

JIGTAPO

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Your Quarterly Companion on Tax & Allied Topics

Learning Today Leading Tomorrow...



Estd. 1926

ज्ञानं परमं बलम्

**The Chamber of
Tax Consultants**

Mumbai | Delhi

www.ctconline.org



The Chamber of Tax Consultants



THE CHAMBER OF TAX CONSULTANTS

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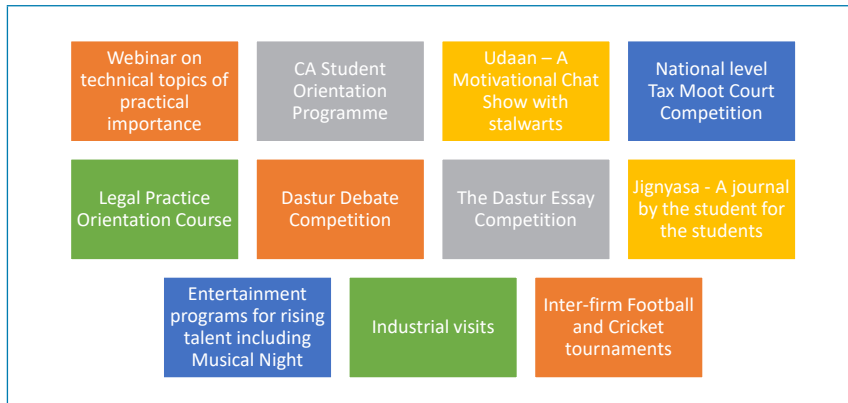
READER'S SUGGESTIONS AND VIEWS

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

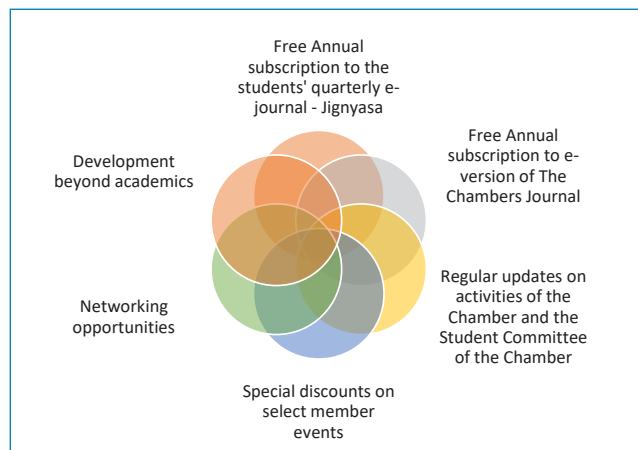


Become a Student Member of The Chamber of Tax Consultants

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



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



Who can become a Student Member?

Any person, who:

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

What are the fees for becoming a Student Member?

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

How can one enroll as a Student Member?

You may download the membership form using the below mentioned link

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

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

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

Email : office@ctconline.org

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

Mobile : 7977258507



POLICY FOR CONTRIBUTION OF ARTICLES FOR JIGNYASA

Who can contribute?

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

For which columns shall contributions be accepted?

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

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

What is the selection process of the article for publishing?

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

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

What are the technical requirements for the article?

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



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

What is the review process?

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

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

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

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

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



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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 jou@ctconline.org along with your name, firm name/college name and a photograph. From among the articles received, the ones approved by the committee shall be published.



From the President



Dear Students,

I am extremely delighted as I connect with all of you for the last time as the President of this great institution, The Chamber of Tax Consultants through this loved publication "Jignyasa". The new team under the able President elect Shri Parag Ved will take charge of the affairs of the Chamber from 4th of July, 2022 on completion of the 95th Annual General Meeting. It has been a great pleasure for me to communicate with all of you, the future stars of the profession over the period of last one year. The year 2021-22 has passed in blink of an eye and now it's the time for me to convey my good bye to all of you.

Students are the future of the profession and therefore the Chamber had always considered the interests of Students at heart. In this last one year, the Students Committee, under very energetic and committed leadership of CA Vitang Shah has made an honest attempt to provide with best of the educational programs to all the students. I am sure, you all will vouch the success of the activities of the committee. Various initiatives taken by the committee has ensured that the students are provided with the best of the opportunities to not only sharpen their skills on educational areas but also in extra-curricular activities. I express my sincere gratitude to CA Vitang Shah and all his team members to make this year a happening and memorable year not only for all the students but also for me as the President of the Chamber. I am pleased to note that Vitang is going to continue as the Chairman of this vibrant committee of the Chamber. I wish him and the new team even greater success in the ensuing year.

The major events of the Committee viz, the Debate Competition, the Essay competition and the National Moot Court Competition have all been carried out in a very seamless manner during the year. We have seen best of the talents of the students during the National Moot Court Competition which was held on 5th June and 18th June this year. The quality of arguments which the participants have put up and the conviction with which the points were made out are really inspiring. The arguments were found to be effective by not only professionals but also by the Hon. Members of the Income-tax Appellate Tribunal who judged the semi-final rounds of the competition. If semi-finals were impressive, final round was certainly one stage up befitting the final round. Shri Nitin Borkar, Hon'ble Justice of Bombay High Court and Shri Pramod Kumar, Hon'ble Vice President of the Income-tax Tribunal judged the final round and both of them have expressed a complete sense of satisfaction for the qualitative way of presentation by the



students. With such quality being displayed by the young students, I am confident that the future of tax profession in India is more than secured in your worthy hands.

While arguments in court, i.e. the skill of oral communication, is one of the aspects of a successful professional, one cannot undermine the relevance of the writing skill reflecting the written communication amongst students. With the idea of enabling the students to develop their writing skill in the optimum manner, the Chamber has been holding the Dastur Essay Competition for past many years. This year also the response to the Essay Competition has been encouraging and we are awaiting the final results before the Annual General Meeting. The winners will be announced and felicitated at the Annual General Meeting to be held on 4th July, 2022. I am sure that the talent displayed by the students in the written form of communication will also be something to be proud of.

The busy work season for the Tax Return filing and Audit is staring at our faces and I am sure that all of you will be very eager to participate in this work season with absolute enthusiasm and absolute commitment. This is an opportunity for you to learn the tricks of the trade. The theoretical education which you all are acquiring during your curriculum needs to be applied in a practical manner. Please consider this season as an opportunity to learn rather than carrying a feeling as to why should I as a student worry so much about the office assignment when I am going to receive a paltry sum as stipend? Such feeling will deprive you of the opportunity to learn under the guidance of your seniors and principles. Please remember that these are your formidable years of sharpening your skills to the level that when you join the profession post qualifying, you are absolutely prepared to handle the toughest of the work assignments. The tilling of land which is being done today is bound to give you the best of the crops when you turn professional and start the real life action. I wish you all the very best in this learning season. The Chamber on its part will certainly have few educational programs for which the announcements will be soon made. Take the best of the advantages of these programs and participate with zeal to ensure success for you in future.

While as the President, I have many people to thank for the pleasant experience over the last year, in this communication I would confine myself to the activities of the Students Committee during the year. When we speak about the activities of this committee, we must put our sincere appreciation and gratitude to Senior Advocate and Past President Shri S. E. Dastur on records. He has got the welfare of students at his heart and has been supporting the activities of this committee in a selfless manner. He puts his heart and soul in all the activities of the committee and whenever we seek his guidance, the same is always available with a smile. The Chamber shall always remain indebted to Shri Dastur Sir for all his kind gestures. We wish him the best of the health and pray to Almighty that he keeps on blessing us for years to come.

The present issue of the Journal again has vast coverage and I am sure that each one of you will be able to relate yourself with one or the other articles. I express my sincere gratitude to all the student authors and also the mentors for their immense contribution.



I would like to rest this last communication with you all on a philosophical note. I am a staunch believer in the theory of Karma and therefore would like to end with the most appropriate Verse from Shrimad Bhagwad Gita :

"Karmanye vadhikaraste Ma Phaleshu Kadachana,

Ma Karmaphalaheturbhurma Te Sangostvakarmani"

This verse is capable of taking away all our difficulties in all times to come. Let us promise to ourselves that we will do our Karmas with absolute commitment and pure intentions. If we do that, the Lord has promised to take care of the results and will have to stand by us in all the situations. Please try to follow this in your life and the results will be nothing but magical. Once again wishing you all a great student life and even better life as a successful professional of the country.

May God bless all of you with all the best things in life and fulfil all your dreams.

Yours sincerely,

CA Ketan Vajani
President



Chairman's Message



Dear Students,

It is always a happy moment while connecting with you'll through 'Jignyasa'.

It is now that time of the year wherein many professionals are heard saying 'Time Nahi Hai'. It's the annual returns filing season (period). It is during these taxing months that a Student has to devote maximum time to work. During the past few years, there has been extensions provided by the government authorities on extensions in deadlines for filing of returns due to reasons like Covid-19 pandemic, launch of new income-tax portal and the initial glitches faced thereon, etc. However, the government has made it explicitly clear that they do not intend to provide any extension in deadline for filing annual returns for the financial year 2021-22. With this knowledge, every professional needs to channel their efforts towards conclusion of work in a time bound manner. It is at this moment when everyone needs to manage their time in the most efficient manner to conclude their work in timely manner.

People who do not have proper time-management generally end up with low-productivity, pressured and stressed, less respected and less reliable and much more. It is said that, essence of time management is a keys to a man's success. Time Management starts with planning your day before you start your day. It starts with being able to rank your tasks daily on barometer of importance and relevance. One should concentrate and devote their maximum time and efforts on the most-prioritized work and then work on the least important work. This exercise needs to be done on a daily basis. The key to success is also in being disciplined and following the practice daily. It should being a habit, a daily routine and should be followed daily without any exterior influence, to yield the maximum result from Time-Management.

Once, Time-Management is learnt and practiced, we will be able to see the following results:

1. Improved Productivity and Efficiency:

It is a general tendency which we observe that maximum people file their returns when the deadline is about to end. This shows that a person would generally not bring an end to a work unless being forced with a deadline to complete it. So, if one assigns a deadline to each and every work on hand and works on it based on the priority scale, the work is concluded and in a timely manner. The efforts are channeled in the most effective manner, based on priority.

2. Confidence:

With being able to conclude the work in a timely manner on a daily basis, one tends to gain confidence, a morale booster, to shoulder more responsibilities, a positive state of mind, being happy and stress free. This helps in a developing a better personality for themselves.



3. Being a Decision-Maker:

With the practice of prioritizing work daily, a person makes decision every time he is faced with a challenge due to vibrant work dynamics and then re-channeling and planning to achieve his updated prioritized work. This develops the most critical leadership skill in a person.

4. Work-Life Balance:

When one is able to complete his work in a timely manner, he can spare sufficient time for personal life activities (which should be part of daily time-plan). Social Life is very critical to a person's work life. A person who is socially at peace tends to be the most effective at work. A stress-free and a disciplined person can achieve great heights and success in life.

So, let us all make Time-Management a part of our daily routine and be disciplined in working on it. I am sure, we will then be able to achieve great heights and success in our stress-free, productive and a happy life.

I would like to also thank our Now Past President of the Chamber – CA Ketan Vajani for Leading a very successful and eventful year for the Chamber. It was a year of transition from online mode to hybrid mode. Ketanbhai has shown us that we should believe in putting our best efforts for any work and leave the results on Almighty, which always gives you more than what you aim/expect. Ketanbhai has been very supportive of all the activities of the Student Committee of the Chamber and acted as a perfect Mentor to me to organize events for the benefits of students without any worry. I really must thank him for all the support and guidance provided to the Committee. Best Wishes for him.

I also congratulate CA Parag S. Ved on being elected as the President of CTC for the year 2022-23. Having worked with him for past 12 years, I can say without hesitation that we have an eventful year ahead of us. His go-getter attitude, his management skills and his love for the professionals and the Chamber will make this a successful year.

'Jignya', an e-journal 'By the Students – For the Students' provides opportunity to Students to contribute articles on relevant topics. Hence, I would request all Students to please reach out to me or the Chambers office if in case you intend to contribute an article for the forthcoming editions of Jignya on topics in subjects like Direct tax, Indirect Tax, legal updates, efficient use of technology, etc.

I must also thank all the Students, Moderators and the Editors for the Article contributions for this edition of Jignya.

I would also like to congratulate all the newly qualified Chartered Accountants. I will request you'll to join the Chamber as a regular member and take benefits of events being organized for professionals on various topics. For students who could not clear the exams, I wish them all the luck and offer once piece of advice i.e. this is not the end of road. You must gather yourself, be motivated, be in a positive frame of mind and put if your best efforts again. Your Dream will surely be achieved.

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

Till then, Stay Safe – Stay Healthy.

CA Vitang Shah

Chairman

Student Committee



FORTHCOMING PROGRAMMES

Webinar on Tax Audit and Income Tax Return – Student Perspective

Tuesday, 16th August, Wednesday, 17th August and Thursday, 18th August, 2022
Time : 05.00 p.m. to 07.00 p.m.

Student Committee

Chairman: Vitang Shah | *Vice-Chairperson:* Charmi G. Shah, Niyati Mankad

Convenors : Charmi A. Shah, Viral Shah | *Advisor:* Ajay Singh

In the present scenario for the practicing professional, the responsibility has increased manifold in terms of Auditing Functions. Cost of negligence is very high and You, students are the initial executors for conducting Tax Audit. However, the questions that arise are:

- Are you equipped to carry out Tax Audit?
- Do you understand the impact of Auditing Standards for carrying out Tax Audit?
- Are you able to co-relate the understanding of Income Tax while dealing with Tax Audit?
- Are you aware about the steps of caution while preparing proper working file for tax audit?

Further, with various changes in Income Tax Return Forms, the webinar will address and discuss the changes in the ITR Forms, practical difficulties and common errors that are faced while filing the returns.

With this objective, the Students Committee of The Chamber of Tax Consultants is pleased to announce a webinar on Tax Audit and Income Tax Returns – Students Perspective.

Who should attend: Article Students, anyone who performs or wants to learn about Tax Audit and file Income Tax Returns.

Fees	
For Student Member of the Chamber	NIL
For all other participants	₹ 250/- + ₹ 45 (18% GST) = ₹ 295/-

Sr. No.	Topics	Speakers
1	Session on Tax Audit (Basics of Form 3CD, documentation, uploading and filing of Tax Audit Report)	CA Yogesh Amal
2	Session on Tax Audit (Basics of Form 3CD, documentation, up-loading and filing of Tax Audit Report)	CA Chintan Gandhi
3	Income Tax Return – Recent Changes, Issues and Do's and Don'ts	CA Charmi G. Shah CA Ankit Sanghavi



ESG and the Energy Sector



Shivali Shah



Megha Agarwal,
Advocate

What is ESG?

"ESG" stands for Environment, Social and Governance. Environmental reporting maps an entity's performance on sustainability related factors. Disclosures under the environment head typically cover emission levels, waste management and water consumption. Social reporting pertains to disclosures regarding activities of the entity focusing on welfare of the workers, consumers and the community in general. Governance disclosures entail disclosures regarding an entity's corporate governance framework and internal mechanisms.

With climate change and global warming taking place at unprecedented levels, the world is compelled to face the fact that, unless big corporations incorporate sustainable practices, the future is bleak. The purpose of ESG reporting is to encourage investors to invest their money in companies that are responsible and sustainable towards the environment and society. Such investments, would in turn, be the stimulus for companies to improve their performance towards environmental, social and governance factors.

In 2018, India was the fastest growing trillion-dollar economy in the world. However, much of this growth did not trickle down to the masses¹. ESG

disclosures aim to push the top 1000 listed companies of the country to employ their resources in ensuring the best for the environment, their employees, investors and society at large.

Evolution of ESG in India

In 2009, the Ministry of Corporate Affairs issued the Corporate Voluntary Guidelines. The intent of the aforesaid guidelines was to encourage companies to voluntarily achieve higher standards of governance. Subsequently, in 2011, National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business ("**NVGs**") were released in order to promote the concept of business responsibility.

In 2012, the Securities and Exchange Board of India made it mandatory for the top 100 listed companies by market capitalization to publish Business Responsibility Reports ("**BRR**")². BRR was a disclosure requirement for companies to disclose their responsible business practices. BRR was issued based on the NVGs to enable companies to align their practices with ESG parameters³. However, the BRR was merely a disclosure requirement which did not mandate compliance with the NVGs. Over time, the applicability of BRR was

1. REPORT OF THE HIGH LEVEL COMMITTEE ON CORPORATE SOCIAL RESPONSIBILITY 2018, Government of India, Ministry of Corporate Affairs, August 2019.
2. Business Responsibility Reports, Securities and exchange Board of India, https://www.sebi.gov.in/legal/circulars/nov-2015/format-for-business-responsibility-report-brr-_30954.html.
3. Business Responsibility Reports - Frequently Asked Questions (FAQs), BSE, https://www.bseindia.com/downloads1/BRR_FAQs%2010052013.pdf



extended, first to the top 500 companies (in 2015) and then to the top 1000 (in 2019) by market capitalization.

In 2013, India enacted a new legislation which introduced a provision on corporate social responsibility. Section 135 of the Companies Act, 2013 ("**Companies Act**") mandated expenditure towards corporate social responsibility initiatives for certain prescribed companies. Further, for the first time, the fiduciary duties of directors were codified by the introduction of Section 166 of the Companies Act. Section 166(2) of the Companies Act, 2013 requires a director of a company to *inter alia* "act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment."

In 2021, the BRR was replaced by the Business Responsibility and Sustainability Report ("**BRSR**") The BRSR is mandatory for the top 1000 listed companies from the financial year 2022-23. This requirement is expected to apply to more companies in the future. The BRSR lays down a far more comprehensive set of disclosure requirements than the BRR did⁴.

The Energy Sector in India

India is now the world's third largest consumer of energy. Since 2000, India's energy use has doubled. In the near future, India's energy consumption is expected to increase on account of rising urbanization, purchase of new appliances and the Government's focus on rural electrification. A majority of India's energy demand — around 80% — is met by

coal, oil and solid biomass. Of this, coal is largest contributor. Solid biomass which is largely fuelwood, makes up a small and declining proportion, and is predominantly used as a cooking fuel⁵.

The country is now the third largest emitter of carbon dioxide in the world. However, per capita emissions remain low. In recent years, the issue of particulate matter emissions and their impact on air pollution have come into the forefront with major cities and regions facing extremely poor air quality.

Whilst coal, oil and biomass remain primary sources of energy, it cannot be denied that renewable sources of energy (especially solar) are gaining prominence.

ESG vis a vis Energy Sector

Almost half of India's greenhouse gas emissions are from the energy sector⁶. Majority of these emissions come from coal based power plants. For India to transition to net-zero emissions, the energy sector would have to undergo a paradigm shift towards renewable sources of energy.

The BRSR requires companies to give comprehensive details of their energy consumption, emissions, water discharge and waste management activities. Further, companies are also required to disclose their environmental impact assessments. The BRSR should aid India's steps towards meeting the United Nations Sustainable Development Goals.

However, reporting frameworks such as the BRSR, would have little meaning in reducing emissions if they are not coupled with strict penalties on companies with high emissions. The Ministry of Power has

4. Business Responsibility and Sustainability Report, Securities and Exchange Board of India, https://www.sebi.gov.in/sebi_data/commndocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF

5. India Energy Outlook 2021, <https://www.iea.org/reports/india-energy-outlook-2021>

6. <https://economictimes.indiatimes.com/industry/renewables/india-can-cut-carbon-emissions-by-deploying-renewables-gas-power-ge-gas-power/articleshow/86937533.cms>



repeatedly requested for extensions for deadlines imposed by the Union Ministry of Environment, Forest and Climate Change for power plants adhering to emission guidelines⁷. While the difficulty in striking the balance between adequate power supply and sustainability is fathomable, a stricter regime is the need of the hour, given the alarming rate of climate change.

Further, the energy sector, especially coal, is responsible for creating lakhs of jobs in the country both directly, and indirectly. Coal mines particularly create over 7.25 lakh direct mining jobs any many more indirect jobs⁸. Coal mining jobs are particularly hazardous, and it is imperative that companies strictly comply with the law to ensure safety of the workers and adequately compensate the workers and their families in case of accidents. ESG disclosures, if diligently complied with, will ensure that companies are transparent about their activities in ensuring the safety of their workers.

The BRSR also requires the prescribed companies to disclose any incidents relating to workers' safety and steps taken by the company to ensure safety of workers. Coal India Limited, India's largest coal company in their voluntary ESG report of 2019-2020⁹ disclosed the number of fatalities and serious injuries suffered by their workers and the activities undertaken by them to ensure occupational health and safety. Consistent disclosures by companies on these parameters will allow investors to judge whether steps taken by the companies are adequate in ensuring worker safety and whether companies are prioritizing their security.

In order to improve their performance on ESG parameters, energy companies could *inter alia* consider the following action items:

- **Environmental:** Investing in clean fuel and renewable energy sources, targeting net zero emissions, efficient waste disposal, ensuring safe discharge of water consumed for generating energy.
- **Social:** Ensuring worker safety, fair and equal remuneration for employees, leadership diversity, ensuring safe habitable conditions for communities residing around their plants, compliance with labor laws.
- **Governance:** Reporting transparency, anti-corruption efforts, securing interests of shareholder and investors.

However, as discussed earlier, disclosure requirements by themselves will not suffice for ensuring sustainable practices. Companies would need to move away from traditional fossil fuels to renewable energy sources. This transition may be difficult and take time but is a compelling need. The energy crisis faced in the summer of 2022 made it clear that India is heavily reliant on coal for its power supply¹⁰. Further, with the extent of employment created by this sector, any transition would need to involve reskilling of the labor force to ensure that they are not hung out to dry¹¹.

Way Forward

While the concept of ESG has been around for a while, the introduction of the BRSR has made the disclosure requirements more

7. <https://www.downtoearth.org.in/news/pollution/polluting-coal-power-plants-may-get-blanket-20-year-extension-of-compliance-deadlines-83022>

8. https://www.ey.com/en_in/news/2022/04/strong-skill-action-plan-needed-to-transition-from-coal-to-renewable-energy

9. https://www.coalindia.in/media/documents/ESG_Report_2019-20.pdf

10. <https://www.downtoearth.org.in/blog/energy/india-s-growing-power-crisis-newer-efficient-plants-lying-idle-may-have-role-to-play-82777>

11. <https://www.eco-business.com/news/indian-coal-mine-workers-fear-job-social-security-loss-amid-shift-to-renewables/>



comprehensive and stricter. The impact of these disclosures on companies required to make them, the environment and society in general will only be ascertainable with time.

Presently, India's ESG framework consists primarily of disclosure requirements, in addition to certain pre-existing legal compliance requirements. For the ESG disclosures to be a meaningful step towards achieving a more sustainable future, the current framework will have to be coupled with policy and regulatory decisions to make a real impact in the ESG space.

The purpose of these disclosures is majorly to ensure more responsible investing by investors. With a younger generation of investors entering the field, focus on more ethical investing may increase. Companies are likely to carry out their operations in an environmentally and socially conscious manner if this directly benefits them from an investment perspective. If the focus on ESG continues and investors continue to engage with it, companies will take measures to improve their ESG indicators.

Veracity and authenticity of ESG disclosures ought to be monitored closely by the regulators to ensure that ESG does not end up being an avenue for "greenwashing" unethical activities of companies¹². Further, a check must also be kept on the methodology that several ESG funds are using to evaluate companies and characterize them as responsible investments.

ESG disclosures will be ineffective in ensuring sustainability if there is no consequence regarding such disclosures. For instance, a company could keep disclosing high emission rates year after year. In the absence of any penal action to keep these emissions in check, the disclosures would not help solve the real issue. Merely relying on investor sentiment to encourage companies to adopt ethical and sustainable practices may not yield substantial results soon, as majority of the investors are likely to focus more on the profitability of a company. With inflows into ESG funds declining this year, it is evident that depending only on an 'investor approach' to encourage companies to improve their ESG performance may not be enough¹³.

From the perspective of the energy sector in particular, the stakes are significantly higher due to country's dependence on it for power. Further, the nature of the industry is such that environmental and social impact of their operations are more severe than most other industries due to factors such as the scale of their emissions and number of people they employ. ESG disclosures will be beneficial in ensuring that the energy sector keeps a check on its carbon footprint in check, ensures employee wellbeing and overall growth.

Overall, the ESG disclosure requirement is a step in the right direction. However, only time will tell how much of an impact it has in securing a more sustainable and ethical future and how companies and investors respond to it eventually.

12. <https://www.forbes.com/sites/betsyatkins/2022/01/17/esg-environmental-social-greenwashing/?sh=d2431074e313>

13. <https://www.thehindubusinessline.com/markets/investor-interest-in-esg-funds-wane/article65348015.ece>





The interplay between TDS and TCS [section 206C(1H) and section 194Q]



Dhruvi Zingade



CA Subhash Bhide

1. Concept

What is tax deducted at source?

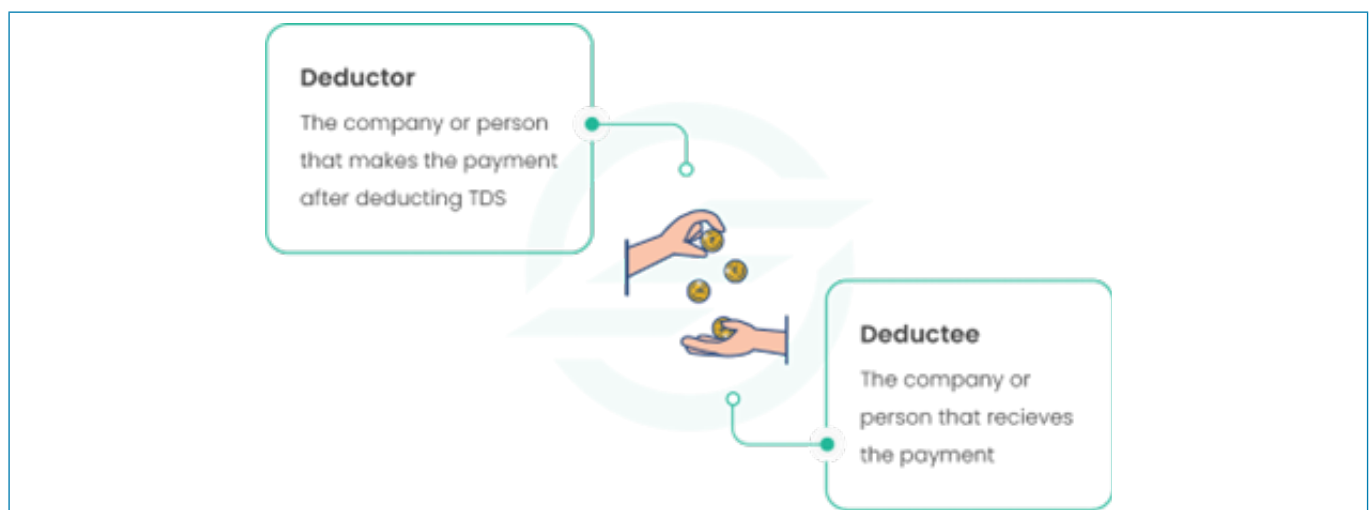
Tax deducted at source ("TDS") was introduced to collect tax from the very source of income.

A person (deductor) who is liable to make payment of specified nature to any other person (deductee) must deduct tax at source and remit the same into the account of the Central Government.

The Government's quest for data collection drove it to introduce Tax Collection at Source (TCS) for the sale

of goods where the seller is entrusted with the responsibility to collect Income-tax. It is done to ensure the deposit of tax with the tax authorities. TCS is an additional amount collected as tax by a seller of specified goods from the buyer at the time of sale over and above the same amount.

The government's intention in enacting this law is to create a trail of high-value transactions. Deduction of income tax at source has become one of the major tools in the hands of the income tax department for collection of income tax.



- Section 194Q was introduced in the Budget of 2021-22 and has come into effect from 1st July 2021. Whereas, TCS under section 206C (1H) was introduced in the Finance

Act of 2020 which came into effect from 1st October, 2020. Both sections were brought under the purview of Income Tax to ensure reporting of all material purchase and sale

transactions in 26AS thereby ensuring the transactions being considered in computation of taxable income.

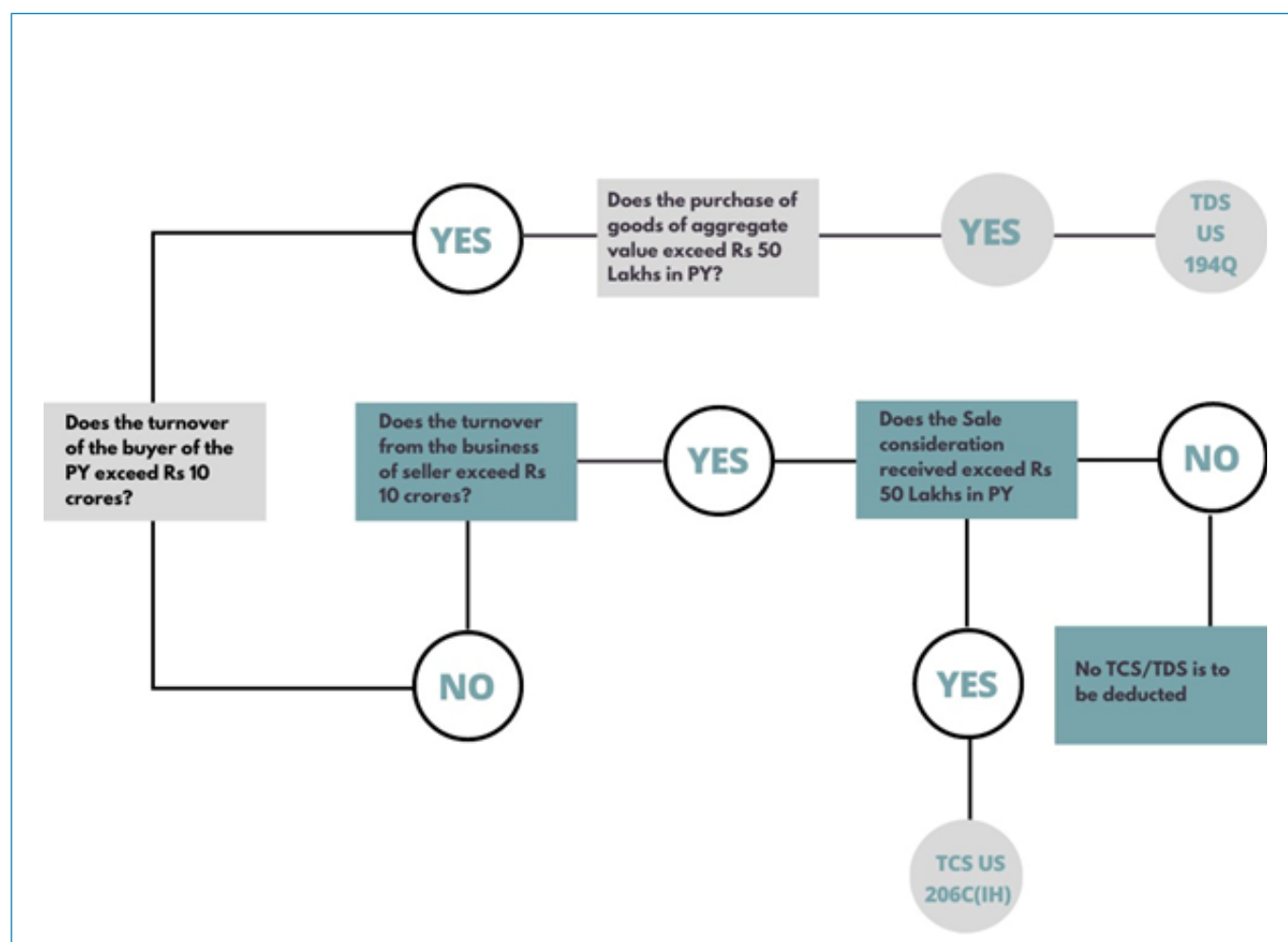
What if the two sections overlap?

In case of transactions to which both section 206C (1H) and section 194Q

apply, TDS is required to be deducted under section 194Q.

However, the provisions of section 194Q do not apply in respect of transactions where tax is collectible under section 206C (except sub-section (1H) thereof) of the Act.

3. In a nutshell, TCS and TDS can be diagrammatically explained as follows:



4. Provisions of the law

Particulars	194Q	206C (1H)
Section Head	TDS on purchase of goods	TCS on sale of goods
Applicable to	Buyer/Purchaser	Seller
Applicable with effect from	1st July 2021	1st October 2020



Particulars	194Q	206C (1H)
Point of taxation	Payment or credit, whichever is earlier	At the time of receipt
Applicability to advances	TDS shall be deducted on advance payments made	TCS shall be collected on advance receipts
Rate	0.1%	0.1%
When PAN is not available	5%	1%
Threshold	Turnover from the business of BUYER should exceed Rs. 10 crores during the immediately preceding financial year AND purchase consideration must exceed Rs. 50 lakhs in P.Y.	Turnover from the business of SELLER should exceed Rs. 10 crores during the immediately preceding financial year AND sale consideration received must exceed Rs. 50 lakhs in P.Y.
Not applicable to	Non-resident buyer (unless the purchase is connected to a PE in India) – CBDT Circular 13 of 2021.	Non-resident – exemption limited to consideration received for supply of fuel to foreign airline. CBDT Circular 17 of 2020. An alternate view that the TCS provision in the first place is not applicable to non-resident is also possible. However, for brevity the same is not discussed.
Date of payment of TDS	7th day of the subsequent month	7th day of the subsequent month
Quarterly statement to be filed	Form 26Q	Form 27EQ
Certificate to be issued to seller/buyer	Form 16A	Form 27D
Amount debited/credited to suspense account	Applicable	No such provision

5. Given that the sections have been introduced recently, there is a dearth of primary material. The Government has provided clarifications for the convenience of taxpayers.

- The CBDT vide Circular 13 of 2021, dated 30th June 2021 clarified that in case the GST

component has been indicated separately in the invoice, tax is to be deducted under section 194Q only on the amount credited in the account of the seller without including GST. However, Circular 13 of 2021 was silent on other non-GST levies such as VAT, excise duty, CST, etc.

- ii. The provisions of section 194Q would not apply in relation to transactions in securities and commodities which are traded through a recognized stock exchange or transactions in electricity, renewable energy certificates, and energy-saving certificates traded through power exchanges.
- iii. Further, section 194Q shall also not be applicable in the case of a non-resident buyer other than the transactions connected with the PE.
- iv. Section 194Q shall not be applicable in the first year of incorporation of a Company.
- v. The turnover or gross receipts of a Company from "Profits and Gains of Business or Profession" must only be considered. Non-business turnover must not be considered.

6. The TDS or TCS shall be deducted on an amount exceeding INR 50 lakhs. The following illustration would help better the understanding of the sections-

Turnover of Buyer (in crore)	Turnover of Seller (in crore)	Amount received or paid for sale or purchase of goods in the previous year (in lakhs)	Amt for TDS/TCS (in lakhs)	TDS or TCS	Liabe Person	Applicable Section	Explanation
9	11	55	5	TCS	Seller	206C(1H)	Buyer Turnover less than 10 Cr.
11	9	90	40	TDS	Buyer	194Q	Seller's Turnover less than 10 Cr
11	11	75	25	TDS	Buyer	194Q	Exclusion provided under Sec 206C (1H)

7. Way forward...

As tax deduction takes place throughout the year, it ensures a continuous cash flow to the Government. It is a measure to prevent tax evasion. It helps in increasing the tax reach as it is deducted at the time of payment itself preventing the commission of fraud.

Information gathered from withholding tax returns allows the Income -Tax department to identify or track the cases of both, non-reporting and

incorrect reporting of income. The two sections provide a significant refurbishment of TDS and TCS provisions, which would help the tax administration to create a comprehensive repository of data. However, in the era of automatic exchange of information between the income tax department and GST department, whether such a provision is required is a question mark and discussion for another day.





Exemptions under Capital Gains



Pratham Jhunjunwala



CA Urvish Mehta

Capital Gain tax arises on the sale of capital asset by a taxpayer. The Income Tax Act, 1961, has laid down a list of exemptions under the head "Capital Gains". These provisions allow total or partial exemption from Capital Gains and aid in minimizing tax liability for an assessee. **However, a fundamental rule to bear in mind is that exemption amount cannot exceed the total amount of Capital Gains itself.**

Before we dive deeper into the provisions laid down for each exemption, it is important to understand the mechanism of the **CGAS Scheme**, i.e., Capital Gain Account Scheme. It is an option for the taxpayers to temporarily park their funds before making an investment in specified assets as per the relevant section to claim the capital gain exemption. The taxpayer who has income from capital gains and wants to reduce the capital gains tax by making a specified investment has an option to open a CGAS Account. In case of inability of such taxpayer in utilising the sale consideration for buying the new asset before the due date of filing his/her Income Tax Return, he/she must create a CGAS Account and deposit the funds in such account to claim the capital gain exemption. The benefit of CGAS Scheme is available for Section 54, 54B, 54D, 54EE, 54F, 54G, 54GA, and 54GB of the Income Tax Act.

Following are the capital gain exemption provisions covered under the Income Tax Act:

1. **Section 54: Sale of residential house property by individuals & HUFs**

- a. **Eligible Assessee:** Individuals and HUFs
- b. **Nature of Eligible Asset:** Long Term Capital Asset
- c. **Eligible Asset being sold:** Residential house property being building and land appurtenant thereto. It is important to note that the property transferred should be a residential house property in order to attract the provisions of this section
- d. **New Assets to be purchased or constructed in order to avail exemption:**

The assessee should acquire **one residential house property in India** in order to avail exemption u/s 54. However, if the long term capital gain is upto INR 2 crores then the assessee can acquire two residential house properties within the prescribed time limit. This benefit of purchasing two house properties is available only once in a lifetime.

- e. **Time Limit for purchase or construction:**

In case of purchase, the new house property must be purchased within 1 year before or 2 years after the date of transfer.



In case of construction of new house property, the construction must be completed within 3 years from the date of transfer.

f. **Amount of exemption:** The amount of exemption is the lower of:

- i) Amount of capital gain or
- ii) Amount deposited in the CGAS Account or the cost of new asset acquired from the sale consideration received on the transfer upto the due date of filing of return of income.

g. **Lock-in period:** The new asset acquired from the sale consideration should not be transferred before 3 years have expired from the date of its purchase or construction. However, if the asset is transferred before the expiry of the lock-in period, then the cost of acquisition of the new asset to be considered during such subsequent transfer has to be reduced by an amount equal to the capital gain earlier exempted to the assessee.

2. **Section 54B – Sale of Agricultural Land by individuals & HUFs**

a. **Eligible Assessee:** Individuals and HUFs

b. **Nature of Eligible Asset:** Long Term Capital Asset or Short Term Capital Asset

c. **Eligible Asset being sold:** Agricultural land which has been used by the individual or his parents or HUF, for agricultural purpose during 2 years before the date of transfer

d. **New Assets to be purchased or constructed in order to avail exemption:**

The assessee should acquire another agricultural land in India (rural or urban) in order to avail exemption u/s 54B.

e. **Time Limit for purchase or construction:**

The agricultural land should be purchased within 2 years from the date of transfer.

f. **Amount of exemption:** The amount of exemption is the lower of:

- i) Amount of capital gain or
- ii) Amount deposited in the CGAS Account or the cost of new asset acquired from the sale consideration received on the transfer upto the due date of filing of return of income.

g. **Lock-in period:** The new asset acquired from the sale consideration should not be transferred before 3 years have expired from the date of its acquisition. However, if the asset is transferred before the expiry of the lock-in period, then the cost of acquisition of the new asset to be considered during such subsequent transfer is reduced by an amount equal to the capital gain earlier exempted to the assessee.

3. **Section 54D – Compulsory Acquisition of Land and Building used in an Industrial Undertaking**

a. **Eligible Assessee:** Any person

b. **Nature of Eligible Asset:** Long Term Capital Asset or Short Term Capital Asset

c. **Eligible transfer:** Compulsory acquisition of land or building which was used by an assessee in the business of industrial undertaking during 2 years prior to the date of transfer.

d. **New Assets to be purchased or constructed in order to avail exemption:**

The assessee should acquire new land or buildings for the industrial



undertaking in order to avail exemption u/s 54D.

e. **Time Limit for purchase or construction:**

The new asset should be purchased within 3 years from the date of receipt of compensation.

f. **Amount of exemption:** The amount of exemption is lower of:

- i) Amount of capital gain or
- ii) Amount deposited in the CGAS Account or the cost of new asset acquired from the sale consideration received on the transfer upto the due date of filing of return of income.

g. **Lock-in period:** The new asset acquired from the sale consideration should not be transferred before 3 years have expired from the date of its purchase or construction. However, if the asset is transferred before the expiry of the lock-in period, then the cost of acquisition of the new asset to be considered during such subsequent transfer is reduced by an amount equal to the capital gain earlier exempted to the assessee.

4. **Section 54EC – Sale of Land or Building or both by any Taxpayer**

- a. **Eligible Assessee:** Any person
- b. **Nature of Eligible Asset:** Long Term Capital Asset being any land or building or both
- c. **New Assets to be purchased or constructed in order to avail exemption:**

The assessee should acquire **bonds redeemable after 5 years** issued by:

- i) National Highway Authority of India or
- ii) Rural Electrification Corporation Ltd. or

iii) Power Finance Corporation Ltd. or

iv) Indian Railway Finance Corporation Ltd.

d. **Time Limit for purchase or construction:**

The new asset should be purchased within 6 months from the date of transfer of the original asset.

e. **Amount of exemption:** The amount of exemption is the lower of:

- i) Amount of capital gain or
- ii) INR 50 lakhs or
- iii) The cost of new asset acquired from the sale consideration received on the transfer

It is pertinent to note that the CGAS Account scheme relaxation is not available for the purposes of this section.

f. **Lock-in period:** The new asset acquired from the sale consideration should not be transferred before 5 years have expired from the date of its acquisition. However, if the asset is transferred before the expiry of the lock-in period, then the previously exempted long term capital gain shall become taxable in the year of transfer/conversion of the new asset.

5. **Section 54F – Sale of Long Term Capital Asset other than House Property by Individual/HUF**

- a. **Eligible Assessee:** Individuals and HUFs
- b. **Nature of Eligible Asset:** Long Term Capital Asset not being residential house property
- c. **New Assets to be purchased or constructed in order to avail exemption:**

The assessee should acquire **one other residential house in India** in order to avail exemption u/s 54F.



d. **Time Limit for purchase or construction:**

In case of purchase, the new house property must be purchased within 1 year before or 2 years after the date of transfer.

In case of construction of new house property, the construction must be completed within 3 years from the date of transfer.

e. **Amount of exemption:** The amount of exemption is calculated using the formula:

Cost of New Property x (Capital Gains on Transfer/Net Considerations Received)

It is important to note that CGAS Account scheme is available for all assesses seeking relief under this section.

f. **Lock-in period :** The new asset acquired from the sale consideration should not be transferred before 3 years have expired from the date of its purchase or construction. However, if the asset is transferred before the expiry of the lock-in period, then the capital gain earlier exempted becomes taxable in the previous year in which the new asset is transferred and treated as long term capital gain.

6. **Section 54G – Sale of Plant, Machinery, Land or Building to shift Industrial Undertaking from Urban to Rural area**

- a. **Eligible Assessee:** Any Person
- b. **Nature of Eligible Asset:** Long Term Capital Asset or Short Term Capital Asset
- c. **Eligible Transfer:** Transfer of plant and machinery or land or building for shifting industrial undertaking from urban area to rural area.

d. **New Assets to be purchased or constructed in order to avail exemption:**

The assessee should

- i) Purchase or construct **new plant & machinery, land or building** in such rural areas or
- ii) **Shift original assets from urban to rural area** or
- iii) Incur notified expenses

e. **Time Limit for purchase or construction:**

The purchase or construction of new assets must be completed within 1 year before or 3 years after the date of transfer.

g. **Amount of exemption:** The amount of exemption is the lower of:

- i) Amount of capital gain or
- ii) Amount deposited in the CGAS Account or the cost of new asset acquired from the sale consideration received on the transfer

f. **Lock-in period:** The new asset acquired from the sale consideration should not be transferred before 3 years have expired from the date of its purchase or construction. However, if the asset is transferred before the expiry of the lock-in period, then the cost of acquisition of the new asset to be considered during such subsequent transfer is reduced by an amount equal to the capital gain earlier exempted to the assessee.

7. **Section 54GA – Sale of Plant, Machinery, Land or Building to shift Industrial Undertaking to Special Economic Zones (SEZ)**

- a. **Eligible Assessee:** Any Person



- b. **Nature of Eligible Asset:** Long Term Capital Asset or Short Term Capital Asset
- c. **Eligible Transfer:** Transfer of plant and machinery or land or building for shifting industrial undertaking from urban area to SEZ.
- d. **New Assets to be purchased or constructed in order to avail exemption:**
The assessee should
 - i) Purchase or construct new plant & machinery, land or building in such SEZ or
 - ii) Shift original assets from urban area to SEZ or
 - iii) Incur notified expenses
- e. **Time Limit for purchase or construction:**
The purchase or construction of new assets must be completed within 1 year before or 3 years after the date of transfer.
- f. **Amount of exemption:** The amount of exemption is the lower of:
 - i) Amount of capital gain or
 - ii) Amount deposited in the CGAS Account or the cost of new asset acquired from the sale consideration received on the transfer
- g. **Lock-in period:** The new asset acquired from the sale consideration should not be transferred before 3 years have expired from the date of its purchase or construction. However, if the asset is transferred before the expiry of the lock-in period, then the cost of acquisition of the new asset to be considered during such subsequent transfer is reduced by an amount equal to the capital gain earlier exempted to the assessee.

- 8. **Section 54GB – Sale of Residential House Property or Residential Plot of Land by Individual or HUF**
 - a. **Eligible Assessee:** Individuals and HUFs
 - b. **Nature of Eligible Asset:** Long Term Capital Asset
 - c. **Eligible Asset being sold:** Any residential property (a house or a plot of land)
 - d. **New Assets to be purchased or constructed in order to avail exemption:**
The assessee should subscribe to equity shares of eligible company and the company must purchase new plant & machinery within 1 year from the date of such subscription in order to avail exemption u/s 54GB.
 - e. **Time Limit for purchase or construction:**
The shares should be subscribed upto due date of return filing.
 - f. **Amount of exemption:** The amount of exemption is calculated using the formula:

$$\text{Cost of New Asset} \times (\text{Capital Gains on Transfer/Net Considerations Received})$$
 It is important to note that CGAS Account scheme is available only for corporate assesses seeking relief under this section.
 - g. **Lock-in period:** The new asset acquired (i.e., equity shares or plant & machinery) should not be transferred before 5 years have expired from the date of subscription or acquisition. However, if the asset is transferred before the expiry of the lock-in period, then the capital gain earlier exempted becomes taxable in the previous year in which the equity shares or plant & machinery is transferred and treated as long term capital gain.



Important Case Laws

Having understood the provisions regarding exemption under capital gains, it is important to gain insight into some important case laws on the same.

1. C Aryama Sundaram [2018] (Madras High Court)

Insight: Section 54 does not mention that construction could not have commenced before the date of transfer of asset. Also, Section 54 does not contemplate that the same money received from the sale of residential house should be used in the acquisition of new residential house. Cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned property will qualify for exemption u/s 54.

2. Gita Duggal [2013] (Delhi High Court)

Insight: Section 54 and 54F use the expression "residential house" and not "residential unit". Both the sections require the assessee to acquire a residential house. The only requirement is that it should be used for residential purposes and not commercial purposes. The fact that the residential house consists of several independent units cannot restrict exemption u/s 54/54F.

3. Syed Ali Adil [2013] (Andhra Pradesh High Court)

Insight: Where the assessee has acquired two adjacent flats and he had effected modification to make them single by opening the door between them, it was immaterial that the flat was acquired from two different sellers and two separate

sales deeds. Hence, both houses shall be deemed to be single house property for the purpose of section 54.

4. Gurnam Singh [2010] (Punjab and Haryana High Court)

Insight: Exemption u/s 54B cannot be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner in the sales deed.

5. Kamal Wahal [2013] (Delhi High Court)

Insight: Having regard to the rule of purposive construction and the object and enactment of the section 54F, exemption cannot be denied solely on that ground that the new residential house is purchased by the assessee exclusively in the name of wife.

6. Ravinder Kumar Arora [2012] (Delhi High Court)

Insight: Where a house property is registered in joint names, the exemption u/s 54F can be allowed fully to the co-owner who has paid the purchase consideration and it will not be restricted to his share in the house property.

7. Sambandam Udaykumar [2012] (Karnataka High Court)

Insight: Exemption u/s 54F cannot be denied in relation of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which the transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc.



**8. V.S. Dempo Company Ltd. [2016]
(Honorable Supreme Court of India)**

Insight: Section 50 deems the capital gains as STCG. It does not change the nature of the asset held. Section 54EC requires the nature of the asset to be long term capital asset not the gain to be long term capital gain. It does not make any distinction between depreciable and non-depreciable assets. Hence, where a depreciable asset was held for the period required for qualifying as a long term capital asset, assessee shall be eligible for exemption u/s 54EC irrespective of the fact that the resultant gain is a short term capital gain.

**9. Gaudi Mahadevappa [2013]
(Karnataka High Court)**

Insight: Where the stamp duty value u/s 50C has been adopted as the fair

value consideration, the reinvestment made in the acquisition of a residential property, which is in excess of the actual net sale consideration, can be considered for the purposes of computation of exemption u/s 54F, irrespective of the source of such reinvestment.

**10. Hindustan Unilever Limited [2010]
(Bombay High Court)**

Insight: If the assessee has made the payment for the purchase of eligible bonds within 6 months from the date of transfer, exemption u/s 54EC cannot be denied merely because the bond was allotted to the assessee after the expiry of the six-month period.



Ethics of a Professional



Vaishali Lund



CA Vishal H. Shah



Introduction

Consider a situation, a defence lawyer has been appointed by the Hon'ble court to defend the case of a terrorist who was involved in killing of thousands of people. No person would, out of his own will and in his complete senses ever want to defend a person who has been charged with the crime of killing people. However, the law of our land very clearly defines the "right to be heard" and "right to be defended" of a person before he is convicted guilty. Although, the law very righteously intends to uphold these rights, it is indeed a dilemma for the defending lawyer. Many defending lawyers, face the wrath of their family, friends and the society at large.. Even the family members and the friends start questioning the defence lawyer and blame him or her for bringing disrepute to them.

The defence lawyer, is forced to think whether practicing his profession is above the act of humanity? Whether defending a person who destroyed thousands of families is the real test of his profession? In the recent past, there have been several petitions filed by lawyers to decline to defend the cases of these criminals. However, the Bar Council very expressly mentions that "No lawyer shall request for refusal of legal representation of unpopular clients or an unpopular cause by a lawyer on account of conflict of interest". The Bar Council states that "It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in



mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence". In the words of Lord Denning, *"No matter how great or a rascal the man may be. No matter how undeserving or unpopular his cause. The barrister must defend him to the end provided only that he is paid a proper fee or in the case of a dock brief, a nominal fee"*.

Such ethics help a lawyer to rise above his professional dilemma and choose what governs his professional code of conduct. Ethical guidelines are issued by every professional body like the Indian Medical Association, the Bar Council of India, the Institute of Chartered Accountants of India, etc.

Ethics involves systematizing, defending and recommending concepts of right and wrong behavior. Ethics refers to principles such as honesty, morality and integrity. In accounting, these principles are established as a Code of Conduct that is set by governing bodies. While the ethics code varies by each country, the basic rules remain the same. In Accounting, ethics isn't just a list of rules that needs to be followed but it is inherent with the profession itself. Every profession is governed by strict code of conduct, enshrining rigorous ethical and moral obligations. Professional ethics consist of personal, organizational and corporate standards of behavior expected from professionals.

The International Federation of Accountants (IFAC), in its guidelines on Professional Ethics for the Accountancy Profession, has stated:

"Persons who pursue a vocation in which they offer their knowledge and skills in the service of the affairs of others have responsibilities and obligations to those who rely on their work. An essential pre-requisite for any group of such persons is the acceptance and observance of professional ethical standards regulating

their relationship with clients, employers, employees, fellow members of the group and the public generally."

A report of a Chartered Accountant, as a professional, is looked upon by a variety of stakeholders including shareholders, banks, government, investors, employees, etc. This creates a tremendous responsibility of public interest on the broad shoulders of the Chartered Accountants. The code of ethics for Chartered Accountants is based upon the Chartered Accountants Act, 1949, the Chartered Accountants Regulations, 1988 and the Council General Guidelines, 2008.

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under The Chartered Accountants Act, 1949 for the regulation of the profession of Chartered Accountants in India. The Council of ICAI is empowered to discharge the provisions of the Act, and regulate and maintain the standards of the profession. In pursuance of this, ICAI has established the Ethical Standards Board (ESB) to function as standard setting body. The Ethical Standards Board develops and issues ethical standards and other pronouncements for chartered accountants. It works towards evolving a dynamic and contemporary Code of Ethics and ethical behavior for members while retaining the long cherished ideals of 'excellence, independence, integrity' as also to protect the dignity and interests of the members.

The objective of Ethical Standards Board is to set up ethical standards for chartered accountants, converge with the International best practices on ethics, subject to local laws, thereby enhancing the quality and consistency of services provided by chartered accountants and strengthening the public confidence in the profession.

The Institute of Chartered Accountants of India, had brought the first edition of the Code of Ethics for members in November, 1963. Since then, the Code of Ethics has



been constantly updated from time to time to keep it relevant to the profession. Most recently, the revised code of ethics came into effect in 2020. Barring a few provisions of Volume -1, the provisions of the revised code of ethics came into effect from 01st July, 2020.

The fundamental principles on which the code of ethics is based are:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behavior

The revised code of ethics is divided into four parts, Part-1, Part-2, Part-3 and

Independence standards categorized into Part 4A and Part 4B.

- Part – 1 – Complying with the code, fundamental principles and conceptual framework. It is applicable to all professional accountants.
- Part – 2 – It is applicable to Professional Accountants in service.
- Part – 3 – It is applicable to Professional Accountants in public practice
- Part 4A – Independence for audit and review engagements.
- Part 4B – Independence for assurance engagements other than audit and review engagements.
- Glossary

OVERVIEW OF THE CODE

PART 1

COMPLYING WITH THE CODE, FUNDAMENTAL PRINCIPLES AND CONCEPTUAL FRAMEWORK

(ALL PROFESSIONAL ACCOUNTANTS - SECTIONS 100 TO 199)

PART 2

PROFESSIONAL ACCOUNTANTS IN Service

(SECTIONS 200 TO 299)

(PART 2 IS ALSO APPLICABLE TO
INDIVIDUAL PROFESSIONAL
ACCOUNTANTS IN PUBLIC PRACTICE
WHEN PERFORMING PROFESSIONAL
ACTIVITIES PURSUANT TO THEIR
RELATIONSHIP WITH THE FIRM)

PART 3

PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

(SECTIONS 300 TO 399)

INDEPENDENCE STANDARDS

(PARTS 4A AND 4B)

PART 4A – INDEPENDENCE FOR AUDIT AND REVIEW ENGAGEMENTS

(SECTIONS 400 TO 899)

PART 4B – INDEPENDENCE FOR ASSURANCE ENGAGEMENTS OTHER THAN AUDIT AND REVIEW ENGAGEMENTS

(SECTIONS 900 TO 999)

GLOSSARY

(ALL PROFESSIONAL ACCOUNTANTS)

Source: Page VII of the Revised Code of Ethics Volume-1-
<https://resource.cdn.icai.org/55133CodeofEthics-2019.pdf>



The revised code of ethics, including the Chartered Accountants Act, 1949, the advertisement guidelines, website guidelines etc. provide clarity on the ethical dilemmas that may be faced by Chartered Accountants while discharging their professional obligations. Some of the ethical dilemmas and solutions to those, as enshrined in the revised code of ethics, the Chartered Accountants Act, 1949, the advertisement and the website guidelines are brought out through the below independent illustrations:-

- CA Mickey, has been approached by the members of the company Comic World Private Limited to act as the statutory auditor of their company for the financial year 2022-23. CA Donald, was the statutory auditor of the company earlier, however CA Donald did not wish to continue as the statutory auditor since he did not find the assignment feasible for the fees paid to him. CA Mickey is glad to accept the assignment, however he does not seem it necessary to communicate his acceptance to CA Donald, the previous auditor, since according to him, CA Donald was anyways not interested in the assignment.

CA Mickey is guilty of professional misconduct as per Clause (8) of Part-I of ***the First Schedule to the Chartered Accountants Act, 1949*** which states that *a chartered accountant will be held guilty of misconduct if he accepts a position held by another Chartered Accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing.* Another important point to draw attention to is the fact that, communicating with the previous auditor is not only for professional courtesy but it also provides an opportunity to understand if there are

any reasons whether professional or not that may hinder the independence or harm the interest of the auditor.

- CA Minnie is a practicing Chartered Accountant in a partnership firm. She is looking for expanding the scope of her practice. She is considering some options like providing management consultancy services, portfolio management services, management of NRI funds, providing collection or agent recovery services, providing training services to clients and their employees on recent developments in laws like GST, Income tax, companies Act etc. The other partners object that the services that CA Minnie is planning to undertake are prohibited to be undertaken by a practicing Chartered Accountant. CA Minnie reads the code of ethics and discovers the following:

In exercise of authority granted under Section 2(2)(iv) of the Chartered Accountants Act, 1949, the Council has passed a resolution permitting Chartered Accountants in practice to render entire range of "Management Consultancy and other services" which include services like financial management planning, budgeting including capital budgets and revenue budgets, preparing project reports and feasibility studies, working capital management, etc. The detailed list are mentioned in the resolution passed by the council.

However, the member is not permitted to undertake such assignments like management of NRI funds because the same is not covered under "Management Consultancy and other services". A Chartered Accountant cannot provide Portfolio Management Services also since explanation to Clause (xix) of the definition of "Management Consultancy and other services" expressly bars the activities of broking, underwriting and portfolio



management. A Chartered Accountant cannot work as a collection agent. However, he can act as a recovery consultant as provided in clause (xxv) of 'Management Consultancy and other services'. As far as providing training services are concerned, Chartered Accountants in practice can provide training services to their clients and the employees of their clients.

- Ayka Private Limited intends to bring its Initial public offer in the year 2022. CA Dora, a well – known Chartered Accountant is one of the directors on the board of Ayka Private Limited. The company intends to publish her expertise, specialization and knowledge in the field of corporate taxation and also refer her as "The ultimate Tax – Guru" or "The expert in taxation" in the prospectus and other public announcements made by company. CA Dora invites attention of the other board members to Clause (6) and (7) of Part -I of the first schedule to the Chartered Accountants Act, 1949. She mentions that although inclusion of the name of the member of the Institute in the prospectus or public announcements does not contravene the provisions, however it is necessary to note that there should not be any advertisement of her professional attainments. In case, after applying good judgement, it is proved that inclusion of her name and achievements led to direct or indirect solicitation of clients for professional work, then she would be held guilty of misconduct as per the above mentioned provisions. Further, use of adjectives like "The ultimate Tax Guru" or "The expert in taxation" would be a very clear case of professional misconduct.
- CA Arjun is a recently qualified Chartered Accountant and also an advocate. He wants to practice as

an advocate as well as continue his Chartered Accountancy practice. He is confused as to whether he can practice as a Chartered Accountant and Advocate both. He approaches CA Krishna, who is a very experienced Chartered Accountant regarding his query. CA Krishna advises CA Arjun that Council direction under Paragraph 2.14.1.7(v) under Clause (7) of Part-I of the first schedule to the Chartered Accountants Act, 1949 appearing in Volume-II of Code of Ethics, prescribes that a Chartered Accountant in practice, who is otherwise eligible, may practice as an Advocate subject to the permission of the Bar Council, but in such cases he should not use designation 'Chartered Accountant' in respect of the matters involving the practice as an Advocate. In respect of other matters, he should use the designation 'Chartered Accountant' but he should not use the designation 'Chartered Accountant' and 'Advocate' simultaneously.

- CA Smarty, a practicing Chartered Accountant instructs Mr. Hopeful, a CA articled clerk undergoing articleship training under him, to complete the KYC (Know your client) formalities of a new client that intends to avail the services of the firm. Mr. Hopeful is not aware of the activity he is supposed to do to in this assignment and enquires the same from his principal CA Smarty. CA Smarty explains that members in practice are required to abide by the Know your client (KYC) norms which are mandatory with effect from 01st January, 2017. As per paragraph R320.3 A6 of Volume-I of Code of Ethics, professional accountants while accepting engagement of attest functions are required to comply with the "Know Your client" (KYC) Norms of the Institute, which are as below: -



1. Where Client is an individual / proprietor

A. General Information

- ✓ Name of the Individual
- ✓ PAN No. or Aadhar Card No. of the Individual
- ✓ Business Description
- ✓ Copy of last Audited Financial Statement

B. Engagement Information

- ✓ Type of Engagement

2. Where Client is a Corporate Entity

A. General Information

- ✓ Name and Address of the Entity
- ✓ Business Description
- ✓ Name of the Parent Company in case of Subsidiary
- ✓ Copy of last Audited Financial Statement

B. Engagement Information

- ✓ Type of Engagement

C. Regulatory Information

- ✓ Company PAN No.
- ✓ Company Identification No.
- ✓ Directors' Names & Addresses
- ✓ Directors' Identification No.

3. Where Client is a Non-Corporate Entity

A. General Information

- ✓ Name and Address of the Entity
- ✓ Copy of PAN No.
- ✓ Business Description

- ✓ Partners name and addresses (alongwith their P.A.N. and Aadhar numbers)

- ✓ Copy of last Audited Financial Statement

B. Engagement Information

- ✓ Type of Engagement

Explanation: "Attest Functions" for this purpose will include services pertaining to Audit, Review, Agreed upon Procedures and Compilation of Financial Statements.

- CA Ranbir, a practicing Chartered Accountant was invited to news show for an interview. During the interview, he handed over his bio data to the Chairperson that enlisted his professional achievements, his association with national and international firms and his recognition as an expert in the field of international taxation. The chairperson read out the said bio data during the interview on national television. CA Ranbir does not think of this to be professional misconduct. However, it was held that this act of CA Ranbir has led to professional misconduct on his part as per provisions of **Clause (6) of Part -1 of the First Schedule to the Chartered Accountants Act, 1949** which states that a Chartered Accountant will be held guilty of misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- CA Tom, a Chartered Accountant in practice wants to enter into a partnership with his friend Mr. Jerry, who is practicing Chartered Accountant holding membership of Sydney,



Australia chapter of the Institute of Chartered Accountants of India for sharing fees from partnership in India. CA Tom is apprehensive as regards to sharing of fees with a professional of another foreign recognized professional body.

As per Clause (4) of Part-I of ***the First Schedule to the Chartered Accountants Act, 1949***, CA Tom can enter into partnership for sharing of fees with his friend Mr. Jerry who is a professional holding membership of foreign recognized professional institute.

- CA Rakhi, a practicing Chartered Accountant, got married to CA Kunal. They intended to practice their profession together and accordingly CA Rakhi formed a partnership with her husband CA Kunal. They also created a website for their firm wherein the professional experience and the services provided by their firm were displayed. CA Rakhi wants to post her full-page wedding picture with CA Kunal on the website. CA Kunal is of the opinion that, posting of wedding photograph on their professional website will render both of them guilty of professional misconduct.

The opinion of CA Kunal is correct since, Para 3.3.7 of the website guidelines states that, a Chartered

Accountant can display their photograph on the website provided that the photo is the passport size and style photograph.

- M.A.D & Associates is a Chartered Accountancy firm comprising of three partners Mitesh, Aatish and Dinesh. The firm is in the process of accepting the branch audit of the Mulund branch of the State Bank of India. The partners, while discussing the audit became aware of the fact that Mitesh, a partner of the firm has availed housing loan from the Dadar branch of the State Bank of India. The partners, after discussion concluded that the firm cannot undertake branch audit of a bank branch if any partner has taken a loan from any branch of the said bank. The partners agreed on the guidelines that state that the members should not place themselves in a position which would either compromise or jeopardize their independence.

The above illustrations are just some of the areas that are addressed by the code of ethics governing the Chartered Accountants. The code of ethics provides insight into many more issues that the Chartered Accountants may come across during the course of fulfilling their professional responsibilities. The detailed code of ethics can be read by clicking on the following links:

- Code of Ethics Volume-I
<https://resource.cdn.icai.org/55133CodeofEthics-2019.pdf>
- Code of Ethics Volume-II
<https://resource.cdn.icai.org/60018code-of-ethics-2020vol2.pdf>
- Code of Ethics Volume-III (Case Laws Referencer)
<https://resource.cdn.icai.org/59111esb48239.pdf>
- The Chartered Accountants Act, 1949
<https://resource.cdn.icai.org/7694announ1209a.pdf>



- The Chartered Accountants Regulation, 1988
<https://resource.cdn.icai.org/7697announ1209b.pdf>
- "Know your ethics" column published in each volume of the Member journal published by the Institute of Chartered Accountants of India
<https://www.icai.org/post/know-your-ethics>
- Council Guidelines for Advertisement, 2008
<http://esb.icai.org/wp-content/uploads/2020/09/advertisement-guidelines-website-guidelines.pdf>

It can be very rightfully said that the code of ethics is a basic need for any profession and Chartered Accountants are entrusted with the important responsibility of trust of so many stakeholders. The code of ethics not only serves as guidelines for the professionals facing dilemma but also acts as a deterrent to those professionals who are thinking of walking the wrong paths.

I would like to conclude with the words of Potter Stewart, the former associate justice of the United States Supreme Court, "Ethics is knowing the difference between what you have a right to do and what is right to do."



Original Jurisdiction of The Supreme Court under Article 131 of The Constitution of India



Drishti Bhatia



Niharika Payannavar



Rashmi Rajani,
Advocate

Indian History and its States

India gained independence in 1947, The Government of India Act, 1935 (the "Act") remained the constitutional law in India till 1950. This Act provided for Section 204 which gave the Federal Court (Supreme Court) the power to adjudicate disputes between the federal government and the Provinces. **Section 204** stated that the Federal Court would have Original and Exclusive Jurisdiction in any dispute between the Federation, Provinces and the Federated States.

After the passing of the Independence Act, 1947 under section 7b (1) each State gained its nature of sovereignty. Thus, the essence of Section 204 of the Act was incorporated under Article 109 of the first draft of the Indian Constitution of India. This Article aimed to empower the Supreme Court to adjudicate disputes between the Centre and one or more States. However, this Article did not extend to a dispute in which a State specified in Part B of the First Schedule was a part if it arose from any provision, treaty or covenant entered into before the commencement of the Constitution and continued to remain in operation.

The inclusion of this Article was supported in the Constituent Assembly Debates by Shri A. Thanu Pillai, who opined that *"If there is any benefit that the people should receive from the Constitution, it is the right of approach to the Supreme Court. Before the enactment of the Constitution, many states had no right of appeal to the Privy Council. With new changing conditions he appreciated the right to approach the Supreme Court shall be granted to all and no discrimination shall lie there."*¹

Effect of the DAR Commission on amendment of Section 204

Several re-affirmations were made by Congress Party during the time frame from 1928 to 1947 to reorganise the provinces on the basis of linguistic and cultural approach. The win by Congress Party in 1945-46 elections took a turn by dropping the principle of linguistic states as the former Prime Minister, Jawaharlal Nehru stated that *"First things must come first and the first thing is the security and stability of India"*.

On 22nd December, 1953 the Jawaharlal Nehru, stated in the Parliament that a

1. Constituent Assembly Debates, Volume 8 Friday, 3rd June, 1949, (Draft Article 109, Constitution of India Article 131) (Shri A. Thanu Pillai)



Commission should be appointed i.e. the State Reorganisation Commission for the reorganisation of the States so that the welfare of the people of each constituent unit as well as the nation as a whole is promoted. Finally, after many discussions, debates, and deliberations, in the Constitution (Seventh Amendment) Act, 1956, Article 131 stated that-

"Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

- (a) *between the Government of India and one or more States; or*
- (b) *between the Government of India and any State or States on one side and one or more other States on the other; or*
- (c) *between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:*

[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, Sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]”²

Ambit of Article 131

Article 131 of the Constitution of India provides exclusive power to the Supreme Court of India to deal with inter-state disputes. The intent for granting exclusive power to the Supreme Court was with the

purpose that all inter-state dispute matters should directly be adjudicated before the Supreme Court so that a faster remedy is available considering such disputes have a wider impact.

The three key elements of Article 131 are:

Dispute

Over the years through several landmark judgments, Supreme Court has thrown light on matters which will be considered as ‘dispute’ which may be adjudicated under Article 131 of the Constitution. A ‘dispute’ must involve the assertion and/or vindication of a legal right of the centre or the state or two or more states. Although any issue merely touching upon the political concerns would be outrightly rejected by the Supreme Court. A ‘dispute’ shall always be with regards to the rights, obligations, duties, powers, immunities and liberties only as far as the parties to a suit are concerned. Further in terms of Article 131, dispute arising out of any treaty, agreement, covenant, engagement, Sanad or another similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute will be outside the jurisdiction of the Supreme Court.

Parties

When it comes to the ‘parties’ a dispute must be between either the Centre and one State or States; or between two or more of States. Any suit brought before the Supreme Court by a private, citizen or a body corporate, statutory corporations against the Centre or a state shall not be entertained under this article.

2. Substituted for the original provisos (i) and (ii) by the Constitution (Seventh Amendment) Act, 1956



Question law or a question of fact

The dispute must involve a '*question of law or a question of fact*' upon which the existence or extent of a legal right depends.

In the year 1977, in the State of Karnataka, a few opposition members of the State Assembly had submitted a written Memorandum to the union home minister alleging the Chief Minister of being corrupted by way of nepotism and favouritism. The Government of India appointed a commission under the Commissions of Inquiry Act, 1952 to inquire the allegations against the Chief Minister. Against the said appointment of the Commission, the State brought a suit against the Centre under Article 131 stating that the notification appointing the commission was illegal and *ultra vires*, and contended on the grounds of federalism and the scheme of the Constitution. It was argued that under the provisions of the Constitution³, the State Cabinet was collectively responsible to the State Legislative Assembly and not to the Centre. The Apex Court did not approve the contentions made by the state and held that the distinction between the State and the State Government was immaterial in this context, thus the validity of the Act in question was upheld. The court also held that the dispute must be one involving any question on which the existence or extent of a legal right depends. Although the suit was dismissed, the maintainability of the suit was upheld by 4:3 majority⁴.

Exclusions to Article 131

It is safe to say that Article 131 has been designed in such a way that it goes hand in hand with the other provisions of the

Constitution. Therefore, if a remedy to any issue is available under any other Article of the Constitution, then the parties cannot seek remedy under this provision of the Constitution. The Supreme Court have in the past passed order under various Articles being Article 32 (the right to move the Supreme Court for enforcement of rights), Article 262 (the right to move the High Court for enforcement of rights), Article 280 (Matters under the Finance Commission), Article 290 (matters arising out of Consolidated Fund of India or the Consolidated Fund of a State), Article 363 (bar to interference by courts in disputes arising out of certain treaties, agreements, etc) and confirmed the said position.

For instance, in cases of water disputes between two or more states, the remedy to such conflicts is entertained under Article 262 of the Constitution, therefore, a party cannot seek relief under Article 131.

Exception

Under **Article 143 of the Constitution**, the President may refer a dispute to the Supreme Court if the dispute involves a question of law or fact. Thus, the advisory of the Supreme Court is an exception to the matters which are excluded from being tried in the Supreme Court. It is pertinent to note here, that though special powers vest in the hands of the President with respect to the referral of a dispute to the Supreme Court, the crux of the provision still stays intact.

Conclusion

Article 131 provides a mechanism for settling inter-governmental disputes quickly and at the highest judicial level. Because

3. Article 164(2) of the Indian Constitution- (2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State

4. *State of Karnataka v. Union of India*, AIR 1978 SC 68



of India's quasi-federal governing system, the constitution-makers deemed Article 131 to be crucial. The odds of a conflict arising between the states or between the Centre and the State are high under such a system, and the Constitution authors believed that decision-making authority in such circumstances should be clearly stated without delay. As the highest judicial authority, the Supreme Court was assigned original and exclusive jurisdiction. Other High Courts do not have this jurisdiction because it would be difficult for any other

court to decide a matter between 2 states, thus only Supreme Court can exercise this jurisdiction.

This provision makes Federalism a two-way street by creating boundaries for both the parties i.e. the Centre and the State. Needless to say, it is imperative that both the parties respect the boundary drawn by the Constitution of India for a balanced working and functioning of not only the Judiciary, but all organs of the Government.





Virtual Digital Assets & Cryptocurrency – All That We Know, Yet



CA Vivek Shah

Ever since its inception, cryptocurrencies have always been a subject matter of discussion. Right from its early days when they were touted to be like just another Ponzi scheme, to now, where we see countries accepting it as a legal tender; the journey so far has been quite adventurous & interesting. The technology behind cryptos is known as 'blockchain'. It is a decentralised technology which can be used for multiple purposes such as land records, medical records, banking, insurance etc. Crypto transactions are just one small application of blockchain technology, which is much larger and can be used for multiple other applications.

The matter related to cryptocurrencies in India was first discussed on the floor of the house of the parliament, when the then Finance Minister late Shri Arun Jaitley famously remarked "India does not accept cryptocurrencies as a form of legal tender, however, the benefits of blockchain technology shall be used for the development of our country.". At this stage it was not mentioned whether cryptocurrencies were legal or illegal. Back then, there was no clarification whether cryptocurrencies were to be considered as a separate asset class or not. Moving forward now the question was asked to the RBI about the legality of cryptocurrencies, however, it only mentioned that it does not consider any cryptocurrency as a legal tender and hence it was not under their jurisdiction. As the market matured, there were more people getting associated with

crypto transactions mainly due to TV ads, influencer marketing, front-page newspaper ads & celebrity endorsements. At this juncture, the RBI decided to impose a ban on all banks from providing services to crypto exchanges. This led to even greater confusion among those who were trading in cryptos. Subsequently the matter about registration & regulation of crypto exchanges was raised to SEBI. SEBI concluded that cryptos were neither securities nor commodities nor currencies, and in that case they would not have jurisdiction over these crypto exchanges. This makes us ponder over another question that how did these exchanges get recognised or classified as exchanges. If one takes a liberal view, it is prudent to say that these 'so-called' crypto exchanges are self-regulated, self-assumed and self-governed. There is absolutely no regulatory authority, agency or department which governs the transactions taking place on these so-called crypto exchanges. On analysing the above given facts and the sequence of events, one wonders whether this was a collective failure of the system at large.

Should You Invest?

Investments in cryptos are not only subject to market risks, but also regulatory risk, geopolitical risks & social media risks. It is emphasised over here that social media plays a major role in fluctuating & manipulating the price of certain cryptos. In the past it has been observed that



the price of a particular crypto increases if an entrepreneur/billionaire tweets that they will accept crypto for selling their electric vehicles. Similarly, after a couple of weeks when the same entrepreneur/billionaire tweets that they will no longer accept cryptos for selling their electric vehicles, the prices of cryptos started crashing. Though the prices of cryptos are determined by the market forces, one cannot overlook the fact that inherently, cryptos are extremely volatile in nature.

Before one plans to invest in cryptos, there are multiple factors which should be considered and analysed. It is important to understand that as of now there are more than 9800 cryptos which are recognised, there could be even more cryptos than this figure which are not yet recognised. This number is constantly increasing as you read this article. For all you know, the number could have crossed 10,000 by the time this article is published. Before investing there are multiple factors which need to be analysed such as the price, the total circulating supply, the total mined quantity, the total volume of transactions, exchanges on which a particular crypto can be traded, its team, their vision & finally, if it is a business or just a currency. Quite a few cryptos claim that in order to avail their service they need to be paid in their own crypto. In such cases, these cryptos are not just a currency but also a business. If the number of people wanting to avail their services are large, then in that case it is observed that the price of that particular crypto may increase overtime. Some cryptos claim that a particular process can be simplified or expedited using their blockchain.

In order to invest in cryptos in India, the easiest way is to open an account with one of these 'so called', self-assumed, self-regulated & self-governed crypto exchanges. One needs to verify their KYC documents and load money through banking channels to start investing in cryptos. Charges and Commission on some

of these exchanges are not transparent and they can range from anywhere between 0.25% to 7% of the transaction value.

Cryptos have been classified as a separate asset class in India, they are now considered as virtual digital assets (VDA). Another evolving area in the crypto world is of non-fungible tokens they are also referred to as NFTs. NFTs are form of digital art which can be bought and sold just like a traditional piece of art. The creator of this digital art or NFT can decide its price, rarity and percentage of royalty on every subsequent sale. NFTs establish ownership of the digital art on blockchain. There are music NFTs, video NFTs & image NFTs as of now. Any person can create its own NFT and put it up for sale on an open platform. Recent trends have shown that celebrities, sports persons and entrepreneurs have started launching their own NFT collections on various platforms. Globally, the demand for NFTs is extremely huge and India shall also witness a demand in digital art from good content creators in the years to come. Some NFTs also come with real world benefits, such as seeking advice from an entrepreneur, or meeting your favourite celebrity for 15 minutes, or a video call with a sports person. Though the art is digital, but to create value for a prospective buyer, some real-world benefits can also be added to the NFT.

We are living in interesting and dynamic times, where investment shall not only be limited to cryptos or NFTs. Corporations are selling virtual land in the Metaverse (or a digital universe) as a digital asset. Each company, organisation or group of individuals can create their own Metaverse. It is a place where people can interact with each other without necessarily disclosing their real identity. They can also make a virtual avatar of themselves and be a different personality from what they are in real life. Metaverse is going to introduce a concept of 'teleporting' where one doesn't need to physically be present, but the



virtual avatar of the person is present at that place. It could give a whole new dimension to virtual reality. Gaming, virtual meetings, music concerts & building cities – it's all going to happen in the virtual universe.

Whether one should invest in cryptos, NFTs, digital land or any other virtual digital asset (VDA), totally depends on the risk appetite of the individual. A lot of people follow the policy of investing only an amount which they can afford to lose. Traditionally, fiat currencies have been backed with some asset, in the case of cryptos, there is no asset backing and hence, there is no intrinsic value which one can derive. However, nothing contained herein shall be construed to be financial or investment advice. Each person must exercise caution before investing in any asset class including VDAs.

Legal Viewpoint

Whether cryptos are legal or illegal is determined by the law of the land. As of now, in India, there is no law which regulates it or legalises it. At the same time, there is no law which prohibits it either. So, in the absence of any specific law or regulation, the decision of a person lies on the interpretation of the facts and circumstances of the case.

To understand the legal position, one must look at precedents and the global scenario to determine whether holding, trading & mining of cryptos would be a legal or an illegal activity. Let's take an example of marijuana – a prohibited substance under the Narcotic Drugs & Psychotropic Substances Act in India. There is a law and that law declares it illegal to possess, consume or deal with such substances. However, the same substance, is legal for consumption in some states in USA, because the law allows people to consume that substance. So, the question of legality can only be answered if there is a law present. Realistically, cryptos enable people to move their wealth from one country to

another, without reporting it to anyone and with no restrictions whatsoever. The icing on top is that there is complete anonymity, and the beneficial owner cannot be tracked. This has led to a lot of illicit wealth being parked in cryptos. Based on the present law, this would amount to a clear violation of Foreign Exchange Management Act & Prevention of Money Laundering Act in India.

However, globally some countries have recognised cryptos as a separate asset class. In some countries such as El Salvador, it is a legal tender, which is to say that one can pay taxes to the government in crypto. In times of economic crisis and sanctions, cryptos are gaining more adoptability and popularity. In China, it is illegal to deal with cryptos.

Due to regulatory hurdles and uncertainty in the crypto policy in India, a lot of Web3 companies have shifted to other countries where they can officially create, distribute, deal and trade in cryptos. Some popular countries which are crypto friendly are British Virgin Islands, St. Vincent & the Grenadines, Curacao & Panama. Many have also selected Singapore as their destination primarily because cryptos are regulated and there is clarity in the legislation which regulates it. Companies prefer floating 2 entities at the time of creating their own crypto – first a trust or a foundation which holds the cryptos and the second one is a marketing or distributing arm which conducts all activities and enters in contracts with others. This structure is preferred so that the founders can safeguard the crypto in case of any eventuality or an adverse regulatory condition.

About legality of cryptos, a major concern which looms is whether issuing any currency is a 'sovereign right' or whether any person or corporation can also enjoy this right. Countries have had the right to issue their own currency, regulate and monitor it. Also, currencies are issued by Central Banks and not by the governments



in power at the time of its issuance. So essentially, there is separation of control and power in fiat currencies. This maintains the value of a currency to a large extent. In cryptos, none of this is possible due to the inherent nature of blockchain technology. At the same time, some also argue that cryptos are necessary to break the monopoly of certain governments which keep printing additional currency without any fundamental justification.

Taxation of VDAs

The Finance Budget of India has introduced a tax on income from crypto transactions at a flat rate of 30%, without claiming any deduction and no set-off of any losses against any income. In addition to it, there is also 1% TDS on every transaction which has become applicable. This implies that any cost incurred such as brokerage, commission & trading costs cannot be deducted from the gains. In any other business, various deductions such as rent, office expenses, staff salary etc are allowed as a business deduction, however, in crypto trading no such deductions shall be allowed.

The Finance Ministry has clarified in the Rajya Sabha (the Upper House), that gains from one crypto cannot be set off against losses of another crypto. It seems the government has taken a strict view considering that there have been some instances in the past where manipulation of stock prices could be done in some listed companies to book losses against actual profits and that would reduce the overall tax liability of the assessee. It seems that government has taken a correct and a fair stand on this matter, since cryptos are not regulated and there could be some deliberate attempts by some sections of the society to specifically manipulate the price of cryptos to book losses and make adjustments so that there would be no tax liability. It could amount to evasion of taxes. This is highly possible in cryptos since they are not regulated. At this stage, there is no clarity on the matter whether

profits arising from crypto trade can be set off against losses arising from the same crypto in another trade. In my personal opinion, it seems that the government has taken an approach to "nationalise profits and privatise losses" arising from cryptos.

Some people argue that taxing cryptos makes it a legal activity to deal in. It is pertinent to note that the present Hon'ble Finance Minister Smt. Nirmala Sitharaman has clarified that taxing a transaction is the right of the government, but the issue of legality will be decided only after consulting all stakeholders and the process would take time to reach its finality.

In recent times, the matter of indirect taxes on crypto transactions has also erupted. Transactions which take place on crypto exchanges are subject to GST. Major crypto exchanges have paid tax on the commission or brokerage charged on transactions. However, as of now, there is no GST on trading of the full value of the cryptos, but only on the brokerage element in the transaction. Soon there could be GST on the entire transaction value of the crypto trade.

GST is also applicable on sale of NFTs by celebrities, sportspersons and artists which transact in India in Indian currency. However, it is observed that many NFT platforms are registered in jurisdictions outside India. In such a case, the NFTs are listed for sale or auction on the platform of the service provider which is situated outside India. The point of sale for such transactions is outside India. The sale consideration is also paid in crypto and not in fiat currency to a wallet which is situated outside India. Due to the nature of transactions, many exchanges and/or NFT creators deem this transaction to be 'export of services' and hence there is no taxability in India with respect to GST. For such transactions, one may argue that the ultimate buyer could be situated in India, however, there is no way as of now, to identify the location of the buyer from its wallet address.

Introduction to Valuation



Dhruv Shah



CA Vikram Jain

Introduction

"*Valuation is an art and not an exact science,*" is what we have heard many times. What does it mean? To give a live example, Paytm (One 97 Communications Limited) came out with an Initial Public Offer ('IPO') at a price of INR 2,150 per share in November 2021. Paytm being a loss-making entity with no visibility of the profits in the future (as mentioned in its red herring prospectus) was priced higher than various market leaders like L&T, HDFC, etc. Asian Paints, the largest paints manufacturer in India with a market cap of ~ INR 2,70,000 crores is valued at a price to earnings ('PE') multiple of close to 88 times. Whereas the Metals sector in India which generates huge employment, tax, etc. is valued at a PE multiple between 2 to 5 times. So, what do these examples tell us?

The question to analyse here is *Do these multiples reflect the true value of the Company? Do these multiples help us determine the future prospect of the business? Do these multiples consider the social impact and market scenario?*

Well, these are valid questions that hover over everyone's mind. Thus, knowing the basics of valuation is quite important when analysing companies and before making any investment decisions.

Knowing the value of an asset and what determines that value is the key and most

important part of any decision-making exercise whether it involves making an investment, takeover or that matter for running a business as well. The premise of valuation is that we can make reasonable estimates of value for most assets, and that the same fundamental principles determine the values of all types of assets, real as well as financial. Some assets are easier to value than others, the details of valuation vary from asset to asset, and the uncertainty associated with value estimates is different for different assets, but the core principles remain the same. This introduction lays out some general insights about the valuation process and outlines the role that valuation plays. It also examines the three basic approaches that can be used to value an asset.

In simple terms, *Valuation refers to the worthiness of an asset as on a particular date.*

Valuation can be conducted for all kinds of assets such as equity shares, preference shares, debt instruments, Intangible assets like brands, trademark, customer relationships, goodwill, technical know-how, non-compete agreements, drawings, distribution network, patents and many more; tangible assets like Property, Plant and Equipment (PPE), etc.

'Price is what you pay; value is what you get' simply helps understand the difference between price and value. It has to be



clearly understood that valuation is not a certification job, but it is an expression of an opinion of an individual professional. No two valuers will assign the same value to an asset under consideration. From a business point of view, valuation depends upon what it is worth to a serious investor. Valuation normally is a very subjective concept since it depends on various parameters and also on the experience of the person valuing the particular asset. Valuation is always done on a specific date. The value arrived on a specific date, might not hold true six months later.

In a normal course, no one will pay more for what he expects to get from an asset. This statement may seem logical and obvious, but many a times this is forgotten as could be seen when the pandemic occurred in March 2020 and now with the impact of rising inflation, war, etc. There are those who argue that value is in the eyes of the beholder, and that any price can be justified if there are other investors willing to pay that price. That is not always true.

Emergence of Valuation in India

The Wealth Tax Rules, 1957 had prescribed the valuation of unquoted shares. But the adoption of Liberalisation Privatization and Globalization (LPG) policy in 1991 set India at the centre stage of international trade in goods and services. For a small period post the LPG Policy, the Controller of Capital Issues (CCI) had published guidelines for the issue of shares at premium. In 1992, a major step was taken by the government to introduce the Securities Exchange Board of India (SEBI) Act. SEBI brought about changes wherein the Companies were free to price the issues in consultation with the merchant bankers. Due to the limited coverage and restricted acceptance in the early 2000s, only Net Asset Value (NAV) and Comparable Companies Multiple (CCM) Method were widely used to value the assets based on the Supreme Court judgement in Hindustan Lever Limited

case (*Hindustan Lever Employees' Union vs. HLL (1995) 83 Com. Case 30 SC*). The large transactions that took place in the late 1990s and post 2000 were primarily based on NAV and CCM methods. At that point of time, the concept of valuing companies based on Income Approach i.e., primarily Discounted Cash Flow (DCF) Method (explained in detailed in the latter part of this article) was not fully understood by regulators and people in the industry as well. Somewhere between the period from 2005 to 2010 the concept of using a DCF method to value a company came more into prominence.

In April 2010, the Reserve Bank of India came out with a circular which mandated the use of DCF method as an internationally accepted valuation methodology for any inflow of foreign exchange into India. Post 2010 DCF was widely used as a more scientific approach to value a share of a company. Several attempts made to provide an institutional framework in the past fizzled out as not all stakeholders could be on the same page. The attempt, which came closest to fruition, was the draft Valuation Professionals Bill, 2008 (Valuation Bill), which did not reach Parliament. Finally, the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules) made under the Companies Act, 2013 provides a centralised institutional framework for development and regulation of valuation profession, though its ambit is limited to valuations required under the Insolvency and Bankruptcy Code, 2016 (Code) (IBC) and the Companies Act, 2013 (Co. Act). The concept of registered valuers (RV) was introduced in IBC and Co. Act which help govern how the RV are supposed to function in India. The Ministry of Corporate Affairs (MCA) has introduced the Draft Valuers Bill 2020 which is currently available for public comments. The Draft Valuers Bill 2020 would provide a framework for valuation profession in India as well as help in regulating valuers.



Since we have understood the basics and emergence of valuation in India, let us now try to understand certain nuances and terms which are generally used in valuation for any kind of asset whether be any financial instrument, tangible, or intangible asset, etc. Please note that we have referred to the ICAI Valuation Standards (ICAI VS) which have been issued by the ICAI Registered Valuers Organisation (ICAI RVO). The ICAI VS needs to be mandatorily referred to by RV who are registered as RV with the ICAI RVO. The ICAI VS are primarily a mix of all concepts and terms in valuation which are generally accepted globally as well.

A. Purpose of Valuation

The first thing to understand is the primary purpose for which the valuation is being carried out. Is it for a regulatory requirement like Co. Act, FEMA, Income Tax or is it for financial reporting or just that the Promoter wants to know the value of his company? A brief table below provides some of the main purposes for which valuation is carried out covering most of the purposes for which valuation is done in India.

Business Valuation	Regulatory	Intangibles	Financial Reporting
Restructuring	FEMA	Purchase / Sale	Purchase Price Allocation
Purchase / Sale of shares / business	Income Tax Act	Hypothecation	Private Equity/ Venture Capital Funds
Litigation / Family Settlements	SEBI Regulations	Accounting for purchase	Financial Instruments
Fund raising	Companies Act	Impairment	Ind AS reporting – Fair Value / Impairment

B. Valuation Bases

Valuation Bases is one of such concept, required to get the basic understanding of the underlying valuation activity. *Valuation Bases means the indication of the type*

of value being used in valuing any asset/ financial instrument. Different valuation bases may lead to different conclusions of value. The ICAI VS defines the following valuation bases:



- **Fair Value**

Fair Value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date.

- **Orderly Transaction**

Orderly transaction is a transaction that assumes exposure to the market for a period before the valuation date to allow for marketing activities that are usual and customary for transactions involving such assets or liability and it is not a forced transaction.

- **Valuation Date**

Valuation date is the specific date at which the valuer estimates the value of an underlying asset.

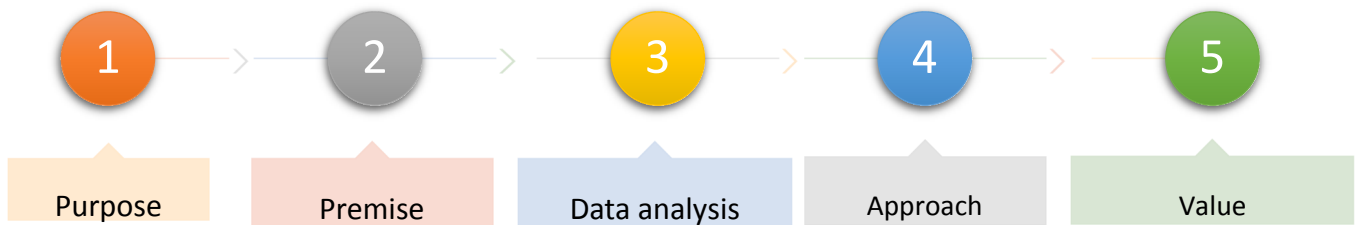
- **Liquidation Value**

Liquidation value is the amount that will be realised on sale of an asset or a group of assets when an actual/hypothetical termination of the business is contemplated/assumed.

- **Going Concern Value**

Going Concern Value is the value of a business enterprise that is expected to continue to operate in the future.

C. Process of Valuation



a. **Premise of Valuation:**

It refers to the assumption regarding the circumstances of the asset/entity that may have a vital role to play in terms of its valuation. The following are the fundamental premises of value:

- o **Highest and Best Use**

This assumption considers the use of the asset considering the legal conditions, financial circumstances, and the feasibility to operate it for the business activities.

For example: A factory operates at 80% of its capacity due to the frequent electricity offloading activities taking place five days a month. Thus, the highest and the best possible use of the factory is at 80% capacity.

- o **Going Concern Value**

This concept assumes the subject asset/company would continue to operate in the business and generate cash inflows in the future.



For example: As per Accounting standard 1, all the entities are normally viewed as a going concern, that is, as continuing in operation for the foreseeable future.

o As-is-where-is Basis

This concept considers the existing use/condition of the asset/business which may or may not be the highest and best use.

For example: Valuation of any asset is mostly based on as-is-where-basis which means that it is based on the current performance of the asset.

o Liquidation Value

This concept considers the amount that would be realised if the business is terminated, and all the assets are sold, and the liabilities settled.

For example: Valuation is arrived based on actual realisation of assets and payment of liabilities as appearing on the balance sheet. In the IBC process, in case any asset is not sold to any eligible bidder then the same is liquidated and the lenders are paid-off.

o Forced Transaction

It is a transaction where a seller is under constraints to sell an asset without marketing period or effort to market such asset.

b. Data Analysis

Regardless of the approach/method selected for the valuation assignment, having sufficient information of the company, its competitors, the industry it

operates in, business being carried out, economic and government policies, current global and local backdrop and many other factors decide on the importance of analysis of the data.

Financial Analysis

For any valuation, it is imperative to understand the financial statements of the company. It summarises the long term and short-term assets held by the company, the expected returns on those assets, the various methods used by the company to raise capital, the income earned during each accounting period and various other points having impact on the financial front. The historical information as well as projected cashflows will be analysed and mapped with the current financials by calculating Year-on-Year growth and also analysing various accounting/financial ratios and working capital to understand the prospective operational level of the company in the future.

Economic and Industry Scenario

Besides understanding the internal factors that impact the performance of the company, it is equally important for the valuer to understand the external factors affecting the company. The industry lifecycle stages are introduction, growth, maturity, and decline. These stages of the industry have an impact on the pricing as well as market share of the company. It also has an impact on the capital expenditure that the company would incur. The valuer should also assess the impact on the company as an effect of competitor's action. The economic scenario in a



country such as period of inflation, recession impacts the value of the asset. Higher inflation means higher cost of living and therefore lower purchasing power. Thus, in an inflation period, the cost of debt increases thus impacting the WACC which in turn impacts the valuation of the asset. Another external factor that impacts the valuation is the global economic scenario. There would be a positive as well as negative impact on various sectors of the industry in India on account of the Ukraine and Eastern Europe.

Risks Involved

Any business being carried out today is subject to various kinds of risks which can range from government/regulatory policies, geopolitical strife, unusual disturbances (like war, natural disasters, famine, pandemic, etc.), industry specific issues and challenges, etc. In simple words, to earn any amount of money over and above the risk free return, additional risk has to borne by the business/investor. This risk needs to be adequately factored while arriving at fair value of any asset.

c. Approaches used in valuation

As per ICAI VS various approaches to valuation have been provided which are generally considered in any kind of valuation exercise. As a valuer we need to see whether all or any one valuation approach would be applicable in the subject asset which is being valued. Let us understand various approaches mentioned in the ICAI VS:

1. Market Approach

The Market Approach uses prices and other relevant

information generated by market transactions involving identical or comparable assets, liabilities or a group of assets and liabilities, such as a business.

Under the Market Approach, the valuation is based on the following:

- (a) market price of the shares of a company in case such shares are listed ('Market Price Method');

and/or

- (b) prices paid in transaction(s) of subject asset to be valued or transaction multiples derived from prices paid in transaction(s) of comparable companies ('Comparable Transaction Multiple Method');

and/or

- (c) market multiples derived from prices of comparable listed companies ('Comparable Companies' Multiple Method').

Few instances where this approach can be used:

- o When there is a recent orderly transaction in the asset to be valued.
- o When there are recent comparable transaction in an identical asset and whose information is easily available.
- o In case we are valuing an asset for which there are listed comparable companies.

2. *Income Approach*

This approach converts maintainable or future amounts to a single current amount. The fair value measurement is determined based on the value indicated by current market expectations about those future amounts.

a) *Discounted Cash Flow ('DCF')*

Under the Income Approach, the equity shares of the company are valued using Discounted Cash Flow ('DCF') method. The DCF Method values the business by discounting its free cash flows for the explicit forecast period and the perpetuity value thereafter. The free cash flows represent the cash available for distribution to both the owners and the creditors of the business. The free cash flows are discounted by Weighted Average Cost of Capital ('WACC'). The WACC represents the returns expected by the investors of both debt and equity, weighted for their relative funding in the entity. The present value of the free cash flows during the explicit period and the perpetuity value indicates the value of the business.

b) *Relief From Royalty ('RFR')*

Under this method, the value of the asset is based on the present

value of royalty payments saved by owning the asset instead of taking it on lease. It is adopted for valuing the intangible assets that are subject to licensing such as trademark, patents, brands etc.

c) *Multi Period Excess Earning Method ('MEEM')*

This method is used for valuing intangible asset that is most significant out of the group of intangibles being valued. The fundamental concept underlying this method is to segregate the earnings attributable to the intangible being valued. Contributory Asset Charge ('CAC') which is a crucial factor in case of this method refers to the charge for the use of an asset or group of assets based on their respective fair value and should be considered for all assets excluding goodwill.

d) *With or Without Method ('WWM')*

This method considers valuation of the intangible asset which equals to the present value of the difference between the projected cashflows over the remaining useful life of the asset the business with all assets including intangible assets is to be valued and when business excluding intangibles assets are to be valued.



Few instances where this approach can be used:

- o where assets do not have any market comparable or comparable transaction.
- o where the asset is an income producing asset for which the future cash flows are available and can be projected.

3. Cost Approach

The Cost Approach represents the value with reference to historical cost of assets owned by the company and the attached liabilities. Such value generally represents the support value in case of profit-making business and thus, has limited relevance in the valuation of the business of a going concern.

a) Net Asset Value (NAV)

It can be arrived at by considering the total assets minus the liabilities (excluding share capital and reserves). The NAV can be considered as a support value to any income approach. Most of the items on the balance sheet are valued as they appear on the balance sheet. The NAV as arrived is a very simple way to gauge the value of a company through the face of the balance sheet before beginning a deeper look into each line item as it appears on the balance sheet.

b) Replacement Cost

Replacement Cost Method, also known as

'Depreciated Replacement Cost Method', involves valuing an asset based on the cost that a market participant shall have to incur to recreate an asset with substantially the same utility (comparable utility) as that of the asset to be valued, adjusted for obsolescence.

c) Reproduction Cost Method

Reproduction Cost Method involves valuing an asset based on the cost that a market participant shall have to incur to recreate a replica of the asset to be valued, adjusted for obsolescence.

Few instances where this approach can be used:

- o in case where liquidation value is to be determined.
- o income approach and market approach cannot be used.
- o in case of valuing a investment holding company

d. Value

After applying the process of valuation, the valuer will be able to derive the following types of values:

a) Intrinsic Value

It is the real worth of the stock when differentiated from the current market price of the stock. However, it is a subjective value as the estimates of the value may vary from one valuer to another.



b) Fair Value

It refers to the price that would be received to sell an asset or paid to transfer a liability with the assumption that the seller and buyer are aware about the market scenario.

c) Fair Market Value

It is the general estimate of what a business or asset would sell in the open market independent of particular investor scenarios.

d) Investment Value

It means the value based on expected earnings or monetary return to a particular investor.

For example: The current market price of Reliance Industries is INR 2,500 whereas the valuation undertaken indicates a value of INR 2,700. In this case, the intrinsic value is INR 2,700, fair market value is INR 2,500. If a particular investor (after considering the expected future earnings) is willing to buy the shares at INR 2,800 then INR 2,800 is the investment value.

D. Valuation under various Regulations in India

A need for valuation may arise from many requirements. The table below summarises the various sections/regulations/rules under which a financial instrument/asset/business valuation may be required:

The Companies Act, 2013 (to be done by a RV only)

Section	Valuation Requirement
54(1)(d)	Issue of Sweat Equity Shares in case of unlisted companies:– RV to value sweat equity shares and IPR or Knowhow or Value addition brought in by the person to whom sweat equity shares are proposed to be issued (Rule 8 of Companies Share Capital & Debenture Rules, 2014).
62(1)(c)	Issue of shares/convertible securities on preferential basis by unlisted company for cash or for consideration other than cash
67(3)(b)	Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees
192(2)	Transactions involving transfer of assets for non-cash consideration to/from directors
230 & 232	Scheme of Compromise/Arrangement or Scheme of Corporate Debt Restructuring or Merger and Amalgamation of Companies.
234	Cross border merger of an Indian Company into Foreign Company or <i>vice versa</i>
236	Purchase of Minority share holding
281	Winding up of a company



Foreign Exchange Management Act, 1999 ('FEMA') (to be valued by a Chartered Accountant (CA) or Merchant Banker (MB))

—	Fresh Issue of Indian Company Shares by non-resident by way of subscription to Memorandum of Association
—	Issue of Shares or Securities by an Indian company to a Non-Resident
—	Transfer of Shares or Securities by a Resident to a Non-Resident
—	Transfer of Shares or Securities by a Non-Resident to a Resident

Income Tax Act, 1961

Section	Valuation Requirement
56(2)(vii)	For issue of unquoted shares. FMV of such shares to be computed in accordance with Rule 11UA to be done by Merchant Banker (MB) only
56(2)(x) 50CA	For transfer of unquoted shares (Also covers sum of money, immovable property, other property) to be done by CA or MB
50B	Slump sale of a business to be done by CA or MB
92	Transfer pricing provisions





Report on The Dastur Essay Competition, 2022

The Chamber of Tax Consultants successfully organised the '**Eleventh**' edition of '**The Dastur Essay Competition**' during the period February 2022 to April 2022.

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 Eleventh Dastur Essay Competition were:




1. Does Media need to be regulated? If yes, how should it be regulated?
2. Need and remedies for reforming India's Judicial System.
3. Privatisation of Public Sector Undertakings – Opportunities and Challenges.

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

The **Top Ten Essays** selected by the judges for the preliminary rounds were judged by **Hon'ble Justice Shri V. G. Bisht, Judge of Bombay High Court.**



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

Rank		Name	Topic	Cash Prize
First		Mr. Satya Sankar Perepu (Grant Thornton Bharat)	Privatisation of Public Sector Undertakings – Opportunities and Challenges	INR 10,000/-
Second		Ms. Anjana K (Government Law College, Kozhikode)	Does Media need to be regulated? If yes, how should it be regulated?	INR 7,500/-
Third		Mr. Dhairya Bheda (NMIMS School of Law, Mumbai)	Privatisation of Public Sector Undertakings – Opportunities and Challenges	INR 5,000/-

The Results of Top Three Winners were announced in the 95th Annual General Meeting of the Chamber held on July 4th, 2022 at. 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 'Jiganya'.



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

Rank	Name
Fourth	Ms. Aanchal Shah (GK Choksi & Co.)
Fourth	Mr. Yashwant Pratap Singh (Jamia Millia Islamia, New Delhi)
Sixth	Ms. Muskan Dadia (Government Law College, Mumbai)
Seventh	Mr. Amal Michael (Government Law College, Kozhikode)
Seventh	Ms. Tejasvi Thakkar (Dr. D.Y. Patil College of Law)
Ninth	Mr. Mokshit Maru (GBCA and Associates LLP)
Ninth	Ms. Bhuvanashri Ilango (Tamil Nadu Dr. Ambedkar Law University)

The **Top Ten Essays** are 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 Eleventh 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.



THE DASTUR ESSAY COMPETITION 2022

Privatisation of Public Sector Undertakings – Opportunities and Challenges



Satya Sankar Perepu

The eminent American philosopher and cognitive scientist Noam Chomsky remarked

"A basic principle of modern state capitalism is that costs and risks are socialized to the extent possible while profit is privatized"

1. Abstract

The economic reforms in India are notable because of the development of private enterprises that are free from functionary management and the current wave of privatisation reflects changes in economic thinking and economic policies that have been gathering force for nearly two decades, privatisation programs are now being pursued in a larger number of countries than ever before. This essay is an effort to contribute to the discussion on how privatization of public sector undertakings (PSUs) or state-owned enterprises (SOEs) may impact the financial performance and efficiency of these enterprises. Moreover, in determining and comparing the significant differences among companies' financial performances and their efficiency levels, before and after privatization periods. Furthermore, analysis of how instead of privatizing companies, the government should renovate the public sector dynamically since it makes a crucial contribution to national investment and growth.

2. Introduction

India has a mixed economy in which both Private and Public Sectors exist especially in the areas of Banking, Telecom, Road Transport, Education, Healthcare, Manufacturing, and Education among others. Many Business analysts and experts diverge as right-wing and left-wing. The right- wing is in favor of privatisation and believes that privatization could speed up economic growth with the increase in competition while the left-wing finds that the privatization means ***"Bureaucracy selling Crown Jewels of the country"*** which could bring more problems like unemployment taking the economy backward due to its inherent issues.

Privatisation is also known as denationalization which is the process of transferring property from public ownership to private ownership and/or transferring the management of a service or activity from the government to the private sector. The top three attributes of privatization are as follows:



(1) **Ownership measures** which refer to the transformation of the ownership of public enterprises to private owners, (2) **Organizational measures:** which relate to the limitation of the state control in public companies. These involve the employment of methods for the leasing and restructuring of the enterprises, and (3) **Operational measures** concern the way to improve the profitability and efficiency of public enterprises.

Reigniting this age-old debate, Prime Minister Narendra Modi said, **"Government has no business to be in business"**. *The government's focus should be on projects related to the welfare and development of the people. More and more government power, resources, and capacity should be used for welfare work. At the same time, when the government starts doing business, there is a lot of damage.*

The government has announced that all **PSUs in non-strategic sectors will be privatized, while the government has identified four strategic sectors – atomic, energy, space, and defence where there will be only one to a maximum of 4 PSUs** fully owned by Govt. For 2021-22 **Central government's efforts to raise ₹ 1.75 lakh crore** through strategic disinvestment of loss-making PSUs including BPCL, Shipping Corporation of India, Container Corporation of India, and Bharat Earth Movers. The **Department of Investment and Public Asset Management (DIPAM)** under the Ministry of Finance is the nodal department for the strategic stake sale in the PSUs.

3. Historical background of PSU in India

The driving factor behind the nationalization was when India became independent in 1947 and had to deal with several obstacles, such as massive poverty, high illiteracy, unemployment levels, a low GDP, and disease. As necessity is reportedly the mother of invention, India's necessity prompted the establishment of

PSUs. The five-year plan led to a mixed economy where, the government manages to nationalize industries, such as public utilities, railways, and communications because these generate a revenue source. In contrast, **due to the high risk and low returns, information shortage, and reluctance on the part of several private enterprises**, the government took control of the economy.

India has its model for SOEs, taking into consideration unity in diversity. The central government owns enterprises with a partial funding arrangement from the private sector or equity market, but it controls the enterprises. In these enterprises, the business model involves 100% government decision-making, and the governments earn revenues or profits for their exchequer or disinvestment.

4. Reasons for Privatization

Under communism, govt takes over companies and under capitalism, companies take over the government. There are numerous reasons why governments turn to privatization.

If we take the **example of the privatisation of railways** ¹then India is following the Japanese model which is a great success that ensured high efficiency and ultimate benefit to the customer. **109 routes were identified by the Indian government where 151 private trains will run for 35 years. These routes are divided into 12 clusters** where service and punctuality were severe issues. All clusters will be auctioned to 12 different private players who will be completely responsible for their sector.

4.1 Cost Reduction: Governments often outsource operations due to the potential cost savings. Private sector service providers are often able to deliver the same services as the public sector but at a lower price. As per the 2019 budget, **50 lakh crores are to be invested**



by the government by 2030 for the redevelopment of Railways, and electrification, as India needs 20,000 trains to meet the future demand. As trains like Tejas and Vande Bharat would be run by private hence the manufacturing costs would be shared with private entities. And lastly, to **improve efficiency, private would also infuse fresh capital to upgrade the technology** in their respective clusters.

4.2 Source of Revenue: 12 different **Bids will fetch around 30 thousand crores** to the government and an agreement was made with the private company they will be paying fixed transport charges, energy charges, and share some portion of revenue.

4.3 Quality of Service: The Privatization of Indian Railways have removed some long-lasting problem like poor sanitation; pickpocketing, low security around stations, food poisoning, inconvenience to passengers, etc. without affecting cost, due to their flexible policies in management. The government assured that they would be monitoring the prices set by private entities.

4.4 Expertise: The first and foremost benefit of privatization of Indian Railways will be the **better infrastructure and will bring better maintenance of coaches, engines, and tracks** which will further help in reducing accidents and undesirable incidents. Secondly, there is a huge demand for **Indian LHB coaches** in African and South Asian markets but due to the inefficient manufacturing capabilities of the PSUs, we are not able to exploit the opportunity to export to the foreign countries.

4.5 Transfer of Risk: By handing over a project to the private players, the government transfers the responsibility and risk to the private player for an agreed sum of money. Now the private company has the risk of completing the project on time or else paying a penalty or bearing the losses on its own.

Similarly, since PSUs are making losses with the money of taxpayers, there needs to be better utilization of taxpayer's money. Today the country has a lot of underutilized and un-utilized assets under the control of the government. Under the **National Asset Monetization Pipeline**, the government targeted to monetize around 100 such assets like oil, gas, port, airport, and power. Of these, investment opportunities of **2.5 trillion rupees are expected**. When the government monetizes, the private sector of the country fills that space. The government needs to ensure that this tax revenue is explicitly and efficiently invested in the development of the economy.

Creative actions of privatization in India include

- (1) deregulating—reducing regulations;
- (2) contracting with the private sector to purchase a service (e.g. road construction);
- (3) establishing incentives to encourage the private sector to provide a service;
- (4) abandoning or shedding services;
- (5) reducing the demand for service;
- (6) establishing separate corporations—profit and non-profit authority;
- (7) supplying temporary help on the part of the private sector;
- (8) issuing waivers;
- (9) selling or giving away government-owned assets;
- (10) establishing franchises/leasing
- (11) subsidizing or making grants available to the private sector;
- (12)

1 <https://pib.gov.in/PressReleasePage.aspx?PRID=1635722>



discontinuing subsidies to **public entities providing joint funding; and (13)** establishing public-private partnerships.

5. Advantages of Privatisation

Privatisation can address issues like income inequality, inflation, inefficiency, etc. that have been negatively contributing to the growth of India. A few major advantages are listed below:

5.1 Increased Productivity: Privatisation of a PSU can increase its efficiency because as compared to government, private enterprises are more profit-oriented. Thus, the management of a privately-run business will stress more upon cost-cutting to improve profitability.

Initially, **Videsh Sanchar Nigam Limited (VSNL)** was an independent government body that was later privatized under the TATA Group in 2022. Today, it is a multinational telecommunications company, known as **Tata Communication Private Limited**. After its privatization, the first major change was the improvement in the management system of the body by a great margin. The company provides services in operating landing stations and undersea cables and has more than 415 direct and bilateral ties with leading international service providers. **TCL expanded its presence in more than 240 countries** and territories around the world. Its network carries around 30% of the world's internet routes and connects its business to 60% of the world's cloud giants. It is said that the Network of TCL has so vast area that connects 4

out of 5 cell phone subscribers in the world. **If we compare Tata Communications with BSNL and MTNL, another government-owned entity, the losses of BSNL and MTNL narrowed to ₹ 7,441 Cr and ₹ 2,554 crores in 2020-21 whereas TCL made a net profit of 1,254 Cr,** we now can witness how privatisation helped the former stay afloat and thrive.

5.2 Technology Improvement and long-term gains: Before the privatization of BALCO (**Bharat Aluminium Company Ltd²**), the Government of India didn't have enough accumulated cash to make technological improvements in the company. There was a requirement of over ₹ 500 crores for its basic improvements plus ₹ 4000 crores for its modernization. Therefore, a 51% stake of BALCO was transferred to Sterlite Industries Ltd (SIL) which is a unit of Vedanta Resources. The new management proposed to invest ₹ 6000 crores and assured to increase the production four times. Privatization of BALCO, was good for the improvement of production facilities in terms of machinery and infrastructure, ultimately resulting in more production. SIL had the experience of operating the largest copper smelter plant in India. BALCO which registered a turnover of ₹ 898 crores in 2000, has escalated it to a whopping ₹ 9863 Crores in the financial year 2020-21.

5.3 Competitive Environment: Another pet of privatisation is the competition in the market. The privatisation

2 https://d2z1l9uefzbzxd.cloudfront.net/wp-content/uploads/2021/08/Balco_Financial_Statement_2020_21.pdf



drive will provide the private players a level playing field with increased competition in the market which will eventually drive the PSU to perform better and increase their efficiency. PSU due to the increase in the competition will introduce innovative products that focus on specific consumer preferences keeping in view the risk assessment, risk improvement, product pricing, and lower service costs.

In 2002, **electricity distribution** was **privatized** in **Delhi**, The **Delhi Vidyut Board** ³was unbundled and split into six entities and i.e. Delhi Power Company Limited (holding company), Indraprastha Power Generation Company, Delhi Transco Limited, BSES Rajdhani Power Limited, BSES Yamuna Power Limited (also called Reliance Energy) and North Delhi Power Limited (now Tata Power Delhi Distribution Limited). Of these five companies, **BRPL, BYPL, and NDPL are joint ventures between the Delhi Government and the private sector** where 51% of equity is with the private which handles the power distribution sector in Delhi.

Ever since privatisation Delhi DISCOMs have **saved the city and its consumers over ₹ 1.2 lakh crore** over the past 19 years. Of these, the Aggregate Technical and Commercial losses (AT&C losses) constitute the major part. Technical loss occurs due to resistance in the flow of electrons. On the other hand, commercial losses are governed by the laws relating to criminality – theft, collection efficiency hampered by corruption, and political interference. This was followed by investments of around ₹ 19,000 crores made by the **Delhi DISCOMs to**

improve the distribution network in the national capital. These are huge profitable ventures now **achieving global benchmarks in AT&C by affordable and reasonable pricing of electricity and improving the quality, security, reliability of power supply, and consumer service.** Delhi Government has put a cap on prices and introduced strong regulations on private players from increasing the cost of electricity beyond a certain limit. Comparatively to other Tier 1 cities electricity is cheaper in Delhi. For the customer also, it's a win-win situation, because we are witnessing a much better value proposition.

5.4 Mitigation of the NPA problem and Capital infusion: The most debated issue of the privatisation drive and its impact on the economy is the ever-increasing and never-ending burden of the Non-Performing Asset (NPA). The **banking sector is overburdened with NPAs and the majority of which is contributed by the PSBs which is majorly due to spending on welfare schemes and write-offs.** The financial health of the economy is badly affected by the rising NPA issue. Privatization of PSBs will not end the NPA problem, but will surely aid in effectively bringing it down. It will boost the economy by recapitalizing PSBs with the help of raising fresh equities thereby empowering the banks to resume lending, improve their performance and simultaneously privatise their ownership structure. **The influx of foreign investment along with the growing technology** will allow the private banks to take more risks to bring in better products, aggressive lending, development in

3 Diving into the Privatisation Push in India's Power Sector (thewire.in)



the rural areas, and charge lower interest on loans. Also, speedy services via net banking and mobile banking particularly in rural areas, thereby developing the rural banking landscape.

5.5 Burden of management on Govt:

The privatization of PSUs will reduce the burden of the Government by the optimum utilization of the resources available and will also help in generating additional financial resources. As a PSU **the accumulated losses at Air India⁴ have swelled to about 69,575.64 crores** in the past decade. Air India, which is surviving on a taxpayer bailout, has never seen a profit since its merger with Indian Airlines in 2007-08. History has proved that attempting to integrate airlines have never been successful. The best airlines supported by the best aviation consultants never succeeded. Jet-Sahara, Kingfisher-Deccan, Air India-Indian Airlines the list is endless. About ₹ 2.5 lakh crore of taxpayer's money was directed towards keeping this enterprise afloat, and also losses of close to ₹ 20 crores a day. It was getting difficult for the government to manage and sustain it. Hence, the government decided to hand it over to the TATA Group of Companies. *The government was lucky to find Tata being so generous.*

Air India which began as Tata Airlines pioneered by the great Indian entrepreneur JRD Tata in 1932 was one of the earliest airlines in the world. Tata ran it successfully as a

business, expanding it and naming it Air India in 1946, and later with international flights in its portfolio, it became Air India International in 1948. Nothing was wrong with Air India. Air India was nationalized in 1953. *The socialist idea was to take commanding heights of the economy into public ownership.* The experience of Air India is a perfect story of the disease from which India has not yet fully recovered. The government stated *"Air India will regain its lost place in domestic, int'l skies' as it's in the capable hands and future is secure now".*

5.6 Revenue Generation: Privatization could be an instant source of revenue generation for a government looking for funds to invest in some project or welfare scheme. Apart from this, it also has some **long terms benefits that the company provides like higher tax collection, GST, excise duty, etc. on account of increased revenue**, this was quite evident in the case of **Privatisation of Maruti⁵**.

In 1981, the government have formed a JV with Japan's Suzuki Motor. **The government made handsome gains of around ₹ 6,000 crore through various stake sales** in Maruti, the company has proved to be a multi-bagger even from there. **Maruti Suzuki still has a 50% market share.** As against a market cap of around ₹ 24,000 crore in 2001, the company's current market cap stands at about ₹ 2.15 lakh crore. The expansion of manufacturing capacity was all from internal resources, and today Maruti has cash reserves of about ₹ 38,000 crores.

4 <https://www.hindustantimes.com/business/air-india-will-regain-its-lost-place-in-domestic-int-l-skies-101643408918435.html>

5 <https://www.news18.com/news/opinion/opinion-towards-privatisation-this-is-a-maruti-moment-for-the-modi-administration-3441437.html>



This was achieved despite competition from all the leading car manufacturers of the world, who came to India after 1993.

The Government has during this period received over ₹ **1.5 lakh crores as excise duty and GST. In addition, income tax revenues amount to nearly ₹ 29,000 crores.** Maruti has produced over 23 million cars and their operation and maintenance have created millions of jobs. Quality improvements and cost reductions have enabled Maruti to export cars to over 100 countries. The global competitiveness of Maruti is evident from its ability to export cars to Japan. Largely due to Maruti's growth a very robust component industry has developed in India. This **supports thousands of small and medium-scale manufacturers who are Tier 2 and Tier 3 vendors. Automobile component exports from India are over \$ 11 billion.**

6. Disadvantages of Privatisation

Privatisation will not always work best. 'Best' cannot mean only the cheapest or most efficient but should mainly aim to enhance the conditions of the services which people get. Like there are two sides to a coin, with benefits there are some drawbacks as well.

6.1 Natural Monopoly: Privatization in some sectors where there is low competition may lead to a monopoly of a single private firm. Having a monopoly over a particular sector the firm gets a free hand to compromise its quality and also to fix higher price rates etc. to churn out larger profits.

Opening up the telecom sector to private operators is seen

as a success, however, is also the source of the government's problem. The competition among private operators to get a foothold in the telecom market meant that on the one hand they bid huge sums to win limited licenses and scarce spectrum, and on the other joined a price war to win subscribers. In 2016 **Reliance Jio entered a predatory price war to quickly win and expand market share,** as did not have legacy problems like installing earlier generation technologies and disputed AGR dues⁶ which led to falling average revenue per user (ARPU). The Supreme Court judgment—

Union of India vs. Association of Unified Telecom Providers of India⁷

The final result of the Supreme Court verdict was that telecom operators in India jointly owed rupees **1 Lakh Crore** to the government. According to filings submitted to the Court, **Reliance Jio's total liability is just ₹ 41.35 Cr** since it entered the market just three years ago, a figure that Mukesh Ambani's RIL-backed Jio should have no issues paying. Meanwhile, **Airtel's** total liability is estimated to be ₹ **41,507 Cr**, while that of **Vodafone-Idea** is estimated to be ₹ **39,313 Cr**. With Vodafone-Idea threatening to throw in the towel, India's telecom business is headed for a private sector duopoly. In the latest development, **India has been forced to postpone a 5G spectrum auction** that was supposed to happen this April. Neither Bharti Airtel nor Vodafone Idea is in a position to buy new spectrum licenses

6 **Adjusted Gross Revenue** is the usage and licensing fee that telecom operators are charged by the Department of Telecommunications

7 <https://www.xda-developers.com/india-reliance-jio-airtel-vodafone-idea-telecom-carrier-monopoly-uncertain-future-agr-judgment/>



at the high prices the government wants to charge. Only Jio could realistically afford those rates.

If **Reliance does exploit its current position of strength to establish a near-monopoly position** in the market, there are several challenges it can pose. The least of them is a sharp rise in tariffs in the medium term, adversely affecting consumers. More important is the control that, Jio would establish over the flow of data. Reliance Industries is a conglomerate that has diversified into areas from e-commerce to providing various digital services, including cinema, news, music, and retail. If the **parent company has a monopoly over the pipe through which those services are delivered. Monopoly is no more a question of pricing to generate super-profits at the expense of the consumer.** It is the ability to stamp out the competition and prevent entry into sunrise sectors by using dominance in an existing one. That is the strength of platforms such as Amazon, Google, and Facebook. With control over the data delivery means, **Reliance will also acquire powers that can stifle the competition.** India desperately needs a U-turn. It is reportedly preparing a rescue package for stressed telecom companies and could offer relief to companies that owe licensing fees.

6.2 Loss of Control of Government:

India in particular has witnessed corruption and unlawful ways of getting licenses and business deals even when privatizing. We have also

seen a rise in lobbying and bribery that has put the practical applicability of privatization for a great outcome in question. The privatization mission lost its objectivity when the enterprises established for-profit maximization gave way to malpractices like selling government assets built with taxpayer's money at cheaper prices to private players.

A total of six airports were opened for privatisation⁸ by the AAI in December 2018, and Adani Group was declared the highest bidder for all of them in February 2019. According to contracts signed between Adani Enterprises and the AAI for airports in **Mangalore, Lucknow, and Ahmedabad** in February 2020, the latter had to pay ₹ **74.5 crores, ₹ 147 crores, and ₹ 277 crores** for aeronautical and non-aeronautical assets at the three airports respectively. **Assets valued at ₹ 1,300 crores** at the time the Ministry of Civil Aviation had sought approval from the government's Public-Private Partnership Appraisal Committee (PPPAC), were **sold to Adani Enterprises Limited (AEL) for a mere ₹ 500 crores.** A comparison of these figures with the estimates has resulted in a deficit of 80% for Mangalore airport, 75% for Lucknow, and 28% for Ahmedabad.

6.3 Formation of Cartels: Cartels are created when a few large producers decide to co-operate concerning aspects of their market. Once formed, cartels can fix prices for members, so that competition on price is avoided.

8 <https://www.thehindu.com/news/national/aai-assets-worth-1300-cr-at-3-airports-sold-to-adani-for-500-cr-claims-union/article36835561.ece>



In 2002 **Cement Corporation of India** ⁹**was privatized** by selling all its plants to private players. The Competition Commission of India (CCI) in 2016 a preliminary investigation has found that **6 leading cement companies including Ambuja, UltraTech, and the cement association have formed a cartel** that was penalized ₹ 67 billion imposing a penalty of 0.5 times net profits. In these orders, cement manufacturers and their associations had been accused of using a common portal to manipulate prices. **Due to the artificially high price of cement, in turn, there is poor growth in the housing sector of India.**

7. Are PSUs having natural death or they are assassinated?

PSUs contribute 20% of India's GDP, but systematically government has weakened PSUs over a period of time in four ways:

7.1 Special dividend: The government should keep the profits as reserves and let the company grow while it places pressure on PSUs to get the surplus dividend and thus depletes their cash reserves. In 2017, a study found that the government has been **extracting a much larger dividend income than what is warranted by the Companies Act** in order to reach a better fiscal target. The additional funds are generated from the productive operations of these dying out companies instead of using them for capital expenditure to update the production Technology. Due to this companies like **ONGC's cash**

reserves eroded 98% in just 1.5 year.

7.2 Disinvestment loss-making company: It's selling a country's economic wealth. *"If our child is weak we make him drink some nutritional drink rather than selling his organs"*. The lack of support by the government to the PSEs at critical moments has left wide gaps in key industrial capabilities. With the **collapse of HMT**, India is forced to import 80% of its machine tools, the bedrock of manufacturing. The undermining of the PSEs by the government's **reluctance to support BHEL has flooded the Indian power sector with Chinese equipment**. Moreover, India is largely absent in emerging technologies like solar wafers, computer chips, or EV batteries. At a crucial juncture like the sale of Giants like BPCL, BEML, and Shipping Corporation of India. **Privatisation would undermine India's Atmanirbhar Bharat mission** as it compromises India's sovereignty and economic freedom technique in energy security and strategic posture.

7.3 Bad purchases: The government has driven India's most profitable company under mountains of debt, **ONGC was forced to purchase HPCL and GSPL** enterprises higher than 14% of actual value, and ONGC had to take an additional loan to purchase on which it had to pay heavy interest.

LIC is used as an investor of last resort in the past to support the market by buying shares of PSUs,

9 https://www.business-standard.com/article/companies/six-leading-cement-companies-forming-a-cartel-under-cci-scanner-118021301275_1.html



LIC has 1.4 billion dollars invested in ONGC when it was listed and IDBI 13000 crores in 2014. It provided funding of **rupees 3,76,000 crore in many Infrastructure Projects** in 2018 when minority shareholding of the Central Government in 30 CPSEs were sold in bundles which was the worst decision till now and after which LIC solvency ratio is less than in the last 10 years which is dangerous. If one looks at the solvency ratio of LIC the magnitude of the problem becomes Apparent.

7.4 Existential crisis: In 2005 BSNL was one of the profit-making telecom companies with a profit of 10,000 Cr. Now, in contrast, it has more than 8,000 Cr loss. When other companies were getting 4G licenses then why BSNL, a PSU which has lesser debt among all competitors were not given a spectrum license in time? Bribery and lobbying are stated as one of the main reasons.

"You can't sell a strong profitable company but you can sell a company by making it bankrupt." BSNL¹⁰, HAL, and Air India once India's pride is now not even able to pay their employees' salaries few questions we may need to ask:

(1) Were PSU given the autonomy they deserve? (2) Did we consider the exact impact of privatization? (3) Have we professionalized the management of PSU or kept government puppets as management decision-makers? (4) Is PMO interfering in the working of PSU? (5) Has the government

taken any significant steps to improve the state of these PSUs or shown more interest in selling them? Answers are hidden somewhere in these questions. The **government should stop milking the PSUs the situation might improve.** If PSUs are treated like national assets then they can work towards the interest of society and earn profit as well.

If we take the latest example of the attempt to **privatization** of RINL (Rashtriya Ispat Nigam Limited) also known as **Vizag Steel Plant**¹¹. The central government has taken a policy decision that 'Steel' is a non-strategic sector and all PSUs in that sector will either be 100% privatized or closed. In this connection, it may be noted that raw materials accounted for 51.55% of operating revenue **as the center had not allocated captive units which increases the raw material cost** in case of RINL in 2020-21 against 21.38% in the case of **Tata steel (100% captive source)**, 26.28% in case of **JSPL (largely captive)**, 32.99% in case of **SAIL (100% captive source)** and 40.63% in case of **JSW steel (35% captive source)**. Despite this among major steel companies, **RINL is second only to Tata Steel**, and Jamshedpur in respect of energy intensity and is first in respect of specific water consumption. Waste heat recovery and solid waste utilization are comparable to or even better than peers. The power & fuel cost of the company in 2020-21 was 5.63% against 7.37% in the case of JSW steel which is a private

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11 <https://www.hindustantimes.com/india-news/visakhapatnam-steel-plant-1-year-on-privatisation-makes-no-headway-101643311320947.html>



company. In FY 20-21 **RINL achieved a record turnover of Rs 28,008 crores by selling a record 5.225 million tonnes.** Records have been established in all areas of production. It has been officially announced that RINL has achieved a profit before tax of Rs 835 crore in the 2021-22 financial year. Had the captive iron ore mine been there, profit would have been more.

8. Why India must strengthen its PSU?

Fortune 500 global list ¹²2020 revealed that Chinese firms had overtaken US-based firms. **China today had 124 firms on the Fortune list of which 94 SOEs** compared to 121 from the US. In 2005 only 45 state-owned enterprises were on the list but now we have many. Today 28% of the world's largest and most powerful economic entities are state-owned and dominated largely by China SOEs like ZTE, Lenovo, and Huawei.

How this happened: The rise of SOEs in the global economy has been traced to the strategic vision in a plan to corporatize SOEs, by listing several on the stock market making them profitable in competitive in the global market. Simultaneously China set up 37 new SOEs in new emerging industries and technology. According to US Centre for strategic studies in 2019 China's investment through SOEs in the US was dollar 2.7 trillion and another one trillion dollars in Europe.

From British and France colonialism to the rise of the US everything was about money capitalization and that's what China is doing. **To become the global superpower that's true economic dominance not by guns or wars.**

Chinese SOEs were given autonomy. Indian public sector undertakings divested not given any physical support and rather government insisted taking larger dividends. This is contrary to China where SOEs are liberally funded to grow and become global government-promoted private sectors.

As the Indian govt readiness to privatize the most vital and significant PSUs like Bharat Petroleum a Fortune 500 company, BEMC, Shipping Corporation of India and a dismember of ONGC the Chinese may be happier to acquire these firms and these assets through a chain of firms they would control. **BPCL has 17 strategic oil reserves in 17 countries, these firms are important strategic assets to confront arising China more vulnerable to then Rafale Jets or leased Russian Submarines.**

Ola Snapdeal, Swiggy, Paytm, Zomato, Big Basket, Flipkart, Nyka, Unacademy, dream 11, Quickr, OYO, Policy bazaar, etc., all Indian companies have been invested by Chinese investment bankers directly or indirectly through shell companies. If India doesn't want to hide behind the trial watch of western powers as it confronts arising China it must strengthen its public sector. **India needs to imitate China's model in establishing new PSEs in strategic and emerging industries like semi-conductor** which require patience and capital in greater risk.

9. Conclusion

PSU's played a major role in increasing capital formation in the accelerated growth of the country. The government may come and go but the economic institution's development phase needs to be permanent if we want the country to be a rising

12 <https://fortune.com/2020/08/10/fortune-global-500-china-rise-ceo-daily/>



superpower then there has to be an ideological shift. This shift from public to private management is so profound that it will produce a panoply of significant improvements boosting the efficiency and quality of remaining government activities, reducing taxes, and shrinking the size of government. But before applying the rule of privatization, it must be thought if these **problems can be removed without privatizing them. If the answer is 'Yes' then improving the services of PSUs is a better way than privatization.**

Whether privatizing a particular PSU will be beneficial in long run or not, depends entirely on the industry. For example, **Gujarat State Fertilizers & Chemicals Limited** between 1999 and 2001, was veering to the brink of a cash crunch. The **government's turnaround strategy** to restructure corporate debt helped in bringing down the interest cost and to switch from naphtha to natural gas for feedstock this reduced the input cost substantially. GSFC has never looked back since then from accumulated losses of ₹ 657 Cr in 2001-02 to generating total revenue of 7817 Cr in 20-21. GSFC produces fertilizers, one of the important elements for agricultural sector which contributes 15% of GDP by employing more than 40 % of the population and raising productivity challenges, soil fertility issues. India can't afford to completely

privatize and create a chance of monopoly/ cartels.

Switching to the **automobile industry** for example the outcome, one may think that if **Suzuki weren't allowed to take over Maruti**, the company would have suffered the same fate as the likes of **Premier Motors and Hindustan Motors** (ambassador car "the King of Indian Roads").

Privatisation will help in attaining this goal in a far more effective manner. Government resources will be hugely augmented and can be used to build infrastructure and provide social welfare. It is the responsibility of the government to give full support to the enterprises of the country which government trying its level best with the **Digital India mission, Bharatmala, Sagarmala projects, ease of doing business, credit linked capital subsidy for MSMEs, Invest India scheme**, etc. that leads to productive jobs in the economy, arising from higher manufacturing activity, will further increase the ability of people to support themselves. An equitable society cannot be created by giving doles and not creating wealth.

"Privatisation is a bitter pill but it is a pill that will cure"

10. Bibliography and References

10.1 You Tube Channels

- 1) Study IQ: <https://www.youtube.com/c/StudyIQcoachingcenter/about>
- 2) The Print: <https://www.youtube.com/channel/UCuyRsHZILrU7ZDIAbGASHdA>
- 3) World Affairs: <https://www.youtube.com/channel/UCCJsQKOKArvDksacfT2ryQw>
- 4) Think school: <https://www.youtube.com/channel/UCKZozRVHRYsYHGEyNKuhhdA>
- 5) Bloomberg Quint: <https://www.youtube.com/channel/UC3uJIIdRFTGgLWUziahbzrg>
- 6) News Interviews



10.2 Journals & Papers

- 1) Asian Development Bank Institute Working Paper No 1057
- 2) Indian Academy School of Management Studies, Bangalore –Indian Journal of Economics & Business Vol 8, No 1
- 3) FICCI (Federation of Indian Chambers of Commerce & Industry) Reports
- 4) World Bank: <https://documents1.worldbank.org/curated/en/602461468764357400/pdf/multi-page.pdf>
- 5) White paper on disinvestment of central public sector enterprises on 31st July 2007 Government of India Ministry of Finance Department of Disinvestment

10.3 Articles and Websites

- 1) <https://dipam.gov.in/recent-disinvestment>
- 2) https://en.wikipedia.org/wiki/Public_sector_undertakings_in_India
- 3) https://en.wikipedia.org/wiki/Disinvestment_of_Public_Sector_Units_in_India#:~:text=On%2017%20May%202020%2C%20as,will%20be%20limited%20to%204
- 4) <http://psutoprivate.com/entries/general/will-psus-be-privatised->
- 5) https://www.niti.gov.in/sites/default/files/2020-01/Draft_RFQ.pdf
- 6) <https://www.thehindu.com/opinion/lead/weighing-in-on-the-public-sector-privatisation-debate/article30446194.ece>
- 7) https://en.wikipedia.org/wiki/Disinvestment_of_Public_Sector_Units_in_India#:~:text=On%2017%20May%202020%2C%20as,will%20be%20limited%20to%204
- 8) <https://www.hindustantimes.com/cities/delhi-news/privatisation-of-power-helped-save-delhi-1-2-lakh-crore-since-2002-say-discoms-101628015973757.html>
- 9) <https://timesofindia.indiatimes.com/readersblog/blogs/impact-of-privatization-on-a-country-28449/>
- 10) <https://www.thehindubusinessline.com/opinion/privatising-public-sector-banks-isnt-a-good-idea/article34247032.ece>
- 11) <https://www.yourarticlelibrary.com/india-2/privatisation/a-new-essay-on-privatization-in-india-essay/69400>
- 12) https://en.wikipedia.org/wiki/Disinvestment_of_Public_Sector_Units_in_India#:~:text=On%2017%20May%202020%2C%20as,will%20be%20limited%20to%204
- 13) <https://www.newindianexpress.com/opinions/columns/shankkar-aiyar/2021/feb/28/psu-privatisation-why-now-and-why-it-matters-2269867.html>
- 14) <https://www.news18.com/news/opinion/opinion-towards-privatisation-this-is-a-maruti-moment-for-the-modi-administration-3441437.html>
- 15) <https://www.quora.com/How-is-the-privatization-of-PSUs-a-problem>



- 16) <https://www.newindianexpress.com/states/tamil-nadu/2021/sep/04/reconsider-decision-to-privatise-psus-tamil-nadu-cm-mk-stalinto-pm-narendra-modi-2354076.html>
- 17) <https://www.hindustantimes.com/india-news/visakhapatnam-steel-plant-1-year-on-privatisation-makes-no-headway-101643311320947.htm>
- 18) <https://www.livemint.com/economy/how-delay-in-disinvestment-is-hurting-psus-11643007585350.html>
- 19) <https://bizfluent.com/info-8166130-advantages-disadvantages-privatization.html>
- 20) <https://timesofindia.indiatimes.com/business/india-business/300-psus-may-shrink-to-barely-two-dozen/articleshow/80740632.cms>
- 21) <https://www.economicshelp.org/blog/501/economics/advantages-of-privatisation/>
- 22) <https://www.insightsonindia.com/2020/07/01/rstv-the-big-picture-privatisation-of-public-sector-enterprises/>
- 23) <https://hbr.org/1991/11/does-privatization-serve-the-public-interest>
- 24) <https://www.thehindubusinessline.com/opinion/psu-banks-any-takers/article37962956.ece>
- 25) <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/BCF090514FR.pdf>
- 26) <https://chanakyaforum.com/air-india-ready-for-take-off-now-goodbye-fabian-socialism/?112203>
- 27) <http://rabbitstocknews.com/govt-holding-roadshows-for-idbi-lender-privatisation-to-assess-trader-interest/>
- 28) <https://www.hindustantimes.com/business/air-india-will-regain-its-lost-place-in-domestic-int-l-skies-101643408918435.html>
- 29) <https://psuwatch.com/govt-approved-disinvestment-35-psus-since-2016-dr-bhagwatkarad>
- 30) https://economictimes.indiatimes.com/chennai/career-business/turnaround-of-gsfc-to-be-a-case-study-at-iim-a/articleshow/1620101.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
- 31) <https://www.thehindu.com/opinion/lead/weighing-in-on-the-public-sector-privatisation-debate/article30446194.ece>
- 32) <http://psutoprivate.com/entries/general/will-psus-be-privatised->
- 33) <https://www.fortuneindia.com/opinion/budget-2022-why-psus-should-be-valued-not-private-monopolies/106835>
- 34) <https://www.doubtnut.com/pcmb-questions/those-public-sector-undertakings-which-are-making-profits-should-be-privatized-do-you-agree-with-thi-48067>
- 35) <https://m.timesofindia.com/city/chandigarh/privatisation-not-good-for-india-report/articleshow/88602433.cms>





THE DASTUR ESSAY COMPETITION 2022

Does Media Need to be Regulated? If Yes, How Should it be Regulated?



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Introduction

"The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses."

—Malcolm X

Often referred to as the fourth Estate and the 'fourth pillar of a democracy' after the executive, legislature and judiciary, media has an enormous responsibility as an interface between the government and the people. Mass media denotes a section of the media specifically envisioned and designed to reach a very large audience such as the population of a nation state.¹ Also known as mainstream media, it includes newspapers, magazines, television, radio etc. that disseminates information and prominent stories of interest to a general audience and influences every aspect of life of the common man including their issues, expectations, feelings and necessities. They are one of the major instruments of social change.

There has been a paradigm shift in the media environment with traditional media increasingly transitioning to digital and multimedia such as online newspapers. The advent of new age media based on the internet with the development of information technology has enhanced media's role in society and vice-versa. Improved accessibility and affordability of high speed internet, advancement of literacy as well as the educational and technological infrastructure of the society has lead to the boom of citizen journalism and user generated content where people create and edit content using web pages, blogs or even photo or video sharing sites such as YouTube. With people banking on the ad revenues and global outreach of the platforms, even social media has become an inevitable source of day to day information besides entertainment.

However digital media has its own disadvantages such as misinformation, privacy issues, provocative contents including hate speech propagating religious or racial intolerance, cybercrimes and data

¹ Dr. S R Myneni, Media Law, 2013.



security. With increased reliance being placed on digital media upon the onset of COVID-19 pandemic, more focus on regulation of media has been brought to the spotlight.

Need for Media Regulation

Media regulation includes laws, guidelines, rules and procedures enforced to protect the public interest, establish standards and govern its content, conduct or structure. While the debate around the need for regulating media has always concerned compromise of freedom of speech and expression, the digital media evolution has necessitated a more comprehensive approach including new dimensions.

Unlike print media viz. newspapers, visual media has a greater influence on the heart and minds of people and has a wider audience as even children and uneducated people rely on them. Recent decade has witnessed rampant misuse of media for creating havoc or misleading the people into violence as in the US capitol attack case². The major reasons that validate the necessity of media regulation are as follows:

1. Fake news

Misinformation and disinformation reigns an unregulated media without a fact checking mechanism. While misinformation includes false or inaccurate information intentionally or unintentionally propagated, disinformation refers to deliberately misleading or biased information, manipulated narratives or facts or propaganda. Fake and incorrect

reports can have unforeseen consequences when it goes viral on social media spreading like wildfire and the damage gets done even before the truth could be verified. In a case before the Hon'ble Supreme Court of India, the Centre stressed the need to prevent "fake and incorrect reports, intentional or unintentionally either by all sections of the media"³.

In the ongoing Russian invasion of Ukraine, misleading twitter posts, manipulated photos, deepfake videos and false statements have all become part of the war⁴. A fake video of Ukrainian president Volodymyr Zelenski asking his troops to lay down their weapons that had appeared on a Ukrainian news website, YouTube and Facebook, though shortly taken down, could be the first weaponized use of deepfakes during an armed conflict⁵. However, with fastidious technological advancements on the way, it is unlikely to be the last.

2. Manipulation of Public opinion

Blatant abuse and misuse of media power and privilege is observed in cases where it reports opinionated and tailored facts as news to create or induce opinions or to push propaganda. Serving its opinions under the garb of news reports or facts can lead to dangerous circumstances. Attempts to thwart elections by influencing the voters using manipulated narratives as in the U.S capitol breach instigated by

2 January 6, 2021. See <https://www.britannica.com/event/United-States-Capitol-attack-of-2021>

3 "Supreme Court concerned over fake news on covid-19", Hindustan Times, April 1, 2020.

4 <https://www.dw.com/en/fact-check-fake-news-thrives-amid-russia-ukraine-war/a-61477502>

5 <https://www.wired.com/story/zelensky-deepfake-facebook-twitter-playbook/>



the tweets of former president Donald Trump is an example of disruptive use of media when unchecked.

3. Sensationalizing of contents

Media is disrepute for exaggerating the facts for commercial purposes. Though acceptable to some extent, these editorial tactics are often overused and have been degrading over the years to unethical and unacceptable practices in the face of freedom enjoyed by the media. Online journalists are accused of creating clickbait titles and thumbnails on videos, often misleading, to generate more views for ad revenues. This also degrades the quality of contents as media focus shifts from social responsibility to commercialization.

Prominent news channels in their attempt to sensationalize the issues have gone as far as displaying the Call Detail Records- a vital piece of evidence- as seen in the aftermath of death of actor Sushant Singh Rajput, resulting in several threat calls and messages to the alleged accused in the case. The Press Council of India had stated that the coverage of the alleged suicide of the actor by many media outlets was in contravention of the norms of journalistic conduct. Bombay High Court Division Bench of Dipankar Datta, CJ and G.S. Kulkarni, J., while addressing the several questions on reporting by electronic media remarked that the duty of the press or media to have news items printed or telecast based on true and correct

version relating to incidents worth reporting, accurately and without any distortion or embellishment as well as without taking sides cannot be overemphasized⁶.

Recently, Vice-President M. Venkaiah Naidu also called for shunning of sensationalism in news coverage, emphasizing the need for the media to introspect and self-regulate⁷.

4. Media trial

Another prominent media tactic in the rat race to viewership includes parallel trial or investigation by the media. In a recent instance, in the **Sushant Singh case**⁸, an aggravated scenario has played out with several prominent media channels conducting and broadcasting debates, opinions, scrutinizing details, exposing the material witnesses, examining and cross-examining witnesses and even, chasing investigating officials soon after the death of the actor. Also a part of sensationalism, media trial has further grave implications as it can overturn the investigation in itself.

In **Manu Sharma vs. State (NCT of Delhi)**⁹, the apex Court had commented on the danger of serious risk of prejudice that comes with unrestricted and unregulated freedom exercised by the media. It stated that the concerned authorities should ensure that fair investigation by the investigating agency is not hampered by media trial and that the right of defence of the accused is not prejudiced in any manner whatsoever.

⁶ Source: www.livelaw.in

⁷ www.thehindu.com/news/national/andhra-pradesh/shun-sensationalism-vice-president-tells-media/article65360005.ece

⁸ Rhea Chakraborty v Union of India, 2020 SCC OnLine Bom 990

⁹ (2010) 6 SCC 1



It is beyond media's domain to prove someone guilty or not while the investigation is ongoing.

In ***R.K. Anand vs. Delhi High Court***¹⁰, the Supreme Court also observed that it would be a sad day for the court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers of the court.

Recently, the High Court of Kerala observed that in a democracy governed by rule of law, the media interest or debate are all permitted subject to the inviolable exception that it cannot suggest, publish or telecast that A or B is guilty, untrustworthy or a credible witness or not, during the course of trial or investigation. Such measures are synonymous to usurping the jurisdiction of the courts which alone has the constitutional authority to decide on such particulars¹¹.

5. Violence and obscenity

Research on the effects of viewing violence on television- especially among children- found that it has a desensitizing effect to violence in the real world.¹² It can even lead to sadistic attitude development where watching violence becomes enjoyable to the person. Trivialized and glamourized portrayal of violence and sexual harassment in media contributes to this. A study by the

Network of Women in Media, India (NWMI) of 31 primetime television news and talk shows in 12 languages found aggression in more than 50% of all news shows and in 85% of talk shows¹³.

With the web media gaining popularity among the new generation and transforming to influential platforms in society beyond their communication purposes, there is an increased challenge for content moderation. The so-called "social influencers" such as celebrities, vloggers etc. in YouTube, Instagram and Facebook, yields much power to mobilize even mass movements, as seen in Whatsapp hartal¹⁴ and in E-BullJet case¹⁵ in Kerala. Videos threatening the police and the government system besides provocative comments were posted on social media even by minors during the arrest of the E-BullJet brothers for motor vehicle rules' violation due to their influence on the youth through social media.

The heightened popularity of Over-The-Top (OTT) platforms since the pandemic due to closing down of theatres, where the audience can watch any programme at any time on their mobile at their convenience also contributes to increased exposure of people to violence, vulgar language use and pornographic and explicit sexual contents which are not allowed on other media platforms.

10 (2009) 8 SCC 106

11 T. N. Suraj v. State of Kerala, WP (Crl) No. 346 of 2022(S)

12 Kalpana Srivastava et al, Media and mental health, Industrial Psychiatry Journal, 2018 Jan-Jun, 27(1):1-5.

13 "Staging Aggressive Masculinity, Report of a Media Monitoring Project", January 2022. The study was based on the performance of reporters or anchors rather than news framing or biases.

14 <https://www.newindianexpress.com/states/kerala/2018/jun/05/whatsapp-hartal-in-kerala-385-cases-registered-1595-held-says-cm-pinarayi-vijayan-1823788.html>

15 <https://www.thehindu.com/news/national/kerala/arrest-of-e-bull-jet-brothers-cyber-police-register-case-against-people-who-posted-provocative-comments-on-social-media/article35995507.ece>



Nowadays even toddlers know to browse through apps to get the content they want. However the internet is littered all over with obscene, malicious and cringeworthy contents inappropriate for children. The "Elsagate"¹⁶ scandal of YouTube in which disturbing videos depicting horrendous violence, drug abuse and scenes of sexual nature using popular animated characters are hidden amongst cheap animation and specifically targeted at children, is merely one such extremely alarming instance that exposed the inadequacy of safeguards in digital media. That many more such contents still remain on these platforms even after being flagged inappropriate, affecting the perception and mental health of our children in ways beyond our comprehension is truly terrifying. Prevalence of child pornography and content depicting sexual violence on these media also requires immediate attention and stringent action, which is not being implemented properly at present.

6. Mental health

Mass media reflects as well as moulds public attitudes and values. While media has been a boon in overcoming social isolation imposed by the pandemic, it has also taken a toll on the mental health of the society. Children who spend more time watching or gaming on mass media spend significantly shorter time with friends and family than who don't, leading to antisocial behavior.

Excessive use of media also leads to depression, anxiety and suicidal behaviour due to constant pressure to keep up with the 'trend'.

7. Media pluralism or diversity

Media pluralism and diversity refers to the co-existence of multiple opinions, points of view and analyses in media systems or different types of medias and media support. It is essential for the citizens to confront new ideas and make their own informed decisions independently and hence is an indispensable part of a democratic state.

India Media Ownership Monitor- a database listing ownership details of news media in developing countries that rank low on World Press Freedom Index- released by the Reporters Without Borders and Data Leads, ranked India high-risk on media plurality despite a flourishing news media market. The report observed highly unregulated cross-media ownership, high political control and funding, lack of transparency and missing data.¹⁷ This indicates the political stronghold on Indian media.

Eminent Indian journalist, P. Sainath in his bold and frank letter to the Chief Justice of India ('To the CJI, On His Lament that Investigative Journalism Is Vanishing From Indian Media', December 24, 2021) quite rightly pointed out that "media ownership (is) concentrated in the hands of a few corporate houses pursuing mega profits."

16 <https://www.forbes.com/sites/danidiplacido/2017/11/28/youtubes-elsagate-illuminates-the-unintended-horrors-of-the-digital-age/amp/>

17 <https://www.newsclick.in/Media-Pluralism-India-Under-Threat-RSF-Reporters-Without-Border>



8. Other reasons

As there are few fact-checking mechanisms in the electronic media and with people themselves turning to content creators utilizing web connectivity, the quality of information available in electronic media has undergone a drastic decline. Misuse of anonymity in online arena is rampant and there is no set standards of cyber etiquette or ethics followed in the public domain. According to former Defence chief Bipin Rawat, cybercrimes increased by 500% in the pandemic¹⁸.

Thus regulations are essential to keep a check on media activities and revolting contents spewed out in the shield of creative freedom as well as to ensure media freedom, plurality and diversity by bringing media markets, ownership, infrastructure and technical standards in its ambit.

Conflict with Freedom of Speech and Expression

It is impossible to bypass the discourse on conflict between the freedom of speech and expression guaranteed by the Constitution of India under Article 19(1)(a) while debating the need for regulation of media. "Liberty of thought and expression" incorporated in the preamble signifies its utmost importance in democratic foundation of our Government. Though not expressly mentioned in the Constitution, the liberty of the press is undoubtedly included in the ambit of Article 19(1)(a) empowering it to disseminate knowledge to the masses.

However absolute freedom involves the risk of abuse necessitating restrictions. Thus the freedom provided is qualified by

certain clearly defined limitations under Article 19(2) in the public interest. The Supreme Court in *Harijai Singh case*¹⁹ held that "the freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving unrestricted freedom of speech and expression would amount to an uncontrolled licence". It would lead to disorder and anarchy in the absence of even reasonable restraints. The freedom granted is not to be misinterpreted so as to disregard its duty to be socially responsible. The Court stressed the need for the element of responsibility in the conscience of the journalists.

Other important judicial interpretations dealing with Press or Media Freedom are given below:

Brij Bhushan vs. State of Delhi²⁰

Imposition of pre-censorship on publications was held to be violative of freedom of speech and expression unless justified under Article 19(2) of Constitution.

K. A. Abbas vs. Union of India²¹

Wherein the validity of censorship was challenged as violative of Article 19(1)(a), the Court observed that pre-censorship of films under the Cinematograph Act was justified under

Article 19(2) and that films have to be treated separately from other forms of art and expression due to its ability to stir emotions more deeply.

Ajay Goswami vs. Union of India²²

It held that blanket ban on publication of obscene materials and articles can't be imposed to protect juvenile innocence as the same might not be offensive to the sensibilities of an adult.

18 The Hindu, 13 November 2021.

19 In Re., (1996) 6 SCC 466

20 A.I.R. 1950 S C 129

21 1971 AIR 481

22 (2007) 1 SCC 143



Romesh Thappar vs. State of Madras²³

Court held that Article 19(1)(a) includes freedom to propagate ideas and that liberty of circulation is as essential as that of publication. Hence it can be stopped only under grounds of Article 19(2).

S P Gupta vs. Union of India²⁴

Right to know, receive and import information and the access to telecasting for the purpose has been recognized as a fundamental right within Article 19(1)(a).

Secretary, Ministry of Information & Broadcasting, Govt. of India vs. Cricket Association of Bengal²⁵

The Supreme Court held that the freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression.

Sidhartha Vashist alias Manu Sharma vs. State (NCT of Delhi)²⁶

Court cautioned that media interfering in administration of justice sub-judice isn't permitted under the Article 19(1)(a).

Although the freedom of the press is guaranteed as a fundamental right, it is necessary to deal with the various laws governing the different areas of media so as to appreciate the vast expanse of media laws.

Current Scenario

Media in India is governed by general laws of land including taxation like any other individual citizen with no special immunity or elevated status. But like

any other profession, substantial areas of activities specific to the field remains out of domain of existing law and has the need to be governed by a professional code of ethics or self regulation. In the words of former PCI Chairperson Justice Markandey Katju, "Normally, negotiating with the media should be the way, but we do need laws under some extreme situations" while remarking that though 90% of wrongdoers could be persuaded to do the right thing, law is needed for some who are incorrigible²⁷.

During the British rule and in post independence India, several legislations were enacted to regulate media and to protect its freedom, such as First Press Regulation, 1799, Vernacular Press Act, 1878, Indian Press Act, 1910, Cinematography Act, 1952, Press Council of India Act, 1965 etc. In the current scenario, Indian media is mostly self-regulated so as to avoid government control intervening with media independence and autonomy.

Regulation of Print Media

Print media isn't generally government regulated. The Press Council of India²⁸ (PCI) is a quasi-judicial statutory body constituted under the aegis of the PCI Act of 1978 to regulate print media in India. A self-regulatory organization, it issues standards more in the nature of guidelines to maintain and improve quality and to preserve press freedom but doesn't have penal power and the government need not comply with its recommendations. It remains a mere superficial body as

23 AIR 1950 SC 124

24 AIR 1982 SC 149

25 (1995) 2 SCC 161

26 AIR 2010 SC 2352

27 The Hindu, 19/04/2012.

28 <https://prsindia.org/theprsblog/regulation-of-media-in-india-a-brief-overview>



reports analyzing working of media aren't adopted by the government and rules issued are not adhered to by journalists as it can't suspend them. Other laws include the Press and Registration of Books Act, 1867 (introduced under British rule against derogatory, explicit, ethically wrong or misleading publication threatening national security and sovereignty), The Newspaper (Prices and Pages) Act, 1956, and Civil Defence Act, 1968 that allows Government to make rules to prohibit print media compromising civil defence.

Broadcast media, Television and Radio

Initially government regulated, Doordarshan and AIR became autonomous in 1997 with the establishment of Prasar Bharati Act 1990. With entry of private ownership channels and profit seeking companies quality of the programmes in Television started degrading. At present Programme and Advertisement Codes to regulate television contents are issued under Cable Television Networks (Regulation) Act, 1995. Other regulations include Telecom Regulatory Authority of India Act, 1997, Policy Guidelines for downlinking of Television Channels and Guidelines for obtaining DTH license among others.

The Broadcasting Code, adopted by the Fourth Asian Broadcasting Conference in 1962 that laid down important principles to be followed by the electronic media has ideally been practiced by all Broadcasting and Television Organization. In ***Secretary, Ministry of I&B vs. CAB***²⁹, the Supreme Court emphasized the right of every citizen to telecast and broadcast to the audience through any media and that Government had no monopolistic power over electronic media as it has not been mentioned

anywhere in the Constitution or in any other prevailing law in the country, opening the broadcasting sector to the citizens.

News channels are governed by a self-regulation body, the News Broadcasters Association (NBA) with its Code of Ethics regulating the content. However as these are applicable only on its members, a large chunk of private media entities are left out. The News Broadcasting Standards Authority (NBSA) of the NBA can fine, censure, warn or admonish the broadcaster for violating its code. Instances of non compliance of members with the NBSA's decisions and the lack of stringent punishment show the ineptitude of self-regulation systems.³⁰ Other organizations like Broadcast Editors Association and the Advertising Standards Council of India don't have any statutory powers and merely govern through agreements.

Films

In the film industry, the distribution networks are government controlled. The statutory film certification body in the Ministry of Information and Broadcasting of the Government of India called the Central Board of Film Certification (CBFC) regulates public exhibition of films. It certifies movies as U, U/A, A or S indicating unrestricted public exhibition, parental guidance for children under age 12, restricted to adults and restricted to a specialized group of people, such as engineers, doctors or scientists respectively or may refuse to certify the film and censors contents under the provision of Cinematography Act, 1952.

There have been instances where the exhibition of the film was suspended on the sole ground that the public screening of the film was likely to hurt religious sentiments

29 (1995) 2 SCC 161

30 <https://thewire.in/media/arnab-goswami-republic-tv-jignesh-mevani-2>

31 Vital Media v. State of Punjab, (2015) 13 SCC 397



and cause a breach of the peace³¹. In ***Phantom Film Pvt. Ltd. & Anr vs. Central Board of Film Certification***³², the Bombay High Court held that the film cannot be objectionable merely due to depiction of the use or sale of drugs in a particular state and because of the political references therein and opined that the story must be viewed in its entirety.

National Centre of films for Children's and Young People (CFSI) established in 1955, produce and distribute films which essentially provide a clean and healthy environment for children and young people. The National Film Development Corporation (NFDC) was established in 1980 with the task of promoting good cinema, to produce and finance films, and overseas distribution of films³³.

OTT Platforms and Other digital media

OTT platforms that offer viewers access to media directly through the internet bypassing cable and satellite systems are not regulated by any statutory body and hence displays content with all sort of vulgarity. In the recent time platforms have considered self-regulation of online content through voluntary code specifically for language, violence and sex, but these have weak standards due to lack of sanctions. A diverse country like India has to carefully tread the need for independent media regulator to deal with OTT contents as some are based on harsh social realities and are a tool to expose the brutalities political powers tend to erase from public domain.

Recently the government of India formally notified the the 'Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021'³⁴ framed by the

Ministry of Electronics and Information Technology (MeiTY) under the Information Technology Act, 2000,(IT Act) seeking to regulate contents in OTT and social media platforms (intermediaries) like Twitter and Facebook. While The IT Act, 2000 largely deals with cybercrimes and doesn't seek to regulate digital media, MeiTY is now empowered to do so. This has several legal challenges as it excludes the Ministry of Information and Broadcasting (MIB), originally responsible for digital media regulation because IT Act, 2000 is beyond its administration.

Under these rules, the intermediaries are required to provide a grievance redressal mechanism to resolve complaints from users or victims. It also endeavours to deploy technology-based measures to curate the contents. India operates on the 'Safe Harbour model', under which the intermediaries are have no liability for the unlawful acts of third parties who use their infrastructure. While the new rule attempts to place more responsibility on these platforms, it has received widespread criticism as being *ultra vires* as the MeiTY controls it and that it may be misused to adversely affect the privacy of individuals.

Regulations Worldwide

Development of media regulations without encroaching on their creative freedom requires study of tried and tested practices over the world. Some international practices of media regulation are as follows:

In the United Kingdom while print media is largely self regulated, a statutory body called the Broadcasting Standards Commission regulates electronic media through code of conduct and monitors

32 2016 SCC OnLine Bom 3862

33 <https://www.legalserviceindia.com/articles/media.htm>

34 <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>



them through public complaints. Government has released a white paper on the threat of unregulated online content proposing new regulatory framework to enforce codes of practice and redressal mechanism to users for online safety³⁵.

In USA, independent government agency, The Federal Communications Commission regulates broadcast journalism by issuing licenses, investigating complaints and implementing rules and regulations.

In Singapore online contents are directly regulated by its media regulatory authority Infocomm Media Development Authority that classifies them into categories with age restrictions. It even issued and enforced code of practices for OTT services requiring them to clearly display ratings and elements in content such as the theme and language and to comply with the law of the land. Contents disruptive of racial or religious harmony or public interest and national security are prohibited from streaming.

Dutch Media Authority recognizes five types of measures to promote media diversity such as: restrictions on media concentration or ownership, providing alternatives to commercial media outlets like public service broadcasting and non-profit or 'community' media economic interventions like tax reduction, transparency measures and organizational measures.

The German Press Council deals with issues at an early stage through conciliations. Only in the next stage, the Press Council of Germany intervenes between concerned parties where its complaints commission inspects issues related to editorial pages to detect violations and may take *suo moto* actions. They also have another branch to evaluate even anonymous

public complaints, compelling most media establishments to voluntarily accept the press code as the ethical guideline and to take corrective measures. Readers can make a complaint to the Press Council if they believe that data pertaining to them have been mishandled and it will be dealt under the contravention of individual rights ensuring data protection.

Media Regulation in New Age

In reality there is no single medium on media regulation and redressal in India and self-regulation unfortunately exist as a mere farce. Proper self-regulation can be done in many ways, including licensing and association certification, information and awareness movement, establishing public complaint management and grievance redressal division, establishing preset procedures such as for dispute resolution, standard regulation through accreditation and quality assessment measures as well as ensuring stringent punishments so as to deter unfair practices. However the dilemma of who determines the fairness and righteousness of the contents is a matter of grave concern. Leaving the regulation to the media itself entails great likelihood that objectives of regulation are surrendered to its own business goals. Thus it is essential to review the accountability systems existing in the media.

At present, no qualification has been prescribed by the PCI for journalists unlike other professions such as that for advocates prescribed by the Bar Council. Similarly it has very limited powers to deal with delinquent journalists unlike the Bar Council or the Medical Council that can take action against professional misconduct or violation of principles in their respective fields.

35 Astha Pandey and Pranjal Pandey, To Censor or Not to Censor: Regulation of Content on OTT Media Platforms in India, 7 CMET (2020) 46 at page 52



The recommendations put forward to the UK Government by the Cairncross review³⁶, a British study into the future of the press and the sustainability of the production and distribution of high-quality journalism and public-interest in 2019 can also be taken into consideration to improve the prevailing conditions. It included: establishment of a government innovation fund to improve the supply of public-interest news; direct funding for local public-interest news; and new forms of tax relief to improve standards of online news market and ensure quality journalism.

The Indian media has transformed rigorously since the independence. With social media platforms taking over the digital media, a Pandora's Box of novel issues has also been unleashed. They suffer a lack of editorial oversight as in traditional news content where the viewpoints to be broadcasted or published are determined by a set of producers and higher executives. While Companies can easily supervise the contents shared in their platforms and can be held accountable in traditional media systems, social media platforms are mere conduits for user-generated content and is subject to much less moderation. Unlike traditional media, social media users have almost no control over the content they are exposed to as it uses complex algorithms to keep users scrolling by recommending more radical posts than they would have ever sought out on their own.

Despite governments being aware of the need for OTT regulation as well as impact of web media on the people, there are currently no globally accepted best practices as these are in early stages of development and are subject to review and modifications. However the crucial aspects

taken into consideration include content regulation, net neutrality, licensing, taxation and privacy policy.

Regulating social media is a different topic overall. Attempts for the same have seen tech giants such as Facebook and Google being at war with the governments, threatening to discontinue their services. However hope is not all lost with The European Union attempting to set the standard for tech regulation globally by taking steps toward a landmark legislation, The Digital Services Act to address social media's societal harms and economic effects³⁷. It aims to end an era of self-regulation by compelling tech companies to police their platforms for harmful contents more aggressively by setting up new policies and procedures to deal with terrorist propaganda and other illegal materials in the context of European Union nations. It also proposes yearly audits for tech giants like Google and Meta for "systemic risks" related to their businesses.

Another legislation, The Digital Markets Act aims to counter anticompetitive behaviour by these tech firms that affect the economy with their iron grip over online advertising, app stores and e-commerce. However, that the European Union's data privacy law, the General Data Protection Regulation (G.D.P.R.) introduced with much expectations is lacking in enforcement, creates concern about the fate of new laws. Thus the governments have a great responsibility to ensure that these big companies no longer bypass their obligations by elusive techniques such as compelling the user to sign consent forms to continue using their services. Along with the introduction of new rules, effective enforcement of these as well as

36 <https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>

37 <https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html>



the existing rules has to be ensured for a successful regulation.

Other suggestions³⁸ so as to regulate media are:

- i. Drafting contracts that maintain essential compliance with the Codes of Practices can deter journalists and guest contributors from grave violations. Concerned departments for the purpose have to be established in all branches of organization.
- ii. Data protection has to be given prime importance and integrated into laws.
- iii. Developing a universal code of ethics to be followed by all journalists and content creators.
- iv. Publicizing ownership details etc. of media in public domain to counter political control and paid news.
- v. Establishing a media ombudsman to deal with complaints of the public and to take quick and effective action. It may also be a grievance redressal system for journalists as well.
- vi. Digital media ethics awareness courses maybe established as part of journalism training. Awareness classes to the public as well on digital media etiquette.

Other steps that could be taken include:

- Developing technology based measures to quickly take down flagged contents after review from digital media platforms.
- Making it compulsory for intermediaries to provide annual or monthly data statistics on flagged

or reported contents and action taken towards the same to bring accountability.

- Preventing misuse of system by forming review groups of experienced and expert members of the media community within the country for determining whether the content has to be taken down.

Conclusion

Media regulation is a sensitive topic that needs a detailed study on the need of laws and for its successful implementation and enforcement. Accountability and transparency of media can only be ensured in the era of the INTERNET by developing some kind of international code of ethics. At the same time it shall not be restrictive of the fundamental human right.

In the wake of recent developments, the governments must strive to strike a balance between media freedom and regulation for their smooth functioning. The problems emerging in the media and entertainment industry cannot be tackled with regulations alone. Moderation of content can also be imposed only upto a reasonable extent so that it does not cause any apprehensions as to the creative freedom enjoyed by the sector. The traditional values of the society have also been affected as contents from culturally diverse countries are available to the audience on the web introducing them to new ways of thinking. It has become almost impossible to set the standards as to obscenity, morality, decency etc. The ultimate choice on the matter must always be left to the interest of the consumers and the society.

³⁸ Meera Mathew, Media Self- Regulation In India: A Critical Analysis, ILI Law Review, Winter Issue 2016



Along with development of new rules and policies to keep up with the changes due to fast paced technological developments in media sector, the misuse of these rules by the political powers and market interests also have to be curtailed. Biased contents dominating media presentation

is an unsightly scenario in a democracy. Rather than relying on self regulation, co-regulation or a hybrid model of regulation involving self regulation backed by statutory regulation shall be promoted for progress and quality improvement of the media.

BIBLIOGRAPHY

1. Dr. S. R. Myneni, Media Law, Asia Law House, 2013.
2. Dr. Sukanta K. Nanda, Media Law, Central Law Publications, 2017.
3. Meera Mathew, Media Self- Regulation In India: A Critical Analysis, ILI Law Review, Winter Issue 2016.
4. Astha Pandey and Pranjali Pandey, To Censor or Not to Censor: Regulation of Content on OTT Media Platforms in India, 7 CMET (2020), RMLNLU Law Journal.
5. Sruthi Prabhakar and Yamuna Vijayagopal, The Role of Media During Covid-19 : Ethical and Regulatory Challenges, 5 UPES LR (2020) 151.
6. <https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html>
7. <https://prsindia.org/theprsblog/regulation-of-media-in-india-a-brief-overview>
8. <https://blog.ipleaders.in/importance-media-regulatory-framework/?amp=1>
9. <https://www.legalserviceindia.com/articles/media.html>
10. <https://kq.freepressunlimited.org/themes/enabling-environment/media-law-and-policy/media-law-and-regulation/>
11. <https://hbr.org/2021/01/are-we-entering-a-new-era-of-social-media-regulation>
12. <https://blog.ipleaders.in/regulation-of-broadcasting-of-media-in-india/?amp=1>
13. <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>
14. <https://www.google.com/amp/s/www.wired.com/story/zelensky-deepfake-facebook-twitter-playbook/amp>
15. <https://www.forbes.com/sites/danidiplacido/2017/11/28/youtubes-elsagate-illuminates-the-unintended-horrors-of-the-digital-age/amp/>
16. <https://www.google.com/amp/s/amp.dw.com/en/fact-check-fake-news-thrives-amid-russia-ukraine-war/a-61477502>
17. <https://www.britannica.com/event/United-States-Capitol-attack-of-2021>
18. <https://www.thehindu.com/news/national/andhra-pradesh/shun-sensationalism-vice-president-tells-media/article65360005.ece>
19. <https://www.newsclick.in/Media-Pluralism-India-Under-Threat-RSF-Reporters-Without-Border>



20. <https://www.newindianexpress.com/states/kerala/2018/jun/05/whatsapp-hartal-in-kerala-385-cases-registered-1595-held-says-cm-pinarayi-vijayan-1823788.html>
21. <https://www.thehindu.com/news/national/kerala/arrest-of-e-bull-jet-brothers-cyber-police-register-case-against-people-who-posted-provocative-comments-on-social-media/article35995507.ece>
22. <https://thewire.in/media/arnab-goswami-republic-tv-jignesh-mevani-2>
23. <https://www.apa.org/topics/video-games/violence-harmful-effects>
24. <https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html>
25. www.livelaw.in
26. <https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>
27. The Hindu newspaper
28. The Hindustan Times
29. The Indian Express
30. NWMI, Staging Aggressive Masculinity, Report of a Media Monitoring Project”, January 2022.





THE DASTUR ESSAY COMPETITION 2022

Privatisation of Public Sector Undertakings – Opportunities and Challenges



Dhairya Bheda

Introduction

The world at large is evolving and is demanding the need for change for all of us by making us proactive instead of being of a reactive person. Over the past decade, one of the most popular and trending topics around us has been **Privatisation of the Public Sector Undertakings (hereinafter referred to as PSUs)**.

What are the Public Sector Undertakings?

- The government-owned companies are known as Public Sector Undertakings (PSUs).
- In a PSU majority i.e. 51% or more of the paid-up capital is owned by the central government/any state government/partly by the central governments and partly by one or more state governments.

What are the types of public sector undertakings?

- Public Sector Undertakings are classified as Public Sector Enterprises (PSEs), Central Public Sector Enterprises (CPSEs), and Public Sector Banks (PSBs).

The term privatisation mainly refers to the removal of government/public sector intervention from the business of the

entity and providing an open-ended way out for the entity and its management to think about the future prospects for the growth of enterprises/organization/company. **As our Honourable Prime Minister Narendra Modi says, Privatization is the need of the hour and the Government has no business to be in business.** The aim of India's economy touching the **\$ 5 Trillion-mark**, privatization would play a major role, as the enterprises which have the potential to steer their work force and show a multi-folded growth would get the opportunities to forecast themselves into broader picture. Privatisation may look and sound easier but the reality is a bit different. There are numerous opinions of the people of the nation over the Privatisation of PSUs, few resulting into Opportunities and few others into Challenges. Developing countries have been quick to jump on the privatization bandwagon, sometimes as a matter of political and economic ideology, other times simply to raise revenue. In our daily routine itself, we all can see both aspects of the PSUs, i.e. the opportunities and the challenges it may face once it gets privatised. Ranging it from:

1. The Job losses people may face to the betterment of the services countrymen may receive,
2. The pollutants arising in the locality (due to aggressive business tactics)



to the infrastructural growth of the surrounding due to betterment in the business environment,

3. There are concerns about crony capitalism also, & Many more which we shall discuss ahead in detail...

The desire to involve the private sector in the management and provision of port infrastructure and services is prompted by the recognition that government regulations and processes are not always conducive to efficient operations of commercial activities and by recognition of the private sector's relative strength in this field. Also, in recognizing that investment sources outside government must be tapped in the provision of such infrastructure and services involvement of the private sector provides the opportunity to share risks and, in times of rapidly changing economic environment to respond quickly to market/demands and opportunities.

What is the need to privatize the PSUs?

- The private sector has come a long way and acquired the will and capacity to compete at the world stage. It no longer needs the government to take care of non-profit-making industries. Rather it is seeing opportunities in areas like railways too through investments in Mass Rapid Transit System.
- There are many advantages of privatization that could be complementary to the developmental targets.
- Privatization raises government finances that can be spent in social sectors.
- It creates money for restructuring and improvements necessary for PSUs.
- It brings in professional management to the mismanaged PSUs. It increases the profitability of the firms.

- Privatization brings in more investment including Foreign Direct investment.
- It also helps in up-gradation in technology, skills, and operational efficiency.
- It reduces the public debt that is rising to unsustainable proportions.
- It also releases resources such as large government manpower currently locked up in managing PSUs to be redeployed in priority areas.

Source of the Idea

For decades prior to the 1980s, governments around the world increased the scope and magnitude of their activities, taking on a variety of tasks that the private sector previously had performed. In the United States, the federal government-built highways and dams, conducted research, increased its regulatory authority across an expanding horizon of activities, and gave money to state and local governments to support functions ranging from education to road building. In Western Europe and Latin America, governments nationalized companies, whole industries, banks, and health care systems, and in Eastern Europe, communist regimes strove to eliminate the private sector altogether. The concept of privatisation became popular in India during the liberalization policy introduced by the Indian Government in the year 1991. The liberalization policy came out to be a success for the growth of the country and the countrymen in terms of betterment of business and the business environment. India has a mixed economy in which both Private and Public Sectors exist especially in the areas of Banking, Telecom, Road Transport, Education, Healthcare, Manufacturing and Education. Many Business analysts and experts on Economy are of the view that privatization could speed up economic growth with the increase in competition. So, should India opt for privatization or continue with the current system, is a burning



discussion topic in view of the various steps taken in different sectors. Whether the move will benefit the country or will not be feasible needs to be evaluated by discussing the Opportunities & Challenges of the Privatisation of the PSUs.

At independence, India adopted a mixed economy model. In this context, the Public Sector Enterprises (PSEs) were established on a socialistic pattern of development. Apart from that, there was a need to create adequate infrastructural facilities which served as the most important consideration leading to the expansion of the PSEs. However, due to the poor performance of several PSEs and the consequent huge fiscal deficits, the issue of privatisation has come to the forefront. Privatisation is ought to infuse efficiency by bringing PSEs to the competition in the

market. The term 'privatisation' is used in different ways, ranging from 'transition to private legal forms' to 'partial or complete denationalization of assets.' In India, privatisation is sought to be achieved through two measures: The disinvestment of the government's equity in public sector undertakings. Disinvestment: Selling off public sector equity to mutual funds, financial institutions and the private sector. The opening up of hitherto closed areas to private participation. The current direction of privatisation of PSEs has been spelt out in a policy laid down by parliament in 2002. The policy stated that the main objective of disinvestment is to put national resources and assets to optimal use and in particular to unleash the productive potential in our public sector enterprises.

Brief structure for Privatisation and Nationalisation:

	Privatisation	Nationalisation
Ownership	Private Sector	Government
Incentives	Profit motive acts as incentive for owners and managers	Workers may feel motivated if they feel company belongs to them
Externalities	Private firm may ignore external costs (pollution)	Government can put social benefits above profit motive
Efficiency	Incentives increase the productivity with new age ideas	Nationalised firms may find it difficult to sack surplus workers
Knowledge	Employment is based on skills and on merits	Political interference based on political motives

In India, there seems to be broadly three positions with respect to the privatisation of PSEs:

- One, PSEs should not be sold irrespective of its performance.
- Second, the market view i.e. the business is not the business of government.

- Third, the privatisation of profit-making PSEs is also debated.

For example, Bharat Petroleum Corporation Limited (BPCL) which is making handsome profits, comes under this category.



Opportunities

The desire to involve the private sector in the management and provision of port infrastructure and services is prompted by the recognition that government regulations and processes are not always conducive to efficient operations of commercial activities and by recognition of the private sector's relative strength in this field. Also, in recognizing that investment sources outside government must be tapped in the provision of such infrastructure and services involvement of the private sector provides the opportunity to share risks and, in times of rapidly changing economic environment to respond quickly to market/demands and opportunities. The opportunities waiting for PSUs being privatised are:

1. Save Taxpayers' Money

By applying a variety of privatization techniques to state services, infrastructure, facilities, enterprises, and land, comprehensive state privatization programs can reduce program costs. Over 100 studies have documented cost savings from contracting out services to the private sector. Cost savings vary but average between 20 and 40 percent, depending on the service. For some services like catering business of Indian Railways savings are often greater. Competitive bidding whenever possible and careful government oversight are crucial to sustained cost savings. States can also realize large one-time windfalls from the sale or lease of state infrastructure and facilities. Moreover, privatization can put an end to subsidies to previously government-run operations. Privatization also creates a steady stream of new tax revenues from private contractors and corporations who pay taxes and license fees, while state units do not.

2. Increase efficiency and innovation

Private management can significantly lower operating costs through the use of more flexible personnel practices, job categories, streamlined operating procedures, and simplified procurement. Private ownership can stimulate innovation. Competition forces private firms to develop innovative, efficient methods for providing goods and services in order to keep costs down and keep contracts. These incentives, for the most part, do not exist in the public sector.

3. Improved Maintenance

Private owners are strongly motivated to keep up maintenance in order to preserve the asset value of the investment in the facility. Improved maintenance helps in better production quality from the plant and machinery. Public owners often defer maintenance due to political considerations, increasing overall long-term costs.

4. Optimum Utilisation of Scarce Resources

It has been observed that the public sector has failed in the optimal use of national resources. The private sector may succeed in the optimum use of resources by maintaining efficiency and reducing overhead costs and increase in use of scarce resources.

5. Reduction in Political Interference

The process of privatization reduces political interferences in the public sector enterprises by giving more representation to the private sector in the management of Public Enterprises. The improvement of the regulation of the economy by reducing conflicts between the public sector's regulatory and commercial



functions. Privatization liberates the economy from state control. Without government regulations dictating market progression, the market operates organically. Due to a lack of government interference, the market becomes more dynamic and follows integral economic values of demand and supply. Consumer response to a more dynamic and organically run market is greater and generates higher revenues. Privatization allows state officials to spend less time managing personnel and maintaining equipment, thus allowing more time to see that essential services are efficiently delivered.

6. Better Customer Service

As private companies are profit-driven and function in a competitive market, their primary focus rests on efficient customer service. State-run companies lack this feature as they face no competition and are not financially motivated. Furthermore, customer service is enhanced in privatization due to the elimination of unnecessary bureaucratic hassle. A number of surveys have indicated that public officials believed service quality was better after privatization. In a survey of 89 municipalities conducted in 1980, for example, 63 percent of public officials responding reported better services as a result of contracting out.

7. Increased competition

Often privatisation of state-owned monopolies occurs alongside deregulation – i.e. policies to allow more firms to enter the industry and increase the competitiveness of the market. It is this increase in competition that can be the greatest spur to improvements in efficiency. For example, there is now more competition in telecoms (after

entrance of Jio in the market and disturbing all the competitors and creating new way of business) and distribution of gas and electricity. If competitive bidding is instituted for a service, service quality can improve even if the service is retained in-house. The reason is simple: "Competition induces in-house and private service providers to provide quality services in order to keep complaints down and keep the contract".

8. Intrapreneurship Opportunities

Intrapreneurs are self-motivated, proactive, and action-oriented people who have leadership skills and think outside the box. Often in the state-owned enterprises these intrapreneur talents remain hidden and don't get the limelight they deserve. This intrapreneurs often brings innovative ideas which helps in creating the best outcome for the overall working of the organization.

9. Streamline And Downsize Government

Privatization is one tool to make bureaucracies smaller and more manageable. Large private corporations often sell off assets that are underperforming or proving too difficult to manage efficiently. Under new owners and leaner management, such divisions often receive a new lease on life. Entrepreneurial governments can replicate this experience.

10. Privatisation of profit-making PSUs

There are various PSUs who have the ability and the monopoly in their sector and still are not performing well (i.e. they are profit making but can grow more and help the economy grow more stronger, but due to political influences they



don't provide results which they are capable of providing and hence privatising the same would give a boost to the workers and the staff of their organization to perform more productively. This will still bring in benefits of the efficient operation of the private sector through reduced costs. For example, Air India is marred with issues like poor punctuality, high staff-top lane ratio, high operating costs and overall customer indifference. These issues will now be rectified by the Tata Group acquiring back their old gem.

11. Increase Flexibility

Privatization gives state officials greater flexibility to meet program needs. Officials can replace the private firm if it isn't meeting contract standards, cut back on service, add to service during peak periods, or downsize as needed.

12. Reduce the financial and administrative burden on the public sector

Public management of a port or a system of ports on a day-to-day basis generates a considerable demand on governmental resources in terms of time and personnel for what is largely a commercial enterprise. Whilst this resource demand falls most heavily on directly concerned ministries and agencies (e.g. Transport) it can be shown that it frequently spills over to those peripherally involved (e.g. Treasury) organization and even to the Cabinet itself.

Challenges

This section addresses the issues, and the decisions which governments themselves must make prior to embarking upon a privatization process. They may vary from project to project.

The initial groundwork and clarification of objectives recommended herein should enable governmental sponsors of ports privatization to chart their course with greater clarity. This in turn should lead to a smoother, faster internal process. It should also attract a greater number of interested, qualified and eligible investors/operators; thereby, providing government with the widest range of choice and the best opportunity of achieving objectives.

1. Problem of Price

The government usually want to sell the least profitable enterprises, those that the private sector is not willing to buy at a price acceptable to the government. There are many of the PSUs which are underrated and can fetch a hefty valuation as they usually are cash rich organisations. But the problem with it is, there plays a political game around the organization which affects the Working Capital cycle and makes it worse for them to perform more effectively.

2. Natural Monopoly

A natural monopoly occurs when the most efficient number of firms in an industry is one. For example, tap water has very significant fixed costs. Therefore there is no scope for having competition amongst several firms. Therefore, in this case, privatisation would just create a private monopoly which might seek to set higher prices which exploit consumers. Therefore it is better to have a public monopoly rather than a private monopoly which can exploit the consumer.

3. Public Interest

There are many industries which perform an important public service, e.g., health care, education and public transport. In these industries, the profit motive shouldn't be the primary objective of firms and the



industry. For example, in the case of health care, it is feared privatising health care would mean a greater priority is given to profit rather than patient care. Also, in an industry like health care, arguably we don't need a profit motive to improve standards. When doctors treat patients, they are unlikely to try harder if they get a bonus.

4. Short – termism of firms

As well as the government being motivated by short term pressures, this is something private firms may do as well. To please shareholders they may seek to increase short term profits and avoid investing in long term projects. For example, the UK is suffering from a lack of investment in new energy sources; the privatised companies are trying to make use of existing plants rather than invest in new ones.

5. Concentration of Economic Power

The private sector emerges a monopoly and the concentration of economic power in the hands of few. The dominance of some business groups in terms of capital and assets is an economic and social problem. The private sector operates on the principle of maximization of the Monopoly profits. It is harmful to consumers and society as a whole. There are possibilities whereby two or more entities would come together in a particular sector and create a duopoly and then rig the prices of the items/services which only they are offering and so ultimately the people of the nation had to suffer because of high service cost.

6. Increase in Unemployment rate

With modernization and digitalisation of the business era, most of the private entities are moving towards

automation of services whereby there is less requirement of man power and so they do remove the workers/ staff which are not required and the same manpower is replaced by the machinery which is resulting into job losses and the job losses affects the family member of the person who losses the job in all ways. With PSUs there is a job security whereas in private companies there is no such thing of job security because the moment the employee is not required by the organization he has to vacant his position and which results into unemployment.

7. Stakeholder perspective

No investor would want to struggle navigating through cultural integration and low employee morale cauldron while focussing on critical business retention/expansion strategies necessitating periodic capital infusion. Stakeholders perspective is to earn profits either in the form of dividend or capital appreciation and while the company is a PSU, they deliver good return to their investors and hence it will be a key challenge for the new private firm who is either overtaking the same PSU or the new management that is running the PSU to make sure that they deliver the same form/kind of returns to their stakeholders in the forceable future as well. Being a private player, there is no certainty on the profit figures as there can be major capex happening which would eat over the reserves accumulated over the period of time by the entity being an PSU.

8. Hardships faced by people

If government driven services will be provided by the private players then they may increase the price for the goods/services offered by them and the general public would have to



suffer because of rise in the purchase price of the daily needs of living. Eg: If Railways will be privatised then the motive of the management team would be to earn profits which will not be acceptable by the general public as they have been habitual to travel in a very nominal cost throughout the life span and a sudden change in the price of the services would not attract more people to use the service and instead they will try to switch to other modes of transport and this would cause a major challenge for the management team to strive in the market with such a huge cost to be repaid.

Way forward

- While, disinvestment and privatization in loss-making assets is a common wisdom now, we must not forget that there are slippery slopes in this path.
- We must not get carried away and sell the PSUs for lesser prices than expected just for the sake of privatization.
- A proper judgment of the value of the PSU is necessary and Railways and BPCL are some of the sectors where the proper pricing is difficult to come up with as the potential for future growth is high as of now.
- There is an issue with how do we utilize the proceeds of disinvestment. Using it for bridging the revenue deficit and neglecting dire needs of modernization of existing strategic sectors and asset creation will be a huge misstep.
- To make the assumptions of cronyism go, the process of privatization must be fair and transparent with a level playing field to all players. A third-party evaluation of assets and a minimum number of bidders should be necessary pre-conditions to ahead with each sale.

- The after-privatization governance is also important and the private player that wins the bid must be made accountable so that the existing socio-economic functions of that asset must continue and they are not sacrificed for profit motives.
- The regulatory mechanism also needs to change if the all-around privatization takes shape. This is a critical process as we must balance the socio-economic needs with market requirements of freedom of operation.
- The new policy must take into account all these issues and come up with a fool-proof policy to regulate the Privatization and after.
- The government will focus more on privatization going forward in line with the public sector enterprises' (PSE) policy framed last year. This will create more jobs and have a broader impact on the economy, rather than just stake sales.
- A clear - cut policy on indigenisation and privatisation should be developed, there should be transparency in the privatisation policy and an improvement in the quality of governance in the country.
- Draw lessons from other countries rather than reinvent the wheel.

Facts

1. Disinvestment receipts constituted 0.95-4.68 per cent of the total receipts of the Centre during 2014-15 to 2020-21, according to data given by the minister in the House. While the proportion was the least at 0.95 per cent during 2020-21, it was the highest at 4.68 per cent during 2017-18, showed the data
2. The revised estimates (RE) for disinvestment receipts in 2020-21 was ₹ 32,000 crore.



As on March 31, 2021, the government has realised disinvestment receipts of ₹ 32,845 crore, which is around 103 per cent of the RE in 2020-21.

3. As much as ₹ 37,134 crore of the goods and services tax (GST) compensation was pending to states for 2020-21 and ₹ 14,664 crore for the first half of the current fiscal year. This is after taking into account the amount released from the compensation fund and back-to-back loans, minister of state for finance Pankaj Chaudhary told the Lok Sabha.
4. Twenty years is a long time. That's what it took to execute the privatisation of Air India.

The process was set in motion in year 2000, albeit the idea for selling it was first proposed in 1988, following the successful sell-off of British Airways and other national assets by the Margaret Thatcher government in the UK. "Air India was the Holy Grail of public sector privatisation. The sentiment in the government was, 'If we can success-fully privatise Air India, we can sell anything.' Now that it's done, it's up to them to

leverage it," a market source told Business Today requesting anonymity. The sale of Air India is to fetch the government ₹ 18,000 crore, and would give the buyer, Tata group, ownership of Air India, its low-cost unit Air India Express, and a 50 per cent stake in the airline's ground and cargo handling subsidiary, Air India SATS Airport Services (AISATS).

5. The upcoming LIC IPO is fundamentally a big positive. LIC is a superb organization built over the past several years. A successful listing will give it a thrust to expand globally.
6. The Centre has broadened its privatisation policy to disallow public sector undertakings (PSUs) and cooperative societies from participating in the bidding for other state-owned firms. The Department of Investment and Public Asset Management (DIPAM) has also asked all government departments to inform PSUs and cooperative societies under their administrative control that they will not be permitted to participate in the privatisation process unless otherwise specified.

THEIR TIME HAS COME

These companies are likely to fetch good valuations if they are privatised on priority

*Consolidated revenue for the year ended March 2021

Company	Revenue in ₹ crore*	Likely bidders
Steel Authority Of India Ltd (SAIL)	69,113.61	Vedanta, Tata Steel, Nippon Steel
Bharat Sanchar Nigam Ltd (BSNL)	17,452.11	Reliance Jio, Bharti Airtel
Container Corporation of India Ltd (CONCOR)	6,427.08	Adani, Allcargo Group, Gateway Distriparks
Shipping Corporation of India (SCI)	3,703.25	Reliance, Adani Shipping India, Great Eastern Shipping
BEML Ltd	3,556.64	L&T, Adani
Hindustan Copper Ltd	1,786.76	Vedanta
Mahanagar Telephone Nigam Ltd (MTNL)	1,387.71	Reliance Jio, Bharti Airtel

Source: ACE Equity; industry



Conclusion

The PSU privatization is a long-lagging process. This is thought to be a necessary pre-condition for growth and good governance of the existing PSUs. Amid the pandemic hit market conditions, it needs to be seen if the current drive fetches good results. At any cost, the poor of the country must not bear the cost of aspirations of the remaining middle and higher class. Any future policy must be aware of the tremendous role that PSUs played and still play. Problems at home, typically drying national coffers, and opportunities outside, especially globalization, plus social change, have made privatization popular with governments. While privatization can help ameliorate some of the pressing problems states face, such as providing revenue for a cash- strapped government, it is by no

means a panacea for all the ills of the public sector or the wider society. However, privatization's success will, to large extent, depend on the quality of the political and economic environment within which it occurs and the approach adopted in implementing it. Although there is no one-size-fit-for-all approach to privatization, the key thing is to learn from the good and bad experiences of others, and to apply them to the exigencies of the local context in order to maximize the gains, while minimizing the costs, of privatization. That said, it should be borne in mind that there will always be winners and losers in any privatization policy. The key issue seems not to be whether or not to privatize but where, how, and how much to privatize, so as to distribute its benefits (and costs) equitably. This is where joint ventures and Public-private-partnerships (PPPs) seem to offer some hope to governments.

Bibliography

- <https://www.jstor.org/stable/4374104>
- <https://www.economicshelp.org/blog/501/economics/advantages-of-privatisation/>
- [https://www.mbauniverse.com/group-discussion/topic/business-economy/privatization-of-indian-economy\](https://www.mbauniverse.com/group-discussion/topic/business-economy/privatization-of-indian-economy)
- https://www.business-standard.com/article/economy-policy/privatisation-of-public-sector-units-to-drive-divestment-receipts-mos-121121400058_1.html
- <https://www.grin.com/document/263720>
- <https://www.mackinac.org/7294>





Glimpses of Past Events

The Dastur Essay Competition, 2022

The result announcement and the Felicitation Function held at the 95th Annual General Meeting of The Chamber of Tax Consultants held on **Monday, 4th July, 2022** at Garware Club House, Churchgate, Mumbai- 400 020.



Hon'ble Justice Shri S. J. Kathawalla felicitating Mr. Satya Sankar Perepu, 1st Winner of The Dastur Essay Competition, 2022.



Hon'ble Justice Shri S. J. Kathawalla felicitating Mr. Dhairya Bheda, 3rd Winner of The Dastur Essay Competition, 2022.



CA Parag Ved, President felicitating Ms. Aanchal Shah, 4th Winner of The Dastur Essay Competition, 2022.



CA Ketan Vajani (Imm. Past President) felicitating Ms. Muskan Dadia, 6th Winner of The Dastur Essay Competition, 2022.



CA Neha Gada, Hon. Jt. Secretary felicitating Mr. Mokshit Maru, 9th Winner of The Dastur Essay Competition, 2022.

Glimpses of Past Events

Moot Court

5th The Chamber of Tax Consultants National Moot Court Competition, 2022 was held on 5th June on Virtual Mode and on 18th June at ITAT and Government Law College, Mumbai

Semi Final at ITAT Library on 18th June, 2022



CA Ketan Vajani (President) welcoming the Hon'ble Members of the ITAT and giving his opening remarks



CA Ketan Vajani (President) welcoming Hon'ble Shri Vikas Awashthy, Judicial Member, ITAT Mumbai by offering bouquet



CA Parag Ved (Vice-President) welcoming Hon'ble Shri Prashant Maharishi, Accountant Member, ITAT Mumbai by offering bouquet



Vipul Joshi, Advocate (Past President) welcoming Hon'ble Shri Sandeep Singh, Judicial Member, ITAT Mumbai by offering bouquet



Ajay Singh, Advocate (Past President) welcoming Hon'ble Shri Rahul Chaudhary, Judicial Member, ITAT Mumbai by offering bouquet



Hon'ble Shri Pramod Kumar, Vice-President, ITAT presenting memento to Semi Final Participants



Hon'ble Member of ITAT judging the participants





Glimpses of Past Events

Moot Court

Finals at Government Law College, Mumbai on 18th June, 2022.



Hon'ble Justice Shri Nitin Borkar, Bombay High Court inaugurating the Final Round by lighting the lamp. Seen from L to R: CA Ketan Vajani, (President), Hon'ble Shri Pramod Kumar, Vice-President, ITAT, Ms. Asmita Vaidya, Principal, Government Law College, Mumbai and Ajay Singh, Advocate (Advisor)



Dignitaries at then session. Seen from L to R: CA Mitish Modi, AIFTP Chairman (WZ), CA Parag Ved (Vice-President), CA Vijay Bhatt (Hon. Treasurer), CA Vitang Shah (Chairman), Ms. Asmita Vaidya, Principal, Government Law College, Mumbai, Hon'ble Justice Shri Nitin Borkar, Bombay High Court, Hon'ble Shri Pramod Kumar, Vice-President, ITAT, CA Ketan Vajani (President), Ajay Singh, Advocate (Advisor), CA Anish Thacker (Imm. Past President), Ms. Niyati Namkad, Advocate (Vice-Chairperson) and Ms. Varsha Galvankar (Imm. Past Chairperson)



CA Ketan Vajani (President) giving his opening remarks at Final Round and Valedictory Function.



Hon'ble Justice Shri Nitin Borkar, Bombay High Court addressing the students



Hon'ble Shri Pramod Kumar, Vice-President, ITAT addressing the students



2nd Best Speaker: Mr. Ronak Jain from National Law Institute University



Best Speaker:
Mr. Abhishek
Sadhwani from
Institute of
Law, Nirma
University



Runner up Team: JSS Law College



Winning Team: Gujarat Nation Law University



The Chamber of Tax Consultants

The Chamber of Tax Consultants



Estd. 1926

Vision Statement

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

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

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

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

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



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