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Estd. 1926

ज्ञानं परमं बलम्

**The Chamber of Tax Consultants**

Mumbai | Delhi

[www.ctconline.org](http://www.ctconline.org)



## THE CHAMBER OF TAX CONSULTANTS

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Estd. 1926

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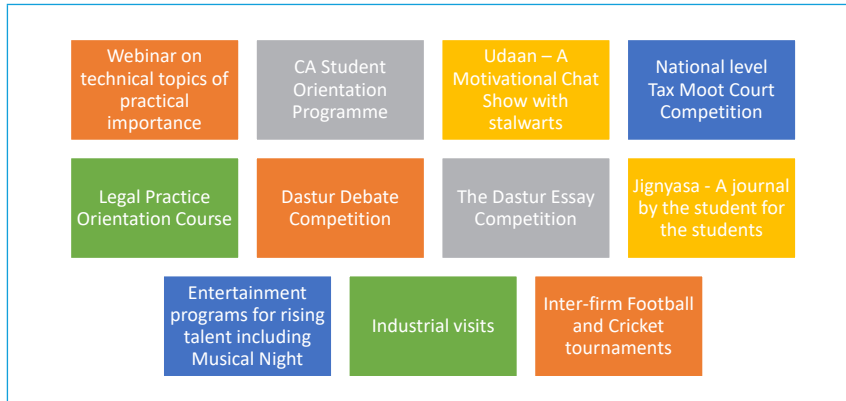
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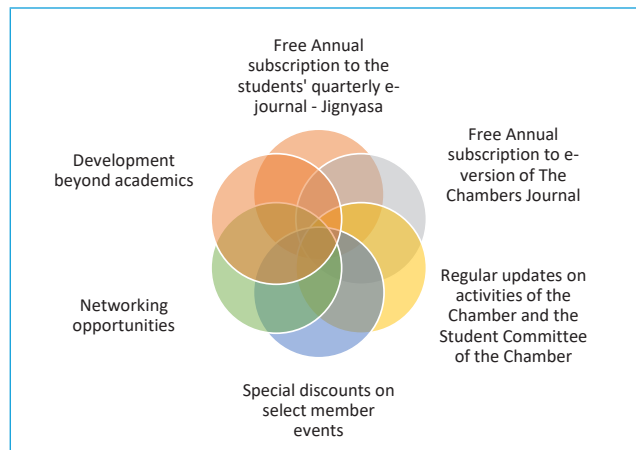
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### What are the benefits of becoming a student member of the Chamber?



### Who can become a Student Member?

Any person, who:

- ✓ has completed 18 years of age;
- ✓ is not otherwise eligible to be a member of the Chamber;
- ✓ is pursuing his/her education as a student and has enrolled as a student of Law, Chartered Accountancy, Cost and Management Accountancy, Company Secretary, Chartered Financial Analysts, Business Management or Management Accountancy or Masters in Commerce or such other course approved for this purpose by the Managing Council shall be eligible to be a Student Member.

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The fees for becoming a student member is merely Rs. 590/- [Rs. 500/- + Rs. 90 (GST @ 18%)]

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Address : 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020

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For any queries, you can also get in touch with Mr. Hitesh Shah (Manager) at:

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## President and Chairperson's Message



**CA Haresh Kenia**  
*President*



**Niyati Mankad**  
*Advocate  
Chairperson,  
Student Committee*

### **NURTURING RESPONSIBLE CITIZENSHIP: THE ROLE OF STUDENT IN INDIA'S GROWTH STORY**

In today's world, students are pivotal in steering a nation's future beyond classrooms and textbooks. As you stand at the brink of a promising future, armed with knowledge and potential, your role as responsible citizens becomes crucial in shaping India's progress. Cultivating responsible citizenship involves active involvement in politics, community engagement, and contributing to India's ambition of becoming a 5 trillion-dollar economy and global powerhouse. Here's a comprehensive guide on how you can contribute to this journey while instilling a sense of nationalism and driving impactful change.

#### **Active Participation and giving back**

Engage in community service initiatives that nurture empathy and belonging. Volunteer for social causes, promote education, healthcare, and uplift marginalized communities. Volunteering and engaging in community initiatives instill a sense of empathy and solidarity. Embracing the ethos of giving back ensures that prosperity is shared. Whether through mentorship, pro-bono work, or philanthropy, your contributions create a ripple effect in society.

#### **Political engagement and Nationalism**

Participating in politics isn't merely about joining a political party; it's about engaging in the democratic process. Get informed about policies, understand various parties' ideologies, and critically analyze their manifestos. Engage in discussions, debates, and, if inclined, consider entering politics to effect positive change. By actively participating in political processes, whether through discussions, campaigns, or voting, you contribute to shaping the nation's direction.

#### **Voting and choosing leaders**

Exercise your voting rights responsibly. Educate yourself about candidates, their integrity, and commitment to societal welfare. Choose leaders dedicated to the country's development, transparency, and ethical governance.

## **Adapting Soft Skills for the AI Era**

While technical prowess remains essential, the integration of soft skills such as communication, adaptability, critical thinking, and problem-solving is imperative. These skills complement technological advancements, enabling you to effectively collaborate, innovate, and lead in a dynamic and AI-driven landscape.

## **Emotional Intelligence (EQ) for Professional Resilience**

Developing high emotional intelligence is key to navigating the challenges posed by AI. EQ encompasses self-awareness, empathy, and effective relationship management. It allows you to understand and regulate emotions, navigate complex situations, and foster meaningful connections in the workplace and society.

## **Sustaining Relevance Amidst Automation**

AI and automation are revolutionizing industries, impacting traditional job roles. However, by honing soft skills and emotional intelligence, you elevate your professional profile. These human-centric abilities, coupled with technical expertise, create a distinctive edge that machines cannot replicate.

## **Innovating & Embracing Change**

AI thrives on human innovation. Embrace technological advancements, innovate solutions merging efficiency with human-centric values, ensuring your relevance and contribution to a dynamic economy.

## **Contributing to Economy & Professional Dedication**

Excel in your profession with dedication, ethical practice, and continuous learning. Your role as students significantly impacts the economy, supporting compliance, ethical practices, and advocating for conducive business environments.

## **India's Journey to a \$5 Trillion Economy and Vision Viksit Bharat @ 2047**

Your dedication, responsible citizenship, and active participation are vital in achieving India's ambitious economic goals. By blending technical prowess with holistic skills, you fortify your role in shaping the nation's future. Moreover, align your efforts with the Vision Viksit Bharat @ 2047 initiative launched by PM Narendra Modi. Contribute your innovative ideas on the portal <https://innovateindia.mygov.in/viksitbharat2047/>. Embrace this vision by empowering yourself to be the architects of India's future. Envision a developed India by 2047, working towards a prosperous, inclusive, and technologically advanced nation.

In conclusion, your responsibility as a student extends beyond academic excellence. Embrace active citizenship, contribute to the community, and make informed choices for India's growth. Your actions today pave the way for India's prosperous tomorrow, and in this age of AI, your adaptability, empathy, and innovation will be indispensable. Together, let's lead India towards a brighter and inclusive future envisioned under Viksit Bharat @ 2047.

## The Internship Playbook – An Essential Guide



*Hasit Sheth,  
Advocate*

### Executive Summary

Internship is an important training in an apprentice model. The article journeys through from finding an internship to making most of it when one gets it. There are many suggestions with ample dos and don'ts. Internship as an intergenerational skills transfer method is discussed. Key idea is to understand internship is a building brick of a career, which is built brick by brick. All though, keeping the big picture in focus of how a firm or business makes revenues and profits is emphasised. Even the idea of not interning by choice is covered. Several topics like ethics, workplace culture, mistakes and finding the right fit are described. Also,

### Internship's roots are in the apprenticeship system

The internship system's roots are in the apprenticeship system of the middle ages. Artisan guilds passed on their secret knowledge to the next generation in return for some labour. Master craftspeople at artisan guilds to make glass, steelwork, carpentry and similar crafts would teach the apprentices. The apprenticeship system was all about practical training. All learning was on the job. With the rise of formal education, some parts of it became "vocational education" in schools, polytechnics and Industrial Training Institutes (ITIs). The central idea of apprenticeship is the

intergenerational transfer of skills which remains intact to date.

### Change from an "apprentice" to an "intern"

The manufacturing world still uses the "apprentice" terminology. India also has a law for it: The Apprentices Act, 1961. But the rise of the service industry (software, banking, law firms, tax consulting, etc.) has popularised the term "internship". Change in terminology apart, the function of an internship is the same as an apprenticeship. The idea behind an internship is to provide hands-on, practical working experience to students while their formal study course is still in progress. Several formalised training programs like the articleship of chartered accountants and solicitors already exist, but internships are typically short and last a few weeks.

### Learning the craft

An intern and her mentor should focus on skills transfer. Two major categories of skills to learn and teach are functional skills and behavioural skills. Functional skills will cover subject matter, e.g., laws, rules and procedures in tax consulting firms or law firms. While rulebooks contain all rules for filing, there are tens of nuances in any task. For example, if regulatory or court filings for a few cases are to be done together, the nuances can be sequencing the filings, pre-requisites



before filings, variations for filings if cases differ, packing into multiple or single filings, usual website or departmental quirks, fee payments, client signatures, notarisation and many similar issues. These are things that one learns while observing others doing filing. They can also be learned by working under the guidance and supervision of an experienced professional.

### **The economic bargain of an internship**

The economic bargain differs for internships based on the parties and work involved. Several internships are unpaid and may involve intensive work. There is increasing resistance to unpaid internships and rightly so. But in a country with rising unemployment and good opportunities being few, an unpaid internship is a choice to be made against future opportunities. But paid internships too may not cover full expenses if it is in a new city. Progressive organisations are now defraying some if not all expenses of interns. A long-term view of follow-on benefits is necessary and expectations from internships should be kept realistic.

### **What if you do not or cannot intern?**

It's simply OK if you cannot intern or do not want to intern. Every choice comes with a trade-off. The absence of internship history may be a barrier to getting past human resource criteria in a large organisation. It's particularly challenging for a fresher looking for the first job without any internship experience. But the world does not end if you don't intern. Employers will say fine if you didn't intern but what else did you do during that time? If you did social service or published a small book or wrote articles in professional journals, the employers may consider it at par with an internship. The point of an internship is to provide proof of capacity to work and ability to learn. That proof can also come through non-formal ways. But be ready to prove to yourself

and the world that the path you chose is the best one for your plans.

### **Core knowledge is the key**

At times, young professionals forget that a resume full of internships means nothing if your core knowledge of the subject is shaky. Your fundamentals must be clear. Period. For example, what is a valid contract must be clear without any doubts for any lawyer. It means having a thorough understanding of what is not a valid contract! Understanding and clarity in the basic concepts of any field are hidden superpowers of those at the top. And this clarity cannot be gained by merely running around in an office. It needs deep study whether done during or after the formal course is over. Whatever may be your internship or job search strategy, always ask how well you know and can apply the key fundamental principles of your field. Expertise-based professions like law, medicine, tax or finance require you to have a strong reservoir of knowledge that is refreshed all the time.

### **Finding a Right Internship**

It's quite an effort to find the right kind of internship. Human resources professionals call it a "fit", i.e., the right candidate for the right organisation for the right kind of work. A fit is not easy to achieve, but in short internships, it may not matter much. One sure thing is that professional workplaces are not colleges. They exist to earn profits and not merely to train people through internships. When you intern, ask yourself how you are contributing to the profitability of a company. It's never too early to understand how the business makes profits wherever you may work.

Research the organisations you want to intern with in good depth from all publicly available information. Like any strategy, you will have to choose trade-offs. You will discover how your



mind works to balance short-term gains versus the ability to delay gratification. You will find out if you like being a small part of a large organisation or an important player in a smaller organisation. All this is part of discovering your professional self. But in all scenarios, make sure you will be acquiring skills and not mere certificates. After your first job, nobody will care whether you interned at the best places. The halo of interning at the best places lasts about a year or two into your career and then it disappears behind professional work experience.

### **Prepare Before You Intern**

It's best to do background research on any person or organisation before you meet them. It also helps to make the interactions interesting. The same rule applies to firms you want to work with. Research the organisation well. It means knowing the profiles of key partners and bosses you are likely to work with and their upline bosses. The background research is not hard to do with the tools like LinkedIn for smaller firms. Know the website of the firm inside-out. Reach out to the immediate team if you know their names and email before you join them. Tone your emails so that your desire to learn makes an impression of an enthusiastic upcoming intern. Know the business and services of the organisation to figure out from where revenues are generated and how profits are made (unless you are joining a non-profit organisation). An early understanding of business instead of just a desire to get a job is a marker of leadership skills too. In all this, don't let your imagination get the better of you. This is the real world; things happen at a specific pace. Accept the pace and adjust your mindset to the pace of how things work in the firm you have joined. You need to train yourself to be efficient before you step into any office. Be ethical in the smallest of your dealings. Learning to respect time or personal efficiency are some personal traits

that cannot be learned overnight. Fix these things before you step into any office; you will not have time later in your career to fix basic personal issues.

### **Know technology**

It is now impossible to function without technology in any professional organisation. Email is the king of technology; it can make or break careers. Email skills mean writing skills. You must still get better at writing letters even if sent as letters or by post. Business letter writing is an underestimated skill. Legal positions are constantly affected by letters sent out by the business. Business letters constantly record facts that contracts are formed, modified, performed, and terminated. Pick up the phone whenever needed to clarify things. Be careful in calling senior people, you may be wasting their precious time. It's best to have a mid-level colleague or your immediate reporting boss smooth out the communication curve for you. As an intern, you are learning to function in a business environment. Here, your social skills in a college environment are not quite relevant. How you describe your internship experience on social media is up to you, but in any case, do not breach any client confidentiality redlines.

### **First Day at Office**

It's easy to get lost in a large office on your first day. Everyone may seem busy with what they are doing. It may seem you are being ignored after a formal introduction. The senior partner who welcomed you on the first day may never meet you again. All these things are part and parcel of a busy workplace. In any professional office, it's the clients and official deadlines that come before any individual's comfort. So take a deep breath and start being useful around. Gently ask what you can help with. There is always work to do, e.g., filing, arranging papers, research, calls to be

made, logistics arrangements, etc. Volunteer to do whatever comes your way as tasks.

Don't sit in an office and read your exam books; you are not in a library to prepare for an exam. Don't be eager to show off your textbook knowledge or learning. Don't get into arguments about you being right. Remember you are learning, not teaching them even if you are a genius. Gently fit into teams. Join lunches or any social events around. Introduce yourself to everyone you meet. Keep an office notebook to jot down the names of everyone you meet and what work they do. Most likely you will meet them again in your professional journey. Internships are also a way to create memories and lasting professional networks.

### **Be Useful and Resourceful**

Now that you have started working, the fun begins. You may be given small or large tasks. Some projects require "all hands on the deck". That means everyone in the office gets tasks to do in a large, time-bound project. A high-pressure project is your best bet to make an impression. But there may be times when you feel stuck in a slow-motion movie. Peaks and valleys in workload are common in a professional services organisation. The pace of work is set by client requirements that may pop up suddenly. There is no need to get worked up over any small operational issue. Work will get done, eventually. A problem-solving mindset succeeds over blame game mindset.

Time is money in the professional world. In any firm, a chain of people gets a task done. If one person in this chain sits over a task for too long, the whole system suffers. If you are stuck, seek help and get the task moving. No task is inconsequential. The cost of fixing small issues, e.g., a wrong sequence of pages, the absence of an index, incorrect page numbers, spelling mistakes, etc., can be catastrophic. Even if your

job is to proofread documents, do the task very diligently while learning the underlying ideas and strategies.

### **Networking at Office**

In general, being polite wins over being aggressive. Don't mistake being assertive with being aggressive. Assertion is required to get the job done at times. But being aggressive is simply a recipe for disaster. Also, don't appear to be desperate to convert the internship into a follow-on job offer. Appearing desperate to find a job, however acute your need, will most likely work against you. Better to use the opportunity of an internship to network with colleagues and build longer-term associations. Those who succeed are good at finding people with common interests and values in a workplace. While working, seek future mentors. Your colleagues will be in the best position to give you a good reference in future background checks.

### **Doing Real Work**

A task in hand is worth ten in your imagination. What needs to be done, must get done in good time and without errors. Improve your time estimation skills as you practice. Execution is the key. An average but consistent worker, invariably succeeds against the lazy resident genius. Errors will happen in your work. But how you deal with those errors will set you apart. Taking ownership of a project and its flaws increases your future utility and success in any organisation. Once something is done, seek feedback to improve your future similar tasks.

### **Last Day At Office**

Inevitably, your last day of internship will arrive sooner than you expected. It's time to say goodbyes with promises to keep in touch. If you have developed good relationships with your colleagues, they will make sure to remember



you when a vacancy arises. It's important not to burn bridges even if you had some unhappy experiences or things didn't go exactly as you expected in the internship. You don't need to accept any behaviour that is very rude, bullying or truly illegal – all of which must be reported to your superiors. But mere tactical disagreements or differences in working styles should not be a reason to get upset. Always keep in mind the long career ahead of you before you get upset easily over things that will be pointless in a few days.

### **What Next**

Building a career is like bricklaying. One brick of experience at each stage of your career creates a solid "career-wall" in future. Seek incremental growth with each experience. Build good relationships with each "brick". Internships come and go. No doubt, great brands on your resume

will be impressive. But it's more a reflection on those brands than your skills. Once one internship is done, it's now time to find the next internship or a job. Use the past lessons to lay the next "brick" of your career-wall. Just like the height of the career-wall is only one of its features, the strength of the career-wall also matters. Your career-wall must have windows to view future opportunities. It's OK to go wrong in some of your choices and start rebuilding parts of your career. It's never too early to start thinking of giving back to the knowledge and skill pool of your chosen profession. Volunteer from an early time in your career to help others grow too. In all this, your enthusiasm for work, and your passion for your field be it tax, law or anything else will be your biggest asset. The world is a big place. My best wishes for to you to do well in your career.



## Registration under Real Estate (Regulation & Development) Act, 2016



*Kamika Futane,  
CA Aspirant*



*CA Aditya Zantye*

In India, for every common man, a house is one of the major and unequalled investments. The real estate market in India both residential and commercial is estimated at USD 265.85 billion in 2023 with a lucrative YoY growth rate of around 5% to 16% city-wise. To ensure the protection of the interest of the property buyers in this growing sector and to provide a safe environment for investment in Real estate, the Real Estate (Regulation & Development) Act, 2016 ("the Act") came into effect from 1st May 2016. Some sections of the Act were notified from 1st May 2016 and all the State Governments were given one year to formulate their own Rules and Regulations and set up the Authority, to implement the Act from 1st May 2017. The act aims to bring in transparency and efficiency to all the real estate transactions carried out along with a speedy dispute redressal mechanism. It addresses the common problem faced by buyers transacting in this sector which includes lack of authentic information about the project, delay in completion of the projects, high risk of fraud, default in quality, exaggerated prices and most importantly the fear of losing the money invested in any of the failed projects, by bringing in precise provisions targeting the issues in this sector. The act provides for the safe deposit of the amount received from the buyer to the developer in a designated bank account and regulated withdrawal of the funds from the account. It also mandates the registration of the real estate project, both commercial and residential, by submitting all the

proofs and documents as required by the act along with the registration of promoters of the project and Real estate agents. The act ensures that the developer sells the properties based on the carpet area of the property which is the net usable floor area which will ensure fair pricing of the property. The act brings stability to this sector by building trust and boosting confidence among the investors which in turn attracts investments in this industry and braces development. The act gives power to every Indian state to establish a real estate regulatory authority to register every real estate project and monitor them as well as to adjudicate and arbitrate disputes arising from the projects and areas under their scope. While the centre has reserved the right to make any necessary changes to the Act.

### Registration under RERA

As the main objective of the act is to promote transparency and accountability among real estate transactions, registration and approval of all real estate projects becomes a significant subject matter. The Act mentions provisions and requirements for the registration of real estate projects along with the registration of promoters of the project and the registration of real estate agents under the Act. The provision laid down for mandatory registration under this act and the process of approval of the same by the Authority thereof marks the authenticity of the projects and creates awareness by promoting good governance

practices which will ensure adherence to the foremost objective and purpose of the Act.

The act distinctly states that no developer/promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner the real estate property in the form of any plot, apartment, building or real estate project without registering the project with the regulatory authority. The provision lays down the requirement of prior registration of all the real estate projects planned to be undertaken by the developers.

The provision further states that the promoter should also make an application to the authority for registration of projects which are under development on the date of commencement of this Act and for which the completion certificate has not been issued, within three months from the date of commencement of this Act.

### Exemption from registration

To ease the processing burden for certain small-scale activities, the government has provided for certain exemptions from registration under the Act. They are as follows,

- Where the area of land proposed to be developed does not exceed 500 Square meters or the number of apartments proposed to be developed does not exceed 8 apartments including all the phases of development.

Here, as per the provision, the above two conditions are independent of each other the developer can avail of exemption if any of the one condition is satisfied i.e. if the land do not exceed 500 sq mtr and if the apartment is to be developed exceeds 8 apartment or vice versa then also the developer can avail the exemption under this act.

- Where the developer/promoter has received a completion certificate for a real estate project before the commencement of the Act.

- Where the purpose of the project is to renovate, repair or redevelop any plot, apartment/building and where there is no involvement of marketing, advertising, selling, or new allotment being made.

Here only those projects will be included wherein there is only renovation/repair or redevelopment of existing property, and no additional units are allotted

### Application of registration of Real Estate Project by the Promoter

Herein, the promoter is the one who constructs or develops buildings or apartments for sale or undertakes any development of land into real estate projects, and the development authority of government and also includes any builder, colonizer, contractor, developer estate developer or any other person is acting as a holder of power of attorney from the owner of the land on which the apartment is constructed or land is developed for sale.

The Promoter shall apply for the registration of the real estate project through the authorized online portal of the regulatory authority by submitting the following documents.

- A brief analysis of his enterprise including name, registered address, type of enterprise,
- Particulars of registration
- Name and photographs of the promoter
- Details of the project launched by the promoter in the last 5 years and current status of the same including any delay in completion, details of pending cases, details of type of land and payment pending.
- Authenticated copy of all the approvals taken from the competent authority and commencement certificate
- Sanctioned plans, layout plan and specifications and the whole project as sanctioned by the competent authority.

- Plan of development works to be executed in the proposed project and proposed facilities to be provided.
- Proforma of allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees.
- Number, type and the carpet area of the apartment for sale in the project
- The number and areas of garages for sale in the project
- Name and addresses of the contractor, architect, structural engineer, or any other person concerned with the development of the project.
- A declaration supported by an affidavit signed by the promoter of a person authorized by him stating,
  - That the legal title of the land used for the purpose of development of the project is with the promoter
  - That land is free from all the encumbrances or details of encumbrances including details of rights, title and name of such party as the case may be.
  - Period for completion of the project
  - 70% of the amount received from allottees will be deposited in a designated bank account maintained with the scheduled bank and shall be used only to cover the cost of construction and land cost. The amount can be withdrawn by the promoter in proportion to the percentage of project completion post receipt of certification by an engineer, an architect, and a chartered accountant in practice that states the withdrawal is in proportion to the percentage of completion of the project.
  - That he shall take all the pending approvals on time.

### Grant of registration

Authority shall grant registration within the period of thirty days from the date of receipt of application and provide a registration number including login ID and Password to the applicant for accessing the website to create its webpage and to fill therein the details of the proposed project.

The authority may reject the application if the application does not conform to the provision of the act or rules and regulations made thereunder within thirty days from receipt of the application. The reasons for rejection should be recorded in writing and the promoter should be given a reasonable opportunity of being heard.

If the authority fails to grant the registration or reject the application within the given time period then the project shall be deemed to have been registered and the authority shall within seven days of the expiry of thirty days period provide the registration number and login ID and password to the promoter to access the webpage.

### Validity & Extension of registration

Registration of the project is valid up to the time period specified by the promoter while making an application.

The authority may grant an extension to the promoter on the application made by the promoter due to force majeure or in reasonable circumstances. Such a time period of extension will not exceed a period of one year.

### Revocation of Registration

The authority may revoke the registration granted to the promoter, on the receipt of the complaint or Suo moto on this behalf on the recommendation of the competent authority after being satisfied that,

- The promoter makes a default in doing anything required by or under this Act or rules and regulations made thereunder.

- The promoter violates any of the terms or conditions of the approval given by the competent authority.
- The promoter is involved in any kind of unfair practices or irregularities.

The Authority may, instead of revoking the registration, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

### Consequences of Revocation of Registration

On revocation of registration, the authority shall

- Debar the promoter from accessing its website in relation to that project.
- Specify his name in the list of defaulters and display his photograph on its website.
- Inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration.
- Freeze the designated bank account maintained for that project.
- Facilitate remaining development work with consultation of government on actions to be taken.

### Registration of Real Estate Agent

The act provides that no real estate agent shall facilitate or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building in a real estate project, without obtaining registration under this Act. Facilitation of sale/purchase under this act also includes activities relating to marketing or advertising the project.

The real estate agent must make an application to the authority for registration by submitting necessary documents which include an authenticated copy of proof of address of place of business, number of branch offices, along with contact details, details of criminal proceedings

against him if he is an individual or any of the partners, directors, trustees etc. in case of any other entity.

The authority shall grant the registration for the entire state or reject the application for the reasons to be recorded in writing, within 30 days from receipt of application. If the applicant does not receive any communication from the Authority within the provided time, then he should be deemed to have been registered under this Act.

The registration for the real estate agent is generally valid for up to 5 years or until revoked, after which he must opt for a renewal of the same.

The registration granted under this Act can be revoked by the Authority if the real estate agent commits a breach of any conditions mentioned under this Act or any rules or regulation thereunder or the Authority is satisfied that the registration by the agent was obtained through misrepresentation or fraud.

### Penalties in case of non-registration or default

#### For Promoter

If the promoter contravenes any of the provisions of prior registration under the act, then he shall be liable to a penalty that may extend up to 10% of the estimated cost of the real estate project as determined by the Authority

If the promoter continues to violate the provision of prior registration even after the directions, orders or decisions issued to him by authorities then he shall be punishable with imprisonment for a term that may extend up to three years or with a fine that may extend up to a further 10% of the estimated cost of the real estate project, or with both.

If any promoter provides false information or contravenes the provisions specified for application for registration for real estate projects, he shall be liable to a penalty that may extend up to 5% of the estimated cost of the real estate project, as determined by the Authority.



### **For Agents**

If any real estate agent fails to comply with or contravenes the provisions of making an application and registration, he shall be liable to a penalty of Rs 10,000 for every day during which such default continues, which may cumulatively extend up to 5% of the cost of plot, apartment or buildings or the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

### **Case Study on Revocation of Registration**

#### ***Bikram Chatterjee vs. Union of India (2022)***

Apropos to the Case, the registration granted to Amrapali Groups under the Real Estate (Regulation & Development) Act, 2016 was cancelled by the supreme court as it was observed that the group had diverted the funds from the designated bank account which is required to be set up under this act and the diverted funds were used

by the directors to purchase personal asset for directors. It contravened the provision of the Act that was laid for withdrawal and usage of the money received from home buyers and, also failed to pay the lease amount and compensation to farmers whose land was acquired. This was termed as a serious fraud and the court ordered the revocation of all the registrations obtained by Amrapali Groups under this Act.

### **Conclusion**

The real estate industry thrives based on trust and various stakeholders are involved in many different ways for a project to get through. Registration of the projects thus plays an important role in this process. Infrastructure and good housing facilities make a huge impact on the country's overall growth and this Act to a large extent regulates the space of real estate and provides for the protection of the interest of the home buyers.



## Compliance under RERA



Sujeet Kane,  
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CA Aditya Zantye

The Real Estate (Regulation & Development) Act, 2016, was made fully operational with effect from May 1, 2017. There began a norm for myriad of strict compliances under RERA that had to be adhered to by each developer and promoter, in different parts of the country. Before getting into the technicalities associated with Compliances under the Act, it is of paramount importance to understand the rationale for speedy implementation of RERA.

Prior to enactment, the situation of the real estate sector can be better understood through a lighthearted, fictional joke that touches on the theme without undermining the severity of the issue:

"Why did the Real Estate Developer bring a ladder to the office?"

"Because he heard the higher you climb, the more '**transparent**' the deal becomes."

Transparency was a glaring issue, with potential homebuyers facing difficulties in obtaining accurate and reliable information about projects and developers. Unregulated practices, such as misleading advertisements with respect to property features (claims such as 'sea facing views'), pricing (to generate interest and attract more offers), neighborhood (safety or noise claims) and financing (Low interest rates with hidden additional fees or charges) along with arbitrary changes in project plans or prices were pretty common. Project delays were prevalent,

causing frustration and financial stress among homebuyers. To sum it up, the Pre RERA market was marked by:

- Lack of Accountability
- Lack of Transparency
- Lack of Systematic Mechanism

Post RERA [Real Estate (Regulation & Development) Act, 2016], the real estate sector in India has witnessed a notable transformation. As a result, several key parties have come under the ambit of this law enacted by the Indian Parliament in 2016 to regulate the real estate sector and protect the interest of the home buyers. In the grand symphony of real estate governance, various key players step onto the stage, each with a crucial role to play in the harmonious execution of the Act.

### Important Stakeholders to a Real Estate Transaction

1. **Promoter:** the one who constructs or facilitates the construction of an independent building or apartments or conversion of existing buildings or apartments for the purpose of selling them. It also includes a person to develop the land into a project.
2. **Allottee:** the person to whom a plot, building or apartment as the case may be sold, allotted, or transferred by the

Promoter. It also includes a person who subsequently acquires the said allotment through sale, transfer or otherwise.

3. **Real Estate Agent:** means any person who negotiates or acts on behalf of a person in the transaction of transfer of his plot, building or apartment in a real estate project by way of sale. He receives remuneration or fees or any other service charges whether as commission or otherwise. They are also called property dealers, brokers, middlemen.

### Compliances for Builder/Promoter

- Foremost compliance by every Promoter is to register their real estate project with the respective authority before **advertising, marketing, or selling** any plot, apartment, or building. One may wonder as to why such registration is required. Well, the rationale behind such thought is that it helps the Promoter in enhancing trustworthiness. Buyers prefer to deal with Promoters having RERA registration. Promoters are required to make an application to the respective authority for registration of the real estate project within the prescribed time as per specified procedures.

Although, it is crucial to note that RERA compliance can vary across different states in India. Therefore, Promoters need to understand and acquaint themselves with the specific regulations and requirements applicable in their respective regions. While the RERA Act is a central legislation, each state in India has its own RERA authority responsible for its implementation.

- Where any changes are to be made with respect to any building plan post RERA approval, proper permissions and approvals from regulatory authorities is a must. For example, if the Promoter is involved in addition or deletion of floors in Building A and B, and deletion from Building C

and D, it is important they obtain approval from **2/3rd** of the Allottees involved in the project. The necessity to obtain heavy regulatory approvals is because any changes to the building plan can have an impact on the society and structural integrity of the building, as well as the rights and interests of the Allottees.

- As per RERA norms, Promoters will have to give a 5-year warranty against structural flaws. The responsibility has been cast upon the promoter to rectify such defects without further charge within **thirty days from the date of possession** and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation. As a result of such stringent provisions being inserted in the central law, it is often said "Any Promoter worth his salt would not construct a poor building." However, some are of the opinion that the provision of a promoter's responsibility towards a structural defect for up to five years is not harsh because they can appropriately cover themselves through insurance as well. In reality, the actual concern would be the warranty for defects in workmanship for five years which may pose a considerable challenge. To sum it up, if a promoter wants to save himself from the pain of inferior construction, he will have to keep vigilant check on agencies (contractors & sub-contractors) he conducts business with by entering into a robust contract agreement for the same and the end user being the beneficiary shall reap the benefits of improved diligence.
- The Promoter at the time of **booking** and **allotment** shall be responsible to make available to the allottee, the following information, namely: -
  1. Sanctioned plans, layout plans, along with specifications, approved by competent authority, by display at the site or such other place as may be

specified by the regulations made by the Authority.

2. The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation, and electricity.

**Rationale** - RERA has the spotlight on responsibility and compliance of norms.

The depth of the same can be very well understood through the provisions regarding land entitlements and possession. The Promoter needs to provide a declaration supported by an affidavit stating the time period within which the project will be completed. Possession date (considered as sacrosanct under RERA) shall specifically be stated in the agreement for sale entered with the potential buyer. A written affidavit is also required from the Promoter stating that the legal title to the land on which the development is proposed has legally valid documents with authentication of such title if such land is owned by another person and that such parcel of land is free from all encumbrances. Such provisions aid in avoiding delay in delivery of possession of your dream house.

- One of the most critical compliances mandated by RERA is the imposition of Designated Bank Account. **Seventy percent** of the amount realized from the allottees for the real estate project must be kept in a designated account in a scheduled bank. The Banks have developed an Escrow mechanism for the convenience of developers wherein 3 Banks accounts are opened namely Master A/c (100%), RERA A/c (70%) and Current A/c (30%). This particular provision prevents promoters from using the funds for other projects and mitigates the risk of insolvency as well acts as a trust building mechanism in real estate in India. In order to understand the provision, one needs to understand the rationale as well. An escrow is under the purview of a neutral third party, which is

essentially a bank or recognized lender. The Promoter can access the funds from an escrow account solely for the purpose of construction of the project to which it belongs. Where the Promoter wants to withdraw 'X' amount from Escrow to cover the cost of the project in proportion to the percentage of completion of the project, respective calculations and engineering needs to be duly certified by an engineer, an architect, and a chartered accountant in practice.

- On top of it, the Promoter also shall get his accounts audited within **six months** after the end of every financial year by a chartered accountant in practice and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.
- On successful registration of the proposed project, the Promoter would be provided with registration number, login id and password for accessing the website of the Authority, creating the webpage, and filling in the details of the proposed project. The Promoter is required to create a webpage on the website of the Authority to render all the required details of the proposed project for public viewing. The Promoter shall mention the website address of the Authority wherein all the details of the registered project have been entered and include the registration number obtained from the Authority in all the advertisements or prospectus where details of the project are given.
- The Promoter needs to obtain the completion certificate (CC) or occupancy certificate (OC) from the relevant competent authority as per local laws and make it available to the allottees. Occupancy

Certificate is an official document issued by local government authorities or building regulatory bodies to certify that a newly constructed or renovated building is in compliance with applicable building codes, zoning regulations, and other safety and occupancy requirements. The certificate signifies that the building is suitable and safe for occupancy. The Promoter needs to execute a registered conveyance deed of the apartment, plot, or building, as the case may be, in favor of the allottee along with the undivided proportionate title in the common areas to the association of allottees. However, in absence of any local law, conveyance deed shall be carried out by the Promoter within **three months** from the date of issue of occupancy certificate.

### Compliances by Allottees

RERA is considered as “The Mosaic of Accountability” or the “The Symphony of Compensation” or “The Architecture of Consumer Protection” when it comes to real estate deals with general public. Large real estate companies have been scrutinized for failing to complete projects despite receiving over 80% of payment from Allottees/Home Buyers still waiting for possession after several years. This has caused disappointment for many aspiring homebuyers. Sometimes, properties advertised by promoters in attractive real estate brochures are fraudulent schemes. To prioritize the interest of the consumers, RERA came into effect on May 1, 2017. RERA highlights important conditions to be complied with by the consumer (allottee) as well to safeguard their financial interest and to protect themselves from fraudulent schemes:

- Obtain comprehensive project details, such as the project’s floor plans, layouts, carpet area, number of units, amenities, and projected completion date. RERA requires developers to disclose all relevant information to allottees. Ensure that the sale agreement mentions the carpet area, price, payment schedule, possession date, and any penalties for delay in possession. RERA

specifies that developers cannot change the agreement without the buyer’s consent.

- Understand how the carpet area is calculated and ensure that it matches what was promised. RERA requires developers to sell properties based on the carpet area, not the super built-up area.
- Verify whether the developer has set up a separate escrow account for the project. RERA mandates that 70% of the funds received from allottees should be deposited in this account and used solely for the purpose of Land Cost and Construction Cost
- Check if the developer has provided a specific timeline for project completion. RERA requires developers to adhere to the committed timeline and gives allottees the right to seek compensation for delays along with interest.
- Ensure that the developer has obtained the necessary occupancy certificate from the relevant authorities before handing over possession. The occupancy certificate certifies that the project is completed per the approved plans and fit for occupation. Verify the authenticity of the sale deed and the title certificate. RERA mandates that developers provide these documents to allottees within **three months** of possession.

It is also important to note that RERA Act is a central legislation, each state in India has its own RERA authority responsible for its implementation. The rules and regulations may vary slightly from state to state. Therefore, home buyers need to refer to the specific RERA website of the state where the property is located to understand the exact compliance requirements. If you encounter any non-compliance with RERA provisions, you should first try to resolve the matter with the promoter directly (good luck doing that). An aggrieved person (having vested interest) can file a complaint with the respective state’s RERA authority if that doesn’t yield satisfactory results. RERA

provides a dispute resolution mechanism and protects home buyers in such situations.

## Compliances for Real Estate Agent

**Real Estate Agent:** Person who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him; and receives remuneration or fees or any other charges for his services whether as commission or otherwise; and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be; and includes property dealers, brokers, middlemen by whatever name called.

- Real Estate Agent should facilitate the sale/purchase of properties in a real estate project registered u/s 3 of the Act after obtaining registration under section 9. Every real estate agent shall make an application to the Authority for registration in such form, manner within such time and accompanied by such fee and documents as may prescribed in respective State's rules. The Authority shall grant a single registration to real estate agent for the entire State or Union territory.
- The registration number will be valid for 5 years Every registered real estate agent shall quote his registration number in every sale facilitated by him under this Act. The Real Estate Agent must ensure that the following details are uploaded on the Authority's website:

1. Brief details of his enterprise including name, registered address, type of enterprises
  2. Particulars of registration as proprietorship, society, partnership, company etc. including byelaws, MOA, AOA etc.
  3. Name, address, contact details and photograph of the real estate agent, authenticate copy of PAN card.
  4. Authenticate copy of address proof, contact number, email id of real estate agent & its officials Income Tax Returns for last 3 years (in some states)
- The Real Estate Agent should ensure that he shall not engage in any sale or purchase of any plot, apartment, or building, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the RERA Authority.
  - The Real Estate Agent shall maintain and preserve such books of account, records and documents as may prescribed. He shall not involve himself in any unfair trade practices and facilitate in the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building as well as discharge such other functions as may be prescribed in Rules, RERA Registration number should be mentioned in every marketing collateral,



## The Real Estate Regulatory Authority and the Real Estate Appellate Tribunal - Powers and Procedure



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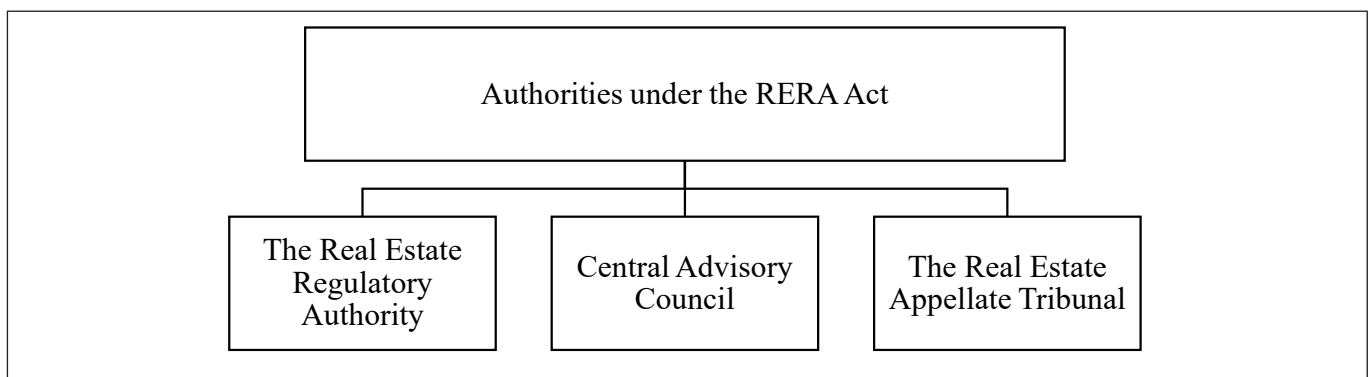
*Paras S. Savla,  
Advocate*

### Introduction

The Competition Commission of India on 12 August 2011 in the case of ***Belaire Owners Association vs. DLF Limited, HUDA and ors.***<sup>1</sup> observed that *"The absence of any single sectoral regulator to regulate the real estate sector in totality, so as to ensure adoption of transparent & ethical business practices and protect the consumers, has only made the situation in the real estate sector worse"*. A strong emphasis was placed on the need for a regulatory authority in the country. The inadequacy of laws and regulations results in domination of the certain anti-social elements and illegal developments in the housing sector. Surprisingly till 2016, there was no specific central legislation to govern the real estate sector. Therefore, the Parliament to regulate real estate sector, which being one of the fastest growing sectors, passed "The Real Estate (Regulation and Development) Act, 2016" ("RERA Act"). The Act came into effect on 1st May 2016.

The RERA is a comprehensive legislation passed by the Indian Government aimed at enhancing transparency in the real estate sector and tackling prevailing inconsistencies and challenges within the industry. RERA aims to increase candidness in the home buying process and address the apprehensions of various stakeholders such as homebuyers, builders, brokers, and others involved in the real estate industry. Being familiar with its rules and guidelines is crucial for both homebuyers and builders to navigate the real estate environment seamlessly.

For the better implementation of the Act, it made provisions for authorities, namely the Real Estate Regulatory Authority, the Central Advisory Council and the Real Estate Appellate Tribunal. They play a pivotal role in regulating and overseeing the real estate sector.



1. *Belaire Owners Association vs. DLF Limited, HUDA and ors (2011) CompLR 239 (CCI).*

## A. The Real Estate Regulatory Authority

Chapter V of the RERA deals with Real Estate Regulatory Authority. Under RERA, appropriate Government has to establish the Real Estate Regulatory Authority, for regulation and promotion of the real estate sector in the State/ Union Territories (UTs). The Authority shall strive to facilitate the growth and promotion of a healthy, transparent, efficient, and competitive real estate sector while protecting the interest of homebuyers/allottees, promoters and real estate agents. The authority shall also establish an adjudicating mechanism for speedy dispute redressal regarding registered real estate projects. It is formed to rapidly settle disputes and encourage accountability and openness in the real estate sector/industry.

The Authority shall consist of a Chairperson and not less than two whole-time members. As per section 25 the Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

Apart from above, as per section 71, an Adjudicating officer is appointed by the Authority in consultation with the Government, who is or has been District Judge. The Adjudicating officer decides the compensation payable in respect to complaints filed.

Section 31 allows any aggrieved person to file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation of the provisions of the Act or the rules and regulations made thereunder against any real estate promotor/developer or agent, as the case may be.

The Authority concerns itself with not only administrating and promoting the real estate sector but also quasi-judicial functions

like administrating issuance of interim orders, directions, and rectification of orders. The functions of the Authorities are as below –

### 1. *Functions of the Authority*

#### 1.1 For promotion of the real estate sector (Section 32)

As per section 32, the Authority is tasked with facilitating the growth and promotion of a healthy, transparent, efficient and competitive real estate sector. To do this, it may make recommendations to the appropriate Government or the competent authority, as the case may be, on –

- a) protection of interest of the allottees, promoter and real estate agent;
- b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;
- c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
- d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;
- e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques;



- f) measures to encourage grading of projects on various parameters of development including grading of promoters;
- g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;
- i) to render advice to the appropriate Government in matters relating to the development of real estate sector;

### 1.2 Advocacy and Awareness Measures (Section 33)

When formulating a policy for the real estate sector, including the review of related laws, the relevant Government has the option to seek the Authority's opinion on the potential impact of such a policy or law on the real estate sector or any other relevant matter. Upon receiving such a reference, the Authority is required to provide its opinion within sixty days. Subsequently, the appropriate Government can take further actions based on the received opinion as it deems appropriate, however such opinion shall not be binding upon the Government.

### 1.3 Other ancillary functions of the Authority (Section 34)

Apart from above, the functions of the Authority shall include;

- a) to register and regulate real estate projects and real estate agents registered under RERA;
- b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under RERA, with reasons therefor, for access to the general public;
- d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under RERA, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under RERA and the rules and regulations made thereunder;

- g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under RERA;

## 2. Powers of the Authority

### 2.1 To call for information and conduct investigations (Section 35)

The Authority has been given appropriate powers to achieve the above objectives. If deemed necessary, either based on a complaint or suo motu action concerning the Act or its associated rules and regulations, the Authority may issue a written order, after recording reasons, to require any promoter, allottee, or real estate agent to provide written information or explanations regarding their affairs. The Authority may also appoint one or more individuals to conduct an inquiry into the affairs of the concerned promoter, allottee, or real estate agent.

Despite the provisions of any other law currently in effect, when exercising these powers, the Authority is granted the same powers as a civil court under the Code of Civil Procedure, 1908, with regard to the following matters:

- Discovery and production of books of account and other documents, at a specified place and time.
- Summoning and compelling the attendance of individuals and examining them under oath.
- Issuing commissions for the examination of witnesses or documents.
- Any other matters as may be prescribed.

### 2.2 Power to issue interim orders (section 36)

If, during an inquiry, the Authority determines that an act in violation of the Act, or its associated rules and regulations, has been committed and is ongoing, or if there is an imminent risk of such an act occurring, the Authority has the authority to issue an order restraining any promoter, allottee, or real estate agent from continuing such an act until the inquiry concludes or until further orders are given. In cases where the Authority deems it necessary, such orders may be issued without prior notice to the concerned party.

### 2.3 Power of the Authority to issue directions (section 37)

To fulfil its responsibilities under the provisions of this Act, along with its rules and regulations, the Authority may issue directions, as deemed necessary, to promoters, allottees, or real estate agents. These directions are binding on all parties involved.

### 2.4 Other powers of the Authority (section 38)

The Authority is empowered to levy penalties or interest for any violation of the obligations imposed on promoters, allottees, and real estate agents under this Act or the associated rules and regulations. The Authority, while exercising its powers, shall adhere to the principles of natural justice. Additionally, within the framework of this Act and its rules, the Authority has the authority to establish and regulate its own procedures.

If an issue arises concerning agreements, actions, omissions, practices, or procedures that:

- Significantly prevent, restrict, or distort competition in relation to real estate project development; or
- Abusively leverage market power or create a monopoly situation that adversely affects the interests of allottees,

The Authority may, suo moto, refer such issues to the Competition Commission of India.

### **2.5 Power of rectification of orders (section 39)**

The Authority has the authority to amend any order it has issued under the Act within two years of its date, aiming to rectify any obvious errors in the record. Such amendments will be made if the parties bring the mistakes to the Authority's attention.

### **2.6 Power of recovery of interest or penalty or compensation and enforcement of order, etc (section 40)**

If a promoter, allottee, or real estate agent fails to pay interest, penalty, or compensation imposed by the adjudicating officer, Regulatory Authority, or Appellate Authority under this Act or its rules, the amount can be recovered as arrears of land revenue. In case of non-compliance with orders or directions issued by the adjudicating officer, Regulatory Authority, or Appellate Tribunal, enforcement measures will be taken as prescribed.

### **B. The Real Estate Regulatory Tribunal:**

Under Chapter VII of the RERA deals with Real Estate Appellate Tribunal. The Tribunal is established by the appropriate Government. Every bench of the Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

According to Section 44, any person aggrieved by the decision or order or decision of the Authority or the Adjudicating officer may prefer an appeal to the Appellate Tribunal. Any appeal must be submitted within sixty days from the date the appropriate Government, competent authority, or the aggrieved person receives a copy of the decision made by the Authority or the AO. The appeal should be in the prescribed form and accompanied by the specified fee. However, the Appellate Tribunal may consider appeals beyond the sixty-day period if there is a valid reason for the delay.

### **3. Powers of the Tribunal**

The Appellate Tribunal is not bound by the procedures laid down by the Code of Civil Procedure, 1908 instead, shall be guided by the principles of natural justice. Further, the Tribunal is not required to adhere to the rules of evidence provided under the Indian Evidence Act, 1872. Within the confines of the Act, the Appellate Tribunal possesses the authority to regulate its own procedural rules.

For the purpose of discharging its functions under this Act, the Tribunal is vested with the same powers as in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;



- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examinations of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or directing it ex parte; and
- (g) any other matter which may be prescribed.

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings and the Tribunal shall be regarded as a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Thus, any order issued by the Appellate Tribunal under this Act can be enforced by the Appellate Tribunal as if it were a decree of a Civil Court. In this regard,

the Appellate Tribunal possesses all the powers inherent in a Civil Court.

### **Conclusion**

As can be seen above, the role of the Authority extends beyond mere promotion of ethical business practices and protection of the interests of the stakeholders involved. Setting up of the Authority and the Tribunal is reducing the number of litigations due to deterrent rules and regulations in this extensively corrupt sector. However, it is seen that the Tribunal follows procedure similar to a Civil Court and is sometimes cumbersome. The Tribunal can take guidance from different Tribunals like Income-tax Appellate Tribunal, which is known for easy justice and speedy justice.



## Rights of Landlords and Tenants in Redevelopment of Tenanted Property



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*Aradhana Bhansali,  
Advocate*

### 1. Introduction

A majority of aging residential buildings in the city of Mumbai are tenanted properties. These crumbling structures owe their fate to overall poor maintenance by the developer and also collectively by the tenants themselves, thereby taking them down the long road of redevelopment or reconstruction which more often than not is a hassle for the thousands of tenants that reside with their respective families. It is on account of the building structures becoming dilapidated or beyond repairs that redevelopment is prompted on several factors and any prospective redevelopment project must align with interests of several persons i.e., landlords and the tenants and other occupants residing in such buildings.

This article aims at dissecting the web of statutes, regulations and legal precedents surrounding redevelopment of residential properties in Mumbai consequently understanding the rights and responsibilities of landlords and tenants with regards to redevelopment and reconstruction of properties in the city.

### 2. Kinds of Tenancies

An owner of the property has a right to own the property against the whole world at large and this right is a right in rem. Similarly, a tenant has rights and obligations on the tenanted properties which a Tenant possesses and holds and any tenancy of a tenant can be terminated by following the due process of law and not otherwise. Tenancies are broadly categorized into two kinds with an additional third kind unique to Mumbai.

#### 2.1. Rent Agreements

These are legal contracts between the property owner and potential tenant wherein a potential tenant takes temporary possession of a specified property for a short period of time in consideration of monthly sum of money or rent paid to the landlord or property owner. The agreement must provide detailed descriptions of the tenanted property along with the details of the Landlord and Potential Tenant and any facilities and amenities if any that may be provided by the Landlord.

According to Section 55<sup>1</sup> of the Maharashtra Rent Control Act, 1999 (the Act) registration of all rent agreements is mandatory in the State and this registration of the rent agreement is to protect the interest of the tenant. If the agreement is unregistered, then this provisions provides that the terms as stated by the tenant shall prevail unless otherwise proved by the landlord.

## 2.2. Lease Agreements

A Lease agreement is a legal contract between a landlord and tenant for occupancy generally for a longer duration. Here, the Landlord generally transfers a right to use the property and right to enjoy the benefits of the property in favour of the tenant. The landlord may permit the tenant to sub-lease the property with the consent of the landlord. Such tenancy rights created under a lease are inheritable and transferable. They typically last for more than a year and can last for a long duration such as 99 years.

Under such lease agreements it is difficult for the landlord to evict the tenant unless he contravenes anything in the lease agreement or the applicable rent control laws.

## 2.3. Pagdi Properties

Pagdi properties are common in Mumbai. It is an age-old practice dating back to pre-independent India, involving the Landlord charging a lumpsum amount of consideration or pagdi at the outset and subsequently levying a very nominal sum of

rent annually. Under this system the tenants become partial owners of the premises and not the land while continuing to pay rent to the Landlord. The tenant may also sell the property with the consent of the Landlord however, would have to pay the landlord a considerable portion (about 33%) of the amount of the sale. This system has been legalized under Section 56<sup>2</sup> of the Act. Pagdi properties form a considerable portion of disputes involving redevelopment.

## 3. Common Disputes in Redevelopment of Tenanted Properties

Redevelopment of building where the tenants reside is a complex affair that involve a plethora of factors involving several stakeholders that must be taken into consideration. As stated above, disputes arise when the interests of the stakeholders do not align. In order for a successful redevelopment the interests of stakeholders viz. the tenants, landlords and developers must be carefully balanced to ensure fairness and equity.

Some common instances of disputes are enumerated below:

1. *Redevelopment of old buildings which do not consume all of their FSI*

In certain cases, older buildings do not consume all of their permissible FSI in which case it is profitable for the owner of the building to redevelop it into one which consumes the maximum permissible FSI and provide larger flats and additional facilities which it initially lacked.

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1. Maharashtra Rent Control Act, 1999, Section 55, Maharashtra Act No. XVIII Of 2000.  
2. Maharashtra Rent Control Act, 1999, Section 56, Maharashtra Act No. XVIII Of 2000.

## 2. *Redevelopment of buildings neglected by the landlord*

Most old cessed buildings are pagdi properties. In these cases where the building is severely neglected by the landlord where he fails to undertake the repairs he ought to undertake, tenants prefer to reconstruct or redevelop the premises themselves. This is particularly distressing in cases where the building has been declared dangerous and the tenants are ordered to vacate the premises as the landlord may not have intentions of developing the land leaving the tenants displaced from their home awaiting relocation. A similar case is discussed below.

## 4. Legal Provisions for Redevelopment

### 4.1. *Provisions related to rebuilding or redeveloping dilapidated or unsafe buildings*

#### 4.1.1. *When owner neglects to execute required repair work, tenants may do so on their own – S. 499 MMC Act*

In many cases buildings are poorly maintained either due to paucity of funds owing to nominal rent as in the case of pagdi properties or neglect by the landlord. Under such circumstances tenants may proactively undertake the repairs of the property in the event of the failure of the landlord to do so under Section 499 of the Mumbai Municipal Corporation Act, 1888<sup>3</sup>.

In such cases the tenants must seek approval from the Municipal Commissioner while providing details of the proposed

works to be executed. Once the approval is granted the tenants may execute the necessary repair work. They are also entitled to recover the cost of such work from the owner/landlord either by deducting it from their rent where the amount deducted by each occupier shall be proportional to the rent he owes the landlord or the tenants can simply recover the cost from the landlord.

#### 4.1.2. *When the building is in a dangerous condition – S. 354 MMC Act*

In some cases, if the building or any part of it is in a ruinous or dangerous condition so as to pose a danger to its inhabitants or people passing by, the Municipal Commissioner may by written notice under Section 354<sup>4</sup> ask the owner/landlord or occupier/tenants to pull down the structure or repair it. In such cases the buildings are declared dilapidated and redeveloped by an order of the Municipal Commissioner.

### 4.2. *Self-Redevelopment*

#### 4.2.1. *Self-Redevelopment of Co-Operative Housing Societies*

In certain cases of tenanted properties, there may be an existing Co-operative Housing Society incorporated by the tenants which may seek to self-redevelop the property for several reasons, illustratively, to maximize the available FSI or because the building is in poor condition or to increase the FSI in cases of older premises.

Under the provisions of Section 79A<sup>5</sup> of the Maharashtra Co-Operative Societies Act, 1960, the State government has issued a

3. Mumbai Municipal Corporation Act, 1888, Section 499, Bombay Act No. III of 1888. In default of owner the occupier of any premises may execute required work and recover expenses from the owner.  
4. Mumbai Municipal Corporation Act, 1888, Section 354, Bombay Act No. III of 1888. Removal of structures, etc., which are in ruins or likely to fall.  
5. Maharashtra Co-Operative Societies Act, Section 79A, Maharashtra Act No. XXIV of 1961.

comprehensive set of guidelines<sup>6</sup> for the redevelopment of Co-Operative Housing Societies.

## 5. Current Legal Developments and Positions of Courts

### 5.1. *Tenants permitted to reconstruct demolished building themselves without obtaining NOC from owner in the absence of redevelopment plan within three years of demolition*<sup>7</sup>

In a recent judgment of a division bench of the Hon'ble Bombay High Court permitted an association of tenants to reconstruct a demolished building and seek necessary approvals from the MCGM. The Court also permitted the tenants to do so without requiring the consent or obtaining an NOC from the Landlord. In the instant case a building was declared dilapidated and unsafe in 2014 and demolished in 2019 leaving its 103 tenants to fend for themselves. The Landlord here, made no proposals for redevelopment or reconstruction and failed to take any steps for the same. The Court clarified the distinction between "redevelopment" and "reconstruction" and stated that Section 499(6) of the Mumbai Municipal Corporation Act, 1888 preserved the rights of the tenants to reconstruct the demolished building. However, the Court reiterated that the tenants had no rights for redevelopment which involved a utilization of additional FSI. They also could not reconstruct the premises themselves and convert themselves to owners in the new premises. They would merely remain tenants.

### 5.2. *Tenant's rights of redevelopment cannot eclipse landlords' rights of ownership*<sup>8</sup>

In a case with facts opposite to that of the case above, an application filed before the Hon'ble Bombay High Court sought to put a stop to the redevelopment of an old building in Mumbai. In the instant case, the technical committee found that the building was in poor condition but was reparable and did not need to be demolished. The Landlord of the building proposed to redevelop the property and offered the flats on an ownership basis to the tenants free of charge. The landlord had also presented redevelopment proposals before the Court. The Court noted that ownership of an immovable property came with the right to enjoy the fruits therefrom, under such circumstances the tenants could not curtail such rights of the landlord. The Court rejected the contentions of the tenants and permitted the redevelopment of the building while informing the landlord that he would not be allowed to deviate from his commitment to the tenants.

### 5.3. *Consent of 100% of tenants not required to issue a commencement certificate*<sup>9</sup>

A recent case before the Hon'ble Bombay High Court posed an important question—whether the consent of 100% of the tenants was required to issue a commencement certificate by the BMC? In the instant case a building constructed for industrial purposes was declared dangerous and subsequently demolished in accordance to the relevant provisions of law. The landlord sought to redevelop the property however, he was

6. Govt. of Maharashtra, Dept. of Co-Operation, Marketing and Textiles, General Resolution No. Sa. Gra. Yo. 2018/Pra. Kra. 85/14-sa dated 4th July 2019.

7. *Chadralok Peoples Welfare Association vs. State of Maharashtra & Ors. WP(L) No. 17361/2023.*

8. *Anandrao G Pawar vs. MCGM & Ors. WP(L) No. 20227/2023*

9. *Raj Ahuja & Anr. vs. MCGM & Ors. WP No. 5130/2022*



granted a change in use for the building from industrial to residential as it was not economically viable to redevelop the land into an industrial premises. Some of the tenants however objected to such change in use and also refused the landlords offers of alternate land of a similar area at a different location.

The Court while ruling in favour of the Landlord/Owner observed that an objection by a minority of tenants could not be used to stall the project as it would cause great prejudice to the Landlord/owner. The Court also ruled that the MCGM regulations in question could not be interpreted in a way that required the consent of 100% of the tenants before issuing a commencement certificate to the landlord.

#### **5.4. Tenants cannot dictate nature of redevelopment<sup>10</sup>**

A similar case involving the redevelopment of a tenanted property sought to be halted by a single tenant who filed a Writ Petition before the Hon'ble Bombay High Court seeking directions from the Court that the building be redeveloped as it originally stood. The building originally being residential was to be developed into a commercial premises by the owner who offered permanent alternate accommodations to the tenants. All but one

of the tenants agreed to such arrangements. The High Court rejected the contentions of the tenant and noted that the tenants had limited rights and could not dictate the nature of redevelopment of the property.

#### **6. Conclusion**

Redevelopment of properties in Mumbai is a complex affair. The interests of the Landlord and Tenants must be preserved while simultaneously making the entire project economically feasible. Disputes tend to arise when the interests of the parties are not aligned.

The Landlord being the owner of the property possesses a right to enjoy the property and the fruits therefrom. This also comes with the right to develop the property independently and howsoever he deems fit. In such circumstances Courts have held tenants have limited rights for dictating the nature of the redevelopment. However, tenants are not without remedy. They may seek legal remedies under the applicable laws.

Through the intervention of the Court, the rights of both the landlord and the tenants are being balanced which is the need of the hour so as to avoid untoward loss harm and injury to hundreds of tenants who are residing in dilapidated buildings.

10. *GM Height LLP vs. MCGM & Ors. WP No. 5302/2022*

## Self Redevelopment and Redevelopment in Greater Mumbai



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### Introduction

In urban areas such as Mumbai, there is a severe shortage of available land, while the need for housing is consistently increasing. Furthermore, numerous buildings in Mumbai and other urban areas have beyond their functional lifespan and provide a hazard to the inhabitants' safety. The government has been actively pushing and regulating the renovation of existing properties to meet the growing demand for housing and replace outdated structures.

Over the span of the last 30 years, the redevelopment of buildings has changed drastically with the enactment of a number of acts as well as guidelines required to be followed.

Self-redevelopment is an approach that is widely used in the state of Maharashtra. This method is the situation in which the residents of a community take it upon themselves to reconstruct the building for themselves, rather than the developer. The approach ensures that there will be a greater level of monitoring of the project, as well as a reduced likelihood of experiencing setbacks and misuse of funds.

On the other hand, redevelopment is the process which is often carried out by a developer, in redevelopment, the old society building is torn down and rebuilt by appointing a competent builder who can create and deliver new apartments to the members of the society at ideally no cost, along with a few extra advantages

and who may additionally generate a profit by making use of the balance plot potential to build more apartments and shops, subject to approval from the M.C.G.M.

Among the many benefits of self-redevelopment, include a greater emphasis on open communication, less reliance on outside developers, and a stronger feeling of community pride. However, at the same time both these approaches come with their own set of challenges and disadvantages.

Recently, there has been a significant amount of interest in the self -redevelopment of buildings that are owned by existing Co-operative Housing Societies. This interest has been shared by both the Societies and the Builders. Residents of older buildings are now learning that they have the potential to unlock enormous value from their home by giving it to a developer for reconstruction. For Co-operative Housing Societies, redevelopment offers a long-term, practical solution when older buildings are no longer economically viable or suitable for use.

This article delves into the changing face of Mumbai by investigating the complex web of opportunities and threats that come with redevelopment projects. This article highlights the various legal provisions such as the Maharashtra Cooperative Societies Act, 1960 and The Development Control and Promotional Regulations (DCPR) 2034 and their implications surrounding

redevelopment and self-redevelopment projects in the city of Mumbai.

In this article, the author aims to examine the fundamental legal principles that support redevelopment projects, examining important legal decisions and changes in legislation that have influenced the course of urban redevelopment and self-redevelopment in Mumbai.

## REDEVELOPMENT

Under the terms of a redevelopment agreement, the landowner and the organization that is responsible for the development of the land enter into a legally binding contract. An idea for redevelopment may commence with a redevelopment arrangement, and it can conclude with the developer transferring the agreed-upon built area and any monetary contribution to the Society. Real estate developers, meanwhile, are on the hunt for sites with unrealized development rights, so they can add a few stories to an existing building and turn a healthy profit.

However it appears that in Maharashtra, numerous redevelopment schemes for co-operative housing society-owned buildings have encountered administrative challenges, prompting complaints from Housing Societies, the Housing Federation, and individual members. Some of the challenges faced are: not taking in consideration of the members, random selection of developers, Obscure tendering procedure, lack of implementation of an equitable contract-awarding procedure.

In order to overcome these challenges, the Government issued directives under Section 79(A) of Maharashtra Co-operative Societies Act, 1960.

The process of redeveloping cooperative housing societies in Maharashtra entails a number of essential procedures as described in the provided guidelines.

The procedure starts with the intention of the members of the society who wish to redevelop their building. Thereafter a requisition is made by a minimum of one-fifth of the members of society to convene a Special General Body

Meeting regarding the redevelopment of building. They are directed to submit an application to the Secretary of The Managing Committee regarding the same. The meeting will discuss important issues, such as appointment of a skilled architect or Project Management Consultant (PMCs) from the government or local authority panel, receiving redevelopment suggestions from member by establishing a quorum which shall be 2/3rd of the total membership of the society. The decision made in the Special General Body Meeting shall be approved by not less than 51% of the total membership of the society additionally they must also give their written consent.

After the meeting, comprehensive minutes are created, and the Secretary is tasked with circulating a copy of such minutes to all the members.

The next step is the appointment letter issued to the Architect or the Project Management Consultant who has certain duties which need to be fulfilled such as the preparation of the Redevelopment Project Report.

Thereafter another meeting is convened for the purpose of holding a comprehensive discussion on the report where members participate in giving suggestions and recommendations. In this meeting the Architect or Project Management Consultant are invited.

The next stages entail organizing a Special General Body Meeting to choose a developer through a tender process.

The developer is selected through a quorum of the members, and a development agreement is hereinafter executed within 3 months. The whole procedure emphasizes openness, active involvement of members, and strict compliance with legal and cooperative housing organization standards.

### ***Section 79A of Maharashtra Cooperative Societies Act, 1960 - Mandatory or declaratory?***

The primary objectives of the Maharashtra Cooperative Societies Act are based on making

housing plans that are better for the people of the state. It has a simple registration method, member benefits, and all the rights and responsibilities that people in Maharashtra have. The goal of the Maharashtra Cooperative Societies Act is to give cooperative societies in Maharashtra a fair system and ways to work together.

The guidelines enshrined under Section 79A provide a systematic framework for carrying out the redevelopment of co-operative housing societies, outlining a series of sequential steps to be followed. The procedure begins by convening a special general assembly of the society to deliberate on the renovation of the society's structure, and concludes with the distribution of new apartments to the original members in the renovated building. The guidelines have a key goal of guaranteeing openness and fostering a democratic process.

However, several lawsuits have been filed, claiming noncompliance with these guidelines and seeking an immediate halt to the reconstruction. An inquiry that inevitably emerged was whether adherence to the directives was obligatory or discretionary and, consequently, if any deviations were allowable.

Over the years, the Bombay High Court has consistently held the position that the guidelines are directory rather than mandatory, as evidenced by a succession of judgments delivered by different benches.

In the case of ***Maya Developers vs. Neelam R. Thakkar & Ors.***, the developers requested temporary measures against certain individuals who were refusing to give up peaceful and unoccupied control, even after the development agreement had been signed. The Defendants claimed that the guidelines outlined in Section 79-A were not adhered to. Several specific instances of non-compliance were reported, including the absence of a full feasibility report, lack of openness, and a biased selection process that favored Maya Developers. It was discovered that one of the partners of Maya Developers had a familial relationship with a member of the

management committee. It was argued that there has not yet been a definitive case on the nature of the guidelines provided under Section 79-A, and that these guidelines have a legally binding effect. The Bombay High Court determined that the objective of the 2009 guidelines is to provide a set of recommendations.

A single member contested the redevelopment process in ***Abhanga Samata CHS vs. Parag Arun Binani & Anr.*** on the grounds that Section 79-A guidelines had not been implemented and the selection of the developer was fraudulent. Accusations included not seeking tenders through newspaper ads, society not submitting written consent letters from members, and lack of video conferencing of meetings. The trial court held in favour of the member and enjoined the redevelopment process and. Thereafter, the society and developer appealed against the trial court's order. Their key argument was that the decision made by majority would be binding on the minority. Furthermore, Section 79-A guidelines were directory and not required, therefore considerable compliance was sufficient. Bombay High Court overturned the lower court's ruling because its conclusions were contradictory to the record. In addition, trial court irregularities cannot overrule majority societal choices. Further, Section 79-A guidelines are not mandatory and substantial compliance is sufficient. A democratic decision cannot be overturned unless it was fraudulent or misrepresented.

### ***The Development Control and Promotional Regulations (DCPR) 2034***

The Maharashtra government has issued the DCPR 2034, which outlines a systematic approach to city development, providing advantages to both industrial stakeholders and the residents of Mumbai. This document may be described as a comprehensive guidebook for the real estate and construction sector.

DCPR has revised the eligibility requirements for the redevelopment of private housing societies and buildings under the Maharashtra Housing and Area Development Authority (MHADA).

It has raised the Permissible FSI. On addition, the Development Control Regulations of 1991 did not authorize the delivery of TDR on the city, but this is now allowed. Regulation 33(7) (B) states If housing societies, landlords, or their representatives want to redevelop existing residential housing societies so that existing members can reside on the same plot again, they can add a further 15% of the existing Built-Up Area (BUA) or 10 square meters per tenement, whichever is higher, without any premium charges.

If the areas around the stairs, lift, and lift entrance are declared free of Floor Space Index (FSI) by paying a premium in line with the rules, then those areas will be declared free of FSI without having to pay an extra premium.

In situations where these places are considered without asking a premium according to the current rules, they can still be acquired free of FSI by paying an extra fee according to these rules.

A minimum of 70% permission from the members is required for private co-operative housing associations.

A minimum of 51% approval from the members is required for land that is owned by a governmental authority or the Maharashtra Housing and Area Development Authority (MHADA).

The change has been proposed to expedite the process, but its effectiveness is doubtful, as a larger number of skeptical members may raise the likelihood of legal action, which would ultimately be more time-consuming. Deciding to undergo reconstruction and entrusting the house to a private developer for development is a significant choice. The ultimate determination can be influenced in any manner by a limited number of individuals in the event of a small housing society. The risk for conflict arises when certain individuals withdraw their permission midway.

Transferable Development Rights (TDR) are a type of real estate transaction in which the ability to build on one property is given to another property. It means that a homeowner can sell

someone else the right to build on their land. If someone buys TDR, they can either use it to build something else or sell it to someone else.

Subject to the condition that the completed flats are sold prior to the issue of the completion certificate and tax is paid on them, the supply of TDR, FSI, and long term lease (premium) of land by a landowner to a developer is exempted from taxation.

### **Development agreement**

An essential document in the process of redevelopment is the "development agreement," which grants permission to the developer to develop the site. Both parties must guarantee that the appropriate stamp duty and registration are completed during this procedure. During the redevelopment process, the builder approaches the proprietor and enters into an agreement with them to seek permission to develop the site on their behalf. The builder undertakes the reconstruction at his own cost and retains a share of the apartments or a piece of the property for personal sale in the market.

There are various clauses that must be included in the development agreement for example,

- The duration for the completion of the Redevelopment project should not exceed two years, and in exceptional circumstances, it may be extended to a maximum of three years due to unforeseen circumstances.
- The Developer is required to provide a Bank Guarantee equivalent to 20% of the total cost of the Redevelopment Project.
- The Developer shall endeavor to provide alternative housing options to the residents within the same vicinity until the Redevelopment Project is finalized. Alternatively, he must either pay monthly rent and a deposit that matches the current rental rates in the area, taking into account the yearly increase in rent, or provide Transit Camps as an alternative.

- If the advance rental payment is not honored, the society has the authority to prohibit the builder from selling the apartments or permitting new purchasers to inhabit them.
- The Agreement must be registered in accordance with the provisions of the Registration Act of 1908.

The developer is responsible for obtaining approval for the building plans, acquiring the commencement certificate and sanction of building plans from the MCGM, as well as making all necessary payments such as deposits, fees, and premiums to the relevant authorities, including the MCGM. The Society grants a general Power of Attorney to any Director, Partner or Proprietor of the Developer company, authorizing them to act on behalf of the Society for all matters related to the property development. This includes dealing with government authorities, obtaining necessary approvals and certificates, hiring professionals, and overseeing the entire redevelopment process, including demolition, construction, and sale of the developed premises. The Power of Attorney encompasses all actions necessary for the successful completion and occupation of the new building.

### **Stamp duty**

The stamp duty on a development agreement between the owner of the property and the developer is covered under Article 5(g-a) of the Maharashtra Stamp Act, 1958. This article is to read with Article 25 (b) and (c) which states that the stamp duty payable must be either 4% or 5% depending on the where the immovable property is situated. Provided that Section 32A shall, mutatis mutandis, apply to such agreement, records, or memorandum to an instrument under that section.

Additionally, if the appropriate stamp duty is paid according to clause (g) of Article 48 for a power of attorney issued between the same parties about the same property, then the stamp duty under this article will be one hundred rupees.

Further, the Bombay High Court in the case of Adityaraj Builders vs The State of Maharashtra and Ors, held that once the stamp duty has been paid on a development agreement then it is not required to pay additional stamp duty on Permanent Alternate Accommodation Agreement. ("PAAA")

A PAAA is an agreement which is executed by the developer along with the members of the societies whose houses are being redeveloped. Although not all members of the cooperative housing society are required to sign the development agreement, the ruling clarified that the agreement must be stamped. Additionally, the ruling clarified that the PAAA cannot be subjected to stamp duty in excess of the Rs. 100 requirement outlined in Section 4(1) of the Maharashtra Stamp Act, 1958.

### **Self Redevelopment**

In self-redevelopment, the current residents unite together to establish a cooperative housing organization; they lease the property, and then they decide who will carry out the renovations, who they will pay, and the manner in which they will pay it. In light of the many failures associated with developer-led techniques, self-redevelopment appears to be a suitable paradigm due to its quantitative and qualitative benefits. Qualitatively, homes under a self-redevelopment paradigm are better off in terms of corpus, carpet space, authority, and quality of life. A more thorough understanding is required before self-redevelopment can begin about the process of establishing cooperative housing societies and leasing the property. An expanded perspective is required to fully grasp the project's timetable, financial viability, the cooperative's structure, and the criteria for selecting its representative.

In the traditional method, redevelopment is often undertaken by a developer, who keeps the benefits of the augmented floor space index (FSI) for himself without distributing them among the members of the community. In addition, many buildings that are now being repair have been abruptly abandoned by the construction workers,

leaving the original owners of the apartments feeling powerless.

To tackle this problem, the Maharashtra government's cabinet established an expert committee on March 8, 2019. The committee's purpose is to ensure that flat owners receive the advantages of an improved Floor Space Index (FSI) and have an active role in the refurbishment of their building. The committee has been assigned the responsibility of conducting research and providing recommendations to assist housing societies in Maharashtra with their building restoration initiatives. The recommendations of the high-level committee were implemented on September 13, 2019, by the issuance of a Government Resolution (GR).

The following are the recommendations made:

1. Eligibility Criteria: Buildings in cooperative housing societies that are 30 years or older are eligible for self-redevelopment.
2. One Window Scheme: Proposes a streamlined process for obtaining various permissions from government/semi-government bodies through a one-window scheme to expedite the re-development process.
3. Time Limit for Sanction: Suggests a binding time limit of 6 months to complete all permissions through the one-window scheme.
4. Floor Space Index (FSI) Incentives: Offers a 10% increase in FSI for societies undertaking self-redevelopment.
5. Road Requirements Relaxation: Relaxes the condition of having two roads for collective self-redevelopment, allowing permission for buildings on narrower roads in populous areas.
6. Transferable Development Rights (TDR): Provides cooperative housing societies adopting self-redevelopment with the opportunity to purchase TDR at a concessional rate.
7. Concession in Premium Rates: Recommends concessions in various premium rates charged by planning authorities to encourage self-redevelopment.
8. Staged Premium Payments: Proposes stages for payment of premiums instead of lump-sum payments to ease financial pressure on housing societies.
9. Tax Concessions: Suggests exemptions or concessions in taxes such as Land under Construction Assessment Tax, Stamp Duty, Goods and Service Tax, and Open Space Deficiency Development Charges.
10. Nodal Agency: Recommends the State Co-operative Bank to serve as a nodal agency for providing finance, guidance, and information on self-redevelopment.
11. Completion Period: Specifies a binding period of 3 years for completing the entire self-redevelopment project after obtaining approval.
12. Interest Rate Subsidy: Proposes a 4% subsidy in the interest rate for bank loans taken by housing societies for self-redevelopment.
13. Authority for Self-Redevelopment: Specifies that the authority approving redevelopment will also act as the planning authority for self-redevelopment.
14. Tripartite Agreement: Mandates the execution of a tripartite agreement between the finance institution, cooperative housing society, and the appointed contractor.
15. Self-Redevelopment under Pradhanmantri Awas Yojna: Offers incentives for housing societies building flats for beneficiaries in the Economical Weaker Section/Lower Income Group.
16. Vigilance Committee: Requires the formation of a vigilance committee to supervise and control the self-redevelopment work.
17. Grievance Redressal Committee: Proposes district-level committees to address

difficulties, complaints, and objections during self-redevelopment.

18. Contractor Criteria and Registration: Calls for defining criteria and registration of contractors by the planning authority.
19. Contractor Appointment and Actions: Emphasizes the importance of appointing competent contractors and outlines actions against contractors for delays or unsatisfactory work.

Although, the aforementioned recommendations have been put forth via the Government Resolution, it is observed in practice that these recommendations have limited applicability. The lack of transparency in the appointment of a Project Management Consultant (PMC) and developer poses a disadvantage to society members. Although a single window scheme has been proposed, its implementation has not been realized, requiring individuals to navigate through various departments for clearances instead of having a streamlined process.

### **Advantages of self-redevelopment**

1. Single window system for all approvals- To streamline the application process and eliminate bottlenecks caused by several departments processing requests, the GR implemented a single-window system. Because of this, the renovation will take less time and cost less money.
2. Stamp duty waiver- An announcement made by the government of Maharashtra in July 2023 was that registered co-operative housing societies that choose to undertake self-redevelopment will be required to pay a stamp duty of just Rs.1000 for the purpose of allotting apartments in newly constructed buildings to owners of flats that are already in existence. The state government, on the other hand, has made it clear that buyers who purchase flats from the open market in societies like these would be required to pay

stamp duty at the rate that is now in effect on the market.

Earlier, in compliance with the permanent alternative accommodation agreement (PAAA), members who did not participate in the redevelopment agreement were required to pay the stamp duty in accordance with the construction cost. In the past, people who did not join the PAAA would be required to pay stamp duty based on the building cost, which was typically somewhere about Rs 108 per square foot on average. Similarly, the registration costs for them would amount to around Rs 30 per square foot.

3. Regulation 33(7)(B)- this regulation allows housing societies, landlords, or their representatives to enhance the existing Built-Up Area (BUA) by an additional 15% or 10 square meters per tenement (whichever is higher) without incurring any premium charges. Furthermore, if designated areas like staircases, lift, and lift entrances are declared free of Floor Space Index (FSI) by adhering to the prescribed premium regulations, they become exempt from FSI charges. Even without initially paying a premium based on current rules, these areas can still be obtained free of FSI by subsequently adhering to the specified regulations
4. More efficient decision making- Housing societies are able to make decisions rapidly and effectively because they do not have to deal with the bureaucratic red tape that sometimes accompanies engaging with outside developers or organizations.
5. Development rights retained with society – In certain self-redevelopment situations the rights are retained with the society. This was further affirmed in the case of Gopi Gorwani vs Ideal Co-Operative Housing where the Bombay High Court ruled that no developer may compel a housing society to allow a



redevelopment of its building unless the two parties have reached a binding agreement.

*"Once members of the society had by a unanimous resolution, before executing the final agreement, decided not to get the premises developed through the (builder), the society cannot be forced to get the redevelopment work done through (the developer), when prima facie there is no concluded contract."*

6. Lower risks and timely completion of project- There would be fewer disputes and delays caused by outside developers if residents are involved in making decisions and managing the project. A more streamlined development process is associated with the capacity to make rapid decisions, adjust to new situations, and handle risks well. Furthermore, inhabitants are more likely to adhere to project schedules since they have an interest in the redevelopment's prompt and effective conclusion.

#### **Disadvantages of self-redevelopment**

1. Disagreements between members- When housing societies attempt to redevelop their own structures, disagreements among members often a major setback. Problems with decision-making, slowdowns in development, or even project derailment might result from disagreements about financing, goals, or other causes. Effective communication, open procedures, and techniques for generating consensus are necessary to manage differing perspectives and identify areas of agreement. It is crucial for the community to have proactive techniques for resolving conflicts since ignoring internal disagreements can lead to drawn-out arguments, setbacks, and a diminished capacity to fully utilize the rehabilitation project.
2. Responsibility for the entire process assumed by society- Society's sole duty for rehabilitation may be a drawback. Being

autonomous has advantages, but individuals may not be ready to manage choices, tasks, and skills. Possible dangers include negotiating the real estate development environment, failure to comply with all rules and regulations, and inefficient resource allocation. As society takes on more responsibility, members will have a steep learning curve, which may slow down, cost more, and present more unanticipated challenges during recovery.

3. Insufficient financial support from banks and Non-Banking Financial Companies (NBFCs)- Financial institutions may be reluctant to provide loans or financial assistance to housing societies engaged in self-redevelopment due to concerns about perceived risks, probable lack of knowledge within the society, and the absence of a professional developer monitoring the project. This constraint hampers the society's financial resources, making it more difficult to get the required funding for the reconstruction process.
4. No professional license issued to PMCs- The absence of professional certification for Project Management Consultants (PMCs) poses a risk to residential societies. Without established norms, unqualified individuals can masquerade as PMCs, potentially victimizing societies. This legislative gap hampers the ability to verify the competence of PMC applicants, putting societies at risk of hiring inexperienced consultants. The lack of professional standards may lead to poor project outcomes and financial losses. Implementing clear PMC guidelines and certifications is crucial for safeguarding residential societies and ensuring the success of redevelopment projects by engaging qualified professionals.

#### **CONCLUSION**

In conclusion, the article illuminates the dynamic landscape of redevelopment in Greater Mumbai where alternative methods, spearheaded by



members of the societies as well as outside developers, coexist. Legislations like DCPR 2034 and the Maharashtra Cooperative Societies Act are vital which provide a legal framework governing the procedure for redevelopment.

Special General Body Meetings and development agreements are part of the complex redevelopment procedures that strive for openness and compliance with regulatory requirements.

Redevelopment as well as self-redevelopment in Greater Mumbai each have their own set of benefits and drawbacks. Expertise is offered by traditional redevelopment projects directed by outside developers, although openness and

community engagement are sometimes lacking. In contrast, self-redevelopment offers financial incentives, simplifies decision-making, and gives inhabitants greater autonomy, but it also presents difficulties like internal disputes and limited resources.

The housing societies' selection will depend on how thoroughly they assess these benefits and drawbacks in light of their own situations. Sustainable, inclusive, and effective urban redevelopment in Greater Mumbai requires careful evaluation of several elements, such as financial ramifications, community dynamics, and legal frameworks.



## GST, Income-Tax and Accounting vis-a-vis in the Real Estate Sector



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### Introduction

The real estate sector in India was valued at Rs. 9.8 lakh crores in 2017, around the time when GST was implemented. It has expanded to Rs. 82 lakh Crore in 2023 and is only expected to expand further. The real estate sector includes four types of properties i.e. residential, commercial, hospitality and retail <sup>[1]</sup> <sup>[2]</sup>. It is the second highest contributor to employment in the country, after

the agricultural sector. The smart city project undertaken to build 100 smart cities is one of the many government initiatives taken to improve the housing situation in India. The PMAY (PM Awas Yojna) has been allocated Rs. 79,000 crores in the budget for the year 2023-24. This article discusses the implication of accounting, direct tax and indirect tax aspects on the real estate sector.

### Accounting implications

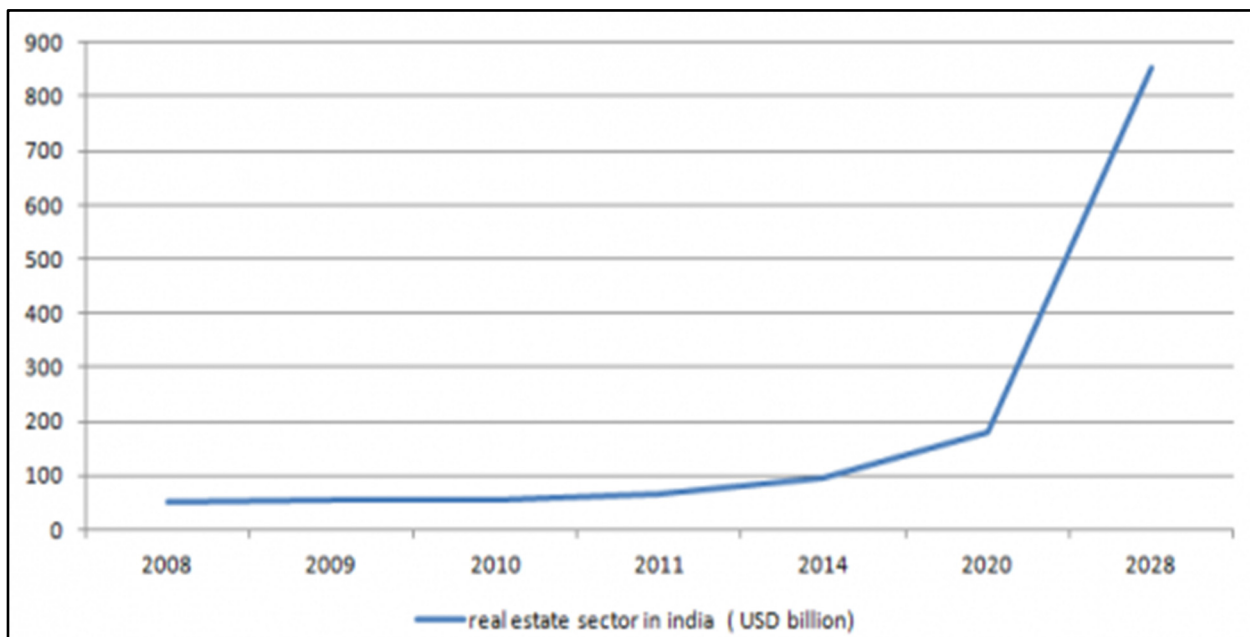


Figure 1- Source and credits: Project Guru

Real estate includes land, building, and the rights related to such properties. Due to the lengthy gestation period and higher ticket size of each project, the accounting of revenue and cost is unique in this sector.

**AS 7 and AS 9:** The relevant AS that applies to accounting for real estate is AS 7 - 'Revenue from Construction Contracts'. A construction contract is considered as a contract which undertakes the construction of an asset or combination of assets, including tangible as well as intangible assets. The long gestation period of the construction projects is not the sole distinguishing criteria of construction contracts.

**Recognition:** For accounting, if the consideration is variable, companies need to estimate variable consideration and include it in the transaction price when reversal of such revenue is unlikely. When the total cost of a contract exceeds its revenue, even during the progression or before the commencement of the project, the expected loss has to be recognized immediately.

**Measurement of revenue:** As per AS-9, revenue is the sum of cash received, receivables and other considerations i.e. by amounts charged to them for goods and services supplied and for use of assets by customers, while that as per AS-7 is measured as the sum received or receivable.

**Disclosure:** Disclosures must be given about contracts with customers, significant judgments and changes in timing or amount of revenue recognised. Further disclosure to be given are:

1. Amount of contract revenue recognised as revenue, costs incurred and recognised profits or losses up to the reporting period,
2. Methods used to determine the contract revenue and stage of completion of contracts which are in progress,
3. Amounts of advances received and amount of retention money,
4. Gross amount due from and due to customers for contract work.

ICDS III and ICDS IV are similar to AS-7 & AS-9 respectively.

**IndAS 115:** The relevant Ind AS applicable to the contracts is IndAS 115 - 'Revenue from contracts with customers' which prescribes the accounting of revenue for real estate companies. AS-9 was not exhaustive for the purpose of accounting for transactions related to the real estate sector, hence, the gap is filled by IndAS 115. As per IndAS 115, revenue is to be recognised upon completion of contractual obligations and when performance obligation is satisfied, over a period of time, POCM is to be used.

### 5-key principles to revenue recognition

1. Identify the contract with the customer
2. Identify performance obligations in the contract
3. Determine transaction price
4. Allocate the transaction price to the performance obligation
5. Recognize revenue as and when the entity satisfies performance obligations.

**Measurement:** Revenue is measured at the transaction price i.e. amount of consideration which an entity expects to be entitled to in exchange for transferring promised goods or services to a customer.

**Recognition:** Real estate entities can show that it has met performance obligation criteria and record revenue based on the completion contract method. In case, it cannot show that unit delivery is complete or performance obligation is met, it cannot book revenue over time. In such cases, the entities need to record revenue based on the completed contract method.

**Completed contract method (CCM):** Revenue is recognised only after the completion of the entire project i.e. profit or loss is recognised on an actual basis. In the financial years when the project is under construction, no income

is recorded. This method allows a delay in the booking of income and hence, also results in a delay in the booking of profit. Tax on the income is then paid at the end when the revenue and profits are booked. Amounts like tax and penalties are not included in revenue. No points for guessing that it is not the taxman's favourite method of accounting.

**Percentage of completion method (POCM):**

Certain criteria are required to be fulfilled to book revenue using POCM.

1. Customers receive and use the benefits simultaneously as the company performs its obligations.
2. The performance of the entity enhances or creates an asset controlled by the customer.
3. Entity creates an asset which has no other alternate use and it has a right to receive consideration for its performance executed till the given date.

Recoverable incremental costs to obtain a contract like brokerage and commission, are to be recorded as an asset. Costs related to a project are usually expensed out, barring a few exceptions. Upon fulfilment of obligation related to the contract by either party, a contract asset/liability is created. The company's unconditional right to consideration is separately shown as a receivable.

**Examples:**

2. **Under-construction property:** Performance obligation is complete only when the completely constructed property is handed over to the customer. Completing a slab does not count as a fulfilment of the contractual obligation.
3. **Agreement for joint development:** Landowners enter into a contract with a real estate company to construct apartments on their land. Here, the contract is to construct a predetermined number of flats/units and that is when revenue will be considered. If the landowners receive only a part of

the sales value of the flats/ units then the landowners are not customers and hence IndAS 115 does not apply.

Usually, buyers pay a certain portion of the total value of the transaction upfront and pay the remaining at the time of receiving the possession. Due to the long gestation period of projects in the construction sector, non-current receivables are to be recognised at the present value. The discount received is treated as finance income and not revenue from operations or sales.

**Lease:** Lease income and expenses are to be accounted for during the fit-out period as well. Any incentives provided to the lessee will be spread over the lease term and adjusted in the amounts of lease rentals. Lease income can be recognized based on the agreed rates as per the agreement. Interest-free security deposits are recognised at the present value and any interest income is recognized throughout the deposit. The difference between the fair value at inception and the lease rentals is recognized over the term of the lease on a straight-line basis.

**Non-cash consideration:** Developers sometimes get some rights, licences, permissions, additional space etc. in exchange for building certain structures like roads, public parks, etc. The barter transactions are recorded at the fair value of the asset, goods, services, received or given up, whichever is more clearly evident.

**TDR:** The cost to acquire TDR is considered as a cost for the builders. TDR acquired to construct build up requires that cost of acquisition shall be considered as the cost of construction. However, when TDR is acquired by forgoing the right by the owners on the existing structures, the cost of acquisition is considered as the fair market value or the net book value of the portion given up, whichever is less.

**Disclosures:** Disclosures regarding disaggregation of revenue, contract balances, performance obligations, significant judgments, capitalization of expense are to be given.

Differences in treatment as per AS7 and AS 9 versus Ind AS 115: AS 9 - Revenue recognition

follows a more realisation centric approach and requires revenue recognition when the revenue is realised or realisable. While, IndAS 115, follows the control principle, which recognizes revenue when the control, ownership, risks and rewards are transferred to the owner. AS-9 allows for recognition of revenue as per the progress of the work, while IndAS 115 warrants revenue recognition only upon completion of performance obligation. AS-9 differentiates the guidance for industries while IndAS 115 provides a comprehensive framework for all industries. AS-9 also differentiates between recognition of revenue from goods and services, while IndAS 115 does not.

## Direct Tax implications

Whether you are a businessman or investor, understanding the intricate taxation scenario is essential. Recent reports suggest that a surge in the property tax collections across the majority of the urban local bodies in India signalling a bustling real estate market<sup>[5]</sup>. Thus, considering the jump in property transactions, it is essential for professionals to understand the income tax aspect of the real estate sector.



Figure 2- Source and credits: Pexels

## The Accounting Tightrope walk

Real estate companies need to maintain two sets of accounts to comply with both, IndAS and Guidance notes. Guidance Note on Real Estate Transactions advocates reporting revenue as a percentage of the completion method (POCM).

**Percentage of completion method (POCM):** This method allows booking the revenue every year during construction according to the stage of completion of the project. By estimating the future

revenue and expenses, income is recognised based on estimates made. Tax is booked and paid yearly on the income booked every year. Revenue is booked as the project progresses, providing a snapshot of the development stage. Tax authorities, thus, prefer this method due to its regular outflow of tax.

Sec. 145 of the Income tax Act, 1961 (Act) states that the income chargeable under the head of "Profits and gains from business and profession"

is to be calculated using cash or accrual system used by the assessee who is a developer. The taxation perspective contains a lot of debate over which method, ie POCM or completed contract method, is to be used. However, the position with regards to the accounting methodology to be adopted and its consequent tax impact is a debatable issue and has witnessed a lot of litigation. Both the methods are explained in detail in the above section on 'Accounting implications'.

In ICDS, the definition of revenue from contracts with customers, the recognition criteria, identification of contracts are similar to that in AS7 and AS9. However the completed service of contract method is disallowed in ICDS IV. Contract costs are to be recognised as an expense in the period in which they are incurred. Expected loss is recognised in proportion to the work completed.

### Joint development agreement (JDAs) under section 45(5A) of the Income-tax Act,1961(Act)

Section 45(5A) of the Act is a special provision consider JDAs are the perfect collaboration between landowners and developers. JDAs are agreements entered into by builders and landowners where the owners give the builders the right to develop the property. The land owners get a share of revenue from the sale of constructed property and the builder gets the profits from the additional property developed. JDAs are a value proposition for the owners as well as the developer. It is a win-win situation where owners do not have to bear the cost of construction of the new property and they may even get a predetermined number of units in the newly developed property while developers skip the hefty capital investment for purchase of land, which in the case of JDA, is provided by the owner.

This section, however, is not applicable if the entire consideration is given in cash.

#### For developers

Units of property built by the developer will be treated as 'stock in trade' for them and the nature of such income will be 'Income from Business

and Profession'. The revenue from the sale of the property will be reduced by the expenses incurred in the development of the property. The profit from such development of property is the taxable amount.

In the case of JDA, timing is not always synchronised. While the transfer of the right to develop is done earlier, the consideration to the owner is received only later. Due to the extended gestation period of such projects, the consideration to the owner may come fashionably late, creating a time difference in taxation date and date of transaction.

#### For landowners

Computation of Income tax in the hands of the individual:

Full value of consideration	Stamp duty value of owner's share in project + consideration received in cash
Less: Indexed cost of acquisition	Cost of acquisition (COA) * Cost inflation index (CII) of the year of transfer / CII of the first year in which asset was held by assessee or CII of 2001-02, whichever is later
Capital gains	xxx

The difference in the hardship allowance or rent compensation given by the builder and that which is actually paid by the owner during the tenure of the construction, finds its way into the pockets of the owner and is taxed under the head "Income from other sources".

**TDS:** Cash payments, however, trigger a 10% TDS (tax deducted at source) u/s. 194IC, which rises to 20% sans a PAN number. The liability to deduct TDS is at the time when the consideration is credited to the owner.

#### Demystifying the impact of GST on real estate

The key reform brought about by GST was the availability of ITC on goods and services procured in the process of construction and development of property. Various activities in real estate are

subject to GST under the 'works contracts services' category, even though the sale of real estate itself is exempt. Completed property which has received the Completion certificate (CC) or Occupancy certificate (OC) is neither considered a good nor service, and hence is outside the purview of GST. Considering the long tenure of construction projects, GST is paid along with the instalments or lump sum payments made to the developer. All the materials used in construction attract GST to the developer. Developers charge 5% GST on the development of residential apartments, however the same is not eligible for ITC. GST is levied at 12% on commercial development and ITC is available.

In a bid to exclude the value of land from taxable real estate, a 33% standard abatement was introduced. This was given by the High Court of Gujarat ruling in the case of **Munjaal Manish bhai Bhatt vs. UOI** <sup>[3]</sup> <sup>[4]</sup>. This rule is ultra vires as there is no basis for coming up to this percentage of abatement. When the actual value of land is available, then that needs to be considered for the calculation of taxable values. However, when the value of land is not available, this value of abatement may be taken, thus making the abatement of 33% optional.



Figure 3- Source and credits: Housing

### Points to remember:

- Properties with up to 15% commercial space are treated as residential property only.
- As seen in the image below, no GST is applicable on the purchase/sale of plots, resale properties and ready-to-move-in flats. All ITC for the sale of land should be reversed.
- Stamp duty and registration charges are not replaced by GST and hence are parallelly applicable along with GST.
- GST is also applicable in the case of JDA, payable by the developer under the reverse charge mechanism before or at the time when the developer issues the CC.
- Common expenses like administrative charges, finance charges, marketing expenses, etc. must be proportionately attributed to the project and only eligible ITC on such expenses should be availed.

**Affordable housing:** GST brought reduced rates on products like cement and home sales, especially for affordable housing. Developers are



expected to pass on these benefits to customers, ensuring that even loss-making companies comply with anti-profiteering norms.

**TDR / FSI:** Transferable development rights (TDR) allows the owner of the land to transfer the development rights of the property to the developer without transferring the land. This TDR

is traded in the market. Housing societies, land owners, and entities transfer the development rights and allow the development of property on their land without transferring the ownership of the land. This provision allows for the development of the property without huge capital outflow for the developers.

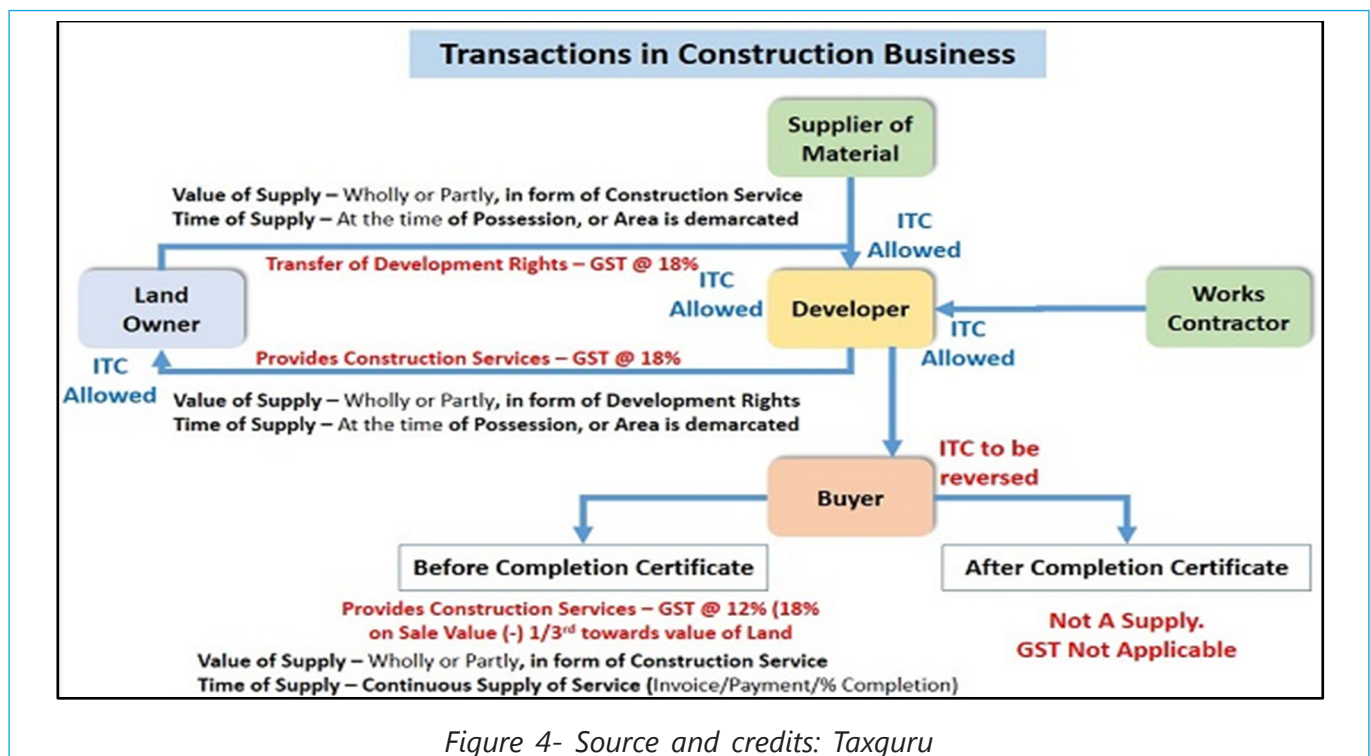


Figure 4- Source and credits: Taxguru

FSI is the Floor Space Index (Floor Area Ratio) that gives the developer the permissible ratio of built up area allowed on the land to the total area of the land. Under the notification no. 04/2019 and 05/2019-Central Tax (rate) on 29th March, 2019, GST on transfer of TDR made after 1st April, 2019 is applicable at 18% but a deemed value of 33% is assigned to the land transferred. This GST shall be payable on RCM basis if 80% of the purchases are not from registered sellers and ITC shall be eligible for such supply. The liability to pay GST on TDR/FSI arises on the builder on the date of issue of CC. The value of TDR is the higher of the consideration received or the value of the TDR.

### Taxability of other goods/services related to construction of property

- Additional charges:** Additional charges for facilities like car parking and amenities are considered bundled supply and are subject to GST at the rate applicable to the main service of property construction. The internal development charges and external development charges, to be collected by the developer and deposited with the government, are to be included in the value of the basic sale price and GST is to be levied on such taxes, duties, fees, charges levied under this or any other law.

2. The time limit to issue credit notes and reverse ITC on discounts given poses a challenge and increases the tax burden on the customer. In the meeting held on 17th December 2022, the GST council recommended that in case the buyer cancels the deal on an under-construction property, and the time limit to issue the credit note has lapsed, the buyer will be given the tax refund directly by the government.
3. Liquidated damages, cancellation charges, and poor performance penalties are considered as service and thus, chargeable of GST.
4. Compensation for alternate accommodation given by the developer to the owners while the construction is in progress is taxable under GST laws. Such compensation includes rent, displacement costs, relocation charges, brokerage, moving charges etc.

## Conclusion

To summarise, the ever-changing real estate environment in India necessitates a sophisticated approach to accounting, direct taxation, and indirect taxation. Real estate companies must choose between the completion contract and percentage of completion approaches when navigating the complexity of revenue recognition

following the adoption of IndAS 115. Developers' taxes are shaped by direct tax factors such as JDAs and the POCM. Due to the significant effects of GST on ITC, JDAs, under-construction properties, and works contract services, rigorous compliance is required. Stakeholders must adjust to regulatory frameworks as the industry develops, striking a balance between tax efficiency, financial transparency, and adherence to GST principles.

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## Evaluating Exemptions of Charitable Trusts and Religious Institutions



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Charitable NGOs and non-profits worldwide engage in collective efforts to support the needy through fundraising for social welfare. Recognizing their impact, India incentivizes these institutions with tax breaks. The Income Tax Act, 1961 (“the Act”) particularly Chapter III, which covers incomes exempt from tax also covers exemptions granted to charitable trusts. This article will delve into these tax exemptions and considerations for charitable or religious trusts. Under Chapter III, charitable or religious trusts can avail exemption in two ways:

1. Avail exemption under Section 10(23C) for income received by a registered university, or other educational institution, or a hospital subject to various conditions.
2. Avail exemption under Section 11 to 13 or income derived from property held under trust wholly for charitable or religious purposes.

Thus, a trust or institution can choose to opt for an exemption either under Section 10(23C) or under Section 11 of the Act.

### **Exemption under Section 10(23C) w.r.t. Universities, Hospitals, Educational and Medical Institutions**

Section 10(23C) of the Income Tax Act provides an exemption to income received by individuals or entities acting on behalf of specified institutions. The first category of this exemption encompasses

income generated by universities, educational institutions, hospitals, and other medical institutions falling under sub-clauses (iiiab), (iiiac), (iiiad), (iiiiae), (iv), (v), (vi), and (via) of section 10(23C). In essence, this provision encourages the tax-free status of income derived by universities and educational institutions, along with medical establishments, ensuring that they can allocate their resources more efficiently for the benefit of the public. By extending tax exemptions to these specific categories under section 10(23C), the government aims to incentivize and support the crucial roles played by universities, educational institutions, hospitals, and medical facilities in advancing education, healthcare, and research. Exemption of any income received by any person on behalf of universities, educational institutions, hospitals and other medical institutions under section 10(23C) is available as follows:

- 1) Universities or Educational Institutions or Hospitals or Medical Institutions substantially financed by the Government:
  - Any university or other educational institution wholly or substantially financed by the Government exists solely for educational purposes and not for profit. [Sub-clause (iiiab)]:
  - Any hospital or other institution wholly or substantially financed by the Government, which exists solely for philanthropic purposes and not for profit and which exists for the

reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of convalescing person or persons requiring medical attention or rehabilitation [Sub-clause (iiiac)];

2) Universities or Educational Institutions or Hospitals or Medical Institutions whose aggregate annual receipts does not exceed Rs.5 crore:

- Any university or other educational institution existing solely for educational purposes and not for profit and its aggregate annual receipts does not exceed Rs. 5 crore [Sub-clause (iiiad)];
- Any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of convalescence of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for profit, if its aggregate annual receipts do not exceed prescribed limit of Rs.5 crores. [Sub-clause (iii ae)];
- Where a person has receipts from an institution specified in sub-clause (iiiad) as well as from an institution specified in sub-clause (iii ae), whose combined receipts exceeds 5 crores, then the said person shall not be eligible for exemption under the respective sub-clauses (iiiad) and (iii ae).

3) Universities or Educational Institutions or Hospitals or Medical Institutions or Specified Charitable Institutions exempted subject to certain conditions:

- Any other fund or institution for charitable purposes approved by the Principal Commissioner or Commissioner having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States [Sub-clause (iv)];

- Any trust (including any other legal obligation) or institution wholly for public religious or wholly for public religious and charitable purposes approved by the Principal Commissioner or Commissioner having regard to ensure the income applies for the objects of the fund or institution [Sub-clause (v)];
- Any other university or educational institution existing solely for educational purposes and not for purposes of profit and which may be approved by the Principal Commissioner or Commissioner other than referred in (1) and (2) above [Sub-clause (vi)];
- Any other hospital, or other medical institution other than referred in (1) and (2) above approved by the Principal Commissioner or Commissioner [Sub-clause (via)].

It is pertinent to note that the Hon'ble Supreme Court tackled the interpretation of the term 'solely' appearing in section 10(23C) (vi) of the Act and the necessity to adhere to state laws for approval vide its Order dated 19th October 2022 passed in Civil Appeal No. 3795 of 2014 in the case of ***M/s New Noble Educational Society vs. The Chief Commissioner of Income Tax and Anr.*** Prior cases like ***American Hotel vs. CBDT (2008) 10 SCC 509*** and ***Queens's Educational Society v. CIT 2015 (8) SCC 47*** interpreted 'solely' to signify the dominant objective, favoring educational institutions with multiple aims, as long as education remains primary. However, the Apex Court disagreed, defining 'solely' as 'exclusively' or 'only' and rejecting the 'predominant object' test for educational entities. It emphasized that all an educational institution's objects must focus on education, allowing only incidental business activities related to education for tax benefits. Compliance with state laws was deemed crucial for Income Tax Authority to grant approval, ensuring the authenticity of charitable institutions under section 10(23C) of the Income Tax Act. As the court had taken a different view as compared

to its earlier judgments, the Apex Court directed that the view held by this judgment will be applicable prospectively.

### Exemptions under Section 11 to 13 of the Act

For exemption under Section 11 of the Income Tax Act, 1961, the assets must be held under the Trust. Whereas Section 12A states that exemption under Sections 11 and 12 can only be availed of if the following conditions are fulfilled:

1. **Registration:** The trust must register itself under Section 12AA with the Commissioner of Income Tax (CIT).
2. **Audit:** In cases where the income of the Trust or charitable institution exceeds the general exemption limit of INR 2,50,000 in any of the previous years, the accounts of such an entity must be audited.
3. **Return:** Under Section 139 (4A) of the Income Tax Act, 1961, anyone who receives an income generated by an asset held under a Trust or via other legal obligations entirely for charitable or religious purposes shall be required to provide a return for such income if the total amount for which they are assessable is over INR 2,50,000.

### Section 11

The tax exemption under Section 11 of the Income Tax Act is notably broader in scope, encompassing any philanthropic organization engaged in charitable or religious activities. This option is widely adopted by philanthropic entities due to its inclusive nature, accommodating a diverse range of organizations working towards social welfare.

The Act grants exemptions under this Section 11 with the key stipulation that the income of Non-Profit Organizations (NPOs) should be entirely dedicated to charitable or religious purposes. Notably, while the Act explicitly defines "charitable purpose" it lacks a specific definition for "religious purpose." The absence of a distinct definition implies a broader interpretation, allowing NPOs to apply their income in endeavours related

to the promotion of religious activities, or the maintenance of religious institutions, ensuring flexibility and inclusivity within the regulatory framework for organizations serving religious objectives if coupled with other Charitable Activities.

Section 2(15) of the Act defines the term 'Charitable Purpose'. 'Charitable purpose' includes

- relief of the poor,
- education,
- yoga,
- medical relief,
- preservation of environment (including watersheds, forests and wildlife) & preservation of monuments or places or objects of artistic or historic interest and
- the advancement of any other object of general public utility.

In the realm of tax laws, the definition of "Charity" is intentionally broad, encompassing a wide array of philanthropic activities. The term "charitable purpose" is not exhaustively defined, creating flexibility to cover diverse initiatives that contribute to societal well-being. Notably, the phrase "any other object of general public utility" adds to the expansiveness of the definition. However, the utility derived from these activities must extend beyond the interests of a select few individuals.

The lack of a specific definition for "general public utility" in the tax laws leaves room for interpretation. This phrase implies activities or initiatives that benefit the public at large, promoting the welfare and advancement of society. Importantly, the focus is on ensuring that the objectives classified under "general public utility" genuinely serves the broader community and are not restricted to benefiting only a specific group of individuals. The openness of these terms reflects an intention to encompass a variety of charitable endeavours that contribute positively to the public sphere while maintaining a level of discretion in their interpretation and application

within the legal framework. Section 2(15) of the Income Tax Act specifies that activities aimed at advancing any other general public utility won't be considered charitable if they involve:

- (a) Engaging in trade, commerce, or business, or
- (b) Providing services related to trade, commerce, or business, for a fee or any other consideration.

However, there are exceptions. Such activities can still be considered charitable if:

- (i) They are directly related or incidental to advancement of general public utility.
- (ii) The total income from these activities doesn't exceed 20% of the total receipts of the trust or institution during the previous year.

In simpler terms, while promoting public welfare is considered charitable, if these activities involve business-like actions or services for a fee, they might not qualify unless they directly contribute to the charitable purpose and stay within the specified income limits.

The Hon'ble Supreme Court of India in ***Assistant Commissioner of Income Tax (Exemptions) vs. Ahmedabad Urban Development Authority [Civil Appeal No. 21762 of 2017]*** delivered a landmark decision regarding the provisions and conditions of a charitable institution engaged in the activity of advancing an object of general public utility ("GPU"). The Supreme Court held that a charitable organization cannot engage in trade, commerce, or business, or provide services for consideration unless such commercial activity is incidental to its main object and falls within the 20% monetary threshold of total receipts as per Section 2(15) of the IT Act. The SC clarified that determining whether an activity constitutes "trade, commerce, or business" depends on the cost at which services are availed and the price at which they are provided to clients. The case involved various entities, including statutory authorities, trade promotional bodies, the ICAI, cricket associations, and private trusts, aiming to interpret the proviso to Section 2(15) and identify qualifying activities under the provision. Section

2(15) of the Act defines charitable purpose to include the advancement of any other object of General Public Utility (GPU). The proviso to this section specifies that such advancement of GPU's object would not be considered charitable if an institution engages in trade, commerce, or business, or provides services related to trade, commerce, or business for which it receives a fee or cess or any other consideration. However, if such activities are carried out in the course of advancing any other object of GPU, and the aggregate receipts from such activities during the previous year do not exceed 20% of the total receipts of the institution for the relevant period, these activities are considered charitable. It also held that instead of looking at the predominant object, an analysis of the nature of activities undertaken by the charitable organization must be made to ascertain whether or not they were intrinsically linked to GPU and to qualify as a charitable organization engaged in GPU, such activities should be conducted in the course of achieving the GPU. In addition, such analysis of income and expenditure of GPU charitable institutions must be done on an annual basis to determine the nature of their activities. This would indicate whether the amounts charged are nominal or significantly higher and accordingly determine if such activity amounts to "trade, commerce or business" held by the Apex Court.

Now we shall proceed to understand what is exempt from tax under Section 11 of the Act.

The following income shall not be included in the total income of the previous year of the person in receipt of the income:

- (a) Income derived from property held under trust wholly for charitable or religious purposes to the extent such income is applied in India for such purpose. Further, a minimum 85% of the income derived should be applied for charitable or religious purpose.
- (b) Income derived from property held under trust in part only for such purpose, to the extent such income is applied in India for such purposes.

- (c) Income derived from property held under trust,
- created on or after 1.4.1952 for charitable purpose which tends to promote international welfare in which India is interested to the extent to which such income is applied to such purpose outside India. This does not cover religious trusts.
  - trust for charitable or religious purposes, created before 1.4.1952, to the extent to which such income is applied for such purposes outside India.

In both cases, the CBDT should have, by general or special order, directed that such income shall not be included in the total income of the person in receipt of such income.

- (d) Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution. Such voluntary contributions received as corpus must be invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus, to claim the above exemption.

Section 11 of the Income Tax Act provides deductions for the income from property under charitable trusts and institutions. In order to claim them, this income must come from properties that are operating solely for religious or charitable purposes and the entities must obtain a registration certificate under Section 12A or Section 12AA of the IT Act. There are certain conditions as well such as:

- i. The purposes for which individuals provide donations to these entities must come under Section 12 of the Act.
- ii. Considering the mode and manner of fund deposits and investments, trusts must adhere to the conditions present in the Act's Section 11(5) and Section 13(1).

- iii. The institutions or trusts must not be established to benefit a particular religious caste or community.
- iv. Income or property of such institutions should not apply for the direct or indirect benefit of any person defined under Section 13(3). They include the institution's founder, manager, trustee, author, relative, etc.

The income used by charitable institutions for promoting international welfare is also eligible for exemption under Section 11. However, there are certain conditions in this case as well. In such a scenario, if the trust was formed before 1st April 1952, the income utilized for philanthropic or religious purposes outside India will be eligible, provided that the CBDT, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income. And if the entity was created on or after 1st April 1952, income utilized for promoting worldwide welfare activities of which India is a part will be applicable for deductions.

### Section 12 and 12A

In the context of charitable or religious trusts and institutions under Section 11, voluntary contributions received are treated as income derived from property held for charitable or religious purposes. However, donations explicitly designated as corpus donations, with the directive that they form part of the trust or institution's core funds, are not considered income. This exemption applies if the corpus donations are invested as per the modes specified in Section 11(5), ensuring they contribute to the trust's long-term financial foundation. Additionally, the provision stipulates that the value of medical or educational services provided by a charitable or religious trust running a hospital, medical institution, or educational institution to persons referred under Section 13(3) is deemed as income. This income is derived from property held under trust wholly for charitable or religious purposes. Consequently, it becomes subject to income tax during the relevant previous year when such

services are rendered. This regulation ensures that the provision of essential services by these trusts is acknowledged for taxation purposes, aligning with the broader objectives of charitable and religious endeavours.

The Charitable trusts, Non-Profit Organizations/ Non-Government Organizations (NPOs/NGOs), Welfare societies, and Section 8 Companies must register under Section 12A to claim complete tax exemptions under Sections 11 and 12 of the Income-tax Act, 1961. Section 12 offers income exemption from voluntary contributions that a charitable or religious trust receives from a donor. An accumulation not exceeding 15% of the income from such property is permissible. For computing this 15%, voluntary contributions referred to in section 12 shall be deemed to be part of the income. Therefore, in order to avail exemption, minimum 85% of the income has to be applied towards the object of the NPO. In other words, 85% of income must be applied during the previous year for the purposes for which the trust has been created. The balance of 15% can be freely accumulated or set apart for application to charitable or religious purposes in India. Hence, one of the benefits under Section 12A is when a trust, NGO, or institution sets up its operations, it receives a tax rebate of 15% on its income, provided it plows back such money into charity or welfare activities. One cannot use this particular amount received through rebate for any personal use. The registration under 12A is mandatory to receive grants from the Central or State governments. However, private or family trusts cannot avail of exemptions under Section 12A. There are a certain set of documents which are required while applying for registration under Section 12A such as Copy of registration with the (ROC)/public trusts/firms or societies, KYC details of members, PAN card details of the trust, society, or institution etc. as mentioned under Sec.12AA and Sec. 12AB for fresh registration.

According to the Finance Act, 2020 a provisional registration will be given to an existing trust or institution applying for registration under Section 12AB. Form No. 10A needs to be duly filed while applying for provisional registration for the first

time. If any new trusts seeks fresh registration, the application for provisional registration under Section 12AB has to be filed one month before the commencement of the previous year in which the charitable activities have to be started. The provisional registration will be granted for a period of three years. Trusts or institutions that have received the provisional registration must apply for a permanent registration by submitting Form No. 10AB, at least six months before the expiry of provisional registration or six months after the commencement of charitable activities, whichever is earlier. The registration will be granted for the period of five years.

The tax exemption registration process underwent a significant overhaul on April 1, 2021, embracing digitalization and simplification. Applications for Section 10(23C) or Section 12AB exemptions are now submitted online, each organization receiving a unique registration number. Approvals have a specified period, necessitating timely renewal to maintain tax exemption. Provisional registration allows temporary approval, expediting processing. The online system enhances accessibility and efficiency, but organizations must be vigilant about renewal deadlines to continue enjoying tax benefits, reflecting a user-friendly and efficient approach to registration. In the Gujarat Maritime Board case (***CIT vs. Gujarat Maritime Board, 2007***), the Supreme Court clarified that entities primarily focused on public development, devoid of profit motives and legally obliged to use income for public benefit, can be registered as charitable trusts under section 12A. Past rulings, like ***CIT vs. Madras Stock Exchange Ltd. (1981) 130 ITR 184***, supported such claims, allowing profits from unrelated businesses for public utility to qualify for exemption. The case highlights the delicate balance needed to prevent misuse of tax benefits by commercial ventures. Registering under Section 12A of the Income Tax Act is crucial for non-profit organizations to claim full income tax exemption, while unregistered trusts may face taxable transactions.

In the Commissioner of Income Tax, ***Gandhinagar vs. Gujarat Maritime Board***, the Gujarat High Court affirmed the Tribunal's decision, emphasizing



the need for genuine deviation from the Trust's objectives for cancellation of the registration and rejecting the Commissioner's conclusions based on perceived violations of specific sections and the amended Section 2(15), hence the appeal got dismissed.

### Section 13

Trusts claiming exemption under Section 11 of the Income Tax Act must consider the implications outlined in Section 13, which aims to restrict exemption in specific situations. Section 13(1) prohibits the direct or indirect use of the trust's income or property for the benefit of specified individuals. Section 13(2) further identifies specific circumstances where it is deemed that the trust's income or property is utilized for the benefit of these specified individuals. Section 13(3) of the Income Tax Act defines "specified persons" to include the author of the trust, the founder, and individuals making substantial contributions to the trust. If a trust engages in any transaction, directly or indirectly benefiting these specified persons as outlined in Section 13(3), it jeopardizes the exemption granted under Sections 11 and 12 of the Income Tax Act.

Now here an interesting question arises whether a contravention under Section 13(1) or 13(2) would lead to denial of partial or entire exemption under Sections 11 and 12. The challenge stems from the wording of Section 13, which allows for two interpretations: one suggesting the complete denial of exemption and the other indicating that only the exemption for the specific income violating Section 13 should be denied. Therefore, to tackle the issue the amendment has been made in Section 13(1)(c)/(d). The said amendment provides that only that part of the income which has been applied in violation to the provisions of Section 13 shall be liable to be included in total income. It is essential to note that the said amendment came into effect from 1 April 2023. Therefore, the said amendment will be applicable prospectively from AY 2023-24. Further, Section 115BBI has also been introduced by Finance Act, 2022 to tax the income in violation to Section 13

at special rates, which also came into effect from 1 April 2023.

In ***DIT (Exemption) vs. Charanjiv Charitable Trust [(2014) 43 taxmann.com 300 (Delhi)]***, the Delhi High Court considered whether a Charitable Trust violated sections 13(1)(c)(ii) and 13(3) of the IT Act in transactions with a specified person, APIL. The Trust, aiming to open schools, entered agreements with APIL to buy land, but later canceled these agreements, receiving a refund. The Revenue argued that the Trust's actions indicated an improper motive of advancing funds without interest to a prohibited person, violating Section 13, hence denying the Trust entire tax exemption under Section 11 of the IT Act. The Court sided with the Revenue, finding the Trust in violation of Section 13 due to its dealings with APIL, impacting its eligibility for tax exemption.

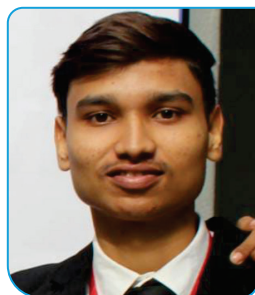
Referring to the Memorandum to Finance Act, 2022, it is noted that denying the entire exemption to a trust for a minor income applied in violation of Section 13 poses challenges for trusts and institutions. Despite the beneficial amendment to Section 13(1)(c)/(d) effective from April 1, 2023, completely denying exemption for a single violation might be overly severe for trusts dedicated to charitable or religious purposes in assessment years preceding 2023-24.

### Key Takeaways

The article highlights how recent judgments clarify tax exemptions for charitable organizations, indicating potential scrutiny by tax authorities. The rulings urge charities to align with their stated objectives, especially educational and medical institutions. Compliance with other laws becomes crucial, leading to increased scrutiny and potential disputes. Upholding ethical responsibility is vital for tax exemptions, ensuring genuine contributions to society. It emphasizes the need for transparency and accountability among trust administrators and tax authorities to foster a fair system. Encouraging ethical practices is not just a rule but a moral obligation for charitable trusts to continue their noble work for societal betterment.



## An In the Realm of Regulation: Analysing India's Law Enforcement Agencies



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### Introduction

In the formative years of British India, legal frameworks drew inspiration from religious doctrines, resulting in an inconsistent and ad hoc system marked by disparate penalties for similar offenses based on religious affiliations. Recognizing the imperative to streamline and institutionalize these laws for effective governance in the Indian subcontinent, the British Empire initiated a transformative process through the Charter Act of 1833. This historic move led to the establishment of the inaugural Law Commission of India, chaired by Lord Macaulay, with a pivotal focus on codifying key legal elements such as the Indian Penal Code and the Criminal Procedure Code. Subsequently, this landmark commission set the stage for four successive law commissions, each contributing significantly to the evolution of Indian law by producing crucial statutes like the Indian Contract Act, Code of Criminal Procedure, Code of Civil Procedure and the Transfer of Property Act.

The trajectory of India's legal reforms reflects a continuous response to diverse socio-religious and administrative dynamics. As the nation progresses, safeguarding its socio-economic and political interests becomes paramount, necessitating robust measures to address challenges ranging from security threats and external aggression to internal issues like money laundering and corruption. In this intricate landscape, the

establishment of numerous law enforcement agencies under the auspices of ministries such as Home Affairs, Defense, and Finance underscores the comprehensive approach undertaken by India. This article delves into the multifaceted realm of regulation, aiming to analyze the intricacies and dynamics of India's law enforcement machinery in its ongoing pursuit of fostering a secure and peaceful environment.

Apart from Police there are several enforcement agencies in India which exist for better enforcement of law and to maintain order in the society. Following is the list of key enforcement and intelligence agencies existing in India who operate for the betterment of the society.

### 1. Central Bureau of Investigation (CBI)<sup>1</sup>

#### **Historical Background:**

During World War II, India faced corruption issues linked to war expenditures. To counter this, the Special Police Establishment (SPE) was formed in 1941, later replaced by the Delhi Special Police Establishment Act of 1946, enabling investigation of bribery and corruption. The SPE's jurisdiction expanded, covering Union Territories initially, then extending to other areas with state consent.

In 1963, by a resolution dated 1st April, 1963 CBI was established to address broader crimes beyond corruption. Initially part of the SPE, the CBI

1. Central Bureau of Investigation, <https://cbi.gov.in/>.

included divisions for anti-corruption, economic offences, and special crimes. Over time, it evolved to investigate a wide range of crimes, earning trust from various institutions.

CBI's structure comprises divisions focusing on anti-corruption, economic offenses, special crimes, prosecution, administration, policy, coordination, and forensic science. The agency has transformed from an anti-corruption entity to a comprehensive law enforcement agency with authority to investigate and prosecute offenses across India. Thus, CBI is the premier investigating police agency in India. It is also the nodal police agency in India, which coordinates investigation on behalf of Interpol Member countries. The Director of CBI oversees the organization, with its governance defined by the Central Vigilance Commission Act of 2003.

### **Delhi Special Police Establishment Act, 1946**

SPE is constituted under Section 2 of the Delhi Special Police Establishment Act, 1946 (DSPE Act). By Resolution dated 1st April, 1963, the government named it as Central Bureau of Investigation (CBI).

### **Ministry**

The CBI, formerly functioning under the Home Ministry is now functioning under Dept. of Personnel, Ministry of Personnel, Pension & Public Grievances, Government of India

### **Investigation & Jurisdiction**

CBI derives power to investigate under Section 2 of the Act with jurisdiction to investigate offences (notified in Section 3 of the DSPE Act) in the Union Territories only. However, the jurisdiction can be extended by the Central Government to other areas including Railway areas and States

under Section 5(1) of the Act, provided the State Government accords consent under Section 6 of the Act. The executive officers of CBI of the rank of Sub Inspector and above, exercise all powers of a station office in-charge of the police station for the concerned area for the purpose of investigation. As per Section 3 of the Act, SPE is authorised to investigate only those cases, which are notified by the Central Government from time to time.

### **Then how is a case transferred to/taken up by CBI?**

The CBI has jurisdiction to investigate in following situations:

1. The CBI has power to investigate any offence as notified under Section 3 of DSPE Act within the Union Territory, as stated above<sup>2</sup>;
2. Upon the request from the state government<sup>3</sup> or after giving consent<sup>4</sup> by the state government, the Central Government can direct/order CBI to take up the Investigation; or
3. High Court or Supreme Court orders CBI to take up investigation anywhere in India without requiring the consent of the concerned State<sup>5</sup>.

It is important to note that CBI *suo moto* cannot take cognizance of any matter and any case that comes before the CBI shall be from the abovementioned 3 routes only.

### **Where are the cases taken up by the CBI tried?**

The cases taken up by the Central Bureau of Investigation (CBI) are tried by the special courts established under the Code of Criminal Procedure,

2. § 2, Delhi Special Police Establishment Act, 1946.

3. FAQ 1, Central Bureau of Investigation, <https://cbi.gov.in/faq#:~:text=The%20Central%20Government%20can%20authorize,of%20the%20concerned%20State%20Government.>

4. § 6, Delhi Special Police Establishment Act, 1946.

5. FAQ 8, Central Bureau of Investigation, <https://cbi.gov.in/faq#:~:text=The%20Central%20Government%20can%20authorize,of%20the%20concerned%20State%20Government.>

1973, in the respective states or union territories<sup>6</sup>. The special courts have exclusive jurisdiction to try the offences under the Delhi Special Police Establishment Act, 1946, and other laws that empower the CBI to investigate<sup>7</sup>. The special courts also have the power to grant bail, issue warrants, summon witnesses, order searches and seizures, and pass any other orders as deemed necessary for the fair and speedy trial of the cases<sup>8</sup>. The appeals against the orders or judgments of the special courts lie with the High Courts and the Supreme Court of India<sup>9</sup>.

## 2. National Investigation Agency (NIA)<sup>10</sup>

The NIA stands as India's central counter-terrorism law enforcement agency, addressing complex inter-state and international linkages associated with terrorism, arms and drug smuggling, fake currency circulation, and border infiltrations.

After the November 2008 Attacks, India recognized the need for a centralized agency to investigate offenses related to terrorism and other national security issues. Following recommendations from experts and committees, including the Administrative Reforms Commission, the Indian government proposed and enacted the National Investigation Agency Act, 2008 ("NIA Act") on December 31, 2008. The NIA, operating under a concurrent jurisdiction framework, focuses on cases involving terrorism and specific Acts with national ramifications.

With an aim to deter terrorist activities & vision to establish excellence in counter-terrorism and national security investigations, cultivating a highly trained and collaborative workforce, the NIA as of February 5, 2020, the NIA has investigated 315 cases, with 60 cases being decided in trial after the submission of charge sheets. Impressively, 54 of these cases resulted in convictions, showcasing a remarkable 90% conviction rate.

## Legal Framework

The National Intelligence Agency is formed under the National Investigation Agency Act, 2008 (NIA Act).

### How a case is transferred to/taken up by NIA?

As per Section 6 of the NIA Act, the NIA can only act upon '*Scheduled offences*'. Section 2(g) of the NIA Act defines '**Scheduled offences**' as the offences which are mentioned in the Schedule 1 of the NIA Act.

In accordance with Section 6 of the NIA Act, when the police receive information under Section 154 of the CrPC pertaining to offenses classified as Scheduled Offenses under the NIA Act, the police station's officer in charge is mandated to expeditiously transmit the report to the State Government. Subsequently, the State Government is required to promptly forward the said report to the Central Government. Then the Central Government within 15 days from the receipt of the report from the State Government determines whether the offence is indeed a Scheduled Offence. This determination is based on the information provided by the State Government or received from other sources. The Central Government also considers the gravity of the offence and other relevant factors to decide if it's a fit case for investigation by the NIA.

The Central Government has the authority to suo motu direct the NIA to investigate a Scheduled Offence if it believes such an offence has occurred and warrants investigation under the NIA Act.

Once the Central Government issues a direction for NIA investigation, the State Government and any police officer of the State Government involved in the investigation must cease their activities. They are required to transmit all relevant documents and records to the NIA. Until the NIA

6. CD Staff, How does the CBI take up cases?, Civildaily (Mar. 26, 2022), <https://www.civildaily.com/news/how-does-the-cbi-take-up-cases/>. CD Staff, How does the CBI take up cases?, Civildaily (Mar. 26, 2022), <https://www.civildaily.com/news/how-does-the-cbi-take-up-cases/>.

7. Central Bureau of Investigation, 2 (last visited Dec. 21, 2023).

8. Supra, at 6.

9. Supra, at 6.

10. National Investigation Agency, <https://www.nia.gov.in/>.

officially takes up the investigation, it remains the duty of the officer-in-charge of the police station to continue the investigation.

If the Central Government believes that a Scheduled Offence has occurred outside India but within the purview of the NIA Act, it may direct the NIA to register the case and initiate an investigation. In such cases, the Special Court at New Delhi is designated with jurisdiction.

### ***Where are the accused under NIA Act tried?***

Under section 11, the Central Government shall, in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate one or more Court of Session as Special Courts. The appeal from the special court shall lie to the High Court both on facts & on law.

### **3. Enforcement Directorate (ED)<sup>11</sup>**

The ED stands as a pivotal multi-disciplinary organization within the Indian government, entrusted with the investigation of money laundering offenses and violations of foreign exchange laws. Established in 1956 as an 'Enforcement Unit' under the Department of Economic Affairs, the ED has undergone significant transformations over the years.

#### ***Historical Background***

Originally conceived to address violations of Exchange Control Laws under the Foreign Exchange Regulation Act, 1947 (FERA '47), the Enforcement Unit underwent a name change in 1957, becoming the 'Enforcement Directorate.' With branches in Delhi, Bombay, Calcutta, and later in Madras, it initially operated under the Department of Economic Affairs. In 1960, administrative control shifted to the Department of Revenue.

### ***Legal Framework Changes:***

As legislative frameworks evolved, the ED adapted accordingly. The repeal of FERA '47 and the introduction of the Foreign Exchange Management Act, 1999 (FEMA) marked a significant shift. Simultaneously, the Prevention of Money Laundering Act, 2002 (PMLA) came into effect in 2005, assigning the ED the responsibility of enforcement. The enactment of the Fugitive Economic Offenders Act, 2018 (FEOA) further expanded the ED's purview.

### ***Key Functions***

The Enforcement Directorate's primary functions revolve around enforcing PMLA, FEMA, FEOA. Key responsibilities include tracing assets derived from proceeds of crime, provisionally attaching property, ensuring prosecution of offenders, and confiscating property through Special Court, a session court is designated as the Special Court. The ED can investigate the proceeds of a predicate or a primary offence that has been filed by an agency like the CBI.

As a statutory body operating under the administrative control of the Department of Revenue, Ministry of Finance, the Enforcement Directorate plays a crucial role in safeguarding India's financial integrity by investigating and prosecuting offenses related to money laundering and foreign exchange laws.

### **4. Narcotics Control Bureau (NCB)<sup>12</sup>**

#### ***Historical Background & Legal Framework***

NCB was established in 1986 as the apex body for drug law enforcement in India under the Ministry of Home Affairs. It was created after India ratified the United Nations Convention on Psychotropic Substances in 1985, which required the signatories to have a single agency for

11. Enforcement Directorate, <https://enforcementdirectorate.gov.in/>.

12. Narcotics Control Bureau, <https://narcoticsindia.nic.in/>. (last visited Dec. 21, 2023).

13. Ibid, 12.

coordinating and implementing the obligations under the convention<sup>13</sup>. The NCB derives its legal authority and is responsible for implementing the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act)<sup>14</sup>. The NCB has its headquarters in New Delhi and has six zonal units and 14 sub-zonal units across the country<sup>15</sup>. The NCB also works in close cooperation with other national and international agencies such as the Central Bureau of Investigation, the Directorate of Revenue Intelligence, the Customs, the Enforcement Directorate, the Border Security Force, the Coast Guard, the Interpol, the United Nations Office on Drugs and Crime, and the International Narcotics Control Board<sup>16</sup>.

The NDPS Act is the primary legislation that regulates the cultivation, production, manufacture, possession, sale, purchase, transport, storage, consumption, import, export, and transit of narcotic drugs and psychotropic substances in India<sup>17</sup>. The NDPS Act also provides for the constitution of the Narcotics Control Bureau and empowers it to exercise the powers and functions of the Central Government for taking measures with respect to the matters specified in the act<sup>18</sup>. The PITNDPS Act is a special law that provides for the prevention of illicit traffic in narcotic drugs and psychotropic substances and for the forfeiture of property derived from or used in such illicit traffic<sup>19</sup>. The PITNDPS Act also empowers the NCB to investigate and prosecute the offences under

the act and to attach and seize the properties involved in such offences<sup>20</sup>.

### ***How a case is transferred to/taken up by NCB?***

The NCB can take up a case either on its own or on the basis of information received from other sources such as the public, the media, the informers, the other law enforcement agencies, the courts, etc.<sup>21</sup> The NCB can also take over a case from any other agency if it is of inter-state or international ramifications if it involves a large quantity or high value of drugs or substances, or if it is of national or international importance, or if it is in the interest of justice, or if it is directed by the Central Government or the courts<sup>22</sup>. The NCB can also transfer a case to any other agency if it is of a local or minor nature, if it is beyond its jurisdiction or competence, if it is in the interest of justice, or if it is directed by the Central Government or the courts<sup>23</sup>.

### ***Where are the cases taken up by the NCB tried?***

The cases taken up by the NCB are tried by the special courts established under the NDPS Act and the PITNDPS Act in the respective states or union territories<sup>24</sup>. The special courts have exclusive jurisdiction to try the offenses under the acts and have the power to impose the penalties prescribed by the acts, which include imprisonment, fine, forfeiture of property, and death penalty in certain cases<sup>25</sup>. The special courts also have the power to grant bail, issue warrants,

14. Ibid, 12.

15. ClearIAS Team, Narcotics Control Bureau (NCB), (last visited Dec. 21, 2023).

16. Ibid, 15.

17. Ibid, 15.

18. Ibid, 185.

19. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, No. 46, Acts of Parliament, 1988 (India).

20. supra, 12.

21. supra, 12.

22. supra, 15.

23. supra, 15.

24. supra, 15.

25. Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India).

summon witnesses, order searches and seizures, and pass any other orders as deemed necessary for the fair and speedy trial of the cases. The appeals against the orders or judgments of the special courts lie with the High Courts and then to the Supreme Court of India.

## 5. Intelligence Bureau (IB)<sup>26</sup>

### *Historical Background*

IB was established in 1887 as the Central Special Branch by the British Indian Army to monitor the activities of the Russian Empire in Afghanistan<sup>27</sup>. It was later renamed as the Intelligence Bureau in 1920 and became the main intelligence agency of the British Raj<sup>28</sup>. After India's independence in 1947, the IB continued to function under the Ministry of Home Affairs and was responsible for collecting and analyzing intelligence from within and outside the country<sup>29</sup>. The IB also played a crucial role in the integration of the princely states into the Indian Union, the liberation of Goa, the Sino-Indian War, the Indo-Pakistani Wars, the Khalistan movement, the Naxalite insurgency, the Kashmir conflict, and the Mumbai attacks<sup>30</sup>. The IB has undergone several changes and reforms over the years to cope with the evolving security challenges and threats faced by the nation<sup>31</sup>.

### *Legal Framework*

The IB does not have a specific statute or legal provision that defines its powers and functions. IB had functioned for more than a century after its inception in 1887 without the backing of any

regulatory framework. The constitutionality of IB was challenged by a PIL filed by RN Kulkarni back in 2012<sup>32</sup>. As a result of the PIL, the court had directed the Central Government to come up with an executive order clearly specifying the powers and functions of IB. However, to this date, such an executive order has not come into force<sup>33</sup>.

### *Areas of Investigation & Jurisdiction of the IB*

The IB is a vital component of India's security apparatus, mandated to investigate and prevent threats to internal security, sovereignty, and integrity. With jurisdiction across India and, when necessary, abroad with host country consent, the IB addresses offenses ranging from crimes against the state like sedition and conspiracy to security-related issues such as espionage and terrorism. It also handles violations of the Official Secrets Act, Unlawful Activities (Prevention) Act, and Information Technology Act, covering cybercrimes and unlawful activities. Additionally, economic offenses under the Foreign Contribution (Regulation) Act and the Foreign Exchange Management Act, including money laundering, are within its purview. The IB's role extends to combating corruption under the Prevention of Corruption Act, reflecting its commitment to upholding ethical governance and countering diverse threats to national security.

### *How does a case is transferred to/taken by the IB?*

The IB can take up a case either on its own or on the basis of information received from

26. Ministry of Home Affairs, <https://www.mha.gov.in/en/centralpoliceorganization/intelligence-bureau> (last visited Dec. 21, 2023).

27. Ibid, 26.

28. ClearIAS Team, Intelligence Agencies of India: IB and RAW, CLEARIAS, <https://www.clearias.com/intelligence-agencies-ib-raw/> (last visited Dec. 21, 2023).

29. Ibid, 28.

30. Ibid, 28.

31. supra 26.

32. Times Of India, Explain Intelligence Bureau's legality, HC tells Centre, Times of India (Mar. 26, 2012), <https://timesofindia.indiatimes.com/india/Explain-Intelligence-Bureaus-legality-HC-tells-Centre/articleshow/12408605.cms?referral=PM>.

33. Bipasha Kundu, The Legality of Intelligence & Investigative Agencies of India, Live Law (Nov. 4, 2021), <https://www.livelaw.in/mlum.remotlog.com/columns/intelligence-and-investigative-agencies-india-need-for-legal-framework-data-protection-right-to-privacy-184937>.

other sources such as the public, the media, the informers, the other intelligence or law enforcement agencies, the courts, etc.<sup>34</sup>. The IB can also take over a case from any other agency if it is of inter-state or international ramifications or if it involves a high level of secrecy or sensitivity or if it is of national or international importance or if it is in the interest of justice or if it is directed by the Central Government or the courts<sup>35</sup>. The IB can also transfer a case to any other agency if it is of local or minor nature or if it is beyond its jurisdiction or competence or if it is in the interest of justice or if it is directed by the Central Government or the courts<sup>36</sup>.

### **Where are the cases taken up by the Intelligence Bureau (IB) tried?**

The cases taken up by the IB are tried by the special courts established under the National Investigation Agency Act, 2008, in the respective states or union territories<sup>37</sup>. The special courts have exclusive jurisdiction to try the offences under the act and have the power to impose the penalties prescribed by the act, which include imprisonment, fine, and death penalty in certain cases. The special courts also have the power to grant bail, issue warrants, summon witnesses, order searches and seizures, and pass any other orders as deemed necessary for the fair and speedy trial of the cases<sup>38</sup>. The appeals against the orders or judgments of the special courts lie with the High Courts and the Supreme Court of India<sup>39</sup>.

## **6. Research and Analysis Wing (RAW)**

### **Historical Background**

RAW was established in September 1968 as a successor to the Intelligence Bureau (IB), which was responsible for both internal and external intelligence until then. RAW works as an external agency. The need for a separate external intelligence agency was felt after the failures of the IB in the 1962 Sino-Indian War and the 1965 Indo-Pakistani War<sup>40</sup>. RAW was created under the leadership of Rameshwar Nath Kao, who was its first chief and is regarded as the father of Indian intelligence<sup>41</sup>. Under his guidance, RAW achieved several successes, such as the creation of Bangladesh in 1971, the accession of Sikkim to India in 1975, the support to the African liberation movements, and the protection of India's nuclear program<sup>42</sup>. RAW also faced some challenges and controversies, such as the defection of one of its officers, Rabinder Singh, to the United States in 2004, the involvement in the 1999 Kargil War, and the allegations of meddling in the domestic affairs of India's neighbors<sup>43</sup>. Over the years, RAW has undergone several changes and reforms to adapt to the changing security environment and the emerging threats and opportunities for India<sup>44</sup>.

Statute and legal provisions which form and govern the functioning of the investigative agency: Unlike many other intelligence agencies, RAW does not have a specific statute or legal provision that defines its powers and functions. It operates under the executive order of the Prime Minister of

34. supra, 28.

35. supra, 28.

36. supra, 28.

37. National Intelligence Agency Act, 2008, No. 34, Acts of Parliament, 2008 (India); R. K. Raghavan, The Intelligence Bureau: A Historical Perspective, 56 INDIAN J. PUB. ADMIN. 1 (2010).

38. Ibid, 37.

39. supra, 37

40. Jayshree Bajoria, RAW: India's External Intelligence Agency, COUNCIL ON FOREIGN RELATIONS 2 (last updated Feb. 18, 2009).

41. ClearIAS Team, Intelligence Agencies of India: IB and RAW, CLEARIAS 3 (last visited Dec. 21, 2023).

42. ibid, 41.

43. supra, 41.

44. supra, 41.



India, who is the head of the Cabinet Committee on Security, and is accountable to the Parliament of India through the Ministry of External Affairs<sup>45</sup>. RAW derives its authority from the Constitution of India, the Indian Penal Code, the Criminal Procedure Code, the Official Secrets Act, and other relevant laws and regulations that govern the conduct of foreign affairs and national security<sup>46</sup>. RAW is also subject to the oversight of the Central Vigilance Commission, the Comptroller and Auditor General of India, and the judiciary<sup>47</sup>. RAW is also bound by the fundamental rights and the rule of law enshrined in the Constitution of India and has to respect the human rights and civil liberties of the citizens and the foreign nationals<sup>48</sup>.

### **Investigation & Jurisdiction**

RAW, India's external intelligence agency, is mandated to collect, analyze foreign intelligence, conduct covert operations, and advise policymakers to advance the country's foreign strategic interests. Its purview encompasses counter-terrorism, counter-proliferation, counter-espionage, cyber-security, economic security, energy security, and global issues. With jurisdiction across India, RAW can also operate abroad with host country consent or under international agreements. It investigates and prosecutes offenses ranging from those against the state (waging war, sedition) to security-related offenses (spying, terrorism), violations of the Official Secrets Act, Unlawful Activities (Prevention) Act, Information Technology Act, Foreign Contribution (Regulation) Act, Foreign Exchange Management Act, and the Prevention of Corruption Act, thereby addressing a diverse spectrum of threats to national security.

### **How does a case is transferred to/taken by RAW?**

RAW can take up a case either on its own or on the basis of information received from other sources such as the public, the media, the informers, the other intelligence or law enforcement agencies, the courts, etc.<sup>49</sup>. RAW can also take over a case from any other agency if it is of inter-state or international ramifications or if it involves a high level of secrecy or sensitivity or if it is of national or international importance or if it is in the interest of justice or if it is directed by the Prime Minister or the courts<sup>50</sup>. RAW can also transfer a case to any other agency if it is of local or minor nature or if it is beyond its jurisdiction or competence or if it is in the interest of justice or if it is directed by the Prime Minister or the courts<sup>51</sup>.

### **Where are the cases taken up by RAW tried?**

The cases taken up by RAW are tried by the special courts established under the National Investigation Agency Act, 2008, in the respective states or union territories<sup>52</sup>. The special courts have exclusive jurisdiction to try the offences under the act and have the power to impose the penalties prescribed by the act, which include imprisonment, fine, and death penalty in certain cases<sup>53</sup>. The special courts also have the power to grant bail, issue warrants, summon witnesses, order searches and seizures, and pass any other orders as deemed necessary for the fair and speedy trial of the cases<sup>54</sup>. The appeals against the orders or judgments of the special courts lie with the High Courts and the Supreme Court of India<sup>55</sup>.

45. supra, 40.

46. supra, 40.

47. supra, 41.

48. supra, 41.

49. supra, 43.

50. supra, 42.

51. supra, 43.

52. supra, 42.

53. National Investigation Agency Act, 2008, No. 34, Acts of Parliament, 2008 (India); Arun Vishwanathan, India's Defence Intelligence Agency: The Need for Reform, 34 STRATEGIC ANALYSIS 801, 801-814 (2010).

54. Ibid, 55.

55. Ibid, 55.



## 7. Defence Intelligence Agency (DIA)

Established in 2002 post-Kargil War, the DIA coordinates intelligence from the Army, Navy, and Air Force, providing a unified defense picture. Headed by a three-star officer, it operates under the Ministry of Defence's executive order. While lacking a specific statute, it adheres to constitutional and legal frameworks, is accountable to Parliament, and overseen by various authorities. DIA's jurisdiction covers defence and military intelligence, including offenses against the state, security-related crimes, and violations of various acts.

### ***Jurisdiction***

DIA initiates cases independently or based on external information, transferring or taking over cases based on jurisdiction, sensitivity, or national importance. Cases are tried by special courts

under the National Investigation Agency Act, of 2008, with appeals reaching High Courts and the Supreme Court.

**In conclusion**, India boasts a diverse array of law enforcement agencies, each playing a specific and crucial role in safeguarding the nation's security, integrity, and interests. All enforcement agencies collectively contribute to the intricate tapestry of India's security apparatus. While each agency operates within its defined mandate, the collaborative efforts ensure a comprehensive and unified approach to addressing a myriad of challenges, ranging from national defense to economic security. The existence and cooperation of these agencies underscore India's commitment to maintaining law and order, upholding justice and protecting the well-being of its citizens.





Professional". Not only a Company Secretary can guide a Company in Taxation policies but can also be an advisor to non-corporate Entities or even Individuals.

The Goods and Services Tax Act introduced with effect from 01st July, 2017. It has opened a plethora of opportunities for Company Secretaries. In this article, we will be discussing the scope of Company Secretaries under the regime of Goods and Services Tax ("GST")

Apart from return filing under Goods and Services Tax Act, 2017 a Company Secretary can assist in filing e-forms including GSTR-1, GSTR-3B, GSTR-4, GSTR-9 etc. Due to adequate knowledge and experience in Tax Litigation and Representations, Company Secretaries can also appear before GST Tribunals to represent their clients.

Being a Compliance Officer in Companies, a Company Secretary can comply with the due dates of filing GST Returns well within time.

## Analyzing the role of Company Secretaries in Goods and Services Tax one by one-

**I. Supply under GST-** There are various types of supply under GST- Supplies which are exempt from GST, supplies without consideration, Deemed supplies, Composite and Mixed supplies. A CS can play an important advisory role in structuring the business under the purview of GST.

**II. Composition Scheme-** There are some supplies which are taxable as composition levy at the rates applicable to them. Such clients opt for 'Composition Scheme'. Also, tax payers are in dilemma whether to pay tax under Composition Scheme or Regular Scheme? Which one is the best option for them in the present scenario. This is where the role of Company Secretary is very important. A Company Secretary can advise the client by considering the type of business the client is in.

**III. Registration under GST-** Provisions regarding GST Registrations are governed by section 22 and 24 of the CGST Act, 2017.

With effect from 01.09.2017 the persons whose aggregate turnover of goods exceeds Rs. 40 lakhs for Normal Category States and Rs. 20 lakhs for special Category states are liable for registration under GST. For services it is Rs. 20 Lakhs for normal category states and Rs. 10 lakhs for special category states. GST REG-01 is the form to be filed for Application for Registration. After all verification by GST Department, registration certificate is issued in GST REG-06

Whenever there is a change in particulars furnished in Registration Certificate like Change in name or place of business etc., GST REG-14 shall be filed within 15 days from such change.

**IV. Exemptions Under GST-** There are some exemptions on which GST is not levied by the Central Government. Some of the items are listed below:-

- a. Indian National Flag
- b. Fish
- c. Eggs
- d. Milk
- e. Unbranded Atta
- f. Services provided by an Advocate (subject to certain conditions)
- g. Services provided a Doctor
- h. Services provided by Courts, Arbitral Tribunals etc.
- i. Services provided by Department of Posts (subject to certain conditions)

A Company Secretary can provide a complete structure of GST in the respective organization as well as requisite advisory under other taxation laws across the different levels in a Company including to the top level management and Board of Directors. He can also draft a Tax Incentive Plan for a company by including various exemptions provided by the Central Government from time to time.

**V. Time of Supply:-** Another critical element in the GST Regime is the Time of Supply which would help in determining the taxability and the due date of payment of taxes. The time of supply indicates the date of supply to be entered on the Tax Invoice to be prepared by the Supplier or recipient in some cases. A CS being an expert in GST Laws, can very well guide the Accounts personnel in preparing the Tax Invoice of the supply made as per section 31 of the CGST Act, 2017 and the Rules therein.

**VI. Place of Supply:-** It is critical to determine place of supply as the taxability will depend on it. GST is a destination-based tax. There are two types of supplies- a. Intra state supply and b. Inter state supply. When goods are transported from a place in one state or union territory to another place in the same state or union territory, it is termed as Intra state supply. When goods are transported from one state or union territory to another state or union territory it is termed as Inter state supply. In case of Intra state supply SGST/UTGST along with CGST are levied on the value of Supply. In case of inter state supply, IGST is levied on the value of taxable supply. But there are certain exceptions to it. For example- If you have your registered place of business in Pune, Maharashtra and you go for a vacation in a Resort in Bangalore, Karnataka. Then, in this case the CGST and SGST will be charged although the supply is an Interstate supply.

The role of Company Secretary is most crucial in this. If, for example a group of employees of a company registered in Maharashtra need to attend a seminar in Goa for which they have booked a hotel. Thus, in this, the hotel in Goa will charge SGST and CGST at 6% or 9% depending upon the room tariff and not Charge IGST thereof. A CS is a good interpreter of Tax Laws and can plan taxation policies of company more effectively and efficiently.

**VII. Complying the timelines by filing GST Returns:-** Returns under GST are the medium through which the Central Government takes a note of our Supplies made; Input Tax Credit (ITC) availed; Refunds claimed, if any; Payment of Tax etc. Following returns are filed electronically with the GST Authorities: -

- a. GSTR-1
- b. GSTR-3B
- c. GSTR-4
- d. GSTR-9
- e. GSTR-9C
- f. RFD-01
- g. GST PMT-06

A Company Secretary plays a critical role in filing the statutory returns under the GST Regime. The accuracy and correctness of the data entered is vital and required to be cross verified to avoid future hurdles.

**VIII. Value of Supply:-** The provisions relating to Value of Supply under GST are contained in section 15 of the CGST Act, 2017. This section also contains certain exclusions from the Value of Supply like discounts given before or at the time of supply, Government subsidies etc. A CS is well aware of Government subsidies as he acts as the sole link between The Government and the Company. Thus, a CS can help the company calculating the exact value of supply.

**IX. Maintaining of Accounts and Records:-** Maintenance of all the accounting records, bookkeeping GST Invoices, E-Way bill, Debit and Credit Notes, Receipt and Payment Vouchers etc. is the need of hour. Up-to-date maintenance of data can save the client from the claim of fake input tax credit story which a company might witness it if the records are not proper. A CS having a good knowledge of Accounting Standards, Book

Keeping, taxation and Secretarial Standards can act as a repository of the records and documentation of the Company. A CS can act as an "Asset having an Appreciation" always when opined for. A CS can also assist in setting up the internal accounting and MIS System in an organization such that the required registers, records and statements can be easily extracted for the purpose of computing GST Liability, Input Tax Credits and GST Returns.

**X. Registration:-** Provisions regarding Registration under GST are contained in section 22 and 24 of the CGST Act, 2017. Clients can be advised as regards applicability of the provisions of CGST Act, 2017 to them which is the most crucial part of GST compliances.

**XI. Appearances and Pleadings:-** A CS is authorized to act as an Authorized representative before the Tax Authorities as envisaged in section 116 of the CGST Act, 2017. A CS has the requisite domain knowledge in Appearances and Pleadings before statutory Authorities. As a governance professional a CS has in depth knowledge of drafting and pleadings which include drafting replies to notices or file an application with the GST Authorities or with the respective Advance Ruling Authorities of various states under section 97 of the CGST Act, 2017. Court room etiquettes also play a significant role when representing a client before governmental authorities. As a Key Managerial Personnel, a CS is well aware of the background of the client and since he acts as a link to the Government, the Board or individuals where the client is a non-corporate entity, share and rely on the CS as a trustworthy professional.

**XII. Other areas:-** A CS not only guides LLPs and Companies but also other entities. Non-Governmental Organizations, trusts, Partnership Firms, Body of Individuals, Association of Persons require advice under the GST framework. Since, a CS has an in-depth knowledge both theoretically and practically, he can act as an advisor to them.

**XIII.** There are multiple amendments, circulars, notifications, and updates issued by the Authorities. A CS can act as a repository of the requisite knowledge bank for ensuring effective compliance.

**XIV. Advisor to Central Government or State Government:-** A CS can also act as an advisor to the pre-budget memoranda circulated by the Government before the Annual Budget session of the Country or any state.

**Conclusion:-** Thus, the role of a Company Secretary under the Goods and Services Tax is not restricted to any one area but is a multi-faceted. Services provided by a Company Secretary will not only be restricted to compliances but also to the Advisory and most importantly to the Pleading side of the profession in the days to come. As a Key Managerial Personnel, a CS would require donning multiple hats, as a compliance officer, advisor, representative, systems advisor, repository of data to name a few.



## Report on The 7th Dastur National Debate Competition : A Riveting Saga of Ideas & Insights

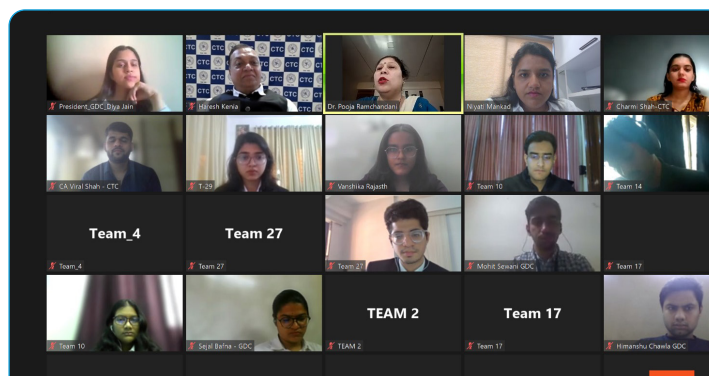
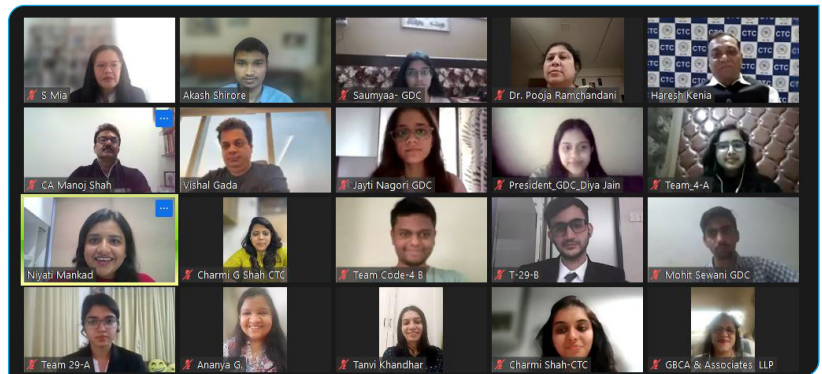
— Aditi Sarkar

*Student of H.R. College of Commerce and Economics*

The Chamber of Tax Consultants in association with the Growth, Development and Change Cell of H.R. College of Commerce & Economics, unfurled the intellectual tapestry of the 7th National Dastur Debate Competition on January 16th, 2024. This grand symphony of ideas not only surpassed its predecessors but also sculpted profound discussions, honing the critical thinking and communication skills of participants.

### Day 1: Inauguration and Setting the Stage

The inauguration on January 16th, 2024 marked the commencement of the 7th National Dastur Debate Competition — an intellectual journey inaugurated by Dr. Pooja Ramchandani, the Principal of H.R. College of Commerce & Economics, and Mr. Haresh Kenia, the President of the Chamber of Tax Consultants. The virtual auditorium buzzed with the electric energy of intellect as



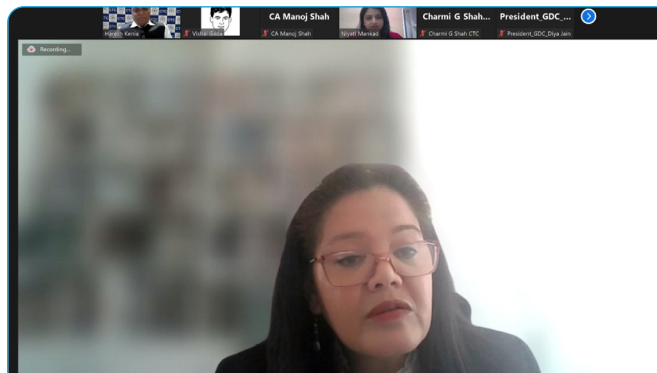
participants were not merely greeted but jointly welcomed by Niyati Mankad, the Chairperson of the Student Committee at CTC, and Diya Jain, the President of GDC, for this intellectual extravaganza. Subsequently, teams were allocated team numbers, and comprehensive guidelines detailing the competition's rules and regulations were outlined. The virtual stage was poised for a symphony, where each participant contributed a unique note to the harmonious flow of Dastur's intellectual battleground.

### Day 2: First Sparks of Debate

On January 18th, 2024, the initial sparks of debate echoed through the virtual halls as teams engaged in the opening rounds. Each team brought a unique flair to the discourse, transforming the competition into a dynamic melting pot of perspectives. Dr. Pooja Ramchandani, graced the gathering, setting the tone for a day filled with thought-provoking debates. Her presence transformed the environment into a dynamic arena where ideas clashed, and intellectual rigor took center stage.

## Day 3: The Finals

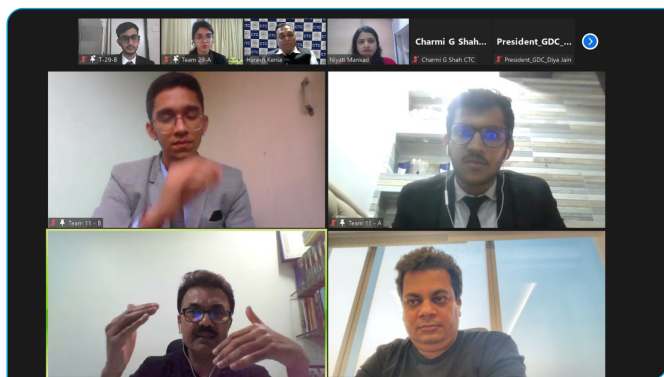
The grand culmination on January 20th, 2024 saw the competition intensify with quarter-finals, semi-finals, and the ultimate face-off in the finals. The weeks of preparation reached their zenith, focusing on the quality rather than quantity of debates. Ms. Shahnaz Mia, a distinguished guest from the Gauteng division, High Court, South Africa, added a global perspective to the finals, making the debates an intellectually enriching experience. The event concluded with the announcement of the victors, leaving a profound impact on participants and attendees.



Chief Guest of Honour - **Ms. Shahnaz Mia**, sitting Judge of Gauteng Division, High Court, South Africa

## Esteemed Panel of Judges

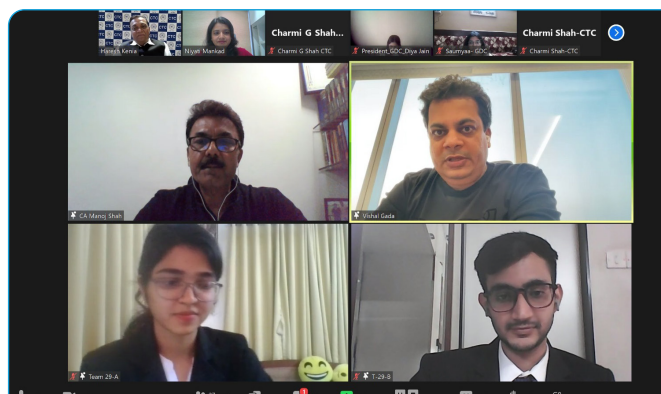
The intellectual arena was graced by a distinguished board of judges, adding an extra layer of expertise to the debates. The panel for the Semi-Finals included: **Adv. Indira Kandarpa, Dr. Suman Kalani, Mr. Kishu Daswani, and Dr. Anand Raut**, whereas the Finals featured the esteemed **CA Manoj Shah** and **CA Vishal Gada**. Their collective experience and seasoned expertise brought an invaluable perspective to the heated debates, adding a final touch to the culmination.



## Diverse Topics Stimulating Intellectual Discourse

The organizing committees acknowledged the significance of diverse and challenging themes. The debate was enhanced by articulate and profound arguments, giving vitality to a range of thought-provoking topics and sparking fervent discussions. These topics comprised:

- **India can and should formulate a UCC (Uniform Civil Code).**
- **Religious symbols, attire should not be allowed in educational institutions.**
- **Renewable energy rather than nuclear energy is desirable from India's development perspective.**
- **Legal recognition of same-sex marriages is desirable.**
- **Use of AI should be regulated and controlled.**
- **India should introduce a Four-Day Work Week.**





A multitude of viewpoints, both in favor and against the diverse themes, infused richness and variety into the competition, enhancing the intellectual tapestry of Dastur.

### List of Winners

- **Winners:** Ryssa Lemos and Krish Bhatia (Team 29)
- **1st Runner Up:** Sanjeev Jain and Yash Parekh, H.R. College of Commerce & Economics (Team 4)
- **2nd Runner-up:** Aviral Shrivastav and Durgeshwari Paliwal
- **Best Speaker:** Krish Bhatia
- **Second Best Speakers:** Isha Agarwal and Gautam Tanted

### Epilogue: A Tapestry woven with Brilliance

The resounding success of the 7th National Dastur Debate Competition resonated upon its conclusion, leaving an enduring impression on the participants and vividly illustrating the transformative power of intellectual discourse. Beyond a mere contest, Dastur evolved into a realm where intellectual boundaries were transcended, and a collective pursuit of ideas flourished and collided. As a testament to an unwavering commitment to intellectual growth, the event stands as a remarkable milestone. The 7th National Dastur Debate Competition not only provided a platform for insightful discussions but also emphasized the organizers' dedication to promoting meaningful discourse at the national level.

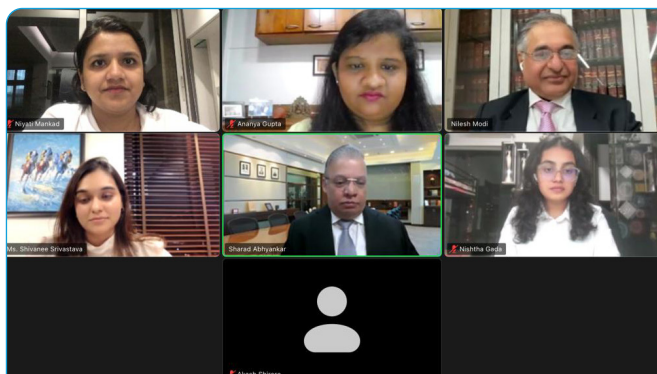
## Report on Udaan – Episode 6 on “Dual Perspectives: Solicitorship in India & UK + Barrister Insights”

— Nishtha Gada

*Student of Government Law College, Mumbai*

The 6th Episode of Udaan was conducted on 20th December 2023 with the aim of assisting students in navigating the intricacies of solicitorship. Solicitors typically specialize in providing legal advice, drafting legal documents, and representing clients in various legal matters, especially in the context of corporate and business law. The esteemed speakers for the session through their journeys and insights unravelled the mysteries and the intricacies of solicitorship in India and the UK.

Mr. Nilesh Modi, the secretary of the Bombay Incorporated Law Society, India (BILS) gave an overview on the role of BILS and how it conducts the Solicitor Exams. With BILS being the only society conducting the exams in the nation, they are tasked with protecting the interests of the solicitors, providing practical training and experience for candidates and further prepare them to practice law with confidence. The Solicitors Exam is conducted twice a year and covers subjects like Civil Procedure Code, company law, corporate General Acts. The exam acts as possible. The exam a comprehensive range easier for you when you With each paper being Judge of the Bombay challenges candidates dedication. Mr. Modi then on the technical aspects process by which it is



law, conveyancing and aims to cover as many is designed to include of acts, making it begin your practice. vetted by a Sitting High Court, the exam and requires intense went on to elaborate of the exam and the administered.

Mr. Sharad Abhyankar spoke about his professional journey as a solicitor and as a senior partner at Khaitan & Co. He shared his experience on how his interest in company law bloomed and how he went about signing his articles. Mr. Abhyankar encouraged participants to follow through with the exams and refrain from leaving after signing their articles. He then proceeded to share some tips and tricks with the participants on studying for the exam and achieving success.

Ms. Shivaneer Srivastava, counsel in the chambers of Nimay Dave shared her insights on how she achieved the dual solicitorship. The Dual Solicitorship involves a candidate obtaining solicitor qualifications from both India and the UK. Ms. Srivastava gave an overview of the Solicitor’s Qualifying Examination (SQE) and her experiences regarding her success in the exams. The SQE covers topics like Contracts, Torts, Business Law, Human Rights, Taxation and Criminal Law. The UK examination also conducts an Objective Structured Clinical Exam where amongst other parameters, senior solicitors pretend to be clients and ask candidates questions. Ms. Srivastava also shed some light on the process by which one can become a barrister in the UK. She also concluded by explaining the 4 inns of court and how you must be a member of one of the Inns before beginning the vocational component of becoming a barrister.

The session then came to an end with our esteemed speakers addressing questions from the participants and helping clear doubts for students confused about solicitorship and its process.

# A Report on “Decoding GST Annual Returns and Reconciliation Statement: Student Workshop”

— Disha Jain  
CA Aspirant

## Introduction

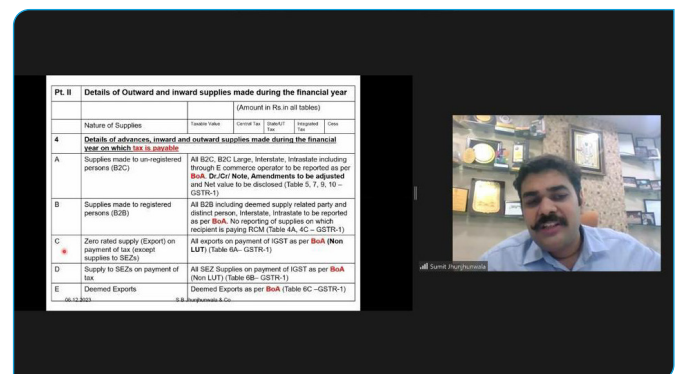
GST Annual Return is more than consolidating the monthly returns filed during a financial year. Considering the significance and complications of filing the annual return, the Student Committee of Chamber of Tax Consultant had organized a webinar on “GST Annual Return and Reconciliation Statement”. The aim of the webinar was to provide valuable guidance on the process of filing the annual return in FORM GSTR-9 and reconciliation statement in FORM-GSTR-9C. It was a remarkable event attended by many professionals as well as students.

## Preliminary Remarks

The program was emceed by the Convenor of the Student Committee, CA Charmi A. Shah. She invited Ms. Neha Gada for the opening insights, who has given a succinct overview of Chamber of Tax Consultant, how the Committee was formed, and activities being carried out. This was followed by Mrs. Niyati Mankad, Advocate and Chairperson of the student committee, who welcomed all the participants. She also highlighted the events to be held in the upcoming months and encouraged the students to become members. CA Charmi G. Shah and Sachin Maher then formally introduced the distinguished speaker CA Sumit Jhunjunwala.

## Address by CA Sumit Jhunjunwala

CA Sumit Jhunjunwala started the session by emphasizing the critical importance for registered person to exercise utmost care while filing the GST Annual Return and Reconciliation Statement. The focus of the session was to decode each table of GSTR-9 and GSTR-9C through practical examples along with discussing crucial areas to be considered during annual return compliances along with reconciliation statement and to raise awareness about key considerations while filing the annual return and reconciliation statement for the financial year 2022-23, with a statutory due date of December 31, 2023. He highlighted that taxpayers should view the annual GST return i.e., GSTR-9 as an opportunity to rectify and declare any errors made during the previous financial year like rectifying excess input tax credit, under-reported transactions, misclassified goods etc. He mentioned the stringent provisions of the GST Law concerning acts intending to evade tax, such as willful misrepresentation of facts and incorrect claims of Input Tax Credit. He also emphasized the importance of maintaining documents. Further, he highlighted the potential risk if the Financial Statement including various ledgers for say RCM, ITC etc. are not meticulously maintained. Following that, he discussed some teething issues and concluded the presentation with the explanation of reconciliation statement i.e. GSTR-9C.

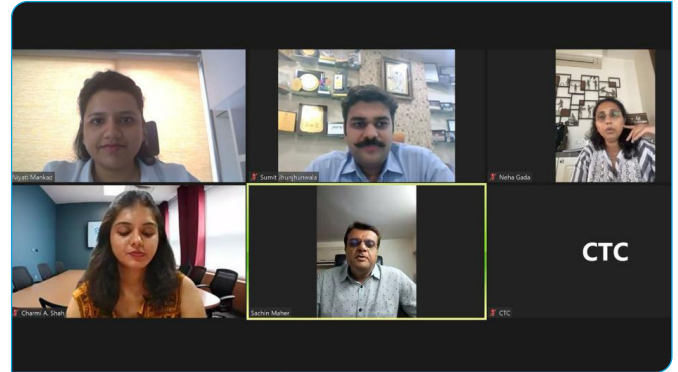


## Question and Answer

After the conclusion of the presentation, a few questions were addressed by the speaker expeditiously where the attendees clarified their doubts.

## End Note

The session was concluded by CA Raj Khona, who expressed his heartfelt gratitude to the speaker of the session and to all participants who took part in the webinar on behalf of CTC. The participants also expressed their pleasure in the chat box for meeting an eminent resource person by thanking the faculty.



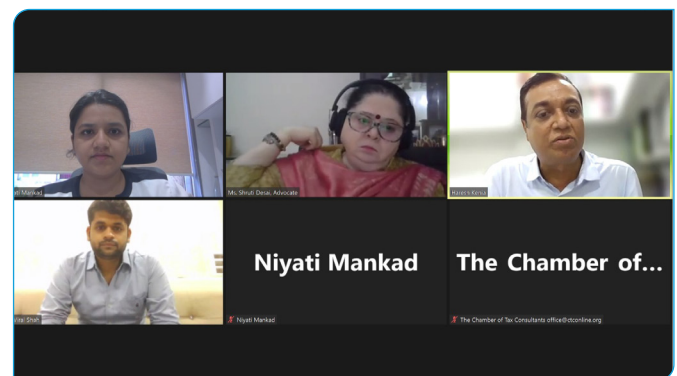
## Report on 'Bridging Divides – Embracing the Mediation Act, 2023'

— Soham Patil

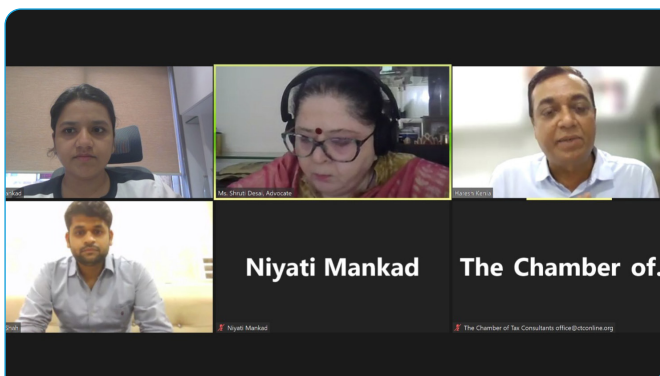
Student of MNLU, Mumbai

The Chamber of Tax Consultants had conducted a webinar titled "Bridging Divides – Embracing the Mediation Act, 2023," on November 7th, 2023. This webinar marked an important discourse surrounding the Mediation Act of 2023 and its consequential impact on dispute resolution, especially within the realm of commercial matters. The event, hosted via Zoom, attracted an impressive attendance of individuals seeking better understanding of this legal development.

The speaker, Advocate Ms. Shruti Desai, delved into several pivotal facets of the Mediation Act of 2023, elucidating its crucial elements and implications for dispute resolution. Among the prominent discussion points was the Act's foundational emphasis on mandatory mediation preceding arbitration in the resolution of disputes. It mandates parties involved in a dispute to initiate mediation as the primary step towards conflict resolution.



The session covered mediator qualifications, impending rules for mediation service providers, and the importance of a written mediation agreement. Community mediation, jurisdictional aspects, and online mediation were also explored.

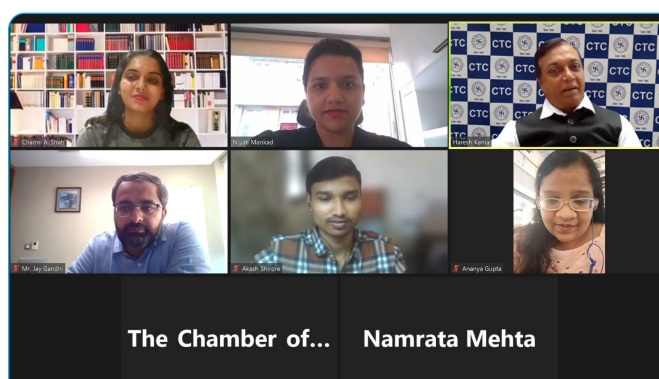
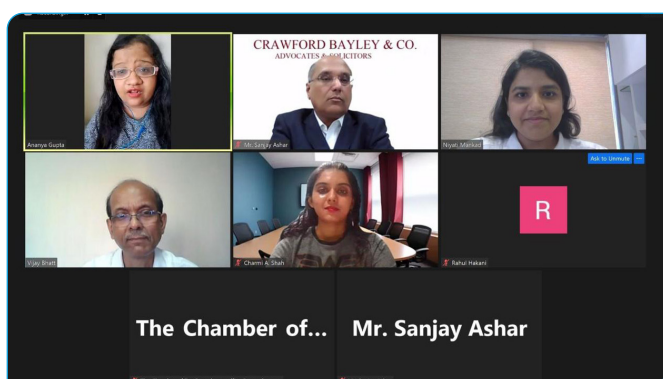


Emphasizing the mediator's multifaceted role, the webinar stressed the importance of confidentiality and sincere commitment. The event concluded with anticipation for forthcoming guidelines shaping the mediation landscape. Overall, the webinar provided a comprehensive understanding of the Act's provisions and their implications for dispute resolution in India.

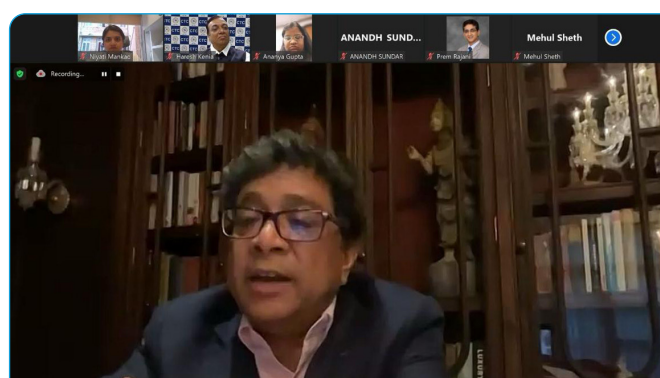
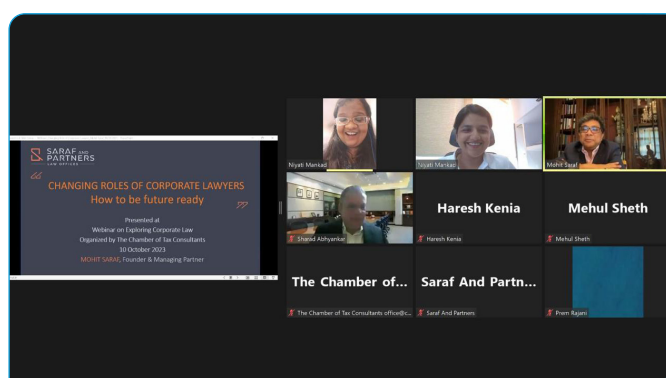
## Report on Webinar on Exploring Corporate Law – Opportunities, Practice Area and Success Strategies

— Akash Shirore  
Student of MNLU, Mumbai

The Student Committee of the Chamber of Tax Consultants, Mumbai, organized a comprehensive 7-day e-certificate course web series on Exploring Corporate Law – Opportunities, Practice Area, and Success Strategies. The event spanned 7(seven) days, from October 6, 2023, to October 13, 2023 on online platform Zoom.

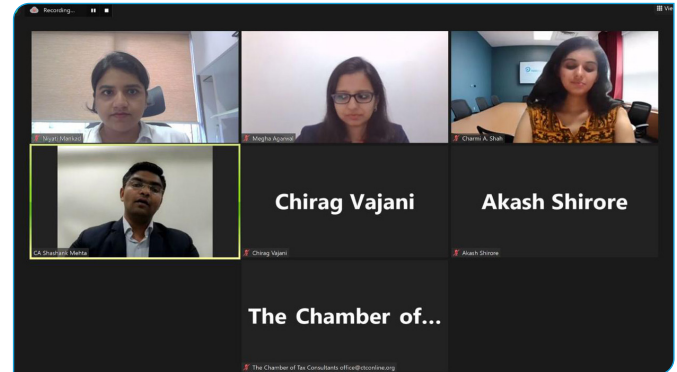
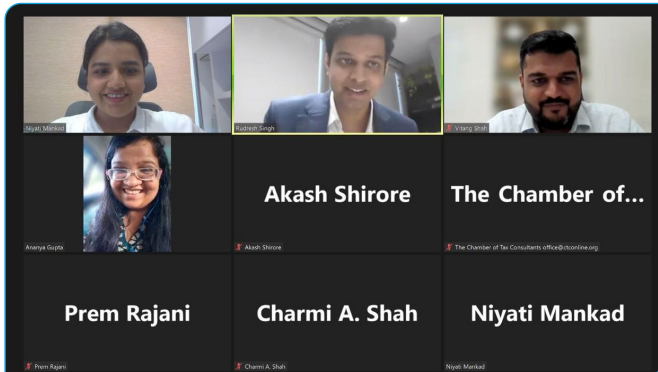


Over the span of seven days, the program encompassed a comprehensive range of topics, spanning from fund formation to competition law, corporate legal practice, M&A, project finance, and banking. Each day was dedicated to a specific area,, enhancing the participants' understanding of the legal landscape.



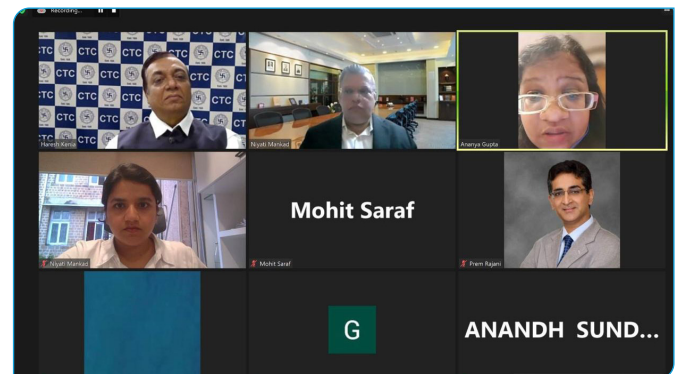
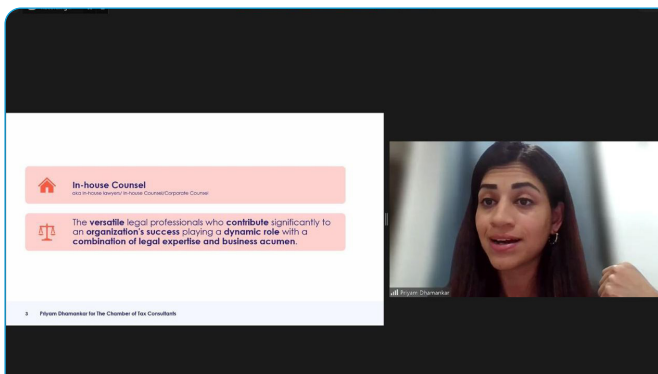
### Day 1 - Fundamentals of Fund Practice

Mr. Jay Gandhi, Senior Partner at Shardul Amarchand Mangaldas, set the stage with an overview of private equity, and venture capital, and alternative investment funds. He discussed the legal aspects of fund formation, intricate fund documents and terms, and the regulatory framework governing funds. He further discoursed the legal framework governing Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs)



### Day 2 - Capital Markets & Securities Law Practice

Mr. Sanjay Ashar, Senior Partner at Crawford Bayley & Co., presented the contours of capital markets and securities law practice. The day covered IPOs, FPOs, rights issues, bonus issues, QIP, and an outline of the regulatory framework, offering participants insights into the complexities of capital market transactions. The session also provided a concise overview of securities market practices, encompassing key topics such as takeovers, prohibition of fraudulent and unfair trade practices, and the role of the Securities and Exchange Board of India (SEBI). Overall the session offered participants a comprehensive understanding of essential aspects the securities market framework.



### Day 3 - Competition & Anti-trust Law Practice

Mr. Rudresh Singh, Partner at Trilegal, explored the realm of competition and anti-trust law. The session delved into the importance and objectives of competition law, the role of the Competition Commission of India (CCI), and core anti-competitive agreements. Real-world instances of anti-competitive practices in India provided practical context.

### Day 4 - Changing Roles of Corporate Lawyers and M&A Practice Simplified

The session commenced with Mr. Mohit Saraf, Founder & Managing Partner at Saraf & Partners, discussing the changing roles of corporate lawyers.

Following this, Mr. Sharad Abhyankar, Senior Partner at Khaitan & Co., simplified M&A practice, covering structuring transactions, due diligence, negotiations, drafting agreements, and post-closing obligations, with real-life case analyses.

## Day 5 - General Corporate Legal Practice

Mr. Prem Rajani, Founder & Managing Partner at Rajani & Associates, highlighted key aspects of general corporate legal practice. This session was rescheduled to October 20, 2023, due to unforeseen circumstances. The session encompassed discussions on commercial transactions, intellectual property, data privacy in commercial agreements, service contracts, corporate social responsibility agreements, and much more.

## Day 6 - Project Finance and Infrastructure:

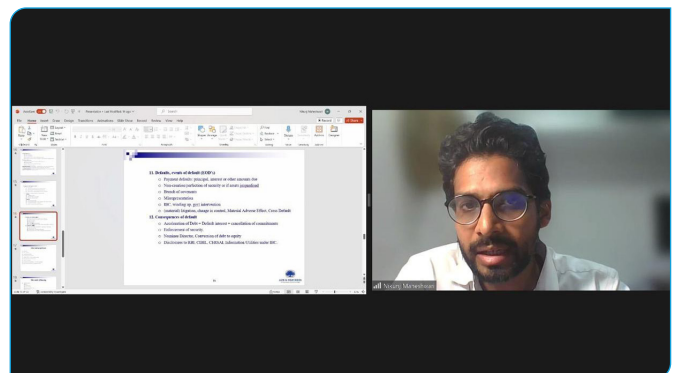
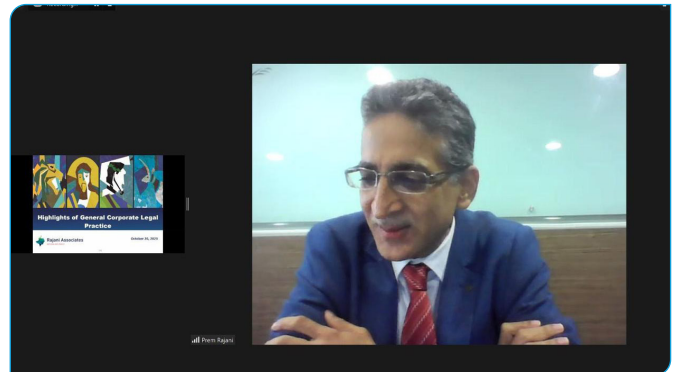
During the workshop, Ms. Megha Agarwal, Associate Partner at ELP, provided a comprehensive understanding of project finance and infrastructure. The session covered critical aspects including key statutes, regulatory requirements, various PPP (Public-Private Partnership) models, EPC (Engineering, Procurement, and Construction) contracts, bidding processes, and the incorporation of environmental considerations into these projects.

Additionally, Ms. Priya Dhamankar, Legal & Compliance Director at Servier India, shared valuable insights into the role of in-house counsel, shedding light on the unique responsibilities and perspectives that come with this position.

## Day 7 - Banking & Finance Legal Practice:

Mr. Nikunj Maheshwari, Partner at AZB & Partners, concluded the workshop by discussing key considerations in banking and finance legal practice. He provided an overview of banking regulations, laws governing RBI, loan documentation dos and don'ts, and the intricacies of key banking contracts.

The workshop proved to be an enriching experience, offering a comprehensive understanding of transaction & advisory practice. Participants gained valuable insights from experts, enhancing their skills and knowledge in various legal domains. The workshop's structured approach ensured a holistic perspective on contemporary legal challenges and, changing legal landscape.





## FORTHCOMING PROGRAMMES



THE CHAMBER OF  
TAX CONSULTANTS

# THE DASTUR ESSAY COMPETITION 2024

For Students of Law & Accountancy

### OBJECTIVES

The objectives of the Competition are to cultivate good reading and writing communication skills coupled with encouraging “**passion for writing**” and “**creativity**”, a quality which every human being possesses, which is possibly hidden and may be unknown to the individual himself.

The Dastur Essay Competition gives a platform to the young professionals to showcase their characteristics that illuminate the good students and potentially great writers. This Essay Competition invites students to explore a wide range of challenging and interesting questions beyond the confines of the college curriculum.

**REGISTRATION  
CLOSES ON  
28th February, 2024**

**SUBMISSION  
DEADLINE  
31st March, 2024**

Student Committee

**Chairperson:**  
Niyati Mankad

**Vice Chairperson:**  
Charmi G. Shah

**Adivisor:**  
Ajay Singh

**Ex-officio:**  
Haresh Kenia,  
Vijay Bhatt

**Convenors:**  
Charmi A. Shah,  
Viral Shah

### ABOUT THE COMPETITION

The Chamber is one of the oldest professional organizations, founded in 1926. Since 2012, the Chamber has been organizing the Dastur Essay Competition for law students and Articled Trainees pursuing CA, CS, and ICWA courses. The competition invites essays on current topics, which are then judged by senior professionals. Prizes and certificates are awarded to meritorious essays.

We, at The Chamber believe that young students are the future leaders of our nation. They have the strength to bring ideas to life. Writing, a dying art today, is an important tool for encouraging the young fresh minds with novel ideas, to express themselves on topics of professional interest and get recognised by a professional forum, with around 4,000 members, through publication of the top three essays in 'The Chamber's Journal'.

Hence, by participating in the Thirteenth Dastur Essay Competition of The Chamber, we request the budding professionals to be passionate about expressing themselves through their words and to take this opportunity to get the creative ideas flowing and allow the author within, to blossom.

#### Topics for the Thirteenth Dastur Essay Competition are:

1. Abortion Law Worldwide: Comparative analysis and Ethical Consideration
2. Enactment of
  - (I) Bhartiya Nyaya Sanhita
  - (II) Bhartiya Nagarik Suraksha Sanhita and
  - (III) Bhartiya Sakshi Sanhita
 is a positive reform.
3. Was revocation of Article 370 of the Constitution of India justified and desirable?

For Rules & Regulations and Enrolment, please visit our website [www.ctconline.org](http://www.ctconline.org)  
For queries pls mails us on [ctcessay@gmail.com](mailto:ctcessay@gmail.com) or contact on 022- 22001787/ 22090423/ 22002455

## FORTHCOMING PROGRAMMES



### THE CHAMBER OF TAX CONSULTANTS IN ASSOCIATION WITH THE ILS LAW COLLEGE, PUNE



PRESENTS

### 1<sup>ST</sup> NATIONAL THE CHAMBER OF TAX CONSULTANTS INDIRECT TAX MOOT COURT COMPETITION, 2024

EVENT	DATE	MODE/ VENUE
PRELIM, QUARTER AND SEMI-FINAL ROUND:	MARCH 16, 2024	VIRTUAL
FINAL ROUND:	MARCH 30, 2024	AT ILS LAW COLLEGE, PUNE CAMPUS

FOR ANY QUERIES CONTACT:  
[ILSCTC.MOOT@GMAIL.COM](mailto:ILSCTC.MOOT@GMAIL.COM)

## FORTHCOMING PROGRAMMES

Sr. No.	Event	Tentative Months
1.	Legal Practice Orientation Course	March, 2024
2.	Orientation on Real Estate Laws	February/June, 2024
3.	Industrial Visit	March, 2024
4.	CA Student Orientation Course	March, 2024
5.	Bank Audit	March, 2024
6.	Webinars on Opportunities – Global as well as domestic in the field of Law, CA, CS, etc.	

## The Chamber of Tax Consultants



Estd. 1926

### Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur**, Senior Advocate on 30th January, 2008.