetens the practice of truth. We have to build a system of education and inner awakening which helps individuals to first internalize these values in their consciousness and flow out spontaneously in behavior and action. And there is a divine element in the individual where these values are intrinsic to the very substance of consciousness. A culture of values attains its highest perfection when human beings can discover this divinity within them and express its verities spontaneously in their thought, feelings and actions. CS

ARTICLE

Anti-bribery and Anti-corruption Legislations, Institutional Framework in India and International Trends

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INTRODUCTION

India has a number of anti-corruption laws. However the need of the hour is a pledge by each and every citizen of India to fight corruption tooth and nail leading to emergence of a Clean and Vibrant India. Corruption is a form of dishonest or fraudulent conduct by those in power and it typically involves bribery. It is an abuse of entrusted power by those occupying a position, for private gain. When it involves the public sector, it can

Corruption is a form of dishonest or fraudulent conduct by those in power and it typically involves bribery. It is abuse of entrusted power by those occupying a position, for private gain. An attempt has been made in this article to cover the various legislations and the institutional framework in India and two other countries, to counter corruption and bribery.

divert resources away from key priorities such as education, health, and infrastructure, which in turn impacts economic and social development. We as professionals and as Indians are very well aware of the rampant corruption and bribery; though supposed to be reduced to a large extent now. Due to the varying levels of corruption, the foreign investors/ foreign companies are apprehensive, while making investment plans in India. When our own Government is trying so earnestly to reduce corruption in all its form and to create a CLEAN INDIA, we must support the Government in every possible way in this GOAL. We should all take an Oath to wage a war against corruption in every form. We must also be aware of the legislations and the institutional framework in India and abroad.

FACTORS CONTRIBUTING TO CORRUPTION IN INDIA

A number of studies have revealed that there are certain factors that contribute to corruption in India like high taxes, complicated legislations, bureaucracy, low per capita income, illiteracy, the power vested with certain Government / public officer to question the citizens. All this has given rise to a class who expect bribe in every small work that they do. Many a times the cumbersome procedures, the lengthy forms, the heap of documents, take such a long time and cost; that people look out for shortcuts and loopholes to get their work done.

However, now the scenario is slowly changing. Due to computerisation, demonetisation, restrictions of payment in cash, there is transparency in every field, human interface has reduced and hence scope for corruption has reduced to some extent; though we have to go a long way in eradicating bribery.

LEGISLATIVE FRAMEWORK

A number of anti-corruption legislations have been enacted in India. We need to think whether they are being enforced. Many scams were unearthed during past few years and the enforcement agencies have now become alert and proactive in monitoring instances of bribery and corruption.
Following are some of the Acts:-

- **Prevention of Corruption Act 1988 (PCA):-** This Act was enacted to combat corruption in government agencies and public sector businesses in India. This law defines who a public servant is and punishes public servants involved in corruption or bribery. It also punishes anyone who helps him or her commit the crime of

corruption or bribery.

- When a public servant accepts money or gifts over and above their salary, in return for favouring a person in their official duty or
- accepts gifts from a person with whom they have a business or official relationship without paying them or
- is guilty of criminal misconduct such as regularly accepting bribes to favour people during their official duty or
- if a person accepts money or gifts in return for influencing the public servant by using his personal connection or through illegal or corrupt methods, this person can also be punished
- Any person helping the public servant commit these crimes can also be punished.

The Supreme Court expanded the ambit of the definition of 'public servant' (under the Prevention of Corruption Act 1988) to include all officials of private banks, as their duties are public in nature (Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli, February 2016).
Every offence mentioned in Section 3(1) of this Act shall be tried by the Special Judge for the area within which it was committed. When trying any case, a Special Judge may also try any offence other than what is specified in Section 3, which the accused may be, under Criminal Procedure Code be charged at the same trial. The Special Judge has to hold the trial of an offence on day-to-day basis. There are number of penalties specified under this Act depending on the nature of offence where in those found guilty will be punished with imprisonment ranging from six months to seven years.

Right to Public Service Legislations comprises statutory laws which guarantee time bound delivery of services for various public services rendered by the Government to citizen and provides mechanism for punishing the errant public servant who is deficient in providing the service stipulated under the statute. Right to Service legislations are meant to reduce corruption among the government officials and to increase transparency and public accountability.

Some of the common public services which are to be provided within the fixed time frame as a right under the Acts, includes issuing caste, birth, marriage and domicile certificates, electric connections, voter's card, ration cards, copies of land records, etc. On failure to provide the service by the designated officer within the given time or has rejected to provide the service, the aggrieved person can approach the Appellate Authorities under the Act, which may order the public servant to provide the service to the applicant or can impose penalty on the designated officer for deficiency of service without any reasonable cause, or may recommend disciplinary proceedings. The applicant may be compensated out of the penalty imposed on the officer.

- **Indian Penal Code 1860 (IPC)**: According to Sec 171-B of the IPC, giving or accepting of gratification related to exercise of electoral vote during elections is considered as bribery and there are penal provisions for the same.

  - The IPC defines "public servant" as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and every person in the pay of the Government or local authority established by a central or state Act.
  - Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

> The Act allows setting up of anti-corruption ombudsman called Lokpal at the Centre and Lokayukta at the State-level. The Lokpal will cover all categories of public servants, including the Prime Minister. But the armed forces do not come under the ambit of Lokpal. The Act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while the prosecution is pending.

- **The Benami Transactions (Prohibition) Act 1988** which was recently amended in August 2016. The Act defines a 'benami' transaction as any transaction in which property is transferred to one person for a consideration paid by another person. Such transactions were a feature of the Indian economy, usually relating to the purchase of property (real estate), and were thought to contribute to the Indian black money problem. The act bans all benami transactions and gives the government the right to recover property held benami without paying any compensation. The recent amendments to the Act seek to more comprehensively enforce the prohibitions.

- **Prevention of Money Laundering Act 2002** aims to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The Act and Rules notified there under impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information in prescribed form to Financial Intelligence Unit, which is a central national agency. Any person found guilty of Money Laundering shall be punished with rigorous imprisonment from 3 years to 7 years and when offence relates to Narcotic Drugs and related substances maximum punishment may extend to 10 years.

- **Right to Information Act 2005 (RTI)** is an Act to provide for setting out the practical regime of right to information for citizens. Any citizen of India may request information from a "public authority" which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide

dissemination and to proactively keep ready certain categories of information so that the citizens need minimum recourse to request for information formally.

It covers all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an Act of Parliament or a state legislature. It also covers bodies or authorities established or constituted by order or notification of appropriate government including bodies owned, controlled or substantially financed by government, or non-Government organizations substantially financed, directly or indirectly by funds provided by the appropriate government.

This Act has helped in bringing openness in the operations of the Government Departments and hence in reducing corruption. Still the people have to be made aware about their rights and how this Act can be used for their benefit.

Where a Public Information Officer has, without any reasonable cause:

- refused to receive an application;
- not furnished information within time limits;
- malafidely denied the request;
- knowingly given incorrect, incomplete or misleading information;
- destroyed information subject to a request; or
- obstructed the process,

the Information Commission can impose a penalty of Rs 250 per day. The total penalty cannot exceed Rs 25,000. Whether these penalties are really levied needs to be seen.

- **Whistle Blowers Protection Act 2011**: The Whistle Blowers Protection Act 2011 is mainly intended to protect the whistle-blowers with respect to disclosure of acts of corruption, wilful misuse of power, wilful misuse of discretion or the commission or attempted commission of a criminal offence by a public servant.

- **Lokpal and Lok Ayukta Act 2013** came into force in 2014 and it seeks to provide for establishment of the institution of Lokpal to enquire into the allegation of corruption against certain public functionaries in India. The Act allows setting up of anti-corruption ombudsman called Lokpal at the Centre and Lokayukta at the State-level. The Lokpal will cover all categories of public servants, including the Prime Minister. But the armed forces do not come under the ambit of Lokpal. The Act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while the prosecution is pending.

- **Companies Act 2013**-Private sector corruption is covered by the Companies Act 2013. The Companies Act, establishes rules addressing private sector corruption by mandating mechanisms for the protection of whistle-blowers, industry codes of conduct, and the appointment of independent directors to company boards.

- **The Black Money (Undisclosed) Foreign Income and Assets and Imposition of Tax Act 2015**-An Act to make provisions to deal with the problem of the Black Money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

- **Foreign Contribution Regulation Act 2010 (FCRA) which was amended in 2016**: It is a consolidating Act whose scope is to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest. This Act was amended in 2016 to regulate the procedural aspects and to substantially improve the services provided under the earlier rules.

- **India has signed UN Convention against Corruption** on 9th December 2005 and the same has been ratified on 2011. **India also ratified the United Nations Convention on Transnational Organised Crime** which mandates criminalisation of Corruption and bribing of public officials. India is a member of the **G20 Working Group against Corruption**.

In India a number of Companies have their internal Anti-Bribery and Anti-Corruption policies which define the acts of corruption, bribery and related nature and also specify a procedure for penalising such Acts.

In an effort to fight corruption, the government withdrew all 500 and 1000 rupee notes in November 2016. The government introduced a tight deadline on returning the cancelled notes to prevent persons holding large amounts of illicitly obtained notes from laundering the money. In addition, an ordinance was passed criminalizing the holding of a large amounts of the withdrawn notes coming into effect 31 March 2017.

AUTHORITIES RESPONSIBLE FOR INVESTIGATING BRIBERY AND CORRUPTION

- **Central Vigilance Commission (CVC)**
  This is an apex vigilance Institution free of control from any

> Our Commitment to the society, to the development of our country and to the mankind in general should be so strong that inspite of any enticements, we have to be focused towards our Goal of a Clean India (In literal and moral sense).

executive authority monitoring all the vigilance activities under the Central Government organisations in planning, executing, reviewing and reforming their vigilance work. It was created to address Government corruption under PCA 1988 and IPC 1860.

- **Central Bureau of Investigation and Anti-Corruption Bureau**
  The Central Bureau of Investigation (CBI) is the prime investigating agency of the central government. It consists of three divisions: the Anti-Corruption Division, the Special Crimes Division and the Economic Offences Division. The Anti-Corruption Division is responsible for collection of intelligence with regard to corruption, maintaining liaison with various Departments through their Vigilance Officers, enquiries into complaints about bribery and corruption, investigation and prosecution of offences pertaining to bribery and corruption and tasks relating to preventive aspects of corruption. The Anti-Corruption Division investigates cases against public servants under the control of the Central Government, public servants in Public Sector Undertakings under the control of Central Government and cases against the public servants working under State Govt. entrusted to the CBI by the State Governments and serious departmental irregularities committed by the above mentioned public servants. The Economic Offences Division investigates financial crimes, bank frauds, money laundering, illegal money market operations, graft in Public Sector Undertakings and Banks. The Anti-Corruption Bureau operates at State Level.

- **Comptroller and Auditor General of India**
  The Office of the Comptroller and Auditor General (C&AG) is the apex auditing body. The C&AG has produced several reports on state departments such as railways, public sector enterprise, and tax administration. These reports have revealed many financial irregularities, suggesting a lack of monitoring of public expenses, poor targeting and corrupt practices in many branches of government e.g fodder scam, coal mine allocation, 2G Spectrum allocation.

- **Serious Fraud Investigation Office (SFIO)**
  SFIO is fraud investigation agency under the jurisdiction of Ministry of Corporate Affairs, specialized, multi-disciplinary organization to deal with serious cases of corporate fraud. Recently with a clear view to give serious powers to the SFIO to investigate cases of corporate fraud, including those relating to loan defaults, the Central Government has given the SFIO the green signal to make arrests of Key Managerial Personnel (KMPs), directors or any other person reasonably believed to be guilty of an offence under the Companies Act, 2013 (the Act). In August 2017, the Central Government notified sub-sections (8), (9) and (10) of Section 212 of the Act, which confer powers of arrest on the SFIO. The Central Government also notified the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 (Rules) under the Act.

- **Lokpal (Central Level) and Lok Ayukta (State Level)**
  Nodal ombudsman authority which investigates and prosecutes cases of corruption involving Prime Minister/ Council of Ministers, Members of Parliament, Judge of Supreme Court or High Court (with permission of seven member Bench), Public servants etc and also private persons who have abetted in committing the relevant offence.

- **Enforcement Directorate** - Established to investigate and prosecute cases relating to Prevention of Money Laundering Act, 2002 and Foreign Exchange Management Act, 1999.

What does Bhagwad Gita Say about Corruption

Lord Krishna mentions that even a highly intellectual person, advanced in spiritual understanding can fall prey to the temptations that present themselves on the path to higher goals. He mentions that the senses are very impetuous and can sometimes drag even the cleverest spiritualist. Just like a boat is toppled by strong winds, even the mind of an advanced yogi is shaken sometimes by gusty winds of temptation. There are many learned sages and philosophers who try to conquer the senses, but in spite of their endeavours, even the greatest of them sometimes fall victim to material sense enjoyment due to the agitated mind. Hence one should be totally focussed on the Spiritual Being so that he/she does not fall for any temptations, material or otherwise.

Our Commitment to the society, to the development of our country and to the mankind in general should be so strong that

inspite of any enticements, we have to be focused towards our Goal of a Clean India (In literal and moral sense).

INDIA WORLD RANKING ON THE CORRUPTION PERCEPTION INDEX

India has been ranked 79th out of 176 countries in the recently released Corruption Perception Index (CPI) for the year 2016 by the Berlin based corruption watchdog, Transparency International. The countries are ranked annually based on their perceived levels of corruption. The scores range from100 (very clean) to 0 (highly corrupt), New Zealand and Denmark topped the list with a score of 90 each. Somalia was ranked most corrupt with a score of 10. The lower ranked countries in the list were plagued by untrustworthy and badly functioning public institutions like the police and judiciary. The global average score is 43 which indicated endemic corruption in the country's public sector. Nearly two-third of 176 countries in the year's index fall below the midpoint on the scale.

Now let us have a look at, what some of the countries (where corruption is perceived to be least) all over the world are doing to curb corruption and bribery. New Zealand (perceived as least Corrupt along with Denmark) and Singapore (7th on the Corruption Perception Index 2016).

Denmark and New Zealand have been consistently ranked at the top of the Corruption Perception Index and are perceived to be the least corrupt of all the countries surveyed. They have high GDP per capita, low inequality rates, literacy rates close to 100 %, and prioritise human right issues (e.g. gender equality, freedom of information).

NEW ZEALAND

The Ministry of Justice, New Zealand, has specified an anti-corruption guide for New Zealand business on its website www.justice.govt.nz. This includes details of relevant domestic and foreign corruption laws; international anti-corruption agreements; and guiding principles on how to establish, implement, and maintain effective anti-corruption compliance procedures. Some of the points are covered below, which can be used by countries / organisations as a model for an Anti-Corruption regime.

New Zealand has robust anti-corruption laws and the **Serious Fraud Office (SFO)** is committed to proactively detecting, investigating and prosecuting both public and private sector corruption. New Zealand businesses, trade on their hard-earned reputation, as one of the least corrupt countries in the world. New Zealand's business landscape is predominantly made up of small to medium-sized commercial organisations with domestic operations and limited resources.

New Zealand criminalises bribery and corruption in both the public and private sectors, challenging traditional conceptions that corruption is purely a public sector issue. Importantly, all of New Zealand's bribery and corruption offences apply to individuals and legal persons. This means that an act of bribery or corruption committed by an employee, agent or other intermediary on behalf of an organisation may result in a prosecution against the individual in their personal capacity, as well as a prosecution against the organisation. This is important, as seeking accountability from individuals who perpetrate illegal or unethical acts is one of the most effective ways to tackle corporate wrongdoing.

Further, all bribery and corruption offences apply both domestically and extraterritorially. This means that the **SFO** can prosecute New Zealand citizens, residents, and entities incorporated in New Zealand for acts of bribery and corruption that occur wholly outside of New Zealand, including when the bribe is paid through a foreign intermediary.

The Secret Commissions Act contains bribery and corruption style offences relevant to the private sector (though also relevant to public sector employees and contractors). Other Secret Commissions Act offences include failure of an agent to disclose to their principal, a financial interest in a contract, provision of a false receipt to an agent with intent to deceive a principal, receipt of a secret reward for advising someone to enter a contract.

The Organised Crime Bill increased the maximum penalties for all Secret Commissions Act offences to 7 years' imprisonment or an unlimited fine for individuals. Corporations are also liable to an unlimited fine.

Public Sector Corruption – Crimes Act 1961 Generally speaking, bribery under the Crimes Act occurs when a person corruptly gives, receives, accepts or obtains a bribe (whether directly or indirectly) for themselves or any other person, with intent to influence that person to act or refrain from acting in their official capacity. A bribe may involve money, gifts, or any other benefit. The Crime Act criminalises Domestic Bribery and Commission, foreign bribery, facilitation payments, and corporate liability for foreign bribery.

New Zealand signed the **OECD Anti-Bribery Convention** in 1997 and ratified it in 2001. The Convention requires countries to criminalise the offence of foreign bribery (i.e. where an individual or business from New Zealand pays a bribe to a foreign public official in the conduct of international business).

New Zealand signed **United Nations Convention against Corruption(UNCAC)** in 2003 and ratified it in November 2015. UNCAC is wider in scope than the OECD Ant-Bribery Convention and is the first global instrument to address

corruption in both the public and private spheres. UNCAC requires countries to criminalise a broad range of corrupt conduct, including both domestic and foreign bribery and related offences such as obstruction of justice, embezzlement of public funds and money laundering.

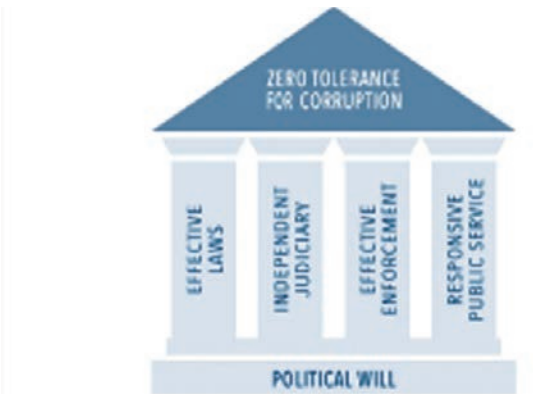
New Zealand was a founding member of Asia Pacific Economic Cooperation (APEC) which seeks to support sustainable growth and prosperity in the Asia Pacific Region. In 2004 Leaders of the APEC endorsed the **Santiago Commitment to Fight Corruption and Ensure Transparency** and the APEC Course of Action on Fighting Corruption and Ensuring Transparency.

Among other things, the Santiago Commitment and Course of Action require member states to ratify and implement UNCAC, assist member countries to prevent corruption and strengthen transparency in the public sector and across government, target private sector corruption by encouraging integrity in business and improving accounting standards, and work with civil society, NGOs, the private sector and international organisations to fight corruption and strengthen integrity in the Asia Pacific Region. In 2014 the APEC Network of Anti-Corruption Authorities and **Law Enforcement Agencies** (ACT-NET) was established. The **goal of ACT-NET is to act as an informal network for sharing information and exchanging best practices and techniques among anti-corruption and law enforcement authorities in the Asia-Pacific region**.

SINGAPORE

According to the website of Corrupt Practices Investigation Bureau (www.cpib.gov.sg) in Singapore, the success of Singapore in fighting corruption is the result of an effective corruption control framework with its four key pillars of effective laws, independent judiciary, effective enforcement and a responsive public service, underpinned by strong political will and leadership.

➢ Singapore's Corruption Control Framework



Strong Political Will

The political will to eradicate corruption was established by Singapore's founding Prime Minister, Mr. Lee Kuan Yew, when the People's Action Party (PAP) was elected into government in 1959. The PAP was determined to build an incorruptible and meritocratic government, and took decisive and comprehensive action to stamp out corruption from all levels of Singapore's society. As a result of the government's unwavering political commitment and leadership, a culture of zero tolerance against corruption has become ingrained into the Singapore psyche and way of life.

Effective Laws

Singapore relies on two key legislations to fight corruption; the Prevention of Corruption Act (PCA), and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA). The PCA has a wide scope which applies to persons who give or receive bribes in both the public and private sector. The CDSA, when invoked, confiscates ill-gotten gains from corrupt offenders. Together, the two laws ensure that corruption remains a high-risk low-rewards activity. Upon the conclusion of investigations by the CPIB, all alleged corruption cases are handed over to the Attorney-General's Chambers (AGC), the prosecutorial arm of the Singapore Criminal Justice System, to obtain the Public Prosecutor's consent to proceed with Court proceedings.

Independent Judiciary

In Singapore, an independent judiciary provides insulation from political interference. The Chief Justice is appointed by the President on advice from the Prime Minister and the Council of Presidential Advisers. District judges and magistrates are appointed by the President with advice from the Chief Justice. Various provisions of the Constitution also guarantee the independence of the Supreme Court judiciary. Transparent and objective in its administration of the rule of law, the judiciary recognises the seriousness of corruption and adopts a stance of deterrence by meeting out stiff fines and imprisonment towards corrupt offenders.

Effective Enforcement

The Corrupt Practices Investigation Bureau (CPIB) is the sole agency responsible for combating corruption in Singapore. The CPIB is under the Prime Minister's Office (PMO) and reports directly to the Prime Minister, enabling the CPIB to operate independently. With a fearsome and trusted reputation, the CPIB acts swiftly and vigorously to enforce the tough anti-corruption laws impartially for both public and private sector corruption.

Responsive Public Service

The Singapore Public Service is guided by a Code of Conduct, which sets out the high standards of behaviour expected of public officers based on principles of integrity, incorruptibility and transparency. The practice of meritocracy in the Public Service, together with regular reviews of administrative rules and processes to improve efficiency also reduce the opportunities for corruption. In addition, the CPIB is mandated to conduct procedural reviews for government agencies which may have work procedures that can be exploited for corrupt practices. CS

REFERENCES

1.www.wikipidea
2. Indian Bare Acts
3.www.Lexology.com
4.www.Transperency .org
5. www.cpib.gov.sg
6. www.justice.govt.nz

ARTICLE

Prevention of Corruption Act, 1988 (With Special Reference to Gratification)

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The Prevention of Corruption Act, 1988 (POCA) was a turning point in the legal history of India. Corruption, which was till then governed as an offence – whether civil or criminal under the Indian Penal Code, 1860 was finally brought under the Special Act for a more speedy and effective action against the offenders.

Corruption is a bane of our country. Gratification or accepting of bribes for doing or refraining from doing a particular thing that benefits a particular individual or a segment without caring for the overall accrual of benefits to the society proves to be a hindrance to the social, political and economic objectives of the country. Though penalties were prescribed in all the legislations for non-compliance, a separate legislation dealing with corruption directly, was the need felt by all sections of the society and it is on these lines, government has promulgated the Prevention of Corruption Act, 1988. This article throws light on the provisions of the Act dealing with gratification or acceptance of bribes.

Though this legislation was specifically brought into effect to combat corruption, the word "corruption" has not been defined in the POCA. Consequently, one has to take the generic meaning of the word "corruption". Black's Law dictionary defines it as a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit.

Corruption normally involves one or a combination of the following methods:

1) Bribery
2) Embezzlement, theft or fraud
3) Extortion or blackmail
4) Net working
5) Abuse of discretion
6) Favouritism, nepotism and clientelism

In this article, we shall concentrate on "Bribery" and the methods to combat them.

DEFINITION OF BRIBERY

Bribery involves the improper use of gifts and favours in exchange for personal gain. Also nicknamed as kickbacks it is the most common form of corruption.[1] The types of favours given are diverse and may include

1. Money;
2. Gifts;
3. sexual favours;
4. company shares;
5. entertainment;
6. employment; and
7. political benefits.

The personal gain that is given can be anything from actively giving preferential treatment to having an indiscretion or crime overlooked. Bribery can sometimes form a part of the systemic use of corruption for other ends to perpetrate further corruption. Once accustomed to bribery, it makes officials more susceptible in the form of blackmail or to extortion.

On a survey[2] conducted among 16 Asia Pacific Nations, India was placed with the highest percentage of incidence of bribery and Japan, the lowest.

Countries with the highest incidence of bribery:

India	–	69%
Vietnam	–	65%
Thailand	–	41%

> Gratification is not defined under the POCA except to the extent in Explanation that the term shall not be restricted to pecuniary gratifications or to gratifications estimable in money. Thus, the definition is very wide to cover all such payments, in excess of legal remuneration, as gratification. Monetary measurement of gratification is not a pre-requisite for treating it as gratification.

Pakistan	–	40%
China	–	26%

Countries with the lowest incidence of bribery:

Australia	–	3%
South Korea	–	3%
Hong Kong	–	2%
Taiwan	–	2%
Japan	–	0.2%

ANTI-BRIBERY LEGISLATIONS

Prevention of Corruption Act, 1988 is a progressive step towards this aspect. POCA prescribes the procedures for the eradication of corruption which includes gratification, otherwise called bribery, by the public servants.

To elaborate on this subject, we have to understand the following terms:

1) Who is a public servant ?
2) What constitutes bribery under the POCA ?
3) What are the steps prescribed under the POCA for combating bribery ?

Section 2(c) gives the definition of public servant.

"public servant" means—

(i) *any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;*
(ii) *any person in the service or pay of a local authority;*
(iii) *any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 2(45) of the Companies Act, 2013 (Section 617 of the erstwhile Companies Act, 1956 (1 of 1956);*
(iv) *any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
(v) *any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;*
(vi) *any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;*
(vii) *any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
(viii) *any person who holds an office by virtue of which he is authorised or required to perform any public duty;*
(ix) *any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 2(15) of the Companies Act, 2013 (or Section 617 of the erstwhile Companies Act, 1956 (1 of 1956);*
(x) *any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*
(xi) *any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;*
(xii) *any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.*

Thus, the definition given by the POCA is very much elaborate and it includes within its definition, all forms of persons who are in various positions across various departments intended to serve the public.

Now the question comes as to whether a person who is not appointed by the Government or any of its department is a public servant? The answer is Yes. The intention of the legislature is not to allow anybody to escape in the pretext of not being appointed by the government and thus outside the purview of the definition of public servant and thus outside the purview of the POCA. This is evident from the Explanation 1 and Explanation 2 to Section 2(c).

Explanation 1 reads as *"Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not".*

From the definition of "Public servant", in Section 2(c), one can understand that the following persons are not directly appointed by the government:

1) Person appointed in the Government Company, as in clause

(iii)
2) Person authorized by the court of Justice viz., liquidator, receiver, commissioner etc. as in clause (v)
3) Any arbitrator as in clause (vi)
4) Person defined in clause (ix)
5) Person defined in clause (xi)
6) Person defined in clause (xii)

Explanation 2 reads as *"Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."*

This explanation provides that wherever the appointment is itself defective in the eyes of law, such defect cannot preclude the person from escaping the liability of misconduct done while he was occupying the office.

WHAT CONSTITUTES BRIBERY ?

Bribery is mentioned as "gratification" in the POCA and is dealt in Sections 7 to 11 of the POCA.

Section 7 - Public servant taking gratification other than legal remuneration in respect of an official act

*Whoever, being, or **expecting to be a public servant**, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any **gratification** whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*

Public servant and a person expecting to be a public servant is covered under the provision. "Expecting to be a public servant" will be guilty of cheating under the common law but not under this section as defined in Explanation 1.

Next comes the coverage, which is wide enough to cover all acts of committing an offence viz.,

1) Accepting;
2) Obtaining;
3) Agreeing to accept;
4) Attempts to obtain;
5) Either for himself or for others

to do or to refrain from doing something

Gratification is not defined under the POCA except to the extent in Explanation that the term shall not be restricted to pecuniary gratifications or to gratifications estimable in money. Thus, the definition is very wide to cover all such payments, in excess of legal remuneration, as gratification. Monetary measurement of gratification is not a pre-requisite for treating it as gratification.

Legal remuneration is defined as the remuneration which a public servant can lawfully demand including all remuneration which is permitted by the Government or the organization which serves to accept.

Public servant is deemed to commit the offence under the Section if he induces the other person to believe that his influence with the government has obtained a title which is used to obtain money from the other person. In simple language, it is the abuse of authority of office, bestowed on the public servant, which he abuses for obtaining an out of way consideration from another person for doing or refraining from doing something.

Interestingly in our country, there are middle men who act as liaison agent between the public who wanted to have the work done and the authority who has the discretion to allow. What would happen if the public servant acts through these intermediaries? Section 8 provides the legal position as under:

Section 8 - Taking gratification, in order, by corrupt or illegal means, to influence public servant

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Thus, it is not only the public servant alone who is covered under the POCA. Anybody who does something as an intermediary and attempts to influence the public servant shall fall within the provisions of the POCA. The section begins with the word "whoever" which includes everybody within the purview of the legislation. Thus the net for trapping the persons indulging in gratification is widened.

Influencing of public servant by a person who acts as an intermediary can be of two kinds – one is by payment of gratification to the public servant and secondly by utilizing the closeness or proximity to the government staff concerned. While Section 8 deals with the first situation, second situation is dealt by Section 9 which read as under:

Section 9 Taking gratification, for exercise of personal influence with public servant

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Section 11 prescribes altogether a different situation. It deals about the receipt of any assets for a consideration which are disproportionate to its actual value from the other person. Receipt may be without consideration or for inadequate consideration. Section 11 reads as under:

Section 11 - Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding

> Influencing of public servant by a person who acts as an intermediary can be of two kinds – one is by payment of gratification to the public servant and secondly by utilizing the closeness or proximity to the government staff concerned. While Section 8 deals with the first situation, second situation is dealt by Section 9.

or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

SPECIAL SCENARIO

Assume a situation wherein the public servant has not accepted gratification either directly or indirectly through an intermediary. Either through his words or action or both, he encourages others to involve themselves to offences under the Act. Other than encouraging or motivating others to do this, he has not done anything of his own. Can he be hauled under the Act ? The answer is Yes and the related provisions are dealt in two sections viz., Section 10 and Section 12.

Section 10 deals with abetment of offences defined in Section 8 or Section 9 which reads as under:

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 12 deals with abetment of offences defined in Section 7 or Section 11 which reads as under:

"Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than [three years] but which may extend to [seven years] and shall also be liable to fine."

In addition to the penalties viz., fine or imprisonment or both prescribed under the respective sections which are varied in nature, the POCA also prescribes the conditions in which a public servant is deemed to have been committed the criminal misconduct. Section 13 is an additional section. In other words, penalties under Section 13 is in addition to and not in substitution of the penalties prescribed under Sections 7 to 12. Section 13 provides the situations or conditions in which the public servant is liable for criminal misconduct.

Section 13. Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine.

What would happen if the person is a habitual offender ? Section 14 answers the question.

Section 14 Habitual committing of offence under sections 8, 9 and 12.

Whoever habitually commits—

(a) *an offence punishable under section 8 or section 9; or*

(b) *an offence punishable under section 12, shall be punishable with imprisonment for a term which shall be not less than [five years] but which may extend to [ten years] and shall also be liable to fine.*

CONCLUSION

Thus the intention of the legislature is very clear in combating corruption in as much the legal provisions are wider enough to trap all kinds of activities either direct or veiled, which aids in the process of receiving or paying gratification to the public servant in the course of discharge of his official duties to do or refraining from doing something. The legislation would pave the way to ensure a corruption free governmental functioning ensuring a consistent and long term growth in industry and the Indian Economy as a whole. CS

REFERENCES

[1] Black's Law Dictionary
[2] The Hindu, dated March 8, 2017

Is Corruption Inevitable?– Assessing the Measures Taken and Role of Spirituality for Better Future

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INTRODUCTION

Corruption is a complex, multi-dimensional concept and difficult to define precisely. Corruption has become a highly topical, international and a policy issue and a subject matter of spectacular research work for the scholars of various disciplines like sociology, law, management, economics, public administration etc. The word "Corruption" comes from the Latin word "Corruption" means which breaks our 'Trust worthiness'. Basic meaning of 'Corruption' is lack of integrity or honesty and being unscrupulous, unethical and untrustworthy. Corruption means any ill practice done by a person so as to fulfil selfish goal. It's a deviation from the value system and causing the derailment of individual and institutional transparency, accountability and natural justice by misusing power and position. Corruption is a universal and exists in one form or another since time immemorial. It ruins the economic stability of the nation and cause loss of credibility in the administration. Bribes, embezzlement, extortion, straddling, kickbacks, theft, fraud, cheating, nepotism, favouritism, adulteration, block money, grease money, misappropriation, mismanagement are few forms and ways of representing corruption.

Corruption in India has an ancient history and after studying the same it seems that corruption in human being is as old as the civilization itself. From time to time policy makers, rulers across the globe have taken sincere legislative measures to curb the disease of corruption but, due to one or the other reason corruption has remained a big challenge. This has posed a big question mark against the policies, system, administration and so on. One striking point which seems to be the very root of all complications is the quality of human being. The world has tried enough to take decisions and tackling human issues on the basis of market driven ideology, but a deeper insight is required with a flare of spiritual dimension. Perhaps this is the only way left to try which can be a source of hope for a sustainable living.

Ancient, Vedic period

Atharva Veda (7.115.4) – "The wealth earned through pious means flourishes; those who earn through dishonest means are destroyed."
Rig Veda (2-2-12) - 'the corrupt people face gloom and misery through their children as they sow the seed of evil in the family'.
Sama Veda (179 & 913) – deals with source of corruption evil and describes corruption as hydra headed having nine heads / kind.
Yajur Veda (30-22) – advises the ruler to see that evil minded and low character people should be avoided by a divine person.

Bhagavat Gita describes corruption and its impact on human life. **Vidurniti** also holds a great relevance even today.
Kautilya was the Minister in the kingdom of Chandragupta Maurya during 317-293 BC and was the first political theorist to realize the effects of corruption. Kautilya's Arthshastra states a metaphor that 'it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue,' so it is impossible for a government servant not to eat up at least a bit of the king's revenue. Further, says - those who have amassed money wrongfully

shall be made to pay in back; they shall then be transferred to other jobs where they will not be tempted to misappropriate and made to disgorge again what they have eaten. Kautilya has given a detailed list of at least Fourty ways of embezzlement that the treasury officers during his time were used to practice. "just as it is impossible to know when a fish moving in water is drinking it, so it is impossible to find out when government servants in charge of undertakings misappropriate money" (kautilya's Arthashastra - 2.9.33).

Medieval period - During the medieval period the corruption was rampant through extortion of revenue and also perversion of justice.

Buddhism - Gautam Buddha teaches one to be clean, transparent and corrupt less.

Jainism - Vardhaman Mahaveer's thoughts of non-violence and ethical, moral values are well reflected in Jainism teachings.

IS CORRUPTION INEVITABLE?

History of anti-corruption strategies goes back to Holy scriptures like Bhagavat Gita, Bible, Quaran. According to Ralph Braibanti, "Government Corruption" is found in all forms of bureaucracy and in all periods of political development. A review of penal codes utilized in various ancient civilizations clearly demonstrate that bribery was a serious problem among the Jews, the Chinese, the Japanese, the Greeks, the Romans as well as the Aztees of the New World. In ancient India large-scale corruption dominated public life. Kautilya, Katyayana, Manu, Narada, Brahspati and other sages, seers and Hindu Law givers have mentioned about the phenomenon of bribery and suggested techniques to have the king and people from corrupt officials and bribe seekers (Thakur, 1979).

Above noting are relevant even today also. From the study of Corruption it seems that corruption in human being is as old as the civilization itself and now become a continuous, serious and a dangerous problem. It has been calculated that approximately 3% of the world's GDP is used in bribes (Sandoval, Ben´ıtez & Brandstetter, 2016). Whereas the OECD - Organisation for Economic Co-operation and Development estimates that at least 5% of world GDP is spent annually on Corruption.

In India corruption has threatened the very foundation of democracy and undermined the social welfare and human development. It is understood that total eradication of corruption is not possible but, it doesn't mean one cannot have control over it and can at least prevent to expand at any level.

Recently a robot – Sophia has been offered a citizenship of Saudi Arabia and with this news it will be interesting to refer to a conference paper of March, 2016 which says - Can a robot bribe a human? To what extent is a robot bribing a human affect his/her reciprocal response? In the said paper it has been mentioned – "We performed an experiment using the Rock, Paper, Scissors game (RPSG). The robot bribes the participant by losing intentionally in certain rounds to obtain his/her favour later, and through using direct and indirect speech in certain rounds. The participants could obtain between 20%- 25% more money when the robot bribed them than in the control condition. The robot also used either direct or indirect speech requesting a favour in a second task. Our results show that the bribing robot received significantly less reciprocation than in the control condition regardless of whether the request was couched in direct or indirect speech" (Sandoval, Ben´ıtez & Brandstetter, 2016).

In India corruption has threatened the very foundation of democracy and undermined the social welfare and human development. It is understood that total eradication of corruption is not possible, but it doesn't mean one cannot have control over it and can at least prevent to expand at any level.

So, even pending issues have not been solved and mounted with an alarming situation and now with Artificial Intelligence a new arena of corruption has opened. It is in the hands of the human being to deal with the technology and make best use out of the same eliminate or minimizes roadblocks.

MEASURES TAKEN

The Right to Information Act, 2005 is a remarkable initiative of the Central Government which provides transparency by providing required data to all stakeholders. The Lokpal and Lokayuktas Act, 2013 which came into force from 16th January, 2014 seeks to provide an establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries in India.

In India, the law relating to corruption is broadly governed by the Indian Penal Code, 1860 ('IPC') and the Prevention of Corruption Act, 1988 ('POCA'). There is also the Comptroller and Auditor General ('CAG'), Enforcement Directorate, Anti Corruption Bureau (ACB), the Central Bureau of Investigation (CBI) and the Central Vigilance Commission ('CVC') which play an important role due to Public Interest Litigations ('PILs') in India. The CVC is only an investigating agency and does not have power to formulate or make policy. In relation to public procurement

contracts, the Competition Commission of India ('CCI' / 'Competition Commission') has the power to examine information suo moto and take cognizance of cases even without a complainant before the CCI. Anti-competitive practices are prohibited under the Competition Act, 2002 ('Competition Act'). The Competition Act prohibits anti-competitive behaviour including abuse of dominance by an entity that enjoys dominance in a relevant market. Entities are also prohibited from imposing unfair and discriminatory terms of sale, purchase of goods or services.

The CAG is a constitutional authority created under Article 148 of Constitution of India, 1950. Parliament cannot be compelled to act on the recommendations of CAG. However, Supreme Court has often relied on CAG reports while issuing directions to Government Departments (Desai Nishith Associates, 2016).
The Companies Act, 2013 also provides for a vigil mechanism and an audit committee. Companies Act itself seeks to set higher standards of corporate governance for companies. Political contributions are not per se prohibited and may be made subject to fulfilment of certain conditions as stipulated in the Companies Act, 2013. Further, class action suit, establishing Serious Fraud Investigation Office, requirement of having a policy on vigil mechanism, risk management and empowers auditors to report any qualification and appointment of independent Director on the Board. Disclosure about the compliance under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the Board's report.

Income Tax Act, 1961 ('IT Act') provides for deductions in respect of items of expenditure incurred by a tax payer. IT Act also provides for contributions to political parties and deduction of such contributions from the total income of the tax payer. IT Act further provides for disallowance of any illegal payments made.

The Whistle Blowers Protection Act, 2014 seeks to establish a mechanism to receive complaints relating to corruption or wilful misuse of power or discretion by public servants, to inquire into those complaints, and prevent the victimization of the complainants. The Whistleblowers Act also provides for safeguards against complainants making disclosures, as well as people making disclosures during the inquiry process.

"It will be interesting to know the conclusions drawn by Chung-wen Chen, John B. Cullen, and K. Praveen Parboteeah after their study in which the results of cross-cultural analysis using a sample of 1,799 firms from 38 nations showed that at the firm level, manager-controlled firms (MCFs) have a higher propensity to bribe than shareholder-controlled firms. At the country level, bribery is higher in MCFs (relative to shareholder-controlled firms) in societies with a low level of institutional collectivism, a high level of uncertainty avoidance, economic change, and income inequality.

ANTI-CORRUPTION MEASURES – ASSESSMENT AND SUGGESTIONS

Before assessing the measure take it is worthwhile to know the factors responsible for corruption and then only measure taken can be accessed. The main reasons and factors responsible for corruption are greed, depleted value system comprising moral and spiritual values, unequal distribution of wealth, ineffective implementation of laws, delayed judicial proceedings, inadequate quantum of punishment, silence or passiveness on the part of good people in the society, unscrupulous so-called religious institutions, etc.

It is not possible to eradicate corruption without joint efforts and cooperation amongst citizens, judiciary, public administration, Government. India has been ranked 79th among 176 countries in the Corruption Perception Index 2016 released by the Transparency International organisation. Its score marginally improved from 38 in 2015 to 40 in 2016. India had a score of 36 in 2012 (https://www.transparency.org/news/feature/corruption_perceptions_index_2016).

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At corporate level following suggestions are made:

- Establishing compliance department and deputing Compliance Officer, reporting to Board of Directors, for the overall compliances in an organisation and establishing compliance reporting system,
- Framing Code of Conduct, Regulations in respect of prevention of corrupt practices, Anti-Bribery policy and compliance thereof followed by periodical reporting,
- Cap on providing gift and incurring entertainment, travelling expenses,
- Reporting to compliance department for all activities which may lead to bribery or corrupted practices,
- Due diligence process and periodical review,
- Adequate controls over payment, procurement & sales activities,
- Adequate internal control system, financial controls and budgetary system,
- Developing detailed checklists for specific transactions and financial matters,
- Adopting Code for Charity Governance prescribed by the ICSI and guidelines for political contributions,

- Regulations on prevention of anti-social transactions,
- Regulations on compliance with Competition Laws and implementing standards on preventing cartel activities,
- Incorporating whistle blower committee, detailed inquiry and investigation and corrective actions for the reported matters,
- Incorporating a clause on anti-bribery in each and every agreement,
- Prior approvals for entering into contracts and incurring specified expenses,
- Regular audits and self-audits,
- Conducting training sessions, distributing educational materials for creating awareness,
- Framing slogan competition, poster competition for anti-bribery so as to create an atmosphere of combating corruption,
- Having zero tolerance policy for any violation of laws, rules and regulations

ISO 37001 is an anti-bribery management system (ABMS) standard for organizations. It specifies various anti-bribery policies and procedures which an organization should implement to assist it prevent bribery, and identify and deal with any bribery which does occur (https://www.giaccentre.org/ISO37001.php).

Company Secretaries have shown proven track record as an ideal Compliance Officer/Manager in a corporate.

One finds inverse relations between the magnitude of corruption and effectiveness of control of public administration. Weak implementation of law is the major cause of turbulence. Optimum use of latest technology with IT era and widespread implementation of e-governance for utmost transparency and fixing accountability in specific for ensuring minimisation of human intervention and discretion could be the most suitable means to prevent the corruption. Online filing and e-tendering by several government ministries is a welcome step. Spreading awareness through educating stakeholders can go a long way for achieving a goal of minimizing corruption. An element of good governance certainly proves to be pillar for the ideal welfare state imagined by Late Gandhi ji. A strict code of conduct and implementation thereof. One striking point is worth giving a thought - it is surprising that Indian do better abroad than within the own country !

ROLE OF SPIRITUALITY FOR THE BETTER FUTURE

From time to time policy makers, rulers across the globe have taken sincere legislative measures to curb the decease of corruption but, due to one or the other reason corruption has remained a big challenge, so this has posed a big question mark against the policies, implementation thereof, system, administration and so on.

Now, we come across on almost daily basis media highlighting issues and topics of scams, pollution, political uncertainty, governance issues etc. but, when we pose and take a deep plunge into the issues then one can see that such problems including corruption are at the surface because they are the outcome of the greed, sins and negativity prevailing at the bottom level on human mind. Seeds are at deeper level not being seen properly but, complaining about what is being intruded definitely requires a deep introspection and examination to the roots.

One striking point which seems the very root of all intricacies, including but not limited to corruption, is the quality of human being. We go on talking with the issues, problems and many enthusiastic fellows ponders with the solutions but, when we takes a stocks of the situation over a certain period then it concludes that the ultimate outcome is not one which was aimed while deliberating for the solutions and implementation thereof. Classic quote clings that prevention is better than cure and it's a very high time to plunge into the very basic nuance of any issue.

When we take a sincere peep in the history, we find that the main reasons behind the evolution of these problems including Corruption are nothing but deviation from spirituality.

NUANCES ENGRAVING SPIRITUALITY

The word "Spirituality" comes from the Latin term "Spiritus", which means "breath". In its true sense Spirituality is highly individualistic and certainly applies at a personal level. Many have tried to institutionalize for the foundation of Spirituality and that is welcomed so as to channelize the group energy but, at its route Spirituality is an individual persona and multidimensional nuances of Spirituality caters to the individuals depending upon the individual capacity and level of consciousness. Therefore, many times it seems difficult to describe, explain and convince the foundation of spirituality.

Mr. P. Rajagopalachari (2002) says: "spirituality is the natural expression of one's own inner Self. Spirituality is the science of divine human perfection up to the highest limit of divinization".

Kelemen and Peltonen (2005) opined: "Spirituality is a positive emotion that serves to bring together the rational and the embodied aspects of human life while at the same time reaching to make a connection with a larger universe. To make this a guideline for human existence at work, it is, however, necessary to understand it as an art, requiring regular exercise and constant working on one's self and one's relation to the world".

Authors believe that "Spirituality is the God's gift to the mankind given by way of an inherent virtue and quality that deals with introspection, magnification, refinement and purification of total physic, psychological and intellectual levels through managing the self and further nurturing intrinsic values and tendencies towards the supreme level of consciousness for attaining self-actualization through the route of the balanced life between materialistic world and the inner world and generating value addition at both personal level and the mankind in general".

Spirituality involves a deeper drift with the inner world and realizing oneself passing through the true meaning of life and being connected to the supreme level commonly understood as the God. Quest for experiencing the truth beyond the five (physical) senses, Inspiration, creativity and consciousness are the pre-requisites of spirituality.

CONCLUSION

The world has tried enough to take decisions and tackling human issues on the basis of market driven ideology but, a deeper insight is required with a flare of spiritual dimension. Perhaps this is the only way left to take a try and which can be a source of hope for a sustainable living. We have to decide "what kind of persons required for the future?" and answer shall

underlie to quest for the self-awareness and subsequently providing guidelines to the next generations. Spirituality is somewhat less explored domain in the corporate world and also field of education along with a macro level approach so as to solve the problems like corruption so, a great scope to explore and reap the fruits. Spirituality is the gift of the God and is interwoven with the inner self however, need to be uncovered with the constant and continuous practice.

It is not guaranteed that spirituality will flourish under the formal guidance and structured supervision but, it supports and helps. In general it is said that instead of driving anything out of compulsion it is good if causing anything to be done by self-motivation. In general this is perfectly should be the case but, when object and vision is for the sustainable living and a push is required then for initial stage a sort of compulsion by implementing relevant rules and regulations should be welcomed because it would be in the interest of the society at larger and for being a mean to the end of sustainable living. It's a high time that Government should incorporate statutory provisions in the Education Act to direct all public, private schools, colleges to include a course on Spirituality without any bias for any particular caste, community, religion. Corporate and international organisations also should implement the essence of spirituality so as to curb violations and corrupted practices.

Rabindranath Tagore once narrated having essence that men is the most senior capable entity of this planet earth and therefore must behave and prove as the guardian of other living creature, environment and the planet earth. It's a time to revert to our holy ancient scriptures, Upanishads, Puranas and Vedic literature for the holistic living and same can only be through the means of spiritual way of life. CS

REFERENCES

1) Ancient, Holy scriptures (Vedas, kautilya's Arthashastra - chapter VII, book no.2, Tr. And Ed, shamsatry R - mysore 1929, p.29)
2) https://en.wikipedia.org/wiki/List_of_scandals_in_India (retrieved on 25th November, 2017)
3) Thakur Upendra (1979), "Corruption in Ancient India", Abhinav Publications, New Delhi, p.7, 21.
4) Sandoval, Eduardo Ben´ıtez & Brandstetter J¨urgen & Bartneck Christoph (2016), "Can a Robot Bribe a Human? The Measurement of the Negative Side of Reciprocity in Human Robot Interaction", Conference paper, March 2016, downloaded from https://www.researchgate.net/publication/299720802 (source retrieved on 22nd November, 2017)
5) Desai Nishith Associates (2016), "A comparative view of Anti-Corruption Laws of India – A Legal, Regulatory, Tax and Strategic perspective", June, 2016 (downloaded from http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/A_Comparative_View_of_Anti-Corruption_Laws_of_India.pdf on 25th November, 2017)
6) Khurana Rashmi (2017), "India: Riding the Contradictions", Kroll Global Fraud & Risk Report – 2016/17", Kroll Associates, US downloaded from the source http://constructioncitizen.com/sites/constructioncitizen.com/files/blog_attachments/RPT_KRL_US_Kroll_Global_Fraud_and_Risk_Report_2016.pdf (retrieved on 23rd November, 2017)
7) https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (retrieved on 23rd November, 2017)
8) Chen Chung-wen, Cullen John B. and Parboteeah K. Praveen (2015), "Are Manager-controlled Firms More Likely to Bribe than Shareholder-controlled Firms: A Cross-cultural Analysis", Management and Organization Review 11:2, June 2015, 343–365. doi: 10.1017/mor.2015.16
9) ISO 37001 - https://www.giaccentre.org/ISO37001.php (source retrieved on 29th November, 2017)
10) Mr. P. Rajagopalachari : Spider's Web , July 2002, Published by SRCM Chennai
11) Mihaela Kelemen and Tuomo Peltonen : Spirituality: A way to an Alternative Subjectivity?, Organization Management Journal 2005, Vol. 2, No. 1, P. 60,61
12) Dalai Lama, Ethics for the New Millennium, NY: Riverhead Books, 1999
13) Waaijman, Kees (2000), Spiritualiteit. Vormen, grondslagen, methoden, Kampen/Gent: Kok/Carmelitana (retrieved through the source : https://en.wikipedia.org/wiki/Spirituality#CITEREFWaaijman2000 on 24th November, 2017)
14) http://www.awgp.org/spiritual_wisdom/gayatri/activation_of_internal_power_centres_by_gayatri_sadhan (retrieved on 24th November, 2017).
15) http://shivyog.com/research/ (retrieved on 24th November, 2017).
16) http://www.speakingtree.in/allslides/what-is-iq-eq-sq (retrieved on 24th November, 2017).

Anti-bribery Measures in India

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INTRODUCTION

India is a country on the path to Developed Status from under-development as it stands today. In effect we as a country are moving from having very small GDP in comparison to our resources and population to building our own fortune. As the saying goes, "Behind every great fortune there is a crime". There is a lot of crime being perpetrated in the form of bribery, fraud and tax avoidance in the garb of charity and philanthropy.

The annual Kroll Global Fraud Report notes that India has among the highest national incidences of corruption (25%).[1] The same study also notes that India reports the highest proportion reporting procurement fraud (77%) as well as corruption and bribery (73%). According to the Transparency International Corruption Perception Index, India is ranked 76 out of 167 nations.[2] Rising instances of corporate fraud have set the alarm bells ringing within India Inc.

There is lot of crime being perpetrated in the form of bribery, fraud and tax avoidance in the garb of charity and philanthropy. The article aims to address these issues of bribery and corruption while taking a look at the various laws that govern bribery in India.

In India, the law relating to corruption is broadly governed by the Indian Penal Code, 1860 ('IPC') and the Prevention of Corruption Act, 1988 ('POCA'). A glance at these two legislations will show that the Penal Code enacted in 1860 by the British Raj and the POCA of 1988 have been horribly outdated.

WHAT IS A BRIBE?

In order to understand the Anti Bribery measures in India one must first look at what is a bribe. "A bribe is an inducement, payment, reward or advantage offered, promised or provided to any person in order to gain any commercial, contractual, regulatory or personal advantage." It is illegal to directly or indirectly offer a bribe or receive a bribe. It is also a separate offence to bribe a government/ public official. "Government/ public official" includes officials, whether elected or appointed, who hold a legislative, administrative or judicial position of any kind in a country or territory. A bribe may be anything of value and not just money -- gifts, inside information, sexual or other favors, corporate hospitality or entertainment, offering employment to a relative, payment or reimbursement of travel expenses, charitable donation or social contribution, abuse of function -- and can pass directly or through a third party. Corruption includes wrongdoing on the part of an authority or those in power through means that are illegitimate, immoral or incompatible with ethical standards. Corruption often results from patronage and is associated with bribery.

SCOPE OF THE ARTICLE

Limiting this article to a study on corporate bribery practices one can see that both offering and receiving a bribe by any person in employment of the company, the benefit of which will be undue influence peddling is a crime. By wrongly benefiting a few individuals who abuse their power or position, corruption creates unfair competition, damages innovation and undermines integrity. It is important to see in what way corporate bribery is practiced. Gone are the old days of cash being exchanged in shady bars and restaurants.

RECENT TRENDS

Nowadays bribery has become sophisticated. Gifts and hospitality in five star hotels are given as bribes. Entertainment like tickets to sporting events and favours like admission

1 http://www.kroll.com/en-us/intelligence-center/reports/global-fraud-risk-report
2 https://www.transparency.org/news/feature/corruption_perceptions_index_2016

of children in good schools are given as inducements and bribes. The practice of giving gifts and hospitality is recognized as an established and important part of doing business. However, it is prohibited when they are used as bribes. Giving gifts and hospitality varies between countries and sectors and what may be normal and acceptable in one country may not be so in another. To avoid committing a bribery offence, the gift or hospitality must be:

a. Reasonable and justifiable in all the circumstances
b. Intended to improve the image of the Company, better present its products and services or establish cordial relations with the opposite party.

Another important aspect of what constitutes bribery and corruption and what does not is related to lobbying. As such lobbying is not recognized in India like certain European and American countries. There is no law in India that mandates that the viewpoint of various stakeholders and interested parties be taken into account before formulating rules and regulations. A bill was introduced by a Member of Parliament, The Disclosures of Lobbying Activities Bill, 2013 in Lok Sabha in 2013 in the wake of the Nira Radia controversy but the same has since lapsed. This bill sought to regulate lobbying activities and the lobbyist itself. Today lobbying is seen to be a negative aspect in India because of its ties to corruption. If lobbying is brought above board by having a law regulating it and defining what constitutes lobbying and what does not then the entire country can benefit.

> The practice of giving gifts and hospitality is recognized as an established and important part of doing business. However, it is prohibited when they are used as bribes. Giving gifts and hospitality varies between countries and sectors and what may be normal and acceptable in one country may not be so in another.

A whopping 66 per cent of businesses in the country believe that some form of bribery is acceptable, in spite of increased regulatory actions and public outcry against corruption, according to a survey. As many as 80 per cent believe that corruption is still widespread, with 52 per cent saying offering gifts to win businesses is "justifiable to help a business survive", while 27 per cent justify cash payments, the survey on fraud and corruption by Ernst & Young said.[3]

India has got the dubious distinction of having the highest bribery rate in the Asia Pacific, with a survey showing today that more than two-thirds of Indians had to pay 'tea money' or fork out other forms of bribe to get public services. The survey, conducted by international anti-graft rights group Transparency International, found 69% in India as saying they had to pay a bribe, followed by 65% in Vietnam. China was much lower at 26% while the same for Pakistan was 40%.[4]

BRIBERY RISKS IN INDIA

There are various risks that accrue to our nation due to bribery and corruption. Economics defines bribery as a form of rent. This bribe induced rent causes the cost of production to go up for a commodity or fixed cost for a business giving service. The Government has stepped up efforts to counter corruption but red tape induced corruption continues to be widespread. It is seen that Corruption is especially prevalent in the judiciary, police, public services and public procurement sectors. Due to varying levels of corruption in different states it is seen that some states are too expensive for new companies to set up industries there due to the rent cost of corruption.

Corruption and bribery present moderate risks for companies dealing with India's tax administration. Certain types of industries identify tax administration to be a major constraint in doing business in India. [5] Tax regulations are ranked as the most competitive disadvantage by business executives according to the Global Competitiveness Report 2016-2017.[6] Paying taxes in India takes 241 hours per year, which is lower than the regional and global average.[7] Enforcing a contract takes around 1420 days, which is significantly longer than the regional average.[8]

The major risk of corruption is that it has made certain sectors of the old economy where red tape abounds off limits to new investors, small businessmen and start-ups as they cannot compete with the legacy industrialists and foreign multi-national companies when it comes to crony capitalism and awarding of new licenses.

Factors contributing to corruption in India are:

1) High Taxes
2) Complex and Unnecessary Bureaucracy
3) Excessive Regulation

3 https://timesofindia.indiatimes.com/business/india-business/66-of-businesses-believe-in-some-form-of-bribery-Survey/article-show/47373660.cms
4 http://www.hindustantimes.com/business-news/two-thirds-indians-have-to-pay-bribe-highest-in-asia-pacific-region-survey/story-LvV4BZZjdCjuuJQDRJftyH.html
5 http://www.enterprisesurveys.org
6 https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1
7 http://www.doingbusiness.org
8 http://www.doingbusiness.org

4) Emergence of Political Elite
5) Artificial Scarcity of Resources
6) Change in the value system of society
7) Absence of strong public institutions
8) Overpopulation
9) Widespread Illiteracy

LEGISLATION

The three main legal frameworks addressing corporate corruption in India are the Prevention of Corruption Act (POCA), the Lokpal and Lokayutas Act, and the Companies Act. The Indian Penal Code (IPC), 1960, Prevention of Money Laundering Act, 2002, Right to Information Act, 2005, and the Central Vigilance Act, 2003 are other existing anti-corruption legislations in India. India has taken a variety of measures to address corruption but the laxity in following up on complaints and the slow process of India's courts have ensured that few people get caught and are punished for corruption.

In 1988 POCA was enacted to consolidate all laws relating to offences by public servants. However, POCA prosecuted and criminalised only bribe-taking and not bribe-giving. Section 7, Section 8, Section 9, Section 10 and Section 11 criminalised various acts of public servants and middlemen seeking to influence public servants. Unlike corruption statutes in other countries, POCA prosecuted bribe-taking only by public servants. POCA falls well short of International standards when it comes to prosecution of corrupt public officials. A comparative analysis of POCA with anti corruption laws from the USA and UK tells us of the vast difference in prosecution and conviction levels between the Acts.

POCA has a serious drawback in that it does not consider bribe-giving a crime. Section 24 states that Statement by bribe giver does not subject him to prosecution. Another serious drawback of POCA was that it involves corruption related to public sector and involving public servants alone. Therefore, payments made beyond a contract or payments made to fraudulently secure contracts in the private sector were not covered by POCA. Such offences can only be prosecuted under the outdated Indian Penal Code, 1860.

There is no time limit for completion of trials relating to corruption under POCA. This has been seen as its most limiting drawback. It also does not allow for compounding of an offence.

Civil Servants in the employment of Central Government are subject to the terms and conditions of the All India Services Act, 1951 ('Services Act'). Central Civil Services (Conduct) Rules 1964 ('Central Services Rules') are applicable to Government Servants. These acts and rules have proved to be loophole prone and largely toothless in combating corruption. The CVC was set up in February 1964 on the recommendations of the Santhanam Committee on the prevention of corruption to advise and guide the Central Government agencies on the issue of vigilance and corruption. The CVC is only an investigating agency and does not have power to formulate or make policy.

The Comptroller and Auditor General (CAG) is a constitutional body which has been created under Article 148 of the Constitution of India. The CAG publishes yearly CAG reports which have been the subject matter of much scrutiny in Indian courts and have been the basis of many Public Interest Litigations filed in the Courts of India. These reports have laid bare the blockbuster scams.

> India has got the dubious distinction of having the highest bribery rate in the Asia Pacific, with a survey showing today that more than two-thirds of Indians had to pay 'tea money' or fork out other forms of bribe to get public services. The survey, conducted by international anti-graft rights group Transparency International, found 69% in India as saying they had to pay a bribe, followed by 65% in Vietnam. China was much lower at 26% while the same for Pakistan was 40%.

The Companies Act, 2013 seeks to enforce higher standards of corporate governance in companies. Section 182 of the Companies Act, 2013 provides that neither Government Companies nor companies that have been in existence for less than 3 years are allowed to do political contributions. The Companies Act, 2013 seeks to enforce a Vigil Mechanism in the Companies itself through which the Companies can report genuine concerns in such manner as may be prescribed.

The Right to Information Act, 2005 has played a central role in the fight against corruption in India. The RTI Act stipulates that citizens have the right to access government documents within 30 days from the filing of the request. Thereby, a mechanism of control of public spending has been granted to ordinary citizens. India has signed and ratified the UN Convention against Corruption.[9]

ANTI BRIBERY MEASURES IN INDIA

Anti Bribery measures in India have been haphazard at best. Whenever a new scam comes knocking on the door of India there is a hue and cry over corruption and anti corruption and anti bribery legislation becomes front and centre in the minds of Indian citizens. However it is to be seen whether these periodic awakenings have had any lasting effect on curbing corruption in India.

Corruption is a rent on the economy. In fact in a developing country like India where capital and resources is scarce, in many instances corruption is seen as an acceptable rent to be paid for conduct of economic activity by the layman. In economics and in public-choice theory, rent-seeking involves seeking to increase one›s share of existing wealth without creating new wealth. Rent-seeking results in reduced economic efficiency through poor allocation of resources, reduced actual wealth-creation, lost government revenue, increased income

9 http://www.ijifr.com/pdfsave/20-11-2015293IJIFR-V1-E9-051.pdf

inequality, and (potentially) national decline.[10] This rent seeking stems from a socialistic attitude towards society whereby it is assumed wealth redistribution is the objective of society. So the person seeking bribes sees it as a natural redistribution of wealth from the evil bourgeois businessman and the businessman sees giving of a bribe to gain himself benefit and also to deny his competitors benefits as gaining competitive advantage in the market. However repeated studies in coercive monopoly policy in economics have highlighted the debilitating effect this lack of competition has on the market.

Institutions like the Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Office of the Comptroller and Auditor General (CAG), Central Information Commission (CIC) have been established and are conducting anti corruption procedures in India. The Transformation Index 2012 notes that judges of the Supreme Court have displayed unprecedented activism in response to public interest litigation over official corruption, environmental issues and other matters. This expanded role has received considerable public support. The Supreme Court has been taking corruption seriously in recent years, both in general and political domains.

The single biggest source of corruption in India is seen to be public procurement which despite best efforts of the Government and still sees veritable cases of corruption and rent seeking. It is seen that in many cases certain local suppliers receive a price preference over foreign competitors. In addition, the government in October 2011 announced the National Manufacturing Policy, which encourages government procurement practices that would discriminate against foreign companies, according to the US Commercial Service 2013. Public procurement lags the country in ease of doing business rankings as most foreign agencies rate Indian public procurement as highly complex and susceptible to corruption.

While corruption cannot be ended completely it can certainly be reduced. Some of the measures to reduce corruption in India are:

1) **Electoral Funding Reform**: In India the elections are held every five years and there is a cap on electoral spending by a candidate. But this cap has been reduced. However, candidates spending crores of rupees per seat to stand a chance in the election. Either the cap on spending in elections should be removed or state funding of elections should be introduced to mitigate the effects of corruption.
2) **Stricter Laws**: A strict law against corruption which brings together all the separate provisions against bribery and corruption under one umbrella is the need of the hour. A strict law against corruption which enables a time bound trial will go a long way in combating the evil of bribery.
3) **Tax Compliance**: Once upon a time our direct taxes were unreasonable, and people felt compelled to evade them. However our tax structure is no longer unreasonable yet the evasion of taxes as an activity has entered people's genes and they consider it a moral obligation to evade taxes. The unhealthy trends of surcharges and deductions which has created unnecessary hassles in taxation also need to be done away with.
4) The system of taking prior sanction to prosecute a person who is facing corruption charges must be done away.
5) **Blacklist corrupt businessmen:** Private businesses caught indulging in corrupt practices or bribing officials should be blacklisted for, say, 10 years and be barred from government projects. In the category of corrupt practices would fall use of shoddy material -- like road contractors who give one inch of tar when they are supposed to give four inches and the road crumbles after one monsoon. Bigger instances of private businesses cutting corners in public projects by colluding with corrupt officials should attract exemplary punishment.
6) Those persons should be rewarded who are working honestly in discharge of their duties. It is seen that promotions in Government are done on the basis of seniority and not on the basis of merit. Meritorious and honest behavior should be rewarded in Government.

CONCLUSION

Let us say a pledge to say no to corruption and bribe giving. If we say no to giving a bribe no one will be able to take a bribe. This is based on the old adage that a single drop multiplied will eventually make an ocean. CS

10 https://en.wikipedia.org/wiki/Rent-seeking

Anti-corruption Laws in India

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INTRODUCTION

As per the latest IMF projection, India's growth rate is expected to be 7.2% in 2017-18 fiscal and 7.7% in 2018-19 owing to critical structural reforms, favorable terms of trade, and lower external vulnerabilities. It is encouraging to note that acceleration of structural reforms is bringing a new growth impetus. The GST implemented from July'2017 help make India more of a single market and thus spur productivity, competitiveness, job creation and incomes and investment in the Country.

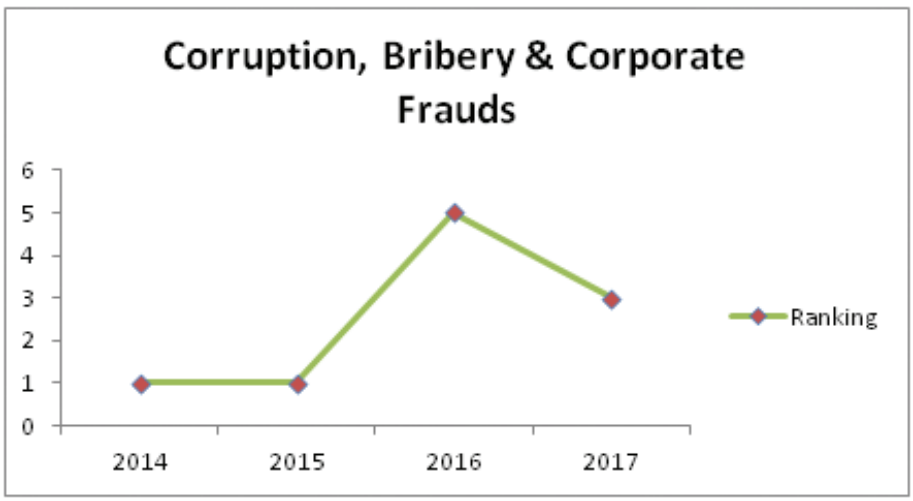
India is the 79 least corrupt Nation out of 175 countries. It is a major threat to Indian polity and Economy and now with the increase in transnational companies, it has become imperative to understand the local laws and the international laws as a step towards anti-bribery and anti-corruption.

Risks to business establishment are detrimental to growth and development of any Country. The nature of risks globally has changed enormously, and with their occurrences becoming more unexpected and their effects becoming more profound, risks need to be taken more seriously. Further, due to rapid digital transformation of businesses, underlying infrastructure is becoming more complex.

Given that India is increasingly attracting the international business community with its extensive regulatory, legal and diplomatic influences, companies cannot underestimate the multitude of challenges in business operations in India particularly with reference to vastly divergent risk landscape the country offers. Corruption and bribery has been one of the risks the country is facing, the nature of which is such that it continues to pose an increasingly greater threat despite the efforts of lowering its impact *via* new regulations such as Goods and Services Tax (GST), Make in India, the Digital India programme and the demonetization move in 2016.

Corruption has been seen as an immoral and unethical practice since biblical times. The annual Kroll Global Fraud Report notes that India has among the highest national incidence of corruption (25%). Further, it reports the highest proportion reporting procurement fraud (77%) as well as corruption and bribery (73%).

Figure 1: Year-Wise Ranking for Corruption & Bribery



Source: India Risk Survey 2017

Corruption, Bribery & Corporate Frauds has become the third biggest risk to businesses in

India as per India Risk Survey 2017. It has moved from the fifth rank to the third position this year. According to Transparency International's Corruption Perceptions Index 2016, India ranks 79 with a score of 40, as against previous scores of 38 in 2015 and 2014, and 36 in 2013 and 2012. India's rank stood at 76 in 2015 and 85 in 2014. However, there has been a minor improvement in India's score, which is 40 on a scale of 100 in 2016, compared to 38 in 2015. It should be noted that this is a marginal improvement. The risks relating to 'Corruption, Bribery & Corporate Frauds' makes it difficult for businesses to maintain leverage in execution of business strategies.

While there has been an improvement in the perception towards conducting business in India from international markets, global investors have made demands for major economic reforms to be implemented in India. As per World Bank's Doing Business 2017 rankings, India currently stands at 130 out of 189 countries. India retains this ranking from 2016. However, India's Distance to Frontier (DTF) score has improved. By promoting policies that are pro-business, pro-growth and anti-corruption, the Government of India has been improving the country's global image as a business destination with implementation of major policy announcements such as 'Make in India', the Goods and Services Tax (GST) reforms, the Digital India Programme, and the motive of combating corruption via the demonetization move in 2016.

According to the National Crime Record Bureau (NCRB) data, the share of incidents registered under the Prevention of Corruption Act, 1988 was 28.3% of the total cases registered in 2015. The Central Bureau of Investigation (CBI) registered 617 corruption cases in 2015, in comparison to 611 cases in 2014, and 649 cases in 2013. However, cases registered by the Vigilance and Anti-Corruption Bureau of various states increased to 5,250 cases in 2015 from 4,966 cases in 2014.

IMPACT

Corruption and bribery is a major threat to Indian polity and Economy. The issues of corruption continues to hinder growth and disrupts economic progress. This denies a level-playing field to prospective investors and businesses. As per the World Economic Forum (WEF) report, Indian firms pay 50 per cent of total project cost, on an average, as bribes to speed up clearances for real estate and infrastructure ventures. Historical incidents of corrupt practices and modern theories of regulation of economic behavior might evoke a sense of fascination. However, there can be no doubt that in modern business and commerce, corruption has a devastating and crippling effect. According to Transparency International Corruption Perception Index, India is the 79 least corrupt Nation out of 175 countries.

According to Forbes Report, while India remains the most corrupt Country in the region with 69% bribery rates, Japan came out as the least corrupt nation with 0.2% bribery rate. Shockingly number of times bribes were demanded for accessing public education and healthcare facilities is also very high in India with around 58% and 59% bribery rates in education and healthcare sectors respectively. Noticeably India was found to be more corrupt than Vietnam, Thailand, Pakistan and Myanmar. In report Vietnam is the second most corrupt country with 65% bribery rates, Thailand 41% and Pakistan 40%. The report also showed how poor sections of society are more affected by menace of corruption. 73% of bribes paid in India came from the low economy groups, who had to pay money due to non-availability of other options, or less influence to avoid paying bribes.

ANTI-CORRUPTION AND ANTI-BRIBERY LAWS IN INDIA

In the wake of numerous scams being unearthed in India over the past decade, the enforcement agencies have become increasingly proactive in terms of monitoring compliance under relevant anti-corruption and bribery laws and taking action against violations thereof.

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1. Companies Act, 2013

The Companies Act, 2013 seeks to set higher standards of corporate governance for companies and provides for a vigil mechanism and an audit committee.

i. Vigil Mechanism

Section 177(9) of the Companies Act provides for the establishment of a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. Section 179(1) also provides that there shall be safeguards against victimisation of persons who use the vigil mechanism. This whistle blowing mechanism established for directors and employees to report genuine concern applies to every listed company or such class or classes of companies, as may be prescribed. Rule 7 of Companies (Meetings of Board & its Powers) Rules, 2014 prescribes the classes of companies as listed companies, companies which accept deposits from the public and companies which have borrowed money from banks and public financial institutions in excess of 50 crore rupees. Rule 7(4) provides additionally that vigil mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the vigil mechanism.

ii. Political Contributions

Section 182 (1) of Companies Act, 2013 provides that neither government companies nor companies that have been in existence for less than three years are permitted to make political contributions. The Companies Act does not provide for a definition of what constitutes a 'contribution,' however Section 182 (2) specifies that a donation, subscription or payment caused to be given by a company on its behalf or on its account to a person who,

to its knowledge, is carrying on any activity which can reasonably be regarded as likely to affect public support for a political party shall also be considered a contribution. Additionally, the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, *i.e.*, a souvenir, brochure, tract, pamphlet or the like by, on behalf or for the advantage of a political party shall also be considered as a contribution. Eligible companies may make a contribution in any financial year provided that such contribution shall not exceed 7.5% of its average net profits during the three immediately preceding financial years.

Additionally, there must be a resolution passed at a Board of Directors meeting authorizing such contribution under Section 182 (1) of the Companies Act. Section 182 (3) prescribes that such contribution must be disclosed in the profit and loss account of the company with the amount and the name of the political party. The penalty for non-compliance with a provision of the section which could be 5 times the amount so contributed and each officer of the company would be punishable with imprisonment for a term of 6 months and a fine which could be 5 times the amount contributed.

2. Whistle Blowers Protection Act, 2014

The Whistle Blowers Protection Act, 2014 seeks to establish a mechanism to receive complaints relating to corruption or willful misuse of power or discretion by public servants, to inquire into those complaints, and prevent the victimization of the complainants. The definition of public servant is the same as the definition provided under Prevention of Corruption Act (POCA). Disclosure has been defined under Whistleblowers Act as a complaint relating to an attempt/commission of an offence under POCA, the willful misuse of power or discretion causing loss to the Government, or an attempt to commit, or a commission of, a criminal offence by a public servant, that made in writing or electronic mail against a public servant before a Competent Authority. The complainant may be any public servant, or any person, and may include an NGO.

The Whistleblowers Act makes it mandatory for the identity of the complainant to be disclosed to the Competent Authority and stipulates that no action will be taken if the identity of the complainant proves to be false. However, the Competent Authority shall conceal the identity of the complainant except in the narrow circumstance that disclosure to a Head of Department is necessary while making an inquiry. Even when this is so, written consent from the complainant is mandatory, and the Head of Department shall be directed not to disclose the identity of the complainant. The Whistleblowers Act also makes it mandatory for the disclosure to be accompanied by full particulars and supporting documents.

The Whistleblowers Act also provides for safeguards against complainants making disclosures, as well as people making disclosures during the inquiry process. Section 11 provides that a person shall not be victimized or proceeded against merely on the ground that he has made a disclosure or rendered assistance to an inquiry. If a person is being victimized, he may make an application to the Competent Authority which will take action following a hearing with the public authority and the victim. This action can include restoring the victim to its original position, and imposing a fine of INR 30,000 in the event of non-compliance with any orders issued by the Competent Authority. Moreover, if the Competent Authority is under the impression that the complainant needs to be protected, it may issue directions to the concerned government authorities to protect such persons.

The Whistleblowers Protection (Amendment) Bill, 2012 has introduced ten categories of information in respect of which there is a prohibition on reporting or making disclosures. These are the sovereignty, strategic, scientific, or economic interests of India, records of deliberations of the Council of Ministers, anything that is forbidden to be published by a court, anything relayed in a fiduciary capacity, personal or private matters, information received by a foreign government, breach of legislative privilege, anything that could impede an investigation, commercial confidence/trade secrets/intellectual property, as well as anything that could endanger a person's safety.

3. Foreign Contribution Regulation Act

The Foreign Contribution Regulation Act, 2010 (FCRA) regulates foreign contribution and acceptance of foreign contributions and foreign hospitality by certain specified persons. Section 3 of the FCRA prohibits certain categories of persons from accepting foreign contributions. These persons include, among others, candidates for election, judges, Government servants, employees of Government owned or controlled bodies, members of Legislature, political parties or political organizations.

FCRA has defined 'foreign contribution' to include the donation, delivery or transfers of any currency or foreign security. Section 3(2) (a) of the FCRA extends this prohibition to persons in India and citizens of India residing outside India receiving foreign contributions on behalf of the aforementioned categories of persons.

Section 6 of the FCRA regulates the acceptance of foreign hospitality by a member of a Legislature or an office-bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government. It mandates that these persons shall not accept any foreign hospitality while visiting any country outside India except with prior permission of the Central Government save for medical aid in the event of contracting sudden illness while abroad.

4. Prevention of Corruption Act

The Prevention of Corruption Act 1988 is the principal anti-corruption law. It penalises offences committed by public servants in relation to the acceptance or attempted acceptance of any form of illegal gratification (ie, anything of value other than a legal entitlement). A bribe giver may also be prosecuted if it is proved that he or she was involved in the abetment of the offence committed by public servant.

It was enacted to consolidate all laws relating to offences by public servants. However, POCA prosecuted and criminalized only bribe taking and not bribe-giving. Section 7 to 11 criminalised various Acts of public servants and middlemen seeking to influence public servants. Unlike corruption statutes in other countries, POCA prosecutes bribe taking only by public servants.

Important principles under POCA

1. Public duty and Public servant

Public duty is defined as *'a duty in the discharge of which the State, the public or the community at large has an interest'*. The expression 'state' also has an inclusive definition. The significance of the definition accorded to 'public duty' is that persons who are remunerated by Government for public duties or otherwise perform public duties, may also be public servants for POCA.

2. Taking gratification, influencing public servant and acceptance of gifts

Sections 7 to 11 of POCA provide for the instances of taking gratification, influencing public servants or accepting gifts. It is important to note that these sections are presently sought to be amended substantially keeping in mind India's obligations under the UNCAC. The provisions as they presently exist in POCA are discussed below.

In respect of offences under Sections 7, 11 and 13, the court has held these to be an abuse of office by the relevant public servant. Provisions in POCA respecting offending transactions contemplate necessarily a public servant and illegal gratification in connection with securing a favour from the public servant or as an incentive or reward to the public servant.

Section 7 provides for public servants taking gratification other than legal remuneration in respect of an official act. The explanation to Section 7 provides that 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money. However, it is equally important that there should be a demand of such sum made by the public servant and the mere fact that the individual has a valuable thing, in the absence of proof of such demand, there may not be conviction under Section 7 of POCA. It has also been held that an offence under Section 7 is an abuse of office and that the acts of the concerned individuals have the colour of authority.

Section 8 provides for taking gratification by corrupt or illegal means to influence a public servant. The section uses the expression *'Whoever accepts or obtains, or agrees to accept, or attempts to obtain'* and this has been held to be applicable to public servants and persons who are not public servants.

The only difference between Sections 8 and 9 is that while Section 8 contemplates use of *'personal influence'* for securing any favour or disfavour, Section 9 contemplates use of *'corrupt or illegal means'*. Although Section 8 uses the expression 'corrupt' – this is not defined in POCA. In one of the cases, Supreme Court held that if a public servant accepted gratification for inducing any public servant to do or to forbear to do any official act, then he would fall within the net cast by Sections 8 and 9. In the same case, examining the nature of the gratification obtained, Supreme Court held that for the purpose of Sections 8 and 9, the gratification could be of any kind and hence, its application was wide. The court in this case was examining the relation between Sections 8 and 9 on the one hand and offences under Section 13(1) (d) on the other.

Section 11 provides for the prosecution of a public servant who obtains a 'valuable thing' from a person who is concerned with any business or transaction relating to such public servant. The court interpreted the mechanism of this section to mean that a public servant must obtain a valuable thing while acting in his official capacity, and that these benefits are essentially for such public servant himself or for any other person. Section 13 provides for the prosecution of a habitual offender and importantly, it criminalises a public servant who:

a. by corrupt or illegal means, obtains any valuable thing or pecuniary advantage,
b. obtains such thing by abusing his position as public servant, or,
c. while holding office as the public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

Like Section 7, Section 13(1)(d) has been subject matter of considerable litigation. Supreme Court has held that for convicting the person under Section 13(1) (d) there must be evidence on record that the person under investigation *'obtained'* for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest.

As stated above, the Supreme Court has held that in respect of the demand and acceptance of a bribe and the burden of proof would lie with the prosecution to establish beyond reasonable doubt that the bribe was demanded or voluntarily paid. Mere possession and recovery of currency notes from a person under investigation without proof of demand would not establish an offence under Section 7 or Section 13(1)(d) of POCA. The Supreme Court has held that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to have been proved.

3. Presumption of taint and role of the bribe giver

Section 20 of POCA provides that in respect of any valuable thing or gratification that is found in the possession of a person under investigation there would be a presumption that such valuable thing or gratification was for the purposes in Section 7 of POCA. This is a rebuttable presumption and the burden of proof would be on the person under investigation to demonstrate that the valuable thing or gratification was not received in connection with an offence under POCA. Therefore, where evidence is not led to dispel the presumption, a person under investigation would be convicted.

Section 24 of POCA provides immunity to the bribe giver and provides that the statement given by the bribe giver shall not subject him to any prosecution. As mentioned earlier, the immunity provided to bribe givers has been considered a major flaw in POCA and also considered to be inconsistent with international standards.

Prevention of Corruption (Amendment) Bill, 2013

After India ratified the UNCAC, the Government of India initiated measures to amend POCA to bring it in line with international standards. Materially, these included:

a. Prosecuting private persons as well for offences,
b. Providing time-limits for completing trials,
c. Attachment of tainted property,
d. Prosecuting the act of offering a bribe
e.

5. Lokpal & Lokayuktas Act

The Lokpal and Lokayuktas Act 2013 establishes the offices of the nodal ombudsman for the central and state governments (Lokpal and Lokayuktas, respectively) and accords relevant powers to these bodies to unearth, investigate and adjudicate corruption in India.

Lokpal is the nodal ombudsman authority which investigates and prosecutes cases of corruption involving:

a. the Prime Minister;
b. the Council of Ministers;
c. Members of Parliament;
d. Public Servants and other Central Government employees;
e. employees of companies funded or controlled by the Central Government; and
f. private persons who have abetted in the commission of relevant offences

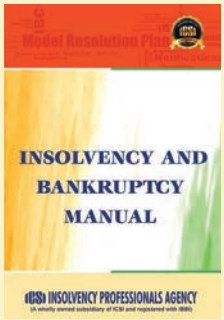
Comparison of laws of US, UK and India

Provision	India	UK	USA
Anti - Corruption Legislation/ Legal Framework	• Prevention of Corruption Act, 1988 • Indian Penal Code, 1860 • Foreign Contributions Regulation Act • Representation of People Act, 1951 • All India Civil Service (Conduct) Rules • Central Civil Service (Conduct) Rules • Benami Transactions (Prohibition) Act, 1988 • Prevention of Money Laundering Act, 2002 • Companies Act, 2013 • Lokpal & Lokyukta Acts	• Bribery Act, 2010 • Companies Act • Common law offence of bribery	U.S. Foreign Corrupt Practices Act, 1977
Enforcement Agencies	• Under the new Lokpal & Lokayukta Acts, a Lokpal, an Ombudsman has been appointed at the Central & State levels, respectively to serve as a public watchdog at Central & State levels • It has wide powers to prosecute all offending politicians, ministers and senior civil servants, including the Prime Minister, the Central Vigilance Commission, the Auditor & Comptroller General of India	• The Serious Fraud Office (SFO)	• The Department of Justice is responsible for FCPA violations
Territorial Application	India and to foreign payments from abroad in India	Has widest extra-territorial reach. An offence may be prosecuted when any act or omission forming part of the offence: • Takes place in UK • Done by a person with a close connection with the US (s.12)2) c))	The FCPA also applies to certain foreign nationals or entities that are not issuers or domestic concerns. This may be either directly or through an agent that engages in any act in furtherance of a corrupt payment while in the territory of the US. Also, officers, directors, employees, agents, or stockholders acting on behalf of such persons or entities may be subject to FCPA's anti-bribery prohibitions.
Private Bribery	Under POCA: Apply predominantly to public servants, however, private persons can be covered under 'abetment'. Under IPC: Covers private persons under criminal breach of trust provisions	Covers bribery on a private level	Does not cover bribery on a private level, although some articles suggest that it can be prosecuted/ enforced under other US legislation
Position on Facilitation Payments	• No exemption provided • Any payment made or benefit provided to a public servant to influence him or her in their official capacity or expedite an official process would amount to bribery under the POCA.	No exception provided under the Bribery Act	The FCPA's bribery prohibition contains a narrow exception for 'facilitating or expediting payments' made in furtherance of routine governmental action. The facilitating payments exception applies only when a payment is made to further 'routine governmental action' that involves non-discretionary acts. 160 examples of 'routine governmental action' include processing visas, providing police protection or mail service and supplying utilities like phone service, power and water.
Accounting/ Books of Record Tax Treatment	There is an obligation under Companies Act to state 'true and fair accounts', which could be violated in these cases, entailing personal criminal liability for officers of the company. Payments with an illegal purpose cannot be deducted as expenses under Indian tax laws. Therefore, recording such payments as expenses, and recording fictitious expenses, could be construed as tax evasion.	Companies Act 2006 includes an offence of falling to keep adequate accounting records	FCPA provisions that apply only to issuers The FCPA requires publicly traded companies 'make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets to issuer.

CONCLUSION

India has been engaging to combat corruption at every level. Through major implementations of new regulations, the Government aims at creating an environment for friendly competition among businesses, and boosting India's economic ties, naming thereby, the recent demonetisation move has already cracked down on several cases of black money laundering. Further, the Goods and Service Tax (GST) implementation is expected to have a positive impact on India's economy as well as business via transparent taxation methods; linking a citizen's Unique Identification Number (UIN) to Personal Account Number (PAN) is another step towards creating further transparency. However, India's law on corruption is a work-in-progress and as can be seen from international laws and standards, Indian law does not address all issues relating to corruption, for instance, unlike laws in developed foreign jurisdictions, laws in India do not provide for measures such as damages when a party suffers due to contracts vitiated by corrupt practices or comparable safeguards in the context of government contracts This places the burden on companies and its stakeholders to be proactive and take necessary measures to ensure that a company, its officers and employees adhere to the highest standards of integrity. CS

Release of ICSI Insolvency Professionals Agency publications at the 45th National Convention of Company Secretaries



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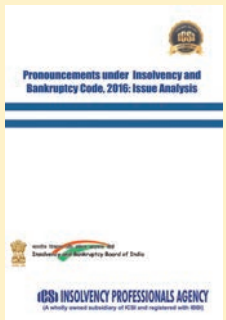

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In light of this, it generates substantial interest to delve deep into the critical dimensions of the book. These critical research analyses will help the members and others in identifying the gaps that is existing and also be a tool for providing the solutions to the industry and regulators etc.

Objectives:

a) To comprehend the implications of critical aspects covered in the book under Companies Act, 2013.

b) To accept the views on various issues covered under various section and sub sections of the book.

c) To find out probable solution based on National / International Practices, Principles, procedures and Judicial Pronouncements.

d) To understand the probable hurdles that are being witnessed by corporate houses in embracing the sections covered under Companies Act, 2013.

Pedagogy:

(a) Interested members are requested to review the contents and send their suggestions in the following format:

Sl. No	Name of the chapter	Page No of the title	Suggestion/ Improvement (Error or Interpretation issues or lack of adequate commentary) / Additional Juridical pronouncements precedents	Suitable commentary & illustration(s), if required

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3

LEGAL WORLD

- OFFICIAL LIQUIDATOR OF HIGH COURT OF KARNATAKA V. SMT. V. LAKSHMIKUTTY [SC]
- INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD. V. OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD & ORS [SC]
- ASSOCIATION OF REGISTRATION PLATES MANUFACTURERS OF INDIA. SHIMNIT UTSCH INDIA PRIVATE LTD & ORS [CCI]
- UTTARAKHAND TRANSPORT CORPORATION & ORS. V. SUKHVEER SINGH [SC]
- P. KARUPPAIAH (D) THROUGH LRS. V. GENERAL MANAGER, THIRIUVALLUVAR TRANSPORT CORPORATION [SC]
- ASSISTANT DIRECTOR OF INCOME TAX. V. M/S E FUNDS IT SOLUTION INC [SC]

Corporate Laws

LMJ 26:12:2017

OFFICIAL LIQUIDATOR OF HIGH COURT OF KARNATAKA v. SMT. V. LAKSHMIKUTTY [SC]

Special Leave Petition (C) No. 5844 of 1980

P.N.Bhagwati & A.P.Sen, JJ. [Decided on 12/12/1980]

Equivalent citations: 1981 AIR 1483; 1981 SCR (2) 349; (1981) 51 Comp Cas 566.

Companies Act, 1956 read with Provincial Insolvency Act- liquidation proceedings-claim of the company against debtor- debt due- whether the claim of the debtor against the company should also be considered-Held, Yes.

Brief facts:

The appellant OL applied to the High Court, on behalf of the company, for the issue of direction to the respondent to pay the balance due by her under a chit fund account. The respondent claimed that since there were mutual dealings between her and the company in liquidation an account should be taken in respect of such mutual dealings and only that amount should be payable or receivable by her which is due at the foot of such account. She claimed that she was entitled to the benefit of the rule enacted in section 46 of the Provincial Insolvency Act. The High Court upheld her contention. Hence the challenge before the Supreme Court.

Decision: Appeal dismissed.

Reason:

We think that the view taken by the High Court is the correct view on the interpretation of Sections 529 and 530 of the Companies Act, 1956. Section 529 provides that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to the provable debts as are in force to the time being under the law of insolvency with respect to the estate of persons adjudged insolvent. This provision brings in the applicability of Section 46 of the Provincial Insolvency Act which reads:

"Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively."

This rule enacted in Section 46 of the Provincial Insolvency Act with regard to the debts provable by a creditor against the insolvent must, therefore, likewise apply in regard to debts provable against a company in winding up. Consequently, when the respondent in the present case claimed to prove her debt against the company in liquidation, she was entitled to the benefit of the rule enacted in Section 46 of the Provincial Insolvency Act and she could legitimately claim that since there were admittedly mutual dealings between her and the company in liquidation, an account should be taken in respect of such mutual dealings and only that amount should be payable or receivable by her which is due at the foot of such account.

It is true that Section 530 provides for preferential payments, but that provision cannot in any way detract from full effect being given to Section 529 and in fact the only way in which these two Sections can be reconciled is by reading them together so as to provide that whenever any creditor seeks to prove his debt against the company in liquidation, the rule enacted in Section 46 of the Provincial Insolvency Act should apply and only that amount which is ultimately found due from him at the foot of the account in respect of mutual dealings should be recoverable from him and not that the amount due from him should be recovered fully while the amount due to him from the company in liquidation should rank in payment after the preferential claims provided under Section 530. We find that the same view has been taken by the English Courts on the interpretation of the corresponding provisions of the English Companies Act, 1948 and since our Companies Act is modelled largely on the English Companies Act 1948, we do not see any reason why we should take a different view, particularly when that view appears to be fair and just. We may, point out that Gore Browne in his book on Company Law, 43rd Ed at page 34-14 also confirms this view:

"Indeed, all claims provable in the winding up may be the subject of set-off, provided that there is mutuality."

Moreover, we find that the observations of the House of Lords in National Westminster Bank Ltd. v. Halesowen Presswork & Assemblies Ltd, (1972) 1 All ER 641 at 659, are also to the same effect. We may also usefully refer to the observations of Sir Ernest Pollock, M. R. In Re. City Life Assurance Co. Ltd (1926) Ch. 191, 203(CA) where the learned Master of the Rolls after referring to Section 207 of the Companies Act, 1908 (Section 317 of the Companies Act, 1948) which corresponds to section 529 of Companies Act, 1956 and Section 31 of the Bankruptcy Act, 1914 which corresponds to Section 46 of the Provincial Insolvency Act, says:

"It is to be observed that Section 31 of Bankruptcy Act, 1914, is definite in its terms that where there is a mutual credit, mutual debt or other mutual dealings, the sums are to be set off and the balance of the account and no more shall be claimed or paid on either side respectively. It is not merely permissive, it is a direct statutory enactment that the balance only is to be claimed in bankruptcy."

We are in agreement with these observations and affirm the view taken by the Karnataka High Court in the judgment sought to be appealed against. We accordingly dismiss the special leave petition on merits after condoning the delay in filing it.

LW 87:12:2017

INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD. v. OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD & ORS [SC]

Civil Appeal No.16962 of 2017 (Arising out of SLP (C) No.25815 of 2013)

With Civil Appeal No. 16963 of 2017(Arising out of SLP (C) No. 29534 of 2014)

Ranjan Gogoi, A.M. Sapre & Navin Sinha, JJ. [Decided on 24/10/2017]

Recovery of Debts and Bankruptcy Act, 1993 read with Limitation Act,1963-proceeding before the Recovery officer of the Tribunal- order of the RO- appeal filed

after 30 days- whether the delay could be condoned- Held, No.

Brief facts:

A common question of law arising for consideration in both appeals is whether Section 5 of the Limitation Act, 1963 (hereinafter referred to as "the Limitation Act"), can be invoked to condone the prescribed period of 30 days, under Section 30(1) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred as the "RDB Act"), for preferring an appeal before the Tribunal, against an order of the Recovery officer.

In view of the pure question of law involved, the facts of the case need not be elucidated. Suffice to observe that pursuant to a recovery certificate issued by the Tribunal under Section 19(22) of the RDB Act, the Recovery officer passed necessary orders under Section 28 of the Act. An appeal was preferred by the aggrieved against the same before the Tribunal, beyond the prescribed period of 30 days. It was held that Section 5 of the Limitation Act not being applicable to proceedings under Section 30 of the Act, the delay beyond the prescribed period could not be condoned.

Decision: Appeal dismissed.

Reason: Section 5 of the Limitation Act provides that the appeal or application, with the exception of Order XXI, CPC may be admitted after the prescribed period, if the applicant satisfies the court that he has sufficient cause for not preferring the application within time. The pre-requisite, therefore, is the pendency of a proceeding before a court. The proceedings under the Act being before a statutory Tribunal, it cannot be placed at par with proceedings before a court. The Tribunal shall therefore have no powers to condone delay, unless expressly conferred by the Statute creating it.

In Sakuru vs. Tanaji, (1985) 3 SCC 590, it was observed that:

"3…that the provisions of the Limitation Act, 1963 apply only to proceedings in 'courts' and not to appeals or applications before bodies other than courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact the such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal…"

An "application" is defined under Section 2(b) of the RDB Act as one made under Section 19 of the Act. The latter provision in Chapter IV, deals with institution of original recovery proceedings before a Tribunal. An appeal lies against the order of the Tribunal under Section 20, before the Appellate Tribunal within 45 days, which may be condoned for sufficient cause under the proviso to Section 20(3) of the Act. The Tribunal issues a recovery certificate under Section 19(22) to the Recovery officer who then proceeds under Chapter V for recovery of the certificate amount in the manner prescribed. A person aggrieved by an order of the Recovery officer can prefer an appeal before the Tribunal under Rule 4, by an application in the prescribed Form III. Rule 2(c) defines an "application" to include a memo of appeal under Section 30(1). The appeal is to be preferred before the Tribunal, as distinct from the appellate tribunal, within 30 days. Section 24 of the RDB Act, therefore, manifestly makes the provisions of the Limitation Act applicable only to such an original "application" made under Section 19 only. The definition of an "application" under Rule 2(c) cannot be extended to read it in conjunction with Section 2(b) of the Act extending the meaning thereof beyond what the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. Any such interpretation shall be completely contrary to the legislative intent, extending the Rules beyond what the Act provides for and limits. Had the intention been otherwise, nothing prevented the Legislature from providing so specifically.

The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act. The appeals lack merit and are dismissed.

Competition Laws

LW 88:12:2017

ASSOCIATION OF REGISTRATION PLATES MANUFACTURERS OF INDIA. SHIMNIT UTSCH INDIA PRIVATE LTD & ORS [CCI]

Case No. 58 of 2017

D.K.Sikri, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta & G. P. Mittal. [Decided on 14/11/2017]

Competition Act,2002- section 3 & 4 – HSRP contracts- cartelisation and collusive bidding – tailor made pre eligibility criteria- whether charge is proved-Held, No.

Brief facts:

The sum and substance of the allegations made by the Informant Association against the OPs essentially centres around the tendering process of various States in awarding HSRP contracts.

The Informant has stated that the OP companies have formed a cartel to engage in collusive bidding in various States to get HSRP contracts. It is alleged that OPs have been rigging bids with the connivance of officials of Transport Departments to come up with "tailor-made pre-eligibility criteria" which ensured erection of artificial barriers at the pre-qualification

stage for other manufacturers.
Further, the Informant has shown through charts the rates at which tenders were awarded to the OPs in different States over time. Initially, when tenders were floated with "tailor-made" conditions, the OPs were awarded tenders at exorbitant rates in case of north-eastern States whereas after open NITs (i.e. without "tailor-made" tender conditions) were floated, the OPs re-strategized their modus operandi and started quoting unreasonably lower/ predatory rates for securing contracts.

Decision: Complaint dismissed.

Reason:

The Commission has perused the information and the documents filed therewith. From the above detailed factual matrix, it is evident that the substratum of allegations made by the Informant rests upon "tailor-made" tender conditions which have been allegedly incorporated in the tenders floated by various State Governments for awarding HSRP contracts. These conditions are stated to be included with the connivance of officials of Transport Departments. The process for initiation of CBI investigation in this regard appears to have been set in motion.
The Commission notes that the Informant has made unique allegations against the OPs. Initially, when these companies quoted exorbitant rates, the Informant alleged cartel formation by them. Subsequently, when the tender conditions were eased, the Informant has alleged that they started abusing their dominant position through predatory pricing. From the averments made in the information, it is observed that the OP companies succeeded in getting contracts initially when tender conditions were favourable to them and most of such tenders pertain to the year 2009 or earlier period. In fact, the Informant has mentioned that some of such contracts were subsequently cancelled by the respective State Governments. Post- relaxing of norms, prices have fallen and other manufacturers have got contracts as well.
On a careful consideration of the matter, the Commission is of the opinion that the allegation made by the Informant does not make out any specific case of bid rigging in any State tender post-2009. No conduct nor any evidence amongst the OPs post-2009 has been detailed in the information. The allegations, at the most, may indicate misconduct by public officials in connivance with some of the persons associated with bidding entities as also hawala transactions through shell/ front companies, however, same does not concern the Commission and cognizance of the same has already been taken by the Government and the CBI.
In view of the above, the Commission holds that no case of contravention of the provisions of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

Industrial & Labour Laws

LW 89:12:2017

UTTARAKHAND TRANSPORT CORPORATION & ORS. v. SUKHVEER SINGH [SC]

Civil Appeal No. 18448 of 2017 (Arising out of SLP(C) No.4012 of 2017)

Arun Mishra & L. N. Rao, JJ. [Decided on 10/11/2017]

Industrial Disputes Act- dismissal of employee – misappropriation charges- driver in connivance with conductor allowed passengers to travel without tickets- whether dismissal is too harsh- Held, No.

Brief facts:

The Respondent was appointed as a driver with the Appellants- Road Transport Corporation in the year 1989. On 27th October, 1995 while driving a vehicle on Karnal-Haridwar route, the Respondent did not stop the vehicle when the inspection team signalled. The inspection team had to follow the vehicle which was stopped six kilometres away from where it was signalled to stop. On verification, it was found that 61 passengers were travelling without a ticket. The Respondent was placed under suspension on 31st October, 1995 and disciplinary proceedings were initiated by issuance of a charge sheet on 3rd November, 1995. After prolonged disciplinary proceeding and inquiry he Respondent was dismissed from services.
The Respondent challenged the award of the labour court in the High Court, which allowed the writ petition and set aside the dismissal order. The High Court directed that the Respondent should be deemed to be in service with all consequential benefits. Assailing the legality of the said judgment of the High Court, the Appellants have approached this Court.

Decision: Appeal dismissed.

Reason: It is contended on behalf of the Appellants that the impugned judgment is contrary to the law laid down in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (1993) 4 SCC 727. It is further submitted that a copy of the inquiry report was in fact supplied to the Respondent. The other point that was canvassed by the Appellants is that the Respondent neither pleaded nor proved that any prejudice was caused to him by the non-supply of the inquiry report prior to the issuance of show cause notice. The counsel for the Respondent supported the judgment of the High Court by submitting that it was incumbent upon the disciplinary authority to supply the inquiry report prior to the issuance of the show cause notice as per the judgment of this Court in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). He also relied upon certain findings in the inquiry report which were in favour of the Respondent. He finally submitted that the punishment of dismissal from service is disproportionate to the delinquency.
The award of the labour court was set aside by the High Court on the sole ground that non-supply of the inquiry report prior to the show cause notice vitiated the disciplinary proceedings. The High Court, in our opinion, committed an error in its interpretation of the judgment in Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors. (supra). It is no doubt true that this Court in the said judgment held that a delinquent employee has a right to receive the report of the inquiry officer before the disciplinary authority takes a decision regarding his guilt or innocence. Denial of a reasonable opportunity to the employee by not furnishing the inquiry report before such decision on the charges was found to be in violation of principles of natural justice. In the instant case, the disciplinary authority communicated the report of the inquiry officer to the Respondent along with the show cause notice. There is no dispute that the Respondent submitted his reply to the show cause notice after receiving the report of the inquiry officer. On considering the explanation submitted by the Respondent, the disciplinary authority passed an order of dismissal. Though, it was necessary for the Appellants to have supplied the report of the inquiry officer before issuance of the show cause notice proposing penalty, we find no reason to hold

that the Respondent was prejudiced by supply of the inquiry officer's report along with the show cause notice. This is not a case where the delinquent was handicapped due to the inquiry officer's report not being furnished to him at all.
It is clear from the above that mere non-supply of the inquiry report does not automatically warrant re-instatement of the delinquent employee. It is incumbent upon on the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report. We have examined the writ petition filed by the Respondent and we find no pleading regarding any prejudice caused to the Respondent by the non-supply of the inquiry report prior to the issuance of the show cause notice. The Respondent had ample opportunity to submit his version after perusing the report of the inquiry officer. The Respondent utilised the opportunity of placing his response to the inquiry report before the disciplinary authority. The High Court committed an error in allowing the writ petition filed by the Respondent without examining whether any prejudice was caused to the delinquent employee by the supply of the inquiry officer's report along with the show cause notice. We are satisfied that there was no prejudice caused to the respondent by the supply of the report of the inquiry officer along with the show cause notice. Hence, no useful purpose will be served by a remand to the court below to examine the point of prejudice.
The Respondent contended that the punishment of dismissal is disproportionate to the delinquency. It is submitted that he was working as a driver and the irregularity in issuance of tickets was committed by the conductor. We are in agreement with the findings of the inquiry officer which were accepted by the disciplinary authority and approved by the appellate authority and the labour court that the Respondent had committed the misconduct in collusion with the conductor. It is no more res integra that acts of corruption/misappropriation cannot be condoned, even in cases where the amount involved is meagre. (See - U.P.SRTC v. Suresh Chand Sharma (2010) 6 SCC 555). For the aforementioned reasons, we allow the appeal and set aside the judgment of the High Court. No order as to costs.

LW 90:12:2017

P. KARUPPAIAH (D) THROUGH LRS. v. GENERAL MANAGER, THIRIUVALLUVAR TRANSPORT CORPORATION [SC]

Civil Appeal No.4160 of 2008

R.K.Agarwl & A M Sapre, JJ. [Decided on 12/10/2017]

Industrial Disputes Act- dismissal of employee – reinstatement allowed but back wages was not allowed- whether entitled for back wages also- Held, No.

Brief facts:

This appeal is filed by the employee against the final judgment and order dated 07.12.2006 passed by the High Court of Judicature at Madras in W.A. No. 1848 of 2000 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and upheld the judgment of 1996 by which the appellant was denied the back wages for the period from 21.07.1994 to 31.08.1999.
The only question involved in the appeal filed by an employee against his employer is whether the appellant is entitled to claim back wages for the period in question, i.e., 21.07.1994 to 31.08.1999?

Decision: Appeal dismissed.

Reason:

Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.
The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/ withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See M.P. State Electricity Board vs. Jarina Bee, (2003) 6 SCC 141)
Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his re-joining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The Courts have also applied in appropriate cases the principle of "No work-No pay" while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case.

Having seen the record of the case, we are satisfied that there was no evidence brought on record by the appellant (employee) in his writ petition to claim the back wages for the period in question either in full or part. Moreover, we find that the issue in question was raised in writ petition and not before the Industrial or Labour Tribunal where parties could adduce evidence on such question.

Be that as it may, the writ Court and the appellate Court yet examined the question in its writ jurisdiction and finding no merit therein declined to award any back wages. This Court does not find any good ground to interfere in the discretion exercised by the two Courts below and accordingly uphold the orders impugned herein calling no interference. Indeed, the appellant should feel satisfied that he was able to secure reinstatement in service despite his involvement in a murder case. The appellant should be content with what he has got. In view of foregoing discussion, the appeal fails and is accordingly dismissed.

LW 91:12:2017

ASSISTANT DIRECTOR OF INCOME TAX. V. M/S E FUNDS IT SOLUTION INC [SC]

Civil Appeal No. 6082 of 2015 with batch of appeals.

R.F. Nariman & Sanjay Kishan Kaul, JJ. [Decided on 24/10/2017]

Income tax Act read with Indo-US DTAA- US Corporation having Indian subsidiary- Indian subsidiary providing services in India- whether profits of the Indian subsidiary is taxable at the hands of US corporation considering the subsidiary as PE in India- Held, No.

Brief facts:

These appeals are from a judgment of the Delhi High Court disposing off several appeals and cross appeals. They relate to two American Companies which are the assessees in the present case, namely, e-Funds Corporation, USA (relating to assessment years 2000-01 to 2002-03 and 2004-05 to 2007-08) and e-Funds IT Solutions Group Inc., USA (relating to assessment years 2000-01 to 2002-03 and 2005-06 to 2007-08). The appeals from the Income Tax Appellate Tribunal (ITAT) by the assessees were allowed by the High Court, whereas cross-appeals by the department were rejected.

The assessing authority decided that the assessees had a permanent establishment (hereinafter referred to as PE) as they had a fixed place where they carried on their own business in Delhi, and that, consequently, Article 5 of the India U.S.Double Taxation Avoidance Agreement of 1990 (hereinafter referred to as DTAA) was attracted. Consequently, the assessees were liable to pay tax in respect of what they earned from the aforesaid fixed place PE in India. The CIT (Appeals)dismissed the appeals of the assessees holding that Article 5 was attracted, not only because there was a fixed place where the assessees carried on their business, but also because they were "service PEs" and "agency PEs" under Article 5. In an appeal to the ITAT, the ITAT held that the CIT (Appeals) was right in holding that a "fixed place PE" and "service PE" had been made out under Article 5, but said nothing about the "agency PE" as that was not argued by the Revenue before the ITAT. However, the ITAT, on a calculation formula different from that of the CIT (Appeals), arrived at a nil figure of income for all the relevant assessment years. The appeal of the assessees to the High Court proved successful and the High Court, by an elaborate judgment, has set aside the findings of all the authorities referred to above, and further dismissed the cross-appeals of the Revenue. Consequently, the Revenue is before us in these appeals.

Decision: Appeal dismissed.

Reason:

The Income Tax Act, in particular Section 90 thereof, does not speak of the concept of a PE. This is a creation only of the DTAA. By virtue of Article 7(1) of the DTAA, the business income of companies which are incorporated in the US will be taxable only in the US, unless it is found that they were PEs in India, in which event their business income, to the extent to which it is attributable to such PEs, would be taxable in India. Article 5 of the DTAA set out hereinabove provides for three distinct types of PEs with which we are concerned in the present case: fixed place of business PE under Articles 5(1) and 5(2) (a) to 5(2) (k); service PE under Article 5(2) (l) and agency PE under Article 5(4). Specific and detailed criteria are set out in the aforesaid provisions in order to fulfil the conditions of these PEs existing in India. The burden of proving the fact that a foreign assessee has a PE in India and must, therefore, suffer tax from the business generated from such PE is initially on the Revenue. With these prefatory remarks, let us analyse whether the respondents can be brought within any of the sub-clauses of Article 5.

Since the Revenue originally relied on fixed place of business PE, this will be tackled first. Under Article 5(1), a PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on. Thus, it is clear that there must exist a fixed place of business in India, which is at the disposal of the US companies, through which they carry on their own business. There is, in fact, no specific finding in the assessment order or the appellate orders that applying the aforesaid tests, any fixed place of business has been put at the disposal of these companies. The assessing officer, CIT (Appeals) and the ITAT have essentially adopted a fundamentally erroneous approach in saying that they were contracting with a 100% subsidiary and were outsourcing business to such subsidiary, which resulted in the creation of a PE. The High Court went on to hold that the ITAT's finding that the assessees were a joint venture or sort of partnership with the Indian subsidiary was wholly incorrect, and held that there is no fixed place PE on the facts of the present case. We agree with the findings of the High Court in this regard.

Insofar as a service PE is concerned, the requirement of Article 5(2) (l) of the DTAA is that an enterprise must furnish services "within India" through employees or other personnel. It has already been seen that none of the customers of the assessees are located in India or have received any services in India. This being the case, it is clear that the very first ingredient contained in Article 5(2) (l) is not satisfied.

We entirely agree with the approach of the High Court in this regard. Article 42.31 of the OECD Commentary does not mean that services need not be rendered by the foreign assessees in India. If any customer is rendered a service in India, whether resident in India or outside India, a "service PE" would be established in India. As has been noticed by us hereinabove, no customer, resident or otherwise, receives any service in India from the assessees. All its customers receive services only in locations outside India. Only auxiliary operations that facilitate such services are carried out in India.

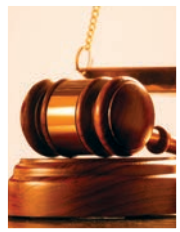
This being so, it is not necessary to advert to the other ground namely, that "other personnel" would cover personnel employed by the Indian company as well, and that the US companies through such personnel are furnishing services in India. This being the case, it is clear that as the very first part of Article 5(2) (l) is not attracted, the question of going to any other part of the said Article does not arise.

Having held in favour of the assessees that no permanent establishment in India can possibly be said to exist on the facts of the present case, we do not deem it necessary to go into the cross-appeals that were filed before the High Court, which were dismissed by the High Court agreeing with the ITAT that the calculation of the ITAT would lead to nil taxation. This point would not arise in view of our decision on the facts of the present case. It is, therefore, unnecessary to go into this aspect of the matter.

4

FROM THE GOVERNMENT

- DESIGNATION OF SPECIAL COURT
- COMPANIES (ACCOUNTS) AMENDMENT RULES, 2017
- COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE), AMENDMENT RULES, 2017
- ONLINE REGISTRATION MECHANISM AND FILING SYSTEM FOR CLEARING CORPORATIONS
- SECURITIES AND EXCHANGE BOARD OF INDIA (INTERNATIONAL FINANCIAL SERVICES CENTRES)GUIDELINES, 2015 – AMENDMENTS
- INVESTMENTS BY FPIS IN HYBRID SECURITIES
- REVIEW OF SECURITIES LENDING AND BORROWING (SLB) FRAMEWORK
- MODIFICATION TO ENHANCED SUPERVISION CIRCULAR
- CLARIFICATION TO CIRCULAR ON PREVENTION OF UNAUTHORISED TRADING BY STOCK BROKERS
- ENHANCING FUND GOVERNANCE FOR MUTUAL FUNDS



Corporate Laws

01 Designation of Special Court

[Issued by the Ministry of Corporate Affairs vide [F.No. 01/12/2009-CL-I (Vol. IV)] dated 03.11.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court of Judicature at Madras, hereby designates the following Courts mentioned in column (1) the Table below as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said sub-section, namely:-

TABLE

Courts	Jurisdiction as Special Court
(1)	(2)
XV Additional Court, XVI Additional Court of City Civil Court, Chennai	State of Tamil Nadu except Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur.

AMARDEEP SINGH BHATIA
Joint Secretary

02 Companies (Accounts) Amendment Rules, 2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/19/2013-CL-V-Part] dated 07.11.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

In exercise of the powers conferred by sub-sections (1) and (3) of section 128, sub section (3) of section 129, section 133, section 134 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Accounts) Amendment Rules, 2017.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014, in Annexure, for form AOC-4, the following Form shall be substituted, namely:-

AMARDEEP SINGH BHATIA
Joint Secretary

Form No. AOC-4 not published here for want of space. Readers may log on to mca.gov.in & then go to rules for the Annexures.

03 Companies (Filing of documents and Forms in extensible business reporting language), Amendment Rules, 2017

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/19/2013-CL-V] dated 06.11.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 read with section 398 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, namely:—

1. Short title and commencement. - (1) These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 (hereinafter referred to as the principal rules), for rule 3, the following rule shall be substituted, namely:—
   "3. Filing of financial statements with Registrar.- The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:-

   (i) companies listed with stock exchanges in India and their Indian subsidiaries;
   (ii) companies having paid up capital of five crore rupees or above;
   (iii) companies having turnover of one hundred crore rupees or above;
   (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015:

Provided that the companies preparing their financial statements under the Companies (Accounting Standards) Rules, 2006 shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under Companies (Indian Accounting Standards) Rules, 2015, shall file the statements using the Taxonomy provided in Annexure-II A:

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of

financial statements under these rules.".

4. In the principal rules, for Annexure-I, the following Annexure shall be substituted, namely:—

AMARDEEP SINGH BHATIA
Joint Secretary

Annexure-I, Form No. AOC-4 XBRL not published here for want of space. Readers may log on to mca.gov.in & then go to rules for the Annexures.

04 Online Registration Mechanism and Filing System for Clearing Corporations

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2017/119 dated 03.11.2017.]

1. In order to ease the process of application for recognition / renewal, reporting and other filings in terms Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 and other circulars issued from time to time, SEBI has introduced a digital platform for online filings related to Clearing Corporations.

2. All applicants desirous of seeking registration / renewal as a Clearing Corporation in terms of Regulation 4 and 12 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, shall now submit their applications online only, through SEBI Intermediary Portal at **https://siportal.sebi.gov.in.**

3. Further, all other filings including Annual Financial Statements and Returns, Monthly Development Report, Rules, Bye-laws, etc., shall also be submitted online.

4. The aforesaid online registration and filing system for Clearing Corporations is operational. Recognised Clearing Corporations are advised to note the same for immediate compliance.

5. Link for SEBI Intermediary Portal is also available on SEBI website – **www.sebi.gov.in.** In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the SEBI Portal helpline on 022- 26449364 or may write at **portalhelp@sebi.gov.in.**

6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

SANJAY PURAO
General Manager

05 Securities and Exchange Board of India (International Financial Services Centres)Guidelines, 2015 – Amendments

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD/DRMNP/CIR/P/2017/120 dated 14.11.2017.]

1. Kindly refer to SEBI (IFSC) Guidelines, 2015 notified by SEBI on March 27, 2015 and various amendments made thereto from time to time.

2. Based on the consultations held with the stakeholders, it has been decided to amend the definition of 'issuer' as given in Clause 2 (1) (i) which shall now read as follows:
"issuer" shall mean
   (i) any entity incorporated in India seeking to raise capital in foreign currency other than Indian rupee which has obtained requisite approval under Foreign Exchange Management Act, 1999 (FEMA) or exchange control regulations as may be applicable; or
   (ii) an entity incorporated in a foreign jurisdiction, provided such entity is permitted to issue securities outside the country of its incorporation or establishment or place of business as per the laws and regulations of its country of incorporation, jurisdiction or its constitution,
   or
   (iii) any supranational, multilateral or statutory organization/ institution/agency provided such organization/institution/ agency is permitted to issue securities as per its constitution.

3. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

SUSANTA KUMAR DAS
Deputy General Manager

06 Investments by FPIs in Hybrid Securities

[Issued by the Securities and Exchange Board of India vide Circular No. IMD/FPIC/CIR/P/2017/121 dated 15.11.2017.]

1. This has reference to the daily FPI net investment data and the FPI Assets Under Custody (AUC) data being disseminated by the depositories (NSDL and CDSL). Presently, FPI investments are classified as either debt or equity depending on the type of the security in which the FPIs transact.

2. FPIs are permitted to invest in REITs and InvITs, which are classified as hybrid securities and presently, the said investments are not reflected in the daily FPI net investment data or the monthly/fortnightly FPI AUC data.

3. In order to capture FPI investment data in hybrid securities, a third category termed as "Hybrid Security" shall be created for the purpose of capturing and disseminating FPI investment data in hybrid securities.

4. The depositories (NSDL and CDSL) shall put in place the

necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate on their websites, the AUC of the FPIs in debt, equity and hybrid securities.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

PIYOOSH GUPTA
Chief General Manager

07 Review of Securities Lending and Borrowing (SLB) Framework

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DP/122 /2017 dated 17.11.2017.]

1. The framework for Securities Lending and Borrowing (SLB) was specified, vide SEBI circular no. MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007, and operationalized with effect from April 21, 2008. The SLB framework has been revised based on the feedback received from the market participants.

2. Pursuant to the feedback received from the stock exchanges and other market participants and in consultation with the Secondary Market Advisory Committee (SMAC), the framework for SLB is now modified as under:

Tenure of the Contract

3. SEBI Circular MRD/DoP/SE/DeP/Cir-01/ 2010 dated January 6, 2010, allows the Approved Intermediaries (AI) to decide the tenure of the contract subject to the condition that the maximum period of the contract is not more than 12 months. In this regard, it is clarified that AIs can introduce contracts of different tenures ranging from 1 day to 12 months based on the need of the market participants.

Position Limit in SLB

4. Para 12 of Annexure 2 of SEBI Circular MRD/DoP/SE/DeP/Cir-14/ 2007 dated December 20, 2007, stands modified as under:
   a. Position limits shall be as under:
      i. The market wide position limit for SLB transactions shall be 10% of the free-float capital of the company in terms of number of shares;
      ii. No clearing member shall have open position of more than 10% of the market-wide position limit. The position limit for an Institutional Investor shall be the same as that for a clearing member;
      iii. The client level position limit shall not be more than 1% of the market-wide position limit.

Treatment of Corporate Actions during SLB

5. Para 2 of Circular MRD/CoP/SE/Cir-31/2008 dated October 31, 2008 and Para 1 of Circular no. CIR/MRD/DP/33/2010 dated October 07, 2010 stand modified as under:

   Details of treatment of corporate actions during the contract tenure are specified below:
   i. Dividend: The dividend amount would be worked out and recovered from the borrower on the book closure/ record date and passed on to the lender.
   ii. Stock split: The positions of the borrower would be proportionately adjusted so that the lender receives the revised quantity of shares.
   iii. Other corporate actions such as bonus/ merger/ amalgamation / open offer, etc: The contacts would be foreclosed on the Ex-date. The lending fee would be recovered on a pro-rata basis from the lender and returned to the borrower.
   iv. AGM/EGM: In the event of the corporate actions which is in nature of AGM/EGM, presently the AIs are mandatorily foreclosing the contracts. It has been represented by market participants that mandatory foreclosure during the life of the contract may not be necessary as, all lenders may not be interested in taking part in the AGM/EGM. It has therefore been decided that the AIs shall provide the following facilities to the market participants:
      a. Contracts which shall continue to be mandatorily foreclosed in the event of AGM/EGM.
      b. Contracts which shall not be foreclosed in the event of AGM/EGM.

Rollover Facility

6. Para 1.1 of Circular CIR/MRD/DP/30/2012 dated November 22, 2012 on Introduction of roll-over facility stands modified as under:
   a. Any lender or borrower who wishes to extend an existing lent or borrow position shall be permitted to roll-over such positions i.e. a lender who is due to receive securities in the pay out of an SLB session, may extend the period of lending. Similarly, a borrower who has to return borrowed securities in the pay-in of an SLB session, may, through the same SLB session, extend the period of borrowing. The roll-over shall be conducted as part of the SLB session.
   b. The total duration of the contract after taking into account rollovers shall not exceed 12 months from the date of the original contract. It is clarified that multiple rollovers of a contract by the lender or borrower is permitted.
   c. Rollover shall not permit netting of counter positions, i.e. netting between the 'borrowed' and 'lent' positions of a client.

7. Pursuant to the applicability of this Circular, SEBI circular CIR/MRD/DP/33/2010 dated October 07, 2010 shall stand withdrawn. The provisions of SEBI circular no. MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007, circular no. MRD/DoP/SE/Cir-31/2008 dated October 31, 2008, Circular SEBI/MRD/DoP/SE/Dep/Cir-01/2010 dated January 06, 2010, CIR/MRD/DP/30/2012 dated November 22, 2012, CIR/MRD/DP/18/2013 dated May 30, 2013 and CIR/MRD/DP/19/2014 dated June 03, 2014, other than that specified in this circular, shall continue to be applicable.

8. The circular shall come into force with effect from January

1, 2018.

9. Stock Exchanges, Clearing Corporations and Depositories are directed to:
   i. Take necessary steps to put necessary systems in place for the implementation of the above provisions of this circular.
   ii. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
   iii. Bring the provisions of this circular to the notice of the stock brokers/trading members, clearing members and depositories participants and disseminate the same on their website.

10. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

SUSANTA KUMAR DAS
Deputy General Manager

08 Modification to Enhanced Supervision Circular

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2017/123 dated 29.11.2017.]

1. SEBI vide circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, has issued guidelines covering broad areas for enhanced supervision based on the recommendation of the committee constituted by SEBI.

2. In this regard, following modifications are made :
   a. Clause 7.1.2 stands modified as follows: "End of day securities balances ISIN wise (as on last trading day of the month) and End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and total number of securities across all ISINs)"
   b. Clause 7.1.3 stands modified as follows: "ISIN wise number of securities pledged, if any, and the funds raised from the pledging of such securities and consolidated number of securities pledged (i.e., total number of ISINs and total number of securities across all ISINs), if any and the funds raised from the pledging of such securities."
   c. Clause 7.1.4 stands modified as "The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven calendar days of the last trading day of the month."
   d. Clause 7.2 stands modified as below -
      "Each Stock Exchange shall in turn forward –
      a. Information at Para 7.1.1, 7.1.2 and 7.1.3 to clients via Email on the email IDs uploaded by the stock broker to the exchange for their clients.
      b. Information at Para 7.1.1, 7.1.2 (only consolidated data) and 7.1.3 (only consolidated data) to clients via SMS on mobile numbers uploaded by the stock broker to the Exchange for their clients."
3. The above provisions shall be applicable one month from the date of this circular.
4. You are advised to take necessary steps to ensure compliance with the above.
5. The Stock Exchanges are directed to
   a. Bring the contents of this circular to the notice of the Stock Brokers and also disseminate the same on their website.
   b. Make necessary amendments to the relevant bye-laws, rules and regulations for this implementation of the above directions in co-ordination with one another to achieve uniformity in approach.

6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework".

DEBASHIS BANDYOPADHYAY
General Manager

09 Clarification to Circular on Prevention of Unauthorised Trading by Stock Brokers

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/124 dated 30.11.2017.]

1. SEBI vide circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 has inter-alia specified that brokers shall execute trades of clients only after keeping evidence of the client placing such order. Further, SEBI has made it mandatory to use telephone recording system to record client instructions and maintain telephone recordings wherever the order instructions are received from clients through the telephone.

2. Subsequently, SEBI has received representations from stock brokers and their associations expressing operational difficulties caused to stock brokers. Accordingly, in view of operational difficulties faced by stock brokers, it has been decided as under.
   i. Brokers are required to maintain the records specified at para III of aforementioned circular for a minimum period for which the arbitration accepts investor complaints as notified from time to time, currently three years. However in cases where dispute has been raised, such records shall be kept till final resolution of the dispute.
   ii. If SEBI desires that specific records be preserved then such records shall be kept till further intimation by SEBI.
   iii. The above mentioned SEBI circular also prescribes that 'when dispute arises, the burden of proof will be on the broker to produce the above records for the

disputed trades'. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/ securities by client in respect of disputed trade, etc. shall also be considered.

3. The Stock Exchanges are directed to:
   a. Bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.
   b. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above directions.
   c. Communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

DEBASHIS BANDYOPADHYAY
General Manager

10 Enhancing fund governance for Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2017/125 dated 30.11.2017.]

In order to strengthen the governance structure for Mutual Funds (MFs), it has been decided to implement the following:

A. Tenure of independent trustees and independent directors:

1. Regulation 16 (5) and Regulation 21 (1) (d) of SEBI (Mutual Funds) Regulations, 1996 mandate appointment of independent trustees of MFs ("independent trustees") and independent directors of AMCs ("independent directors") respectively. With respect to tenure of independent trustees and independent directors, it has been decided that:

   i. An independent trustee and independent director shall hold office for a maximum of 2 terms with each term not exceeding a period of 5 consecutive years.
   ii. No independent trustee or independent director shall hold office for more than two consecutive terms, however such individuals shall be eligible for re-appointment after a cooling-off period of 3 years. During the cooling-off period, such individuals should not be associated with the concerned MF, AMC & its subsidiaries and / or sponsor of AMC in any manner whatsoever.
   iii. Existing independent trustees and independent directors shall hold office for a maximum of 10 years (including all preceding years for which such individual has held office). In this respect, the following may be noted:
      a. Individuals who have held office for less than 9 years (as on date of issuance of this circular) may continue for the residual period of service.
      b. Individuals who have held office for 9 years or more (as on date of issuance of this circular) may continue for a maximum of 1 year from date of issuance of this circular.
      c. Such individuals shall subsequently be eligible for re-appointment after a cooling-off period of 3 years, in terms of Para A (1) (i) and Para A (1) (ii) above.

B. Auditors of Mutual Funds:

1. The auditor of a MF, appointed in terms of Regulation 55 (1) of SEBI (MFs) Regulations shall be a firm, including a limited liability firm, constituted under the LLP Act, 2008.

2. Period of appointment:
   With respect to appointment of auditors in terms of Regulation 55 (1) of SEBI (MFs) Regulation, 1996, it has been decided that:
   i. No MF shall appoint an auditor for more than 2 terms of maximum five consecutive years. Such auditor may be re-appointed after cooling off period of 5 years.
   ii. Further, during the cooling-off period of five years, the incoming auditor may not include:
      a. Any firm that has common partner(s) with the outgoing audit firm
      b. Any associate / affiliate firm(s) of the outgoing audit firm which are under the same network of audit firms wherein the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control
   iii. Existing auditors may be appointed for a maximum of 10 years (including all preceding years for which an auditor has been appointed in terms of Regulation 55 (1) of SEBI (Mutual Funds) Regulation, 1996). In this respect, the following may be noted:
      a. Auditors who have conducted audit of the Mutual Fund for less than 9 years (as on date of issuance of this circular) may continue for the residual period of service.
      b. Auditors who have conducted audit of the Mutual Fund for 9 years or more (as on date of issuance of this circular) may continue for a maximum of 1 year from date of issuance of this circular.
      c. Such auditors shall subsequently be eligible for re-appointment after a cooling-off period of 5 years, in terms of Para B (2) (i) and Para B (2) (ii) above.

C. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager

5

NEWS FROM THE INSTITUTE

- MEMBERS RESTORED FROM 1/10/2017 TO 31/10/2017
- CERTIFICATE OF PRACTICE CANCELLED DURING THE MONTH OF OCTOBER, 2017
- KNOW YOUR MEMBER (KYM)

MEMBERS RESTORED FROM 1/10/2017 TO 31/10/2017

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	42568	CS SHIKHA SHARMA	NIRC
2	A	27841	CS PRIYANKA PATIL	WIRC
3	A	26235	CS PRADEEP SINGH	NIRC
4	A	13977	CS DILIP KUMAR JHA	NIRC
5	A	30816	CS HIMANSHI MADAN	NIRC
6	A	17577	CS NIDHI JAIN	NIRC
7	A	14674	CS DEVINDER KUMAR JAIN	NIRC
8	A	19565	CS DEEPAK KUMAR CHITKARA	F/NIRC
9	A	24904	CS MONALI SHARAD WAKALKAR	WIRC
10	A	15105	CS SIMAR PREET KAUR	NIRC
11	F	5871	CS MAYURA JAIN	NIRC
12	A	16810	CS KUMAR ANIKET	NIRC
13	A	19041	CS SHYAM NARAYAN TIWARY	SIRC
14	A	26678	CS RITU PANDEY	NIRC
15	A	30090	CS SAVITA KAPOOR	NIRC
16	A	43632	CS ANANDKUMAR TARACHAND JAIN	WIRC
17	A	20158	CS GOPALAN R.	SIRC
18	A	33546	CS MOHINI AGARWAL	NIRC
19	A	15454	CS NUPUR RAJIV KRISHNAMA	SIRC
20	A	12008	CS BHARAT BHUSHAN JAIN	NIRC
21	A	20469	CS AJAZ UL REHMAN DAR	NIRC
22	A	25663	CS MAMTA SOHANLAL GUNDECHA	SIRC
23	A	11255	CS VINOD VERMA	WIRC
24	A	15659	CS AMEE JITENDRA BHUTA	F/WIRC
25	A	12187	CS S SUBHA	SIRC
26	A	18685	CS VISHAL GARG	NIRC
27	A	40345	CS AJAY JAIN	NIRC
28	A	12868	CS AJAY ANANTRAI PATADIA	WIRC
29	A	39434	CS GUNJAN CHUGH	NIRC
30	A	10735	CS S RAMESH	SIRC
31	A	33065	CS C CHANDRASEKAR	SIRC
32	F	393	CS P D GOSWAMI	NIRC
33	F	4303	CS VINOD KUMAR MEHROTRA	NIRC
34	A	11763	CS V. BALAKRISHNAN	WIRC
35	A	19524	CS VIKASH JOSHI	WIRC

CERTIFICATE OF PRACTICE CANCELLED DURING THE MONTH OF OCTOBER 2017

SL. No	NAME	MEMB NO	COP NO	REGN
1	CS SWATI SRIVASTAVA	ACS 41089	18277	WIRC
2	CS ANKIT KUMAR	ACS 45917	16793	NIRC
3	CS SUKHDEVSINH BHARATSINH JADEJA	ACS 42243	18743	WIRC
4	CS MONISHA CHAUDHARY	ACS 36714	19312	NIRC
5	CS LUCKY RADHEYSHYAM BANSAL	ACS 50039	18753	WIRC
6	CS JAHANGEER SHAIK	ACS 50449	18467	SIRC
7	CS LALIT SETHI	ACS 31350	11554	NIRC
8	CS MANSI SETHI	ACS 39292	14713	NIRC
9	CS AMRITA MITTAL	ACS 38823	14612	NIRC
10.	CS ADYA OJHA	ACS 50340	18830	EIRC
11	CS K SRIDHARA MURTY	ACS24143	10588	WIRC
12	CS ANJALI VIG	FCS 4471	13153	NIRC
13	CS MUNIAPPA GOUNDER SENGOTTAIYAN	FCS 9434	9475	SIRC
14	CS ORUGANTI VENKATA RAVI	ACS 14614	18399	SIRC
15	CS BRAJENDRA KUMAR SHUKLA	ACS 41031	18785	WIRC
16	CS KOMAL SHARMA	ACS 49097	18327	NIRC
17	CS RASHMIBEN JAGDISHBHAI PATEL	ACS 46687	18157	EIRC
18	CS MUKESH KUMAR AGARWAL	ACS 23877	8719	EIRC
19	CS ADITI JHUNJHUNWALA	ACS 26988	10144	EIRC
20	CS DEEPAL SHAH	ACS 24686	18094	WIRC
21	CS EMIL ALEX	ACS 45209	16756	SIRC
22	CS GOURAV GOYAL	ACS 47648	18678	NIRC
23	CS BANSARI PRAFUL JOSHI	ACS 48692	17769	WIRC
24	CS NITESH GOEL	ACS 43971	16202	NIRC
25	CS PRABHU NARAYAN GUPTA	ACS 2587	3046	NIRC
26	CS KAVITA MEHUL JOSHI	ACS 22308	14787	WIRC
27	CS ABHILASH	ACS 45477	17622	SIRC
28	CS VARSHA ANKUSH AGARWAL	ACS 44214	19441	WIRC
29	CS PRIYANKA GARG	ACS 45312	16788	WIRC
30	CS NIKITA KEDIA	ACS 40115	17051	EIRC

31	CS G SUNDARARAJAN	ACS 546	1826	SIRC
32	CS PRIYANKA RAJENDRAPRASAD SHARMA	ACS 28320	10165	NIRC
33	CS SHRIDHAR SHANKAR KULKARNI	FCS 5631	3950	WIRC
34	CS PRABIR KUMAR GHOSE	ACS 4561	3087	EIRC
35	CS HARI HARAN P V	ACS 38668	17233	SIRC
36	CS CHAMPAK KESARI BURMA	FCS 8376	9566	EIRC
37	CS DIPTI RANASARIA	ACS 42157	15675	NIRC
38	CS POOJA SHARMA	ACS 44233	16307	NIRC
39	CS RAM SANWARA	FCS 1049	7286	NIRC
40	CS DEEPSHIKHA	ACS 32935	14024	NIRC

Know Your Member (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the link: https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf

NOTICE

The last date for payment of annual membership fee was 31-08-2017 and for renewal of certificate of practice was 30-09-2017. The members who have not paid their annual membership fee and/or certificate of practice fee by the last date are required to restore their membership and/or certificate of practice by paying the requisite entrance and restoration fees alongwith the applicable annual membership fee and annual certificate of practice fee with GST@18% on the total fee payable. Members are required to submit Form–BB for restoration of membership and Form-D for restoration of certificate of practice duly filled and signed. For more clarification, may please write at **jitendra.kumar@icsi.edu** (for restoration of membership) and **rajeshwar.singh@icsi.edu** (for restoration of certificate of practice).

COMPETITION LAW MONTH

First time, the Institute of Company Secretaries of India in association with Competition Commission of India (CCI) celebrated 'Competition Law Month' during November, 2017 on the Theme 'Overview of Competition Law: Cartelisation and Leniency'. Programmes were organised on PAN India basis under the various sub themes i.e Cartelisation and Leniency, Abuse of Dominance, Competition Compliance Programme.

ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2017 is available in the Institute on payment of Rs. 280/-* for members and Rs. 560/-* for non-members (*including GST@12%). Request along with payment may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries if any, please contact on telephone no: 0120-4082133 or at email id **rajeshwar.singh@icsi.edu**

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link **http://www.icsi.edu/Member.aspx**

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6 MISCELLANEOUS CORNER

- GST CORNER
- CG CORNER
- ICSI INVITES APPLICATIONS FOR EMPANELMENT AS STUDY WRITERS / REVIEWERS FOR ICSI NEW SYLLABUS (2017).
- ETHICS & SUSTAINABILITY CORNER

GST CORNER

GST in NEWS

1. GST filing may be tweaked to simplify it: GSTN Chairman
- The government is considering a proposal to tweak the way people file their GST returns
- The move, to customise the form as per the varying requirements of the taxpayer, is expected to significantly simplify the filing process
- The newly-appointed chairman of the GST Network (GSTN), said instead of having a standard form for everyone, users can be asked a few questions upon signing in and then the best suited form can be displayed as per their transactions and nature of business

2. GST Network launches new facility for exporters to claim refunds
- GST Network introduced a utility Table 6A in Form GSTR1 for exporters to claim refunds
- An exporter can claim a refund of Integrated GST tax paid at the time of export by filling the details of shipping bill and tax paid GST invoice in his Form GSTR1 in the relevant month

3. CAIT Secretary General nominated for GST Panel
- Traders body CAIT's Secretary General has been nominated to be a part of the government's GST panel
- The panel which has been constituted with approval of Union Finance Minister includes other members like Research Director of Centre for Legal Policy, CEO of Federation of Indian Exporters Organisation and Laghu Udyog Bharti President

4. Panel begins review of GST laws to remove glitches
- A committee of government officials has started a review of the laws GST, signalling there is no reluctance to make the regime smoother for businesses, especially the smaller players
- The committee headed by GST Chief Commissioner for Karnataka, is looking at the entire gamut of issues

5. Individuals to help out with GST returns at seva kendras
- The government plans to tap the Central Board of Excise and Customs' vast network of 4,500 GST seva kendras to help small businesses and individuals, who have to comply with the new regulations and file returns
- In the process, it will also deploy thousands of individuals who are undergoing skill training, to become return filers and help others
- The return filers will be on the lines of tax return preparers, who help individuals file I-T returns

6. Only 50 items left in highest GST slab, list slashed three-quarters to ease tax burden
- The highest Goods and Services Tax bracket was slashed three-quarters with only 50 items being retained in the 28 per cent slab
- The GST Council, at its 23rd meeting, moved 178 items out from the list of 228
- It also decided to reduce the tax rate for all restaurants, barring those in luxury hotels, to 5 per cent, without any input tax credit

7. Revised GST rates: Over 200 goods to be cheaper
- A number of goods including daily-use products like toiletries and furniture become cheaper with the revised GST rates for over 200 items
- The Council also recommended that the eligibility threshold for the composition scheme be raised to Rs 1.5 crore from Rs 1 crore, and manufacturers, restaurants and traders under the scheme be levied a uniform 1 per cent tax from the earlier differential tax slabs

8. Finance Minister signals further GST rate cuts
- Finance Minister signalled further cuts in GST rates and appealed to businesses to pass on the benefit of the recent reductions to consumers
- The minister, however, qualified that the rate cuts will be presaged on revenue collections

9. GST: changes in the returns filing process
- Up to November 15, 2017 when the decisions took effect, the GST system required businesses to submit at least three forms to file their returns
- The GSTR-1 dealt with the invoice-wise details of supply, GSTR-2 dealt with the receipts of goods, and GSTR-3 was an overall summary derived from the two previous forms
- Now, the GST Council has decided that, in order to ease the compliance burden on businesses, companies would be allowed to only file the GSTR-1 form, up to March 31, 2018
- The Council has set up a committee to look into how to make the GSTR-2 form easier, following which it will be brought back into the system
- The Council also decided to extend the usage of the summary GSTR-3B form, meant to make life easier for those unfamiliar with the filing process, till March 31 from the earlier December 31 deadline

10. No GST on advance taken by FMCG companies
- In a big relief to all FMCG companies and others that take advance from dealers before they supply goods, no GST would be levied on such advance
- The department of revenue has issued a notification allowing the relaxation after the same was approved in the GST Council meeting in Guwahati
- The notification exempts all taxpayers from payment of tax on advances received in case of supply of goods
- However, service providers would continue to be required to pay GST on advances

11. Exporters can manually file GST refund claims: CBEC
- The government has allowed exporters to manually file before tax officers claims for GST refunds as it looks to fast-track clearance of dues
- Now exporters of services who paid IGST and those making zero rated supplies to SEZ units as well as those merchant exporters who want to claim refunds for input credit can approach their jurisdictional commissioner with their refund form

12. Cabinet nod for GST anti-profiteering body
- Union Cabinet cleared the proposal to set up the National Anti-profiteering Authority, which will take steps to ensure that consumers get the benefit of reduced prices under the new indirect tax regime
- According to a government release, the Anti-profiteering Authority will be headed by a senior officer of the level of Secretary to the Government of India with four Technical Members to be deputed from the Centre and States

13. Highest GST filing in October, Punjab tops the list in compliance
- Over 4.3 million businesses have filed first set of returns for October, notching up the highest monthly filing by the due date since the new tax rolled out on July 1
- That's around 56% of the registered taxpayers
- The last date for filing GSTR-3B, the initial sales returns, was November 20 for the previous month
- Around 56% of the registered taxpayers had filed their GSTR-3B

returns for October by November 20,2017

- Punjab saw over 73% taxpayers filing GSTR-3B returns, the highest among all the states

14. Badri Narain Sharma named GST anti-profiteering body Chairman

- Badri Narain Sharma, a Rajasthan cadre IAS officer of 1985 batch, has been appointed the first chairman of the National Anti-profiteering Authority (NAA)
- NAA will have a two-year tenure that can be extended by the GST Council
- Chairman will be assisted by four senior officials of the rank of joint secretary and above who have been appointed as technical members in the authority

15. October GST collections down to Rs 83,346 crore as compared to Rs 92,000 crore in September

- A finance ministry statement said the total collection on GST for October slipped by almost 10 per cent to Rs 83,346 crore as compared to Rs 92,000 crore in the previous month
- In a major rejig of GST rates, Finance Minister on November 10 announced a 10 per cent cut in tax on over 200 goods ranging from chocolates to cosmetics to artificial fur coats and wrist watches
- According to the finance ministry said Rs 10,806 crore was released to states from the revenue collected from levy of cess on luxury and sin goods, in July and August
- A compensation of Rs 13,695 crore for September and October is being released.

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following Members:

CS S C Singhal *(20.06.1939 – 01.12.2016), a Fellow Member of the Institute from Delhi.*

CS R R Patel *(17.10.1936 -24.04.2017), a Fellow Member of the Institute from Ahmedabad.*

CS O V N Murthy *(02.08.1951 – 10.09.2016), a Fellow Member of the Institute from Hyderabad.*

CS Bajarang Lal Chandak *(07.01.1949 – 09.11.2016), a Fellow Member of the Institute from Faridabad.*

CS P A Shah *(17.01.1933 – 19.07.2017), an Associate Member of the Institute from Ahmedabad.*

CS Amar Kumar Sarkar *(01.12.1926 – 16.08.2017), an Associate Member of the Institute from Kolkata.*

ACS 5722 CS Vijendran Sudhindar *(23.06.1949 – 27.04.2017), an Associate Member of the Institute from Chennai.*

CS Visnoo Kumar Agarwal *(14.03.1967 – 14.06.2017), an Associate Member of the Institute from Delhi.*

CS Sandeep Mandhana *(09.03.1972 – 01.09.2017), an Associate Member of the Institute from Kolkata.*

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

ANNOUNCEMENT

EMPANELMENT OF RESOURCE PERSONS

ICSI Invites Applications for Empanelment as Study Writers / Reviewers for ICSI New Syllabus (2017).

ICSI unveiled its New Syllabus for Executive and Professional Programme on November 22, 2017 on the occasion of 45th National Convention held at Thiruvananthapuram, Kerala, India. Apart from various significant facets of the New Syllabus, some of its salient features are-

i) Innovative concept of Core Areas for Company Secretaries, Ancillary to Core- Areas allied to Core Areas and Hybrid- Combination of Core and Allied areas.
ii) Metamorphosis from Theoretical approach to Practical approach.
iii) Contemporary and expected future profile of Company Secretaries.

Now ICSI has started the process of developing the Study Material and its review in order to ensure pristine contents in all the subjects.

To attain the aforesaid academic objective, ICSI invites applications from Company Secretaries/ Chartered Accountants/Cost and Management Accountants/ Advocates and Academicians to be part of the panel for Writing the Study Lessons / Reviewing of the Study Lessons of various subjects covered under the ICSI New Syllabus (2017).

The list of Subjects covered under ICSI New Syllabus (2017) is as follows-

Executive Programme

Module-1: 1. Jurisprudence, Interpretation and General Laws; 2. Company Law; 3. Setting up of Business Entities and Closure; 4. Tax Laws.

Module-2: 5. Corporate & Management Accounting; 6. Securities Laws & Capital Markets; 7. Economic, Business and Commercial Laws; 8. Financial and Strategic Management.

Professional Programme

Module-1: 9. Governance, Risk Management, Compliances and Ethics; 10. Advanced Tax Laws; 11. Drafting, Pleadings and Appearances.

Module-2: 12. Secretarial Audit, Compliance Management and Due Diligence; 13. Corporate Restructuring, Insolvency, Liquidation & Winding-up; 14. Corporate Funding & Listings in Stock Exchanges.

Module-3: 15. Resolution of Corporate Disputes, Non-Compliances & Remedies; 16. Multidisciplinary Case Studies; 17. Elective Papers -1). Banking – Law & Practice, 2) Insurance – Law & Practice, 3) Intellectual Property Rights– Laws and Practices, 4) Forensic Audit, 5) Direct Tax Laws & Practice, 6) Labour Laws & Practice, 7) Valuations & Business Modelling, 8) Insolvency– Law and Practice.

Eligibility Criteria

1) Minimum 10 years of experience as Company Secretary / Chartered Accountant / Cost and Management Accountant or Advocate.
2) Academicians from Management/ Finance / Human Resources / Law / Economics / Accountancy discipline preferably Ph D with minimum 10 years experience of Teaching and Research.

Professionals / Academicians fulfilling above criteria and interested to be part of the panel of Writers / Reviewers of Study Lessons, development of multiple choice questions (MCQs), may kindly send their recent Bio data indicating the subject/(s) of interest for writing study lessons or review of study lessons or developing MCQs on the following email id: akinchan.sinha@icsi.edu, on or before December 25, 2017.

Please find the ICSI New Syllabus (2017) on the following link: https://www.icsi.edu/WebModules/SYLLABUS_20_NOV_2017.pdf

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"speak the truth abide by the law"

Dear Students,

As you are aware, the Institute has entered into the Golden Jubilee Year which was marked by the inauguration of the Golden Jubilee Celebrations by the Hon'ble Prime Minister, Shri Narendra Modi on 4th of October, 2017.

The Prime Minister of India, Shri Narendra Modi, in his address to the CS fraternity conveyed the need of the hour for the CSs to play an active role in producing a new business culture. Shri Narendra Modi shared that nearly 19 lakh new citizens have come under the scope of indirect taxes following the implementation of GST. He emphasised that a small trader or a big trader, everyone should adopt the honest tax system inbuilt in the GST and it was also the duty of, CSs to encourage the business community in this regard. The Prime Minister asked the ICSI to take the responsibility to train one lakh youth about small-small things related to GST so that they can help small businesses and traders in their area linking them with GSTN, in filing returns after receiving a short term training.

The Institute has taken up this on the guidance by the Hon'ble Prime Minister. ***Consequently, the Institute joined hands with National Skill Development Corporation (NSDC) to organize a Training Program on GST for our students.*** The Institute is inviting its interested students for taking up this Training Programme being organized all across the nation through the NSDC.

About the Course - GST Accounts Assistant:
This program is aimed at training candidates for the job of a "Goods & Services Tax (GST) Accounts Assistant", in the "BFSI" Sector/Industry and aims at building the key competencies amongst the learners about GST. With access to around 500 Training Centre, the course will be accessible across India. The course will enable the students to help the small/big size business entities, traders and others in understanding GST and help them in filing there taxes and maintaining the proper systems/data for the same. This will open a source of earning for the students.

After completing this programme, participants will be able to:

- Compute tax liabilities namely GST, making to the Government, filing of returns and maintaining records of the same for audit purpose.
- Fill the form and register under GST
- Make payment electronically of such amount of tax liability.
- Fill-up the tax return form in the prescribed format with relevant transaction details.
- File periodic GST Returns independently

The interested students may confirm their willingness for the GST Course by filling up the form at the following link: www.goo.gl/tE6MDU

For more information please speak to the following helpline number: +91 120 408 2125(ICSI) or 88000-55555(NSDC)

We look forward to your active participation to enhance your skills and get benefitted from the same.

Best Regards

CS (Dr.) Shyam Agrawal
President

BEING IN THE PRESENT MOMENT

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

One of the characteristics of modern life seems to be the ever-increasing rate at which we are moving, a rat-race of which we find ourselves a part of. Most of us, today, crib about lacking time. We are too busy (read terminally busy) to have enough time to do what we want to do or when we want to do. "I wish I had a few extra hours" is a common refrain. But what we need to think about is, if the time is really short for us or if we are not able to manage time. Everybody on the planet gets 24 hours a day but how one utilizes those hours differs from person to person. Almost all successful people place a very high value on their time and they continually work at becoming better organized and more efficient. As an administrator one needs excellent time management skills to not only to avoid disorganization and disarray at his workplace but also to have a career marked with high achievement and success. An administrator has a lot of actions to perform on a daily basis but unfortunately, most administrators face the challenge of managing time well. The reasons could be many.

Generally speaking, in our relationship with time, we compulsively pick over the past in order to learn lessons from it, and then project into a hypothetical future in which those lessons can be applied. In this shuttling between the past and the future often the present moment slips by without our realizing so. The fact of the matter is neither the past exists nor the future. These two exist only in our minds. There lies tremendous power in the 'present' which exists between a vast past and an infinite future. No wonder the book The Power of Now by Eckhart Tolle has sold over 2 million copies worldwide and has been translated into over 30 foreign languages. Tolle wrote, "Unease, anxiety, tension, stress, worry – all forms of fear are caused by too much future, and not enough presence. Guilt, regret, resentment, grievances, sadness, bitterness and all forms of non-forgiveness are caused by too much past and not enough presence". To gain this power of present one has to be consciously there in the present moment or else the moment is gone before you even realize it.

Tug of War – Past vs. Future

The past and future are merely reference points to understand what we have learned and where we can take it. They never meet; they never cross each other's way. Past is that which is no more, and future is that which is not yet. Both are non-existential. But often people get stuck in the past events –good, bad, ugly – thereby unconsciously empowering them to influence the present. Unable to let go of the past bad experiences and worrying about the future we are thus creating those same experience ahead. When the past memory has been pleasant, it is the attachment to that pleasantness which is rooted in fear of not being able to experience it in the future. So, expanded bliss in the future goes out of reach, each time we set the level by re-affirming and projecting the past. Either way, growth is stunted.

The present is where we are, the central and the neutral space. Henry David Thoreau said, "The meeting of two eternities, the past and future…is precisely the present moment." Understanding what it is to be in the present moment becomes easier when we understand what it means to not be present, since this is the state we have become habitual of. When you aren't being present you become a victim of time. We tend to live our lives on a very superficial level. Our mind is pulled into the past or the future, or both. We move from one scene of life to another - eating, watching television, getting married, changing jobs, buying a new car or house, etc. without ever stopping. Of course, it's natural to spend moments of thought in the past or thinking or planning of the future. Identifying impending dangers through associations with things that have happened in the past is important for self-preservation. There may be times when an administrator needs to think something through — perhaps a business decision, retirement planning, or how to communicate his feelings and desires to his office staff. But when our lives become dictated by thoughts and emotions attached to past events and potential future outcomes, standing peacefully rooted in the present becomes increasingly rare.

So, how do you know if you are in the moment? It's simple – if you are aware of your thoughts and emotions, then you are present and in the moment. If you create what you want now, you'll naturally move into a future of what you want.

Benefits of Being in the Present Moment

- **You'll use the moment wisely** with precision and intention to get what you want. Only awareness can do that. If you want life to be different in the future, then the time to act consciously is NOW. It also means to make the optimum and best use of this moment. So instead of browsing tabs on the internet browser and only struggling to fix what to do first, let's take 1 task at a time and complete it before we start the next one.

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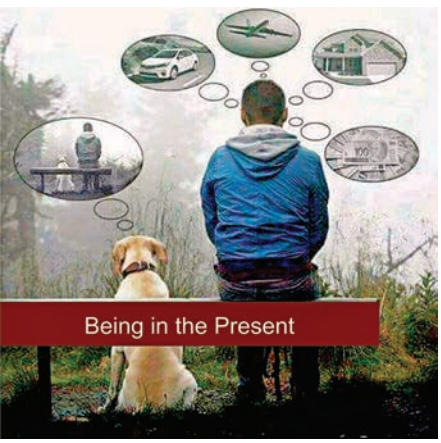

- **You live in a constant state of joy** when you're in the moment. This is because in the 'now' your old emotions, dislikes and problems cease to exist – they cannot exist. Why? Because they all have a reference of the past bad experience or future prophecy of failure or the unexpected. Even thinking that the last moment did not go well is thinking of the past. Thus, we have to be in the natural consciousness of the truth and righteousness, so as to bring value to our every moment and our acts within that moment. Spirituality helps us build this natural positive and elevated consciousness. It is then our every moment is spent worthwhile and we need not repent, or trap ourselves in the memories of the past or fear of the future. This makes us stabilize in the state of constant joy and bliss.
- **You care for yourself.** You decide what is good for you in the 'now'. You won't blindly do what others do, you won't do what they think is good for you or feel that you must do to impress others – friends, seniors, subordinates, bosses or colleagues. Whatever you do when you are 'now', you do it for yourself. So, bringing out positivity in the moment by realizing the moment, is to care for yourself as our 'now' shapes our future. A good 'now' is equivalent to a better future.
  Moreover, any pain or illnesses or diseases tend to disappear when you are truly in the moment and are fully aware of what you are thinking.
- **You achieve more in your day** because being in the moment actually saves time. When we are in the present, the mind is calm and one's efficiency increases, as we don't take time to grasp things, remember or recall what was said to us- which often happens when we were not present in the present when instructions were being given or something was explained to us. Plus, we don't need to waste our time to pull ourselves back into the present from past or future, to do the task, as we are always there. This would mean you can actually save time and this saved time could account to a couple of extra hours, say for instance 2 hours a day. 2 extra hours per day, multiplied by 5 days per week, equals 10 extra hours per week. 10 extra hours per week multiplied by 50 weeks per year would give you 500 extra productive hours each year. 500 hours translates into more than twelve 40-hour weeks, or the equivalent of 3 extra months of productive working time each year.
- **You'll never get tired** when you are in the present moment as you only have one thing to deal with. It's not true to say that 'work drains our energy'. On the contrary you will have more energy when you are able to achieve more and you are more confident and ready when the next task arrives. In fact, too much thinking about past or future could be exhausting. The only key is to have full focus on the present and give it your best shot without worrying what will the next task be.
- **You are free** in the 'now'. In the past or future, we fear what others think of us and their opinions are important to us. But in the 'now' none of that matters – we allow others to think what they want, be what they want – and we allow it for ourselves too.
- **You are open-minded and humble.** When new information arrives and you're in the 'now' it's exciting and like an adventure. You're open to trying it. A closed mind comes from fear and fear lives in the past. Eckhart Tolle wrote in the book Power of Now, "Most people treat the present moment as if it were an obstacle that they need to overcome. Since the present moment is Life itself, it is an insane way to live." Also, there is no winning or losing in the 'now', everyone is equal

Being in the Present Moment through Rajyoga

Rajyoga attends to all aspects of our being – body, mind, emotions and the Inner Self. Awareness of self establishes you in the present moment without our skating across the surface of life. It lets us be in touch with the core. Ideally, the thoughts that run in the mind should be exactly those that I would like and I want. We do exert this control, that we possess, over our thoughts, but it is not complete and it is only occasionally. The more we become completely engrossed in our daily routine, the more our thoughts tend to become reactions to what goes on outside us. That's when they go out of control and our lives move in an unfocused way. As a result, things don't work out as we might have desired. Then we develop a habit of blaming other people and circumstances, or we justify our pain by telling ourselves we are not very worthy or powerful enough. Often, these two inner strategies go together. The trouble is, both are cover ups, preventing us from going for a long-term solution.

The secret of awareness is to just watch everything that is going on in the body and mind - as a witness. You do not resist, but watch your bodily movements and thoughts as a detached observer.

Rajyog Meditation

In Rajyog consider your mind as a stage, and each thought, feeling, emotion as a scene in the film of your life. They will come, don't try to control anything, let them simply fly away on their own. Simply observe how your thoughts pass through your mind. Don't identify with any of them, only observe. Look where they take you. Just observe what happens inside you without

Even thinking that the last moment did not go well is thinking of the past. Thus, we have to be in the natural consciousness of the truth and righteousness, so as to bring value to our every moment and our acts within that moment. Spirituality helps us build this natural positive and elevated consciousness. It is then our every moment is spent worthwhile and we need not repent, or trap ourselves in the memories of the past or fear of the future.

judging. The thoughts flow through your mind as if they were clouds that are crossing the sky until everything is clear and open. The mind is becoming calm, making itself peaceful like the surface of the sea when it is serene.

Now, be conscious of the sounds that are produced around you... Stay here and now as an observer who sees and feels everything from a point of light, a point of calm and peace, behind these eyes. Feel the calm... the tranquility... that comes from within you... Look around you... Observe without interpreting or judging... Feel the silence that is created through the power of concentration. Consciously, create a positive, peaceful, elevated thought that you repeat slowly in your mind, leaving a space of silence between one thought and another, while you keep the focus on that point...

I am a being of peace... I am at peace... I feel the peace... I am light... I am a being of light... My nature is of light... peace and silence... I am feeling the silence between one thought and the next... I listen to the peace... a silent peace... calm.. This peace and silence attracts the ocean of peace... I feel the attraction towards my home of silence and peace... a world full of soft golden light, beyond the sun, moon and stars... In this peace and silence, I strengthen myself... my mind rests in that calm and quietness...

I experience a light, the Supreme Light, the Supreme Soul who fills me... He recharges me... renews me... heals me... frees me... I am free... completely free... now I am at peace... I leave my mind in silence, as if I were floating on a sea of peace for a few minutes...

Once you begin working on the present moment with the intent of improving your life you begin to utilize the power of now - you leave the past in the past, you don't concentrate on the future and instead you start living in the present moment doing everything that you can to improve your life now.

When we are in the present, the mind is calm and one's efficiency increases, as we don't take time to grasp things, remember or recall what was said to us- which often happens when we were not present in the present when instructions were being given or something was explained to us.

DEVELOPMENTS – NOVEMBER, 2017

IFC LAUNCHES "PACIFIC CORPORATE GOVERNANCE INSTITUTE" TO BOOST GOVERNANCE STANDARDS

A program to improve corporate governance in the Pacific, funded by the Australian Government, has been launched in Fiji with an eye towards increasing the number of women in board positions.

The International Finance Corporation (IFC), a member of the World Bank Group, launched the "PACIFIC CORPORATE GOVERNANCE INSTITUTE (PCGI)" on 24th November, 2017 to boost the region's business sector through good governance.

The program aims to mobilise greater investment in Fiji's private sector through improving efficiency and strengthening the overall business environment, including better facilitation of career progression for women on the corporate ladder.

The program will help in promoting board training for women, as there are only eight women out of 109 board positions on companies listed on the South Pacific Stock Exchange.

Endorsed by the Reserve Bank of Fiji and working with the South Pacific Stock Exchange, PCGI will help improve the performance of Pacific companies, state-owned enterprises and banks through education of good corporate standards, market awareness and advocacy, with the aim to help bolster long-term growth.

PCGI will organize and coordinate in-depth governance training for board directors and management executives as well as establish a platform for private sector to be strong advocates to help shape the regulatory and broader business-enabling environment.

The launch was marked by a special focus on the importance of governance for family businesses, with research globally showing only about a third of family businesses survive their founder because they fail to prepare for the demands of a growing business and larger family network.

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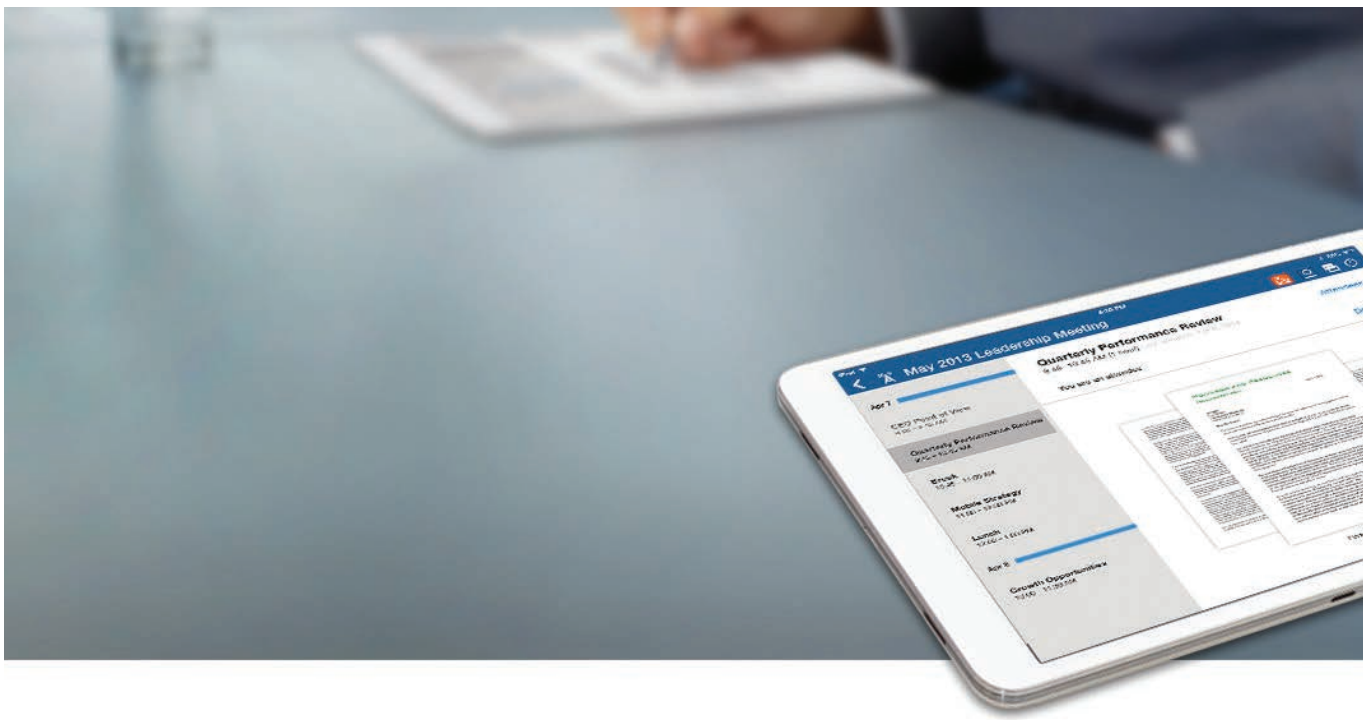

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Regn. No. 21778/71
Posting Date : 10/11-12-2017
Date of Publication : 04-12-2017

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