

JIGTAPUVIV

Vol. III | No. I | September 2021

Your Quarterly Companion on Tax & Allied Topics

Learning Today Leading Tomorrow....





The Chamber of Tax Consultants



THE CHAMBER OF TAX CONSULTANTS

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

Phone : 2200 1787/2209 0423/2200 2455 • E-Mail: office@ctconline.org

Website : <http://www.ctconline.org>

MANAGING COUNCIL	
President Ketan Vajani	
Vice President Parag Ved	
Hon. Treasurer Vijay Bhatt	
Hon. Jt. Secretaries Neha Gada • Mehul Sheth	
Imm. Past President Anish Thacker	
Members	
Ashok L. Sharma	Nilesh Vikamsey
Atul Mehta	Nishtha Pandya
Bhavik R. Shah	Paras K. Savla
Dharan Gandhi	Paresh P. Shah
Dinesh Poddar	Rahul Hakani
Hinesh Doshi	Rajesh P. Shah
Jayant Gokhale	Tejas Parikh
Kishor Vanjara	Vipul Choksi
Mahendra Sanghvi	Vitang Shah
Maitri Savla	Editor - Vipul Joshi
Special Invitees K. Gopal • Hitesh R. Shah	

STUDENT COMMITTEE	
Chairman Vitang N. Shah	
Vice-Chairpersons Charmi G. Shah • Niyati Mankad	
Ex-officio Ketan L. Vajani • Parag S. Ved	
Convenors Charmi A. Shah • Priyanshi Chokshi	
Past President Hitesh R. Shah	Advisor Ajay R. Singh
Office Bearer Vijay Bhatt	
Imm. Past Chairperson Varsha Galvankar	
Managing Council Member Bhavik R. Shah	
Members	
Ankit Sanghavi	Nishtha Pandya
Ashish Mehta	Parimal Parikh
Bhavya Sundesha	Priti Savla
Chirag Vajani	Radha Halbe
Hrudyes Pankhania	Raj Khona
Jas Sanghavi	Ranit Basu
Kishor Peshori	Sachin Maher
Labdhi Doshi	Sashank Dundu
Mallika Devendra	Vipul Choksi

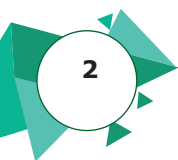
NOTE

"Opinions, views, statements, results, replies etc. published in **Jignyasa** are of the respective authors and contributors. Neither the Chamber of Tax Consultants nor the Authors/Contributors are responsible in any way whatsoever for any personal or professional liability arising out of the same."

"No part of this publication may be reproduced or transmitted in any form or by any means without the permission in writing from the Chamber of Tax Consultants."

READER'S SUGGESTIONS AND VIEWS

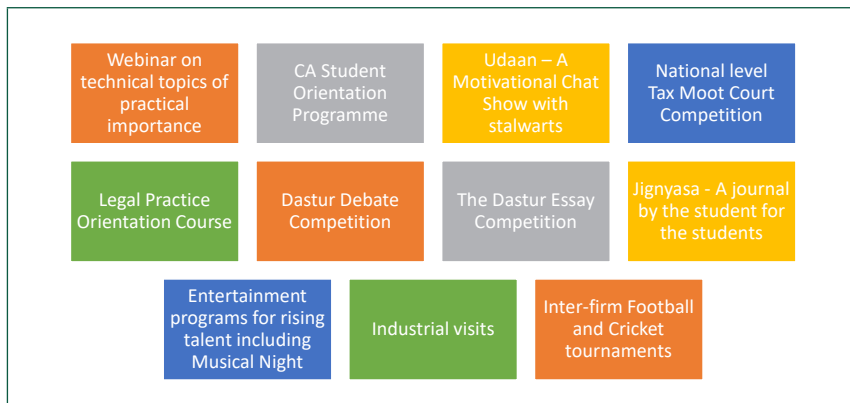
We invite the suggestions and views from readers for improvement of **Jignyasa**.
Kindly send your suggestions to office@ctconline.org



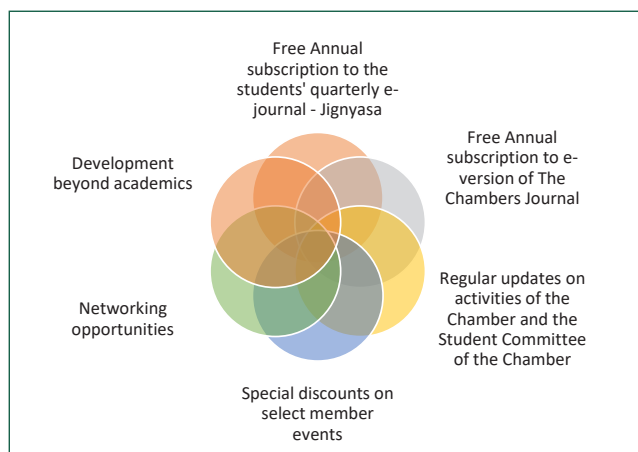


Become a Student Member of The Chamber of Tax Consultants

What are the initiatives/programs organised by the Chamber for Students?



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



Who can become a Student Member?

Any person, who:

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

What are the fees for becoming a Student Member?

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

How can one enroll as a Student Member?

You may download the membership form using the below mentioned link

Link : <https://rb.gy/rw3xde>

You can also get in touch with the Chamber's office at:

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

Email : office@ctconline.org

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

Mobile : 7977258507



POLICY FOR CONTRIBUTION OF ARTICLES FOR JIGNYASA

Who can contribute?

The Student Members of The Chamber of Tax Consultants shall be allowed to contribute articles to the students' e-journal "**Jignyasa**"

For which columns shall contributions be accepted?

Every issue of Jignyasa shall have the following four columns for contributions from students:

1. Information Technology
2. Current topics related to the profession
3. SOP on subjects that are related to upcoming due dates
4. A general topic that is relevant to the student members of the Chamber

What is the selection process of the article for publishing?

The selection of the articles to be published shall be based on the following parameters:

1. The topics should be relevant to the Students Members of the Chamber covering the various areas of practice.
2. The Article to be published should be original and must adhere to strict originality guidelines of the Chamber. A declaration to this effect should be submitted to the Chamber.
3. Subjects related to current topics or subjects which are related to the due dates falling in the next quarter shall be given preference.

What are the technical requirements for the article?

1. The article should contain an executive summary of around 100 words.
2. The list of references should be submitted at the end of the article.
3. A photograph of the author should be provided along with the article.
4. The article should be shared only in word format. No other format shall be accepted.



5. There is no specific restriction on the number of words for the article, but preference shall be given to a well written, the most technically correct, complete and concise article.

What is the review process?

The student is advised to approach a member of the Chamber to be his/her mentor for the article. If the interested student cannot find a mentor, the committee shall help him/her approach the members.

Each article shall then be forwarded to an expert for vetting and verification.

The article post vetting and verification shall be forwarded to the author with suggestive changes. Once approved by the author, the amended article shall be forwarded for publishing.

The articles received which are not published in the current issue of Jignyasa shall be parked in the Chamber's locker for the next issue.

Articles that are not found suitable for publication, communication to the Author of the article shall be made to that effect.



INDEX

Sr. No.	Particulars	Article Contributed by	Page No.
1	From the President		7
2	Chairman's Message		10
3	Various Forthcoming Programs of the Chamber relevant for Students		12
4	Beyond Boundaries — Opportunities for Professionals in Startups	CA Ninad Karpe Lipi Panchmia	14
5	Tally Prime 2.0 — Your Report Your Way Concept	CA Anand Paurana	18
6	Practical issues while Filing Income Tax Return (ITR) — Edited by CA Ashok Mehta	Ritesh Dubey	19
7	The Companies Auditor's Report Order, 2020 (CARO) — Edited by CA Heenel Patel	Harshali K. Pujare CA Ankit Sanghavi	22
8	Committee of Creditors : A Shorter End of the Stick for Operational Creditors? — Edited by CA Anish Thacker	Prachi Kaushik Adv Sashank Dundu	30
9	Corporate Social Responsibility (CSR) — Why it is more than just philanthropy — Edited by CA Sanjay Buch	Hasnain Paliwala CA Jigar Doshi	34
10	Operationalization of the Information Technology Rules 2021 — Edited by CA Dinesh Tejawani	CA Priyanshi Chokshi	39
11	Report on Boot Camp on Valuation		46
12	Glimpses of Past Events		48

Invitation to STUDENT MEMBERS to contribute articles for Jignyasa

The Student Committee of the Chamber invites the **Student Members** to contribute articles for the e-journal for Students – **Jignyasa**. The objective of the committee is to make a major section of the journal - for the students by the students. The students can contribute articles on latest updates in the tax and allied laws, Standard Operating Procedures that can be used for the upcoming due dates, current scenarios in various industries or any other topic. You can send through your article in word format on office@ctconline.org along with your name, firm name/college name and a photograph. From among the articles received, the ones approved by the committee shall be published.



From the President



Dear Students,

I am absolutely thrilled to communicate with all of you, the future of the profession and surely a bright one, through this journal for the first time after taking over the charge as the president of this great institution – The Chamber of Tax Consultants. The Chamber continues to look forward to the students to participate in various activities of the Chamber. We firmly believe that today's students have great potential to convert themselves into remarkable professionals over the period of next few years. You all have been blessed with much more intellect, much more wisdom and much clearer vision about yourself as compared to the people of our generation when we were at your age. What needs is only a proper direction which can be given by person having some real life experience. I am sure your principals must be playing their role as a mentor to you all with complete dedication.

At times, you might be carrying a feeling that you are being put to some unwanted discipline by your principals, who react high handedly to some small mistake which you feel insignificant, at least today. Let me share with you that my own feeling was not much different when I was an articled clerk or for that matter a freshly qualified chartered accountant. I have also undergone similar situations which is probably the most common factor for almost all the students. Those were appearing to be very frustrating moments at that time. When your principal, or for that matter any other senior in the office, ensure that they correct one word or at least one punctuation mark in probably each line that you write, you are bound to feel that he is doing it only with a purpose to tease you and to establish his supremacy. However, today in hindsight, when one revisits the same situation, one probably understands the significance of these corrections. My sincere request to you all is not to get disturbed at the corrections made or suggestions made for improvising on any part of your work, be it writing of reports or raising of an audit query or preparation of tax computation. Please take each such correction as a step towards the perfection which you are aiming to achieve as a professional.

The results of chartered accountancy examinations have been announced about a month back. Some of you might have qualified as chartered accountant. I am sure those who have qualified must be on the seventh sky at present celebrating the success, which comes up after extremely committed hard work, absolute dedication and lot many sacrifices made by you and your family on various fronts. You are all well within your rights to be proud of yourself. But at the same time, I suggest you to be also mindful of the fact that now the society looks at you with a different set of expectations. You need to stand up to the new role of a professional and to ensure that you continue to bring more glory to the profession not only by your knowledge and intellect but also by your overall conduct as a great human being. I wish all the successful candidates all the very best for their glorious career ahead. The field is absolutely open for you all and you have the possibility of selecting the area of



expertise which you love the most. At times, multiple choices bring multiple confusion so please be very patient while charting your journey ahead. Do educate yourself in a systematic manner before deciding the career that you want to take up eventually. The Chamber shall be pleased to welcome you as a regular member and will be glad to cater to the newer challenges you are likely to face as a professional. Your path of education can be well lit by the lamps which the Chamber is willing to oil on a continuous basis.

While I congratulate all the successful candidates, I do not undermine the efforts put in by all the candidates who could not qualify or could qualify only in one of the groups. This is the time where you need to prove your mental strength. Please do not at all permit your mind to develop slightest doubt about your capabilities. Do remember that everything happens twice – first in your mind and then in the material world. If you start believing in yourself and identify the possible small mistakes that you might have made in preparations, then success is bound to come to you once you correct those mistakes. Start your preparations for studies with fresh outlook and fresh mindset not getting too much worried about the result that you had this time. Take it as a challenge and work hard to achieve your ultimate objective. Do remember the golden words of Swami Vivekananda – *“Arise, Awake, and Stop not till the goal is achieved”*

In fact, one should learn lessons of fighting adversities from Indian athletes who continued to bring proud moments for all of us at the Tokyo Paralympics. With a total of 19 medals – five golds, eight silvers and six bronze, India stood at 24th rank at the event. Just to recall, we had stood 48th at the Olympics but when it came to Paralympics we significantly bettered our tally to stand at 24th position. With this can there be any doubt that physical challenges are only a state of mind and these challenges can never be an impediment unless the human mind permits them to turn so? The power of human mind is capable of doing many miracles and all the athletes at the Paralympics are the living testimony of this. As a student, one needs to firmly believe in the strength of mind power. Such firm belief will lead to the required action in the correct direction and will eventually pave the way of success.

The activities of the Chamber carry on steadfastly and continuously. The details of the programs are being conveyed to you through the newsletter and the e mails that you get from the office. We have made conscious attempts to ensure that students can take part in some of the educational activities which will be of great help to them in not only work related matters but also on their educational front. I am excited to note that many students participated in the recently concluded study courses on FEMA & DTAA. Being inspired with the participation of students at these programs, we look forward to your active participation at another course on Transfer Pricing. I am sure this course will enlighten the students considerably. Keep on watching for programs which are at planning stage at present and will be informed in due course. The Student’s Committee is also in the process of arranging for some student specific programmes which include our flagship programs like Essay Competition, Debate Competition and Moot Courts. Detailed announcements will be made at appropriate times. I hope that the coming months only bring us more varied and more interesting programs.

The present issue of the Journal covers variety of topics. The topics selected consist of a perfect mixture from conventional areas of Income-tax Return filing to the new developing area Insolvency and Bankruptcy Code and also one very interesting topic of applicability of new IT law to the social media. The wide range of topics is in line with the need for the students to have a rounded approach while educating themselves. I am thankful to all the



authors and also the mentors for their valuable contributions. I am also thankful to the committee for designing the issue with such a wide variety of topics. I am sure the articles will be an interesting read for all of us.

With the due dates of compliance under Income-tax getting extended substantially and the office work pressure getting somewhat diluted, I feel that all of you would have some time at your disposal which can be utilised to strengthen your understanding of the technical subjects. The Chamber will certainly be pleased to be a contributor for this. I invite suggestions from all of you about the topics that we can consider for student specific programs. Please feel free to communicate your ideas to us and we shall strive to give proper shape to those ideas.

Let me end this communication on few positive thoughts. The cases of Covid have substantially reduced over the period of last two months and we certainly see a ray of hope that the Chamber's activities are likely to be in physical mode very soon. The local trains in Mumbai are already available for fully vaccinated travellers and further relaxations are also expected. Accelerated vaccination drive and number of reduced cases permit us to believe that we will be able to reduce the effect of the perceived third wave of Covid, if not avoid it completely. The end of the tunnel seems very near and real. Let us keep our faith in the Almighty intact and look forward to the brighter journey ahead.

We are all set to enter the festival mood with the festival of light starting from next week. Let me wish you all a Very Happy Diwali and a prosperous New Year to follow. I am sure that the new year will bring new opportunities in life for all of us and we will have greater enthusiasm in the year to come.

Stay Safe and Take Care

Yours sincerely,

CA Ketan Vajani
President



Chairman's Message



Dear Students,

This is my first communication with you all through 'Jignyasa'. It is indeed my privilege to Chair the Student Committee of the Chamber which is considered to be the most vibrant Committee of the Chamber. And why not? Anything which is associated with Students, must be vibrant and dynamic. The Motto of Student Committee - 'Learning Today... Leading Tomorrow...', is a derivate of the Motto of the Chamber 'ज्ञानं परमं बलम्'. In line with the Motto, the Student Committee organizes events especially catering to the needs of Students which are helpful to them in shaping up their careers and also in performance of their duties. It also helps them for their professional development and enabling them to tread the path of 'Learners to Leaders'.

'Jignyasa', an e-journal 'By the Students – For the Students', provides opportunity to Students to express their views on topics or matters of current interest, to offer suggestions on current problems, to discuss various rising-issues and technical developments, to influence readers and urge them to think, etc. By contributing articles for Jignyasa, Students immensely benefit by enhancing their writing skills, expressing their thoughts to the larger world, bringing recognition for selves with the e-journal being published on the Chamber's website and also being circulated to all its members. I would request all Students to please reach out to me or the Chambers office with your intent to contribute an article for the forthcoming editions of Jignyasa on relevant topics in subjects like Direct tax, Indirect Tax, Company Law, legal updates, efficient use of technology, etc.

I am delighted to share that starting with the current edition of Jignyasa, we have newly introduced a regular feature column '**Beyond Boundaries**' wherein we aim to share information/unique stories/experiences - of experts/entrepreneurs/individuals who have ventured beyond academics and beyond their degrees (either themselves or seen others do the same), to undertake an unconventional experience/career and in the process inspire others to come, whether directly or indirectly. I am sure this column will inspire the Students to grow to eventually tell their own story. I will take this opportunity to thank Mr. Ninad Karpe and Ms. Lipi Panchmia for contributing the first column on 'Beyond Boundaries' with detailing the various opportunities for Professionals in Start-ups ecosystem. I am sure this will be beneficial not only for Students but everyone at large.

I have always taken inspiration from success stories of achievers. Their journeys motivate and guide us on ways to achieve our Dreams. Dreams are of utmost importance in our lives and dream has been beautifully described by our Former President of India, Late Shri APJ Abdul Kalam as "*Dream is not that you see while sleeping, it is something that does not let you sleep. So, have your own dream*". It is necessary for a person to have Goals (Dreams) in life because it helps you focus your efforts on relevance, it helps you measure the progress with passing time, keeps you motivated and most importantly Goals help you determine what is your objective in life. Let us all have our own dreams and achieve them in following way:

Let's Dream

It is necessary for us to listen to our heart and mind in determining our dreams. We cannot allow pessimism to control our mind when identifying our dream and we need to tell



ourselves, 'No Dream is Too Big'. There can be multiple dreams classified into buckets like professional dream, family dreams, social dreams, etc. However, no path to achieving the dreams should cross each other.

Believable

The dream should certainly be something which is seemingly beyond our capabilities, but it should be believable. If the right efforts are put in, the dream can be achieved.

Describe

We need to pen down our dream and read it everyday to remember what we want to make out of this life every single day. If possible, we should even discuss our dream with others. This may make us accountable and more motivated to achieve our dreams.

Plan

We need to plan out a clear and well defined strategy for achieving the dream. We should think through all the details and break the whole plan into small workable tasks. We should then set a time frame for accomplishing each task on our Dream plan.

Work

Any Dream can be achieved only if the plan is worked upon. There should be no stopping till the Dream is achieved. Regular assessment may help us to re-draw our plans and may be, re-describe our dreams. But we should always have Dream(s).

I would also like to congratulate all the newly qualified Chartered Accountants. The feeling of being a qualified CA after putting in hard work, dedication and sacrifices for an elongated period, is unparalleled. But you will agree that the journey of gaining education does not stop here. Remember, we all will be Students for our entire life. Your greed for knowledge should only increase with time. I will request you all to join the Chamber as a regular member and take benefits of events being organized for professionals on various topics. For students who could not clear the exams, I wish them all the luck and offer a humble advice i.e. this is not the end of road. You must gather yourself, be motivated, be in a positive frame of mind and put in your best efforts again. Your Dream will surely be achieved.

I must also convey my gratitude to our President – CA Ketan Vajani for his encouragement and posing faith in me to lead the Student Committee, Ms. Varsha Galvankar – Immediate Past Chairperson of the Committee for being a constant support and guide, Past President - CA Vipul Chokshi who has agreed to be the Mentor for 'Jignyasa', CA Charmi G Shah, Adv. Niyati Mankad and CA Ankit Sanghavi for all the efforts in rolling out the e-journal 'Jignyasa'. I must also thank all the Students and the Editors for their Article contribution for Jignyasa.

Before I end this communique, I urge the students to embrace technology and improve efficiency in whatever they are pursuing. There is no choice to remain away from technology. Learn as much as you can. It is the need of the hour. Only one caution: Let technology be your help, don't become slaves of the technology. Let the natural instincts remain alive in you.

I hope to meet you all in person when we are able to organize physical events.

Till then, Stay Safe – Stay Healthy.

CA Vitang Shah

Chairman

Student Committee



FORTHCOMING PROGRAMMES

Sr. No.	Date & Time	Topics	Speaker
1.	Friday & Saturday 19-11-2021 20-11-2021 26-11-2021 27-11-2021 9.30 p.m. to 6.30 p.m.	Class Room Course for Transfer Pricing 2021 (Organised by International Taxation Committee) For Details Click Here	CA Vipsi Patel CA Vaishali Mane CA Paresh Parekh Ms. Mansi Agarwal CA Kunj Vaidya CA Natwar Thakrar CA Utpal Sen CA Vishal Gada CA Uday Ved Mr. Sobhan Kar, ex-IRS CA Bhavesh Dedhia Adv. Vaitheeswaran CA Pankil Sanghvi CA Suchint Majumdar CA Heena Khajanchi CA Jatin Gajjar CA Karishma Phatarphekar
2.	Friday, 17th December 2021 5.00 p.m. to 7.00 p.m.	Effective way of Communication	CA Jayant Gokhale & CA Kushal Lodha
3.	December 2021	Udaan	* To be announced
4.	December 2021	Ind AS - Practical Aspects (Organised by Accounting and Auditing Committee)	
5.	January 2022	The Dastur Debate Competition	
6.	January 2022	Legal Orientation Program Classroom to courtroom	
7.	March 2022	The Dastur Essay Competition, 2022	
8.	March 2022	5th Chamber of Tax Consultants National Tax Moot Court Competition 2022	



Beyond Boundaries

Taking a Step Beyond The Conventional

Beyond Boundaries is a newly introduced column of the Jignyasa E-journal wherein the team aims to share information/unique stories/experiences - Of experts/entrepreneurs/ individuals who have ventured beyond academics and beyond their degrees (either themselves or seen others do the same), to undertake an unconventional experience/ career and in the process inspire others to come, whether directly or indirectly.

The column aims to cover the following:

1. Unconventional/Lesser-known careers - that we usually don't read/hear about - within the ambit of CA, finance, consulting, law, covering what such careers entail, the process of venturing into the same, the challenges thereto & overcoming limitations
2. Stories & experiences of young professionals/young entrepreneurs wherein they share their journey and offer valuable insights to aspiring professionals/entrepreneurs - The story could either be a Success story or a Story describing Failure & Learnings/ The process of Overcoming challenges
3. 'Ask The Expert/Your Career Guide' column where we place information in a question and answer format - Providing for answers to frequently asked questions from the more experienced individuals in this column (Questions could either be drafted by the team or received from other members/students by way of email).

The column would aim to cover stories/experiences of young as well as experienced professionals, in order to cater to individuals at different stages of their respective careers. The target being to cover 1-2 such articles each quarter.

Aims & Objectives

Today, there is a lot of stigma attached to the stability offered by conventional roles, opportunities and jobs. Thus, it is important to convey to individuals, of all ages and from every background, that everyone has the ability to be creative, disrupt and to bring something unconventional and new to the table, whilst also inspiring others. The idea is to encourage people to pursue their passion, be patient and not let traditional stigmas bog them down, while waiting for the right opportunity and enjoying and growing through the whole process.

More than academics or our degrees, our stories & experiences make us who we are. Keeping the same in mind, this column aims to achieve the following objectives:

- **Vision:** To create a singular platform, to empower and to humanize. And also normalize failure as a tool for learning & growth.
- **Mission:** Encourage people to be patient, grab the right opportunity - make that career switch or even start-up - and go after and pursue their passion.
- **Purpose:** Enhance the reach of people of all ages, to individuals they look up to and aspire to learn from, and give them the requisite tools and platform to eventually tell their own story.



Beyond Boundaries — Opportunities for Professionals in Startups



CA Ninad Karpe



Lipi Panchmia

Is India witnessing a golden era of becoming a springboard for a record number of unicorns (startups with valuation of more than \$ 1 billion)? Will India get the coveted title of becoming the “startup capital” of the world? Well, just look at what is happening: In the current calendar year, India has witnessed the rise of 32 unicorns. In 2011, India had witnessed only 1 unicorn, which had risen to 11 in 2020.

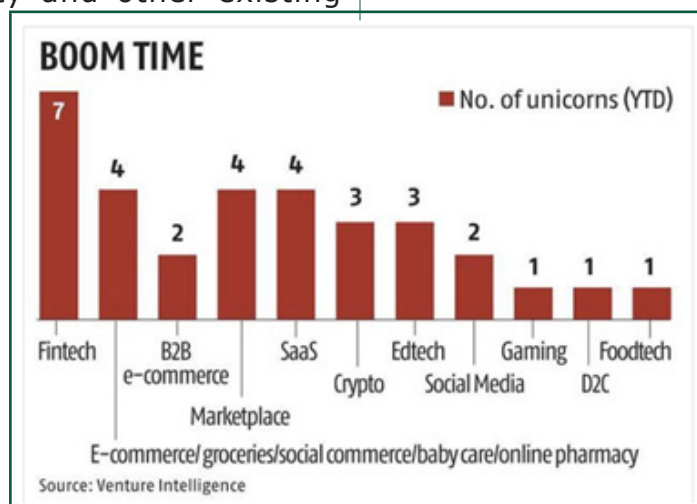
Recently, MobiKwik, a digital payment company, entered the unicorn club after a few of its employees exercised their employee stock option plans. The fintech giant is planning to go for an initial public offering (IPO) by November first week at a valuation of \$1.5 Bn - \$1.7 Bn, according to Inc42.

Another company, Rebel Foods got the coveted status of a unicorn. It operates a network of cloud kitchens and digital brands with 450+ kitchens globally and raised \$175 million in a round led by Qatar Investment Authority and other existing

investors. Following in the footsteps of Zomato, it is believed that they are planning an IPO in the next 18-24 months. It has created well-known brands such as Fasoos, Behrouz Biryani, Ovenstory Pizza, and Mandarin Oak. The cloud kitchen sector has lately seen huge traction.

Before that, Licious became the first D2C (Direct to Consumer) unicorn in India. It is a tech-enabled fresh meat and seafood brand and raised \$52 million from IIFL, Avendus Fund, and others. This sector has a huge market opportunity of \$40 billion, which was well spotted by the founders. Many more startups will now be expected to join the D2C space. Funding for the D2C sector has been increasing but was not earlier considered attractive. This perception will hopefully change because of Licious!

Out of the 32 Unicorns which emerged this year, the highest number (7) was in the Fintech space -- Cred, Bharatpe, Groww, Digit, and others.





Reaching a unicorn status may need a series of investment rounds from Angels/ HNIs, Angel Networks, Family offices, and most importantly Venture Capital Funds (VC). While it may be possible to become a self-funded unicorn like Zerodha or ZOHO, VC funding has gained prominence as it can provide momentum funding for a fast-growing company.

Valuations of fintech startups have been robust, as investors see the space as attractive and well-performing. Some of the active VCs in the Fintech space are Sequoia Capital, Nexus Venture Partners, Kalaari Capital, and Chiratae.

In all this sudden rush of startups, is there any opportunity for professionals? Do professionals -- tax practitioners, lawyers, and CAs -- need to reinvent themselves to cater to this evolving space? Here are some of the opportunities which professionals may want to consider.

1. Become a Founder of a Startup

A popular misconception is that only "techies" can launch a startup. This is simply not true. Startups are a team effort. Professionals may not be able to build technology, but definitely can conceive disruptive ideas which can, in turn, be built by a Tech Co-Founder!

With an in-depth understanding of the Company Flow, Financials, legalities in agreements, IPR, Cap tables, etc, it becomes easier for professionals to execute an idea, communicate with investors and ensure the overall financial health of the startup. Investors like to deal with founders who are aware of the financial projections, valuations, dilution and the cap table which makes the whole process smoother. Due to a better understanding of the fintech space, professionals have an opportunity to

start a fintech company with simple solutions to problems which we may be facing in our professional lives as well.

Other than the usual fintech space including Insurance, regulatory tech, lending tech, payments tech, there can be other ideas around automating audit Tools, simplifying agreements, notarization, easy tax query resolving, or automating other miscellaneous compliances.

Not just fintech, there are startups in other spaces where professionals have been co-founders such as Infra.market (construction marketplace) or Licious (D2C Food Brand).

Peter Thiel, co-founder of Paypal (the most successful online payment system in the world) who holds a degree from Stanford Law school has mentioned that being a law student gave him enough perspective about competition in the startup world which was fundamental in his founding venture with Paypal.

Professionals are generalists in knowledge of many fields and at the same time, specialise in some areas. With the huge proliferation of knowledge and skills available in the online model, professionals can now learn any new skills at their convenience. In fact, building tech is also now simplified by different startups using "no code" options to build and design websites or applications. Lambda School is one such startup based in Silicon Valley which has built its MVP (Minimum Viable Product) using "No Code tools". It is now feasible to think of professionals building their idea to some extent using these tools and then take assistance from experts, after raising funds.



2. Become a Startup to help Startups

Startups need not be disruptive tech-based ideas only. One can have a startup offering professional solutions solely to startups. This ensures a specialization that ensures the ability to advise the founders in a better way on the various steps of the ladder. Every startup needs a stack of services out of which Tax and Accounting are the most basic and also important. These are usually outsourced by startups at the early stage as the startup team needs to be lean and cost-effective. Not everyone can do tax and accounting, hence a startup founder, who for example may be an engineer, will not know the ABC of accounting or tax at all, and hence would approach a professional. Professionals have a huge opportunity to provide these essential services across geographies to startups, who can focus on scaling their business. These services can be bundled for startups -- company formation, direct and indirect taxes, accounting, payroll function, costing, financial modelling, government registrations, etc.

3. Working in Startups

Being an early member of a startup can be an exhilarating experience and having a professional can add a lot of value to the startup. Though most of the functions are handled by startup founders themselves at the initial stage, often, founders may have very little knowledge of Finance.

A Professional may have varied knowledge and can be helpful in fields such as financial modelling, business model, tax compliance, drafting agreements, fundraising, cost-benefit analysis, valuations, patent registration as well as other sorts of Government registrations. However, there may be few complex matters such as FEMA laws, SEBI laws, company structuring,

ESOP, etc, where help can be taken from an expert in the field. However, having a person employed in the startup who is aware of the basics will ensure that the startup gets proper professional help.

4. Professional Services to Startups

As soon as a startup is legally born, the first person the founders reach out to is a Professional. Right from company incorporation to listing the company for an IPO, the services of a CA/CS/Lawyer are indispensable.

Day-to-day activities such as bookkeeping, GST payments, to complex activities such as IP registration, Company flipping to USA/Singapore, compliance with RBI and FEMA laws for Foreign investors, etc need professional advice. There is a huge opportunity to focus on the startup ecosystem, network with upcoming founders so as to provide them services right from inception till they scale to an IPO!

Professionals can help these startups avail benefits which they probably may not even be aware of. There are many benefits available from the Government which are available after the MSME and DIPP registration which startup founders may be unaware of --- 50% reduction in patent fees, Bank loan subsidies, etc. Besides, professionals can help startups avail Income tax benefits under section 80-IAC, guide them in Angel Tax under 52(6)(viib), etc.

Valuation Services also form a huge chunk of services that startups require. With every funding round, a new valuation report is required which only a Registered Valuer or Merchant Banker can provide. Term Sheets and Subscription and Shareholders Agreements (SSHA) also require drafting and negotiation to ensure



that the rights of each party are taken care of.

Indian as well as Foreign Investors are making huge investments in startups. Hence, a whole array of FEMA, RBI, and Foreign laws come into the picture which requires in-depth expertise. There is a huge opportunity in specializing in such laws which need to be grabbed by young professionals who are still exploring!

5. Professionals as Investors

Due to a deeper financial understanding, it is easier for Professionals to evaluate companies based on market opportunity, financial projections, and due diligence. Professionals as investors understand the key terms of the agreement in a better way than many others. Investing in startups has 1x Risk but can have 100x or unlimited returns, unlike other investment options which itself makes it such a lucrative opportunity. One may diversify their funds into various sectors and startups at various stages, depending on the thesis of investment.

Not just as Angel investors, one can also advise or even form family offices to allocate certain funds into startups. Other than that, there is always demand for professionals as analysts or partners in VC and PE funds. New funds are being formed by industry leaders, corporates, startup founders turned investors, etc.

Professionals can also act as mentors and guide these startups where they hold a stake to help founders avoid mistakes and failures.

Conclusion

With a professional, a startup gets holistic advice. As there is huge potential overall in the startup ecosystem, it is important for Professionals to wisely choose what aligns with one's passion and follow that path, as the choice is huge. The rapid growth and rise of the startup ecosystem is here to stay and it is upto professionals to grab the various opportunities which are now available in this space.





The Chamber of
Tax Consultants

Tally Prime 2.0 — Your Report Your Way Concept



CA Anand Paurana

TallyPrime 2.0 – Your Report Your Way - Concept

- Configure / filter / change view - default report of TallyPrime
- Save the above as your own report with your own naming convention
- Henceforth, the "NEW SAVED" report is available in the "New" window name
- Alternatively, "NEW SAVED" report can be set as a "Default" report of TallyPrime
- New report can be for "This Company" or for "All the companies (on This Computer)"
- Can be configured with the Masters
- Can be configured for Selected Period
- Deletion of Saved Report???

(In this edition of **Jignyasa**, we have taken up the initiative of bringing hands on workshop to your device at your convenience.)



Practical Issues While Filing Income Tax Return (ITR)



Ritesh Dubey

Introduction

As per the Income tax Act, 1961 ('Act'), A Person, Company/ LLP may require to file the income tax return in accordance with the provisions of section 139 on or before due date as mentioned in the section 139 of the Act. While filing the said return there are certain practical challenges/ issues which a taxpayers could be facing. By way of this article, we are going to address some of the most critical challenges that faced by taxpayers.

Practical issues faced by taxpayers

1. Mismatch of tax credit

With the Introduction of online filing of TDS ('tax deducted at source') returns, tax deductors are now comfortable with the online system of filing TDS returns. These TDS returns get processed by the income tax department, with TDS being reflected in the online tax account of the payee from whom the tax was deducted. As a payee, a taxpayer is then supposed to get credit for such TDS when you file your income tax return (ITR). However, taxpayers often face problems in getting TDS credit, even if it appears in the online tax account. The rules provide that you will get credit on the basis of the TDS returns filed by the deductor. Therefore, unless TDS reflects in your Form 26AS Statement, you will not get TDS credit.

If the tax deductor either fails to pay TDS, or does not file TDS return, or makes a mistake in data entry of your PAN, TDS will not reflect in your Form 26AS, thus denying you the tax credit. Besides, if you make a mistake in entering the data of the deductor's TAN or the amount of TDS in your ITR, there will be a mismatch with the Form 26AS, and you'll be denied credit.

The hurdles don't end here, Credit for TDS is supposed to be given in the year in which the corresponding income is offered to tax. TDS is supposed to be deducted at the time of payment or credit of income, whichever is earlier. So if you have received an advance, but have not yet raised your invoice, and you are following the accrual system of accounting, you will not get credit for TDS from the advance in the year of deduction, the credit will be given in the subsequent year when you offer the income to tax. Also, if you have raised an invoice in the current year, but received payment in the subsequent year, and TDS has been cut at the time of payment in the subsequent year. Practically, this TDS does not reflect in your Form 26AS for the current year and, therefore, if you claim credit for TDS subsequently deducted, to match it with the income, you will still be denied TDS credit.



Yet another situation arises where the deductor is under the accrual system, while you are following a cash system of accounting. For instance, the bank may deduct TDS on interest accrued on your cumulative fixed deposits each year, while you offer the interest to tax in the year of maturity. Here, TDS will reflect in multiple years' Form 26AS, which you will have to enter each year in the return and show as carried forward to the subsequent year. It is only if you do this correctly that you can claim such TDS reflected in earlier year's Form 26AS. This problem is also faced by professionals who follow the cash system of accounting, while most of their clients follow the mercantile system of accounting. In these cases, claiming TDS credit in the correct year is a daunting task, involving detailed reconciliations each year, and ensuring detailed and correct data entry in the tax returns. There is also the problem of the CPC Bangalore stating that there is a mismatch and issuing a notice under section 139(9) to add the income not shown. (inspite of the carried forward shown) This leads to harassment to assessee as he has to file rectifications and appeals against incorrect adjustment under 143(1)

2. Auto populate facility by CBDT

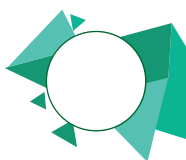
Finance Act, 2021 provided that to ease the filing of income tax return of an individual there will be an auto populate facility given to the taxpayers which will capture the details of Capital Gain, Interest from

Saving bank and Fixed deposit and other basic details of Individual. These provides a huge relief to the taxpayers as earlier they used to fill the long list of capital transaction in ITR which consumes lot of time and still there used to be chances of error while filing the details in ITR.

Post Finance Act, 2021 announcement the department has started providing auto-populate facility to the tax payers. However there is a practical issue in the same as well, One of the major practical issues is mismatch of transaction details due to collection of data from different brokers. The new income tax site has also failed to provide the complete details and one should check the details before accepting this auto populated details. The site before allowing you to file the return takes a confirmation from the filer that he or she has checked the prefilled data, thus the entire responsibility is on the assessee to check the same before uploading.

3. Issues relating to Foreign Tax Credit

Rule 128(1) of the Act provides that "An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in the said rule. The major challenge which arises here is that the assessee needs to fill Form 67 before the due date of filing Income-tax return and most of the taxpayer forgot filing of the said form before the due date and they didn't get the credit of foreign tax paid. The CPC Bangalore has disallowed credits under 143(1) intimations, even in cases where the form 67 was filed in time. The assessee in these cases is forced to file an appeal.(rectifications filed are summarily rejected without providing reason for the rejection).



4. Non-disclosure of exempt income

If there is any income from any source other than the primary source of income, it must be disclosed. Taxpayers have to disclose income from all the sources including savings account interest, fixed deposit interest, rental income from house property, income from short-term capital gains and any other source. The income must be disclosed irrespective of being taxable or exempt. Many taxpayers out of ignorance, tend to miss out on giving details of exempt income.

Example: Although the capital gains are exempt from tax up to ₹ 1 lakh in case of equity shares or equity-oriented mutual funds, the details of the gains have to mandatorily be mentioned in the schedule applicable for capital gains. Not doing so may be questioned by the tax authorities. Now these not kind of practical issues

5. Method of accounting adopted by the assessee

The assessee may adopt different method of accounting which may leads to different disclosure of income in ITR in schedules of the Form and

which creates practical issues while filing the same. Some of the assessee may follow mercantile system while others may approach cash system which leads to different disclosure in ITR. E.g. Schedule FA disclosure, Asset liability disclosure in ITR.

6. Practical issues faced by NRI's

While most of the practical challenges are addressed, some challenges are also faced by NRI's which are discussed below:

- Most of the disclosure in ITR is not required to be disclose in case of NRI's (e.g., Schedule FA), however NRI's are not aware of the same which gives some tough time to them to collate the relevant data for reporting of the same.
- NRI's generally take Foreign tax credit (FTC) on income earned in India, for claiming these they need to fill Form 67, most of the non-resident forget to fill this form before due date which leads non utilization of FTC.





The Companies Auditor's Report Order, 2020 (CARO)



Harshali K. Pujare CA Ankit Sanghavi

CARO 2020 is an abbreviation for Companies (Auditor's Report) Order, 2020. According to Section 143 of the Companies Act of 2013, auditors are mandated to report on the matters entailed in CARO.

CARO was implemented with a view to give include assurance of auditors on additional matters identified by the MCA.. Basis on performing the necessary audit procedures, auditors are required to comment on the clauses given in CARO order. CARO 2020 aims to improve the overall quality of reporting by auditors and has been issued in the supersession of CARO 2016.

CARO 2020 applies to all statutory audits beginning on or after April 1, 2021, for the financial year 2021-22.

CARO is applicable to certain types of companies registered in India including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013. CARO reporting is applicable for the following types of companies: (Note the use of "and")

- a private limited company, not being a subsidiary or holding company of a public company, having a paid-up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and
- which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and

- which does not have a total revenue as disclosed in Scheduled III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.

Companies Not Under the Purview of CARO

The following companies are outside the purview of Companies Auditor Report Order Rules (CARO). Hence, any Auditor issuing an audit report for any of the following company need not report CARO requirements:

- Banking company as defined under the Banking Regulation Act 1949;
- Insurance company as defined under the Insurance Act 1938;
- company licensed to operate under section 8 of the Companies Act 2013;
- One person company as defined under the Companies Act 2013
- Private Limited Company that is defined as Small Company under the Companies Act, 2013.

Analysis of CARO 2020

The applicability of CARO, 2020 remains unchanged. There are 21 clauses in total, compared to 16 in CARO 2016. 7 clauses have been added, 1 clause has been merged with another, and 1 clause has been deleted.



CARO 2016 was ineffective for consolidated financial statements. CARO 2020, on the other hand, includes a clause that is now applicable to auditors' reports on CFS. According to this clause, if the auditors highlight any qualifications or adverse

remarks in their respective standalone companies' CARO reports, the details of such remarks must be mentioned by the company's auditor in his CARO report of CFS.

❖ Newly Added Clauses

Clause No.	Name	Clause	Remark
8	Unrecorded Income	➤ New clause was being inserted, in case any transactions not recorded in the books of account have been or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961, if so, whether the previously unrecorded income has been properly recorded in the books of account during the year	This clause seeks to align books of accounts with tax assessments made on unrecorded income. This helps to maintain greater transparency on governance and parallel books / concealed transactions / transactions evading assessment / violations, etc.
14	Internal Audit	➤ New clause was being inserted, in order to report whether Company has an internal audit system commensurate with the size and nature of its business. ➤ New clause was being inserted, in order to report whether Company has an internal audit system commensurate with the size and nature of its business.	The addition of this clause emphasises the role of the internal auditor and expresses the statutory auditor's responsibility in relying on the work of another auditor. The comments on the reports are larger interactions between the Company's Internal and Statutory Auditors.
17	Cash Losses	➤ New clause was being inserted, to disclose cash losses incurred by the company in the financial year and in the immediately preceding financial year.	It is nearly an indicator for detecting cash waste, fraud, embezzlement, and other issues that may be affecting the company's financials. Its inclusion in the formal audit report is likely to persuade the company to align its budget and implement a budget control mechanism.



Clause No.	Name	Clause	Remark
18	Resignation of Auditor	➤ New clause was being inserted, in order to disclose the issues, objections or concerns raised by the outgoing auditors at the time of resignation from his duty as a Statutory auditor of the company during the year.	The scope of confirmation and disclosure with respect to outgoing auditors is limited to instances of resignation of auditor
19	Financial Capability of Company	➤ New clause was being inserted that whether the company is capable to meet out its liabilities that existing on the balance sheet date as and when they fall due within one year. Auditor needs to analysis on the basis of financial ratio, ageing of financial assets and financial liabilities and Expected realization of those assets and liabilities.	Auditors' reports are likely to raise concerns about issues such as going concern, bankruptcy, insolvency, and NPA classification. This could help provide early warning of banking distress. However, such opinions will be heavily influenced by the amount of information provided to the auditor by management.
20	CSR Compliances	➤ New clause was being inserted whether the company has transferred the unspent amount of CSR in case of a) Outgoing projects to a special designated bank account. b) Other than outgoing projects to a fund specified under schedule VII to the Companies Act within a period of six months of the expiry of the financial year.	This is a clear attempt to the strengthen the compliance regime for CSR.
21	Consolidated Financial Statement	➤ New clause was being inserted, to disclose any qualifications or adverse remarks by the auditor in their reports of the companies (subsidiary) should be included in	This would eliminate subjectivity in CFS reporting and bring much needed uniformity in reporting.



Clause No.	Name	Clause	Remark
		the consolidated financial statements (Parent). CARO 2020 does not apply to consolidated financial statements, unless there is a qualification or adverse remark.	

❖ Modified Clauses

Clause No.	Name	Key Changes	Impact
1	Property, Plant, Equipment and Intangible Assets (PPEIA)	<ul style="list-style-type: none"> ➤ Words 'Fixed Assets' now replaced with "Property, Plant & Equipment and Intangible Assets (PPEIA)", to align with AS-10. ➤ Disclosure regarding title deeds of Immovable property (other than properties where the company is the lessee) now required, as per the format specified. ➤ Whether Revaluation of assets done by registered valuer and whether such valuation exceeds 10% the aggregate net carrying value of each class of assets. ➤ Proceedings initiated in respect of 'Benami transactions'. 	CARO reporting now covers every aspect of Fixed Assets right from records, registers, physical verification to revaluation. In CARO 2020, the requirement to the disclosure of immovable properties in case of assets on lease is specifically excluded.
2	Inventory	<ul style="list-style-type: none"> ➤ Disclosure regarding the change in inventory if it exceeds 10% or more. ➤ in case of Working Capital limit is more than Rs. 5 Core at any point of time during the year, whether Quarterly returns of statement filed by the company with bank or financial institutions are in agreement with books of accounts or not. 	Information of category wise discrepancies to be available to the auditor, larger role in physical verification, Statutory Auditor to review all submissions to the bank.



Clause No.	Name	Key Changes	Impact
3	Loan, Investments, Guarantees, Securities and Advances in nature of Loan	<ul style="list-style-type: none"> ➤ Loan given to any person as against the parties covered u/s 189 of Companies Act, 2013. ➤ Words 'Investment, Guarantees & Security' has been added. ➤ Disclosure regarding the loan or advance granted, renewed or extended or fresh loans has been settled against the overdue of existing loan. ➤ Disclosure regarding the loans or advances given either repayable on demand or without specifying any terms of period of repayment. ➤ Disclosure of outstanding balance should be made. 	Complete and detailed audit of all loans and advances in the nature of loans, Clear understanding of all pay-outs from the Company, layering and round tripping of funds with dues from and dues to related parties, Bankers will be more aware of the extent of deployment for core business purposes rather than advances to group companies
5	Deposits	<ul style="list-style-type: none"> ➤ The word 'Deemed to be deposits' has been added. ➤ <i>"in respect of deposits accepted by the company or amounts which are deemed to be deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules made thereunder, where applicable, have been complied with, if not, the nature of such contraventions be stated; if an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not."</i> 	Deposits that are not deposits by definition but have the substantive characteristics of deposits are required to be reported.



Clause No.	Name	Key Changes	Impact
9	Default in Repayment of Borrowings	<ul style="list-style-type: none"> ➤ The word 'Payment of Interest & Any Lender' has been inserted. ➤ Disclosure should be made in case company is a declared as a wilful defaulter. ➤ Disclosure should be made in case fund raised for short term basis, if utilized for long term. ➤ Disclosure should be made in case of fund raised by the Company in order to meet the obligation of its subsidiaries, associates or joint ventures. ➤ Disclosure of loan should be made in case of loans raised on pledge of securities held in its subsidiaries, associates or joint ventures. 	The word payment of interest on borrowing to any lender has been added in place of Banks, Financial Institutions, Government, or dues to Debenture holder to improve reporting. Other changes were made to improve transactional transparency.
11	Fraud	<ul style="list-style-type: none"> ➤ The word 'Officers or employees' has been deleted. ➤ Disclosure in case of any report has been filed in Form ADT-4 under section 143(12) by the auditors with the central government. ➤ Additional disclosure regarding Whistle-blower (Section 177) complaints to be made. 	Fraud reporting clause has been introduced and auditor is now required to state whether he has performed this or not
12	Nidhi Company	<ul style="list-style-type: none"> ➤ whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability; ➤ whether the Nidhi Company is maintaining ten per cent. unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability; 	Defaults are to be reported



Clause No.	Name	Key Changes	Impact
		➤ Disclosure of ' default in payment of interest ' on deposits or repayment thereof.	
16	Regulation of RBI	➤ Disclosure should be made in case company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration from the Reserve Bank of India as per the Reserve Bank of India Act, 1934.	

❖ **Unchanged Clauses**

Clause No.	Name	Clause
4	Loan to Directors	➤ <i>in respect of loans, investments, guarantees, and security, whether provisions of sections 185 and 186 of the Companies Act have been complied with, if not, provide the details thereof</i>
6	Maintenance of Cost Records	➤ <i>In case the company is required to maintain cost records as specified by the Central Government under subsection (1) of section 148 of the Companies Act, whether the records have been maintained during the year and non-compliance if any.</i>
7	Statutory Dues	<p>➤ <i>whether the company is regular in depositing undisputed statutory dues including Goods and Services Tax, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;</i></p> <p>➤ <i>where statutory dues referred to in sub-clause (a) have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned (a mere representation to the concerned Department shall not be treated as a dispute);</i></p>



Clause No.	Name	Clause
10	Initial Public Offer	➤ whether moneys raised by way of initial public offer or further public offer (including debt instruments) during the year were applied for the purposes for which those are raised, if not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported.
13	Transaction with Related Party	➤ Whether the company has complied with the provisions of section 188 of the Companies Act, 2013 in respect of transactions with related parties. Also, whether appropriate disclosures are made in the financial statements.
15	Non cash Transaction	➤ Whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with.

Conclusion

The CARO, 2020 is projected to increase the overall quality of reporting by statutory auditors on company financial statements, resulting in more transparency and credibility in the companies' financial affairs.





Committee of Creditors : A Shorter End of the Stick for Operational Creditors?



Prachi Kaushik



Adv. Sashank Dundu

Introduction to the Corporate Insolvency Resolution Process –

The year 2016 saw the enactment of a new legislation called the Insolvency and Bankruptcy Code (**the Code**) providing for a time-bound process to resolve corporate insolvency. Before the enactment of the Code, there were multiple legislative frameworks for corporate entities, partnership firms and individuals, which either were complex and fragmented across different Acts such as the SARFESI Act, Companies Act, etc. or just did not exist. (for example there was no framework for individuals). The existence of multiple laws resulted in an inordinate delay in the reorganization and insolvency resolution which consequently led to the destruction of value and weighing the interests of the promoters over the stakeholders. The Code which drew and borrowed from relevant US and UK legislations sought to tackle this by fixing a 330-day timeframe during which the control of the corporate debtor shifts to the Resolution Professional (RP) appointed under the IBC. The RP receives claims against the Corporate Debtor after which it constitutes a Committee of Creditors (CoC). The CoC thus formed has been entrusted to exercise its commercial wisdom in the approval, rejection or modification of the Resolution Plan that is made once the company initiates the Corporate Insolvency Resolution Plan (**CIRP**).

The Insolvency and Bankruptcy Code provides that any creditor, be it a Financial Creditor or an Operational Creditor,

Secured/unsecured, or the Corporate Debtor itself, can file an application before the Adjudicating Authority to initiate CIRP against the Corporate Debtor for any default committed in payment of dues of an amount of ₹ 1 Lakh or more. This amount of ₹ 1 lakh is subject to changes as and when the Central Government requires. During the COVID period, the limit was extended to 1 crore, keeping in mind the hardships which were being faced. Currently, as per notification dated 9.4.2021, the limit has been extended to ₹ 10 Lakhs. CIRP is thus triggered by an occurrence of a default on part of the Corporate Debtor after which the National Company Law Tribunal (NCLT), the Adjudicating Authority, determines whether to admit the insolvency application. Once the application is admitted by the Adjudicating Authority, an Interim Resolution Professional/ Resolution Professional is appointed by the Adjudicating Authority to take control of the assets of the Corporate Debtor and operate the Corporate Debtor on a going concern basis, till the resolution plan is approved by the Adjudicating Authority. This process is to be completed within 180 days from the date of admission of the application with an extension period of 90 days at the request of the Committee of Creditors, which is constituted by the Interim Resolution Professional. The most critical and important decisions are taken by the Committee of Creditors.



The Committee of Creditors and their exercise of commercial wisdom

The CoC is constituted only of the Financial Creditors of the Corporate Debtor. The CoC holds the key to the fate of the corporate debtor and its stakeholders, bestowed with responsibilities to approve or disapprove the Resolution Plan and the Adjudicating Authority has little power to interfere with the decisions taken by the CoC and its commercial wisdom. The NCLAT has reiterated the fact that the Honourable Supreme Court has reaffirmed the primacy of the commercial wisdom of the CoC in key judgments like the *Essar Steel case*¹. The Ministry of Corporate affairs, too, has called it supreme. This re-establishes the fact that the committee is vested with the power to approve or disapprove the RP at its discretion and can also maintain confidentiality over the contents of the Resolution Plan. The Adjudicating Authority has no power to interfere with the majority call of the CoC on merits i.e. it can undertake only an objective assessment that the decision has ensured (i) continuation of the corporate debtor as a going concern during the CIRP; (ii) maximisation of the value of its assets; and (iii) balancing the interests of all stakeholders including operational creditors².

The structural make-up of the CoC is of pre-eminence to this article. The Code draws a distinction between Financial and Operational Creditors. Financial creditors have been defined broadly but can be generally described as banks and other professional lenders and will mostly be secured. Operational Creditors can be defined as any persons to whom such a debt is owed which is in respect of the supply of goods or services. This article makes an attempt to show the flip side of

alienating an important stakeholder, thereby devaluing the paramount status given to the Commercial Wisdom of the CoC.

Dichotomy of creditors: Innate Concerns

In a scenario where only the Financial Creditors of the Company are privy to the negotiations on the terms of the Resolution Plan, Operational creditors have a cause for worry surrounding the procedural fairness of the process. The issue is further exacerbated in light of the fact that issues of procedural unfairness are formally unreviewable by the NCLT³.

One of the main objectives stated in the Code is balancing the interest of all stakeholders. Even so, the committee gives no representation to Operational creditors which are pivotal to the operations of a company. The protection conferred to them in the Code is to the extent that the Adjudicating Authority can review the decision of the CoC if they deem the interests of the Operational creditors to not have been balanced. This appears to be an insufficient protection. Since the NCLT cannot intervene in a manner that comments on the merits of the Resolution Plan, its power is limited to only sending the Resolution Plan back to the CoC for further review. Post that, "once the NCLT is satisfied that the CoC has paid attention to these key features, it must then pass the resolution plan, other things being equal." The Supreme Court did not elaborate on what it meant by "other things being equal". Indeed, the interests of Operational Creditors have often been an oversight; for example; RP approved by the Supreme Court in *Arcelor Mittal* secured 80% for secured financial creditors but only 20% for operational creditors⁴.

1. *Standard Chartered Bank v. Satish Kumar Gupta*. (2020) 1 C O M P L J 100

2. Insolvency and Bankruptcy Code, No. 31 of 2016, § 31(1), India Code (2016).

3. Insolvency and Bankruptcy Code, No. 31 of 2016, § 31(1), India Code (2016).

4. *ArcelorMittal India Private Limited v. Satish Kumar Gupta* (2019) 2 SCC 1.



The Hon' ble Supreme Court in the case of *K. Sashidhar vs. Indian Overseas Bank 2019 SCC OnLine SC 257*⁵ upholds the paramount status of the CoC while also elucidating the reason why financial creditors are best equipped to be the CoC. The rationale put forth is that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision⁶.

The premise for this monopoly over decision-making by the financial creditors is that they are best positioned to evaluate the distress and viability of the corporate debtor. This premise automatically dispossesses the Operational Creditors of the faculties required to assess and adjudge the grim situation of the Corporate Debtor. It is unclear why this assumption has been made when it is highly likely that since operational creditors are prime stakeholders in the CRIP, they would be motivated to maximize recovery for themselves, thus, acting in line with the objectives of the Code.

The *Swiss Ribbons* judgment of the Apex Court, too, favours the existing composition of the CoC⁷. It notes that "the committee has to be composed of members who have the capability to assess the commercial viability of the corporate debtor and who are willing to modify the terms of the debt contracts in negotiations between

the creditors and the corporate debtor. Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern." It further states that "in order to ensure that the financial creditors do not treat the operational creditors unfairly, any resolution plan must ensure that the operational creditors receive an amount not less than the liquidation value of their debt (assuming the corporate debtor were to be liquidated)." While the Supreme Court has charged the CoC to treat all creditors equitably⁸, before August 2019 the IBC required that operational creditors get at least the liquidation value of the assets of the debtor.

Clearly, the judgment recognises the inherent risk in the representation of only one of the stakeholders of the process. The way that risk is mitigated is a provisional mandate that the Resolution Plan must ensure that the operational creditors receive an amount not less than the liquidation value of their debt. This is quite problematic because owing to the fact that Operational Creditors are largely unsecured, it is highly possible that the liquidation valuation due to them is not more than zero in many cases. Moreover, the liquidation valuation is contained in a confidential document that is accessible only to the Resolution Professional and the CoC⁹. It is a practical possibility, thus, that the interests of the Operational Creditors are side-lined and that a Resolution Plan delineating disproportionate share of the value of the

5. *K. Sashidhar v. Indian Overseas Bank 2019 SCCOnLine SC 257*.

6. *Committee of Creditors of Essar Steel India Limited v. Satish Kuman Gupta (Civil Appeal No. 8766-67 of 2019) at ¶ 93. [(2020) 8 SCC 531]*.

7. *Swiss Ribbons Pvt. Ltd. v. Union of India (Supreme Court (2019) 4 SCC 17)*.

8. *Swiss Ribbons Pvt. Ltd. v. Union of India (Supreme Court (2019) 4 SCC 17) at ¶ ¶ 46 & 47*.

9. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, Gazette of India, pt. III sec. 4 (July 4, 2018), § 35(3).



debtor in favour of the financial creditors is approved by the CoC.

It is a settled position of law, by various judgements, Court/Tribunal is not empowered to intrude into/question the commercial wisdom of Committee of Creditors either in approving/rejecting Resolution Plan in question, except in cases, where CoC acted arbitrary in taking those decisions; violating principles of natural justice, violating provisions of Code and the Rules made thereunder etc. This magnifies the powers of the CoC as the Resolution Plan may be manifestly favourable to financial creditors and be implemented without any judicial intervention.

Lack of Representation and Accountability: Perception of Injustice

It is a common saying that "Justice must not only be done but also must be seen to be done." The perception of justice, hence, is as important as justice itself. The CIRP falls deficient of the procedural standards of fairness by disenfranchising Operational Creditors from decision-making and letting the Financial Creditors have minimum judicial accountability. This calls into question the commercial wisdom of

CoC which vests near-plenary authority in only financial creditors which has led to the perception of inequitable distributions between the class of financial and the class of operational creditors¹⁰.

Conclusion

The infallibility of the decision-making of the CoC should not be a given. There is a need for a more transparent and well-laid out procedure for decision-making by the CoC. The metrics of adjudication of the CoC needs to be more defined in order to increase their accountability. There is a need for safeguarding of the Operational Creditors in the current CIRP. Giving representation and/or increasing accountability of the CoC will further bolster and justify the stature accorded to their commercial wisdom. This may however have the effect of going against the basic object due to which IBC was enacted i.e. to providing for a time-bound process to resolve corporate insolvency. But as the adage goes, Justice Hurried is Justice Buried. There needs to be an effective mechanism in place to have a check on both these cardinal features i.e. time-bound delivery of justice as well as complete justice to complete stakeholders.

10. C. Scott Pryor & Risham Garg, Differential Treatment among Creditors under India's Insolvency and Bankruptcy Code, 2016: Issues and Solutions, 94 AM. BANKR. L.J. 123 (2020).

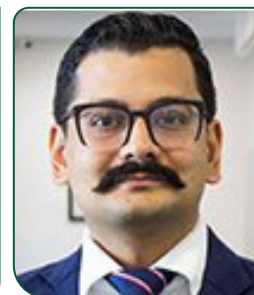




Corporate Social Responsibility – Why it is more than just philanthropy



Hasnain Paliwala



CA Jigar Doshi

Corporate -Social -Responsibility ("CSR") helps a company be accountable—to itself, its stakeholders, shareholders, community as a whole. - This is in line with the requirements of section 166 of the Companies Act, 2013 ("**CA 2013**") wherein directors of a company are mandated to act in the best interests of the company, shareholders, employees, community and protection of the environment. . In India, CSR provisions are mandated by the CA 2013, the Companies (Corporate Social Responsibility Policy) Rules, 2014, the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. Further, top 1000 listed entities are required to submit Business Responsibility Reports ("**BRR**") wherein they report on social and environmental impacts. *Vide* SEBI Circular dated May 10, 2021; top 1000 listed companies would be required to submit the Business Responsibility and Sustainability Report ("**BRSR**") from Financial Year ("**FY**") 2022-23 onwards. BRSR is a notable departure from the existing BRR. Key disclosures under the BRSR include an overview of the entity's material ESG related risks and opportunities, environment related disclosures (green-house gas/air pollutant emissions, waste management practices), gender/social diversity at workplace etc.

In this article, we analyze the legal provisions of CSR in India along with tax implications and offer observations our -thoughts on how Covid-19 has impacted CSR related spending.

It is pertinent to note that culture plays a prominent role in CSR initiatives. As the companies and investors realize that medium to long-term returns hold equal importance to short term returns, the more they will realize that CSR benefits both their image and their livelihood. The Corporates who are known for their attitude of giving back to the society have considered CSR as a moral obligation whilst others have continued to treat CSR as a legal obligation.

Legal Obligations on CSR - Globally

United States – Companies voluntarily disclose performance and policies in this area. The Board of Directors ("**Board**") of companies set high standards for CSR and oversee how ESG related matters, corporate purpose and consideration relating to stakeholders and sustainability matters are incorporate into corporate strategy, operations, risk oversight and reporting.

European Union ("EU") –CSR in EU is also known as 'Responsible Business Conduct' ("**RBC**"). The EU has a smart mix of voluntary and mandatory actions to promote CSR/RBC, implement the UN guiding principles on business and human rights (**UNGP**) and the UN 2030 agenda for sustainable development. In the European union, the importance of CSR reporting is increasing as from the year 2017 CSR became mandatory for the larger companies according to the requirements of the European directives.



Japan – Japanese laws do not mandate disclosures on CSR/ESG related matters. However, many listed companies consider CSR/ESG to be important and voluntary disclose their efforts by publishing relevant reports in accordance with the principles of Japan's Corporate Governance Code.

Denmark – The Danish financial statement act mandates that companies of a certain size must disclose their CSR practices in an annual report or disclose if they do not have a CSR policy.

Legal Obligations on CSR - India

W.e.f. April 1, 2014; , the newly introduced CA 2013 mandated companies to comply with CSR norms. –

(a) Applicability

The CSR provisions under the CA 2013 apply to every company having a:

- (i) Net worth of INR 500 (Five hundred) crores or more or
- (ii) Turnover of INR 1000 (One thousand) crores or more or
- (iii) Net profit of INR 5 (Five) crores or more during the immediately preceding Financial Year ("FY")

Such companies would be required to constitute a CSR Committee ("Committee") consisting of 3 (three) or more directors, out of which atleast 1 (one) shall be independent. For companies not required to appoint independent directors, the CSR Committee shall consist of 2 (two) or more directors. However, where the

amount to be spent by the company does not exceed INR 50 Lakh, the CSR committee would not be required to be constituted and the functions can be discharged by the company's Board.

Responsibilities of the Committee

- (i) Formulate and recommend to the Board, a CSR policy indicating activities to be undertaken by the Company;
- (ii) Recommend the amount of expenditure to be incurred on CSR activities;
- (iii) Monitor the company's CSR policy on a timely basis.

Responsibilities of the Board

- (i) After taking into account the Committee's recommendations, approve the CSR policy;
- (ii) Ensure implementation of the CSR policy
- (iii) Ensure that the company spends at least 2% (two percent) of its average net profits made during the immediately preceding 3 (three) FYs.

(b) Monies provisioned -for CSR but not spent ?

If a company - obligated under the law to incur CSR expenditure fails to spend the requisite amount, the Board shall specify reasons for not spending in its report and transfer the amounts as follows:

Type of Project	Account to transfer the unspent CSR amounts	Timeline for transfer of unspent CSR amounts
On-going project	Special account to be opened by the company in any scheduled bank called the 'Unspent CSR Account'	Within 30 (thirty) days from the end of the FY
Other than On-going project	Fund specified in Schedule VII, CA 2013	Within 6 (six) months of expiry of the FY



However, where a company spends an amount in excess of - requirements, such excess amount may be set off against the requirement to spend up to immediate succeeding 3 (three) FYs, subject to certain conditions.

(c) Permissible CSR Activities in India

- (i) Schedule VII of the CA 2013 enlists CSR activities, which may be undertaken by companies and include the following: Activities towards abolishing poverty, malnourishment, and hunger, promoting health care which includes preventive health care and sanitation and making available safe drinking water.
- (ii) Promoting -education including special education and employment strengthening vocation skills among women, children, elderly, differently abled etc.,
- (iii) Promoting gender equality, women empowerment, setting up homes and hostels for women and orphans, etc.;
- (iv) Measures for reducing inequalities faced by socially and economically backward groups;
- (v) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare etc.;
- (vi) Activities towards protection of national heritage, art, and culture;
- (vii) Activities towards training to stimulate rural sports, nationally recognized sports, Paralympic sports, Olympic sports; .
- (viii) Contribution to - incubators/ research and development projects in science, technology, medicine, engineering funded by the -Central Government ("CG")/ State Government ("SG") and

contribution to public funded universities, Indian Institute of Technology, Indian Council of Medical Research, Department of Pharmaceuticals, Ministry of Electronics and Information Technology etc.;

- (ix) Rural development projects.
- (x) Disaster management, including relief, rehabilitation, and reconstruction activities.
- (xi) Activities towards slum area development.

(d) Manner of CSR Implementation:

Rule 4(1) of the CSR Rules 2021 prescribes the manner of CSR implementation. The Board shall ensure that CSR activities are undertaken by the company either by itself or through:

- (i) a company established under section 8 of the CA 2013, or a registered public trust or a society registered under section 12A and 80-G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
- (ii) a company established under section 8 of the CA 2013 or a registered trust or a registered society, established by the CG or SG; or
- (iii) any entity established under an Act of Parliament or a State legislature; or
- (iv) a company established under section 8 of the CA 2013, or a registered public trust or a society registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least 3 (three) years in undertaking similar activities.



Many companies have been fulfilling their CSR obligations in various fields as permitted by the law as per their preferences. Below are examples of CSR initiatives undertaken by companies in India:-

- *Infosys -Foundation-* the CSR arm of Infosys Limited spent nearly about INR 360 crores towards CSR related activities during the Covid-19 pandemic.
- The *TATA Group* spends on community development projects, improving the quality of life and fostering sustainable and integrated development in the communities.
- *Larsen & Toubro Ltd* contributes by empowering communities and accelerating development in the core areas of water, sanitation, health care etc.

In what ways companies have been practicing CSR globally?

Corporates all over the world practicing CSR in one or the other way in order to gain reputation and fulfill the customer expectations. List of topmost companies all over the world practicing CSR in the following manner:

- *Lego Group* has been one of the topmost reputable companies as it adds value to the company image by providing education and societal contributions.
- *Microsoft* pursue CSR activities by protecting fundamental rights of people, from defending democracy, to protecting human rights.
- *General Mills* becomes first US consumer packaged goods company to enter into a sustainability linked revolving credit facility which now includes a pricing structure that is tied to environmental impact metrics.

COVID-19 related CSR measures:

Several measures were introduced by the Government to contain the spread of COVID-19 as follows:

- (i) Schedule VII was amended to include contribution to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) as permissible CSR expenditure;
- (ii) While activities undertaken by companies in the normal course of business are excluded as permissible CSR activity, currently companies engaged in R&D activities for new vaccines, drugs, medical devices in their normal course with permissible organizations (under Schedule VII) until FY 2022-23 are exempt from the aforesaid restriction.

Tax impact on CSR?

Direct Tax Impact

Can corporates claim tax deduction?

CSR expenditure of the nature prescribed under section 30 to section 36 of the Income Tax Act, 1961 are allowed as deduction, subject to fulfillment of conditions. Further, where any expenditure is incurred wholly and exclusively for the purposes of carrying on business or profession, which is not mentioned specifically in sections 30-36; deduction shall be allowed.

In the case of *Hon'ble Apex Court CIT vs. Madras Refineries Ltd* while hearing the allowability of CSR expenses observed that neither the High court nor the Tribunal concerned had given specific finding to the effect of CSR expenditure. The Hon'ble Apex Court, had only given an observation that the said CSR expenditure shall be allowed as deduction.



Indirect tax impact

Goods and Service Tax ("**GST**") is chargeable on any transaction considered as 'supply', as per GST laws. For example- a company would have to pay GST for procuring masks, which would be distributed to the public as CSR activity. Whether Input Tax Credit ("**ITC**") would be available on procurement of these masks is a question for determination.

There is an ongoing debate as to whether expenses incurred by companies would be considered as 'incurred in furtherance of business' and whether ITC arising on that account would be available?

In this regard, there are two -school of thoughts:-

- (i) **ITC would not be available** as per Section 17(5) of the Central Goods and Service Tax Act, 2017 ("CGST Act"), on products distributed free of cost as CSR activity. Thus, the provisions of section 17(5) of the CGST Act would be invoked to deny ITC on goods distributed under the obligations of the CSR activities.

In the case of **Polycab Wires Pvt Ltd**, the applicant had distributed electrical goods to people affected by flood in Kerala against discharge of its CSR obligations. The Kerala AAR held that the applicant distributed electrical items on free basis without collecting any money and for these transactions

input tax credit would not be available as per Section 17(5)(h) of the KSGST Act and CGST Act.

- (ii) ITC is **available** on CSR activities because they are incurred in the course or furtherance of business. CSR activities are mandatory as per CA 2013. Further, it enhances the company's reputation, thereby creating goodwill.

Legal precedent

As per AAR of **M/S Dwarikesh Sugar Industries Limited** it is observed that the applicant is compulsorily required to undertake CSR activities in order to run its business and accordingly it becomes part of business process. Therefore, the said CSR activities are to be treated as incurred in the course of business.

In the case of M/S **Essel propack Ltd vs. Commissioner of CGST** held that CSR activities are an essential part of business process and therefore to be treated as incurred in the course or furtherance of business.

Challenges in executing CSR activities?

- Shift from '*Comply or explain approach*' to mandatory compliance. Companies view it as a mere compliance obligation, rather than a societal development activity.





Operationalization of the Information Technology Rules, 2021



CA Priyanshi Chokshi

I] Introduction

The Government of India under the powers conferred to it by sections 69A(2), 79(2)(c) and 87 of the Information Technology Act, 2001 [hereinafter referred to as the 'IT Act'] and with an aim to supersede the erstwhile Information Technology (Intermediary Guidelines) Rules 2011, enacted a new set of Rules viz. ***The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*** [hereinafter referred to as the '**IT Rules 2021**'].

India is a country with a massive population of social media users. According to the information released by The Press Information Bureau, in India there are approximately 530 Million users of WhatsApp, 448 Million users of YouTube, 410 Million and 210 Million users of Facebook and Instagram respectively¹. Today, Social Media has not just been a mode of entertainment but it has progressed into a realm for trade and commerce activities as well. Not only has it endorsed the basic criteria of transmission of information but it has also harbored a safe space for people to freely express empower views as well as opinions. The Rules include guidelines that are meant to authorize the users of social and digital media, Over The Top ['OTT'] media streaming platforms and online news sites, by holding those companies accountable

for the content that is being circulated on their platforms. This article contains an exhaustive analysis on the IT Rules, 2021, with a special focus on Rule 4(2) of the Rules providing for tracing the *first originator of a particular message*.

In the recent decade, our country has been exposed to an increase in the use of social media. As a result, many people have misused social media and we have witnessed a tremendous growth in cybercrimes in the form of - spreading fake information, transmitting arbitrarily edited photographs and videos of women in order to antagonize, browbeat, and threaten; disrespecting religious beliefs or sentiments by transmitting abusive, defamatory remarks in order to spread violence and disharmony; criminals perpetrating financial frauds and provoking people towards becoming terrorists. Thus, necessitating the introduction of a stringent set of Rules providing for detailed guidelines on the use of social media and repercussions on its misuse.

II] Relevant Provisions

Rule 2(v): *Significant social media intermediary ['SSMI'] means a social media intermediary ['SMI'] having number of registered users in India above such threshold as notified by the Central Government.*

1. The press Information Bureau Report



Rule 4(2): *A significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order passed by a court of competent jurisdiction or an order passed under section 69 by the Competent Authority as per the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009, which shall be supported with a copy of such information in electronic form.*

Thus, significant social media intermediaries providing services, primarily messaging services, will have to enable the identification of the first originator of problematic content that may harm the country's interests and several other provisions described in the Rules.

III] Legality of Rule 4(2)

1. The Rule is Arbitrary And Excessive

i. Ultra Vires the IT Act

The prefatory text to the Intermediary Guidelines notes that the Guidelines are issued under the powers granted to the Union Government by Sections 87(2)(z) and 87(2)(zg) of the IT Act. The former grants the Union Government power to frame web-site blocking rules and the latter grants power to frame rules to regulate the immunity granted to intermediaries. In short, neither of the sub-clauses relate to monitoring or tracing content on computer networks. There is nothing in Section 87, 79 of the IT Act to suggest that the legislature intended to empower the Government to monitor or trace content, mandate changes to the technical architecture of services, or undermine user privacy.

While it may be argued that Rule 4(2) forms legitimate regulation of intermediary immunity, but this is belied by the fact that the IT Act itself grants the government the power to monitor and decrypt content in a separate and independent provision, namely Section 69 of the IT Act.

It has been held by the Supreme Court in *State of Karnataka and Another v. Ganesh Kamath & Ors*² that: *It is a well settled principle of interpretation of statutes that conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.*

Further, referring to the judgment of the Hon'ble Supreme Court in the case of *Vasantlal Maganbhai v. State of Bombay*³ wherein it was held that: *The statute to be challenged on ground of excessive delegation must be subjected to two-pronged test - Whether it delegates essential legislative function; and whether the legislature has enunciated its policy and principle for the guidance of the executive. An act of invasion of user's privacy is impermissible delegation as it constitutes essential legislative function. In the context of Rule 4(2), the Parliament has not provided any guidance on traceability and automated filtering, therefore, making the impugned rules a case of excessive delegation.*

Thus, the executive through subordinate legislation can only make rules that are consistent with the parent act and with the legislative policy enunciated by the central government. There exists no legal structure to guarantee or even scrutinise an incompetent or *mala fide* claim by an investigative agency or the authorities. Hence, the IT Rules, 2021 have imposed additional requirements and widened the ambit of requirements to be fulfilled by

2. 1983 SCR (2) 665

3. AIR 1961 SC 4



the intermediary, thus making the Rules excessive and arbitrary.

ii. User Threshold

The Rules grant arbitrary powers to the Central Government to determine the user threshold for classification as a significant social media intermediary, with respect to applicability of such Rules. However, there is no benchmark for determining the user threshold and how it would be calculated. Such a threshold ought to essentially be in proportion to the users of social media in entirety in the country. It has been held by the Supreme Court in the case of *Deepak Sibal v. Punjab University*⁴, *if the classification is illogical, unfair and unjust, then the same is unreasonable*.

At this point, I would like to draw a comparison between the IT Rules and the Network Enforcement Act, 2017 ('NetzDG') (also called the 'Facebook Act') introduced in Germany, which is supposed to be applicable to intermediaries with 2 million registered users. The NetzDG faced a similar issue of ambiguity in determination of user threshold, during the course of implementation of the Act, since it had not clarified whether the user-count would be calculated on the basis of an active user-base, or an average-value calculated over time. In a similar vein, the current framework for the calculation of user thresholds for SSIMs operating in India is clouded in ambiguity.

Finally, we are also concerned with the specific details of the user threshold. The current threshold is set at 50 lakh that translates to 5 million registered users. In comparison, The NetzDG has 2 million as its threshold in a country where 88%

of the population (out of a total of 83.1 million) or 73 million people use the Internet. The threshold set by the German Government is, thus, 2.7% of the digital population. Whereas, in India, the Internet using population of approximately 776 million, the threshold is 5 million — which is less than 0.007% of the Indian digital population. Setting such a low threshold, therefore, might create additional hurdles for smaller social media intermediaries and in fact, disincentivize growth in smaller SMIs⁵.

Further, Rule 4(2) itself contains no threshold for virality and could in principle apply to any content that was shared more than once. If there is more than one originator, there is *de-facto* a *first originator*, thus arbitrarily widening the scope of application of the Rule.

iii. Vagueness and Ambiguity

Rule 4(2) of the IT Rules, provides for no clear guidelines or clearly defined criteria with respect to circumstances when the originator of a message can be traced or the methodology to be used to trace such a message without undermining another user's right to privacy. In such circumstances, it would be relevant to note that *when the words of a provision are vague or ambiguous, the provisions can be held to be unconstitutional and void*⁶.

It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its provisions are not clearly defined. Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so

4. (1989) 2 SCC 145

5. Centre for Internet and Society, On The Legality And Constitutionality Of The Information Technology (Intermediary Guidelines And Digital Media Ethics Code) Rules, 2021, (June 22, 2021), <https://www.medianama.com/2021/06/223-legality-constitutionality-of-it-rules/>

6. *Shreya Singhal v. Union of India*, (2015) 5 SCC



that he may act accordingly. Vague laws may trap the innocent by not providing a fair warning⁷.

Thus, the IT Rules are arbitrary, being vague and ambiguous, with ample scope for discretion in application in the hands of the authorities.

2. Violates Fundamental Rights

i. Right to Privacy

Rule 4(2) requires providers of these services to *identify the first originator* of the messages. Irrespective of the technical implementation chosen, allowing for the tracing of online communications is a violation of the fundamental right to privacy, which includes the right to anonymity and protection of identity⁸. Thus, the rule is unconstitutional for it moves companies from privacy-respecting technologies, goes contrary to data minimisation principles, and undermines privacy for all while being easily circumventable by motivated actors.

Reliance is placed on the landmark decision of the Supreme Court in **Puttaswamy**⁹ which has upheld the right to privacy. The Court articulated a vision of privacy grounded in individual autonomy that enabled the enjoyment of other rights guaranteed by the Constitution, most notably the right to freely and privately hold and express opinions. In other words, privacy forms a necessary foundation to the enjoyment of the rights and privileges guaranteed by the Constitution and must be preserved except in cases where **Legality, Necessity and Proportionality**, are all weighed against it. The same has

been described in the context of Rule 4(2) as under:

- a) **Legality:** As already noted, nothing in the IT Act envisions a state power to infringe upon privacy. The Act as a whole does not empower the Government to mandate technical changes to platforms.
- b) **Necessity and Suitability:** Traceability is only necessary when a message goes viral i.e. it has been forwarded too many times for existing metadata-based investigations to be viable. Considering the ease with which motivated individuals can circumvent all traceability proposals, the limited scenarios in which the Rule may be potentially useful, casts serious doubt on its suitability. Additionally, it is unclear how tracing the first originator assists the State in achieving its aims. We cannot assume that the first originator created the content especially when there is cross-posting.

For instance, a twitter user could create and upload a video that is subsequently downloaded and shared on WhatsApp – the first originator is not the creator. Rule 4(2) itself rejects the creation rationale by acknowledging that content may be created outside India but sent to India – creating a ‘first receiver’ of sorts. Now if we were to argue that this ‘first receiver’ is facilitating the spread of the illegal content in India, how do we justify overlooking other originators for domestically sourced content? Another instance being, if I

7. *Kartar Singh v. State of Punjab* (1994) 3 SCC 569

8. *Supreme Court v. Subhash Chandra Agrawal*, (2020) 5 SCC 481

9. *Justice K.S. Puttaswamy v. Union Of India And Ors.*, Writ Petition (Civil) No 494 Of 2012



send “illegal” content to user X, who forwards it to a group with several thousand users facilitating the spread of illegal content, the question that arises is whom should the law be more focused on identifying, and how should liability be apportioned between user X and me?

Another major issue is that there is a distinction between proving that content first originated from a particular device or user profile and proving that the person who owns the device sent the content. The possibilities for manipulation are endless.

The Rule ignores distributors, and aims to prosecute creators. The real question being, *Are first originators really the first?*

- c) **Proportionality:** Any infringement on a citizen’s right to communicate privately must therefore satisfy the test of proportionality: (1) the infringing measure must pursue a legitimate state aim; (2) the measure must substantially further the state aim; (3) the measure must be the least restrictive option amongst equally effective alternatives; and (4) the measure must not have a disproportionate impact on rights holders¹⁰.

The test of proportionality in the given context, seeks to determine the legality of compromising the privacy (and consequently freedom of expression and freedom of assembly) of many, in an attempt to catch a few bad individuals who can circumvent the technical measures enacted to catch them. As per the Rules, every communication will have to be traced

including those who are using the service lawfully, as there is no way to predict which message will be the subject of such an order seeking first originator information. Thus, the identification of first originators requires weakening the privacy of millions of Indian users to ineptly trace a few potentially bad actors; actors that we are unclear whether we should, or how we will, ultimately hold guilty.

The said Rule is clearly disproportionate against invading a law-abiding person’s privacy in order to investigate another’s misconduct, in light of the Hon’ble Supreme Court’s warning in *Ram Jethmalani v. Union of India*,¹¹ where it was held that fundamental rights cannot be sacrificed on the anvil of fervid desire to find instantaneous solutions to systemic problems.

The Rule is also contrary to the Hon’ble Supreme Court’s precedent in *Gobind v. State of M.P.*,¹² wherein it was held that surveillance must be targeted and limited only to those persons, whether or not previously convicted, whose conduct shows a determination to lead a life of crime.

Further, the harm is particularly dangerous and disproportionate as the Impugned Rule does not impose a time limit, allowing the Authorities to be able to identify the first originator of information in India on its platform years after the message was sent.

The State ought to demonstrate that tracing the first originator is the least intrusive method of achieving its aim among effective alternatives, leaving the Government with a high burden to demonstrate that Rule 4(2) achieves something other measures simply cannot.

10. Ibid

11. (2011) 8 SCC 1

12. (1975) 2 SCC 148



ii. Freedom of Speech and Expression

Privacy is inextricably intertwined with the right to freedom of speech and expression because it protects people from retaliation for expressing unpopular, but lawful, views. It encourages users to express their ideas and opinions, report unlawful activities, and challenge popular views without fear of reprisal, whereas enabling the identification of the first originator of information in India subverts privacy and discourages freedom of expression. Citizens will not speak freely for fear that their private communications will be traced and used against them.

Messaging platforms facilitate public discourse and allow citizens to shape public opinion, perhaps best demonstrated by the high levels of political content on these platforms. Anonymity and security thus form crucial barriers against speech being chilled. These platforms also allow individuals to share constitutionally protected but socially stigmatised views, ensuring individual autonomy and dignity.

Imposing a requirement to enable the identification of the first originator of information in India would undermine:

- (i) Journalists could be at risk of retaliation for investigating issues that may be unpopular;
- (ii) Civil or political activists could be at risk of retaliation for discussing certain rights and criticizing or advocating for politicians or policies; and
- (iii) Clients and attorneys could become reluctant to share confidential information for fear that the privacy and security of their communications is no longer ensured.

It would be opportune to quote the former United Nations Human Rights Council Special Rapporteur who noted that, *Being protected from the public gaze may allow citizens to discover and share ideas they may otherwise be persecuted for. The ability to search the web, develop ideas and communicate securely may be the only way in which many can explore basic aspects of identity, such as one's gender, religion, ethnicity, national origin or sexuality*¹³.

In this case it is relevant to note that under the Criminal Procedure Code the Government already requests platforms to provide users' phone numbers, names, device information, and other related data. The Government also has other legal powers such as wiretapping, geo-location, and physical surveillance of suspects. Further, the Government can also use human intelligence to infiltrate and track users on messaging platforms, as reporters have done to investigate the organised spread of misinformation. In summary, the Government has a host of alternative investigative tools to trace data especially in case of illegal activities, while citizens rely almost exclusively on encryption to protect their communications.

Thus, the Rules are violative of a citizen's right to freedom of speech and expression, and not a permissible derogation.

Reference can be made to the stringent European General Data Protection Regulation ['GDPR']. The GDPR is so strict that social media intermediaries, like WhatsApp, are legally bound to protect user privacy and not share information as it is in contravention with the law. GDPR serves as an inspiration to various other countries' data protection legal systems.

13. Vasudev Devdasan, Intermediary Guidelines And The Digital Public Sphere: Tracing First Originators, (April 10, 2021), <https://indconlawphil.wordpress.com/2021/04/10/intermediary-guidelines-and-the-digital-public-sphere-tracing-first-originators/>



Just like the GDPR, India should also take a step forward for ensuring the security of its citizens and protecting their basic fundamental rights.

IV] Conclusion

In a nutshell, to reiterate what the United Nations Special Rapporteur on Freedom Of Expression, Privacy and Right of the Peaceful Assembly said in a letter to the Indian Government that, *We express serious concern about the obligations on companies to monitor and rapidly remove user-generated content, which we fear is likely to undermine the right to freedom of expression. As emphasised by our predecessors, these techniques are unlikely to accurately evaluate cultural contexts and identify illegitimate content. The recently notified IT Rules 2021 do not appear to meet the requirements of international law and standards related to the rights to privacy and to freedom of opinion and expression*¹⁴.

The Rules need further scrutiny, for various organizations are objecting to them as anti-democratic and taking away digital

rights. The Rules ought to play a significant role in the development of a social media control mechanism in the coming days, as will the enforcement action taken against violations of IT Rules 2021, which will determine the amount of social media misuse in India in the future.

Given the importance of encrypted messaging to the autonomy and dignity of citizens, and its centrality to shaping public discourse in India, any restrictions must be strictly scrutinised from the lense of the rule of law and imbalances that exist between citizens and the State that ought to be equalised.

In a democratic system, regulation plays a vital role. However, in a society where people are sensitive to content, a regulatory framework that allows for substantial government interference could become a complete challenge, stifling creativity and freedom of speech¹⁵.

The operationalization of Rule 4(2) will eventually have a substantial bearing on its legality.

14. Neha Alawadhi, UN Special Rapporteurs Write To Govt Against IT Rules, Ask For Review, (June 19, 2021), https://www.business-standard.com/article/economy-policy/un-special-rapporteurs-write-to-govt-against-it-rules-ask-for-review-121061801338_1.html

15. *Internet Freedom Foundation vs. Union of India*.



Report on Boot Camp on Valuation

The Student Committee of the Chamber of Tax Consultants successfully organized the 'Bootcamp on Valuation' on 18th, 19th, 25th and 26th of June 2021.

A Boot camp on valuation was a first step designed by the Students Committee to gain the essential valuation tools under the Armor of professionals. The course, spread over 4 sessions on 4 days, gave participants an overview of various valuation methods with practical examples and problems.

The event received 52 registrations and was a free program for all the Student Members of the Chamber for the year 2021-22.

A summary of structure of the Program is provided below:

Sr. No.	Date	Topic	Speaker
1	18th June 2021	Valuation Overview <ul style="list-style-type: none">- Valuation requirements under various Indian statutes- Valuation Approaches and Methods- Overview of ICAI Valuation Standards	CA Sujal Shah
2	19th June 2021	Market and Cost Approach of Valuation <ul style="list-style-type: none">- Comparable Companies Multiple (CCM) Method- Comparable Transaction Multiple (CTM) Method- Market Price (MP) Method- Assets based value Method- Other methods of valuation- Practical Problems	CA Bhavik Shah
3	25th June 2021	Demystifying Discounted Cash Flow (DCF) Method under Income Approach with Practical Problems	CA Vitang Shah
4	26th June 2021	Valuation of Intangible Assets with Practical Problems	CA Aseem Mankodi



The entire event was very well received and thoroughly appreciated by the participants.



CA Sujal Shah, CA Vitang Shah, Varsha Galvankar,
CA Ankit Sanghavi



CA Bhavik Shah,
CA Vitang Shah,
CA Charmi A. Shah



CA Vitang Shah, CA Charmi G. Shah,
Varsha Galvankar, CA Charmi A. Shah

CA Aseem Mankodi

Agenda

Purpose	<ul style="list-style-type: none"> To understand nature and classification of intangibles Related identification of intangibles and the need for valuation of intangibles How to value intangibles
Duration	<ul style="list-style-type: none"> 3 hours (including time for questions, if any)
Takeaway	<ul style="list-style-type: none"> Tangible working knowledge on how to value intangibles

CA Aseem Mankodi

2021) A Boot camp on valuation- CA Aseem Mankodi

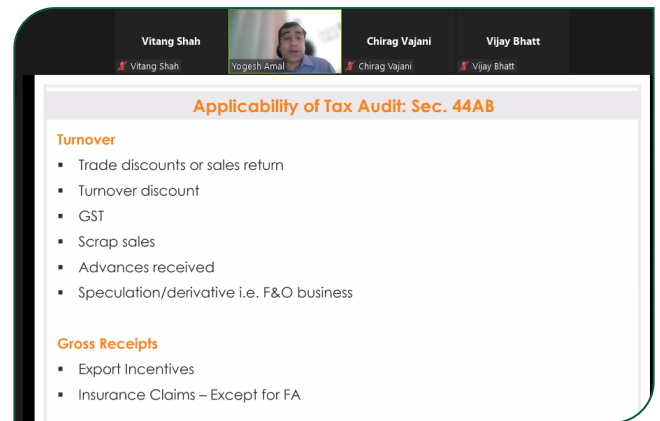


Glimpses of Past Events

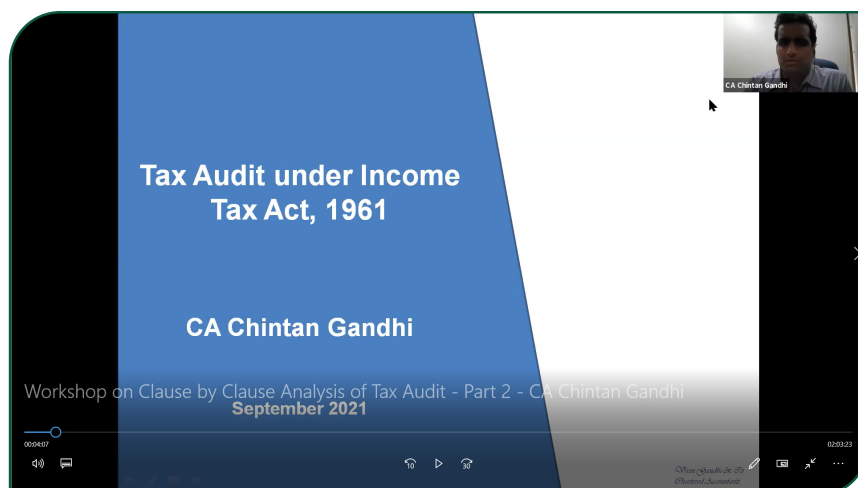
Clause by Clause Analysis - Tax Audit



CA Chirag Vajani, CA Yogesh Amal,
CA Vitang Shah & CA Vijay Bhatt

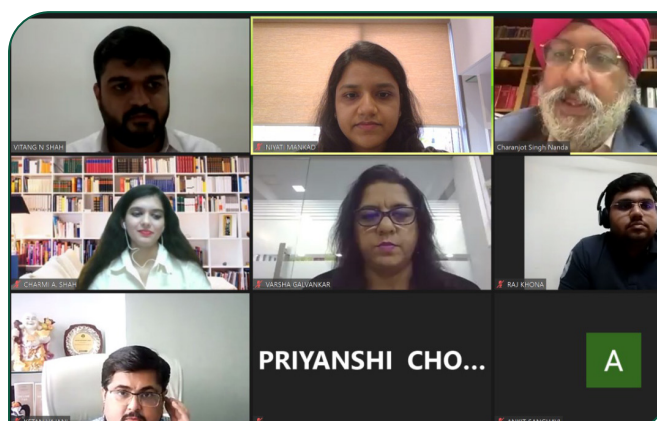


CA Yogesh Amal



CA Chintan Gandhi

Udaan



CA Vitang Shah, CA Charmi A. Shah, CA Ketan Vajani, CA Niyati Mankad,
Varsha Galvankar, CA Charanjot Singh Nanda, CA Raj Khona



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.



THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor,
31, New Marine Lines, Mumbai – 400 020
TEL. : 2200 1787/2209 0423/2200 2455
E-mail: office@ctconline.org
Website : <http://www.ctconline.org>

Delhi Chapter :

C/o.: 1A-1D Vandana Building,
11 Tolstoy Marg, New Delhi-100 001.
Tel. : 011-4710 2200 | M. 9891677316
E-mail: ctc.delhichapter@gmail.com