JIGnyasa

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Your Quarterly Companion on Tax & Allied Topics

Learning Today Leading Tomorrow...

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The Chamber of Tax Consultants

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THE CHAMBER OF TAX CONSULTANTS

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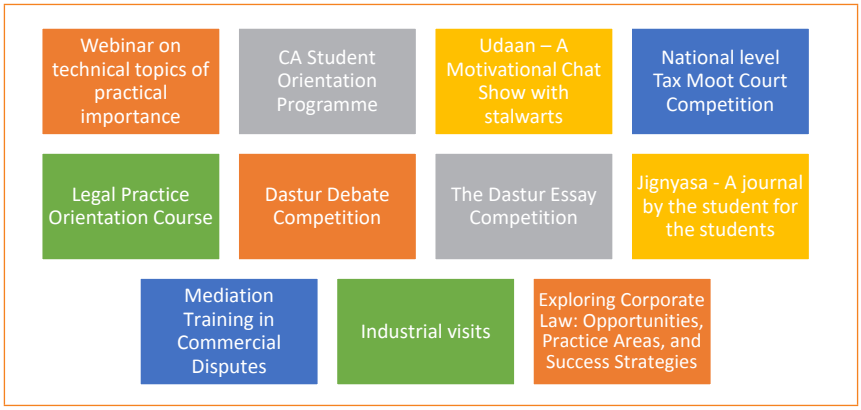

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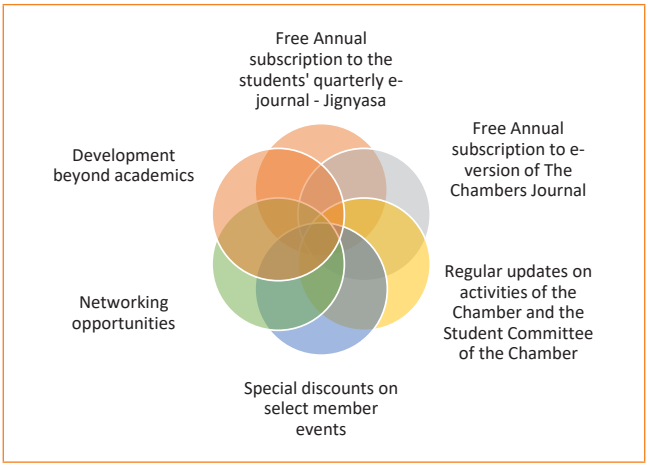

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CA Vijay Bhatt
President

Niyati Mankad
Advocate
Chairperson,
Student Committee

GUARDIANS OF GOVERNANCE: HOW ADVOCATES, CHARTERED ACCOUNTANTS AND COMPANY SECRETARIES DRIVE CORPORATE INTEGRITY !

Dear Students,

Governance is important at every stage of your business. During intense growth or a crisis, good governance can keep you on track. Once you are in business, good governance helps to create strategies for growth or resilience. It serves as the foundation for ethical decision-making, transparency, and accountability within organizations. It encompasses the relationships between an organization's management and other stakeholders.

Is there a Need for Good Corporate Governance?

In India, where the business landscape is continuously changing, the need for good corporate governance procedures has always been greater. Strong corporate governance increases India's appeal to both domestic and international investors by instilling confidence in the market and their investments. Leading conglomerates, have established excellent standards for corporate governance. There are many reputed businsess houses, which are known for its ethical business practices and unshakable commitment to openness, making it a shining example of corporate integrity. The absence of Corporate Governance significantly harms investors' trust in the organization . With corporate governance gathering more imporatance in the recent years, the value of strong governance for business cannot be ignored. Guardians of governance, such as advocates, chartered accountants, company secretaries and other professionals, play an important role in maintaining corporate integrity and cultivating a culture of good governance.

How do professionals such as Advocates, Chartered Accountants and Company Secretaries contribute to effective corporate governance?

Company Secretary plays an important role in corporate governance, serving as an intermediary between the management and stakeholders. The Company Secretary assures transparency, responsibility and adherence to legal and ethical norms within the corporation. His responsibilities include ensuring

adherence to laws, regulations and standards; advising on corporate governance practices and board procedures, coordinating with shareholders, investors, and regulatory bodies Maintaining records, preparing minutes, and handling correspondence.etc. He promotes an ethical culture by creating a code of conduct, offering ethics training and advising the board on legal & ethical decision-making. Maintaining ethical standards is critical for preserving the company's integrity.

Corporate Governance and Chartered Accountants are inextricably linked and one cannot expect to conduct excellent practices without the assistance of a financial professional's advisor. A Chartered Accountant assist in making key governance decisions through functions such as auditing financial statements, ensuring compliance with accounting standards and regulatory requirements, tax planning, compliance and representation before tax authorities, budgeting and forecasting, and so on, in order to provide independent assurance that the company is financially stable and running its operations efficiently. He helps spot risks and frauds more efficiently, as well as build a successful internal control system and rules and as such contribute immensely in maintaining Corporate Governance.

An Advocate plays a vital role as a legal expert and advisor. He ensures that the business is in compliance with the most recent industry legislation.. His functions include legal advice on various aspects, such as contracts, agreements and regulatory compliance; representing the company in courts, tribunals, and arbitration proceedings, drafting, reviewing, and negotiating contracts, agreements, and other legal documents, advising on employment-related matters, including labor disputes and HR policies and so on.

There are other Professionals too such as Cost& Works Accountants, Registered Valuers and others, who all contribute in maintaining high level of Corporate Governance.

Parting Thoughts

Effective corporate governance is essential for a resilient and trustworthy organization. Professionals play a key role in upholding ethical standards, legal requirements and transparent practices to protect the company's reputation, boost investor confidence and promote a culture of integrity. Their role is increasingly vital in guiding companies toward sustainable success and responsible growth in today's evolving business environment, highlighting the ongoing commitment to governance as crucial for navigating opportunities and challenges.

DEMAT vs Physical Shares: The Future of Shareholding in Indian Private Limited Companies*

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CS Raj Kapadia

Introduction

In today's times dematerialization of shares (type of securities) is becoming increasingly essential for a number of reasons. It offers several advantages over holding physical certificates, making the process of owning and trading shares more efficient and secure. Dematerialization (DEMAT), in a general sense, refers to the conversion of something tangible or physical into an electronic form. Traditionally, ownership of shares in a company was represented by a physical certificate, a piece of paper that functioned like a deed. This certificate had details about the company and the number of shares owned by the investor. Dematerialization of securities replaces these physical certificates with electronic entries in a depository. While dematerialization offers a more efficient and secure way to manage securities, it's not without drawbacks. Dematerialized securities rely on electronic depositories and online systems. If these systems experience technical glitches or cyberattacks, it could disrupt access to investment holdings or even lead to data breaches. Thus, there is a great need to discuss this increasing tilt towards dematerialization of securities.

Background

DEMAT provisions under section 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014 are brought into effect pursuant to provisions of Section 29 of Companies Act, 2013. Before the amendment introduced by the Companies (Amendment) Act, 2019, Section 29(1) of the Companies Act, 2013 mandated that every company making a public offer of securities and classes of public companies as the government may prescribe had to issue them in dematerialized form. But after the amendment the word 'public' was removed from section 29(1)(b). This significantly broadened the scope of the section. Now, the government has the power to prescribe any class of companies, not just public companies, that must issue securities in dematerialized form. This gives the government greater flexibility to promote the dematerialization of securities across the corporate sector. But this position even broadened after the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 when it mandated even the private companies other than small companies to issue share certificates in electronic forms. A

* This article is written by Faaria Shaikh, a 2nd year student at Maharashtra National Law University, Mumbai

small company is defined as a company which is not public or a holding or a subsidiary or a company registered u/s 8 of the Companies Act, 2013 or any particular law with a paid-up capital not exceeding Rs 4 crores and turnover of the company not exceeding 40 crores.

The Ministry of Corporate Affairs (MCA) through a notification dated 27th October, 2023 notifies amendment to the, 2014 Companies (Prospectus and Allotment of Securities) Rules. It notifies addition of two new rules. The first rule is to be numbered and inserted as 9(2) & 9(3) and applies to public companies that issued share warrants before commencement of the Companies Act, 2013 and those warrants haven't been converted into regular shares yet. The rule sets a deadline for these companies to take action.

A share warrant is a legal document issued by a company, granting the holder the right or option to buy or sell the company's shares at a predetermined price. Because share warrants provide the holder with the ability to purchase or sell the issuing company's shares, they are classified as securities under the Securities Contracts (Regulation) Act, 1956.

The rules provides that the company has three months from the time this rule comes into effect from 27th of October, 2023 to inform the government agency called the Registrar about the details of these old share warrants using a specific form (Form PAS-7).

The companies must notify the holders of these share warrants before 26th of April, 2024 i.e. within six months from the date this rule comes into effect. This notification will be in two ways:

a. A public notice placed on the company's website (if they have one).

b. An advertisement published in two newspapers - a local newspaper in the common language of the area (vernacular language) and a widely circulated English newspaper in the state where the company's main office is located (registered office).

The notice will ask the warrant holders to surrender their paper share warrants to the company within a specific timeframe. In return, the company will convert those warrants into electronic shares (dematerialized form) and credit them to the warrant holder's account with a depository (a facility that holds electronic shares).

If any warrant holder doesn't surrender their warrant within the given timeframe, the company will automatically convert those warrants into electronic shares and transfer them to a government body called the Investor Education and Protection Fund.

Similarly, after rule 9A, a new rule 9B is inserted. This rule introduces a mandatory switch to electronic shareholding for private companies except small companies in India. This is a significant step in the securities market of India since till now only public companies were required to issue share warrants in dematerialized form and private companies were exempted and could issue physical certificates.

According to this, w.e.f. 30th of September ,2024, all private companies other than small companies have to issue, transfer, buyback or hold the shares only in electronic form (dematerialized) and convert all existing physical share certificates into electronic form. Further, the deadline is 18 months from the closing of the financial year ending on or after March 31st, 2023. This means companies have until September 30th, 2024, to comply (assuming their financial year ends in March). All this could be achieved through the Depositories Act, 1996 and its regulations define the process for dematerialization.

Procedure for DEMAT

The main parties involved in the whole process of DEMAT are the, Depository Participant (DP), depository, company and the registrar and transfer agent (RTA).

A depository is an organization that maintains electronic records of investor's securities (such as shares, debentures, bonds, government

securities, mutual fund units, etc.) upon the investor's request via a registered Depository Participant. It also offers services related to securities transactions.

Registrar and Transfer Agents (RTA) are SEBI-registered entities that manage share registry maintenance and share transfer activities for companies. In our case, they will serve as intermediaries between the company and the depositories.

To access a depository's services, the company must open a Beneficial Owner (BO) account with a Depository Participant (DP) of any depository. For opening a BO account, the company must submit an account opening form along with original proof of identity, proof of address and a PAN card of the shareholder. Further, the company is required to execute a tripartite agreement with the DP and the RTA. At last, the DP will set up the account in the system and assign a unique account number, known as the BO ID (Beneficial Owner Identification number), which is used for all future transactions.

After opening the account, a request to dematerialize the certificates is raised through a DEMAT Request Form (DRF) which the company needs to fill and submit to the DP. Based on the DRF, the DP dematerializes the certificate.

After from this, the company's Articles of Association (AoA) must be updated to allow shareholders to hold shares in dematerialized form. The companies are also required to submit Form PAS-6 to the registrar within 60 days from the conclusion of each half yearly duly certified by a company secretary or a chartered accountant.

DEMAT of shares: a boon or bane?

The step taken by the government to dematerialize the shares of a private companies has its own reasons. This step will improve the ease of doing business in India. Physical share certificates can be cumbersome to manage, especially when dealing with large numbers of shares or frequent transactions. With dematerialized shares held electronically, processes like buying, selling, transferring, or pledging shares become much faster and more efficient.

Another major rationale is to curb illegal activities like benami transactions. When shares are held electronically, it becomes more difficult to hide the true ownership. This deters individuals from using private companies for money laundering or other fraudulent purposes by concealing the real beneficiary. Additionally, dematerialization reduces the risk of disputes and litigation related to fake share transfers or improper pledging of physical certificates.

Dematerialization also promotes greater transparency within private companies. Regulatory bodies like Securities and Exchange Board of India (SEBI) and Ministry of Corporate Affairs (MCA) can more easily track the ownership of shares, allowing them to better monitor company activities and ensure compliance with regulations. This transparency can also help the government collect appropriate stamp duty on share transfers, which is a tax levied on the transfer of ownership. By having a clear electronic record of ownership changes, the government can ensure it receives its due revenue.

But this also come with certain drawbacks. The amendment increases compliances for the private companies like filing the Form PAS-6 every half year. This will incur substantial expenses and technical difficulties for the companies. Technophobic investors and foreign investors, who must now secure PANs and create DEMAT accounts, will face further complications, lengthening private equity transactions and M&A deals. The DEMAT process complicates mergers and demergers due to intricate shareholding structures, leading to administrative challenges in transferring shares and maintaining records. Data privacy and security concerns arise with the electronic storage and transfer of sensitive shareholder information, posing risks of identity theft and fraud.

Finding the right balance

The Indian government's move towards dematerialization marks a significant advancement in creating a more efficient and transparent securities market. However, to fully realize these benefits, several existing challenges must be addressed. Simplifying the DEMAT process is crucial, especially for foreign investors who may face complex regulatory hurdles and for tech-averse investors who might struggle with the technological aspects of dematerialization. Additionally, providing cost-effective solutions is essential for smaller to medium-sized private companies, which might find the transition financially burdensome. Implementing robust data security protocols is another critical area that needs attention to protect sensitive shareholder information and maintain investor confidence.

Achieving the right balance between efficiency and addressing these concerns is vital for ensuring a smooth transition to a dematerialized system for private companies. This balance can be struck through collaborative efforts between the government, regulatory bodies, depository participants (DPs), and investors. By working together, these stakeholders can create a supportive environment that fosters a successful transition to a dematerialized future. This collaborative approach will help build a more efficient, transparent, and secure securities market in India, ultimately benefiting all participants in the financial ecosystem.

■●■

Changing Face of Compliance in India – Whether a Definite Step Towards Viksit Bharat?

Pranav Khandelwal, Student of ILS Law College, Pune

CS Raj Kapadia

The Companies Act, 2013 ("the Act") vide its Section 396 under Chapter XXIV (dealing with Registration Offices and Fees) empowers the Central Government to establish such number of offices at such places as it thinks fit, specifying their jurisdiction (by notification) for the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under the Act or under the rules made thereunder. Further, the Central Government has the power to appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under the Act, and the powers and duties that may be exercisable by such officers shall be such as may be prescribed. In exercise of this power, the Central Government vide Notification dated 31st March, 2014 introduced the Companies (Registration Offices and Fees) Rules, 2014 (**"said Rules"**).

The Central Government (through the Ministry of Corporate Affairs) recently vide its Notification dated 15th February, 2024 brought a significant amendment in the said Rules vide the Companies (Registration Offices and Fees) Amendment Rules, 2024 (hereinafter referred as **"said Amendment Rules"**) by inserting Rule 10A after Rule 10 of the said Rules.

Prior to the coming into force of the said Amendment Rules, the Ministry of Corporate Affairs vide its Notification dated 2nd February, 2024, exercising the powers u/s 396 of the Act, established a Central Processing Centre (CPC) at Indian Institute of Corporate Affairs, Gurgaon, Haryana having territorial jurisdiction all over India for the purpose of the provisions of Section 396 of the Act. By establishing a CPC, the said Amendment Rules, which came into force on 16th February, 2024, expedites the submission and approval of applications, e-Forms, and other documents as specified therein.

As per the said Notification dated 02/02/2024, the Central Processing Centre shall process and dispose off e-forms filed along with the fee as provided in the said Rules. The duties and responsibilities of the Registrar of the Central Processing Center, who is in charge of reviewing and approving all applications, e-Forms, and documents required under the Companies Act, 2013, are outlined in Rule 10A inserted in the said Rules vide the said Amendment Rules. After filing, the Registrar must decide within thirty days, excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required.

The said new Rule 10A provides that the Registrar of the Central Processing Center shall exercise jurisdiction all over India in respect of the examination of following application, e-Forms or documents, namely:-.

1. MGT-14- filing of resolution and agreements.
2. SH-7 – Alteration in capital.

3. INC 24 - Change in name.
4. INC-6 - Conversion of one person to private or public, or private to one-person company.
5. INC-27 - Conversion from private into public or vice-versa.
6. INC-20 - Revocation/Surrender of license under section 8 of the Act.
7. DPT-3 - Return of Deposits.
8. MSC-1 - Application for obtaining the status of dormant company.
9. MSC-4 - Application for obtaining the status of active company.
10. SH-8 - Letter of offer for Buy-Back.
11. SH-9 – Declaration of Solvency.
12. SH-11 – Return in respect of buy-back of securities.

One of the main features of the new regulations is that the Registrar of the Central Processing Center will review and make decisions on all applications filed concurrently[1]. The goal of this centralized method is to improve the approval process's consistency and speed.

The sub-rule 3 of Rule 10A states that the provisions of the sub-rule 2 to 5 of Rule 10 of the said Rules shall apply *mutatis mutandis* in relation to the examination of application, e-Forms or documents under this Rule. These sub-rules outline the procedure to be followed by the Registrar when examining electronically filed applications, e-Forms, or documents. If the Registrar finds any information to be incomplete or defective, they must notify the person or company who filed the document by email or post, giving them 15 days' time to rectify the issue. If the necessary information is not provided within the allotted time, the Registrar can reject or invalidate the application, and the person or company must re-file the document with the required information and payment of fees. It is also mentioned that in case of a document being recorded as invalid, it can only be rectified through fresh filing with the appropriate fees.

Importantly, the said Amendment Rules make it clear that, with regard to applications submitted in accordance with the new inserted Rule 10A, the Registrar of the Central Processing Center is not authorized to use powers under Section 399 of the Companies Act, 2013. Such items will remain under the jurisdiction of the Registrar with territorial authority.

Overall, the Central Processing Center's establishment and the laws that go along with it are a big step toward modernizing and expediting India's company registration and approval procedure. The new regulations seek to enhance the regulatory process's efficiency, uniformity, and transparency by centralizing the review of applications and documentation. In alignment with the Viksit Bharat policy of the Indian government, this amendment is likely to facilitate ease of doing business, promote investments, and contribute to the overall growth of the economy by creating a more conducive environment for businesses to operate and thrive.

1. In view of Clause 3 of the said Notification dated 2nd February, 2024. Clause 3 reads as under:
   "3. The jurisdictional Registrar, other than Registrar of the Central Processing Centre, within whose jurisdiction the registered office of the company is situated shall continue to have jurisdiction over the companies whose e-forms are processed by the Registrar of the Central Processing Centre in respect of all other provisions of the Companies Act, 2013 and the rules made thereunder."

Powers and Functions of SFIO: Real Life Scenarios

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Introduction

Serious Fraud Investigations Offices (SFIO) was established through the Government of India vide Notification No. S. O. 2005 (E) dated 21.07.2015 under Section 211 of the Companies Act, 2013[1]. It was initially established by passing of a resolution by the Central Government in July 2003 upon the recommendations of Naresh Chandra Committee to improve the corporate governance standards in the realm of company law in India. Through the Companies Act, 2013, SFIO received a statutory status. It is a multi-disciplinary organization under the Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, banking, law, information technology, investigation, company law, capital market and taxation, etc. for detecting and prosecuting or recommending for prosecution white-collar crimes/ frauds. The SFIO's jurisdiction is primarily focused on conducting investigations and providing insights in situations involving serious cases of corporate fraud, as defined under Section 447 of the Companies Act, 2013 (hereinafter referred to as "Companies Act"). The primary rationale for establishing SFIO, was to create an independent investigative body with the capacity to probe major fraud cases, separate from police investigations conducted under the Indian Penal Code, 1870. (now Bharatiya Nyaya Sanhita, 2023). The inclusion of Section 447 in the Companies Act and the expanded definition of the term 'fraud' demonstrate the legislature's aim to safeguard investors and provide a system to combat corporate frauds that impact many stakeholders inside the firm. This article seeks to examine the extensive powers and functions granted to SFIO by assessing the different cases throughout the years and the subsequent development of SFIO.

Powers of SFIO

The SFIO's power are limited in the sense that in terms of Section 212(1) of the Act, SFIO can commence the investigation into company's affairs only if the central government is of the opinion that the circumstances are such that it is necessary to investigate into the affairs of the company upon:

1. https://sfio.gov.in/en/faq/

- Receipt of a report of the Registrar/inspector under Section 208[2],
- Intimation of a Special Resolution passed by a company that its affairs are required to be investigated,
- Request from any department of the central/ state government, or
- In public interest.

The objective[3] of establishing SFIO was to take up only the investigation of frauds characterized by:

- Complexity and having inter-departmental and multi-disciplinary ramification,
- Substantial involvement of public interest to be judged by size, either in terms of monetary malpractice or in terms of the persons affected,
- The possibility of investigations leading to, or contributing towards a clear improvement in systems, laws or procedures.

The jurisdiction of SFIO is exclusive i.e. no other investigative agency can conduct investigation into Companies Act offences if the case is being investigated by SFIO[4]. This was reiterated by the Karnataka High Court in the case of **Surana Power**[5] in May 2024[6].

There must be a reason to believe, to be recorded in writing and formed on the basis of materials in his possession, that the person has been guilty of an offence under Section 447 of the Act by the Director, Add. Director or Asst. Director. As per sub-section (4) of Section 212 of the Act, the Investigating Officer shall have the same powers as the Inspector mentioned in Section 217[7] when the investigation is carried out by the investigation officer of SFIO. Thus, SFIO also enjoys all the powers vested in civil court while conducting the investigations in respect of matters such as scrutinising evidence, examination of witnesses on oath, summoning of witnesses, etc.

Scope of the Powers & Possibility of Misuse

According to Section 212(1) of the Companies Act, the initiation of an SFIO investigation requires the opinion of the Central Government. The inclusion of the terms such as 'opinion' and 'reason to believe' expands the jurisdiction of SFIO. These more generalised definitions, however, leave room for subjective interpretation, which SFIO exploits to its advantage.

2. 208: Report on inspection made: —
   The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.
3. https://www.mca.gov.in/content/mca/global/en/about-us/affiliated-offices/sfo.html
4. Section 212 (2) of Companies Act 2013.
5. Vijayraj Surana AND CBI & ANR, 2024 LiveLaw (Kar) 192
6. Section 212(4) read with Section 217 of the Companies Act, 2013
7. Section 217(5) of the Companies Act provides as under:
   (5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—
   (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;
   (b) summoning and enforcing the attendance of persons and examining them on oath; and
   (c) inspection of any books, registers and other documents of the company at any place.

Occasionally, the opinions made are not grounded in the actual and current factual situations, but rather are based only on the inspector's whims and fancies. In order to avoid such circumstances, the courts have provided clarification on the matter. In the case of ***Karvy Stock Broking Limited vs. Union of India and Ors. [AIRONLINE 2020 TEL 143]***, the Telangana High Court held that *"under Section 212(1) of the Act, the Central Government, on the sources referred to under clauses (a) to (d) of the said sub-section, is required to form an opinion that it is necessary to investigate into the affairs of the company by SFIO. It goes without saying that for formation of an opinion with regard to necessity for ordering investigation into the affairs of the company by SFIO, the necessary concomitant is existence of prima facie circumstances, which should be demonstrable before the court when questioned."* Thus, while the SFIO has the authority to investigate based on the opinion of the Central Government, this opinion must be accompanied by an assessment of the available preliminary or prima facie evidence. Any opinion based solely on speculation lacks credibility. In the matter of ***Church of South India vs. Union of India***[8], the Madras High Court delivered a verdict stating that the phrase 'is of the opinion' imposes a jurisdictional duty on the central government to form opinion on the necessity of investigation by SFIO. The entity cannot abstain from forming a judgement and disregarding the imperative of conducting an SFIO investigation; instead, it must carefully evaluate the prevailing conditions. It is inherently mandatory rather than directory. The Bombay High Court in the case of ***Parmeshwar Das Agarwal and Ors. vs. The Additional Director (Investigation) Serious Fraud Investigation Office and Anr***.[9] stated that in order to form an opinion, it is necessary to establish with sufficient evidence that the circumstances in question actually exist., It further established that the circumstances must have some validity and be capable of being shown in court, especially when the defendants dispute their existence. In the ***Sunair Hotels vs. Union of India [LPA390/2017, C.M. APPL. 19101/2017 & 32231/2017 (Delhi High Court)]*** case, the Delhi High Court examined whether the opinion of the central government is open to Judicial Review. During the pronouncement of the judgement, the court noted that although the statute does not explicitly allow for challenging such opinions, the circumstances on which these opinions are based are not immune from judicial review. Therefore, the opinion of the central government is not ultimately conclusive and can be subject to judicial review if it lacks merit.

According to Section 212(3) of the Companies Act, if the central government instructs the SFIO to carry out an investigation, the SFIO is required to submit a report of the investigation to the central government within the specified timeframe mentioned in the order. It is worth noting that the Companies Act,t 2013 does not include any provision for submitting such a report. This raises an important question: if the report is not submitted within the specified timeframe, does the authority of the SFIO to continue the investigation comes to an end, or does it still persist? In order to provide further clarification, the esteemed Supreme Court has determined that the time period specified in the central government's directive is not mandatory, but rather advisory in nature. The jurisdiction of SFIO does not terminate even after the expiration of a specific period of time. Additionally, the section specifies that SFIO has the option to submit either an interim report or a report that is to be submitted when the investigative report is completed. Upon receiving such a report, the Central Government conducts

8. Writ Petition Nos.25236 and 25419 of 2018 & 32587 of 2019, High Court of Madras, Decided on February 01, 2021.
9. Decided on 5 October 2016 in Writ Petition No. 2025 of 2016 by the Hon'ble Bombay High Court

a comprehensive examination and then orders further investigation. The Bombay High Court addressed the issue of ambiguity over the report that the government should examine. Therefore, in the case of ***N. Sampath Ganesh vs. UOI [(2020) 222 CompCas 676 (Bom)]***, the court determined that the government can rely on any of the reports available to it as long as the report is adequate to substantiate the charge in the court of law. The Supreme Court, time and again has held that the investigation report submitted by the authority holds no evidentiary value but rather it is just the opinion of the officer[10].

Striking a Chord between SFIO's Power to Arrest and Individual Rights

Section 212(6) outlines the conditions that must be met in order for bail to be granted to the accused. These conditions include giving the public prosecutor an opportunity to oppose the release of the accused, as well as the court having reasonable grounds to believe that the accused is innocent of the alleged offense and would not commit the same offense if released on bail.

The SFIO's authority to make arrests under Section 212(8) is susceptible to significant misuse. In the instance of **Rahul Modi**[11], the accused was actively assisting the authorities during the investigation. However, the SFIO detained him without any prima facie evidence arrested him and sought extension and further remand. The Delhi High Court deemed this arrest to be unlawful. Nevertheless, the Supreme Court utilized purposive interpretation and determined that the prescription of the inquiry period is purely advisory[12]. The Criminal Procedure Code (now Bhartiya Nagarik Suraksha Sanhita, 2023) does not stipulate a specific timeframe for the conclusion of the investigation. However, due to the absence of provisions for default bail in the Companies Act, the investigation is extended for an unreasonable duration. Therefore, it is crucial to find a middle ground between the powers granted to SFIO and the individuals under investigation by SFIO.

SFIO Officer as a Police Officer

Section 212(15) of the Act provides that an investigation report filed before the learned Special Court shall be treated as a report filed by a police officer under Section 173 of the CrPC (now under Section 193 of Bhartiya Nagarik Suraksha Sanhita, 2023). Section 173(2) of the CrPC (now under Section 193(3) of Bhartiya Nagarik Suraksha Sanhita, 2023) provides that as soon as the investigation is complete "the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government". The Delhi High Court in the case of ***R.K. Gupta & Ors. vs. Union of India***[13] observed that in view of the said provision, the investigation report within the scheme of the Act will be treated as a police report, therefore, the officer filing the said report shall also be considered an officer in charge of a police station, although not specifically provided for in the said Act. The court observed that the said position is further fortified by the fact that if power has been given to the learned Special Court under Section 436(2) of the Act to try offences other than those under the Act, then the power of the SFIO to investigate into such offences cannot be restricted. If during course of investigation under the present Act, the concerned Investigating Officer comes across commission of offences punishable under the IPC (now Bhartiya

10. *K. Veeraswami v. UOI, (1991) 3 SCC 655* Also refer: *Satya Narain Musadi v. State of Bihar (1980) 3 SCC 152* and *M.C. Mehta v. Union of India, (2007) 1 SCC 110.*
11. Rahul Modi and Ors. vs Union of India and Ors. W.P. (Crl) 3842/2018 and W.P. (Crl.) 3843/2018 (Delhi High Court)
12. Serious Fraud Investigation Office and Ors. vs Rahul Modi and Ors. Criminal Appeal Nos. 538-39 of 2019 (Supreme Court).
13. Order dated 21/12/2023 passed in W.P.(CRL) 1891/2023 CRL.M.A. 17499/2023(Stay)

Nyaya Sanhita, 2023) or any other law relating to the transactions being investigated, then the same cannot give rise to distinct proceedings. Such investigation can be carried out under Section 4(1) of the CrPC (now under Section 4 of Bhartiya Nagarik Suraksha Sanhita, 2023). If the report which is subsequently filed is to be treated as a police report under Section 173(2) of the CrPC (now under Section 193 of Bhartiya Nagarik Suraksha Sanhita, 2023), then the officer, as explained hereinabove, is to be considered to be vested with powers of an 'officer in charge of a police station'. However, this order of the Delhi High Court was challenged in the Supreme Court [*Diary No.- 785 - 2024 LiveLaw (SC) 45*] and the Apex Court kept open this question - whether the Investigation Officer qualifies as Police Officer for the reason that the said question did not directly arise for consideration before the High Court and the impugned judgment will not be treated as a precedent on the said aspect.

Cases of Successful SFIO Investigation

While the SFIO enjoys wide discretionary powers which has gained criticism over the years, there have been cases where the investigation and role of SFIO was important for the country's economy.

In the case of **Satyam Computers**, one of the biggest scams of Indian Economy was investigated by SFIO. In the three-month long investigation, the SFIO Report concluded that the independent directors were not aware about the actions taken by the top management regarding inflated benefits, records falsification across India and they were deliberately kept in the dark by the executive of the IT giant.

SFIO also investigated the case of **Deccan Chronicle Holding Ltd.** DCHL took loan and was unable to repay it to the banks. Upon SFIO investigation, it concluded that the loan was availed by the company via sale of non-convertible debentures and other financial papers by various banks. Upon BIFR declaration of the company as sick company, the lenders still took action against then under SARFAESI Act.

In the **Saradha Chit Fund Scam,** the SFIO's interim reports stated that the company including its promoters were involved in misappropriating the funds of the company for personal gains. Promoters were also involved in exploiting regulatory gaps for monetary gains. The company also introduced new products in the market also to defraud the investors by actively concealing information of the company.

It is to be noted that SFIO is only an investigative authority and does not have any power to settle the dispute. However, these reports form the basis for proceeding criminally under the act and other law existing at that point in time.

Conclusion

The Serious Fraud Investigation Office (SFIO) has a vital function in protecting India's corporate environment. The SFIO was established with the purpose of combating financial fraud and possesses significant investigative and supervisory authority. Nevertheless, these extensive powers require a careful equilibrium between efficient inquiry and the preservation of individual rights. Although there are concerns about potential misuse, the SFIO has clearly played a significant role in exposing major financial scams. According to the official records, the SFIO has concluded investigations into a total of 73 cases. Instances such as the Satyam Computers and Saradha Chit Fund Scam serve as prime examples of how the SFIO has effectively revealed deceitful activities and safeguarded the interests of investors. Furthermore, the recent instance of Veena Vijayan, in which the SFIO was given a timeframe of eight months to conduct the inquiry, was concluded in just two months. Enforcement Directorate initiated legal proceedings against Veena Vijayan based on the report filed by SFIO, in order to ensure expeditious dispensation of justice. It is vital to prioritize developing transparency in SFIO's investigation start process and ensuring that investigations are completed in a timely manner. In addition, legislative revisions could contemplate the inclusion of a default bail mechanism in some situations, as the existing system can result in

extended periods of incarceration. Ultimately, the SFIO continues to be an indispensable instrument in India's battle against corporate fraud. To enhance the SFIO's efficacy in promoting a transparent business environment, it is crucial to find a harmonious equilibrium between its powers and individual liberties, while also making necessary improvements to legislation.

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Corporate Coup? The Companies Act: Weapon of Choice or Shield of Shame?

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Within the framework of the Companies Act 2013, the definition of oppression has evolved from referring solely to incidents in which disgruntled shareholders retaliated against majority shareholders to referring to notices that were not given to directors during board meetings. There is mention of oppression in cases of unreasonable transfer restrictions, acting oppressively at board meetings, improper issue of shares, misappropriation of company assets, class oppression, denial of access to information, exclusion from participation in management, imposition of costs, withholding dividend payments.

Although the term "oppression" is not defined specifically in the Companies Act 2013, Sections 241 to 246 of Chapter XVI contain measures pertaining to mismanagement and oppression. Any member of a business or the Central Government may file an application with the National business Law Tribunal (NCLT) under Section 241 if the firm's acts unjustly harm the interests of the public or unfairly prejudice its members. The goal of this application is to safeguard stakeholders' interests and guarantee adherence to public interest standards as outlined in the Act, rather than addressing financial matters. Under Rule 95 of the National Company Law Tribunal Rules, 2016, the Central Government (CG) has the authority to submit applications to the NCLT under Sections 241 and 242 of the Companies Act, 2013. These applications are filed when the CG perceives that a company is operating in a manner that oppresses its members or is detrimental to public interest.

A few guidelines that have developed over time and situations deemed by the courts to constitute "oppression" are as follows:

- the act or omission must not only be prejudicial against the minority shareholders but also unfair, severe, and onerous on them;
- it is not unfair prejudice against the minority if it is equally prejudicial against all other members of the company;
- To qualify as oppression, an act must be unfairly discriminatory, benefit one party at the expense of another, lack probity and good faith, act otherwise in compliance with the law and procedure but maliciously intended to deny the legitimate expectations of a minority group, and be more than just a technical error or illegality.

Mismanagement is not defined in the provisions of the act but it mainly constitutes for all these acts as stated by the principles in judgements passed by the courts.

- absence of basic records;
- inability to complete or have the accounts audited;
- failure to hold general meetings for the acceptance of the accounts; and

- failing to file paperwork with the Registrar of Companies

Other instances of poor management include issuing shares for a consideration other than cash that is not represented by corresponding assets, moving the company's office to incur additional costs, and transferring shares without first offering to current shareholders in accordance with their rights under the articles.

Legal Provisions and Stakeholders

Sections 241 and 242 of the Companies Act, 2013 give procedural instructions for various applications, including those relating to oppression and mismanagement. These rules govern the operation of the National Company Law Tribunal (NCLT).

These guidelines delineate:

***Rule 94*:** Establishes the structure and content specifications for applications submitted under Sections 241 and 242, guaranteeing thorough record-keeping of purported oppression or mismanagement, as well as the requested redress.

Rule 95: Extends access beyond shareholders by defining the qualifying requirements for applicants, which include creditors, governmental bodies, shareholders, and authorized individuals.

***Rule 96*:** Enables all parties to participate in NCLT proceedings in an efficient manner by regulating the procedural components of communication and notice-serving.

***Rule 97*:** Describes the NCLT's authority to give directions to remedy mismanagement and oppression, including instructions to control business operations or call stakeholder meetings.

Rule 98: Deals with the NCLT's appointment of inspectors to look into the business affairs of companies in situations that call for more in-depth examination.

Concerns like discrimination, poor management, debt collection, regulatory compliance, and other company governance difficulties can all be addressed by members of the company eligible to file for the issues.

Sections 241 to 246 of the Companies Act 2013

Section 241: Preventing Oppression and Impropriety

If someone consistently fails to fulfill their responsibilities or engages in dishonest behavior,

Members of the Company or the CG may apply to the Tribunal if business affairs are being conducted in a way that is detrimental to them or the general public interest

Section 243: Tribunal Authority

The NCLT is empowered under Section 242 to make appropriate orders intended to correct the situation after hearing an application under Section 241. These directives could involve reorganizing the business's management procedures, enabling share transfers, or, in the worst situations, suggesting the company be wound up to safeguard shareholders.

Section 243: Repercussions of Tribunal Decisions

It specifies the consequences of terminating or changing agreements in accordance with the tribunal's orders, maintaining coherence and compliance post-decision.

Section 244: Authority to Request Redress

The Companies Act of 2013's Section 244 expands the scope of who may apply under Section 241 beyond shareholders to include authorized individuals and governmental bodies. Their importance in addressing corporate behavior that affects the public interest is acknowledged by this expansion. Section 244 strengthens India's corporate governance system, encourages fair business practices, and improves regulatory monitoring by giving these organizations the ability to seek redress. This all-inclusive strategy seeks to promote responsibility in the corporate sector, preserve stakeholder rights, and maintain openness.

Section 245: Encouraging Shareholder Actions.

The provisions for class action lawsuits introduced by Section 245 allow shareholders to collectively resolve grievances resulting from wrongdoing or fraud that endangers the company's interests. This gives shareholders the authority to hold companies accountable and demand compensation for betrayals of confidence or failure to uphold corporate obligations.

Section 246: Implementation of Clauses.

To provide uniformity and procedural fairness in settling disputes pertaining to corporate governance matters, Section 246 makes clear which laws about winding up proceedings apply to instances under Sections 241 and 245.

Case Studies and Judicial Interpretations

A good illustration of a Companies Act lawsuit alleging minority shareholder oppression is the Tata v. Mistry 2022 case. Cyrus Mistry stated that Tata Sons' actions amounted to mismanagement and persecution after he resigned as Chairman. ***The Tata vs. Mistry*** case serves as an example of the Supreme Court's and tribunals' differing points of view. The NCLAT took a different tack, concluding that some actions were oppressive and that Mistry's dismissal as Chairman was unlawful, despite the NCLT finding no oppression by Tata Sons. These accusations included financial mismanagement, insufficient governance, and restricted authority. But in the end, the Supreme Court agreed with Tata Sons, rejecting Mistry's claims and highlighting the need for hard proof to establish oppression under the Act while highlighting the majority shareholder's authority to choose directors and make decisions.

Oppression and Mismanagement **NCLT**: rejected Mistry's appeal at first on the basis of eligibility and then determined that the Tata Group's claims of tyranny and poor management lacked credibility.	**NCLAT**: overturned the NCLT's ruling and ruled in Mistry's favor, declaring that his dismissal was unlawful and establishing a glaring instance of mistreatment and tyranny.
Oppression of Minority Shareholders: **NCLT**: Upheld Tata Sons' actions, citing existing articles and lack of prejudice to minority shareholders.	**NCLAT**: Directed Tata Sons to refrain from invoking Article 75 against Shapoorji Pallonji Group, acknowledging potential oppression
Conversion of Public Company to Private: **NCLT**: Found no merit in the arguments against the conversion in Article.	**NCLAT**: Deemed the conversion illegal and unsustainable due to procedural irregularities.
Quasi-Partnership: **NCLT**: Denied the claim that Tata Sons functioned as a quasi-partnership.	**NCLAT**: Accepted the claim but did not recognize legitimate expectations arising from such a partnership as grounds for oppression
Mismanagement: **NCLT**: Disregarded allegations of mismanagement by Tata Sons.	**NCLAT**: Found evidence of mismanagement through prejudicial decisions by Tata Trust's representatives

But in the end, the Supreme Court agreed with Tata Sons, rejecting Mistry's claims and highlighting the need for hard proof to establish oppression under the Act while highlighting the majority shareholder's authority to choose directors and make decisions.

Delhi Gymkhana vs. UOI 2020

This recent landmark judgement has provided safety for the public interest. The public interest was prejudiced by the club because it was misusing the membership fees by the prospective members for the benefit of the permanent members. *The court further declared that the government may file a section 241 lawsuit if private individuals, motivated by nepotism and favoritism, take over a sports facility for recreation reasons.*

In the case of ***Dhananjay Mishra vs. Dynatron Services Private Limited & Ors., Company Appeal (AT) No. 389 of 2018 (POWER TO DECIDE MATTERS IN PRESENCE OF ARBITRATION CLAUSE),*** According to the National Company Law Appellate Tribunal (NCLAT), actions covered by the Companies Act and specifically addressed by the Tribunal for the grant of relief under Section 242 of the Companies Act, such as failing to serve meeting notice, financial irregularities, and failing to appoint directors, are not subject to arbitration. It was also clear that the Tribunal is the best venue for delivering outcome-oriented justice due to its statutory authority and plenary jurisdiction. It was evident that the Arbitrator is unable to use the Tribunal's statutory authority.

Shanti Prasad Jain vs. Kalinga Tubes, The Court, while dismissing the appeal, ultimately determined that the allotment of shares to outsiders by the majority shareholders **would not constitute oppression** against the minority appellant group.

The following cases are from the Company Law Board's Judgement regarding oppression and mismanagement: -

A seminal case on this topic is ***Needle Industries (India) vs. Needle Industries Newey (India) Holding Ltd.,*** in which the Supreme Court's ruling is still regarded as authoritative. The Indian minority shareholders in this lawsuit were accused by the foreign majority of persecution because they appointed more directors and issued more shares. Such actions by the minority shareholder were deemed oppressive by the High Court and the Company Law Board (henceforth referred to as "CLB"). But in an appeal, the Supreme Court noted that even in cases where oppression is unsuccessful, the court still has the authority to deliver substantial justice. For this reason, based on the case's facts and circumstances, the Supreme Court rejected the Indian minority's claim of oppression and ordered the minority's shares to be bought by the foreign majority.

The Court in further held in ***Yashovardhan Saboo vs. Groz-Beckert Saboo Ltd.*** that the majority has the right to buy the minority's shares in order to provide substantial justice between parties whose relationship has reached a point where reconciliation has proven difficult, even in the absence of an established case of oppression. The majority should never be compelled to sell its interests to a minority, it was further decided. The CLB has ordered the majority to leave the company in certain recent decisions where the minority shareholders were solely in charge of the management and day-to-day operations of the business. This was done to protect the business's interests because the minority would have the necessary experience to run the business. The principle that the majority may be directed to sell its shares to the minority in exceptional circumstances was established in the cases of ***Shri Gurmit Singh vs. Polymer Papers Ltd.*** and

Chander Mohan Jain vs. CRM Digital Synergies P. Ltd., but it's noteworthy that the majority should never be directed to sell its shares to the smaller group. Given the circumstances, given that the majority did not engage in the business's operations and behaved in a way that was wholly averse to the interest of the business, and since the business's interest is the most important rule in company law, the minority was told to acquire the majority.

The judgments of various cases, such as ***Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad, Mohanlal Ganpatram vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.,*** and ***Power Finance Corpn. Ltd. vs. Shree Maheshwar Hydel Power Corpn. Ltd.,*** collectively shed light on the nuances of oppression and mismanagement within the corporate landscape.

Penalties and Consequences

Under the Companies Act, 2013, many statutory provisions define strong penalties for corporate governance and regulatory compliance in order to ensure adherence to legal norms and deter misbehavior. Section 242 especially handles cases in which changes to a company's Memorandum or Articles of Association are made in violation of tribunal orders. Companies found guilty under this provision may incur fines ranging from ₹ 1 lakh to ₹ 25 lakh. Similarly, officers who are culpable may face fines ranging from ₹ 25,000 to ₹ 1 lakh, as well as imprisonment for up to six months in egregious situations.

Section 243 applies to those who take on critical jobs such as Directors or Managers prematurely, within five years of the conclusion of their contractual relationship. Such conduct is punishable by up to six months in prison, fines of up to Rs 5 lakh, or both, stressing the gravity of noncompliance with statutory regulations.

Section 244 also addresses the issue of misstatements in corporate records, with penalties including imprisonment for up to six months, a fine of up to ₹ 1 lakh, or both. Section 245 provides penalties for firms that fail to comply with tribunal orders, ranging from ₹ 5 lakh to ₹ 25 lakh. Officers who fail to perform their obligations under this provision may face fines of ₹ 25,000 to ₹ 1 lakh, as well as imprisonment for up to three years. Furthermore, Section 246 imposes penalties of up to ₹ 10 lakh on corporations that fail to keep the required books of accounts.

Future Directions and Recommendations

The persistent threat of mismanagement and oppression calls for stakeholders to be vigilant and for legal frameworks to be continuously improved. Court decisions continue to hone the meanings of these acts, defining the bounds of what constitutes appropriate behavior in businesses. Legislative bodies adjust by creating laws that give the oppressed people more power. The continuous communication among legislators, courts, and stakeholders cultivates a business climate that places a premium on openness, responsibility, and equitable treatment for everyone. We may move toward a future where ethical and responsible business practices are the norm as long as stakeholders continue to be watchful and legal systems continue to develop.

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10. ***M/S. Power Finance Corporation Ltd vs. Shree Maheshwar Hydel Power Company Appeal (AT) No. 237 of 2017***

Loan given to Directors and Companies

CA Chirayu Sodani *CS Ashish Garg*

Finance is the life blood of business. No person or entity, (whether the same is incorporated as a company/LLP/partnership firm/AOP/proprietorship concern) can run its business successfully if it does not have access to adequate amount of funds at an appropriate finance cost. When one specifically talks about companies that too in the Indian perspective, the rising interest rates, recession and layoffs have forced companies to control and reduce their non-operating costs to the maximum extent possible, so as to maintain and grow their bottom-line for the years coming ahead.

One of the ideal sources of finance that the Companies look forward during such difficult times is the inter-corporate loans, where they can easily get an access to the required amount of funds from their related party(s) or companies belonging to the same Group at a reasonably lower rate of interest with flexible terms and conditions attached to the instrument. Correspondingly, companies may also resort to providing loans to its directors or their relatives or director's partner when they need the same for growing their individual businesses or for their own purpose. In midst of the complex web of transactions taking place, it became necessary for the Government to take cognizance of the implications of such transactions both, at the regulatory level and the financial reporting level, and bring in stringent guidelines for companies providing loans, guarantees, securities in connection with the loans. Section 185 and 186 of the Companies Act, 2013 ("the Act") govern the provisions relating to giving loan to directors and companies, investment in companies, as well providing guarantees and securities in connection with loans and the threshold limits relating to the same.

Section 185 of the Act – Loans to Directors, etc.

The essence of Section 185 of the Act is to draw a fine distinction between the entities/persons to whom a company can provide loans including loans represented by book debts, guarantees and securities in connection to loans ("LGS"), and the one to whom providing of the same is statutorily prohibited. Our discussion on Section 185 of the Act can be divided into three major categories-

a. Prohibitions described u/s 185 of the Act

b. Exemption to Section 185 of the Act/ Instance(s) where Section 185 of the Act will not be applicable

c. Special considerations

a. Prohibitions described u/s 185 of the Act

1. As per Section 185(1) of the Act, a company is prohibited to provide LGS, both, directly and indirectly to following entities or persons-

   — Director of the company

- Director of the holding company
- Partners of the director
- Partners of the director of holding company
- Relatives[1] of the director of the company
- Relatives of the director of the holding company.
- Firm in which such director of the Company or his relative is a partner
- Firm in which the director of the holding Company or his relative is a partner

2. If a Company resorts to advance LGS, to persons/entities as stated above, it shall lead to contravention of the Act and serious repercussions would entail in the form of hefty penalties and imprisonment.

3. While the Act on one hand prohibits Companies to provide loans to its director, on the other hand it also provides certain additional terms and conditions u/s 185(3) of the Act, basis which the Company can provide loan to its director. However, it is pertinent to note that such exemption is available only for the director of the Company, and not for the director of the holding company. This shall be discussed later under "Section b - Exemption to Section 185 of the Act/Instance where Section 185 of the Act will not be applicable" of our discussion.

4. Section 185 prohibits giving LGS to director of holding company. Therefore, a company may give LGS to directors of subsidiary or associate companies for a simple reason that no such restriction or prohibition exists for them.

5. Section 185 prohibits giving LGS to firms where the director (including director of holding company) or their relatives are partners. However, no such restriction or prohibition exists for giving LGS to firms in which partner of a director is a partner (subject to the condition that director should not be a partner in this other firm as well).

6. Section 185 of the Act prominently uses the word "directly" and "indirectly" in connection with providing LGS. The action of direct sanctioning of LGS can be easily understood and interpreted. However, Section 185 does not provide any specific guidance to the modes of indirect sanctioning of the LGS. In absence of the required interpretation of law, the Hon'ble Bombay High Court ("Bom HC") in case of Dr. Fredie Ardeshir Mehta[2] provided a landmark judgement as to what shall be construed as an indirect sanctioning, amidst the wrong interpretation made by the Revenue of the same. The relevant excerpts of the judgement are provided hereunder-

> ***"11. When section 295 refers to an indirect loan to a director, what it means is that the company shall not give a loan to a director through the agency of one or more intermediaries. The Word "indirectly" in the section cannot be read as converting what is not a loan into a loan."***

7. In the said case, the director had purchased an immovable property from the Company where he was a director, wherein half of the payment was done by the director at

1. Relative shall be construed as per Section 2(77) of the Act vis-à-vis father, mother, brother, sister, son including the step relationships of the aforementioned relatives, spouse, daughter, son's wife and daughter's husband and member of HUF of the director.
2. 1989 (3) BomCR 656, 1991 70 CompCas 210 Bom

the time of the agreement and the balance half was agreed to be paid in future in three equal installments. The Government erroneously construed the balance amount payable by the director as loan and initiated action against the Company for the contravention of the Act. Although, the Government construed this as an offence u/s 295 of the erstwhile Companies Act, 1956, the principle provided by the Hon'ble Bom HC for recognising indirect form of providing LGS stills hold true under the existing Companies Act, 2013 as well, that says "indirect" shall be reckoned as providing loan through the agency of one or more intermediaries. Accordingly, the Hon'ble Bom HC adjudicated the matter in favour of the director expressively stating in its order that the said transaction does not constitute providing loan in indirect form.

8. Section 185 of the Act prominently uses the word "loan represented by book debt". Therefore, it is vital to understand as to what book debts construe u/s 185 of the Act, given the fact that neither Section 185 nor the Act per se defines what exactly a book debt is.

I n common parlance, a book debt is an amount receivable from another person/ entity. Let us say, a company renders certain services or sells goods to its director (in compliance with Section 188 of the Act) in ordinary course of its business amounting to INR 2 Lacs. The said amount is due for payment from the director's side. One needs to understand that the said receivable amount is in nature of a trade receivable and in no way signifies that the Company has provided any financial assistance to the director. The rationale behind saying so is, that when a loan is given, it is given with an objective of financial assistance and not with an objective of fulfilling a performance engagement in the form of provision of goods/rendering of services.

9. The Government may argue that the said receivable from the director construes as a loan and therefore the same tantamount to violation of Section 185 of the Act. However, the company must be able to demonstrate that it never had the intention of providing financial assistance to the director. Additionally, one more situation may arise when the director might use the credit card of the company for his personal purpose, for which he shall be required to reimburse the company. In such a case, the Government may argue that this is a financial assistance in form of loan and is a fit case for levying hefty penalties on the company, director and the officer in default and invoking imprisonment against the officer in default and the director using the credit card. It must be noted that the amount receivable from the director against the credit card used by him for his personal purpose is a mere reimbursement of expense and in no way tantamount to a loan.

Therefore, the above two cases are classic examples of transactions entered into with the director on a routine basis wherein the book debt towards the director in connection with goods/services and reimbursement of credit card expenses are not in form of loan, but mere book debts related to a normal trade receivable and recovery of expenses, respectively.

However, the company must take care of the fact that the recovery of the aforesaid book debts should be done within a reasonable period of time, so that it does not signify that the director is able to take undue benefit of his position.

b. Exemption to Section 185 of the Act/ Instances where Section 185 of the Act will not be applicable

1. Section 185(2) of the Act is a restrictive as well as an amiable provision allowing a

company to provide loans, guarantees and securities in connection with loan, subject to certain conditions.

2. A company can provide loan to any party in whom the director of the Company is "interested" subject to-

   a. Passing of a special resolution ; and

   b. Explanatory statement to be attached to the notice of general meeting providing details about the proposed loan, purpose for which the same is to be utilized and any other relevant information

3. Section 185(2) of the Act provides a list of entities considered as "interested" from the perspective of the director of the Company. The interested parties are stated as hereunder-

   a. A private company in which the director of the company is a director/member;

   b. A body corporate whose management (board of directors, managing director or manager) is accustomed to act on the directions of the director of the company;

   c. A body corporate where at least 25% of voting power is held by one/more directors of the company;

4. One needs to give serious consideration to the fact that this section permits company to provide loans to interested parties of the director of the company, and not to the interested parties of the director of the holding company.

5. It is to be noted that Section 185(2) of the Act imposes onus on the company while providing LGS to the interested parties to make sure that LGS provided are utilized by the borrower for the sole purpose of financing its principal business activity. LGS provided for any purpose other than the principal business activity shall be a serious offence u/s 185 of the Act attracting hefty penalties and imprisonment.

6. Apart from the restrictions enumerated above, different government notifications provide complete/absolute exemption to the following classes of companies from complying with the requirements of Section 185. In those cases, the prescribed classes of companies are not required to follow the requirements of Section 185 while providing LGS to its directors and companies. The prescribed classes of companies are-

   a. Government company[3] (Notification No. G.S.R. 463(E) dated 5th June 2015 as amended by Notification No. G.S.R. 582(E) dated 13th June 2017)

      i. Having obtained prior approval of the central/state government; and

      ii. Having complied with Section 92 of the Act (pertaining to filing of annual return with Registrar of Companies) and Section 137 of the Act (pertaining to filing of financial statements with Registrar of Companies)

   b. Private company (Notification No. G.S.R. 464(E) dated 5th June 2015 as amended by Notification No. G.S.R. 583(E) dated 13th June 2017)

3. Government company as defined u/s 2(45) of the Act means any company in which at least 51% of the paid-up share capital is held by the Central government or state government or jointly by the Central government and state government(s) or jointly by two or more state governments. Any subsidiary of a government company is also deemed to be government company.

i. Having complied with Section 92 and Section 137 of the Act; and

ii. Where no other body corporate has invested in its share capital (whether equity or preference); and

iii. Having borrowings from banks, public financial institutions ("PFI") or body corporate lower of:

1. two times of paid-up share capital; or

2. INR 50 crores

iv. Where no default subsists in connection with repayment of the above borrowing

c. Nidhi company (Notification No. G.S.R. 465(E) dated 5th June 2015)

i. Provided loan to director in capacity as member and the same is appropriately disclosed in the annual accounts; or

ii. Provided loan to relatives of the director in capacity as member and the same is appropriately disclosed in the annual accounts

7. The requirements of Section 185 of the Act will not attract if the company encounters the following situations-

a. When loan is given to the managing director or the whole-time director when such loan is either-

i. Approved by passing a special resolution; or

ii. If such loan is extended to all employees in lieu of the services provided by them to the Company

One must specifically acknowledge that this exemption in not available when a subsidiary is giving loan to the managing director or the whole-time director of the holding company

b. When the company is providing loan in its ordinary course of business subject to the condition that rate of interest of such loan is not less than the prevailing rate of interest on the government security corresponding to the tenure of such loan

c. LGS is given to a wholly owned subsidiary company subject to the condition that such LGS is utilized for purposes in connection with the principal business of the wholly owned subsidiary

d. Guarantee or security provided to a subsidiary (not a wholly owned subsidiary) in connection with the loan raised from a bank or PFI, solely for the principal business activity of such subsidiary

One must note that had the loan been given by the company to its subsidiary (not wholly owned subsidiary), the requirements of Section 185 of the Act would get attracted and no such exemption would have prevailed.

c. Special considerations

A company ought to take into consideration the below stated peculiar issues so as to assess whether LGS fits under the requirement of Section 185 of the Act or not-

1. Any amount paid to a director in the ordinary course of business for expending such amount for the Company and not for personal use, shall not come under the ambit of Section 185. Examples such as travelling expenses, sitting fees, fees paid for any professional work, fuel expenses, etc.

2. Any security deposit paid by company for accommodation of directors when such accommodation forms part of the service agreement, shall not come under the ambit of Section 185 of the Act.

3. Any club membership fees (when such membership is taken on corporate basis) paid by the Company wherein the directors enjoy the benefits of the club facilities shall not come under the ambit of Section 185.

It is vital for a company to acknowledge the requirements of Section 185 of the Act and make sure that any LGS given by the company to its directors or entities mentioned u/s 185(2) and 185(3) of the Act is duly taken care of, amidst the voluminous cases that the registrar and the NCLT handle on a daily basis, pertaining to violation of Section 185 of the Act.

The penalty and imprisonment prescribed u/s 185(4) of the Act for violating requirements of Section 185 is stated herein below-

Particulars	*Company providing LGS*	*Officer in default*	*Director/other person receiving LGS*
Fine	INR 5 Lacs-INR 25 Lacs	INR 5 Lacs-INR 25 Lacs	INR 5 Lacs-INR 25 Lacs
Imprisonment	Not applicable	Maximum upto 6 months	Maximum upto 6 months

Section 186 of the Act – Loan and investment by company

Section 185 and Section 186 of the Act are complimentary provisions which operate hand in hand with each other. Where Section 185 of the Act laid down law relating to providing of LGS, Section 186 of the Act provides threshold limits relating to the loans and investments that the company can make. The discussion of important provisions exhibiting the essence of Section 186 and providing guidance of its operation can be divided into following four categories-

a. Restriction of layers in investment and its exemption

b. Limits on loans and investment

c. Additional compliances to be done

d. Exemption from compliance of Section 186 of the Act

a. Restriction of layers in investment and its exemption

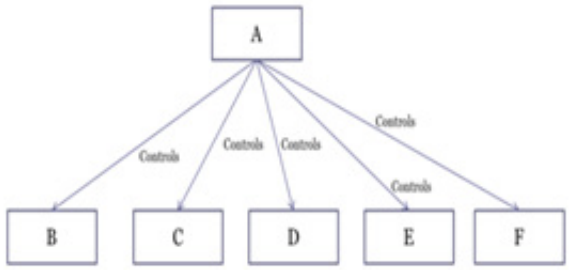
1. No company is allowed to invest in another company having more than two layers of investment company[4].

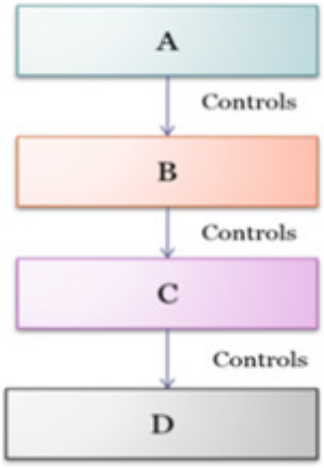
2. While making investment, the control factor is to be considered. Generally, controlled is established when a company holds more than half of the voting rights or paid-up share capital of another company. However, additional factors such as domination on the management of another entity wherein such management is accustomed to act on the directions of the first company, must also be considered while evaluating control.

3. Guidance of Ind AS 110 or AS 21 relating to consolidated financial statements may also be taken for determining control.

4. Investment company refers to company whose:
   - minimum 50% of the total assets are in form of shares, debentures or other securities; and
   - minimum 50% of the total income are from investment in the aforesaid shares, debentures or other securities

4. It is to be noted that layering aspect is to be considered on a vertical basis and not on a horizontal basis.





5. In a horizontal layering arrangement, a company can have infinite number of subsidiaries. There is no restriction prescribed u/s 186 of the Act on horizontal layering.

   However, as far as the vertical layering is concerned, a company is prohibited to have more than 2 layers of investment company. Therefore, in the diagram of vertical layering provided above, it is completely legitimate for Company A to have Company B and Company C in its group structure. However, Company C gaining controlling stake of Company D tantamount to violation of the maximum layers of investment company permissible.

   It is further important to note that under vertical layering, if a holding company owns a wholly owned subsidiary, the same shall be exempted from the calculation of maximum number of layers of investment company. However, the said exemption is restricted to only one wholly owned subsidiary. If the group structure contains more than one wholly owned subsidiary, the other wholly owned subsidiaries shall still be considered for the purpose of calculation of maximum number of investment layers.

6. The requirement of layering shall not be applicable in the following scenarios-

   a. When an Indian company acquires control in a foreign company and such foreign company has investment in more than 2 layers of subsidiaries, which is permissible under the laws of the foreign country; or

   b. When a subsidiary company has investment in more than 2 layers of subsidiary company by virtue of a specific requirement of that law or statute

b. Limits on loans and investment

1. A company is restricted to make investments or provide LGS exceeding the following limit, unless a special resolution has been passed in the general meeting-

   Higher of:

   I. 60% of paid-up share capital + free reserves + security premium; or

   II. 100% of paid-up capital + free reserves

2. It is to be noted that the above limit is not applicable on persons who are in the

employment of the company (other than managing director and whole-time director of the company) when providing of such loans is not in the ordinary course of business of the company.

3. In case, the existing LGS and investment of the company along with the proposed LGS and investment of the company exceeds the aforementioned 60%/100% limit, then a company can make the proposed LGS or investment subject to passing of a special resolution in the general meeting.

4. It is to be noted that irrespective of the fact whether LGS or investment exceeds the prescribed limit or not, it is mandatory for the company to pass a board resolution authorizing the company to provide LGS or acquisition of such investment. However, such board resolution must be passed unanimously, otherwise the company cannot provide LGS or make such investment.

5. The requirement of passing of a special resolution shall not persist when the company is providing LGS to wholly owned subsidiary/joint venture or making investment towards its wholly owned subsidiary. As already discussed in the earlier part that Section 185 is not applicable to providing LGS to wholly owned subsidiary (subject to the condition that loan is utilized for the purpose of principal business activity of such subsidiary), therefore the requirement of Section 186 is also not applicable to it. However, they must be considered while calculating the limit of 60%/100%.

6. Adequate disclosures of such LGS and investment must be provided in the financial statements to enhance the understanding of the users of the financial statements. This may be easily understandable under disclosures given in pursuance of Ind AS 24 or AS 18 relating to Related Party Transactions.

c. Additional compliances to be done

1. A company is required to obtain prior approval of PFI if LGS or investment exceeds the specified limit of 60%/100%. However, no such specific permission is warranted when both existing and proposed LGS or investment is lower than the specified limit, and there subsists no default in repayment of loan and interest to the such PFI.

2. A company registered u/s 12 of the Securities & Exchange Board of India Act, 1992 (which includes stock exchanges, share brokers, sub-brokers, share transfer agents, etc.) to mandatorily comply with the prescribed limits of 60%/100% while providing LGS and making investment. It is also required to disclose such facts appropriately in its financial statements.

3. As far as the rate of interest is concerned, Section 186 and Section 185 of the Act share a similar view, i.e. rate of interest on loans must not be lower than the prevailing yield of government securities corresponding to the tenure of loan.

   However, such conditions are not applicable on a Section 8 company engaged in providing funds for industrial research and development projects in furtherance of its objects as per memorandum of association, whose at least 26% of the paid-up share capital is held either by the central government/the state government/both.

4. The company is required to maintain the records of the LGS and investment under a register maintained in Form MBP-2 at its registered office.

d. Exemptions from compliance of Section 186 of the Act

1. Following entities are exempted from complying with the requirements of Section 186 of the Act when a LGS or investment is made in ordinary course of business-

a. Banking company

b. Insurance company

c. Housing finance company

d. Company engaged in the business of financing industrial enterprises and providing infrastructural projects

2. Investment made

a. By an investment company

b. By virtue of acquisition of right shares u/s 62(1)(a) of the Act

c. By an NBFC whose principal business is acquisition of securities (such as core investment companies)

3. Following companies are kept out of the ambit of Section 186-

a. Government company engaged in defence production

b. Unlisted government company subject to-

i. Compliance of Section 92 and Section 137 of the Act; and

ii. Prior approval of the concerned ministry

Non-compliance of Section 186 of the Act attracts hefty penalties and fear of imprisonment. The same are as under-

Particulars	***Company***	***Officer in default***
Fine	INR 0.25 Lacs-INR 5 Lacs	INR 0.25 Lacs-INR 5 Lacs
Imprisonment	Not applicable	Maximum upto 2 years

Additional Reporting by the Auditors' and Management

1. Auditor's responsibility

Under section 143(11) of the Act, additional onus is entrusted upon the independent auditor appointed u/s 139 of the Act to report under clause 3 of paragraph 3 of the Companies (Auditor's Report) Order, 2020 on whether the company is compliant with Section 185 and Section 186 of the Act or not

2. Management's responsibility

Under section 134(3) of the Act, the board of directors' is mandated to mention in their report about particulars of LGS.

Taking cognizance of the above laws and regulation coupled with the additional reporting requirements, it is important for a company to take due care of Section 185 and Section 186 of the Act while ascertaining or intending to provide LGS and investments.

The Legal Landscape of Corporate Political Contributions

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Introduction

Have you ever wondered how companies can donate money to political parties? In India, there are rules set by the Companies Act, 2013 that govern these contributions. This article explains who can donate, how the donations can be made and how the public is informed about these donations. We will also look at recent changes to the law that have caused some people to worry about big businesses having too much influence in elections.

Contributions made to politicians, political parties, or political campaigns in the form of cash or commodities are known as political donations. The funds support various kinds of initiatives, such as:

- ***Campaign expenditures:*** Funds are used for staff salaries, advertisements, rallies, and other expenses related to seeking public office.
- ***Party operations:*** Contributions enable political parties to continue their ongoing initiatives, such as voter engagement campaigns and office upkeep.
- ***Policy initiatives:*** Donations are occasionally utilised in favour of or against laws or ballot propositions.

The Companies Act,2013 does not define the term 'political contribution'. However Section 182 (2) stated what would be considered[1] as 'deemed political contribution' as **"a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose"**

"the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed, —

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose."

1. Companies Act 1956, sec 293 A [https://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf]

According to news published on March 23, 2024, by Business Standard[2], three companies namely Bharti Airtel, Tata Steel, Larson and Toubro made political contributions of rupees six hundred and twenty-eight crores in the past five years. Bharti Airtel is the only Sensex-listed company that is leading and has consistently contributed for all five years and has donated rupees Two hundred and forty-one towards political contribution.

Provisions of Section 182 of the Companies Act, 2013 deals with "Prohibitions and Restrictions Regarding Political Contributions". and Read with Supreme Court Judgement (in case of M/s Association for Democratic Reforms & Anr. vs. Union of India & Ors dated 15th February, =2024)[3].

The Supreme Court of India in its judgement had struck down the amendments made in the provisions of Section 182 of the Companies Act, 2013 via finance Act 2017 and declared them as unconstitutional:

Therefore, earlier provisions of Section 182 before the amendment are resorted w.e.f 15th February, 2024.

Which Companies Can Contribute [sec 182 (1)]

- Any company other than a government company
- Has been in existence for three years.
- A resolution authorising the making of such a contribution should be passed by the Board of Directors.

To What extent the Companies can Contribute [first proviso of sec 182(1)]

- the aggregate of the amount can be contributed by the company in any financial year up to 7.5% of its average net profits during the 3 immediately preceding financial years.

Disclosures Required [sec 182 (3)]

- Every company in its profit and loss account required to disclose:
  - i. any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and
  - ii. the name of the party to which such amount has been contributed.

Penalty [sec 182(4)]

- The Company punishable with fine which may extend up to five times the amount so contributed.
- Every officer of the company who is in default shall be punished with imprisonment for a term which may extend upto 6 months and with fine which may extend to five times the amount so contributed.

The Representation of People Act, 1950

The Representation of the People Act, of 1950 is the foundation for fair elections in India. It decides who can vote and run for office, and lays out the steps to make sure every election is fair and reflects the will of the people.

Section 29B of the Representation of the People Act, 1950 notifies us of political parties which are entitled to accept contributions. According to it, every political party may accept any amount of contributions voluntarily offered to it by any person or company other than a government

2. Only 8 Sensex companies disclosed political donations in five years, Business Standard, March 23,2024/12:23 AM (https://www.business-standard.com/markets/news/only-8-sensex-firms-disclosed-making-political-contribution-in-last-5-years-124032201044_1.html)
3. https://main.sci.gov.in/supremecourt/2017/27935/27935_2017_1_1501_50573_Judgement_15-Feb-2024.pdf

company. No political party is eligible to accept contributions from any foreign sources.

Sec 29C of the Representation of the People Act, 1950 stipulates that political parties have to declare the donations received by them in each financial year and prepare a report. The report should include all donations of more than twenty thousand rupees by individuals and companies. This section does not apply to the contributions made through electoral bonds. This report shall be submitted by the treasurer of the political party or any other person authorised by the political parties before the due date. The party shall not be entitled to any tax relief if it fails to declare its donations received.

The Financial Bill of 2017

The Finance Bill, 2017 is an annual legislative proposal that often announces the imposition of new taxes or changes to the country's tax system. The financial bill of 2017 was introduced by the Finance Minister, Shri. Arun Jaitley. The bill impacted 40 different laws[4]. The opposition labelled it as a backdoor route for the centre to pass non-finance-related amendments.

The following changes were proposed by the Financial Bill, 2017

1. *Aadhaar card was made mandatory for PAN and Income Tax*

   Aadhaar number was made mandatory to file income tax and to apply for a PAN card. A failure to provide the Aadhar Number would result in PAN being invalidated.

2. *Political Funding*

   The amendment removed the limit of 7.5% cap on the contributions that the company may make to political parties. The company would no longer need to disclose the name of political parties to which a contribution is made.

3. *Limit on Cash Transactions*

   Cash transactions above two lakh rupees will not be permitted to a single person, in a single transaction.

4. *Taxation Laws*

   The Taxation Laws (Amendment) Bill, 2017, was introduced in Lok Sabha on March 31, 2017. It proposes to change the Customs Act of 1962, the Customs Tariff Act of 1975, the Central Excise Act of 1944, the Finance Acts of 2001 and 2005, as well as abolish sections from a few Acts.

Electoral Bond Scheme, 2018[5]

The Government of India announced the Electoral Bond Scheme 2018 on January 2nd, 2018. Electoral Bonds could be acquired by an Indian individual or a company incorporated or created in India. Individuals could purchase Electoral Bonds either individually or in groups.

An electoral bond is similar to a promissory note. It is a bearer instrument that is payable to the bearer upon demand. Unlike a promissory note, which includes the payer and payee's information, an electoral bond has no information about the individuals involved in the transaction, allowing the parties to remain completely anonymous and discreet.

Only Political Parties which were registered under Section 29A of the Representation of the People Act, 1951 (43 of 1951) and received at least one per cent of the votes cast in the previous General Election to the House of the People or the Legislative Assembly of the State were eligible to

4. Vatsal Khullar and Tanvi Deshpande, Breaking Down the Finance Bill's All-Encompassing Amendments,22nd March,2017 [https://thewire.in/business/finance-bill-2017]
5. Electoral Bond Scheme,2018, Press Information Bureau, Ministry of Finance, Government of India, 01 MAY 2019 5:22 PM by PIB Delhi [https://pib.gov.in/Pressreleaseshare.aspx?PRID=1571421]

receive Electoral Bonds. The Electoral Bonds could exclusively be redeemed by an eligible Political Party through an Authorized Bank account. State Bank of India (SBI) has been permitted to issue and redeem Electoral Bonds through its 29 authorized Branches. At the designated State Bank of India branches, electoral bonds could be issued or acquired for any amount, in multiples of about 1,000, 10,000,1,000,000, and 1,000,000.

The election bonds had a fifteen-calendar day validity term from the date of issuance. If the bond is placed beyond that time, no payment would be made to the political party. The day when a qualified political party deposited an electoral bond in its account, that bond would be credited.

Constitutionality of the Electoral Bond Scheme

In the case of ***Association for Democratic Reforms vs. Union of India***[6], The Supreme Court held that the Electoral Bonds Scheme was unconstitutional for violating the right to information of voters. The key issues of the case were whether the electoral bond scheme was constitutional, does the scheme violate the voter's right to information, does the scheme threaten the democratic process and free and fair elections.

On October 31, 2023, a five-judge Constitution Bench led by CJI Chandrachud and Justices Sanjiv Khanna, B.R. Gavai, J.B. Pardiwala, and Manoj Misra heard arguments for three days. Petitioners claimed that the electoral bond program promoted corporate sponsorship, illicit money circulation, and corruption. They argued that citizens have a right to transparency about political parties' source of funding since it informs the party's policies and beliefs. The Union contended that the arrangement was intended to protect contributors' secrets and privacy since they would otherwise face punishment from political parties they did not finance.

On February 15, 2024, the Court unanimously overturned the Union's 2018 Electoral Bonds (EB) Scheme. The Bench ruled that the Scheme infringed voters' access to knowledge under Article 19(1)(a) of the Constitution. The Court also instructed that the selling of electoral bonds be halted immediately. SBI was instructed to provide the ECI with information on the Electoral Bonds acquired between April 12 and April 30, 2019. This would include information about the purchaser as well as whose political parties received the bonds. Furthermore, the Court directed the ECI to post the material given by SBI on its official website within one week of receipt (by March 13, 2024).

Arguments against the provision under the Companies Act, 2013

1. *Board Control Over Shareholder Funds*[7]*:*

   Critics argue board resolutions give too much power to a small group to decide how company funds are used for political contributions, bypassing the interests of the many shareholders who own the company.

2. *Shell Companies Abuse Electoral Bonds Scheme:*

   According to The Hindu[8] at least 20 newly incorporated firms had purchased electoral bonds worth rupees one hundred and three crore. Despite there being a law against it.

6. Association for Democratic Reforms v Union of India, 2024 INSC 113
7. Samya Chatterjee and Niranjan Sahoo, Corporate Funding of Elections: The Strengths and Flaws, ORF Issue Brief, Feb 2014 [https://www.orfonline.org/wp-content/uploads/2014/03/IssueBrief_69.pdf]
8. At least 20 firms bought electoral bonds within 3 years of incorporation, a punishable offence: Data,Vignesh Radhakrishnan,Sambavi Parthasarathy April 10, 2024 [https://www.thehindu.com/data/at-least-20-firms-bought-electoral-bonds-within-3-years-of-incorporation-a-punishable-offence-data/article68047917.ece]

3. *Potential for Abuse:*

   The anonymity of donations made through electoral bonds provided a system in which the source of funding was unknown, raising worries about money laundering or undeclared influences.

4. *Lack of Transparency:*

   Following revisions, firms were no longer required to declare the recipients of their political donations. This lack of openness made it difficult for citizens to grasp the impact of corporate money on politics.

Recommendation

- To some extent, this complaint of board control over shareholders' funds might be addressed by mandating the Prior Approval of Members at General Meeting as opposed to just the Board of Directors.
- A committee should be formed that would make sure that all the compliances are followed both by the companies and the parties.
- There should be financial auditors for auditing the accounts of political parties. These auditors should be periodically rotated.

Conclusion

India's current rules for company political donations (Section 182) are riddled with loopholes. However, to some extent it is sealed by the Supreme Court through restoration of ceiling limit provisions. Critics argue it lacks transparency and allows companies to prioritize political agendas over good governance. This can harm shareholders, especially minority ones if their money is used for political contributions without clear benefits to the company. A few amendments could prevent unprofitable companies from donating and ensuring political contributions better align with shareholder interests.

Further, the new challenge is evolved post striking down the Electoral Bond Scheme and provisions of Section 182 (3A) without providing alterative option or recommendation to curb the cash involvement in the donation to political parties i.e ambiguity and transparency in the cash transaction will be prevailed and need to mandate payment/receipt of donation amount only through a cheque, bank draft, electronic means.

Abortion Law Worldwide: Comparative Analysis and Ethical Consideration

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Hillary's words emphasize the fundamental principle that all individuals, regardless of gender, are entitled to the same inherent rights and freedoms simply by virtue of being human. Despite these claims of progressiveness, women often find themselves facing unequal treatment. This raises fundamental questions about our society's true commitment to forward-thinking ideals. Are biases still entrenched in our systems, hindering women's autonomy and rights? The global discourse on gender equality and women's bodily autonomy is fraught with emotion and controversy. Women worldwide engage in battles for reproductive rights, including the contentious issue of abortion. As we delve into the complexities of abortion laws, we confront broader issues of power, autonomy and justice. This essay seeks to explore the intricate landscape of abortion laws, shedding light on the challenges and implications they pose for women's rights and societal progress.

Abortion

A medical procedure that terminates pregnancy in its early stages, is generally regarded as safe when detected and managed promptly. It involves a decision made by the pregnant individual who, for personal reasons, determines they are not prepared to carry a child at that point in their life. This decision leads to the termination of the pregnancy before the birth of the child.

So the question is, if abortion is just a medical treatment, what exactly is the controversy all about?

The controversy surrounding abortion arises from the question of individual rights and autonomy. Advocates argue that every person has the right to make decisions about their own body, including whether to continue a pregnancy. They assert that no government or authority should impose laws or restrictions in this regard. However, opposing views often stem from various ethical, religious and societal perspectives. **What are the theories about abortion and what is the thought of people for the same when they opt for or oppose the act of abortion?**

There exist myriad reasons why individuals may opt for abortion, each rooted in deeply personal and intricate circumstances shaped by a multitude of factors. One significant scenario where abortion becomes imperative is when a woman has been subjected to the trauma of rape, resulting in an unintended pregnancy that is emotionally and physically burdensome. Financial constraints also play a pivotal role, particularly for single mothers or those in strained relationships, where the prospect of providing for a child's education and future seems unattainable. Additionally, health considerations, such as the inability to carry a child or contraceptive failures leading to unintended pregnancies, further underscore the complexities surrounding the decision to terminate a pregnancy.

However, while these reasons may be compelling for individuals navigating such situations, they may not necessarily be viewed as valid or justifiable by those who hold strong religious or cultural beliefs regarding the sanctity of life. For many, the notion of abortion conflicts with deeply ingrained beliefs that equate childbirth with a divine gift, rendering the act of terminating a pregnancy morally reprehensible regardless of the circumstances. The perspective of those who are against this right comes from various backgrounds like:

Religious Perspective

Indeed, many religious doctrines explicitly denounce abortion as a sin, asserting that the unborn child possesses inherent value and should not be deprived of the opportunity to live. In some cultures, the pressure to conceive and bear children is immense, with familiar and societal expectations dictating a woman's reproductive choices. Consequently, the decision to undergo an abortion can be met with condemnation and ostracism from one's community, further complicating an already fraught situation.

National Interest

When a child with the potential to contribute significantly to the nation and foster its growth is denied the right to life, it represents a profound loss for the country as a whole. The future of any nation lies in the hands of its next generation. Therefore, advocating for abortion poses a significant risk to the future and development of the country. In such circumstances, opting for abortion can be viewed as a moral transgression. It undermines the inherent value of human life and disrupts the natural order of societal progress. Moreover, it sets a detrimental precedent that can erode the ethical fabric of society.

Sexual Awareness

Additionally, promoting abortion may inadvertently perpetuate a cycle of irresponsibility and disregard for reproductive health. Without comprehensive education and awareness about contraception and responsible sexual behavior, individuals may engage in unethical activities, leading to an increase in unplanned pregnancies and subsequent abortions. This trend not only undermines the moral foundation of the country but also jeopardizes its stability and values. As the prevalence of abortion rises, so too does the erosion of fundamental morals and beliefs. Ultimately, this erosion extends beyond national borders, contributing to a global decline in stability and consistency in values and beliefs.

Global Infertility Issues

Today, numerous couples between the ages of 26 and 49 encounter challenges with infertility and experience difficulties in conceiving and carrying a child. These couples often pursue a range of treatments in hopes of building their own family. However, many find themselves turning to surrogacy or adoption because of health issues related to childbirth. This highlights the stark reality that some families face significant struggles in their quest for parenthood, while others who are capable of bearing children may consider abortion, presenting a striking contradiction in society.

The conflict between individual rights over one's body and religious, ideologies and value convictions has compelled every nation to establish its own framework of laws, principles and criteria governing the practice of abortion. This leads to the question - **Isn't it crucial to delve deep into the workings of powerhouse nations, those driving global progress, regarding a debatable issue like abortion, which profoundly impacts countless lives?** These regulations are shaped by the unique cultural, social and ideological perspectives prevalent within each country, leading to a diverse array of approaches to addressing the complex issue of abortion. Consequently, the legal landscape surrounding abortion varies not only from country to country but also among individual states or regions within those countries and this has been presented below by considering the laws of super powers in a sequence from countries allowing complete autonomy to countries having stringent rules, respectively:

i. India

Abortion has been legal in India under various circumstances since the introduction of the

Medical Termination of Pregnancy (MTP) Act, 1971[1]. The MTP Regulations, 2003 were issued under the Act to enable women to access safe and legal abortion services[2]. Before 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860, describing it as intentionally "causing miscarriage." Except to save the life of the woman, it was a punishable offense and criminalized women/providers, with whoever voluntarily caused a woman with a child to miscarry[3], facing three years in prison and/or a fine and the woman availing of the service facing seven years in prison and/or a fine. It was in the 1960s, when abortion was legal in 15 countries, that deliberation on a legal framework for induced abortion in India was initiated. *A study in 2018 estimated that 15.6 million abortions took place in India in 2015. A significant proportion of these are expected to be unsafe*[4].

Improvements

In order to increase the availability of safe and legal abortion services, it has been recommended to increase the base of **legal MTP providers** by including medical practitioners with bachelor's degrees in Ayurveda, Siddha, Unani or Homeopathy. These categories of Indian System of Medicines (ISM) practitioners have obstetrician and gynecology (ObGyn) training and abortion services as part of their undergraduate curriculum. Changes have been made in the **provision of the gestation period** since the permission of abortion and it is recommended to increase the gestational limit for seeking abortions on grounds of fetal abnormality beyond 20 weeks. This would result in making abortion available at any time during the pregnancy, if the fetus is diagnosed with severe **fetal abnormalities**. In addition to the above recommendations, it is also proposed to include increasing the gestation limit for safe abortion services for **vulnerable categories** of women expected to include survivors of rape and incest, single women (unmarried, divorced, or widowed) and other vulnerable women (women with disabilities) to **24 weeks**. Another significant change made in the MTP Act is that earlier it permitted termination of the pregnancy by only a married woman in the case of failure of a contraceptive method or device. With the amendment, **unmarried women** can now seek safe abortion services on grounds of contraceptive failure.

Challenges

According to data from India's National Family Health Survey (NHFS) - fourth round (2015-2016), married women who experienced **intimate partner violence** were more likely to have abortions through self-management. Additionally, women, particularly adolescent girls and those who are poor and/or live in rural areas, often **lack information** about the legal status of abortions in their country and where to seek safe abortion services. They may also frequently lack the decision-making power and **financial resources** to seek such services or they might be discouraged by healthcare providers' negative attitudes and a lack of confidentiality and privacy. Moreover, the stigma associated with abortions, especially in unmarried women, may prevent women from accessing safe abortion services. Healthcare providers who offer these services may perceive discrimination causing them to be reluctant to provide them. These conflicts may cause moral distress and undermine the doctor-patient relationship. *Research says that over 95% of women are unaware of new abortion rules - The MTP Act, 1971 was amended a year and a half back legalising abortion up to 24 weeks in cases of substantial foetal abnormalities*[5].

1. https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971
2. https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-regulations
3. https://compass.rauias.com/current-affairs/medical-termination-pregnancy-amendment-act-2021/
4. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5953198/
5. https://www.thehindu.com/news/national/over-95-women-unaware-of-new-abortion-rules-study/article66563998.ecex

This indicates that India, being a developing economy, possesses significant challenges educating women about medical treatments and their rights.

Viewpoint of women in India

India has made significant strides in empowering women to assert their rights over their bodies and careers, largely attributed to the rise in female education. Presently, women across India are excelling in various sectors, competing with men on an equal footing. This progress signifies a promising future where gender bias will diminish and women will have ample opportunities for growth. Thus, the right to autonomy over one's body paves the way for women to make numerous decisions independently, enhancing their overall agency.

"A woman who is in control of her body is more likely to have more control over other aspects of her life." - Diene Keita

ii. China

Abortion in China is legal throughout pregnancy and generally accessible nationwide. Abortions are available to most women through China's family planning program, public hospitals, private hospitals and clinics nationwide. China was one of the first developing countries to permit abortion when the pregnant woman's health was at risk and make it easily accessible under these circumstances in the 1950s[6]. Following the Chinese Communist Revolution and the proclamation of the People's Republic of China in 1949, the country has periodically switched between more restrictive abortion policies to more liberal abortion policies and reversals. Abortion regulations may vary depending on the rules of the province. In an effort to curb sex-selective abortion, Jiangxi and Guizhou restrict non-medically necessary abortions after 14 weeks of pregnancy[7], while throughout most of China elective abortions are legal after 14 weeks. Although sex-selective abortions are illegal nationwide, they were previously commonplace, leading to a sex-ratio imbalance in China that still exists.

Improvements

In the past, virtually universal access to contraception and abortion for its citizens by a national government service was a common way for China to contain its population in accordance with its now-defunct one-child policy[8]. It was scaled back when the policy was removed in 2015 in favor of a two-child policy which was in turn replaced by a three-child policy in 2021[9]. In 2022, in an effort to boost the country's birth rate, the National Health Commission announced that it would direct measures toward reducing non-medically necessary abortions through a number of measures, including expanded pre-pregnancy healthcare, infant care services and local government efforts to boost family-friendly work places. Hence, China, the most populated country in the world, has liberalized abortion and has taken steps for the betterment of health care of women in the nation.

iii. United States

In United States, *around 28 states give access to abortion which is currently limited depending on gestational age, with bans ranging from six weeks to more than 24 weeks. Abortion is almost completely banned with limited exceptions in another 14 states*[10]. Abortion was a fairly common practice in the history of the United States and was not always controversial.

6. https://www.scmp.com/news/china/politics/article/3182106/abortion-legal-china-how-common-it-and-why-it-controversial
7. https://www.theguardian.com/world/2018/jun/22/china-new-rules-jiangxi-province-prevent-sex-selective-abortions
8. https://www.nejm.org/doi/abs/10.1056/NEJMhpr051833
9. https://en.wikipedia.org/wiki/Council_on_Foreign_Relations
10. https://www.usnews.com/news/best-states/articles/a-guide-to-abortion-laws-by-state

In the mid-1700s, Benjamin Franklin included a recipe for an abortifacient in a math textbook[11]. In 1728, Franklin condemned publisher Samuel Keimer for publishing an article on abortion. According to biographer Walter Isaacson, Franklin did not have a strong view on the issue[12]. In The Speech of Polly Baker, Franklin places the blame for abortion and infanticide on the sexual double standard against women. In 1716, New York passed an ordinance prohibiting midwives from providing abortion[13]. In 1829, New York made post-quickening abortions a felony and pre-quickening abortions a misdemeanor[14]. This was followed by 10 of the 26 states creating similar restrictions within the next few decades, in particular by the 1860s and 1870s[15] with the intention of protecting women from real or perceived risks. After World War II, the regulations were tightened to encourage a return to traditional family life. Since then, a few states have reduced their restrictions on abortion realizing that it is completely an individual's choice and the remaining still believe that abortion is an offense and should not be permitted even at the cost of the lives of pregnant women. Roe v. Wade legalized abortion nationwide in 1973. *In 1972, 41% of abortions were performed on women outside their state of residence, while in 1973 it declined to 21% and then to 11% in 1974*[16].

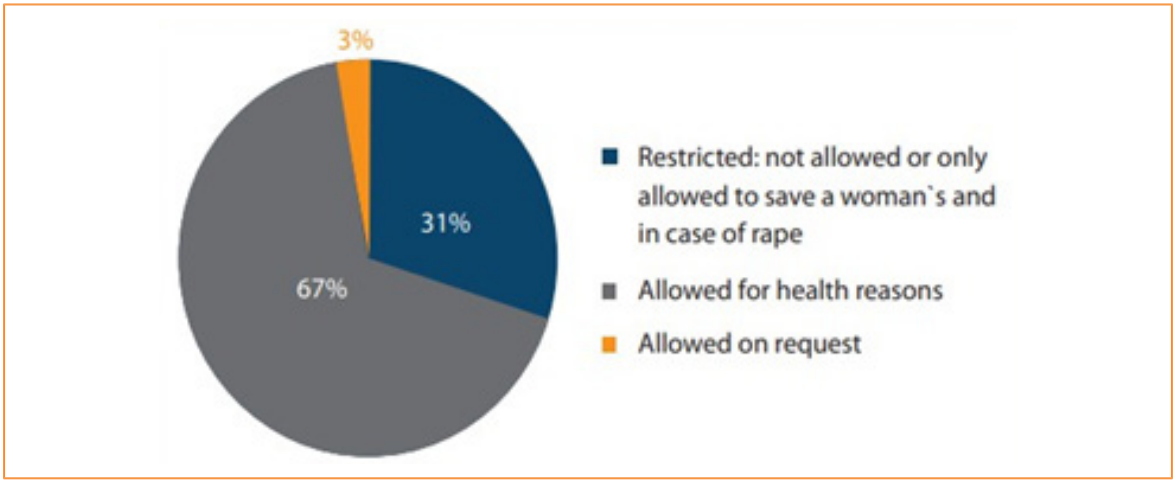
Therefore, one can observe that the journey of abortion in the US has traversed various stages, from being widely accepted to facing restrictions imposed on females within families, to eventually permitting it. Currently, there exists a divisive landscape across states with differing regulations either allowing or prohibiting abortion. However, despite its crucial role in gender development and societal progress, there is a lack of comprehensive clarity in the nation's abortion laws. Ambiguous guidelines pose the risk of erroneous decisions. Hence, it becomes imperative for the country to establish a clear and coherent vision on this matter.

> ***Do You Know?***
>
> The absence of clear guidance on abortion laws hinders healthcare practitioners from offering optimal care options to their patients.

iv. Arab countries

Christianity and Islam are recognized as the two largest religions globally, both having a significant presence in Arab countries, encompassing approximately 22 nations and these countries collectively account for approximately 6% of the world's population[17]. It is imperative to understand the regulatory and legal landscape concerning abortion in these nations, given their substantial population size and influence.

11. https://www.npr.org/2022/05/18/1099542962/abortion-ben-franklin-roe-wade-supreme-court-leak
12. https://www.snopes.com/news/2022/05/16/ben-franklin-abortion-math-textbook/
13. https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1291&context=concomm
14. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2798&context=faculty_scholarship
15. https://www.journals.uchicago.edu/doi/10.1086/410954
16. https://www.pewresearch.org/short-reads/2024/03/25/what-the-data-says-about-abortion-in-the-us/
17. Calculated based on population data provided on https://datacommons.org/place/Earth?utm_medium=explore&mprop=count&popt=Person&hl=en



[18]These Arab nations adhere to the doctrines of their respective religions and often align their stance on abortion with the teachings of their religious leaders. However, as times evolve and nations develop, some of these countries have amended their laws regarding abortion, while others remain steadfast in their adherence to religious guidance. For instance, Section 2 of Algeria's Criminal Code criminalizes abortion and those who contribute to its realization. Articles 525-530 of Syria's Criminal Code criminalize any act leading in a direct or indirect way to abortion and the person committing those acts and anyone assisting a woman to abort. Sections 260–264 of Egyptian Penal Code of 1937 prohibit abortion in all circumstances. Early marriage persists in certain regions of the area, particularly in the least developed countries, where approximately one-third of girls are married before reaching the age of 18. In Sudan and Yemen, one in three girls is married before turning 18, with similar rates in Iraq, Egypt and Palestine[19].

Viewpoint of women in the Arab region

Girls married at a young age face increased lifetime risks of unintended pregnancies, often leading to early childbearing. Due to their youth and lack of autonomy, these girls typically lack the agency to make decisions about their health and may struggle to access family planning services. The limitations on women's rights in these predominantly male-dominated societies pose significant threats to their health. Consequently, women in these regions often face formidable challenges in accessing life-saving medical treatment.

Nevertheless, despite significant religious influence, it has been observed that Arab regions permit abortions under circumstances such as endangerment to the woman's health, instances of rape or to save the woman's life. This suggests room for improvement, where legal frameworks can become more liberal towards women in society as development progresses.

v. Brazil

Abortion in Brazil is a crime, with penalties of 1 to 3 years of imprisonment for the pregnant woman and 1 to 4 years of imprisonment for the doctor or any other person who performs the abortion on someone else. In three specific situations in Brazil, induced abortion is not punishable by law:

i) in cases of risk to a woman's life;

ii) when the pregnancy is the result of rape; and

18. The percentages are calculated based on 2015 population data from UN Population Division's World Population Prospect 2017 and abortion laws.

19. https://arabstates.unfpa.org/sites/default/files/pub-pdf/addressing_unintended_pregnancy_in_the_as_report.pdf

iii) if the fetus is anencephalic (absence of a major portion of the brain, skull and scalp that occurs during embryonic development)[20].

In these cases, the Brazilian government provides the abortion procedure free of charge through the Unified Health System. This does not mean that the law regards abortion in these cases as a right, but only that women who receive abortions under these circumstances and the doctors, will not be punished[21].

Recent studies published in the International Journal of Gynecology and Obstetrics suggest that, despite Brazil's severe legislation, 500,000 illegal abortions are estimated to occur every year among women aged 18–39 years - or one in five Brazilian women. *In a survey conducted in 2018, by the Datafolha Institute, 41% of Brazilians declared themselves in favor of a complete ban on abortion, 34% said they wanted to keep the legislation as it is, 16% said that they wanted to expand it to more situations and 6% said they were in favor of legalizing abortion under any circumstances*[22]. This shows that the majority of medical health practitioners are against the legalization of abortion.

However, upon closer examination of why Brazil maintains stringent laws on abortion, it becomes apparent that there is insufficient justification for the country to impose such restrictions on women's rights. Therefore, it is essential for a country to establish a clear ideology that informs its regulations on emotionally charged societal issues like abortion.

Impact on health

In 2010, it was reported that 200,000 women a year were hospitalized for complications due to abortion (which includes both miscarriages and clandestine abortions). More recent figures estimate that around 250,000 women are hospitalized every year due to illegal abortion complications or 50% of all illegal abortions estimated per year. Those figures contrast with 2- 5% of women requiring medical care after an abortion in countries where abortion is legal. The majority of women admitted to the hospital after an illegal abortion are uninsured, representing a government cost of more than US$10 million every year. ***More than 200 women die every year in Brazil, as a direct consequence of unsafe abortions***.

This reflects that prohibiting such a major concern that affects the whole gender of the country is harming women at large and creating an unfavorable environment where the health of an individual is not considered as important and the same has not been prioritized.

After knowing about the situation in major economies around the world, the critical inquiry revolves around **whether stringent regulations imposed on women seeking abortion, often causing them considerable physical and emotional distress due to inadequate access to proper healthcare, effectively deter individuals from seeking abortions?** The resounding answer appears to be NO! *About 91 million women of reproductive age live in about 24 countries or territories that prohibit abortion under all circumstances*[23]. Those who find themselves in desperate need of abortion services will go to great lengths to obtain them, regardless of legal restrictions.

This reality prompts the question: **Do countries that outlaw abortion witness a decrease in the practice?**

Statistics paint a revealing picture. In nations where abortion is entirely prohibited or only permitted under strict circumstances such as to save a woman's life, *the abortion rate stands at 37 per 1,000 people. Conversely, in countries with more permissive abortion laws, the rate is slightly lower at 34 per 1,000 people*[24]. These figures

20. https://www2.senado.leg.br/bdsf/bitstream/handle/id/529748/codigo_penal_1ed.pdf
21. https://www.editoracrv.com.br/produtos/detalhes/3088-detalhes
22. https://en.wikipedia.org/wiki/Abortion_in_Brazil
23. https://www.axios.com/2022/05/05/only-3-countries-have-rolled-back-abortion-rights-since-1994
24. https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/#

suggest that outlawing abortion does little to dissuade women from seeking termination; instead, it pushes them towards clandestine and unsafe procedures.

> ***Do You Know?***
>
> 28% of transgender and gender non-conforming individuals report facing harassment in medical settings and 19% report being refused medical care altogether due to their transgender status.

The data underscores a troubling truth: banning abortion does not address the underlying issues driving women to make such difficult decisions. Rather, it serves to restrict access to safe and regulated healthcare services, compelling women to resort to illegal and dangerous alternatives. Studies indicate that the risk of death associated with illegal abortions can be as much as 30 times higher than that of legal abortions. Consequently, imposing stringent abortion laws not only fails to curb the practice but also poses grave risks to the health and well-being of women and their unborn children. In fact, such policies may even lead to an increase in maternal mortality rates, highlighting the urgent need for comprehensive and compassionate reproductive healthcare policies.

Does this imply that countries shouldn't enforce laws either for or against abortion rights?

If a woman, as an individual, possesses full autonomy over her body, it suggests that abortion shouldn't carry significant societal weight and should be readily available to all individuals without discrimination or the requirement to disclose reasons for termination. This prompts a broader reflection on whether legal frameworks should incorporate provisions that protect both the mother's and the child's future, aiming to mitigate societal judgment.

As we adhere to the principle of law being definitive, without shades of ambiguity, it prompts consideration of whether laws could encompass clauses that allow individuals to safeguard their interests and the well-being of the child. This would potentially mitigate societal condemnation towards both the mother and the child. The law, traditionally, operates in a binary fashion, devoid of moral considerations. When a crime such as murder is punished, the motive behind it is typically disregarded, as justice is concerned with the act itself. This is why the legal system distinguishes between murder and attempted murder, acknowledging the difference in the severity of the actions despite potentially sharing similar motivations. Hence, while the intentions may align, the legal ramifications recognize the distinct nature of the acts, with one resulting in loss of life and the other in an attempt to inflict harm.

It is a matter of great pride to acknowledge that India is a country that permits abortion without imposing any unnecessary restrictions or prohibitions. In India, women have the autonomy to make decisions regarding abortion within medically prescribed time limits for safe procedures.

One significant aspect of India's approach is that one cannot ask for abortion after knowing the gender of the child, thereby addressing the critical issue of female infanticide and promoting gender equality in population demographics. It is imperative for all nations to consider adopting similar laws to ensure the protection and well-being of all individuals involved in childbirth.

Additionally, a procedure or protocol could be implemented wherein a woman seeking an abortion undergoes a session with a gynecologist. During this session, the gynecologist would inquire about the reasons for the abortion, provide information regarding the potential consequences and seriousness and guide her through the process. This approach aims to reduce the percentage of abortions sought by women who may be unaware of the future implications or who are taking the step out of fear of pregnancy.

Understanding the importance of a woman's ability to make decisions about abortion is crucial, especially considering the potential consequences for the child if born into unfavorable circumstances. It marks the beginning of two distinctly contrasting realities for the child after birth - one is when he/she is put for Adoption and another is when he/she is raised in an unhealthy (unpleasant) environment.

When a child is put for Adoption

It is observed that when a woman is unable to take care of a child due to personal reasons, she may opt for adoption, inadvertently exposing the child to risks such as becoming a victim of child abuse or becoming ensnared in the web of human trafficking. Homeless children are among the most vulnerable populations, often lacking the protection and support systems that would shield them from exploitation and they become easy targets for traffickers who exploit their desperation and lack of resources. Research says that *one-fifth of homeless youth are victims of human trafficking*[25]. This could result in a life filled with suffering, prompting the child to perceive death as an alternative rather than enduring such hardships.

When a child is raised in an Unpleasant Environment

Furthermore, when a child is raised in an unhealthy environment, where the father is engaged in gambling or alcoholism, having struggles to provide for the family, or is absent altogether, or if the woman faces harassment or is denied the opportunity to work, the situation becomes even more dire. Particularly distressing is when the newborn is a girl, as she may face additional challenges due to societal biases and gender discrimination. Growing up in such circumstances can severely impact a child's mental health, leading to issues like depression, anxiety, panic attacks and bipolar disorder, among others. *Globally, nearly 15% of young people ages 10-19 experience a mental health disorder, accounting for 13% of the global burden of disease in this age group*[26]. The child becomes helpless and his life becomes miserable.

The preceding observation highlights that prioritizing the birth of a new child over the mother's choice can lead to the sacrifice of the newborn's life, sometimes resulting in a profoundly unhappy existence. Aware of this grim reality, she may opt against bringing a child into a potentially pitiable and wretched existence.

From our journey's beginning, topics like abortion, adoption, single motherhood and surrogacy stir deep emotions, resonating profoundly with those navigating challenging circumstances. It's crucial to recognize that irrespective of religion or nationality, a person's autonomy over their own body is paramount. Why is it that while men face no scrutiny over decisions regarding their physical appearance - whether it's building muscle, gaining weight or getting tattoos - **the choices women make regarding their bodies ignite global controversy?** - Each woman holds sovereign rights over her body, superseding the claims of her family or partner. It's time we grasp this truth, offering unwavering support and admiration for women who demonstrate strength and resolve in such decisions.

Nations should prioritize providing resources and guidance to empower women in their choices, rather than perpetuating discord based on religious or cultural differences. While respecting religious teachings, we must prioritize humaneness and individual rights above all else, recognizing the inherent dignity of every person. We often overlook the fundamental humanity within us, allowing superficial differences to cloud our judgment. Whether woman or man, the decision of self-care remains a deeply personal one, transcending societal norms and expectations.

By embracing this understanding, we can strive towards a more compassionate and inclusive society, where individuals are empowered to make choices that align with their own values and aspirations.

"No woman should be told she can't make her own decisions about her body. If women's reproductive rights come under attack, I will be standing up for women."

– Kamala Harris

25. https://penntoday.upenn.edu/news/one-fifth-homeless-youth-are-victims-human-trafficking
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Abortion Law Worldwide: Comparative Analysis and Ethical Consideration

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Abstract

The essay will provide with a comparative analysis of the abortion laws in the world. The entire world has a different view when they look at the abortion laws. While some have accepted it wholly, many countries still have many concerns regarding the same. However, the issue cannot be answered with yes or no. It has to be deeply discussed and debated. Moreover, the ethical perspective of the procedure has to be considered to get a better understanding of the issue.

Introduction

"Abortion is a worse sin than killing one's parents"

- Kaushitaki Upanishad

Abortion stands for the expulsion of a fetus from the uterus before it has reached the stage of viability[1]. An abortion may occur spontaneously, in which case it is called a miscarriage or '*Garbhahatya*', or it may be brought on purposefully, in which case it is often called an induced abortion or '*bhrunahatya*'.

The question of right or wrong, ethical or evil comes into play when we deal with the abortions that are not natural and are a result of medical procedures, i.e, induced abortions. If we rely on traditional sources such as our customs and religions act to understand the perception of the process in our society, the answer that surfaces is always in negation and describes it as something that is undesirable and some even go to the extent to call it sinful.

Today, in many countries, abortion has been sought to become a legal right, following which many have granted the same. This worldwide scenario makes us ponder over the question that, whether something that was considered evil at some point by all cultures has become one of the requisites that our society needs to address and implement.

What we may call, is a spectrum, when we analyze the multitude of responses the cause has received worldwide. While some parts of the world have shown a very stern and stringent reaction,

1. https://www.britannica.com/science/abortion-pregnancy

there are countries that have accepted it whole-heartedly, for instance, France; the country has made abortion a constitutional right[2]. Between these two extremes of black and white, the grey are the countries that have yet to decide their legal stance on the issue and abortion rights are subjective to various conditions.

1) Countries With Complete Ban

Case Study 1 : Abortion In El Salvador

In the case of Supreme Court of El Salvador vs Beatriz, 2013, the latter was informed by the medical practitioners that there was an absolute chance of her death if she went ahead with her pregnancy, given that she already suffered from a series of medical issues that risked her life[3]. She appealed in the court to have an abortion legally; however, the Supreme Court rejected the request.

The ground for such a decision as stated by the Supreme Court was "humanity" or "upholding the human rights of the fetus". The right to life of a fetus is recognized in El Salvador since the moment it is conceived. This was the reasoning behind the case. However, the decision itself presents to us a paradox when we analyze its duplicity – on one side the Apex Court upholds the principles of human rights and on the other side decides the case in a manner that does not give much thought to the well-being of the women who suffer serious consequences due to pregnancy.

El Salvador is the representative of that many countries that have completely ruled out abortion from their list of legal medical practices. The question of right or wrong will be discussed further, now let us analyze why the condition and stance of the country on the issue is the way it is. All countries that have banned abortion could be considered to have the following ideals or statics to have such a standing-

- ***Religious Beliefs:*** All countries that have such a strict ban on abortion are most probably the countries that have a stringent set of religious beliefs. For example, Ethiopia has population comprised of people having orthodox religious connotation, therefore, its' views on the issue of abortion are concurred with the same.[4] Other countries having restrictive laws on abortion based on religious sentiments include Iran, Iraq, and Egypt etc.
- ***Availability of Facilities:*** The views of a country are also dependent on the quality of facilities that a country has to offer. Not all countries are equipped with the right kind of resources to do the same, be it, the contrivance of medical practitioners, the essential mode of technology, developed hospital amenities, lack of know-how etc.
- ***Prejudice:*** Apart from the above-mentioned reasons, let us take a glance through the social eyes. Many countries in the world have stigma against it irrespective of any reasoning. These prejudices arise out of religious biasedness. According to a research by Kate Cockrill, Ushma D, Upadhyay, Janet Turan and Diana Greene Foster, there are three types Of stigma (internalized, felt and enacted)[5].

2. https://www.thehindu.com/news/international/france-becomes-the-only-country-to-explicitly-guarantee-abortion-as-a-constitutional-right/article67914799.ece
3. https://www.reuters.com/world/americas/human-rights-court-begins-review-high-stakes-el-salvador-abortion-case-2023-03-22/#:~:text=Beatriz%20appealed%20to%20the%20Supreme,route%20to%20a%20medical%20appointment.
4. https://www.aljazeera.com/news/2022/5/3/a-global-look-at-abortion-and-some-of-the-worlds-toughest-laws
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- ***To avoid sex-selective abortions:*** Many people use abortion as a tool to fulfil their gender- bias. Female feticide is one of the major issues in countries where a male child is more valued than a female child is, especially in regions of East and South Asia, Parts of North America, Western Balkans etc. Thus, to avoid such an issue, many countries have banned abortion altogether.
- ***To increase the population of a country:*** Some countries are affected by their low birth rate and therefore are prone to provide incentives to citizens', to increase the birth rate and in this cue one of the measures they take is to prohibit practices such as abortion.

  According to the Centre for Reproductive Rights, there is a list of 16 countries that have prohibited abortion altogether, these countries include Egypt, Iraq, the Philippines, Laos, Senegal, Nicaragua, El Salvador, Honduras, Haiti and the Dominican Republic[6].

The case study provides a brief analysis of the views that such a country with complete ban on abortion could hold and further delve into the reasons as to determine and verify their stance.

2) Countries with Highly Restrictive Abortion

In these countries, the predominant expression of abortion is infelicitous. However, the conflict between their belief-system and the need to address the scenarios in this century have resulted in the development of a system that allows a very narrow space for women to have a say in these cases of abortion.

Around 40 percent of women of reproductive age live in places where abortion access is illegal or limited. Such countries allow abortion only in cases where women's health is at risk, some counties also allow it in case of rape, incest, or fetal abnormality.

a) ***The Indian Subcontinent:*** In a wave of coloring all the legislations in a way for them to comply with the Islamic laws, Pakistan's government that offences against the human body were void since they violated Islamic edicts. Abortions are only permitted before four months under necessary treatment while only to save the mother's life after the fourth month has passed. Violation of this law could lead to imprisonment of 3 to 10 years. Similarly, only legal parameters to have an abortion in Bhutan is rape, incest, for the sake of the women's mental and physical health. Abortion in Bangladesh is regulated by the Indian Penal Code,1860 and under section 312-316, it is only permissible to save a woman's life.[7]

   In Nepal, the laws are liberal than the above-mentioned countries, here, a pregnancy to be terminated has to be under 12 weeks with the permission of the women's husband or guardian, in cases of rape, incest, the termination of the fetus could be done under 18 weeks. However, it could be done at any stage of the pregnancy if it poses danger to the physical and mental health of the women as recommended by the doctor.

b) Other countries that have a restricted access to abortion include,

- ***Libya:*** Abortion is illegal[8] and the only little or no "relief" they get is in the cases of rape when the termination of pregnancy is recognized as "honor killing" and the punishment for the same is halved. In other cases, women face punishments up to at least 6 months.
- ***Iran***: The country allows abortion only if there is a risk on mother's life or in the cases of fetal abnormalities. However, a panel consisting of a medical doctor,

6. https://www.aljazeera.com/news/2022/5/3/a-global-look-at-abortion-and-some-of-the-worlds-toughest-laws
7. http://adsearch.icddrb.org/assets/pdf/1.AdSEARCH_Situation_Analysis_Report_Abortion_in_Bangladesh.pdf
8. https://www.refworld.org/reference/countryrep/freehou/2005/en/50615

a forensic doctor and a judge rather than the pregnant women makes the final decision. She can only not her acquiescence.

- ***Nigeria:*** In the cases of Rex vs Edgar and Rex vs Bourne[9], the concept that abortion transgressed the criminal codes, even if it was attempted to save the mother's life, was overturned and the exemption to the act was noted and accepted by the country.
- ***Venezuela:*** The country has one of the most restrictive laws on abortion in Latin America. Innately, abortion is illegal and the only exemption provided is the risk of the mother's life. Apart from this, abortion is punishable.
- ***Indonesia:*** According to the Health Law 2009, the exceptions provided to the illegal act of abortion as deemed by the country, are the cases of rape or saving the mother's life[10]. However, prolonged procedures have limited the application of the law. There is an ongoing revision of the criminal codes in the country to cater to the needs of the people ensure a healthy livelihood for them.

Apart from these countries, numerous others share the same restrictive policies on abortion. The issue enshrouds all spheres be it, legal, social or political. However, these restrictions have resulted in various consequences that will be further discussed in the essay.

Consequences of The Restrictive Laws

1. ***Increasing Maternal Mortality Rate (MMR):*** WHO defines MMR as "the number of maternal deaths during a given time period per 100000 live births during the same time period". One of the major reasons for the increasing MMR is the occurrence of unsafe abortions performed without proper guidance due to the lack of adequate facilities, given that the act in itself is illegal in the concerned country.
2. ***Worsened situation of the child:*** Even if the child is born, the probability of his situation worsening is very high, given that he/she is deemed to be unwanted. It could lead to major effects on his psychology. These children face the risk of turning into delinquents. The idea here is to back the concept of restrictive abortion laws with a proper plan to help these children, if the arrangement of such strict laws have to work in these countries.
3. ***A step backwards for Gender-Equality:*** As discussed above, the consent of women to all these processes is limited or zilch. The world in its ways to bring about gender-equality has lacked if women are not even allowed to speak about something that could be life changing for them and concerns their body and mind.
4. ***Suffering of Rape-victims:*** Many countries have given the exception for abortion only in cases where the women's life is at risk. Other cases such as pregnancy of rape-victims have been completely ignored. If the victim is not allowed to abort the child, what exactly is the future that the country has envisaged for the victim and the child? It could lead to a life-time of suffering for both the child and the women. Yet another completely different problem that every such country faces is, if the rape-victim is a minor herself.
5. ***Financial issues:*** Many a times, abortion are also done due to financial difficulties. If

9. https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://portal.abuad.edu.ng/Assignments/158732599 8health_law_assignment.docx&ved=2ahUKEwiKhtS31L- FAxVUp1YBHTg4C7YQFnoECBUQAQ&usg=AOvVaw05LBRniyI14JUS2mLZL4W8
10. https://www.thejakartapost.com/opinion/2022/06/28/making-abortion-legal.html

this stance is considered, the restrictive laws will not allow the same and this could lead to poor financial conditions of the family affecting their overall living conditions. However, it is an ethical question to consider abortions based on financial issues.

3) Countries With Liberal Laws On Abortion

1. ***France:*** The country is the world's first country to explicitly declare abortion righits as one of the constitutional rights of the citizens. Women who seek abortion have the constitutional right under Article 34 of the 1958's French Constitution stating "the law determines the conditions in which a woman has the guaranteed freedom to have recourse to an abortion"

2. ***Japan:***

- The country has provided women with sufficient space and provisions to get their pregnancy terminated as per the women's will In Japan, abortion allowed under the term limit of 22 weeks.
- If we rummage through their laws, we find that the Penal Code of Japan, in fact, makes abortion illegal in the country. However, the exceptions provided to the clause cover a broad range of situations thereby giving women a broader access to abortion
- Exceptions are:
  - (i) If the pregnancy risks the health of the women;
  - (ii) Cases of rape or;
  - (iii) If the decision to abort is due to economic reasons, this exception is not very common worldwide.
- In April 2023, Japan approved the use of abortion pill to terminate the pregnancies under 9 weeks. Similar medication is available in many countries such as France since 1988 and the US since 2000[11].

3. ***India:***

- The Indian Penal Code under Section 312 declares induced abortions as a criminal offence. The only exception to this, is the "Medical Termination of Pregnancy Act".
- The act incorporated new rules in 2021 and has extended the term limit for pregnancy in the following manner,
  - (i) The limit for terminating a pregnancy with 1 doctor's opinion has been extended from 12 weeks to 20 weeks, the new rules have also made these provisions available to unmarried women.
  - (ii) Whereas, the term limit for terminating the pregnancy with 2 doctor's opinion has also been extended from 20 weeks to 24 weeks, in the following cases as provided by the MTP Act, 2021,
    - (a) Survivors of sexual assault or rape or incest
    - (b) Minors
    - (c) Change of marital status during the pregnancy (widowhood and divorce)
    - (d) Women with physical disabilities
    - (e) Mentally ill women
    - (f) Fetal abnormalities that have substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped.

11. https://www.theguardian.com/world/2023/apr/29/japan-approves-abortion-pill-for-the-first-time

(g) Women with pregnancy in humanitarian settings or disaster or emergency.[12]

- These provisions have given women in India access to abortion in a broad sphere and analyzing the situation of India in the world, we are far ahead of many countries. The reasoning behind these laws have been the various case laws that have acted as the guiding principle towards the development of rules that meet the current demands. For instance, in the landmark case of ***Suchita Srivastava & Another vs. Chandigarh Administration (2009) 11 S.C.C. 409*** , the judgement laid the connection between Article 21 and the abortion rights of women. It laid down that the right to life and personal liberty includes the women's right to make reproductive choices. Another case, ***Justice K. S. Puttaswamy (Retd) & Anrs. vs. Union of India and Ors., (2017) 10 S.C.C. 1***, made the judgement that the right of women to make reproductive choices is also encompassed under right to privacy and therefore the state should recognize these rights of women and make provisions in accordance to it.
- Another question that may be posed is the status of the fetus and, is the fetus qualified to have right to life extended to it? In India, under the PCPNDT Act, the definition of fetus does not include the word "person" instead uses the term "human organism" during the period of its development, whereas the right to life is only guaranteed to a person. [13]Therefore, very concretely it could be said that rights of women for their reproductive choices as part of their personal liberty is upheld.

4. ***USA***

Case Study 2: Roe vs. Wade, 1973

In this American case, the US Supreme Court made a statement that the USA constitution protected the rights of women to have an abortion, following this, many abortion related laws were struck down and also made in favour of the process.

The reasoning provided for such a stance by the Supreme Court was; restrictions on abortion infringes the right to privacy held by women, therefore any breach of their abortion right inferred the breach of their constitutional right. However, to avoid granting an absolute right to abortion, the Supreme Court cited the role of the state to fulfil their "compelling" interests in protecting the health of pregnant persons and the "potentiality of human life".[14]

The decision provided with adequate conditions for abortions in reasonable conditions. This case is important since it has been a base for many countries to liberalize the abortion rights. It created a balance between the women's right to abortion and the state's duty to intervene.

12. MTP 2021 Act.
13. https://legalserviceindia.com/legal/article-1691-constitutionality-of-abortion-laws-in-india.html
14. https://www.britannica.com/event/Roe-v-Wade

The estoppel set by the above-mentioned case that focused on the well-being of the women physically, mentally as well as legally; was however put down in another case named, "***Dobbs vs. Jackson Women's Health Organisation***[15]". This case led to the decision that abortion rights are not a fundamental or constitutional rights of the citizens'. In the backdrop of this case, many countries in the USA overturned their abortion friendly laws. The case study is important to understand- how vulnerable abortion rights are, in today's world, even one of the most developed nations are observed to get perplexed when it comes to such sensitive issues.

5. ***China***

Case Study: Abortion in China

Majority of country have determined the abortion laws with respect to the religious and societal affiliations that the citizens' of that country holds, which has little or nothing to do with the practical needs of the country, for instance, population control. For the same reason, this case study on the abortion laws in China gets important to be delved into. China is currently the second country with the largest population, and also is the country with the largest number of ageing population in the world. In the past, China has implemented policies to curb its population, for instance, the one- child policy, limiting the families to bear a single child. Nevertheless, today, the ageing population has posed a variety of problems for the country, such as,

- Ageing population is indicative of improved standards of living, while this is also an inference of a country in its developing or developed stage; however, it has also increased the risk of chronic diseases due to factors such as smoking, high fat and high-calorie diets and more leisure time without physical activity.
- The increased cost of health –care is another issue, since it gets less feasible for the family to maintain it in long-term.
- These issues have forced the government to make policies in the directions to make medical facilities available to the ageing population, which has diverted their funds, their policies and time substantially and sometimes wholly.

Abortion laws in China are liberal and the medical facility is available at all stages of pregnancy and is accessible nationwide. The reason for such liberal notion of the country is due to its past policies attempting to decrease the population growth rate. However, the country's stance on the issue has been renewed, in 2022; the National Health Commission announced to formulate measures to reduce non-medically necessary abortion in an effort to boost the country's declining population. This change is the result of the country's reinvigorated interest in balancing out the ageing population.

Ethical Consideration

Abortion; this practice and the issues related to it cannot be differentiated into black and white. While the procedure sometimes becomes a need for an individual, it could also be misused against the society. Currently, the world is an amalgamation of different views on abortion. All views and principles followed by countries all across the world have their own reasoning. However, this puts us in a dilemma when it comes to the determination of the correct set of

15. https://www.law.cornell.edu/wex/dobbs_v._jackson_women%27s_health_organization_%282022%29

principles to be followed when the situation asks for it. The right or wrong in these conditions is a grey area. Some issues to be considered are:

- ***Ethics considering the right to life of the fetus***
  The justification provided by many liberal countries for abortion is the identification of the fetus as a "biological organism" rather than a "person". [16]The differentiation between these two terms is the ability of the "person" to have a rational thought process, use of language, etc. However, the surmise behind the justification comes at loggerheads when we analyze the fact that the inabilities making "biological organism" ineligible to have the right to life according to the above justifications not exclusive to them. The reasoning behind the above assertion does not consider the citizens' who are suffering from various disorders, physical or mental and are not exactly able to qualify as a "person" as mentioned in the above definition. Considering this logic, would the next step be to end their lives as well? Therefore, without mapping out the conditions of the pregnant women and the fetus, there is no way to determine the ethics behind upholding the fetus's right to life or overturning it.

- ***Ethics considering the right to life of the pregnant woman***
  The right to life is broad and here, it does not only mean to survive. In fact, it encompasses various fundamentals of life such as right to privacy, right to dignity etc. It is inferred to be the infringement of the woman's right to privacy if she is not able to make her reproductive choices. If her pregnancy is at the cost of her health, then abortion is the recommended procedure for her. However, if the woman decides to have an abortion owing to her socio-economic conditions, the question of ethics is raised since; abortion here is not a necessity but a convenience. In addition to this, solutions to her problems in the latter case is possible to be traced out.

- ***Ethics in cases of Rape or Incest***
  Many victims of rape or incest seek abortion and analyzing its ethical consideration is extremely difficult. At one side of the table, we have the victims of such heinous crimes; who cannot be expected to bear their rapist's child given her circumstances. It could be a wrong decision for the woman and the child. On the other side, it is an undeniable fact that the fetus is also a human life. Abortion here could mean holding an innocent for the wrongdoing of another.

Abortion has been in practice since ancient times, although criticized, and often claimed to be at par with "killing of a Brahmin", "stealing of gold" in various religious texts. Even today, countries that have put ban on abortion or have restricted laws have to face the problem of unsafe and illegal abortions because they are happening anyway. This also puts an ethical question on the state whether it should protect its people from unsafe abortion by making it accessible or try to curb it considering the right to life of the fetus.

The issue requires too be understand in depth only then the state can formulate laws that are suited according to the current needs of the world.

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Was the revocation of Article 370 of the Constitution of India justified and desirable?

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Abstract

The revocation of Article 370 of the Indian Constitution on 5th August 2019 sparked debates on its justification and implications. This essay delves into an analysis of the justification of this step through a legal lens by exploring the historical context, procedural aspects, justifications provided by the Indian government and criticisms raised against the move. The essay navigates the implications of the move to assess whether the revocation was desirable or not.

Keywords: Article 370; Constitution; historical; justification.

Introduction

The revocation of Article 370 of the Indian Constitution on August 5, 2019, was a pivotal moment in the history of Jammu and Kashmir (J&K), originally introduced as a temporary provision in 1949, it granted J&K special powers, including a separate constitution, flag, and autonomy over internal administration except for defence, communications, and foreign affairs.[1] This article granted limited powers to the Parliament of India to enact laws in J&K, subject to consultation with the State Government.[2]

Additionally, Article 35A, added to J&K's constitution in 1954, conferred special rights and privileges to permanent residents regarding property ownership, employment, and education, while restricting non-permanent residents from these benefits.[3] The revocation of Article 370 and Article 35A have reshaped the legal landscape of J&K, leading to significant socio- economic implications.

As the debate surrounding the justification and desirability of these actions continues to unfold, this essay endeavours to analyze the legal framework underpinning the revocation of Article 370 and consider its implications on the region over past four years.

1. A K Ganguly, Kashmir Face Off' India's Quandary: Options for India (OUP 2021, VIJ Books (India) Pvt Limited).
2. Ibid.
3. Krishnadas Rajagopal, 'What is Article 35A' The Hindu (August 26, 2017) < https://www.thehindu.com/news/national/what-is-article-35a/article19567213.ece> accessed on 17 March 2024.

History and Evolution of Article 370

The historical background of Article 370 originates from the aftermath of the Partition of India and Pakistan in 1947. Maharaja Hari Singh, the last ruling monarch of the princely state of J&K, was confronted with a crucial decision amidst Pakistan's invasion, ultimately opting to accede to India under specific terms concerning defence, foreign affairs, and communications.[4] This accession was formalized through an Instrument of Accession (IoA) that was aimed to safeguard the state's sovereignty in delineated areas.[5]

The genesis of Article 370 can be traced back to discussions within the Constituent Assembly, where it was recognized that the situation in J&K was unique, given ongoing conflicts and unrest at that time.[6] As a temporary measure, Article 370 was devised to establish an interim system of governance until a permanent solution could be reached. This Article reflected the principle that the extent of J&K's integration with India would be determined by its Constituent Assembly.

With the passage of time, several amendments and orders were implemented to adapt the Indian Constitution J&K. The Constitution (Application to J&K) Order, 1950, along with subsequent orders, specified which subjects and articles of the Indian Constitution would apply to J&K.[7] These measures aimed to balance the integration of J&K into the Indian Union while preserving its unique identity and autonomy.

However, the 'dissolution of the J&K Constituent Assembly in 1957'[8] left Article 370 ambiguous, lacking a clear mechanism for modification or repeal, despite its initial temporary intent.

PART-A

Analysis of the justification behind the revocation of Article 370

I. Legal and Constitutional Aspects:

a. Procedure laid down in the Indian Constitution to revoke Article 370

The procedure to revoke Article 370 is laid down in Article 370(3) of the Indian Constitution as per which the President holds the authority to declare the cessation of operation of this article or its operation with specific exceptions and modifications, and from a specified date. However, it is important to note that such a notification from the President requires the recommendation of the Constituent Assembly of the State. Thus, even though the procedure for removal of Article 370 is laid down, it could not be materialized due to the non-existence of Article 370.

b. Procedure followed in the revocation of Article 370

In 2015, the political landscape of J&K underwent a significant shift when the BJP formed a government in coalition with the PDP. However, this alliance fractured in the year 2018, leaving a power vacuum as no party could establish a stable government.[9] The Constitution of J&K stipulates that if the state's constitutional machinery fails, the Governor's rule with the consent of the

4. Vaibhav Goel Bhartiya and Shivani Sharma, 'Anatomy of Article 370 and 35A: Tracing the Past to the Present' [2020] CPJLJ 13.
5. Ibid.
6. Ibid.
7. S.P. Jagota, 'Development of Constitutional Relations between J&K and India 1950-50' [1960] Journal of the Indian Law Institute 519.
8. Supra 4.
9. Ekta Handa, 'BJP-PDP Split' India Today (19 June 2018) < https://www.indiatoday.in/india/story/bjp-pdp-split-j-k-governor-forwards-report-to-president-all-you-need-to-know-1264595-2018-06-19> accessed on 22 March 2024.

president can be imposed for a maximum of six months.[10]

Consequently, from June to December 2018, the Governor's rule was in effect. Then, from December 2018 onward, the President's rule was enforced through a notification which designated the Governor to oversee J&K administration on behalf of the President.[11] During the President's rule, the Governor assumes a pivotal role effectively acting as the de facto leader of J&K akin to a Prime Minister. The notification also stated that in the absence of any government or Vidhan Sabha in J&K, the Indian Parliament will act on its behalf.[12] In a nutshell, during the president's rule, the governor was the sole representative of J&K and the legislative assembly of J&K was subordinated by the Indian Parliament. Consequently, the central government faced minimal hindrances in enacting and implementing laws in the region.

The culmination of this transition occurred on August 5, 2019, when President Ram Nath Kovind issued the Constitution (Application to J&K) Order 2019, with the consent of the J&K Government, represented by the Governor.[13] This order, replacing the 1954 Presidential Order, introduced significant amendments, including the insertion of Article 367(4).[14]

Of particular importance was Article 367(4)(d), which effectively amended Article 370 by substituting the reference to the 'Constituent Assembly of the State' with the 'Legislative Assembly of the State'.[15] Consequently, the erstwhile order of 1954, along with Article 35A and the unique Constitution of J&K, ceased to exist through the 2019 Presidential Order.[16]

Following the issuance of the 2019 Presidential Order, the Home Minister introduced two resolutions. The first rendered Article 370 inoperative, fundamentally altering J&K's constitutional status.[17] The second resolution proposed the Reorganisation Bill of J&K, which led to the division of the region into two separate Union Territories that is Ladakh and J&K, thus completing the overhaul of the region's governance structure.[18]

I. Justifications cited by the Indian government for the revocation of Article 370

The Indian government justified the revocation of Article 370 based on several factors and legal interpretations. Firstly, it argued that Article 370 was intended as an interim provision, established during wartime conditions in the state, and thus deemed temporary. Moreover, it contended that the President's authority under Article 370(3) was unrestrained by constitutional provisions. By replacing 'Constituent Assembly' with 'Legislative

10. Constitution of J&K 1956, article 92.
11. MANU/HOME/0163/2018 < https://updates.manupatra.com/roundup/contentsummary.aspx?iid=18407> accessed on 23 March 2024.
12. Ibid.
13. 'Article 370 'Scrapped': Full Text of President's Order' The Indian Express (5 August 2019) < https://indianexpress.com/article/india/article-370-jammu-and-kashmir-removal-full-text-of-presidents-order-5879178/> accessed on 19 March 2024.
14. Ibid.
15. Press Information Bureau, MHA, GOI < https://pib.gov.in/pressreleaseshare.aspx?prid=1581391> accessed on 20 March 2024.
16. Ibid.
17. Press Information Bureau, 'Government Brings Resolution to Repeal Article 370 of the Constitution' (MHA, GOI, 5 August 2019 < https://pib.gov.in/newsite/PrintRelease.aspx?relid=192487> accessed on 20 March 2024.
18. Ibid.

Assembly', the aim was to democratize decision-making processes.[19]

Furthermore, the Union government justified the revocation as a step toward promoting national unity and equality. It asserted that special privileges to J&K residents through Articles 370 and 35A impeded the goal of ensuring equal status among all Indian citizens.[20] The removal of Article 35A was deemed necessary as it violated Fundamental Rights and denied Kashmiri women the right to property upon marrying individuals from other states.

II. Justifications cited by Critics against the revocation of Article 370

Critics of the abrogation of Article 370 have raised several compelling arguments against the decision. Firstly, they argue that Article 370 had gained permanence following the dissolution of the Constituent Assembly of J&K, requiring specific conditions for its abrogation as stipulated in Article 370(3).

Secondly, critics highlight J&K's internal sovereignty, as articulated in the IoA, which emphasized that the IoA was not any symbol of acceptance of "any future Constitution of India"[21] (Para 7 of IoA) and reiterated the preservation of the Maharaja's sovereignty (Para 8 of IoA).

Thirdly, critics contended that while exercising authority under Article 356 of the Indian Constitution, the President should refrain from implementing actions with irreversible consequences in a state under the President's rule. They highlighted the legislative changes made during this period, such as the revocation of J&K's special status, the division of Ladakh, and its conversion into a union territory. This unilateral decision-making raised concerns about the erosion of state autonomy and the weakening of India's federal structure.[22]

Moreover, critics argue procedural objections, particularly the failure to consult the Constituent Assembly of J&K, as mandated by Article 370(3). This disregard for established constitutional procedures casts doubt on the adherence to constitutional principles.

Furthermore, critics highlight the lack of meaningful consultation with stakeholders, including the people of J&K, undermining the democratic process and disregarding the voices of those most directly impacted. They argue that the revocation infringes upon the right to self-determination of the people of Kashmir, denying them the opportunity to express their political will democratically.[23]

III. Whether the move was justified?

The Constitutional Bench of the Supreme Court in its judgment upheld the validity of the revocation of Article 370.[24] The legal justification provided by the Supreme Court is mentioned below.

(i) Article 370 was a temporary provision.

The Supreme Court determined that Article 370 was designed to be a temporary measure for two main reasons. Initially,

19. 'Government's rationale behind removal of special status to J&K' The Hindu (5 August 2019) < https://www.thehindu.com/news/national/full-text-of-document-on-govts-rationale-behind-removal-of-special-status-to- jk/article28821368.ece> accessed on 21 March 2024.
20. Ibid.
21. Venkatesh Nayak, 'The Backstory of Article 370: A True copy of J&K's IoA' Indian Express (5 August 2019) < https://thewire.in/history/public-first-time-jammu-kashmirs-instrument-accession-india> accessed on 24 March 2024.
22. Alok Prasanna, 'With Article 370 Verdict, SC has let down federalism' Indian Express (13 December 2023) < https://indianexpress.com/article/opinion/columns/with-article-370-verdict-sc-has-let-down-federalism-9065637/> accessed on 27 March 2024.
23. Srishti Jain and Nikhil Mishra, 'Violation of Right to Self-determination and Constitutional Mandate in context of Removal of Article 370' [2020] JCLJ 205.
24. 2023 SCC OnLine SC 1647.

it aimed to facilitate the integration of J&K into the Union of India, particularly during the turbulent situation prevailing in the state in 1947. Additionally, it served as a transitional measure to facilitate the establishment of a constituent Assembly in J&K tasked with drafting the state constitution. The court highlighted its placement in part XXI of the constitution, titled "Temporary, Transitional and Special Provisions," indicating the intention of the constitution framers.

(ii) J&K did not retain the sovereignty.

The critic contended that J&K possessed internal sovereignty primarily citing paragraphs 7 and 8 of the IoA. However, the court ruled that the effect of these paragraphs ceased following a proclamation issued by Yuvraj Karan Singh (son of Hari Singh). This proclamation declared that the Indian Constitution would govern the relationship between J&K and the Union, effectively resulting in a 'merger' akin to other princely states. Additionally, the proclamation stated that the provisions of the Indian Constitution would supersede the constitutional provisions of J&K inconsistent with it that were then in force in the state.

Furthermore, the Supreme Court pointed out that Article 1 of the Indian Constitution explicitly establishes India, or Bharat, as a union of states, implying that J&K, as a state at that time, was a part of the union. The preamble and Section 3 of the Constitution of J&K affirm that J&K is an integral part of India and lacks any form of sovereignty. The court emphasized that every state of India possesses internal autonomy, and the elevated autonomy enjoyed by J&K does not imply a distinct form of sovereignty.

(iii) Constitutional validity of proclamations issued under Article 356 of the Indian Constitution with irreversible consequences.

The Court rejected the petitioner's argument that the President should abstain from implementing actions with irreversible consequences in a state under the President's rule. It argued that challenging the exercise of presidential power based on irreversibility could lead to obstructing routine administrative actions, causing administrative paralysis in the state. However, the Court emphasized that such exercises must be reasonably connected to the objective of the presidential proclamation. It also stressed that the burden of proof rested on the person challenging the President's actions to demonstrate *prima facie* that they were carried out in a "*mala-fide* or extraneous exercise of power".

Reliance was placed on ***S.R. Bommai v. Union of India***[25], where it was established that the removal of the government is an inevitable consequence of imposing the President's Rule, aiming to prevent simultaneous governance by the Union and state governments. This dilutes the federal structure since the Union assumes the executive and legislative powers of the State. Considering the purpose of Article 356, which is to restore the functioning of the constitutional machinery in the state, actions taken by the President during the proclamation should align with this objective.

The court also determined that the president under Article 370(3) of the Constitution, can unilaterally declare the cessation of Article 370 as mandated by Article 370(1)(d) and does not need concurrence of state.

25. [1994] 3 SCC 1.

(iv) President still has the power to abrogate article 370 even after the dissolution of the J&K Constituent Assembly

The court determined that the president possesses the unilateral authority to revoke Article 370 under Article 370(3). Failure to exercise this unilateral power, particularly after the dissolution of the Constituent Assembly, would result in the stagnation of integration, contradicting the intent behind introducing the provision. While the dissolution of the Constituent Assembly extinguished its authority to make recommendations regarding the status of Article 370, it did not diminish the president's power under Article 370(3).

(v) Article 370 can be amended through the interpretation clause of Article 367.

On August 5, 2019, the Presidential Order (CO 272) was issued, amending the reference from the 'Constituent Assembly' to the 'Legislative Assembly' in Article 370(3). The court found this amendment to be unconstitutional, as any alteration to Article 370 should adhere to the specific procedure outlined in Article 368 (Procedure for the amendment of the constitution) rather than modifying an interpretation clause. However, notwithstanding this, the Court deemed the remainder of the paragraph of CO 272, which permitted the amendment of Article 370 without the recommendation of the Constituent Assembly, as valid. This was because the President had the authority, under Article 370(1)(d), to apply the entire Indian Constitution to J&K, similar to the power under Article 370(3).

Regarding CO 273, which declared the cessation of Article 370's operation, the court emphasized that the President's decision was a policy matter falling within the executive's realm. The application of the entire Indian Constitution to J&K through CO 273 was viewed as a step towards its complete integration into India, reflecting a non-malicious intention behind CO 273 and thus, its validity was upheld.

Concerns raised over Supreme Court Judgment

Upholding the legal validity of the revocation of Article 370, the Supreme Court verdict raises the below-mentioned concerns.

Firstly, there's apprehension regarding the interpretation of "statehood" under the Constitution, particularly concerning whether the Union possesses the unilateral authority to extinguish a state's status without due consultation or adherence to federal principles. The Court's reluctance to address this pivotal question raises doubts about the sanctity of federalism within India's constitutional framework.

Moreover, the court's categorization of Article 370 as "temporary" differs from other provisions like Article 371-A to Article 371-J, which are seen as protecting asymmetrical federalism. Thus, the verdict undermines the idea of asymmetrical federalism.

Secondly, the judgment raises concerns about the democratic process and whether the people of a state have the authority to say how they are governed. The court's framing of the issue as a mere procedural matter undermines the principle of consultation with the state legislature and the representation of the people's interests.

Overall, the unilateral abrogation of Article 370 is viewed as a challenge to core constitutional tenets such as federalism and democracy.

PART-B

Assessing the Desirability of the Revocation of Article 370

The revocation of Article 370 was seen by some as a groundbreaking move, while others perceived it as discriminatory and authoritarian, potentially disturbing peace not only in Kashmir but also across the entire country. Now four years have passed, and the effects of the revocation of Article 370 are becoming evident.

Security Implications

As per 2023 data from the government, the terror-related incidents have reduced drastically from 228 in 2018 to 44 in 2023 (up to 15th December 2023).[26] The official figures also reveal that there have been zero incidents of Organized stone Pelting stones and Organized Hartals in 2023.[27] Schools are now functioning without interruptions caused by hartal calls, and the fear of stone-pelting has diminished, contributing to a decrease in mob violence. Another significant change is the decline in the influence of separatist leaders, who previously relied on shutdown calls and protests to assert their agenda.

The improvement in the security situation can be gauged from the fact that the Cinema Hall reopened after more than 30 years.[28] The number of tourist inflow has increased substantially.[29] Diwali was celebrated at Shrada Temple after 75 years. Muharram Procession returned to Kashmir streets after 34 years.[30] Moreover, the G20 Tourism Summit was also successfully held in Srinagar.

Administrative changes

After the revocation of Article 370 and the reorganization of J&K, both J&K and Ladakh became integrated with mainstream India. This integration allowed the people of J&K to access the benefits and welfare schemes of the central government and all the fundamental rights. Previously, any law or scheme proposed by the central government had to pass through the J&K State Assembly and sometimes political dynamics deprived the people of J&K of these benefits. For instance, the Right to Education Act 2009 and the RTI Act of 2005 were not implemented in J&K, and certain marginalized communities like Gujjars, Bakarwals, and Gaddis couldn't benefit from specific laws such as the ST & Other Traditional Forest Dwellers Act 2006 and the SC & ST (Prevention of Atrocities) Act.

To further strengthen the democratic spirit in J&K, elections were conducted for Panchayati Raj Institutions like Panch, Block Development Council, and District Division Council. Amendments introduced by the Home Ministry aimed to enhance the existing Panchayati Raj System, aligning with the principles of Sarvodaya advocated by Mahatma Gandhi and establishing a robust three-tiered grassroots democracy.[31]

In another step, the J&K cadre for All India Services was amalgamated with the existing cadre of Arunachal Pradesh, Goa, Mizoram, and Union Territories (AGMUT). This move aimed to streamline administrative efficiency and foster uniformity within the civil services.

The introduction of domicile laws in J&K signified a significant change in residency and recruitment regulations. The new domicile laws make it easier for non-residents to obtain domicile status. This change required individuals to have resided in J&K for fifteen years or completed seven years of education in the region and this aimed to diversify the demographic makeup.

26 MHA, 'Ministry of Home Affairs: Year End Review 2023' (31 December 2023) < https://pib.gov.in/PressReleasePage.aspx?PRID=1991936> accessed on 28 March 2024.

27. Ibid.

28. 'Almost after 30 years of forced closure, J&K gets Cinema Halls' The TOI (19 Sep 2022) < https://timesofindia.indiatimes.com/city/srinagar/after-almost-30-years-of-forced-closure-jk-gets-cinema- halls/articleshow/94291546.cms> accessed on 30 March 2024.

29. Arya S., 'Right to Self Determination: An analysis of the Unresolved Conflict within the context of Article 370' [2023] JCLJ 234.

30. Peerzada, 'Muharram Procession' The Hindu < https://www.thehindu.com/news/national/other-states/shia-community- takes-out-muharram-procession-after-3-decades-on-gurubazaar-dalgate-route-in-srinagar/article67126307.ece> accessed on 30 March 2024.

31. Jehangir Ali, 'As Panchayat Terms End, J&K's only elected institution is DDC' The Wire (10 Jan 2024) <https://thewire.in/government/jammu-and-kashmir-elected-representatives-panchayat> accessed on 30 March 2024.

Furthermore, amendments to land laws brought notable changes in land ownership regulations in J&K. Previous laws protecting land holdings exclusively for permanent residents were repealed, allowing individuals and entities from outside the region to invest in land. However, these changes raised concerns among locals about potential demographic shifts and loss of control over land resources, sparking debates about the preservation of cultural identity and socio-economic interests amidst evolving land ownership dynamics.

Economic Changes

The special status of J&K previously prevented citizens from outside the state from purchasing property, which hindered financial investment in the region. Consequently, the growth of businesses and industries stagnated, leading to a lack of job opportunities or unemployment and hindering the growth of the youth and the state itself. Unemployment has also been seen in some way or another with terrorism and militancy spread in the valley.

To address the economic disparities and promote investment in the Kashmir valley, both the Central and State Governments have introduced various packages and schemes. The administration of J&K implemented a 'New Industrial Development Policy' with a package worth ₹ 28,400 Crore, valid until 2037, along with policies for private industrial estate development and industrial land allotment.

Since the abrogation of Article 370 and the introduction of the 'New Industrial Development Policy', J&K has witnessed a significant increase in investment proposals, totalling ₹ 81,222 crores in 2021-23 as per Lieutenant Governor of J&K Manoj Sinha.[32] However, the actualization of these proposals has been relatively slow.

In a bid to further augment foreign investment, the J&K administration released a Foreign Direct Investment Policy in February 2022. The region secured its first significant foreign direct investment from UAE's Emaar, with plans for a mega-mall and IT towers in Jammu and Srinagar. Besides the rise in tourism is contributing substantially to the economy of J&K.

Despite these advancements, economic challenges persist, evidenced by higher inflation rates compared to the national average.

Social Change

The government of J&K undertook significant initiatives to bring about social change in the region. The government established AIIMS Jammu in 2020 and another AIIMS to be established at Awantipora in Kashmir.[33] Eight new medical colleges, two cancer institutes (state-run), and 3,000 health and wellness centres have been set up. Additionally, universal health insurance was introduced under the PMJAY-SEHAT Scheme for all families.

A 1990 report stated that since the 1990s, security concerns have forced 44,167 Kashmiri migrant families to leave the valley. According to a government written statement from March 2022, a total of 3,841 young Kashmiri migrants have returned to their home region in recent years and have found work in several districts under the Prime Minister's Rehabilitation Package.[34] Additionally, the government announced that 1,997 candidates were selected for jobs under the same package in April 2021. It further mentioned

32. Deeptiman, 'In 3 Years J&K got 84,544 cr' The Indian Express (12 Dec 2023) < https://indianexpress.com/article/political-pulse/jammu-kashmir-investments-after-article-370-abrogation-9063291/> accessed on 30 March 2024.
33. 'Two AIIMS like institutions, 8 Medical colleges in J&K, Ladakh' Indian Express (10 Dec 2019) < https://indianexpress.com/article/education/two-aiims-like-institutions-8-medical-colleges-in-jammu-kashmir-ladakh-govt- 6159847/> accessed on 30 March 2024.
34 Ministry of Home Affairs, 'Rajya Sabha Unstarred Questions No. 2425' (17 March 2021) < https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/rs-17032021/2425.pdf> accessed on 30 March 2024.

providing residential accommodation to the returning migrants in Kashmir.

The region has also witnessed substantial infrastructure development, including the construction of the world's highest railway bridge over the Chenab River and the Qazigund- Banihal Tunnel, which has halved travel time from Jammu to Srinagar. Under the Swachh Bharat Mission (Grameen) Phase-II J&K's villages have achieved 100% ODF Plus status.[35]

Furthermore, work on the Zojila Tunnel (the longest tunnel in Asia), is progressing rapidly, with over 35% of the main tunnel's construction completed. This tunnel will ensure all-weather connectivity between Kashmir and Ladakh and is expected to be completed by 2026. Notably, J&K improved its ranking in the Pradhan Mantri Gram Sadak Yojna (PMGSY), achieving the third rank in 2020-21 from the ninth position in 2016-17.

Ladakh

Ladakh is not only important from a strategic point of view because of its border with China and Pakistan-Occupied Kashmir but it also has the importance of the tourism sector and different culture.

The most important thing for the inclusive development of Ladakh was infrastructure development and development of its inter-regional and intra-regional connectivity. Ladakh has now been connected to the National Grid to ensure reliable and quality power supply to the region. This step eliminates the dependence of Ladakh on diesel-powered generators. The remote village of Ladakh is being connected with solar-powered optical fibres to bring the internet there.[36]

To promote research and education, the government has established the first Central University in Ladakh in which the Centre on Buddhist Studies has also been opened.

Amchi Tibetan Medicine has been an integral part of Ladakh's traditional Health System for several 1000 years. To promote it, not only the Indian and Local Governments but also International Organizations are making efforts. In this direction, the National Research Institute for Sowa-Rigpa has been opened for the research of traditional medicines.[37]

Concerns have emerged regarding the negative developments following the revocation of Article 370

Critics argue that the move has fueled anti-India sentiments and led to a resurgence in terrorist activities, resulting in increased targeting of civilians. However, it's worth noting that insurgency typically requires local support to sustain.

The revocation also had significant implications for gender dynamics, particularly affecting Muslim women in Kashmir. They experienced heightened tensions and restricted movements due to the heavy military presence and security measures in the region.[38]

The establishment of the State Investigation Agency (SIA) aimed to enhance counter-terrorism efforts but raised concerns about misuse of power and violations of civil liberties. Additionally, stringent laws like the Public Safety Act and UAPA are being enforced more rigorously, leading to arrests even for minor offences.

35 Ministry of Jal Shakti, 'J&K achieves 100% ODF Plus Model Status' (30 Sep 2023) < https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1962394> accessed on 31 March 2024

36. Ministry of Communication, 'TRAI releases recommendation on improving Telecom Coverage and Backhaul Infrastructure in Ladakh' (25 April 2023) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1919494> accessed on 31 March 2024

37. < https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1857836> accessed on 31 March 2024.

38. Seema Kazi, 'Women, gender Politics and Resistance in Kashmir' [2022] Socio-legal Rev. 95.

These changes have had significant social implications, resulting in divisions among ethnic and regional groups and weakening the sense of a unified Kashmiri identity. Conflict between Kashmiri Muslims and Hindu nationalists in Jammu, as well as feelings of marginalization among Ladakhi Muslims, have exacerbated tensions. Increased military presence and security measures have further restricted freedoms.

Conclusion

While debates persist over the implications of centralization and the suppression of voices in Kashmir, the true measure of progress lies in the restoration of peace and stability. Development is not a fixed destination but an ongoing journey that requires us to move forward with integrity, empathy, and a commitment to justice. Only by fostering dialogue, inclusivity, and respect we can pave the way for a future where the diverse voices of J&K find expression, and the region flourishes in unity and prosperity.

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13. Alok Prasanna, 'With Article 370 Verdict, SC has let down federalism' Indian Express (13 December 2023) < https://indianexpress.com/article/opinion/columns/with-article-370- verdict-sc-has-let-down-federalism-9065637/> accessed on 27 March 2024.

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Report on Episode 7 of Udaan with CA Shreedhar Muppala, hosted by CA Jayant Gokhale

— Ms. Riya Pimple
Student of Pravin Gandhi College of Law

Welcome and Introductions

The session began with a warm welcome from Adv. Niyati Mankad, Chairperson of the Student Committee. She invited CA Mehul Seth, Treasurer of the Chamber of Tax Consultants, to shed light on the chamber's activities. CA Mehul Seth highlighted various initiatives organized by the Student Committee, including moot courts, essay writing competitions, and student magazine activities.

Adv. Niyati Mankad then detailed upcoming activities, encouraging membership opportunities and elaborated on their benefits. She then requested CA Priti Savla, Member of the Student Committee and also a Central Council Member of the ICAI, to share a few words. CA Priti Savla appreciated the efforts and initiatives of the Student Committee and introduced the esteemed guest for the session, CA Muppala, sharing her personal interactions and views about the distinguished personality.

Main Address by CA Muppala

This episode was hosted by CA Jayant Gokhale who was Managing Council and now Vice President of the Chamber. The session continued with CA Gokhale formally introducing CA Muppala and outlining the objectives of the session. As introduced by various dignitaries, CA Muppala's inspiring personality shone throughout this motivating session.

CA Muppala began his address by expressing gratitude to the Chamber of Tax Consultants for organizing the Udaan series, emphasizing its importance in connecting students with professionals and providing networking opportunities. When asked why he chose the CA profession, he candidly shared that it was an accidental choice, showcasing his humility. He recounted his childhood and academic journey, highlighting the guidance from his sister and teachers that led him to excel academically and eventually pursue a career in commerce.

He shared his experience of discovering a genuine interest in CA studies, emphasizing the importance of effort and dedication. He quoted, "Luck always favors you if you are committed, so put your best efforts and you will achieve your destiny." CA Jayant Gokhale further emphasized the essential investment of time in CA studies.

Addressing Challenges and Opportunities

CA Muppala addressed the challenges and difficulties in both the profession and general life. He underscored the time and effort required in the profession and spoke about opportunities in articleship and networking. He stated that difficulties often stem from one's thought process and perception. To overcome personal challenges, he suggested finding solutions and remaining focused on goals. He illustrated his points with inspiring examples, including stories about a CEO and Olympic athletes, highlighting the importance of perception.

Importance of Soft Skills

CA Jayant Gokhale then raised a critical question about the importance of soft skills. CA Muppala provided a detailed explanation across various professional levels, emphasizing the crucial role of communication skills at the managerial level. He outlined three golden rules: what to communicate, how to communicate, and when to communicate. He also discussed common barriers to effective communication, such as the fear of failure, and suggested a gradual approach to skill enhancement. This led to a follow-up question from Mr. Gokhale, who highlighted 'listening' as a key aspect of soft skills.

Specialization During Articleship

The next question focused on whether students should specialize in a particular area during their articleship. CA Muppala explained how the growing economy has expanded the range of options for students. He recommended that students explore and identify their areas of interest, investigate the required skill sets, and make decisions based on their interests rather than relying on others' opinions.

Accounting and Technology

CA Jayant Gokhale raised a question about the relationship between accounting and technology. CA Muppala described technology as a tool that enhances accuracy rather than replacing human roles. He emphasized the importance of using technology to save time and improve efficiency, rather than fearing it.

Balancing Personal Life and Professional Responsibilities

A question about balancing personal life and professional responsibilities was addressed by CA Muppala, who explained why Chartered Accountants are often perceived as boring and mundane, attributing this stereotype to the nature of distance education. He noted that organizing programs and activities helps professionals socialize and connect, countering this perception. He underscored the importance of maintaining a work-life balance, managing stress, and having hobbies. Encouraging students, he reminded them that exams are merely steps in their journey and highlighted the importance of acquiring both skills and qualifications.

Concluding Remarks

In the final segment, CA Muppala addressed expectations regarding clearing CA exams on the first attempt, receiving offers from good firms, and achieving high marks. He concluded by sharing examples of his students, emphasizing the importance of changing one's perception and avoiding comparisons in exams like CA.

Vote of thanks and end notes.

The session concluded with CA Charmi A. Shah expressing gratitude to the esteemed panel and delivering a vote of thanks for the motivational and productive discussion. She extended her appreciation to the ICAI, the board of Studies of ICAI, and other dignitaries for shaping the conversation and ensuring that the session's objectives were met effectively. In her closing remarks, she emphasized the importance of motivation and overcoming the fear of failure, providing a concise and encouraging end to the session.

Report on 7th the Dastur National Direct Tax Moot Court Competition, 2024

— Mr. Akash Shirore
Student of MNLU, Mumbai

The Chamber of Tax Consultants in association with Government Law College, Mumbai organized '7th The Dastur National Direct Tax Moot Court Competition, 2024' (the **'Moot Court Competition'**). The Moot Court Competition was held across two days: Saturday, June 15, 2024 (virtual) and June 29, 2024 (physical). The final round and valedictory session was hosted at the Auditorium of Government Law College in Mumbai, bringing together law students from across the country to test their legal skills and knowledge in a competitive environment.

The Moot Proposition was released on April 26, 2024, and was drafted by Adv. Rahul Hakani. It revolves around an appeal filed by a resident of India against an order issued by the National Company Law Tribunal. The order imposed a penalty on the appellant under Section 43 of the Black Money & Imposition of Tax Act, 2015, for failing to disclose foreign investment assets in her tax return as required by the law. The Moot Court Competition received an overwhelming response, with students and universities eager to participate. Ultimately, 20 teams from prestigious law schools across the country were selected to compete.

Inaugural Ceremony

The Inauguration Ceremony, held virtually on June 14, 2024, featured Mr. Porus Kaka, Sr. Adv. of the Bombay High Court, as the Chief Guest. Panelists, including Mr. Haresh Kenia, President of the Chamber of Tax Consultants, and Ms. Niyati Mankad, Chairperson of the Student Committee, shared their insights on the Moot Court Competition and taxation law.

Preliminary Rounds

The preliminary rounds were held virtually on June 15th, with a distinguished panel of judges assessing the teams' arguments and legal understanding. The judging panel comprised: Adv. Jas Sanghavi, Adv. Jasmin Amalsadvala, Adv. Sushma Nagaraj, Adv. Arjun Gupta, CA Apurva Shah, Adv. Sashank Dundu, Adv. Rupal Shrimal. CA Chirag Wadhwa CA Suchek Anchaliya, Adv. Dinkle Haria, Adv. Prakash Sinha, Adv. Priyanshi Desai, Adv. Ninad Patade, CA Viraj Mehta, Adv. Roshil Nichani, Adv. Jitendra Singh, CA Prerna Peshori, Adv. Ananya Gupta, Adv. Bhavya Sundesha, Adv. Shruti Desai, CA Raj Khona, CA Abhitan Mehta, Mr. Prashant Ghumare, Adv. Jeet Kamdar, Adv. Dhaval Shah, Adv. Roshil Nichani, CA Ketki Mittal, Adv. Shashi Bekal, Adv. Tanvi Mate.

Each team presented their case, demonstrating their grasp of complex legal concepts and their ability to argue convincingly. The high level of competition and the quality of the arguments made the judging process challenging, but ultimately top 8 teams with the highest scores in the oral rounds and memorial scores qualified for the Quarter-Final Round.

Quarterfinals

The quarterfinals took place virtually June 15th with a new set of judges, including: (i) Mr. K. Gopal, Advocate, (ii) Mr. Ajay Singh, Advocate, (iii) Mr. Rahul Hakani, Advocate (vi) CA Paras Savla, (v) CA Pramod Shingte, (vi) Mr. Dharan Gandhi, Advocate, (vii) CA Kishore Phadke, and (viii) Prof. Kishu Daswani.

Semifinals

The quarterfinals narrowed down the teams to the most skilled contenders. The Semi-Final Round of the Competition was held in the Courtrooms of the Income Tax Appellate Tribunal, Mumbai, offering the participants a unique opportunity of appearing before Sitting Judicial and Accountant Members of the Tribunal. The judges shared words of encouragement and complimented the teams on their oral submissions. The semifinals saw intense competition, judged by Hob'ble: (i) Mr. Mr. Anikesh Banerjee, JM, (ii) Mr. Girish Agarwal, AM, (iii) Mr. Rajkumar Chauhan, JM; and (vi) Mr. Sunil Kumar Singh, JM.

The Hon'ble Members who presided over the Semi-Final Round were felicitated by members of The Chamber of Tax Consultants. Gratitude was extended to Mr. Porus Kaka, President of the ITAT Bar Association, Mr. K. Gopal, Vice President of the ITAT Bar Association, and all ITAT Bar Association Members for their support and guidance throughout the competition.

Final Round and Awards

The Final Round of Arguments was held at Government Law College, Mumbai and was presided over by Hon'ble Justice Shri. K. R. Shriram, Bombay High Court and Hon'ble Justice Smt. Justice Neela Gokhale, Bombay High Court. The competition culminated with the awarding of several honors.

Best Team:	Dr. Ram Manohar Lohiya National Law University, Lucknow
Runner-up:	Rajiv Gandhi National University of Law, Patiala
Best Speaker:	Saksham Gadia, Jindal Global Law School, Sonipat
Second Best Speaker:	Yashika Sharma, Rajiv Gandhi National Law University, Patiala
Best Memorial:	Ram Manohar Lohiya National Law University, Lucknow
Second Best Memorial	Jindal Global Law School, Sonipat

The event concluded with the Valedictory Function, beginning with the announcement of winners. Mrs. Asmita Vaidya, Principal of Government Law College, Mumbai, Mr. Haresh Kenia, President of the Chamber of Tax Consultants, and Ms. Niyati Mankad, Chairperson of the Student Committee, addressed the audience. Justices K. R. Shriram and Neela Gokhale shared insights on taxation and praised the finalists. The competition was well-organized, showcasing exceptional talent and dedication.

We congratulate all the participants and Government Law College for their support throughout this event. We encourage all the students to parti

Report on the Thirteenth Dastur Essay Competition, 2024

— Ms. Priyanka Singh
Student of Oriental College of Law

The 13th Dastur Essay Competition, 2024, organized by the Student Committee of the Chamber of Tax Consultants (CTC), once again showcased the intellectual prowess and analytical skills of students from various professional courses across India. The national-level competition aims to provide a platform for students to express their thoughts on topics of general importance, fostering a spirit of critical thinking and eloquent expression.

Topics for the Competition

This year, the competition featured three thought-provoking topics, approved by Shri Soli E. Dastur, Senior Advocate, who is the visionary behind this esteemed competition:

1. **Abortion Law Worldwide: Comparative Analysis and Ethical Consideration**
2. **Enactment of (I) Bharatiya Nyaya Sanhita (II) Bharatiya Nagarik Suraksha Sanhita and (III) Bharatiya Sakshi Sanhita is a Positive Reform**
3. **Was Revocation of Article 370 of the Constitution of India Justified and Desirable?**

Participation and Objectives

Participants included students of Law, Chartered Accountancy (CA), Company Secretary (CS), and Cost Accountancy from all over India. The competition received a remarkable 55 essays, reflecting a wide range of perspectives and in-depth analysis on the chosen topics. The primary objective of the competition is to provide students with an opportunity to articulate their views on significant legal and ethical issues, contributing to their academic and professional growth.

Preliminary Rounds

The preliminary rounds were judged by a distinguished panel of experts - Dr. Sabita Ram, former Dean of MGM Dental College; Dr. Deepa Paturkar, Principal of ILS Law College, Pune; Dr. Suman Kalani, Vice Principal of Pravin Gandhi College of Law; Mr. Subodh Desai, Senior Advocate; CA Akbar Merchant, Past President of CTC; Prof. Daswani, esteemed academic and visiting faculty at Government Law College, Mumbai; Ms. Shruti Desai, Advocate and Ms. Ananya Gupta, Advocate and Solicitor

Final Round

The top 10 essays from the preliminary rounds advanced to the final round, judged by Hon'ble Mr. Justice M. S. Karnik of the Bombay High Court. The results were announced on July 9, 2024, during the Annual General Meeting (AGM) of the CTC. Justice Karnik, who appeared virtually due to his current assignment at the Goa Bench, shared his experience of judging the competition and offered words of inspiration and motivation to the participating students and the professionals attending the AGM.

Winners of the Competition

The winners of the 13th Dastur Essay Competition, 2024, are as follows:

- **1st Prize:** Ms. Hetvi Shah, Article Trainee with K C Mehta & Co LLP (CA Aspirant) - Topic: Abortion Law Worldwide: Comparative Analysis and Ethical Consideration

  Prize: Rs. 10,000/-, Trophy, and Certificate

- **2nd Prize:** Ms. Deeksha Rao, Student of Government Law College, Mumbai - Topic: Abortion Law Worldwide: Comparative Analysis and Ethical Consideration

  Prize: Rs. 7,500/-, Trophy, and Certificate

- **3rd Prize:** Ms. Beauty Gupta, Student of National Law University, Delhi - Topic: Was Revocation of Article 370 of the Constitution of India Justified and Desirable?

  Prize: Rs. 5,000/-, Trophy, and Certificate

Participants who placed in the top four to ten received a memento along with a certificate, while all other participants were awarded a certificate of participation.

Legacy and Gratitude

The Dastur Essay Competition, initiated 13 years ago, continues to uphold its legacy of excellence in nurturing the analytical and expressive capabilities of students. The competition has been judged by numerous distinguished personalities over the years, including Hon'ble Mr. Justice R. D. Dhanuka (Retd. Chief Justice), Hon'ble Mr. Justice J. Naidu, Hon'ble Mr. Justice Nitin Sambre, Hon'ble Mr. Justice Bisht (Retd.), and Hon'ble Mr. Justice Kamal R. Khata, among others.

This competition has been made possible due to the unwavering support from Shri Soli E. Dastur, the doyen of the income tax practice. His vision, dedication, and generosity have been instrumental in the success of this competition. The Chamber and its Student Committee extend their heartfelt gratitude to Mr. Dastur for his invaluable contribution and continuous encouragement.

Conclusion

The 13th Dastur Essay Competition, 2024, was a resounding success, marking another milestone in the journey of this prestigious event. The CTC and its Student Committee extend their heartfelt congratulations to all the participants and winners, and gratitude to the esteemed judges and supporters who contributed to the event's success.

Report on the Workshop on the New Criminal Laws

— Ms. Aarushi Pathak
Student of Pravin Gandhi College of Law

On July 27, 2024, the Chamber of Tax Consultants (CTC) in collaboration with Government Law College (GLC), Mumbai, organized a highly informative workshop focusing on the newly enacted criminal laws in India. The one-day workshop aimed to provide an overview of three significant legislations: The Bharatiya Sakshya Adhiniyam, 2023 (BSA), The Bharatiya Nyaya Sanhita, 2023 (BNS), and The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

Inauguration

The workshop began with a serene Saraswati Vandana and the traditional lighting of the lamp, symbolizing the dispelling of ignorance and the awakening of knowledge. The inauguration panel consisted of Hon'ble Mr. Justice Sandeep K. Shinde (Retd.), Dr. Sujay Kantawala, Dr. Asmita Vaidya, the Principal of GLC, CA Vijay Bhatt, the President of CTC, Mrs. Niyati Mankad, the Chairperson of the Student Committee, and Advocate Sham Walve, who was instrumental in organizing this event. The inauguration was also graced by members of the CTC including the immediate past president CA Haresh Kenia. All speakers and dignitaries were felicitated as a token of appreciation for their participation and contributions.

Participants

The workshop witnessed a turnout of approximately 140 participants, including attendees from Nashik and Aurangabad. The diverse audience comprised students, professors, advocates, chartered accountants, and other professionals, reflecting the wide interest and relevance of the new criminal laws across various fields.

Objectives

The primary objective of the workshop was to dissect and understand the three recently passed criminal laws in India. Esteemed speakers were invited to deliver lectures that covered various aspects and implications of these new legislations.

Session Highlights

Session 1: Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

Speaker: Hon'ble Mr. Justice Sandeep K. Shinde (Retd.)

Justice Sandeep K. Shinde commenced the workshop with a detailed outline of the BNSS, highlighting its distinctions from the Criminal Procedure Code of 1973. He pointed out that the BNSS sometimes lacks clarity in procedural details, which could potentially benefit the accused by creating opportunities for procedural errors or confusion. Justice Shinde emphasized that such procedural uncertainties might delay justice or, in some cases, allow the accused to escape punishment due to technicalities rather than substantive guilt.

Session 2: Bharatiya Nyaya Sanhita, 2023 (BNS)

Speaker: Dr. Sujay Kantawala, Advocate

Dr. Sujay Kantawala discussed the advancements in the BNS, with a particular focus on the clearer definitions and stipulations regarding sexual offences against women. He lauded the new act for its detailed and explicit punishments for these offences, which were previously less defined under the older legal framework. Dr. Kantawala highlighted the significance of the clarity and precision in defining punishments in the BNS as major steps forward in addressing and penalizing crimes more effectively.

Session 3: Bharatiya Sakshya Adhiniyam, 2023 (BSA)

Speaker: Mr. Rajiv Patil, Senior Advocate

Mr. Rajiv Patil concluded the workshop by elaborating on the key principles of the law of evidence, the history of the law of evidence in India, and the changes introduced in the BSA. He covered the definitions of evidence, the handling of electronic and digital evidence, and discussed primary and secondary evidence. Mr. Patil explained the implications of these changes for legal practice and case management, offering a comprehensive understanding of how the new law adapts to the modern era.

Conclusion

The workshop offered insightful information about the new criminal laws and their application in real-world situations. The BNS was praised for improving clarity in handling sexual offences, whereas the BNSS was critiqued for potential procedural difficulties. The sessions emphasized the need for continuous assessment and improvement of these new laws to ensure the fairness and effectiveness of the legal system.

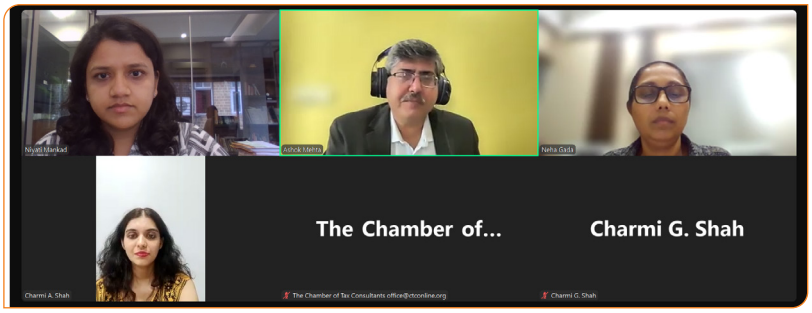
The workshop had begun and concluded with the state anthem followed by the national anthem, instilling a sense of pride and unity among the attendees. This workshop was a significant step toward educating and equipping legal professionals, students, and practitioners with the knowledge necessary to navigate and implement these new criminal laws effectively

Report on the Webinar: Comprehensive Session on Tax Audit by CA Ashok Mehta

— Ms. Riya Pimple
Student of Pravin Gandhi College of Law

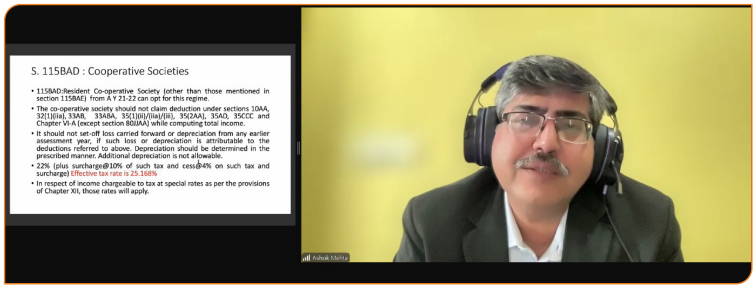
On 9th August, 2024, a comprehensive webinar on the topic of Tax Audit was conducted by CA Ashok Mehta, a seasoned expert in the field of taxation. The session was attended by 110 participants, comprising students, professionals, and practitioners keen on gaining deeper insights into the complexities of tax audits.

Overview of the Session



CA Ashok Mehta provided a comprehensive overview of tax audits, beginning with the requirements under the Income Tax Act and the latest amendments affecting the process. He clarified the conditions and turnover thresholds that necessitate a tax audit, identified who must file, and examined critical clauses in Form 3CD to ensure compliance. Emphasizing proper documentation, he shared best practices and guided participants through the uploading process on the Income Tax portal, highlighting common errors to avoid. The session concluded with a discussion on the penalties for incorrect or non-filing of tax audits, along with strategies to mitigate risks. A detailed presentation prepared by CA Mehta was shared with all participants, serving as the foundation for the webinar.

Conclusion



The webinar was a resounding success, with participants gaining valuable knowledge and practical insights into the tax audit process. CA Ashok Mehta's expertise and clear explanations were highly appreciated by all attendees. The session concluded with a Q&A segment, where participants had the opportunity to clarify their doubts and seek further guidance. Overall, this webinar has equipped the attendees with the necessary tools and understanding to effectively manage and file tax audits, ensuring compliance with the latest legal requirements.

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.

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