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Your Quarterly Companion on Tax & Allied Topics



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### THE CHAMBER OF TAX CONSULTANTS

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#### READER'S SUGGESTIONS AND VIEWS

We invite the suggestions and views from readers for improvement of *Jignyasa*. Kindly send your suggestions to <a href="mailto:office@ctconline.org">office@ctconline.org</a>

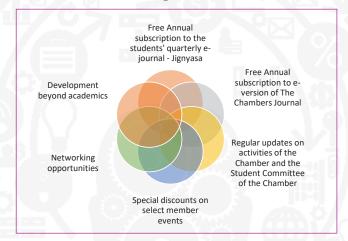


### Become a Student Member of The Chamber of Tax Consultants

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: <a href="https://rb.gy/rw3xde">https://rb.gy/rw3xde</a>

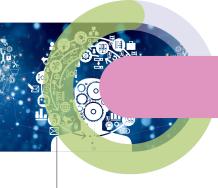
You can also get in touch with the Chamber's office at:

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

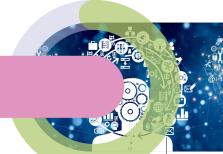
### What is the selection process of the article for publishing?

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?

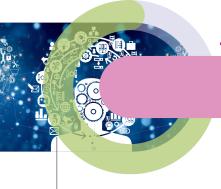
The student is advised to approach a member of the Chamber to be his/her mentor for the article. If the interested student cannot find a mentor, the committee shall help him/her approach the members.

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.



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### 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 <a href="majority-off-off-new-college-name">office@ctconline.org</a> 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



My Fellow Students,

"People do not care how much you know until they know how much you care"

- John C Maxwell

This one sentence brings out the essence of a student who will go on to become a very good professional. If one reads this carefully, one will see tat there are two parts to success, one is knowledge which we all try to gather, keep searching for and, store in our brains, throughout our career as students and then as professionals. The other is a very important part of our being, empathy, the emotion that makes us care. And it is quite true that when people come into contact with you, the first thing that they want to know is how much you care, not how much you know. The knowledge comes second, and of course, it is equally important to succeed as a professional but what gets you noticed, at first, is your empathy, your demeanour towards others, and how genuinely interested you are in their wellbeing. It is true of every person we interact with, be it family members, friends, work colleagues, seniors, juniors, and even clients. If the other person believes, you genuinely care for him/her and you cross that threshold, then your knowledge and subject matter expertise are evaluated. And once you give comfort to the other per, that you will apply what you know in his/her best interest, that person will stand shoulder to shoulder with you for life.

I write this out of personal experience as I cross another milestone in my career. I will shortly demit office as the President of the Chamber in a year that has been different. The difference has at times been disturbing and at times, disconcerting even, given what the world has gone through in the past year and a quarter, with not very bright hopes on the immediate horizon. But, it has been a very fulfilling and a fascinating journey for me, where I got an opportunity to put into practice what I had read about carrying people along.

Speaking of carrying people along, the Student Committee is one committee that has been splendid in doing this. The kind of initiatives taken, the kind of programmes conducted, both in their variety and quality, this journal 'Jignyasa' and so many other initiatives, have shown that where there is heart put into work without any attachment to the results, creates magic and I believe that this committee has done that this year. I must compliment each and every member of the student committee, each participant of the events, and each and every contributor and indeed, each and every reader of 'Jignyasa' for their invaluable contribution in adding to the goodwill of the 95 year young Chamber. I have deliberately not mentioned names here as I believe that each one whom I have spoken of above, has played a stellar role in the success of the student committee in the year to end shortly.



Despite having a rich blend of youth and experience however, in my view, there is opportunity for us to do a lot more in 'catching people young. The joy one gets when knowledge is shared and the feeling that the sharer gets when he/she realises that in the process he/she has ended up also being a recipient of knowledge is as close to bliss as it can be and I therefore invite all of you, all who read this message, to come and experience this by becoming members of the Chamber and as a next step, get involved in its activities. It does not matter where you are involved. It does not matter how many hours you put in. It matters how much you receive and how unreservedly you receive. If you give yourself unselfishly to the cause of excellence (which as I mentioned earlier is equal to empathy plus education), you will realise that what you receive is priceless and long lasting in terms of the adulation, love and respect of your fellow beings.

I would like to end with a favourite poem of mine by Leigh Hunt, which has stuck with me since my school days, when I first read it:

"Abou Ben Adhem (may his tribe increase!)
Awoke one night from a deep dream of peace,
And saw, within the moonlight in his room,
Making it rich, and like a lily in bloom,

An angel writing in a book of gold:-

Exceeding peace had made Ben Adhem bold,
And to the presence in the room he said,
"What writest thou?"—The vision raised its head,
And with a look made of all sweet accord,
Answered, "The names of those who love the Lord."
"And is mine one?" said Abou. "Nay, not so,"
Replied the angel. Abou spoke more low,
But cheerly still; and said, "I pray thee, then,
Write me as one that loves his fellow men."

The angel wrote, and vanished. The next night It came again with a great wakening light, And showed the names whom love of God had blest, And lo! Ben Adhem's name led all the rest.'

I hope that apart from the dubious distinction of being the first (and hopefully the only) 'Virtual' President of the Chamber, I would be remembered as one who always done his best for the Chamber and for all of you.

Take Care. Stay Safe and God Bless You.

Yours sincerely

**Anish Thacker** 

President



### Chairperson's Message

#### My Dear Students

My best wishes to all the students appearing for the CA examinations starting from 5th July, 2021. As I write this concluding message as the Chairperson of the Student Committee of The Chamber of Tax

Consultants in Jignyasa; I flash back to July 2020 when the first issue of Jignyasa was released. I must congratulate the whole committee who have executed the whole idea of this journal and are untiringly working for improving the contents and scope of this journal for the benefits of students.

I am thankful to all the students who have contributed their articles, to the mentors of these students and the reviewers of all the article published in the issues of this journal during whole of the last year. I invite many more students to come forward to contribute articles and take benefit of this learning opportunity under the guidance of seniors in the profession.

As a part of my Chairperson's message I always aimed at writing on some good attributes and principals which I feel all of us should try to imbibe. I have already written about a few attributes such as Gratitude, Courage, Positive Approach and Art of Unconditional Giving in my previous messages.

This is my concluding message as the Chairperson but I have far more lessons to share that I have learnt from my seniors and teachers during my life's journey so far. I shall briefly cover some of these very important principles. Lastly, I shall also share with you my own philosophy for a very happy and simple living. Hope you all find them useful.

#### Learning 1

### If you want to be happy in life stay away from two As: Apeksha (अपेक्षा) - Expectation and Aham (अहम) - Ego

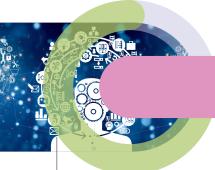
I strongly believe that to maintain purity of the good deeds that one does for self, family, team or community, one must stay away from these two traits, Expectation and Ego. Especially when you work in a team for some common good, staying away from these traits makes life very easy for all and the effects spread very fast to the entire team, so that each one gives their best and the result is very positive and divine. Believe me this has a very contagious effect as one person contributes without expectation and ego it inspires all to reflect and reciprocate the said gestures in the same fashion and tremendous collective positivity in generated towards achievement of the common goal.

#### Learning 2

### Never ever be a party or even an observer to any type of injustice to anyone

Mahabharata has taught us that being party to or being a silent observer to any wrong doing is a sin. One should develop courage to speak up against any wrong if one does not agree to it. Having no view is the most coward behavior and more than that to have the view and not express it in the fear of the consequences is worst. Stay away from such behavior always.

Swami Vivekanand in his book *Thus Spake Vivekananda* said "sincerity of conviction and purity of motive will surely gain the day and even a small minority, armed with this is surely destined to prevail again all odds. Truth, purity and unselfishness – wherever these



are present, there is no power below or above the sun to crush the possessor thereof. Equipped with these an individual is able to face the whole world in opposition". So always try to be on the right side of the path in life.

### Learning 3

## While practicing any legal provisions always respect the spirit of the Law and do not take undue advantage of any ambitious drafting of the provisions

I have learnt this from my Guru's in the profession who have taught me to interpret the Law in the spirit and not to take benefits of the loophole to achieve any undue benefit. Friends, this principal is very important to create your respectful image in the eyes of the regulators of the law as well as your clients and follow it throughout your professional journey to achieve a respectful professional stature in life.

These are some of the lessons that I thought important to be shared. Friends I have always considered myself as a student in this long professional and also personal journey and keep learning from everyone who I meet during this journey be that my students, my teachers, consultants and even public figures around me and try to pick up the best out of them.

This takes me to one more lesson that I have learnt from a whatsapp forward which told a story of a fly and honey bee. The video said that the fly by its nature always gets attracted to dirt and filthy stuff whereas a honey bee travels long way or long hours only to find beautiful flowers to suck honey from. We have to keep our approach like honey bee. In life, we shall come across people and situations which offer both the ugly and the beautiful. We, however, must choose to notice and get attracted towards the best in any person or situation.

So choosing the best from people I have crossed paths with and situations I have encountered in life, I have created my own set of principles for a simple and happy living. These principles being:

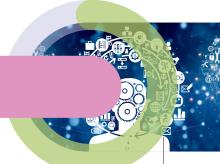
- 1. Life is the most beautiful gift value it the most.
- 2. In every difficult situation, quit asking "Why me?" and get on to "What can now be done to overcome the situation?"
- 3. Compassion the most beautiful feeling you can have for everyone around. Nurture it forever, Kindness never goes out of fashion.
- 4. Love The most powerful thing in the world which no technology can replace.
- 5. In the world of virtual contacts, never ignore your own family.
- 6. Keep respect for your parents at epitome and value them the most. Never compromise on time to be spent with them at any age or in any phase of life.
- 7. Respect Mother Nature Appreciate and respect various creations of god by spending some time with the nature. Care for other creatures on earth birds, animals, plants etc, in whatever small way you can.

Finally keep life simple and balanced, filled with nature – love – art – sports – family - food and friends without getting haunted by material success and achievements as the sole goal of life.

With this I sign off wishing all the very best to all my dear student friends.

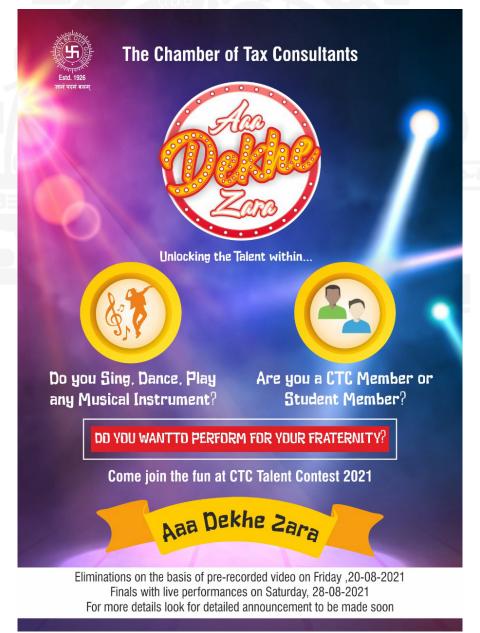
### Varsha Rajaram Galvankar

Chairperson Student Committee



### FORTHCOMING PROGRAMMES

Sr. No.	Date	Topics	Speaker	
1.	August 5, 2021	Udaan – A tete-a-tete with Stalwarts	CA Charanjot Singh Nanda	
2.	August, 2021	Workshop on filing of ITR	Eminent Professionals	
3.	September 1-2, 2021	Workshop on Clause-by-Clause Analysis of Tax Audit Report	CA Yogesh Amal & CA Chintan Gandhi	
4.	August 20 & 28, 2021	Aa Dekhe Zara – Talent Hunt		





# **Digital Transformation** (DX) Series-3





CA Alok Jajodia

CA Mayur Jain

Previous articles covered What is Digital Transformation, the difference between digital transformation and ERP implementation, digital transformation strategy and assess the readiness of digital transformations. This article covers the role of business process management in digital transformation.

# **Business process management** in Digital transformation

Previous articles have proved that digital transformation can revolutionize business. It can change the way one does business. But the worth of this new technology cannot be achieved until there is a corresponding improvement to the business processes.

When should the business process change start? This is a big debate in the ERP implementation or the digital transformation world. There are two schools of thought – some say that the new technology brings in the best practices and the same can be adopted as the business process. Others believe that it is not possible to effectively plan a transformation without the clarity of the new/revised business process.

In article 1 we had mentioned the difference between ERP implementation and Digital transformation, where we had specified:

	ERP Implementation	Digital Transformation		
Business Process Changes	and enhance existing business	Might involve new business models and ways of doing business; therefore, new processes are to be defined, process re-engineering and optimization can lead to quantum		

### What is a business process?

As per Wikipedia - A business process, business method or business function is a collection of related, structured activities or tasks by people or equipment in which a specific sequence produces a service or product for a particular customer or customers.

The various stakeholders in an organization, including suppliers, customers, employees communicate and exchange services through a business process. They use various technologies for this. If there is a change in the technology used, then it is bound that the way exchange happens will also change.

leaps in business.



### Digital transformation is driven by business processes and not technology

Should we let the software determine how the business process are going to look? OR should we ensure that the business processes are defined first and let them drive the software functions?

The new age ERP solutions or the digital transformation technologies are flexible and agile to handle various business processes. There are too many variations possible. Therefore, it is ideal to decide on the business processes well in advance as compared to finalizing it during implementation to avoid delays, costs, and risks. It is always better that the key decisions are taken and let these key decisions drive the digital transformation journey. Failing to define the future state processes well in advance and rushing it during the tight schedule of implementation and budget is an invitation to disaster.

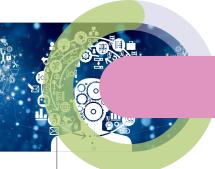
### Business process management should start before (not during or after) digital transformation

The processes definition should be started before the digital transformation activities. It should ideally be technology agnostic (independent of technological decisions). It is not necessary to have detailed process maps in place, but the high-level To-Be processes should be in place.

There are 3 major phases of the digital transformation viz.

 Software Selection: Evaluation of various options and selecting the technology. This is the best phase to also define the high-level To-Be processes. The greater the clarity of the outcome expected, the better is the choice of technology. But the reality is quite different. Organizations don't intend to spend time, money, and resources for the business processes on the assumption that the new technology will bring in the best practices and revised processes.

- blueprint, defining the workflows, and outlining the processes in more detail. This is the phase to define the detail level of To-Be processes. If the processes are not defined in the earlier phase, this phase will take additional time in brainstorming the revised processes. Most organizations define their high-level processes in this phase.
- Implementation: Designed blueprint is executed in the software. Processes are documented to the granular level in this phase. The level at which the processes are defined in the design phase determines the time that is required to make the granular process documentations. Further, if the processes are not defined at the detailed level in the design phase, the probability of those being changed during implementation is high. This will also, therefore, impact the overall project timelines, cost, and risks.



Define Identify Identify Identify Identify Map **Business** Pain Change and define benefits Processes Goals points **Impacts** Risks Identify Identify · Define areas of Quantify specific · Identify the Address business inefficiency business changes to risks and identified objectives Identify improvement respective define risks process map · Define core areas of stakeholder benefits mitigation · Align process expertise improvemen realization Process plans to the Define valuechange is the Define risk Include soft business add benefits Identify and tangible foundation management objectives areas of misfor change benefits plans strategy **Business Process Management** 

# Advantages to start business process management sooner

There are various advantages to start defining the future-state processes early. Some of the key advantages are mentioned below:

- A clear definition of the processes will help in the effective evaluation and selection process of the technology.
- The probability of 'pave the cow path' is very low in case of early start.
- Starting early will help and will have time to define significant improvements in the business processes, which will lead to efficient functioning.
- One of the main advantages of the early start is business improvement can begin immediately without waiting for the new technology. There are quite a few improvements which can be termed as 'low hanging' and those can be implemented immediately upon identification.

- A clear definition will lay a strong foundation for a change management plan.
- It would become easy to estimate the time and cost for the transformation activity

## How does one define business processes?

As the company decides to start the business processes well in advance, it is also necessary to finalise the time and cost to be devoted to the activity. On the assumption that both time and cost are not unlimited; it is important to prioritize the processes. The processes are generally divided into two categories –

Core Expertise: these processes are the differentiators. These are unique to the company and there cannot be any compromise on these processes. Some of the examples of these processes could be – customer-facing processes, employee experience processes, product or services-based processes, etc... It is not necessary to adopt best practices for these. These processes are to be optimized,



re-defined and improvised uniquely for getting the best output. These processes are always on the highest priority. These functions/processes are generally likely to be customized in the ERP/digital transformation activity.

2. **Generic Processes**: these are generic processes followed by all the organizations. These processes can be adopted as the best practice that the technology can bring in. Typically, these processes are embedded in software available in the marketplace. Examples of these could be General Ledger, the Purchase Order, Accounts payable, etc... These processes are important, but not to the extent of core expertise.

# What next - business process plan for change management

When the business processes are started early, it lays a strong foundation for the change management plan. The re-defined

business process also leads the way to identify the changes the organization has to go through, the changes in the roles of the employees, etc... This helps in assessing the change impact and plan the change management strategy.

To conclude, It is always better to start the business process workstream now than later. Even if the entire digital transformation does not happen, some re-defined improved processes can be implemented immediately. In case of the digital transformation journey, a clear vision and path forward is identified.

Moving forward in the future articles would cover the following topics:

- Role of Change Management in digital transformation
- Project and Quality Assurance [Program Management] of digital transformation
- Key challenges or reasons for the failure of digital transformation





### Time Limit for passing Arbitral Award







Mayuri Bhosle

Kajal Jaiswal

Adv. Niyati Mankad

In today's era, rapid development in commerce and industry has resulted in increase in commercial disputes. In order to avoid prolonged litigation and for speedy settlement of disputes, businesses are now resorting to Alternate Dispute Resolution Procedures, especially by way of arbitration. The enactment of Arbitration and Conciliation Act, 1996 ("the Act") manifested the emergence of new era in dispute resolution procedure in the post liberalization economy of the country.

This Act has undergone various amendments over the years. In this article, we are mainly concerned with the Amendments introduced by the Arbitration & Conciliation (Amendment) Act, 2015¹ ("Amendment Act, 2015") and the Arbitration and Conciliation (Amendment) Act, 2019 ("Amendment Act, 2019")².

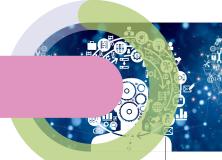
The Amendment Act, 2015 was introduced to make India a more arbitration-friendly jurisdiction. One of the major objects of the Amendment was to provide a quick procedure that prevents undue delays in dispute settlement procedures. While the 246th Commission did not recommend the insertion of Section 29A but it was based on the 176th Law Commission of India Report, 2002. The said report contained

provisions for imposition of time limits in passing awards, so as to minimize the delays before the arbitral tribunal. The 176th Law Commission Report proposed the insertion of Section 29A which granted the time limit of one year, after commencement of the arbitration, for passing the arbitral award. The report further permitted the parties to agree for an extension up to a maximum one year. Thereafter, if further time was required, the proceedings would stand suspended, until an application for extension of time is filed by any of the parties or by the arbitral tribunal before the court. Once such an application is filed, the suspension of arbitral proceedings was revoked. Based on the recommendations of the 176th Law Commission Report, Section 29A was incorporated in the Act to provide for a mandatory time limit on all India-seated arbitrations for rendering the award. <sup>3</sup>Another significant feature of the Amendment Act, 2015 was introduction of Section 29B whereby it allowed the parties to the arbitration proceedings to agree on a fast track procedure to dispose off the proceedings within 6 months and the same was recommended by the 246th Law Commission of India Report.

<sup>1.</sup> The said Amendment Act of 2015 came into force with effect from 23.10.2015

<sup>2.</sup> The said Amendment Act of 2019 came into force with effect from 09.08.2019

<sup>3.</sup> Indu Malhotra. Commentary on the Law of Arbitration. Wolters Kluwer, 2020.



The Amendment Act, 2019 has *inter alia* amended sub-section (1) of Section 29A and has excluded international commercial arbitration from the purview of the timelines provided in this section. A somewhat similar provision is contained in Section 50 of the UK's Arbitration Act, 1996, which states that in cases where the time for making an award is limited by or in pursuance of an arbitration agreement, then the Court may extend that time, upon an application being made by the tribunal or by parties and upon being satisfied that substantial injustice would be done otherwise.

### I. ANALYSIS OF SECTION 29A OF THE ACT

- 1. The arbitral tribunal shall make an award within a period of twelve months from the date of completion of pleadings under Sub-Section (4) of Section 23 of the Act<sup>4</sup>. Prior to the Amendment Act, 2019, the time limit provided for making award was twelve months from the date the arbitral tribunal entered upon the reference.
- 2. Section 23 of the Act provides for pleadings of the parties before the arbitral tribunal. After the arbitral tribunal has been established, the usual practice is to exchange and file their pleadings before the tribunal. The Claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements. The parties may submit with their statements all documents they consider to be relevant or may

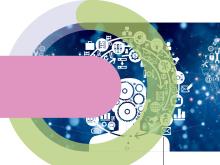
add a reference to the documents or other evidence they will submit. The respondent, in support of his case, may also submit a counter claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement. The statement of claim and defense under this Section 23 of the Act shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment. It is pertinent to note that the Act does not provide for consequences, if the pleadings are not completed within the said prescribed period of 6 months.

- 3. stated above, after the Amendment Act, 2019 this section 29A does not apply to international commercial arbitration and it merely provides that in case of international commercial arbitration, arbitral tribunal shall make an award as expeditiously as possible and an endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under subsection (4) of section 23.
- 4. If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.
- 5. Further, if proceedings are not completed and/or no award is made by the arbitral tribunal then the parties may, by consent, extend the

<sup>4.</sup> Amended vide The Arbitration and Conciliation (Amendment) Act, 2019.



- said period of 12 months for making award but not exceeding six months.
- If the award is not made within the period specified i.e. within the said period of 12 months or the extended period of 6 months (as extended by Parties by consent), then any Party to the Arbitration may apply to the court for further extension of the period. Various High Courts have interpreted as to which "Court" would have jurisdiction to decide Application under this Section. The High Court of Kerala in the case of M/s. URC Construction (Private) Ltd. vs. M/s. BEML Ltd.5, has held that in view of Section 2(1)(e) of the Act, in the case of domestic arbitrations, the application for extension of time under Section 29A would lie to the principal Civil Court, since the High Court of Kerala did not possess original civil jurisdiction. Rejecting this view of Kerala High Court, the Gujarat High Court in the case of Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel<sup>6</sup> has held that "Court" as used in Section 29A would mean that Court which would have jurisdiction to appoint arbitrator under Section 11 of the Act and that it cannot be understood as referred in Sec. 2(1)(e) of the Act and hence, in case of domestic arbitration, court would mean High Court. This view has further been reiterated by the Bombay High Court in the case of Cabra Instalaciones Y Servicios, S.A. vs. Maharashtra State Electricity Distribution Company Limited7, by Delhi High
- Court in the case of **DDA vs. M/s Tara Chand Sumit Construction Company**<sup>8</sup> and also by Calcutta High
  Court in the case of Amit Kumar
  Gupta vs. Dipak Prasad<sup>9</sup>.
- 7. If the parties fail to extend the period by consent or if such extended period of 6 months expires and the award is still not made then any Party to the Arbitration may apply to the Court under Section 29A(5), either prior to or after the expiry of the period so specified (i.e. 12 months or 18 months, as the case may be), for extension of the period. Other points pertaining to such Application made under Section 29A(5) are as under
  - i. The Court may grant such extension only for sufficient cause and only on such terms and conditions as may be imposed by the Court.
  - ii. while extending the period, if the Court finds that the proceedings have been delayed for the reasons attributed to the arbitral tribunal, then, it may order reduction of fees of the arbitrator(s) by not exceeding five percent, for each month of such delay. Moreover, the arbitrator shall be given an opportunity of being heard before the fees is reduced.
  - iii. Substitution/Replacement of Arbitrator: While extending the period, it shall be open to the Court to substitute one or all of
- 5. 2017 SCC Online Ker 20520, (2017) 4 KLT 1140
- 6. Misc. Civil Application (O.J.) No.1 of 2018 in Petition under Arbitration Act No.56 of 2016, decided on 14.09.2018
- 7. Reported in 2019 SCC Online Bom 1437
- 8. OMP (Misc.) (Comm.) 236/2019 decided on 12.05.2020
- 9. Order dated 3/02/2021 passed in A.P. 417 of 2020 (reported in



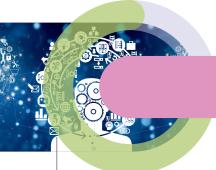
the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material. In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to in continuation of the previously constituted arbitral tribunal.

- iv. Moreover, it shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.
- v. Such application under Section 29A(5) shall be disposed of by the Court as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.
- vi. Second Proviso to Section 29A(4) introduced *vide* the Amendment Act, 2019 provides that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application. In the Authors opinion, such mandate shall continue provided the Application for extension under Section 29A(5) is made before the expiry of the 12 months or 18 months period, as the case may be. This proviso provides for continuation of mandate and not revival of

mandate which has already terminated.

# vii. The scope of or the extent of adjudication by the Court under this Section 29A(5): -

- The scope of or the extent of adjudication by the Court under this Section and also the interpretation of the term sufficient cause as used in Sub-Section (5) of Section 29A came to be interpreted by the Delhi High Court in the case of NCC Ltd. vs. Union of India Through: Director General, Married Accommodation Project & Anr. 10 wherein it held that Section 29A of the Arbitration Act is intended only to counter the delay in the conclusion of arbitration proceedings and cannot be sought to be utilized for the achievement of objectives that are alien to the said purpose. The relevant Paras of the said Order are reproduced hereinbelow: -
  - "11. Section 29A of the Act is intended to sensitize the parties as also the Arbitral Tribunal to aim for culmination of the arbitration proceedings expeditiously. It is with this legislative intent, Section 29A was introduced in the Act by way of the Arbitration Conciliation (Amendment) Act, 2015. This provision is not



intended for a party to seek substitution of an Arbitrator only because the party has apprehension about the conduct of the arbitration proceedings by the said Arbitrator. **The only** ground for removal of the Arbitrator under Section 29A of the Act can be the failure of the Arbitrator to proceed expeditiously in the adjudication process.

14. As far as the grievance the respondents that the conduct the arbitration proceedings are biased concerned, the same cannot be the subject matter of the present proceedings. The respondents have also filed an application under Section 13 of the Act before the Arbitrator, which is pending adjudication. This Court, therefore, refrains from making any observation on the said application. Even otherwise, in term of Section 13(4) of the Act, in case the said application is decided against the respondents, the remedy provided to the respondents would be to challenge the same alongwith the ultimate Award

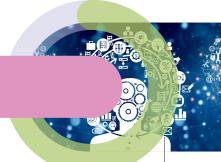
### passed by the Arbitrator."

 Similar view has been taken in the case of Orissa Concrete and Allied Industries Ltd. vs. Union of India & Anr. 11, wherein the High Court of Delhi, observed as under:

> "In my view, any issue with respect to the conduct of the Arbitration Proceedings, except the one relating to the expeditious disposal of the Arbitration Proceedings, cannot be raised by the respondent at this stage. These contentions can be raised by the respondent before the Arbitrator himself or in an application under Section 34 of the Act while challenging the award passed by the Arbitrator, if the respondent is aggrieved of the same. In exercise of power under Section 29A(5) of the Act, the Court is only to see if there is sufficient cause shown to extend the time for making of the award."

The aforesaid principle was further reiterated by the High Court of Delhi in Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India<sup>12</sup>. Similar view has also been taken by the High Court of Bombay in

<sup>11.</sup> Order dated 05.03.2018 in O.M.P. (MISC.) (COMM.) 10/2018 12. 2018 SCC OnLine Del 10184



FCA India Automobiles Ltd. vs. Pvt. **Toraue** Motor Cars Pvt. Ltd. & **Anr**. 13 wherein the High Court while granting the extension prayed for, refused to examine the validity and propriety of various orders by the arbitral passed tribunal relating to fixation of fees and rejection of the application for termination of mandate filed by the respondent therein under Sections 12 and 13 of the Arbitration Act, by holding the same to be beyond the scope of examination under Section 29A. Further, on a related note, the High Court of Gujarat in Nilesh Ramanbhai Patel & Ors. vs. Bhanubhai Ramanbhai Patel (supra) has pertinently observed that Section 29A of the Arbitration Act represents a complete code in itself.

- An examination of the aforesaid precedents would categorically demonstrate that the scope of adjudication in an application for extension under Section 29A pertains only to the aspect of delay.
- 8. If no application for extension is made by any of the Parties before the Court or if the Court rejects/ dismisses such Application for extension, then the **mandate of the arbitrator(s) shall terminate** and it would not be able to proceed further whatever the stage of the proceedings maybe.

9. Applicability of amended Section 29 (amended by Amendment Act, 2019) to arbitrations where reference to arbitral tribunal made prior to such amendment:-On this issue, two Orders have been made, both by the Single Judge Bench of the Delhi High Court. By order dated 23rd January, 2020 in the case of **Shapoorji Pallonji** and Co. Pvt. Ltd. vs. Jindal India Thermal Power Limited14, the Delhi High Court held that the amended Sections 23(4) and 29A(1) of the Act, being procedural law, would be applicable to the pending arbitrations as on the date of the amendment. Whereas in the case of MBL Infrastructures Ltd. vs. Rites *Limited* 15 brought before another single judge of the Delhi High Court, took a contrary view that the amended provisions of the Act will not apply to the facts of the present case as it is evident from a bare perusal of the notification dated 30th August, 2019 (notifying the date of effect of the Amendment Act, 2019) that it does not have a retrospective effect. Thus, the applicability of amended provision of Section 29A to arbitral references made prior to the amendment, continues to remain disputed.

### II. ANALYSIS OF SECTION 29B OF THE ACT

1. The parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure as specified in sub-section (3) of Section 29B.

<sup>13. 2018</sup> SCC OnLine Bom 4371

<sup>14.</sup> O.M.P.(MISC.)(COMM.) 512/2019 by order dated 23.01.2020

<sup>15.</sup> O.M.P.(MISC.)(COMM.) 56/2020 Order dated 10.02.2020



This Section 29B shall override all other provisions of the Act.

- 2. The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consists of a sole arbitrator who shall be chosen by the parties. The fees payable to the arbitrator and the manner of payment of fees shall be such as may be agreed between the arbitrator and the parties.
- 3. The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings:
  - (a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing. Hence, there shall be no oral hearing.
  - (b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
  - (c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
  - (d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.
- 4. The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference. If the award is not made within the said period then

the provisions of sub-section (3) to (9) of section 29A shall apply to the proceedings.

#### III. IMPACT OF COVID-19 PANDEMIC

## 1. E-Arbitrations: Legal position in India

In India, the Indian Council of Arbitration (ICA) is a leading institution that governs the procedure of Arbitration proceedings including that of International Commercial Arbitration. The ICA has been set up through the initiatives of the Government of India and it handles a vast number of arbitration cases. The ICA has framed and adopted the International Commercial Arbitration Rules which govern international commercial arbitration carried out by the ICA and serve as a guideline to other arbitral institutions as well. The rules of the ICA mandate that the Arbitral Tribunal has the power to conduct arbitration proceedings by video conference, telephone or any such other means of communication as may be feasible and deemed fit.

Similarly, even the Delhi International Arbitration Centre has issued an announcement that the parties and arbitrators are free to resort to teleconference method for conducting proceedings and the same must be communicated to the Institution through an Email.

It is pertinent to note that the Act is silent on whether arbitration proceedings can be conducted through video conference and other electronic means. Section 24 of the Act deals with hearings and written proceedings whereby it, inter alia, entitles (i) the parties to have oral hearings or waive this right, if they so deem fit; (ii) empowers the Arbitral Tribunal to



decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. It also provides that the Arbitral Tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held. The Act does not define 'oral hearings' but Section 18 of the Act provides the governing principles/ essential crux of due process: (a) treatment of parties with equality; and (b) full opportunity to be given to each party to present its case. In view of the same, the virtual proceedings should remain valid as long as it is in compliance with Section 18.

# 2. Clarifications regarding extension of limitation period:

The position regarding extension and suspension of limitation stands as below:

On 23rd March 2020, the Supreme Court of India extended the limitation period for all "proceedings" with effect from 15th March, 2020 until further orders. 16 This was on account of the COVID-19 induced lockdown and the difficulties faced by lawyers as well as litigants during these times in physically filing cases within the prescribed period of limitation.

Subsequently, the Supreme Court on 6th May 2020 ordered that all periods of limitation prescribed under

the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings. 17 It further held that in case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

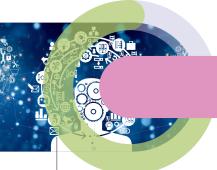
The Hon'ble Delhi High Court in the case of **Rategain Travel** Technologies Pvt. Ltd. vs. Ujjwal **Suri**<sup>18</sup> clarified that by virtue of the order passed by the Supreme Court on May 6, 2020 in cases where the time limit for the passing of an arbitral award expired during the COVID-19 lockdown, no separate petition under Section 29A of the Arbitration & Conciliation Act, 1996, is required to be filed. It further held that Parties would have a period of two weeks after the lockdown is lifted to approach the Court, if the need arises and, in the meantime, all arbitral proceedings to continue through video- conferencing, if considered feasible.

Furthermore, by Order dated 10th July, 2020 the Hon'ble Supreme Court allowed the modification of the earlier Order dated 6th May, 2020 as sought by the Ld. Attorney General as under: -

<sup>16.</sup> Order dated 23/03/2020 passed in Suo Motu Writ Petition (Civil) No(S).3/2020. In Re: Cognizance for Extension of Limitation.

<sup>17.</sup> Order dated 06/05/2020 passed in Suo Motu Writ Petition (Civil) No(S).3/2020. In Re: Cognizance for Extension of Limitation.

<sup>18.</sup> O.M.P (MISC) 14/2020 vide order dated 11.05.2020



"Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall also apply for extension of the time limit prescribed under Section 23(4) of the said Act.

The application is disposed of accordingly."

By Order dated 8th March, 2021<sup>19</sup> the Hon'ble Supreme Court has ended the extension of limitation period granted in the abovementioned Orders and while doing so passed following orders: -

- "2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:-
  - 1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from

- 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
- In cases where the limitation have would expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
- 3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods."

#### CONCLUSION

Though there are initial interpretation issues, culminating into various litigations but the law is expected to be settled at the earliest. This will ensure smooth proceedings which will be beneficial to the parties in dispute. Separate time frame for completion of pleadings should hopefully give confidence to the International community towards arbitration friendly India.

<sup>19.</sup> Order dated 08/03/2021 passed in Suo Motu Writ Petition (Civil) No(S).3/2020. In Re: Cognizance for Extension of Limitation.





# Liability of a Director under the Companies Act, 2013





Henna Shah

Adv. Ananya Gupta

The art of managing a company is similar to the art of puppetry. A puppeteer man oeuvres the rods or strings attached to the puppet resulting in successful storytelling. Similarly, a director uses his/her expertise to supervise and control the affairs of a company steering it towards success. The journey towards success comes with its own set of perils. Any act or omission done by a director in the course of managing a company may attract liabilities as per the law of the land.

Liability of a director may arise under several statutes, for instance, the Negotiable Instruments Act, 1881, the Income Tax Act, 1961, the Securities and Exchange Board of India Act, 1992, the Food Safety and Standards Act, 2006, etc. For this article, let us examine the liabilities of a director under the Companies Act, 2013 ("Companies Act").

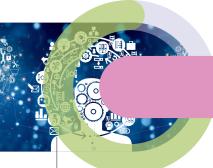
Under sub-section (34) of Section 2 of the Companies Act, a director means a director appointed to the Board of a company. The Companies Act provides for different categories of directors, including, whole time directors, managing directors, independent directors, nominee directors, alternate directors and women directors. Further, 'officer' and 'officer who is in default' as defined under subsections (59) and (60) of Section 2 of the Companies Act also include directors.

Thus, a director can be held liable as an officer of the company. The liability of a director under the Companies Act can be limited or unlimited/personal and civil or criminal in nature.

In India, the directors are prima facie deemed to be aware of the offence committed by the Company and thus are held accountable for the default. However, Section 149(12) of the Companies Act read with Circular No. 1 of 2020 issued by the Government of India through the Ministry of Corporate Affairs limits the liability of independent and nonexecutive directors. Such directors are to be held liable only for consenting to such acts of omission or commission of a company through Board processes or not acting diligently. In Re: Inventure Growth & Securities Ltd., reported at 2018 SCC OnLine SEBI 153, the Securities and Exchange Board of India, Mumbai, rejected the defence taken by the independent directors under Section 149(12) of the Companies Act and were held liable for violating the regulations under the Securities and Exchange Board of India Act, 1992 as they had officially certified the contents of the prospectus.

The directors of a company bear personal and unlimited liability for mis-statements in prospectus and fraud. Moreover, Section 286 states that the responsibilities

<sup>1. &</sup>lt;a href="https://www.mca.gov.in/Ministry/pdf/Circular\_03032020.pdf">https://www.mca.gov.in/Ministry/pdf/Circular\_03032020.pdf</a>



of directors in a limited company whose liability is unlimited under the provisions of the Companies Act shall be liable to make a further contribution, in addition to his liability, if any, as if the winding up is of an unlimited company subject to the specified conditions.

The punishment for non-compliance with the provisions of the Companies Act attracts punishment that may be civil or criminal. In cases where the punishment for default is monetary, the liability of a director is civil. For instance, Section 166 of the Companies Act lays down duties of a director and contravention of the said section shall result in a fine of Rupees one lakh extendable to Rupees five lakhs. Similarly, non-compliance with the requirements of Section 190 leads to a penalty of Rupees five thousand for each default.

In simple terms, criminal liability means a person who may be held responsible for committing an act affecting the public at large. The punishment for such an act involves imprisonment. The Companies (Amendment) Act, 2020 decriminalizes several offences. Thus, after enforcement of the said amendment, a director shall be criminally liable for accepting deposits from the public in violation of sections 73 and 76 under section 76A, failure to distribute dividend under section 127, fraud under section 447, false statements under section 448, etc.

A director's responsibility is not limited to his conduct but also extends to the operations of a company. The Apex Court in **Sunil Bharti Mittal vs. CBI, reported at (2015) 4 SCC 609**, analysed the principle of alter ego wherein if the

company commits an offence, it would be the intent and action of persons controlling the company. Similarly, the Bombay High Court in **Ganesh Benzoplast Limited vs. Morgan Securities Credits Private Limited and Anr., reported at 2021 SCC OnLine Bom 638,** held that the affairs of a corporate entity are governed by or conducted by its directors. If the alleged offence is proved, then the director will have to be sentenced as the Company though being a juristic person, cannot be convicted with corporal punishment.

Further, as per Section 168 of the Companies Act, resignation tendered by a director does not absolve him/her from the offences that occurred during his/ her tenure. In Re: Surana Corporation Limited, reported at 2018 SCC OnLine SEBI 237, the Securities Exchange Board of India, Mumbai convicted the directors of Surana Corporation Limited for the offences committed during their tenure post-resignation. The Apex Court in Ashoke Mal Bafna vs. Upper India Steel Manufacturing & Engineering Company Limited, reported at (2018) 14 SCC 202, held that liability of a director for the day-to-day affairs of the company ceases post-resignation.

Given the foregoing, a company that is a legal person by nature cannot act alone without the assistance of a director. A director must act prudently to protect his interests and avoid liability. It is paramount to ring fence liabilities while acting as a director and attempt hedging at the same.





### **Taxation of Gifts under the Income Tax Act, 1961**





Vamshi Mergu

Adv. Radha Halbe

#### **INTRODUCTION**

A Gift is a transfer of property without consideration, made occasionally and is voluntary in nature. In a general parlance, gifts are given or received as a result of natural love and affection. In a country like India where family relations and occasions are given considerable amount of significance since ancient times of Mahabharata and Ramayana, the concept of gifts is deep routed in the Indian culture. The term "Gift" has been defined under various laws and for various provisions. Even the Indian Contract Act, 1872 recognises a contract of gift between relatives as a valid contract as it is on account of natural love and affection even though there is absence of direct consideration. It will be quite interesting to get acquainted with the law relating to taxation of gifts. But before that, we must first understand the meaning of gift. The Income-tax Act, 1961 does not define gift as such and so we need to understand what gift means by looking at various definitions of gift under various other laws.

## DEFINITIONS UNDER VARIOUS LAWS& DICTIONARIES

#### > General Dictionary

A voluntary transfer of property or of a property interest from one individual to another, made gratuitously to the recipient. The individual who makes the gift is known as the donor, and the individual to whom the gift is made is called the donee.

### Hindu Law

Gift is a relinquishment without consideration of one's own right in property and the creation of the right of another. A gift is completed only on the other's acceptance of the gift.

#### Gift Tax Act, 1958

As per Section 2(xii), "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section.

### Transfer of Property Act, 1882

As per **Section 122**, "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance when to be made - such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

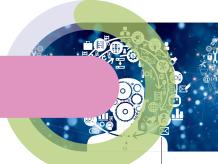


### HISTORY OF TAXATION OF GIFTS IN INDIA

- In India, soon after getting independence there was a need for the Government to frame a Revenue Policy that would assist and fuel the growth of the economy. As result various Revenue laws were enacted such as Wealth Tax Act, 1957, Income Tax Act, 1961, etc. In 1958, in the guest to collect Revenue, the Government introduced the Gift Act, 1958 to fill a gap in the scheme of Direct Taxation which would not only make tax evasion or avoidance by shifting of capital and thus taxable incomes difficult but also spread the tax burden more equitably.
- However, in 1998 the Gift Tax was concluded to have been a failure as its contribution to the overall revenue of the Centre was very insignificant and was not successful as a tool to curb tax evasion and avoidance.

- Resultantly, the Gift Tax Act, 1958 was made in applicable in respect of gifts made after 01.10.98.At the same time, to ensure that there are no leakages of income tax revenue through the mechanism of gifts, there was a need to bring in new provisions in the Income Tax Act, 1961.
- And finally, in 2004-05, with a view to plug the loophole of shifting capital and incomes Section 56(2) (v) was introduced to widen its levy on the gifting transactions. Since then, time and again, the section was replaced and amended and currently Section 56(2)(x) which was inserted with effect from 1st April 2017 is in force dealing with the taxation of gifts.
- > The following table shows the changes in Income Tax Act, 1961 regarding gifts.

Sr No.	Section	Scope of Gifts	Gift received by	Applicability
1	56(2)(v)	Sum of Money (Threshold Rs. 25,000/-)	Individual or HUF	1st day of September 2004 but before the 1st day of April, 2006
2	56(2)(vi)	Sum of Money (Threshold Rs. 50,000/-)	Individual or HUF	1st day of April 2006 but before the 1st day of October, 2009
3	56(2)(vii)	Sum of Money, Immovable Property & Any other property other than immovable property.	Individual or HUF	1st day of October 2009 but before the 1st day of April, 2017
4	56(2)(x)	Sum of Money, Immovable Property & Any other property other than immovable property.	Any Person	On or after 1st day of April 2017



The term 'property' is defined by the Finance Act, 2010. It means (i) immovable property being land or building or both; (ii) shares and securities; (iii) jewellery; (iv) archaeological collections; (v) drawings; (vi) paintings; (vii) sculptures; (viii) any work of art; or (ix) bullion (w.e.f. 1-6-2010).

Thus, as per the law as it stands today, gifts within the specified limits are not chargeable to tax subject to the threshold limit as specified under section 56(2)(x).

However in so far as gifts are concerned, the tax has shifted from the donor to the donee – A gift received is deemed to be the income of the recipient (except in certain circumstances) since 2004 and gift tax is now a donee based income tax.

### TAXABILITY OF GIFTS IN HANDS OF VARIOUS PERSONS

The Income Tax Act, 1961 does not directly restrict any person from making or receiving gifts. However, gifts received in excess of the value of Rs. 50,000 are taxable by virtue of section 56(2)(x) subject to the conditions as laid down therein. Thus, it is crucial to understand the context in which the gifts are given or received by different categories of persons.

#### **Individuals**

- (A) spouse of the individual;
- (B) brother or sister of the individual;
- (C) brother or sister of the spouse of the individual;
- (D) brother or sister of either of the parents of the individual;
- (E) any lineal ascendant or descendant of the individual:
- (F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F); and

Generally, Individuals receive gifts from their relatives out of natural love and affection and hence gifts between relatives are not chargeable totax as such. "Relative" for the purpose of this section means:

For accepting a gift from a relative, no occasion needs to be proved. However, over the years the transaction of 'gift' has evolved as a tool for tax planning andtax avoidance. Hence various conditions are laid down under section 56(2)(x) in order to avoid the abuse of law which we will discuss in greater detail hereinafter.

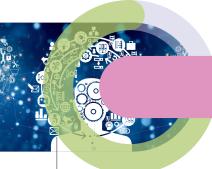
Please note that the term relative must be evaluated from the point of the view of the recipient of the gift and not the donor – so the person giving the gift must qualify as a relative of the recipient as per the relations mentioned in the section – else it will be a gift received from a non relative and will then be taxable as income. Gift received from a relative is not taxable as income u/s 56.

### **Hindu Undivided Family**

The co-parceners (family members) are considered as relatives of the HUF. Thus, any gifts receivedby an HUF from the members shall not attract any tax. However interestingly an HUF is not listed as a relative of an individual and hence any gift received from the HUFby a member may attract tax u/s 56(2)(x) subject to the conditions as laid down therein in the hands of such member in his/her individual capacity as was held in **Gyanchand M. Bardia vs. ITO [2018] 93 taxmann.com 144 (Ahd.-Trib.).** 

#### All other categories of persons

So far as other categories are concerned, whether or not a gift can be given by an artificial person like a company or a Society is in itself firstly a matter of



controversy and thereafter if the gift is of a property listed u/s 56(2)(x) then it will deemed to be income of the recipient assessee.

### Gifts by a resident person to a nonresident

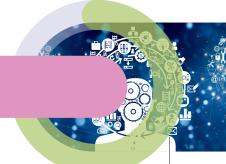
Though the provisions relating to gifts apply in case of every person, a view was taken that gifts received by a non-resident were non-taxable in India as the income does not accrue or arise in India. To ensure that such gifts made by residents to a non-resident persons were subjected to tax in India, the

Finance (No. 2) Act, 2019 has inserted a new clause (viii) under Section 9 of the Income-tax Act to provide that any income arising outside India, being money paid without consideration on or after 05-07-2019, by a person resident in India to a non-resident or a foreign company shall be deemed to accrue or arise in India.

# DETAILED ANALYSIS OF SECTION 56(2)(x)

Let us now try to analyse the taxability of gift transactions under the following circumstances:

	GIFT RECEIVED		THRESHOLD (in Rs.)	TAXABILITY	
	Any sum of money without consideration		ne of money = more n Rs. 50,000/-	Gift received exceeding Rs 50,000/- will be fully taxable.	
				Gift received below Rs. 50,000/- will be fully exempt.	
				(Rs. 50,000 is this not a Basic Exemption Limit)	
An	y immovable property	-			
a.	Without any consideration at all for inadequate consideration (Inadequate consideration = Amount by which SDV> Consideration paid SDV = Refer Note 2)	Stamp Duty Value (SDV) of Property = more than Rs. 50,000/-			
		Higher of the below -		Property received having SD\	
		1.	Rs. 50,000/-	below Rs. 50,000/- will be fully exempt.	
		2.	20% of the consideration paid if purchased from a person engaged in the business of sale of flats(subject to certain conditions)	(It is not a Basic Exemption Limit)  If the inadequate consideration is exceeding the threshold limit, the amount of inadequate consideration will	
		3.	10% of Consideration paidwhere purchased from any other person	be fully taxable.  (It is not a Basic Exemption Limit)	



	GIFT RECEIVED	THRESHOLD (in Rs.)	TAXABILITY		
An	y property ** other th	an immovable property	<b>7-</b>		
a.	Without consideration	FMV of Property = more than Rs. 50,000	Property received having aggregate FMV exceeding Rs. 50,000/- will be fully taxable.		
			If aggregate FMV of Property received is below Rs. 50,000/-, it will be fully exempt.		
			(It is not a Basic Exemption Limit)		
b.	for inadequate consideration (Inadequate consideration = Amount by which FMV	Inadequate consideration = more than Rs. 50,000	If the inadequate consideration is exceeding the threshold limit, the amount of inadequate consideration will be fully taxable.  (It is not a Basic Exemption		
	> Consideration paid		Limit)		
	** this covers only specified property viz. shares and securities, jewellery, archaeological collections, drawings, paintings, scriptures, any work of art or bullion.				

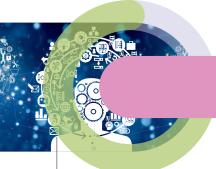
### CERTAIN IMPORTANT POINTS TO BE NOTED-

### 1) Transactions not Regarded as Taxable Gifts

The above provisions will not apply where any sum of money or any property received –

- By an individual from any relative; or
- 2. on the occasion of the **marriage** of the individual; or
- under a will or by way of inheritance (including from a non relative); or
- in contemplation of death of the payer or donor, as the case may be; or
- 5. from any local authority as defined in the Explanation to clause (20) of section 10; or

- from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- 7. from or by any trust or institution registered under Section 12A or Section 12AA or Section 12AB (Trust created wholly for charitable or religious purposes) or
- 8. by any fund or trust or institution or any university or other educational institution orany hospital or other medical institution referred to in subclause (iv) or sub-clause (v) or sub-clause (via) of clause (23C) of section 10; or
- by way of transactions not regarded as transfer under



certain clauses of Section 47; or (See Section 47 - Transactions not regarded as transfer: It covers an exhaustive list of transactions which are not regarded as transfer for the purpose of Section 45. For Example, any transfer between holding and wholly owned subsidiary company, any distribution of capital assets on the total or partial partition of a Hindu Undivided Family.)

- from an individual by a trust created or established solely for the benefit of relative of the individual;
- 11. from such class of persons and subject to such conditions, as may be prescribed. (See Rule 11 UAC of the Income Tax Rules, 1962)

Hence if the gift is received from any of the above sources or in any of the above circumstances it is not taxable.

This provision must be evaluated from the point of view of the recipient – and the same transaction that may be exempt in one case could be taxable in a reverse case. E.g. a gift received from an Uncle – fathers brother – would be exempt for the Nephew. But a gift received from Nephew – brothers son – would be taxable in the hands of the Uncle!

Further – while all forms of money and immoveable property are covered, for others only specified property is covered under the tax. So if the gift received is of any property that is not specified under the section then it may not trigger a tax u/s 56 atleast even if it is not received from a relative or in the circumstances listed.

### 2) Stamp Duty Value

Generally, in cases of transfer of immovable property when the parties enter into an Agreement for the transfer, a mutually agreed sum of money (part of total consideration)is paid by the purchaser to the owner of the property as a token amount and the Registration is completed on a later date. In such cases, the Stamp Duty Value as on the date of agreement will be relevant for the purpose of this Section and not the value of the later date when the actual registration happens PROVIDED at least a part of the total amount of consideration, has been paid at the time of agreement by way of an Account Payee Cheque, Account Payee Bank Draft or any other mode of electronic clearing system.

### 3) Gift From Employer

Any gift received from the employer, of a sum exceeding Rs5,000, is treated as taxable compensation under the head salaries as per Section 17(2)(viii) of the Income Tax Act, 1961 read with Rule 3(7)(iv) of the Income Tax Rules, 1962.

### 4) Business Gifts

In case of gifts to customers/ business associates, the Company generally claims such expenditure as business promotion expenses eligible for deduction against its income and in the case of employees, generally, the Company claims the same as employee welfare expenses. Further, the said expenditure should be justifiable and reasonable considering the size and operations of the Company. Gifts received in the course of business are covered by section 28(iv) which states that the value of any benefit or perquisite whether convertible into



money or not, arising from business or the exercise of a profession is taxable as income from Business or Profession. Hence one may need to evaluate whether a gift received is in the course of business or is purely gratuitous— in the latter case it may not be taxable for the recipient but not allowable as a deduction to the giver.

## 5) Clubbing of Income In Certain Cases

If donee of the gift is spouse or son's wife of the Donor, then any income arising from the use/investment of such gift being any asset will be clubbed in the hands of Donor. [Sec. 64(1)]. Hence even if the receipt of the gift per se is not taxable, the clubbing of income provisions shall apply.

Further, if the donee is minor child of donor, then any income arising from the use/investment of such asset will be clubbed in the hands of Parents. [Sec. 64(1A)]

This may also hold true for a gift to an HUF – if received from a member it may not be taxable as the HUFs income per se but clubbing of income provisions may apply.

### 6) Taxability in Hands of Donee at The Time of Sale of Immovable Property received as a Gift

Where a capital gain arises from the transfer of a property the value of which has been subject to income tax under section 56(2)(x), the cost of acquisition of such property

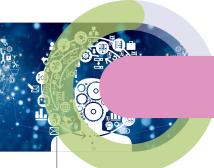
shall be deemed to be the value which has been taken into account for the purpose of the said section. [Sec. 49(4)]

However, if the transfer has not been a subject matter of section 56(2)(x) since it was a gift from a relative, the cost of acquisition for the purpose of computation of Capital Gain will be Cost of previous owner.

#### Conclusion

While by nature there is no income that arises from a gift, it being a capital receipt, the innovative use of gifts to transfer capitals and bases of income has resulted in the deeming of some such capital receipts as income and India has thus shifted its base from a donor based gift tax to a done based deemed income tax, while retaining exemptions for gifts which form a part of a standardized gift regime. A Gift is something given voluntarily without payment in return, as to show favour towards someone or to make a gesture of assistance. However, the same can lead to an unplanned tax outflow in hands of the receiver of gifts and so an analysis of all these provisions becomes imperative. The Government does not put any fretter on restriction on transfer of property without consideration or for inadequate consideration - however it charges its pound of tax if one may say for such transactions when they do not appear to be out of natural love and affection and hence the tax must be factored in as a transaction cost for all gifts that do not appear to be natural in nature!





### **Taxation on Gifts under GST**





Jay Parmar

CA Jeel Gada

### Regulations under GST in Respect of Gifts

Maintaining good relationship with clients, customers, employees is very crucial for a business organization. With good relationships business can prosper in future. Gift is simple yet effective means to maintain relationship with customers, vendors, employees etc. Gifts are provided by company for furtherance of business or for advertisement campaigns or for Product promotion. Different types of gifts are given by organization, for example-Gift vouchers, Festive Gifts, Personalized gifts, etc. In this Article, we have tried to highlight about the taxability of Gifts and Input Tax Credit (ITC) on gifts.

### What does the term gift represent?

To establish the taxability of gift, it is important to understand the meaning of the term 'gift'. The term "gift" has not been defined under the CGST Act, 2017 hence, to understand it one needs to refer to section 2 (xii) of The Gift Tax Act which is reproduced as below:-

"Gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth."

Hon. Supreme Court in the case of **Sonia Bhatia vs. State of UP [1981] 2 SCC 585** states that: A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation thereof.

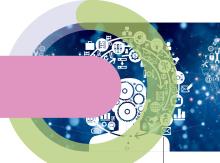
Further the court goes on to elaborate that 'gift' is a gratuity and an act of generosity and does not require a consideration, if there is a consideration for the transaction it is not a gift. In the same case the court also held that a gift is a transfer which does not contain any element of consideration in any shape & form. Love, affection, spiritual benefit, and many other factors may be the reason of the donor to make a gift; but these final considerations cannot be called or held to be legal considerations.

Further reference can also be made to the case of Australian High Court **Commissioner of Taxation (Cth) vs. McPhail [1968] 41 ALJR 346** wherein it was held that to constitute a 'gift' the property should be transferred voluntarily and not because of a contractual obligation.

From the above facts, for identifying one transaction as a gift then the said supply must be made without any contractual obligation.

### **Taxability of Gifts**

For determining taxability of Gifts, we need to decide whether gifts will be considered as supply or not. As per Section 7(1)(a) "all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business." In other words, for a transaction to qualify



as "supply" for the purpose of GST, the said transaction should fulfill following three characteristics:

- A) There should be a transfer in goods or services in any form from one person to another
- B) Such transfer is made or agreed to be made for a "consideration"
- C) Such transfer is made in the course or furtherance of "business"

If any one of the characteristics is not present in a transaction, the said transaction will not qualify as "Supply" for the purpose of GST. Since in the case of Gifts, consideration does not flow from one party to another, it is act of generosity or act of affection hence it cannot be termed as supply. The term supply has great relevance in GST in determining the taxability. Since gifts cannot be termed as supply hence not taxable.

### Whether the Gifts to Employees by the Employer can be Considered as Supply?

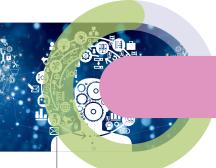
Normally any transaction which do not have any of the above characteristics of supply, will not qualify as "Supply" for the purpose of GST. However, as per Section 7(1)(c), in respect of the activities specified in Schedule – I appended to the CGST Act, 2017, such activities made or agreed to be made even without a consideration will be considered as "Supply" for the purpose of GST.

Entry 2 to Schedule – I states that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. In other words, if employer gives gifts of rupees Rs. 50,000/- or more to his employee in a financial year then it will be taxable. There is a little ambiguity over here as to what will the effect of the transaction where suppose the gift

given by the employer to employee is of ₹ 50,001/- In such case whether the entire ₹ 50,001/- will be taxable or only ₹ 1/- which is exceeding the threshold limit of ₹ 50,000/- alone will be taxable. We all have heard and read in news papers about the Diamond Merchants in Surat giving gifts to its employees in the form of cars, and flats, etc. It such cases, it will be imperative to get clarity from the CBIC as to whether the entire value of car or flat, etc will be taxable or only the value in excess of ₹ 50,000/- will be taxable under GST. In case, the said gifts are taxable, the tax liability will be in the hands of the Employers being the supplier of the gifts.

At this point it is also pertinent to note the Sub-clause (iii) in Clause (a) of Explanation to section 15 of the CGST Act, 2017 where it is provided that the persons shall be deemed to be related persons if such persons are employer and employee. From the above provision it can be concluded that the employeremployee shall be deemed to be related person under GST. Now as per Schedule III of CGST Act, the service provided by an employee to the employer during or in relation to his employment shall be treated neither as a supply of goods nor as a supply of services. As per the Circular No. 92/11/2019-GST released by Government any perquisite forming part of the employment agreement, i.e., included in the CTC of employee shall not be considered as supply. It follows therefrom that supply by the employer to the employee in terms of a contractual agreement entered between the employer and the employee will not be subjected to GST.

In case the gift such as Sodexo Coupons, Big Bazaar Vouchers or gift to the best employee of the year given to the employees which does not form part of the employment agreement, provided to employees above ₹ 50,000 will be covered under supply & therefore ITC on purchase



of such gifts will also be available to the Employer.

### Availability of Input Tax Credit on Gifts

Availability of Input Tax Credit on Gifts has always been a matter of debate. Strong argument laid by taxpayer is that gifts are given for furtherance of business.

As per Section 16(1), "Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic

credit ledger of such person." As per aforesaid Section, ITC can be claimed if goods and services are used in course or for furtherance of business. Gifts are usually given by organizations for furtherance of business, sales promotion, advertising campaigns or promotional activities. However, section 17(5)(h) states that "Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely...... goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples." Section 17 has an overriding effect over section 16(1) thereby ITC on gifts or free samples given to customers cannot be claimed.

### **Evaluation of Various Examples of Gifts given in Practical Cases**

Particul	ars	Taxability		ITC Impact		
articles	along is proupply a part of sup of mix which ordina the su of the of tax	vided with the pricular product. To plies fall under to cell as the cell supply as the cell supply as the cell product.	These kinds the concept is is supply indled in the ness. Hence, ed as supply it higher rate	In case of a product supplied with other product, we must chect whether it is mixed supply composite supply or a gift or composite supply or composite supply. IT will be available to supplie		other check supply, a gift. supply ly, ITC
	introd of Ba of Lap custor is taxa taxable of mix 28% (	nstance, A coruced a scheme g along with the otop will be proved able at 28% while at 18%, as per ted supply it will be i.e., at the higher lio, Bag will not be ift.	that a gift e purchase ided to the that Laptop e the Bag is the provision be taxable at rate). In this			



Doubless	Tarrabilitar	ITC Import
Particulars	Taxability	ITC Impact
	Also, another viewpoint can be taken in case of sale of TV with Remote Control. Since one product is dependent on other thus the supply is naturally bundled which is called as Composite Supply. In case of composite supply tax is applicable on Principal product. Hence in this case TV will be taxable and remote will not be considered as a gift since it is naturally bundled.	
Gifts provided by companies to increase their sales	The material gifts such as A.C, Microwave, etc., are provided by the pharmaceutical companies for the promotional purpose to doctors so that they will refer the medicines of their company in the prescriptions.  The gift is provided to the doctors free of cost but the benefit in return (i.e., consideration) is involved for the pharmaceutical company in the form of increase in sale of medicine as the doctors will prescribe their medicines. Since, there is involvement of consideration, this may not fall under the definition of a gift.	In this case there is no obligation on doctors for prescribing medicines to their patients. Thus, there is no obligation involved between doctors and pharmaceutical companies. Thus, ITC on gifts provided by pharmaceutical companies will not be available to pharmaceutical companies.
	There may be another viewpoint also that there is no contractual obligation involved in this situation, as it is the call of doctor whether he will prescribe the medicines of the company or not, but he is not under any legal obligation for the same. As the consideration in this situation is not certain or directly linked with the gift provided to doctors it may be considered as a gift.	
Diwali Gifts to Employees	In this case gift to employee is already covered under Entry No 2 of Schedule 1. Hence, gift to employee within the value of 50,000 will be considered as gift and hence not taxable. If value of gift is more than 50,000 then it will be taxable.	The gifts to employees exceeding Rs.50,000 are specifically covered under Entry No 2 of Schedule I. Hence, the gifts to employees up to the value of Rs.50,000 will



Particulars	Taxability	ITC Impact
		be considered as gifts & the ITC on the same is required to be reversed as per the provision of section 17(5).
Diwali Gift to Business clients	It is a gift provided on an occasion to the client, generally it is provided for maintaining good relations with the client. Since there is no consideration involved in case of Diwali gifts to business clients thus it will not be considered as supply and hence not taxable.	obligation it may fall under the definition of a gift & ITC on the same needs to be reversed u/s 17(5) of
Gift Vouchers	In this scheme the vendor provides the vouchers as an instrument to be used for making payment of the consideration on the next purchase.  For example, if we purchase anything from Lifestyle for Rs.1,000 and above then we get Rs. 500 vouchers for the next purchase. Now if the customer purchases goods worth Rs. 1,500 & uses the voucher earlier received then, the GST will be liable to be paid on the full value of the supply (i.e., on Rs.1,500) & the value of voucher will be deducted from the payment to be made by the customer. The time of supply of the voucher will be at the time of redemption.	Since, the vouchers are taxable at the time of redemption it will not be considered as a gift and ITC will be available.
	In this scheme, promotional goods are provided without any obligation to distributors. Since, there is no involvement of consideration it cannot be termed as supply and hence it will not be taxable  However, if these items are given to related parties, then the same will be treated as supply (Entry No 2 of Schedule I) & ITC shall be available.	the supplier without any consideration. Further, no benefit in return for the
Gift on achieving particular sales target	In this situation there is a contractual obligation that the gift will be provided on fulfillment of the sales target. Hence, the same will not fall under the definition of gift. It will be considered as supply, hence taxable.	In this scheme there is an obligation for achieving a particular sales target. Thus, it cannot be termed as Gift and ITC need not be reversed.



In conclusion, we can say that if transaction involves legal consideration from one party to another party, it will be treated as supply and hence it will be taxable and since gifts does not attract consideration, it will not be taxable. Also, availment of ITC in case of Gifts is not permissible under CGST Act, 2017 due to Section 17(5). Thus, ITC on Gifts cannot be claimed.







# Regulations under FEMA in respect of Gifts





Mansi Dedhia

CA Jini Jain

The concept of exchanging gifts is not new to us. Gift as a mode of transfer is customary between close relatives and friends in India. It is essential to realize that when this gift involves exchange between a resident and non-resident, Foreign Exchange Management Act, 1999 (FEMA) and its various rules and regulations are required to be adhered to. Briefly, the scope of the article is as follows:

- 1. Introduction of FEMA with a background of various terminologies
- 2. Gift of money
- 3. Gift of immovable property in India
- 4. Gift of immovable property outside India
- 5. Gift of shares of an Indian company
- 6. Gift of foreign securities
- Source rules and regulations under FEMA to be referred to
- 8. Conclusion

#### Introduction

Foreign exchange transactions were governed earlier by erstwhile Act called Foreign Exchange Regulation Act, 1973 (FERA). FERA was a draconian law which was very stringent by nature, most transactions requiring RBI approval above a certain limit. The reason was primarily to protect the nation's foreign exchange reserves. With the economic liberalization of 1991, there felt a need for a more

liberal and sustainable enactment. The emphasis shifted from "regulation" to "management" and thus Foreign Exchange Management Act, 1999 (FEMA) came into force on 1st June, 2000. The main aim of FEMA is to ensure orderly maintenance and regulation of foreign exchange in India.

Residential status under FEMA is the starting point to determine the extent to which the regulations are applicable to a particular transaction entered into by a person. Residential status determines the restrictions and prohibitions under the regulations applicable to various transactions entered into by the individual/entity.

Section 2(v) of the Act defines person resident in India and Section 2(w) defines person resident outside India. Number of days coupled with intention determine the residential status for any individual. For ease of reference, a "Person resident in India" has been referred to as "Resident" and a "Person resident outside India" has been referred to as "Non-resident" with more focus on Individuals in this article.

Another important concept is Capital Account and Current Account Transactions covered under Section 2(e) and 2(j) of the Act respectively. Capital account transactions create a cross-border asset or liability for any individual/entity. For example, a machinery is imported on a 2-month credit and corresponding payment is made to the foreign party. This is a current account transaction



under FEMA. Alternatively, if a loan is taken abroad to make payment, there is a liability created abroad and hence this is a capital account transaction. Under FEMA, Capital Account Transactions are prohibited unless specifically permitted and Current Account transactions are generally permitted unless specifically prohibited. Hence, one must check the allowability before entering into a capital account transaction. Apart from legal provisions under FEMA, one must appreciate that FEMA is a policy-driven legislation and hence, unlike revenue laws which can be interpreted and debated, FEMA should be complied with both in letter and spirit. "What cannot be done directly, cannot be done indirectly".

In order to assess if gift of money or assets between a resident and non-resident is permissible or not, and if permissible, what are the terms and conditions applicable to such gift transaction, one needs to understand the nature of such gift transaction.

Gift of money is a current account transaction since on exchange, the transaction concludes. However, in order to manage the forex reserves and keep control on unlimited gifts, thresholds are introduced under the FEMA. On the other hand, gift of immovable property and shares & securities are capital account transactions since they result in change in cross border assets held by a resident and non-resident.

Due to different terms denoting Nonresidents are used in different notifications, it is important to understand the following definitions:

Non-Resident Indian (NRI): NRI is a person resident outside India who is a citizen of India.

- Overseas Citizen of India (OCI): OCI is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.
- Person of Indian Origin (PIO)¹: PIO means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:
  - a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955; or
  - b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or
  - c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in above (a) or (b); or
  - d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in above (a) or (b) or (c)

FEMA provides various benefits to individuals who have or had ties with India even if they are currently Nonresident. To qualify for it, a Non-resident should either hold an Indian passport to be considered as NRI or should hold an OCI card if the Indian Passport has been surrendered.

Since gifting is largely permitted between relatives, one must note that FEMA uses the definition of relative as per Companies Act, 2013 and not Income Tax Act, 1961. 'Relative' means a relative as defined

<sup>1.</sup> Though PIOs still find a place in certain regulations, vide Government of India's Gazette Notification No. 26011/01/2014-IC.I dated 09.01.2015, all registered PIO cardholders will be deemed to be OCI cardholders w.e.f 09.01.2015. No fresh PIO cards were issued since that date.



in Section 2(77) of Companies Act, 2013 i.e. father, mother, brother, sister, son, daughter, son's wife and daughter's husband.

Now that the foundation is laid, let us study various provisions pertaining to different gift transactions under respective rules and regulations under FEMA:

#### Gift of Money

Earlier, resident individuals were not allowed to draw any foreign exchange for any capital account transaction without prior permission from RBI. The only facilities available for individual to draw foreign exchange was under Current Account Transactions Rules which included transactions like gift, travel etc with separate threshold for each transaction.

RBI introduced Liberalized Remittance Scheme vide A. P. Dir Circular No.64 dated 04.02.2004 to permit remittance by resident individuals abroad up to USD 25000. Since then the limit has been

revised upwards or downwards as per the prevailing economic conditions of India. W.e.f 01.06.2015, the limits of current account transactions were subsumed under LRS limit.

Currently, a resident individual is permitted to remit USD 250,000 abroad per financial year for permissible capital and current account transactions. Gift of money under LRS is a permissible current account transaction. The amount of gift has to be within the upper limit of USD 250,000 when considered along with the other remittances done or to be done in the said year for the other permitted capital account or current account transactions. For example, in FY 2021-22, if Mr. A, a resident, has utilized USD 25,000 for business travel in May 2021 and USD 50,000 for purchase of shares of Apple Inc in June 2021. In such a case, Mr. A has utilized USD 75,000 and balance LRS limit of USD 1,75,000 is available for gift and other permissible transactions for remaining FY 2021-22.

#### Provisions for Gift of Money between Resident and Non-Resident

Donor	Currency	Donee	Permissibility
Resident	Foreign currency	Non-resident	Allowed upto LRS limit of USD 250000 per financial year
Resident	Indian rupee	Non-resident	Allowed only to <b>NRI/PIO</b> relatives of the donor as per Companies Act, 2013 by credit in the <b>NRO</b> <sup>2</sup> account of such relative upto LRS limit of USD 250000
Resident	Foreign Currency	Resident	Not a permitted transaction <sup>3</sup>
Non-Resident	Foreign Currency	Resident	Allowed without limit, but the amount should be repatriated to Resident's bank account in India

<sup>2.</sup> NRO Account is an account denominated in INR permissible to be opened by Non-residents in India

<sup>3.</sup> Master Direction on 'Liberalised Remittance Scheme' and RBI FAQ No. 5



Donor	Currency	Donee	Permissibility
Non-Resident	Indian rupee	Resident	Allowed without limit
Non-Resident	Indian rupee	Non-resident	Not regarded as a permissible credit to NRO Account

**Note**: Remittances under LRS for gifts have to be out of own funds and not borrowed funds. Money received as gift by a Resident may be gifted to a non-resident under LRS later, but this should not lead to flouting of the limits directly or indirectly.

#### **Gift of Immovable Property**

The term immovable property is not defined explicitly under FEMA. It includes

all type of properties – agricultural land, commercial/residential properties, plantations etc.

## Gift of Immovable Property situated in India

Provisions for gift of immovable property in India as per Foreign Exchange Management (Non-debt Instruments) Rules, 2019 are summarized as under:

Donor	Donee	Permissible Type of Property
Person resident in India	NRI/OCI relative as defined above	Immovable property other than agricultural land/farm house/plantation property
NRI/OCI	NRI/OCI relative as defined above	Immovable property other than agricultural land/farm house/plantation property
NRI/OCI	Person Resident in India	Any immovable Property

**Note**: No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea can acquire or transfer immovable property in India without prior approval of RBI. This prohibition is not applicable to an OCI Cardholder.

## Gift of Immovable Property Outside India

The provisions relating to gift of immovable property outside India are covered under Foreign Exchange Management (Acquisition and transfer of immovable property outside India)

Regulations, 2015 which are summarized as under:

#### Gift to a Resident

- A resident individual can acquire immovable property outside India by way of gift from:
  - Another resident individual who acquired a property outside India while he was a Non-resident.
  - Another resident individual who had acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.



- A resident individual who had acquired such property on or before 08.07.1947 and continued to be held by him with the permission of the RBI.
- 2. There is no explicit permission to receive gift of immovable property outside India from a Non- resident by a resident individual. Resident receiving such property as gift would need to sell and bring the funds back to India.

#### Gift to a Non-resident

A resident individual is permitted to acquire an immovable property outside India under LRS. Once a property is acquired under LRS, the same can be gifted to a non-resident.

#### Gift of Shares & Securities

#### **Gift of Shares of an Indian Company**

An NRI/OCI has an option to invest into the shares of an Indian Company on repatriation basis or non-repatriation basis. Investment on repatriation basis means an investment, sale or maturity proceeds of which (net of taxes), are eligible to be repatriated out of India. In case of investment on non-repatriation basis, the proceeds cannot be freely repatriated outside India. Investment on non-repatriation basis is treated at par with domestic investment.

Provisions relating to gift of shares as covered in Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 have been summarized as under:

		H - H #352	
Donor	Donee	Permissibility	Reporting* & Sector caps applicable
Non-resident (including NRI/ OCI) holding on repatriation basis	Resident	Automatic	Only reporting, Sectoral caps would not apply
Non-resident (including NRI/ OCI) holding on repatriation basis	NRI/OCI who will hold on non-repatriation basis	Automatic	Only reporting, Sectoral caps would not apply
Non-resident (including NRI/ OCI) holding on repatriation basis	Non-resident (including NRI/OCI) who will hold on repatriation basis	Automatic subject to condition**	Not applicable (Manual changes needed in Entity Master Form)
NRI/OCI holding on non-repatriation basis	Resident	Automatic	Not applicable
NRI/OCI holding on non-repatriation basis	NRI/OCI holding on non-repatriation basis	Automatic	Not applicable
NRI/OCI holding on non-repatriation basis	Non-resident (including NRI/ OCI) holding on repatriation basis	Prior RBI Approval subject to conditions***	Both



Donor	Donee	Permissibility	Reporting* & Sector caps applicable
Resident	NRI/OCI who will hold on non-repatriation basis	Prior RBI Approval subject to conditions***	Not applicable
Resident	Non-resident (including NRI/ OCI) holding on repatriation basis	Prior RBI Approval subject to conditions***	Both

- \* Incase reporting is applicable, Form FC-TRS is required to be filed with supporting documents on FIRMS portal. The onus of compliance is on donor or donee who is resident in India.
- \*\* Prior Government approval is needed if the company is engaged in a sector which requires Government approval
- \*\*\* Following are the conditions:
- Donee is eligible to acquire such shares under the Rules
- The gift does not exceed 5% of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme on cumulative basis by a single person to another single person
- The applicable sectoral cap⁴ in the Indian company is not breached by such gift
- The donor and the donee should be relatives as described above
- The value to be transferred by the donor together with any shares transferred to any person residing outside India as gift during the

- financial year does not exceed INR equivalent of 50,000 US Dollars;
- Such other conditions as considered necessary in public interest by the Central Government.

#### Gift of Foreign Securities

- A resident is permitted to accept gift of foreign securities from a Nonresident.
- 2. A resident individual is permitted to purchase shares of listed as well as unlisted companies, units of Mutual Funds, debt securities etc under LRS for portfolio investment. Securities acquired under LRS can be gifted to a non-resident.

#### Other Assets

FEMA regulations are silent on gifting of assets other than those already listed above. A view would have to be taken on a case-to-case basis in such instances.

#### **Source Rules and Regulations**

The regulations pertaining to gift of various assets covered above are summarized as under for ready reference:

<sup>4.</sup> Sectoral cap is the specified % upto which FDI is allowed in the sector Eg. In Multi-brand retail trading, the sectoral cap is 51%.



Sr. No.	Asset Category	Corresponding Notification
1.	Gift of Immovable Property in India	Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 dated 17.10.2019 amended from time to time
2.	Gift of Shares of an Indian company	Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 dated 17.10.2019 amended from time to time
3.	Gift of Immovable Property outside India	Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015 [Notification No. FEMA 7(R)/2015-RB dated 21.01.2016 amended from time to time]
4.	Gift of Foreign Securities	Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 [Notification No. FEMA 120/RB-2004 dated 07.07.2004 amended from time to time]

#### Conclusion

To conclude, this article attempts to highlight how each regulation covering gift needs to be analyzed qua asset for any gift transaction between a resident and a non-resident. If one feels there is an ambiguity in interpreting the law in a particular case, one can surely seek RBI's approval before entering

into the transaction. Considering various restrictions imposed under various regulations and the fact that non-compliance could lead to adverse consequences, it is important to understand the possible implications that could arise from all the angles including FEMA. One should also be mindful of taxability of such gifts in India as well as foreign country which is separately covered in the Journal.





## Report on The Dastur Essay Competition, 2021

The Chamber of Tax Consultants successfully organised the 'Tenth' edition of 'The Dastur Essay Competition' during the period March 2021 to June 2021.

The Chamber of Tax Consultants has been organising The Dastur Essay Competition since 2012 for Law Students and Articled Trainees pursuing CA, CS and ICWA Courses, where essays on current topics are invited and then the same are judged by senior professionals with prizes and certificates being awarded to meritorious essays.

The **Objective** behind organising the Competition is:

'to cultivate good reading and writing communication skills coupled with encouraging "passion for writing" and "creativity", a quality which every human being possesses, which is possibly hidden and may be unknown to the individual himself'.

The Dastur Essay Competition provides a platform to the young professionals to showcase their characteristics that illuminate the good students and potentially great writers. It provides budding professionals who are passionate about expressing themselves through their words to get the creative ideas flowing and allow the author within to blossom. This Essay Competition allows students to explore a wide range of challenging and interesting questions beyond the confines of the college curriculum.

The **Topics** for The Tenth Dastur Essay Competition were:

- 1. Impact of Covid-19 on human behaviour, habits and how should one tackle the problem.
- 2. The Agricultural Imbroglio Is it justified and its Solutions.
- 3. Freedom of expression is a Citizen's inalienable right.

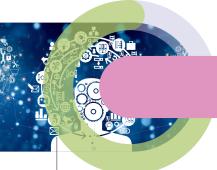
The essays received from all over India were judged by ten eminent professionals as judges in the preliminary round.



Hon'ble Justice Shri Nitin W. Sambre

The **Top Ten Essays** selected by the judges for the preliminary rounds were judged by **Hon'ble Justice Shri Nitin W. Sambre, Judge of Bombay High Court.** The remarks shared by Hon'ble Justice Shri Nitin Sambre, on his experience of judging the Top Ten Essays, is as under:

"Greetings to the Chairperson, the members of the Chamber of Tax Consultants, and the participants of



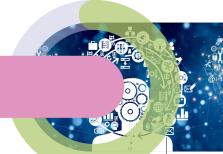
the competition. I hope everyone is keeping safe in these times of crisis. At the outset, I would like to appreciate the efforts of the Chamber of Tax Consultants and its executive committee in organizing this annual event and keeping the tradition alive even in these testing times. Further, I would like to commend the students for exhibiting rationalism and diligence while drafting their essays. I would like to thank the Chamber for providing me an opportunity to peep into the young minds and enjoy their perspective of current worldly problems.

In the current scenario, when everyone prefers to settle for the minimum to get by the standards, the Chamber has shown great interest in organizing such competition for the growth of the students. The association has not only been conducting itself within the framework of its laws but has travelled an extra mile to promote the students and the participants, particularly when everybody wants to play safe in the present social scenario.

I must share my experience while evaluating the essays that every participant had a different perspective about the topic and tried their level best to deliver adhering to the evaluation criteria. It is said that every problem has to be accepted as a gift and made into the form of a challenge. This helps in achieving the said goal. As a caterpillar has to struggle to morph into a beautiful butterfly, similarly these challenges would help the students to grow and evolve for the betterment. Without problems and struggle, one cannot break through life's cocoon. It appears that the participants have accepted the problem as a challenge and have made every effort to deliver the best.

The Chamber and its office bearers are trying to help the students inculcate individual thinking and try to find their voice about the recent national and international developments. Of course, as per the instructions of evaluation the gradation is carried out and winners are declared. However, each one of us has experienced that as we proceed in life that winning and losing is part of the game. What is important is the effort one puts in and the lessons one takes away. It can be said that the Chamber is forward-thinking as it sees its growth in the growth of its members and students. The Chamber should be thanked for providing the students a platform where they could freely express their independent thoughts. The competition inspires and promotes confidence, critical and analytical thinking, common sense and a logical approach which will help the participants in their further advancement in life in achieving their goals.

I would like to thank the Chamber for providing me an opportunity to assess and guide the future minds of our nation."



The **Top 3 Essay Winners** for the **Tenth edition** of **The Dastur Debate Competition** are as under:

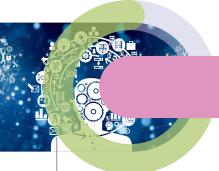
Rank	Name	Cash Prize
First	Mr. Vijaykumar Puri (Government Law College, Mumbai)	INR 10,000/-
Second	Ms. Vaishali Jitendra Lund (M/s. Vishal H. Shah & Co., Mumbai)	INR 7,500/-
Third	Ms. Rutvi Doshi (NMIMS School of Law, Mumbai)	INR 5,000/-

The Results of Top Three Winners were announced in the 94th Annual General Meeting of the Chamber held on July 3rd, 2021 on virtual platform of Zoom due to ongoing Covid-19 pandemic. The Winners conveyed their thanks in the award acceptance speech.

A **Certificate of Merit, Trophy** and a **Cash Prize** was awarded to each of the Top 3 Essays. The Top 3 Essays are published in The Chambers Journal and in the students e-journal 'Jignyasa'.

The Next **Best 7 Essay Winners** are as under:

Rank	Name
Fourth	Mr. Aliasgar Imani (Khimji Kunverji & Co. LLP., Mumbai)
Fifth	Mr. Roshan Kukreja (Khimji Kunverji & Co LLP., Mumbai)
Sixth	Ms. Palak Sanjay Kothari (GBCA & Associates LLP, Mumbai) <b>and</b>
	Ms. Anjali Pramendra Shah (C. N. Patel & Co., Nagpur) <b>and</b>
	Ms. Saloni Gopal Mundada (MDS & CO. LLP, Aurangabad)



Rank	Name
Seventh	Ms. Sneha Vaitheeswaran (Tamil Nadu Dr. Ambedkar Law University, Chennai)
Eight	Mr. Neev Sanjay Jain (GBCA & Associates LLP, Mumbai)
Ninth	Ms. Hasti Manoj Savla (GBCA & Associates LLP, Mumbai)

The **Top Eleven Essays** will also be uploaded on the website of the Chamber.

Certificate of participation were issued to each of the registered participants.

The Students Committee of the Chamber would also like to thank Shri S.E.Dastur for his valuable guidance and support in organising this Competition every year and various initiatives undertaken by the Committee for development of students beyond Academics.

The successful Tenth edition of The Dastur Essay Competition alongwith heartfelt appreciation from everyone involved including the judges, the participants and eminent professionals has boosted the morale of the Student Committee of the Chamber of Tax Consultants and the Committee is indeed geared up to organize more such programs for the benefit of Students in near future.

## WINNERS OF THE ESSAY COMPETITION, 2021



4th Rank Mr. Aliasgar Imani (Khimji Kunverji & Co. LLP., (Khimji Kunverji & Co LLP.,



5th Rank Mr. Roshan Kukreja



6th Rank Ms. Palak Sanjay Kothari (GBCA & Associates LLP, Mumbai)



6th Rank Ms. Anjali Pramendra Shah (C. N. Patel & Co., Nagpur)



6th Rank Ms. Saloni Gopal Mundada (MDS & CO. LLP, Aurangabad)



7th Rank Ms. Sneha Vaitheeswaran (Tamil Nadu Dr. Ambedkar Law University, Chennai)



8th Rank Mr. Neev Sanjay Jain (GBCA & Associates LLP, Mumbai)



9th Rank Ms. Hasti Manoj Savla (GBCA & Associates LLP, Mumbai)



### THE DASTUR ESSAY COMPETITION 2021

# Freedom of expression is a citizen's inalienable right



Mr. Vijaykumar Puri

#### Introduction

Eminent American jurist and judge Benjamin N. Cardozo remarked "Freedom of expression is the matrix, the indispensable condition, of nearly every form of freedom."

It has been duly regarded that the freedom of speech is the first condition of liberty. Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. In modern times, it is widely accepted that the right to freedom of speech is the essence of a free society and it must be safeguarded at all times.

The first principle of a free society is an untrammelled flow of words in an open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of unjust punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

Freedom of speech is guaranteed not only by the Constitution/ statutes of various states but also by various international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talk about protection of freedom of speech and expression.

To understand the nuances of the freedom being an inalienable right of every citizen in a society, it is necessary to dive into the history and evolution of the topic.

#### **Evolution of the concept**

The idea of freedom of speech had originated a long time ago. It was first introduced by the Athenians. They used the term "Parrhesia" which means to speak frankly. This term first appeared in late sixth century/ fifth century B.C.

Countries such as England and France have taken a lot of time to adopt this freedom as a right. The English Bill of Rights, 1689 adopted freedom of speech as a constitutional right and it is still in effect. Similarly, at the time of the French revolution in 1789, the French had adopted the Declaration of the Rights of Man and of Citizens.

The most concrete step and evolution towards the concept in modern times occurred in 1948. Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"

Today, freedom of speech, or the freedom of expression, is recognised in international and regional human rights law. The right is enshrined in Article 19



of the International Covenant on Civil and Political Rights, (ICCPR), Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights.

Freedom of speech, often used synonymously with 'freedom of expression', is understood as a multifaceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

- the right to seek information and ideas;
- 2. the right to receive information and ideas;
- 3. the right to impart information and ideas

International, regional and national standards also recognise that freedom of speech, as the freedom of expression, includes any medium, whether it be orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.

## Meaning of freedom of speech and expression

John Milton famously remarked "give me the liberty to know, to argue freely, and to utter according to conscience, above all liberties".

The above sentence by John Milton clearly displays the essence of freedom of speech. He argued that without human freedom there would be no progress in science, law or in any other field. According to him, human freedom means free discussion of opinion and liberty of thought and expression.

The right to express one's own philosophies, notions, ideas, thoughts and opinions freely through writing, printing,

picture, gestures, spoken words or any other mode is the essence of freedom of speech and expression. It also includes the right to propagate one's views through print media or through any other communication channel.

For instance, Mr. A comes across a news article about a proposed law in the daily newspaper and feels it is detrimental to society. The ability of Mr. A to freely express his views on any medium, without unjust dire consequences, is considered as freedom of speech and expression.

Free propagation of ideas is the necessary objective, and this may be done through the press or any other platform.

According to Article 19 of the ICCPR, the freedom to seek, receive, and convey information and all kinds of ideas irrespective of boundaries, either orally or in the form of writing, print, art or through any other media of their choice are included in the right to freedom of speech and expression.

## Article 19(1)(a) of the Indian constitution

In India, the freedom of speech and expression is granted under Article 19(1)(a) of the Indian Constitution, which is available only to the citizens of India and not to foreign nationals.

Freedom of speech under Article 19(1)(a) includes the right to express one's views through any medium, which can be by way of writing, speaking, gesture or in any other form. It also

The right that is mentioned above, guaranteed by our constitution, is regarded as one of the most basic elements of a healthy democracy because it allows citizens to participate in the social and political process of a country very actively. Being the world's largest democracy in terms of population, this right assumes unmatched significance in



order to ensure correct propagation of democracy.

## Freedom of speech and expression – Is it inalienable?

The Cambridge dictionary defines an inalienable right as "a right that cannot be taken away from you."

An inalienable right, said Richard Foltin of the Freedom Forum Institute, is "a right that can't be restrained or repealed by human laws." Sometimes called natural rights, inalienable rights "flow from our nature as free people."

The most important feature of inalienable rights is that they cannot be given or taken away by a government. Instead, it is a government's job to protect inalienable rights.

Freedom of speech offers human beings the freedom to express their feelings to another, but this is not the only component which makes freedom of speech an inalienable right. There are more reasons to protect these essential liberties.

There are four important justifications for freedom of speech –

1) For the discovery of truth by open discussion

If restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.

2) Aspect of self-fulfilment and development

Freedom of speech is an integral aspect of each individual's right to

self-development and self-fulfilment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth.

3) For expressing belief and political attitudes

Freedom of speech provides opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

4) For active participation in democracy

In the words of Abraham Lincoln, "Democracy is the government of the people, by the people and for the people". Democracy is most important feature of today's world. Freedom of speech protects the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in the decision-making process.

Thus, we find that protection of freedom of speech is essential in a democratic society and is truly an inalienable right which cannot be surrendered by the citizens to the sovereign<sup>1</sup>.

## Freedom of speech and expression in India

Pulitzer-prize winning author Thomas Friedman remarked<sup>2</sup> "The more time you spend in India, the more you realize that this country is one of the world's greatest

<sup>1.</sup> According to the social contract theory.

<sup>2.</sup> Rohit Raj, "Defining Contours of Press Freedom in Backdrop of National Emergency of 1975", All India Reporter (Journal Section), 2008, pp. 155-160, at 160.



wonders- a miracle with a message. And the message is that democracy matters."

Freedom of speech enjoys a special position as far India is concerned. The importance of freedom of expression and speech can be easily understood by the fact that preamble of constitution itself ensures to all citizens *inter alia*, liberty of thought, expression, belief, faith and worship.

The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as a fundamental and human right in Article 19(1)(a) as "freedom of speech and expression" (discussed above). Explaining the scope of freedom of speech and expression, Supreme Court has said that the words "freedom of speech and expression" must be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities.

Moreover, it is important to note that liberty of one must not offend the liberty of others. The Hon'ble Supreme Court of India, in A.K. Gopalan<sup>3</sup> case, observed, "man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals". It therefore includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this country therefore has the right to air his or their views through the printing and or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. In sum, the fundamental principle involved here is the people's right to know.

#### Freedom of Press

Although Article 19 does not express provision for freedom of press, it is considered that the fundamental right of the freedom of press implicit in the right the freedom of speech and expression.

the famous case of **Express** Newspapers (Bombay) (P) Ltd. vs. Union of India4, the Hon'ble Supreme Court observed the importance of press very aptly and held that "In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and nonformal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities."

The above statement of the Supreme Court illustrates that the freedom of press is essential for the proper functioning of the democratic process. Democracy means Government of the people, by the people and for the people; it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential. This explains the constitutional viewpoint of the freedom of press in India.

<sup>3. 1950</sup> AIR 27, 1950 SCR 88.

<sup>4. 1986</sup> AIR 872, 1985 SCR Supl. (3) 382.



#### Right to Information

Right to know, to information is other facet of freedom of speech. The right to know, to receive and to impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose.

The right to know has, however, not yet extended to the extent of invalidating section 5 of the Official Secrets Act, 1923 which prohibits disclosure of certain official documents. Also, the Right to Information Act, 2005, which especially lays down peoples' right to ask information from Government official, prohibits disclosure of certain documents under section 8 of the Act. These exceptions are generally the grounds of reasonable restrictions over freedom of speech and expression under Article 19(1) of Constitution of India.

Based on the above, one can conclude that 'right to information' is nothing but one small limb of right of speech and expression.

## Notable judicial precedents in Indian context

#### 1. Sakal Papers vs. Union of India<sup>5</sup>

Facts: The petitioner was the owner of a private limited company, 'Sakal', which published daily and weekly newspapers in Marathi. This newspaper used to play a leading part in the dissemination of news and in moulding public opinion. They claimed that their net circulation of copies in Maharashtra and Karnataka on weekdays was 52,000

and on Sunday it was 56,000. However, the Central Government passed the Newspaper (Price and Page) Act, 1956, later, the Daily Newspapers (Price and Page) Order, 1960. Because of that order, the government fixed the maximum number of pages that could be published by the newspapers. So, the petitioner filed a case challenging the constitutionality of that Act.

**Judgment**: The court held that Section 3(1) of the Act was unconstitutional, and also an order made under the same would be unconstitutional.

## 2. Union of India vs. Naveen Jindal and Anr.<sup>6</sup>

Facts: The respondent Naveen Jindal was not allowed to hoist the national flag at the office premise of his factory by government officials on the ground that it was not permissible under the Flag Code of India.

**Judgment**: In this case, the high court held that the restrictions that the Flag Code imposed on citizens on hoisting the National Flag were not permissible under clause (2) of Article 19 of the Indian Constitution. The court has also stated that displaying a flag is an expression of pride as well as an expression of genuine enthusiasm and it can only be restricted in accordance with what has been prescribed in the Constitution, otherwise, the restriction would discourage the citizens or Indian nationals from identifying with the flag of the country.

<sup>5. 1962</sup> AIR 305, 1962 SCR (3) 842.

<sup>6.</sup> Appeal (civil) 2920 of 1996.



## 3. Virendra vs. The State of Punjab and Anr.<sup>7</sup>

Facts: Serious communal tension had arisen in the state of Punjab between the Hindus and the Akali Sikhs because of the question of partition of the state on a linguistic and communal basis. There were two petitioners, and both were from different newspapers. Their newspapers' policy was to support `Save Hindi agitation'. A notification was passed by the home ministry office under the impugned Act prohibiting the publication and printing of any material relating to the 'Save Hindi agitation'. Both the petitioners filed a complaint alleging that the Punjab Special Powers (Press) Act, 1956 passed by the state legislature was unconstitutional.

Judgment: The court held that Section 2 of the impugned Act did not merely impose restrictions but imposed a total prohibition against the exercise of the right of freedom of speech and expression, making the same a violation of the right guaranteed by the Constitutional provision.

## 4. People's Union for Civil Liberties vs. Union of India<sup>8</sup>

This case challenged the validity of Section 5(2) of the Indian Telegraph Act, 1885, which stated that if there occurred any public emergency, or in the interest of public safety, the Central Government or the State Government or any other officials were authorized to take temporary possession of any telegraph, on behalf of the government.

Two conditions were observed while dealing with this case:

- The occurrence of public emergency
- In the interest of public safety

For the application of the provisions of Section 5(2), these two conditions were the *sine qua non*. If any of these two conditions were not present, the government had no right to exercise its powers under the said Section.

## 5. Hamdard Dawakhana vs. Union of India<sup>9</sup>

This case challenged the validity of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1956, on the ground of restriction that it took away or abridged this freedom. The Supreme Court held that an advertisement is a form of speech only if every advertisement was held to be dealing with commerce and trade and not for propagating any idea.

#### 6. K. A. Abbas vs. Union of India10

It is the first case in which the issue of the prior censorship of films came into consideration by the supreme court of India. The petitioner's film was not given 'U' certificate, so he challenged the validity of censorship under the criteria as it violated his fundamental rights of freedom of speech and expression. The court, however, held that the motion picture stirs emotions more deeply than any other form of art. Hence pre-censorship was valid and was justified under Article 19(2).

<sup>7. 1957</sup> AIR 896, 1958 SCR 308.

<sup>8.</sup> AIR 1997 SC 568, JT 1997 (1) SC 288.

<sup>9. 1960</sup> AIR 554, 1960 SCR (2) 671.

<sup>10. 1971</sup> AIR 481, 1971 SCR (2) 446.



As is visible from the landmark rulings above, the freedom of speech and expression encompasses almost every aspect of human life. Thus, the subject is evolving in courts of law and will continue to evolve amidst a dynamic and evolving society.

#### **Grounds of restriction**

Soren Kierkegaard famously remarked "People demand freedom of speech as a compensation for the freedom of thought which they seldom use."

Freedom of expression, while being an inalienable right, is not regarded as an absolute right. This is to prevent misuse of the seemingly wide freedom by miscreants. For instance, Mr. A does not like Mr. B and hence uses his freedom of expression to malign Mr. B's image causing a loss to Mr. B. On being questioned, Mr. A cannot take the defence that he was merely exercising his freedom of speech and expression.

There are some restrictions imposed through Clause (2) of Article 19 on freedom of speech and expression on certain grounds.

Article 19(2) states that "nothing in subclause (a) of clause (1) shall affect the operation of the existing law, neither can it prevent the State from making any law, in so far as such type of law imposes reasonable restrictions on the exercise of the right bestowed by the said sub- clause in the interests of the sovereignty and integrity of India, public order, friendly relations with foreign states, the security of the State, decency or morality or in relation to contempt of court, defamation or incitement to an offence".

A question arises whether such grounds of restrictions encroach on the freedom

of speech and expression envisaged in a democratic society.

The eight grounds of restriction are briefly discussed as follows:

#### 1. Security of the state

Article 19(2) imposes reasonable restrictions on the freedom of speech and expression in the interest of the state. The term 'security of the state' should be distinguished from 'public order' as security of the state includes an aggravated form of public order. For e.g., waging war against the state, rebellion, insurrection, etc. The term 'security of the state' in Article 19(2) does not only mean danger to the security of the entire country but it also implies danger to the security of a part of states or threat to a part of states.

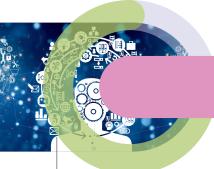
## 2. Friendly relations with a foreign state

This ground of restriction was added through the Constitutional First Amendment, 1951. The main objective behind adding this provision was to forbid unrestrained vitriolic propaganda against a foreign-friendly state, which could jeopardize the maintenance of good relations between India and that state. If the freedom of speech and expression disturbs or hampers the friendly relations of India with foreign states, the government has the right to impose a reasonable restriction.

#### 3. Public order

This ground of restriction was also added through the Constitutional First Amendment, 1951. A situation had arisen in the case of *Romesh Thapar*<sup>11</sup> by the Supreme Court and

11. 1950 AIR 124.



to meet that situation, this ground had been added in the constitution. The word 'public order' depicts the sense of public safety, public peace, and peace of the community.

In *Om Prakash vs. Emperor*<sup>12</sup>, it has been said by the judge that anything that disturbs public peace can be said to disturb public order automatically. There is also a test that determines whether an act affects law and order or public order.

#### 4. Decency and Morality

The word to express or say something should be a decent one that it should win the heart of the opposite person and it should not affect the morals of the society. So our Constitution has considered this view and added this ground in our Constitution.

On the ground of decency and morality, sections 292 to 294 of the Indian Penal Code, 1860 provides an example of a restriction on the freedom of speech and expression.

These are the terms of variable content having no fixed meaning or we can also say that these words are of wide meaning. It varies from society to society and time to time depending upon the morals prevailing in contemporary society. The words morality and decency are not confined to sexual morality only; it has a broader scope.

#### 5. Contempt of court

In a democratic country, we know that the judiciary plays an important role in governing a country in a peaceful manner so in such types of situation it is important to respect the institution and its order. Contempt of court can be defined in two categories i.e., civil contempt and criminal contempt. Contempt of court has been defined in section 2(a) of the Contempt of Courts Act, 1971. Initially 'truth' was not a defence under contempt of court but in 2006 an amendment was made to add 'truth' as a defence.

In the **Indirect Tax Practitioner Assn. vs. R.K. Jain**<sup>13</sup> case, the court has held that truth which is based on the facts should be allowed as a valid defence.

Elements or essential needed to establish contempt:

- Making of a valid court order.
- 2. The respondent should have knowledge of that order.
- 3. The respondent should have the ability to render compliance.
- 4. The respondent should have intentionally or wilfully disobeyed the order.

#### 6. Defamation

Article 19(2) prevents any person from making any statement that defames the reputation of another person. One who gets the freedom of any type should not misuse that freedom to hurt or affect the reputation or status of another person. Generally, a statement that injures the reputation of a man results in defamation. The right to free speech is not qualified. So, it does not mean to hurt any person's reputation which is separately protected under Article 21 of the Indian Constitution.

<sup>12.</sup> AIR 1956 All 241, 1956 CriLJ 452.

<sup>13.</sup> CONTEMPT PETITION (CRL.) NO. 9 OF 2009.



#### 7. Incitement to an offence

This ground was also added by the Constitutional First Amendment Act, 1951. It is obvious that freedom of speech and expression does not include the right to incite people to commit an offence. The word 'offence' has been described under section 40 of the Indian Penal Code, 1860.

Any type of offence takes place in two ways:

- 1. By the commission of an act
- 2. By the omission of an act

#### 8. Sovereignty and Integrity of India

To maintain the sovereignty and integrity of a state is the main duty of a government. Any speech or expression encroaching the sovereignty or integrity is not allowed and such statements may be considered seditious in nature. This ground has been added by the Constitution (Sixteenth Amendment) Act, 1963.

On a brief overview of the restrictions, a question arises whether the said restrictions hamper the right of freedom of expression healthy for a democracy. The Courts seem to believe that the said rights achieve a balance as the constitutional validity of nearly all the above restrictions have been challenged in different Courts.

From the above analysis, the grounds contained in Article 19(2) show that they are all concerned with national interest or in the interest of the society. Thus, they are

indispensable in ensuring that the freedom of expression is exercised in a sustainable manner and the right remains an asset in a healthy democracy.

In this context, one must remember the celebrated words of Cicero<sup>14</sup> "The people's good is the highest law".

## Ground reality - Poll survey on public perception of freedom of speech

#### Why is a survey needed?

- To a great extent, a person is what he thinks. The creation of ideas begins with thinking. If thought is limited, ideas also will be limited, and eventually expression will be inhibited. Thoughts have no power to influence others until they are shared<sup>15</sup>.
- A lot is spoken about nuances of freedom of expression arising from political discourse, statutes and courts of law. However, an important aspect of freedom of expression is how well it can be applied by the layman - i.e. whether s/he is allowed to freely exercise the right. If an individual is not able to exercise his freedom of expression for fear of unjust dire consequences, there is a fundamental failure on part of the State machinery. Also, such failure is likely to go undetected and may very well prove to be a silent killer of democratic principles in a society.
- At this point, it is wise to recollect the sage words of Albert Einstein "Laws alone cannot secure freedom of expression; in order that every man present his views without

<sup>14.</sup> Roman politician, lawyer.

<sup>15.</sup> Robert Trager and Donna L. Dickerson, Freedom of Expression in the 21st century 14 (Pine Forge Press, Inc., New Delhi, 1999).



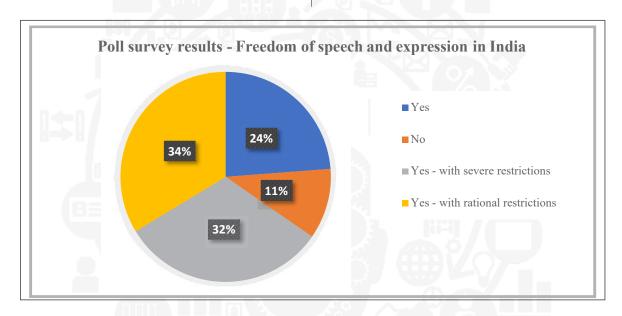
penalty there must be spirit of tolerance in the entire population."

#### Poll survey

 The author has conducted an independent survey on the perception of Indian citizens as to what their perception of freedom of expression is. The survey was conducted on the LinkedIn platform by way of a poll and the response of 1,472 participants are summarised as under:

#### Result

When asked whether they perceive that India has freedom of speech and expression, 24% respondents answered with a clear Yes, 11% respondents felt that India does not have freedom of speech and expression, 32% respondents India's freedom perceived expression is subject to severe restrictions whereas 34% respondents India's freedom perceived expression being subject to rational restrictions.



#### Findings from the poll survey

- The overall results reflect that a majority of the respondents are aware that India's freedom of expression is subject to restrictions and they were nearly equally divided on their perception whether such restrictions were rational (34%) or severe (32%).
- A peculiar finding is that in relation to the respondents (11%) considering

that they do not feel India has freedom of speech and expression, a staggering 94% were women. One respondent, a woman in her early 20s remarked "Freedom of expression doesn't mean anything if the Government fails to enforce it. As a woman, I can't simply voice my opinion on a social media platform without perverts and stalkers, hiding behind the anonymity of Internet, sending me obscene and lewd direct



messages. In such a scenario, reporting them to the social media platform hardly ever leads to any tangible improvement and the only option I have is to block them. Most of my female friends have faced similar experiences on social media. I would rather not voice my opinion than expose myself to the threat of stalkers latching on to me with minimal protection from the authorities."

- To summarise, the findings indicate that 43% of the respondents perceive that India either does not have freedom of expression or that the restrictions placed are severe. Whereas 57% of the respondents perceive that India has freedom of expression or that the restrictions imposed are rational.
- For a democracy to function in a healthy manner, it is not only important that freedom of speech and expression should be present, it is equally important that its citizens should perceive their presence.

#### Conclusion

The concept of freedom of expression is an age-old topic. Despite a plethora of judicial precedents, laws, debates and expert commentaries, the issue remains an evolving one, especially in light of growing mediums of expression (for instance, the Internet).

However, it is unanimously conceded that freedom of expression is every citizen's inalienable right. It is also generally agreed that the freedom is not absolute and is subject to reasonable restrictions.

What constitutes 'reasonable restrictions', however, is highly subjective and a matter of seemingly unending debate in judicial forums and on public platforms

as well. It is also pertinent to note that the debate is not necessarily objective but depends on countless intertwined political, economic and social factors. A good illustration is the ongoing battle between social media platforms Twitter and WhatsApp with the extant Indian government. It will be interesting to see how the matter is eventually played out given that both parties seek to achieve their own version of equilibrium between freedom of speech and "national interest".

Needless to say, the strength of a free society rests on how well its citizens are able to freely express themselves. Based on the results of the survey discussed above, the author believes that freedom of expression, like any law, is ineffective unless and until it is properly enforced and made available to each citizen by the State machinery. Let us not forget the golden words<sup>17</sup> of Leo Tolstoy, "Writing laws is easy, but governing is difficult."

While a debate on the nuances of the freedom of speech and expression is vital to further the concept amidst dynamic times, it is equally imperative for the freedom to be enforced in an equitable manner to ensure a society's smooth progress, especially in a democratic setup.

Only then, in the humble opinion of the author, can it be regarded that the society considers freedom of expression as a citizen's inalienable right.

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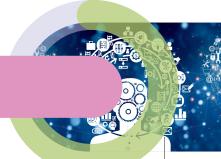
Appendix - Poll survey on public perception of freedom of speech and expression

The poll survey was conducted on LinkedIn web platform.

The respondents were 1,472 in number. The general age group of the respondents was between 22-35 years.

The question asked – "Do you perceive that India has freedom of speech and expression?" The respondents were given the following four alternatives:

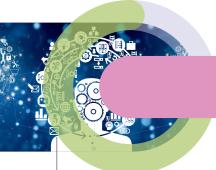
- 1. Yes
- 2. No
- 3. Yes with severe restrictions
- 4. Yes with rational restrictions



A snapshot of the results is provided below:

Oo you perceive that India has freed ou can see how people vote. Learn more	-
Yes	24%
No	11%
Yes-with severe restrictions	32%
Yes-with rational restrictions	34%





#### THE DASTUR ESSAY COMPETITION 2021

# Impact of COVID-19 on human behaviour, habits and how one should tackle the problem



Ms. Vaishali Jitendra Lund

#### Abstract

The infamous novel virus has brought about many changes in the thought process, lifestyle, habits, work life and the way of living of people, societies and communities at large. The "new normal" that the people now are compelled to adopt has completely changed the habits and behaviour of people. Human behaviour has been critical in the way the pandemic and the response to the same has shaped up over the past year. The pandemic has impacted every strata of the society, be it students, the young working professionals, the homemakers, the aged etc. An important aspect to note is that the change that has occurred is completely unexpected and if one measures the outcome of the impact, the change will probably be classified as the "once in a lifetime change". Out of what is seen and heard around, it seems that the negatives around the pandemic overcome the positive around the pandemic in terms of absolute numbers. However, on understanding the facts and on understanding and comparing the outcome of various studies around the world, it can be comprehended that the impact on human habits and behaviour has had equal impact positively and negatively per se. It would be worthwhile to note that enumeration of the impact into positives and negatives helps to appreciate the positives out of the pandemic whereas it allows scope to improve wherever the impact has been negative. Well, definitely the pandemic is not something that any person in the best of his senses would appreciate as a situation. However, like every cloud has a silver lining, the pandemic surely has brought about some degree of positive change in the habits, attitudes and behaviours of the people.

The essay enumerates the change in the mindset of the people regarding various situations during the pandemic and also the changes in the habits of people observed during the pandemic. The positive and the negative changes in the habits of the people have been studied and explained in the essay. Further, the possible solutions to deal with the tough situations have also been suggested.

Impact of COVID-19 on human behaviour, habits and how one should tackle the problem.

#### Introduction

"We are, or will be, going through the most radical transformation the world has ever seen; people are justly terrified, excited, depressed, heartbroken and hopeful, all at once."-Heather Marsh¹.

<sup>1.</sup> Heather Marsh, "The Creator of Me, Them and Us" (2020)



As it is rightly quoted, by Heather Marsh, in her book "The Creation of Me, Them and Us", the human being may at some point of time in life experience too many different emotions at once. A plethora of emotions- terror, grief, excitement and depression, all have been experienced by humans at once during the time of the world pandemic of Covid-19. The novel virus, since the past year has not only affected or impacted our life but has become a part of our life. The "stay at home", "work from home", "study from home", "play at home", "learn at home" has had both positive and negative impact on the habits and behaviour of people. Earlier a person used to wait for the entire day to return to a place called "Home". Home was considered as the sacred place where an individual used to find peace and happiness in the company of his loved ones. Today the home is a school, college, office, gym, theatre all in one place. The questions like "Where are you?" or "When would you be coming home?" and the excuses like " I am not at home" or " I am stuck in traffic" that were once part of the day to day conversations have practically become redundant to use. Since the common answer to all these questions is every individual, in the time of the pandemic is at home only.

Human behaviour refers to the capacity of human individuals to respond to internal and external stimuli<sup>2</sup>. The psychologists around the world have been studying the nature of human behaviour. While some theories suggest that understanding human behaviour is a real time learning experience since people with different personality types react to differently to different situations. This fundamental trait of human behaviour classifies it to be

the most unexpected and unpredictable dynamic of human psychology. However, some theories further elaborate and explain that human behaviour in some situation can be the most predictable. For example, in a given situation, a person of a particular nature will react or respond in the most predictable manner.

Imagine, a person who classifies to be a pessimist in terms of what is defined in psychology will find and harp on the negative aspects only in any given situation. Such a person would only be able to see the traffic, the mud and the chaos created by a sudden rainfall. It would be highly irrational to expect such a person to appreciate the greenery, the smell of the mud, the excitement and the beautiful romantic weather that the sudden rainfall created.

However, it has been observed that the psychology of people has become really unpredictable at the time of the pandemic. A person who used to be an optimist and find the good in every situation seems to have fallen prey to the Covid-19 anxiety syndrome. He is the one who fears that moving out from the house to attend to urgent professional commitments may also lead to him being the reason of danger for his loved ones. The pandemic has infused terror and fear into the lives of people. On the contrary a person who may be pessimist became overly pessimist in this situation. The once upon a time, super busy professionals had their foot forward and were ready to help the aged neighbours, acquaintances and even unknown people with the groceries and medicines during the time of lockdown. Basically, there was no standard rule or pattern that could be identified in the reaction of different people in this situation.

<sup>2.</sup> Hemakumara, GPTS. and Rainis, R. 2018. Spatial behaviour modelling of unauthorised housing in Colombo, Sri Lanka. KEMANUSIAAN the Asian Journal of Humanities 25(2): 91–107



The pandemic truly has proved the fact that the change in human behaviour has been a "once in a lifetime kind of change". Normally, before the pandemic, a person would have had taken ages to adopt a new lifestyle. But the pandemic forced the people to adapt to the new normal very quickly and swiftly since the question was of survival and not choice.

"Cleanliness is next to Godliness" is not something that a person would be able to understand only if he was a learned and a highly educated person. It was something that was taught in the kindergarten. However, a considerably low percentage of population truly practiced the appropriate hygiene and sanitation practices. However, the importance of hygiene and sanitation was, in true sense taught by the pandemic. The pandemic taught the people a lesson that probably the kindergarten textbooks failed to propagate.

However, like every coin has two sides, it cannot be denied that the pandemic has brought in the sedentary lifestyle, the over usage of mobile phones and electronic devices, depression, fear and deteriorating mental health. Some studies and reports also suggest the increased use of alcohol and drugs, the high rate of domestic violence etc. during the lockdown.

Overall, there has been a major change in the mindset of people. The pandemic has bought with itself, positive as well as negative changes in the habits of people, society and community at large.

## Areas where the changed attitude of people has been observed

The paradigm shift in the attitude and beliefs of people is enumerated and elaborated as under:

#### Proceed with Caution Attitude

The human mind, in recent times, is pushed to be cautious in every

action, every decision it takes. The cautious attitude, although very important to survive in today's times, the resultant consequence of the same is high level of mental stress. A man may decide to take all necessary precautions and go to his workplace. However, at the back of his mind he may be feeling extremely anxious of the fact that the virus may infect him if he ventures out in the dangerous situation.

#### Live like there is no tomorrow

Although the said quote was always meant to be applicable in the most positive of situations where it was meant to motivate an individual to live in the present day without worrying about the past or future. However, in the time of this pandemic, the quote has taken the shape of literal reality. All of us are literally driven to believe the fact that there may not be a tomorrow to live in this world. Every morning listening to the news, reading the newspapers or even while talking to anybody, every human mind must has definitely had the thought that today is the last day of life.

#### Trust no one in this world

Trust, a very basic foundation of human character is one of the most damaged virtue after the pandemic. The trust not only on fellow humans, but the entire humanity is lost. People have started questioning every action of every human around. In the initial phases of the pandemic, when somebody was infected with the virus, the people around would look down upon him and start assuming various stories on how the person would have contracted the virus. This would subsequently lead to not trusting the person anymore



and staying as away from him as possible.

## • There seems to be no end to the dark tunnel

Aristotle, the Greek philosopher quoted that "Man is a social animal"<sup>3</sup>. His basic nature is to move around, interact with fellow humans and to grow his treasure of knowledge, relations, material wealth etc. However, since the past year, the pandemic has forced the humans to stay indoors. Although, in the digital age, where everyone is connected through mobile phones, video conferencing facility etc. the human element or the human interaction is missing.

## • The internet is not the window to the world but the entire world

It would not be an exaggeration if it is said that the entire world will come to a standstill if the internet is inaccessible even for a minute. Earlier internet was in support to the main activities that the human would be engaged in. Today, in the age of pandemic, the internet has become an indispensable part of the life. Without internet, probably even smallest of chores like buying groceries would become difficult for people.

#### Comfort is a myth

Comfortable life that every person, once desired is now a reality. Interestingly, the earlier idea of comfortable life, when has turned into reality is causing discomfort to the people. It seems that people are

not really comfortable in their very own earlier idea of comfort.

## Positive Changes in the habits of people

The pandemic has led people to adopt many positive changes in their lifestyle. What to eat, how to eat, how to sanitize something as basic as vegetable to sanitisation of car, the pandemic has led people to create and define what is safe and what is not.

Some of the changes that can be perceived to be towards the better side of life are enumerated as under:

#### Health and fitness

One of the greatest gifts that the pandemic has given the human race is the understanding the importance of health and fitness. Not only understanding and appreciating but also implementing the changes required to lead a healthy lifestyle have been done by the people. Most of the people, in this pandemic have realised the importance of health and fitness and have been able to begin the walk towards healthy lifestyle. The work from home model has to a great extent helped people to remove some dedicated time for fitness. Online yoga and online Zumba classes have further motivated the desire to be healthy and fit. Probably the time that was spent by an average individual in a metropolitan city towards travelling to the workplace and back to home now can be devoted and dedicated to a planned fitness activity like yoga, Zumba, aerobics, gymnastics or even brisk walking and cycling.

<sup>3.</sup> Aristotle -Greek Philosopher – 384-322BC



#### • Importance of home - made food

The normal Indian food ingredients have proven to boost immunity of people. The millennial generation, who was always attracted to the western form of culture is now depending upon the desi Kadha to boost their immunity. The rich benefits of "Haldi Wala Doodh" which was always a "Daadimaa Ka Nuskha" is now the new fad for the young generation. No more is the craze for a Domino's pizza or a McDonalds Burger. The people now have a mini-McDonalds, Domino's, Monginis all at home, right in their kitchen. The urge to have the instagram post with the hashtag "Look what I made today" is positively leading the teenagers back to believe the fact that there is no competition to the homemade food. The Italian, the Chinese, the Mexican cuisine have all got blended with the Indian flavour of the food. The young generation now has been made to understand the cost benefit ratio of the homemade food. The benefit of the home-made food is much higher as compared to the cost involved in the same. The benefits are not only monetary but also healthy. Cooking has now, suddenly become the new therapeutic activity or a "long forgotten now remembered hobby" of many youngsters, working professionals as well as the middle aged.

#### Hygiene and Sanitization

The world has progressed towards the path of hygienic lifestyle. The importance of hygiene has been given prime importance in today's time. The extent of sensitisation towards this can be measured from the fact that every brand, every influencer, every TV show, even

brand commercial reminds people to wash their hands regularly. Signboards on the city road mention "Wear a Mask". Even the local "Kirane ka Dukkan" now has a sanitizer for its customers and follows social distancing norms. The "Wash your hands for at least 5 minutes after every hour" is a very good hygiene practice that has now been blended into the lifestyle of people. The face mask, the hand gloves, the face shields had entered into our lives as quest who were here for few days but overtime the same have now become the guests who refuse to go back from our lives.

#### Setting of a daily routine

Since everyone is at home almost all the time, every individual has made an effort to set up a daily routine to accommodate fitness, health, family time, work, online gatherings etc. all in the twenty-four hours that are at hand. Once upon a time, people used to struggle with their work life balance. In metropolitan cities setting up a daily routine for any individual used to be a nightmare or a waste of time activity. Since, however perfect the routine might be, a sudden rainfall or a sudden traffic bottleneck or a delay in the local train might all ruin the perfect routine. How much ever an individual desired to manage everything in a day, there was something that was always left out. In most of the cases it was either the family time or the very precious but very rarely found "Me Time". It cannot be said that the lockdown or the pandemic has eliminated all the factors that caused lag or interfered with the routine planning of people. However, the pandemic has surely helped people set up a daily routine and to follow



the same to the extent of at least 90% if not 100%.

#### • 8-8-8 Rule

The pandemic has helped everyone to understand the importance of family time. The millennial generation is now made to understand the 8-8-8 rule i.e. 8 hours of work, 8 hours of sleep and 8 hours of leisure time. Although a very difficult habit to inculcate staying in the metropolitan city, the fact that it is unsafe to venture out has made people to find activities to entertain themselves within the closed doors of their homes.

#### Aatmanirbharta

"Aatmanirbhata", today is the new buzz word. Every individual literally has become a home barber, a plumber, a home contractor, a chef, a maid all by themselves. Achieving this kind of "I can do anything and everything" attitude has helped people believe in themselves and has created a sense of freedom and confidence amongst them. Every household has had at least one home baked cake in the past one year. There is no more ranting about the maid not coming for a day. Everything has entered the "I can manage" zone after the pandemic. The people have seen the worst of times where they had to manage all by themselves. Now, since they experienced the toughest of times, everything seems to be manageable and solvable. The pandemic has taught people the very valuable virtue of "Dignity of labour".

#### Sharing and caring

Earlier, the stereotypes prevalent in the society characterised a

man to be the bread earner while the woman to be the caretaker in the family. Not very long ago the stereotypes were broken and women entered the arena of being the bread earners of the society. Unfortunately, assuming the role of bread earners of the household did not absolve them of their duties towards the household. Although, it cannot be denied that men did contribute to the household duties, however the primary responsibility remained that of the women. The pandemic has made the men more understanding and willing to share the household responsibilities. The division of work at home is no more a topic of quarrel but more of a bonding activity. The children are growing up to be responsible individuals who very well have understood the importance of sharing the responsibilities and caring for the loved ones.

#### Digital Payments

The pandemic has driven people to use more of digital payment methods rather than cash. There is more awareness now regarding online modes of payment. The economy is slowly heading towards cashless economy. Although this has some pros and some cons. However, as of now the number of "pros" seems to override the number of "cons" in this case. Even the fruit vendor selling apples now prefers to take payment through "G-Pay" instead of cash. According to the National Payments of Corporation of India data, UPI transactions grew to 2.21 billion in November 2020 last compared to 1.22 billion in November 2019 while the total transactions processed amounted to Rs. 3,90,999 crore in November



2020 from Rs. 1,89,229 crore in November 2019<sup>4</sup>.

## • Importance of life and medical insurance

One of the most fundamental truth of life realised by the humans is "Life is fragile and unpredictable". This very thought has now enforced the idea of security of family members and provision for medical emergencies. A research in the area has found results that there is a substantial increase in terms of the number of people who have now taken life and medical insurance.

#### Importance of savings

Human beings have now realised the importance of savings. An age-old thought that was prevalent was if a person earns Rs. 100/-, he should save Rs. 70/- and spend the rest Rs. 30/-. However, this trend seemed to evaporate when it came to the modern-day generation. However, the pandemic has forced people to think more about savings since they have now realised the fact that medical emergencies may arrive anytime.

## Baby steps towards reduction in economic disparities

The changing times have encouraged people to adopt progressive thinking. Marriages in India used to be considered a status symbol. The amount of expenditure incurred on a wedding used to be directly proportional to the social status that the family would have. Due to the restrictions imposed due to the pandemic, every wedding, irrespective of the rich or poor has to be a minimalistic with minimum

number of guests and minimum number of functions. The amount of money that used to be spent towards the wedding can now be saved and used towards some better cause.

## • Indian culture being adopted worldwide

The very humble "Namaste" of India has now become the global "Hello". The traditional handshake is now replaced by the "Namaste". Indian Yoga practices and spirituality has gained importance on the global platform.

#### • The Work from Home culture

Remote working has now become the new norm. Prior to Covid -19, working from home was a luxury available to only niche kind of senior employees or expecting women. Post Covid-19, remote working is no more the luxury of few but the essential for everybody.

#### Skill Development

The most popular of the universities around the world welcomed the professionals, students, homemakers, possibly everybody to the era of online courses. Professional who never could find time to upgrade their knowledge and skills, now had the leisure to take up skill development and knowledge enhancement courses right in the comfort of their home. Homemakers, who had left their dream midway to sacrifice their time to taking care of the family and upbringing of children, now had the time and facility to go back and chase their incomplete and unfinished dreams.



## • Change in consumer spending habits

After the months spent by people in lockdown, the consumers have been forced to shop differently. They have been compelled to re-prioritize what is essential and what can wait. A very interesting study reported that, the demand for comfortable pyjamas and cotton t-shirts, during the lockdown had surpassed its all-time high demand at any time during the history for which the brands were in existence.

#### Family relations

The pandemic has forced people to stay indoors. This has led to close bonds growing stronger between family members. The grandparents are now closer to their grandchildren. The morals and values are being passed on from generation to generation. Prior to the pandemic the young children in the family were left by the working parents in the hands of the maids and nannies. It is very unfair to deny the fact that maids and nannies are an integral part of the life of the working parents in a metropolitan city. However, by applying any maxim, it cannot be proved that nannies and maids will be able to inculcate culture and values into the new generation.

#### Investment in direct equities

Considering the uncertainty around the regular sources of income of people like salary and rental income, people were forced to think of alternate sources of income. The fear of financial future forced people to learn new skills to improve financial health. Many people earned good amount of money and created wealth by investing in direct equity markets. There was an urge that was seen

amongst the people to learn about the stock market and the craze to earn money from the fluctuating stock index.

## Negative Impact on the human behaviour and habits of the people

While appreciating the positive changes in the habits of the people, the fact that there have it cannot be completely denied that the negative impact that the pandemic has had on various areas are enumerated below:

#### Mental Health Concerns

People at large have been experiencing stressful and anxious situations. The anxiety relating to contracting the virus and the consequences of not being able to cope with it is a common mental concern these days. For many people, the fear of being the carrier of virus and causing harm to the family members is leading to stress. Another peculiar mental behaviour pattern observed by the mental health experts is related to Covid-19 anxiety syndrome. The syndrome is associated with the inability to leave the house because of the possible negative outcome of the action. A person who undergoes such a syndrome feels that going out of the house, even if with proper precautions will eventually lead him in contracting the virus.

#### Increased Alcohol and Drug Usage

Many studies around the world have studied and concluded that the there has been a substantial increase in the adult consumption of alcohol. As per a study, the consumption of alcohol was increased by more than 50% in the United States for the week ending March 2020 as



compared to the same period in the previous year<sup>5</sup>. Further, even locally, it was observed that there were large queues outside liquor shops even during a very strict lockdown period in the country. People did not mind taking a huge risk of contracting the virus while standing in those long queues for alcohol. In some parts of the country, there was even a form of protest that was staged by the locals on closure of liquor shops during the initial phases of the nationwide lockdown.

#### Lack of physical activity

Well, while mentioning the increased importance of fitness under the positive impact of the pandemic, it cannot be denied that due to the pandemic the people have been confined to the walls of their houses. Simple and routine activities like going to the market for buying vegetables m fruits and groceries have been shifted to the online platform. Due to the lockdown the people have been confined not only to the walls of their house but also to the window of their screens. Well, the alarming rate of obesity amongst the youth was anyways a cause of concern which has now multiplied due to the pandemic.

#### Depression and Anxiety

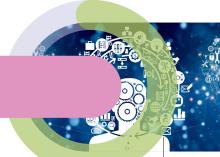
One of most negative word heard around in the terminology of psychology, during the time of the pandemic was depression. Depression is a mood disorder that involves a low mood and loss of interest. It is categorically different from the mood fluctuations that people regularly experience as a part of

their daily life. Anxiety, is defined as a feeling of worry, nervousness, or unease about something with an uncertain outcome. The feeling of depression and anxiety has become a daily part of the lives of people. Due to the lack of human interaction and the loss of loved ones and the alarming rate of increasing cases of the virus, there is a general state of gloom over the minds of the people. Depressing and anxious state of mind has become a common problem amongst the society at large.

#### Increased screen usage

The world has come online. Work, play, shopping, entertainment, social gatherings everything in the lives of people have now been confined to the screens of mobile phones and laptops. An average individual in a metropolitan city spends around 13-18 average hours per day in front of either their laptop or mobile phones. A typical day in the life of a student begins with attending online classes followed by online assignment followed by meeting friends online and ends with either playing online games or watching online web series or on social media. A day in the life of a young or a middle- aged professional begins with attending online fitness activity class or reading online news or doing online banking transactions. This is followed by online work from home followed by online entertainment activities. The aged people have even been forced to attend to events like "Online Satsang" or "Online Community meeting". The online platform surely has been a saviour for people during the tough times of the pandemic.

<sup>5.</sup> Pollard MS, Tucker JS, Green HD. Changes in Adult Alcohol Use and Consequences During the COVID-19 Pandemic in the US. JAMA Netw Open. 2020;3(9):e2022942. doi:10.1001/jamanetworkopen.2020.22942



However, the time spent in front of the blue screen has increased alarmingly. This probably could lead to disoriented behaviour, feelings of anger and anxiety, unusual mood swings, poor vision, obesity, increased cholesterol levels etc.

# Increased instances of domestic violence

In India, during the initial phases of lockdown, Indian women filed more domestic violence complaints than recorded in a similar period in the last 10 years. Further, the situation was perceived to be even worse since according to a general study, only 86% of women who experienced domestic violence did not report or seek professional help. The pandemic altered the family dynamics completely. The work from home culture has led that office frustration home. A difficult situation at work which otherwise would have been dealt with at the workplace now, in the work from home scenario has become a part of the household. The frustration amongst the working class due to the work pressure and the social pressure has contributed greatly to the increasing numbers of domestic violence cases.

# Fear of Missing out and the fear of loneliness

The Fear of Missing out (FOMO) refers to the feeling or perception that others are having fun, living better lives, or experiencing better things than you are. It very badly affects the self esteem of people. During the time of pandemic, self - isolation has forced the feeling of fear of missing out on important

social interactions. Every individual during the pandemic, in the situation of lockdown has at one point of time thought that he is missing on interactions at the workplace, casual small talks with friends, social events like birthday parties, marriage ceremonies etc.

# • Lack of human element in social life

Although, due to the availability of online video call and conferencing facilities, the people have been attending social events online and have even been meeting people online, the human element in the interactions is absent. The magic of the human touch and the warmth that the people experience while interacting with fellow individuals is somewhere lacking due to the pandemic. The lack of human element in the interactions has led to mental agony and to some extent the feeling of anxiety and depression.

## Phobias

Corona phobia is one of the latest terminologies used in the latest times. Corona phobia is the fear of contracting the corona virus. An individual is a victim of Corona phobia if he feels that he has contracted the virus even at the instance of a regular sneeze or cough. Another kind of fear that has been observed in the people who have been a victim of the virus is the fear of not being accepted by the society. The isolation and the quarantine observed by the patients make them experience the feeling of loneliness. Further patients who have been infected with the virus or

<sup>6.</sup> https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19 lockdown/article31885001.ece



have been suspected to be infected by the virus have been reported to have experienced fear, boredom, loneliness, anxiety, insomnia or anger.

# • Irregular sleep pattern amongst children

Since the children are supposed to attend their school and classes online, there is no seriousness or the need of discipline to reach at a place on time. Every activity of the children is to be done at home. There is no requirement or the need to step out of the house. Well, this is indeed a very comfortable arrangement. However, this comfortable arrangement is hampering the feeling of discipline amongst the younger generation. Irregular sleep pattern has been experienced and reported in the case of the younger generation. Nowadays, it is a very common sight to see children fast asleep at 7.00 am and right in their online classroom at 7.15 am. This is not only amongst the school children but also amongst the teenage or college going children.

#### Consumer Habits

The fear of the lockdown has led to the hoarding mentality of people. One small announcement regarding the change in the lockdown restriction leads to panic amongst the people. The feeling of panic leads to panic buying amongst the consumers and there is mass hoarding of goods. The people fail to understand the fact that there is no shortage of goods and start panic buying on the smallest hint of a lockdown.

# Solutions to tackle with the problems during the pandemic

Some solutions that can be implemented to reduce the negative impact of the pandemic are as follows:

## Analyse the problem using step based approach.

Begin by defining the problem. This should be immediately followed by thinking of as many solutions as possible. Analyse the pros and cons of the each solution and select the most workable solution. Prepare a plan of action and implement the solution. Review the impact of the solution and repeat the process in case of unsatisfactory results.

## Maintain Social Connections

Social Isolation is one of the major causes of mental health related problems. Hence maintaining social connections is the best way to maintain a decent level of mental health. All the available tools like phone calls, messaging application, video conferencing can be used for the purpose of staying connected with friends and family.

# Divide your day and set up a daily routine

Inculcate a structure into your daily chores. Divide your day and create blocks of time. Even if working from home, the office time should be clearly distinguished from the personal family time. Implement the 8-8-8 rule, wherein accommodate 8 hours of sleep, 8 hours of work and 8 hours of leisure into your daily routine.



#### Positive Outlook

Maintain a positive outlook towards things. Though the situation around is gloomy, still try to find the good in every situation. Understand that every negative situation is a phase and like a phase this too shall pass. Have gratitude for the things you have rather than feel sad for the things that you don't.

## • Learn, innovate and update

The pandemic has provided a very valuable gift to all the people. The gift is called "Time". Every individual, in this pandemic has got some extra time out of his daily routine. Utilise this time to learn new skills or upgrade the existing skill set. All the resources are available at the fingertips. It is a very good opportunity to make use of.

## Acceptance of the new normal

Many fundamental changes have been forced into the lives of people. Rather than complaining about the changes, it is more effective and practical to embrace the changes and accept the new normal situation. A sense of acceptance eases out the stress related to the new changes.

## Be sensitive towards the needs of others

It is important to be sensitive towards the needs of all those people who are around. Understand and keep a check on the needs of the house helps, workers, drivers etc. Understand and accept the fact that the times have been challenging not only for you as an individual but also everyone around. Talk to the people around regularly and be ready to help wherever possible. Helping others gives an immense sense of

satisfaction to oneself which created positive hormones and contributes significantly towards mental health.

# • Take proper precautions and adopt hygiene practices

 Although taking precautions does not serve as a guarantee of not getting infected by the virus. However, it surely does reduce the risk of contracting the virus. Follow the sanitation guidelines prescribed by the health experts and take care of yourself and your family.

#### Conclusion

While the pandemic has definitely turned the world upside down, there is always something good also that has come out of it. The brotherly feeling towards fellow human beings, the love and compassion, the need to stay around loved ones etc are the good outcomes of the pandemic.

The times are tough for everybody but the one who manages to survive in the tough situation will surely be able to come out of it. There is always a ray of light at the end of the tunnel, however long the tunnel seems.

As Martin Luther King Jr. puts it,

# "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenges and controversy"

The time is testing the patience of every person in the current situation. Although it is very difficult to accept the forced changes into the lives of people, it is not impossible. When a person can't control what is happening around, it is the best to control the way he responds to what is happening around. It is important to remember and remind yourself that the pandemic too is just a phase which shall pass.



In the words of Morris Mandel,

# "The darkest hour has only sixty minutes"

To conclude, to be able to survive and come out of the difficult situation, evert person should remember the words of Olivia Benson,

"You're a fighter. Look at everything you've overcome. Don't give up now"

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# THE DASTUR ESSAY COMPETITION 2021

# Freedom of Expression is a Citizen's Inalienable Right



Ms. Rutvi Doshi

If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter – **George Washington.** 

'Freedom' - this word is like a double edged sword which gives you the choice you want to make freely but at the same time, could be taken away from you since it is not absolute. As rightly said that 'Freedom is not the right to do what you want rather it is the opportunity to do what is right'. But still, being in the era of social media and advanced technology, can people be trusted to handle an unlimited range of ideas and information without government intervention? Should the right to speech be absolute? Or where should the lines be drawn when we talk about the free speech and expression? The solutions to achieve the right balance also is in the level of tolerance which every citizen has in the country. Since our country is governed by the rule of law, there have been various instances wherein laws have not been framed correctly and therefore they end up being misused. Recently there was a cartoonist who was arrested for creating the national emblem and he was charged under State Emblem of India (Prohibition of Improper Use) Act, 2005. The law was obviously twisted to sustain this charge since the cartoon did not incite or have a tendency to incite violence. But the objective was achieved and the cartoonist was sent to jail for a while. Interestingly, in due course, the charge of sedition was withdrawn against him, but it will not be surprising if the incident had a chilling effect on some political cartoonists. In the early seventeenth century, Baruch Spinoza, a Dutch philosopher of Portuguese Sephardi origin was one of the most modern rationalist and a biblical critique during his time and for ours. His theory of freedom of expression and religion was based mainly on his personal turbulent experiences partly as well as the liberal freedoms which he wished to preserve and defend. He was always in favor of a secular and democratic society and was one of the strongest advocates for freedom and tolerance in the early modern period. According to him freedom of speech and expression is an 'indefeasible right' similar to that of right to property. No one can abdicate one's freedom of judgement and feeling since every man is by indefeasible the master of his own thoughts and it follows that men thinking in diverse and contradictory fashions cannot without disastrous results, be compelled to speak only according to the dictates of the supreme power. He argued that all individuals are to be absolutely free and unimpeded in their beliefs, by right and in fact. "It is impossible for the mind to be completely under another's control; for no one is able to transfer to another his natural right or faculty to reason freely and to form his own judgment on any matters whatsoever, nor can he be compelled to do so. The main rationale and logic behind his political thinking was that the object of the government is not to change them into beasts or puppets rather to



enable them to develop their minds and bodies in security. In fact the true aim of the government is liberty. So long as we respect the rights of others, it doesn't matter why you so, therefore the State should have no concern with your beliefs whether rational, irrational, moral, immoral or heretical.

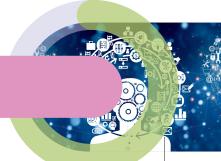
Secondly he grounded freedom of religion in the broader principle of freedom of speech. Every person whether religious or no has the inalienable right to express his beliefs. But one of the most famous paragraphs and explanations he wrote was "The most tyrannical governments are those which make crime of opinions, for everyone has an inalienable right over his thoughts. To avoid evils in a state, there is no safer way than to make piety and religion to consist in acts only that is in the practice of justice and charity, leaving everyone's judgements in other respects free"1. Similarly John Stuart Mill, popularly known as J.S Mill was one of the most popular influencer of liberalism and individual liberty during the nineteenth century. He was one of the men responsible for the First Amendment which took place in America and which gave rise to freedom of speech and expression there. The First Amendment of the to the US Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances". It includes freedom of speech, freedom of religion, freedom to assemble, freedom of press etc. In one of the most landmark case of the Supreme Court, New York Times Co. vs. United States it was possible for the New York Times and Washington Post to publish the contents of the Pentagon papers without the risk of government censorship. The Pentagon papers were a top -secret study of the Defense of the US Political and Military involvement in Vietnam from 1945 to 1967. The portions of the Pentagon papers which were published clearly showed and revealed the involvement of Harry Truman, Dwight D. Eisenhower, John F. Kennedy and Lyndon B. Johnson who had all misled the public about the degree of U.S. involvement in Vietnam.<sup>2</sup>

Most often, though, Mill appeared as a progenitor of First Amendment absolutism: "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind". He argues that the only check against our own fallibility is to promote the free expression of ideas. In other words, he thinks that the only way we can have confidence in our opinions and judgments is by testing them in the fire of free expression. So censorship doesn't merely assume an implausible infallibility it also undermines the only means we have at our disposal to overcome our fallibility. His argument for free speech is as follows "the peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity

<sup>1.</sup> Free Thought and Freedom: Spinoza on Freedom of Religion and Speech, LIBERTARIANISM, (July 2015)

<sup>2.</sup> First Amendment, HISTORY.COM (Sept 2019)

<sup>3.</sup> Leonard Williams, The First Amendment Encyclopedia, MTSU (2009)



of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error."4 The right to freedom of speech and expression is wider in its scope and is not susceptible to any precise definition. It is a phenomenon through which one conveys his ideas to others. If we take into account this definition, then right to information is only a step that helps an individual to get himself well informed, so that he can exercise his right to freedom of speech and expression effectively. The casting of vote is a facet of the right to freedom of expression of an individual and the said right is protected under Article 19(1)(a) of the Constitution. Fundamental rights are guaranteed to every citizen of the country right from the day they are born. They do not have to reach any 'legal age' to exercise them. Article 19(1)(a) includes a list of rights like freedomiof press, right to communicate, print and advertise information, right to access information etc. Any violation of the said rights gives the aggrieved person the right to approach the Supreme Court under Article 32 of the Constitution.6 Freedom of speech is guaranteed not only by the Indian Constitution but also by international statutes such as the Universal Declaration of Human Rights the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, etc. But it is considered as a negative right as well since freedom of speech and expression has its own limits and cannot be absolute even in a democracy. Other countries like Ukraine and Russia represent broad restrictions of freedom of speech and expression.

There only 10% of the total screenings of films in Ukraine can be in a language other than Ukrainian, and at least 50% of books published and distributed in Ukraine must be in Ukrainian. Ukrainian legislation further authorizes the banning of "films containing the propaganda of an 'aggressor state,' including positive images of the workers of the aggressor state, Soviet state security bodies, and films justifying violation of the territorial integrity of Ukraine.<sup>7</sup>

Freedom of expression did not exonerate the business tycoon and Infosys founder, Mr. Narayan Murthy. Once Mr. Murthy was travelling from Nis to Bulgaria in a local train wherein he started a conversation with his fellow lady passenger who started sharing her problems about meeting her husband once in six months after her marriage as both belonged to different countries. He started sympathizing with her and expressed his views on issues like marriage, job, choosing a life partner and freedom of expression is something which should not be curtailed irrespective of it being a capitalist or a communist country. Suddenly there were two fierce gentlemen who came and dragged both Mr. Murthy and the lady passenger and locked him in a small, dingy room for around four days without food. Later, he was dragged and dropped on the station with his passport stating that since he belonged to a friendly country like India, he was left. When he asked the guards about his offence, they said that it was against their rules to discuss such issues openly. Mr. Murthy who was a firm believer about the ideas of Karl Marx, Lenin and Mao as well, started to rethink his ideals after this incident. Suddenly he was made to realize the ruthless system which

<sup>4.</sup> Mills Argument for Free Speech: A Guide, PHILOSOPHICAL DISQUISITIONS (Nov 2018)

<sup>5.</sup> M. Narayan Reddy v Government of India 2011 (4) RCR 418

<sup>6.</sup> PUCL v Union of India (2013) 10 SCC 1

<sup>7.</sup> Ruth Levush, Limits on Freedom of Expression: Comparative Summary, LOC



denied basic freedom to its citizens as well as passengers visiting their country. That's when he realized the value of freedom and vowed to be a socialist capitalist which led him to build Infosys. The art of 'agreeing to disagree' has not been anchored in our country due to which "Religion now has become a tool rather an asset for politicians in to promote Hindutva'. Every individual has the freedom to express their personal views but it does have some sort of censorship which is required specially in liberal democratic countries. India, being a secular state, has no official religion which it follows but every person has the right to practice any religion they want without hurting the sentiments of others.

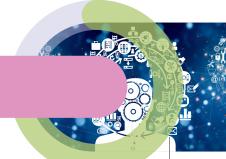
Recently one of the famous stand up comedians Munawar Farugui was arrested from a café in Indore where he was supposed to perform. He was released after spending thirty five days in jail for a crime he did not commit. He was arrested, along with four others, for "indecent" and "vulgar" jokes about Hindu gods. The complainant was Eklavya Singh Gaud, son of a BJP legislator and convenor of the Hindu Rakshak Sangathan. Police acknowledged that they have no video evidence of Faruqui insulting Hindu gods rather they were informed that he was going to perform the same in his show. Comedy is a genre which involves truth mixed with sarcasm and people could relate with the same issues together. Democracy allows you to develop your own thoughts which you can share and discuss it with people till the time it is not anti-national. The problem in this case was that Munawar was not allowed to even express himself before being arrested nor was there any kind of evidence which proved that he had

made derogatory remarks against Hindus or even Hindu Gods. With such actions taken by the authorities, it encapsulates the rising violence and discrimination done towards Muslims and other minorities in our country. Last year when the journalist Arnab Goswami was granted bail, he argued that courts remain "the first line of defence against the deprivation of liberty of citizens", that "bail, not jail" was fundamental to the legal system, and that "deprivation of liberty even for a single day is one day too many".9

Freedom of Speech and Expression has been misused rather abused by every person in the country, be it a politician or an actor. Our very popular actor Salman Khan once said in an interview while describing his experience on working as a wrestler, "It felt like a raped woman". Our own BJP Spokesperson Sambit Patra has openly in debates insulted his opponents by warning him that 'If you don't sit down, we will change the name of any mosque to Lord Vishnu and then you keep shouting. Yogi Adityanath has called Muslims "A crop of two legged animals that needs to be stopped". Well as rightly said that with freedom comes responsibility. In our country, the irony is that democracy was laid down for the people, by the people and of the people and not against the people. With power comes responsibility as well but the power in wrong hands often gets misused, which in our case happens both ways. The expression of dissatisfaction towards one's own government is a part of what democracy is, but the nation's maladies is that it involves an entire concoction of individuals who do not want to take responsibility for their actions nor do they understand the people's perspective. With the rising riots and protests specially for

<sup>8.</sup> Sudha Murthy, The Old Man and His God, PENGUIN (2006)

<sup>9.</sup> Editorial, A big step back, Indian Express (Jan 2021)

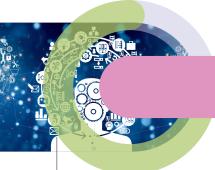


Legislatures in matters of CAA and the NRC, there have been various comments and posts of citizens who expressed dissatisfaction and rather justifications for the purpose and reason behind such a step, but the government has made it into a seditious issue and has arrested numerous individuals who have questioned the law. But the government itself cannot be blamed always. The hate speeches and the involvement of social media has led to a lot of fake news which eventually gets misused by the public. During the Republic Day ceremony, groups of people fled into the processions and started rioting and protesting with tractors and anti-national slogans which showed the power and misuse of democracy at the same time. The law of sedition of India has assumed controversial importance largely because of change in body politic and specially because of the constitutional provision of freedom of speech and expression guaranteed as a fundamental right under article 19(1)(a) of the Constitution. The section has a chequered history which it has undergone through legislative amendments and judicial interpretation. Before Independence it was introduced by the colonial master who wished to penalize anybody who was trying to overthrow the state. Sedition is nothing but libel(defamation) of the established authority of law i.e Government. Hence it is called as seditious libel in England. In other words, sedition includes all the acts and practices which have for their object to excite discontent or dissatisfaction towards the Constitution or the Government or the Parliament to create disturbance and generally all endeavours to promote public discord and disorder.

¹ºIn the year 1922, Mahatma Gandhi, who was the editor of the paper 'Young India' was charged under Section 124A of IPC for bringing or attempting to bring into hatred or contempt or attempt to excite dissatisfaction towards his Majesty's government established by law in British India by means of the written words contained in the articles "Tampering with Loyalty", "The Puzzle and its Solution" and lastly "Shaking the Manes" which was published in Ahmedabad. Instead of contesting the charge, he pleaded guilty for the same. In his written statement he expressed his dissatisfaction towards the government and stated that "Sedition Law is the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen" and declared that some of the most loved of India's patriots have been convicted under it and therefore I consider it as a privilege to be charged under that section. 11 But the landmark judgement of Kedar Nath Singh vs. State of Bihar, the Supreme Court had upheld sedition as constitutional. Kedar Nath Singh had made an intemperate speech about Congress Leaders and used certain derogatory words against them. He was charged with sedition, and ultimately his case went up to the Supreme Court, where the constitutionality of the provision itself was challenged. To uphold sedition, the Supreme Court was obliged to indulge in a degree of textual acrobatics, since at least on the face of it, "disaffection", "hatred", and "contempt" did not fit within any of the clauses of Article 19(2). Therefore sedition was declared as a crime against public order. Section 124A makes no mention of public order. Effectively, to protect the provision's constitutionality, the court had to read into it a phrase that was absent from the text, and indeed, never meant to be part of the definition. This perhaps explains why Section 124A remains one of the most misused and abused provisions of

<sup>10.</sup> Webster, Third New International Dictionary, G.C Merriam Co. (1976)

<sup>11.</sup> K.D Gaur, Indian Penal Code, Reprint 2015



the penal law. The court held that the term "in the interests of" was so wide that it allowed the state to criminalize both forms of expression, without any need to distinguish between the two.

Another recent example for the same was the famous "Tool Kit" case of the climate activist Disha Ravi for which she was arrested by the Delhi Police. She was arrested for her involvement in the circulation of the Toolkit, a digital kit created and shared during the farmers' protests against Farmers Bills in 2020. She was accused of offenses punishable under several sections of the Indian Penal Code out of which one of them was Sedition with criminal conspiracy. She argued that the investigating agency had maliciously invoked allegations of sedition under Section 124A IPC to portray a minor offence as a grave offence. Further, the investigating agency maliciously used terms such as "global conspiracy" to sensationalise the case and prejudice the personal liberty of the applicant. The applicant argued that the Toolkit represented an expression of free speech rights which are protected under Article 19(1)(a) of the Constitution of India. No offence of sedition was made out as the applicant was merely exercising her freedom of speech and expression to oppose the farm laws enacted by the government. The applicant relied on the Supreme Court decision in Kedar Nath Singh vs. State of Punjab, 12 to argue that actual violence or incitement to violence associated with the words in question, the necessary conditions for establishing a case under Section 124A of the IPC, were absent in the present case. Mere involvement of the applicant in the creation or sharing of the Toolkit cannot be construed as an offense. Finally the Court gave her a bail citing that, "Citizens, the conscience keepers

of government in a democratic nation, cannot be put behind bars simply for their disagreement with the State politics,". The difference of opinion, divergence, dissent or even disapprobation are recognised legitimate tools to infuse objectivity in state policies. In fact, "an aware and assertive citizenry, in contradistinction with an indifferent or docile citizenry, is indisputably a sign of a healthy and vibrant democracy." Therefore, the "offense of sedition cannot be invoked to minister to the wounded vanity of the governments. Accordingly the fundamental right of a citizen is to use the best means of imparting and receiving communication, as long as the same is permissible under the four corners of law and as such have access to audience abroad. A century after the famous trial, dissentors are still suffering to fight for their freedom to express their dissatisfaction towards their own government.

In a country like India, two individuals of the same sex cannot get married but instead they could marry a tree or a cow for that matter. In the year 2018, when the Supreme Court struck down Section 377 of the IPC which criminalizes homosexuality, it was one step further taken towards humanity and the right to express themselves. It was a 158 year old provision which was laid down during the reign of King Henry VIII in the year 1533. During his reign it was known as the 'Buggery Act'. The word beggary was derived from the old French word 'bougre' which meant anal intercourse. The Buggery Act, 1533, which was enacted by Henry VIII, made the offence of buggery punishable by death, and continued to exist for nearly 300 years before it was repealed and replaced by the Offences against the Person Act, 1828. Buggery, however, remained a capital offence in England until 1861,



one year after the enactment of the IPC<sup>13</sup>. In 2009, the Delhi High Court had ruled in favour of decriminalising section 377 - a decision which was overturned only to by a two-judge Supreme Court bench in 2013, in the Suresh Kumar Koushal vs. Naz Foundation case. Maneka Guruswamy had quoted instances of discrimination faced by members of the LGBT community and said the petitioners sought emancipation of a "class of people left out of the promises of our Constitution.14 The Constitution of India begins by saying We, the people of India and not we the heterosexual people of India. This was a five bench judgement given in the year 2018 wherein the then Chief Justice of India, Mr. Dipak Misra and Justice AM Khanvilkar quoted various iconic philosophers right from Oscar Wilde to Wolfgang von Goethe. They cited the relationship between Oscar Wilde and his lover Lord Alfred Douglas criticising the archaic laws based on a conservative notion of morality to stand for love, individual freedom, privacy and a human being's right to live with dignity. the German thinker, Johann Wolfgang von Goethe, had said, 'I am what I am, so take me as I am' and similarly, Arthur Schopenhauer had pronounced, 'No one can escape from their individuality'. The emphasis on the unique being of an individual is the salt of his/her life. Denial of self-expression is inviting death. Irreplaceability of individuality and identity is grant of respect to self. This realisation is one's signature and self-determined design. One defines oneself. That is the glorious form of individuality. Sexual orientation is one of the many biological phenomena which is natural and inherent in an individual and is controlled by neurological and biological factors. The

science of sexuality has theorized that an individual exerts little or no control over who he/she gets attracted to. Any discrimination on the basis of one's sexual orientation would entail a violation of the fundamental right of freedom of expression. The choice of a partner, the desire for personal intimacy and the yearning to find love and fulfilment in human relationships have a universal appeal, straddling age and time. In protecting consensual intimacies, the Constitution adopts a simple principle: the state has no business to intrude into these personal matters. Nor can societal notions of heteronormativity regulate constitutional liberties based on sexual orientation. The LGBT persons deserve to live a life unshackled from the shadow of being 'unapprehended felons'.15

#### Conclusion

There is an undeclaring emergency with respect to the privacy laws for which the Data Protection Bill was introduced two years back by the retired judge Justice B.N Srikrishna. There was a face off between the central government and the social media platforms like WhatsApp and Twitter with respect to the intermediary guidelines for right to privacy. There had been various instances wherein the government has instructed the Delhi Police who visited the Twitter Office when the comoany had failed to remove tags on specific tweets by ruling party politicians as well as the FIR's which were filed against people for criticizing the government on social media. The idea behind the PDP Bill was to have it all under one statute, so that "persons who have been affected can have a recourse, the governments under certain

<sup>13.</sup> Supreme Court Scarps Section 377; Majoritarian Views cannot Dictate Rights, THE WIRE (Sept 2018)

<sup>14.</sup> Shaswati Das, Section 377 Verdict by Supreme Court: 5 Key Things to know, MINT (Sept 2018)

<sup>15.</sup> Freedom from Fear: What the SC Judges said in their historic verdict on Section 377, HINDUSTAN TIMES (Sept 2018)



circumstances can have a resource, and there could be a regulator who would constantly monitor it. All developed countries, be it Australia or the EU have privacy policies which empower them to get companies like Google to agree to certain demands from the State. The balance or where the line should be drawn when it comes to freedom of speech and expression should be decided by the judiciary by interpreting what the legislatures intended for the same. The principles laid down in the Library Bill of Rights and Code of Ethics Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the freedoms of speech, press, religion, assembly, and association, and the corollary right to receive information without interference and without compromising personal privacy. When citizens criticize the government for issues like not handling the COVID situation or shortage of oxygens, it does not make them anti-national nor a criminal. The right of privacy and free expression are not derived from any claim of political, racial, economic, or cultural hegemony. These rights are inherent in every individual. They cannot be surrendered or subordinated, nor can they be denied, by the decree of any government or corporate interest. True justice and equality depend upon the constant exercise of these rights. Our fundamental rights cannot be absolute and so the constitution has placed a few reasonable restrictions on the exercise of the right to free speech and these include restrictions placed in the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence. Yet, it is important to note that these restrictions can be imposed only by law enacted by parliament and the restrictions have to be reasonable. The pandemic has generated

a tremendous amount of fake news in our country and worldwide and the latest going around is that corona were can be cured by snorting cocaine, drinking alcohol and bleach. There is no doubt that fake news must be countered effectively and quickly, but surely, a charge of sedition is not the answer. Apart from a vague definition of fake news and its subjective interpretation, it shows that the establishment prefers to act against the weak and defenceless with what was recently described as an 'iron hand' rather than against the privileged who can get away with saying anything. The fundamental right of freedom of speech cannot be applied arbitrarily. L.K. Advani's observation was that that during the Emergency journalists were merely asked to bend but they chose to crawl. There needs to be two questions raised while dealing with freedom of press; first one is that everyone is hearing and seeing what is going on, but is anybody listening? The other question to be asked in this context is can any serious journalist function fearlessly if an opinion expressed, however absurd or bizarre, leads to arrest and a charge of sedition followed by a long-drawn battle in the courts? The gradual erosion of one of our most precious fundamental rights the inalienable right to freedom of speech and expression - is leading to the gradual destruction of our human right to dissent and protest. It is time for the establishment to realise that the people of this country mean well and as in any democracy, there are bound to be different points of view. These must be respected - otherwise the fabric of our society might disintegrate, and fraternity, one of the key words in the preamble to our Constitution might just become another dead idea. As rightly said by Albert Einstein "Laws alone cannot secure freedom of expression, in order that every man present his views without penalty there must be a spirit of tolerance in the entire population.



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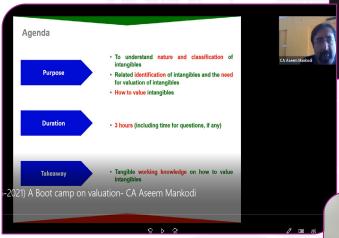


# **Glimpses of Past Events**

## **Boot Camp on Valuation**



Speaker CA Sujal Shah



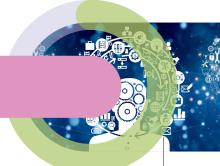
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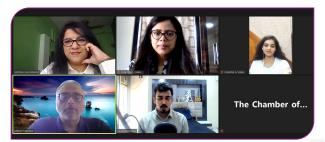
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Speaker CA Vitang Shah



# Glimpses of Past Events Tech Series 2021



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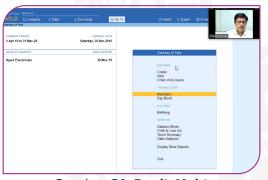
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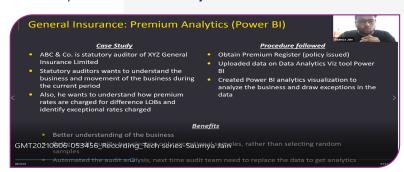
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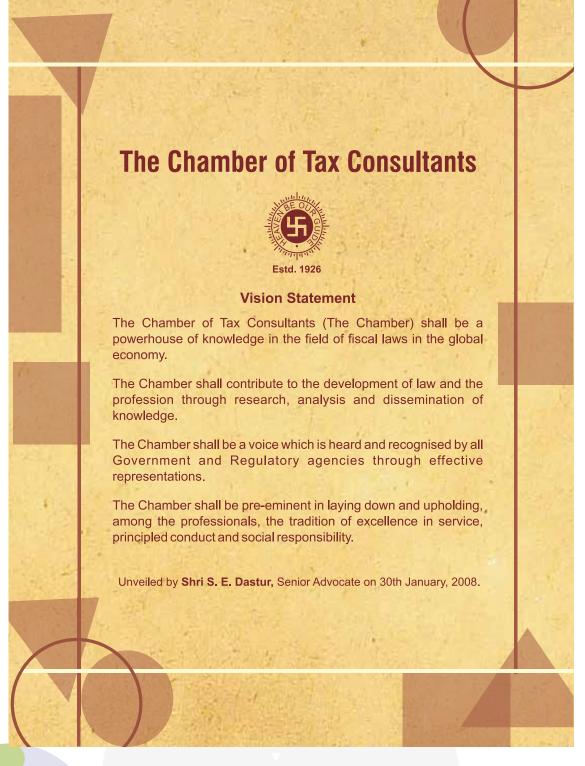
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