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7 YEARS OF GST.... WHAT NEXT?

N K Gupta
Founding Partner

I. Simplification for the users.
II. How can we add more value?
III. Rating in GST.

GST is a comprehensive indirect tax that replaced many central and state tax that replaced many central and state taxes in India. It is levied on the supply of goods and services and is meant to simplify the tax structure by creating a unified market.

I. SIMPLIFICATION FOR THE USERS

As India's Goods and Services Tax (GST) increases to seven, there are some developments and future focus areas. Here's what's coming next –

1. **Rationalization of tax structure** – Discussions are ongoing to reduce the number of GST structures to simplify the tax structure. There are four major slabs: 5%, 12 %, 18%, and 28%, The government will consider merging some tax rates, especially 12% and 18%, to create competition. Ensuring that tariffs are in line with business and customer expectations.
   - **Rate Revisions and Rationalizations -** Periodic review and rationalization of GST rates will likely continue to address anomalies and ensure the tax rates are in line with economic conditions and consumer expectations.
2. **Easy compliance** – The GST compliance process is still considered complex, especially for small business. The government can take simple measures like reducing the frequency of refunds or further improving the customer experience of the GSTN portal.
3. **Dispute Resolution** – Strengthening and simplifying dispute resolution under GST for more effective handling of complaints will be the focus area. The competition has taken place over the last seven years.

The journey of GST is still evolving, and the government's focus will likely be on addressing challenges that have emerged over the past seven years.

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II. HOW CAN WE ADD MORE VALUE?

Adding more value to the Goods Services Tax (GST) can be approached from different angles, whether you're a taxpayer, a business owner, or a government policy maker.

1. **Increased Transparency** – Tax authorities will have a better understanding of the financial position of the business. This will allow for a better comparison of GST returns with actual financial statements, thus reducing cases of tax evasion.
2. **Enhanced Tax Compliance** – Businesses will be more careful when filing GST returns because they know that tax authorities can easily detect discrepancies in the balance sheet and GST returns.
3. **Ease of Audits** – Tax authorities will find it easier to conduct audits and assessments, and having a balance sheet will allow for quick matching of returns.
4. **Potential Discrepancies** – Businesses may be subject to fines or additional scrutiny if there are discrepancies between the balance sheet and the GST return.
5. **Administrative Law** – This will have an additional impact on businesses and banks so they can ensure their information is accurate and up to date.
6. **Confidential Information** – Confidential information may be exposed as important financial information may be shared with government agencies.

Such a policy would likely aim to improve tax compliance and reduce fraud, but it would also require businesses to be more meticulous in maintaining their financial records.

III. RATING IN GST:

Introducing a customer feedback or rating system as part of the Goods and Services Tax (GST) framework could have several potential impacts, both positive and negative.

Positive Impacts

1. **Transparency** – Feedback makes the entire GST process transparent, allowing businesses to better understand customer satisfaction with their rates and tax policies.
2. **Increase compliance** – Businesses are more likely to comply with GST rules and regulations if they know they have a feedback platform that can greatly impact their reputation.

3. **Customer-Centric - Approach** - This system can encourage businesses to focus on customer service by ensuring that GST practices are clear, accurate, and efficient for customers.
4. **Data for Policymakers** – The government can use data input to identify areas where the GST system may be causing problems for consumers, allowing for more informed decision–making on changing the Law.
5. **Enhanced Trust** – If customers believe their feedback is being taken into account, they will have more confidence in your business, which can lead to a decrease in their trust in the system.

Certain factors could negatively impact the GST rating system, so the government should focus on these areas and take initial steps to regulate the systems effectively.

1. **Operational Complexity** – Implementing and maintaining such a system would increase the complexity of the GST framework and would require significant resources to manage.
2. **Potential for abuse** – In some cases, feedback can be maliciously misused by competitors or individuals, leading to unfair sanctions or bad business actions.
3. **Increased Compliance Burden** – Businesses may feel the added pressure of managing customer feedback on top of existing GST regulations, which can be challenging, especially for small businesses.
4. **Contextual Issues** – Responses to customers can be subjective and may not reflect the business's compliance with GST norms. This can lead to bias.
5. **Impact on GST refund** – If the refund is somehow linked to the GST refund, it will complicate the application process and delay the business if it needs to resolve customer ratings or complaints.

Observation

While feedback can improve the GST process by making it more transparent and customer-friendly, it can also create issues such as hard work and torture.

Conclusion

The main focus of GST, once it is implemented in India for seven years, will be on simplifying the tax structure, improving the compliance process, and strengthening the resolution system. These improvements are necessary to improve the process, increase efficiency and customer satisfaction, and reduce the burden on the business and consumers while ensuring that the business continues to support growth. A higher rate can reduce tax evasion and facilitate control. However, it also increases the administrative burden on the business and increases the confidentiality of information. Measuring this index is important to ensure that these regulations are effective while maintaining business confidence and ease of compliance. However, it also brings with it issues such as increased labour costs, the potential for fraud, and increased entrepreneurship. Careful implementation and management are essential to balance the benefits and potential drawbacks and make the system more efficient for the entire GST process.

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AUTHOR'S VIEW- A RUNDOWN ON AI

P C Vaish
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FUTURE OF AI: CHAT GPT

Artificial Intelligence (AI) has made significant strides, with OpenAI's GPT (Generative Pre-trained Transformer) technology leading the charge. The latest version, GPT-4, has demonstrated remarkable abilities by performing exceptionally well on challenging exams such as the US Bar and SATs. ChatGPT, a chatbot based on this advanced technology, is designed to generate human-like responses using Natural Language Processing (NLP). This technology allows ChatGPT to understand and generate text by analysing a vast array of sources, including textbooks and websites.

In practical terms, ChatGPT is a powerful tool for various fields, including law. It can assist in retrieving relevant legal information, analysing legal documents, identifying potential issues, and ensuring compliance with regulations. It can also aid in drafting legal documents and answering common legal questions. While ChatGPT offers significant time-saving advantages—potentially handling around 60% of legal work—it should not replace human expertise entirely. The nuanced judgment and experience of legal professionals remain crucial.

ARTIFICIAL CHAT BOTS MAKING A DIFFERENCE

AI chatbots have become invaluable in the legal profession, helping lawyers manage their workloads more efficiently. These chatbots can handle a variety of tasks, from routing clients to the right lawyer to automating document drafting and scheduling consultations. They also assist with client intake by capturing and analysing case details, addressing questions, and automating repetitive tasks.

The use of chatbots in legal practice has the potential to improve client engagement and streamline administrative processes, bridging the gap in access to justice. However, their implementation must be carefully managed to avoid potential issues. While chatbots can enhance efficiency, they cannot replace human qualities such as creativity, emotional intelligence, and ethical reasoning. A balanced approach that combines AI capabilities with human expertise is essential.

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TECHNOLOGICAL REVOLUTION: INDIAN JUDICIAL SYSTEM'S PASSIONATE PURSUIT OF THE ULTIMATE GAMECHANGER!

The Indian judiciary is embracing technological advancements to enhance the efficiency and accessibility of the legal system. AI tools are being explored to improve case resolution, enhance information access, and break down language barriers. A notable example is 'DoNotPay,' an AI-powered robot lawyer that offers real-time court support through an app. This innovation signifies a major shift in how legal proceedings might be conducted.

Despite these advancements, the integration of AI in the courtroom raises important ethical and practical questions. AI can assist in legal research and case preparation but should not replace human lawyers. The Indian judiciary is taking a cautious yet forward-looking approach, aiming to balance the benefits of AI with the need for human oversight and judgment.

DUE DILIGENCE WHILE UTILIZING AI IN CORPORATE OPERATIONS

As AI becomes integral to corporate operations, it is crucial for organisations to exercise due diligence in its application. This involves evaluating AI's impact, risks, and adherence to legal and ethical standards. For instance, a lawsuit against OpenAI highlights the importance of protecting privacy and using data ethically in AI training.

Robust due diligence ensures that AI technologies are used responsibly, preventing legal issues and safeguarding personal information. Companies must thoroughly vet AI technologies and partners to avoid reputational damage and financial liabilities.

STEP TOWARDS RESPONSIBLE AI: AI COMPANIES TAKE A PLEDGE FOR SAFER TECHNOLOGY

In a move towards responsible AI development, several leading US companies—Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI—have pledged to implement safety measures for AI technologies. These initiatives include watermarking AI-generated content, reporting on AI systems' capabilities, and conducting rigorous security testing.

These voluntary commitments are a positive step towards ensuring that AI remains a safe and ethical tool. The collective efforts of these companies set a standard for responsible AI development and highlight the importance of prioritising safety and ethics.

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AI'S LEGAL RENAISSANCE: ENHANCING TIME EFFICIENCY BY AUTOMATING MUNDANE LAWYER TASKS

India's judiciary is carefully exploring the use of AI, emphasising the need for human judgment in legal decisions. A recent ruling by the Delhi High Court, led by Justice Prathiba M Singh, reinforced that while AI tools like ChatGPT can assist in preliminary research, they cannot replace the nuanced understanding required for legal judgments. This ruling highlights the importance of addressing biases and maintaining human oversight in the judicial process.

INTEGRATION OF AI IN CORPORATE OPERATIONS

AI is transforming the legal profession by automating repetitive tasks, which increases efficiency and accuracy. AI tools can handle tasks such as document management, contract reviews, and legal research. This automation allows lawyers to focus on more strategic aspects of their work, such as client management and legal strategy.

Despite concerns that reliance on AI might diminish essential skills, the general consensus is that AI enhances the legal profession by making legal teams more efficient and better equipped to tackle new challenges.

INTEGRATION OF AI IN CORPORATE OPERATIONS

AI is revolutionising corporate operations, leading to more innovative and efficient business practices. The Biden administration's recent directives emphasise the need to regulate AI to ensure its safe and ethical use. Companies like Wipro are setting examples by focusing on transparent and responsible AI deployment.

As AI becomes more prevalent in business, companies must address legal and ethical considerations, such as data privacy and liability for errors. Embracing AI responsibly can lead to improved decision-making and operational efficiencies.

THE ROLE OF ARTIFICIAL GENERAL INTELLIGENCE IN CORPORATE AFFAIRS

Artificial General Intelligence (AGI) represents a significant leap forward in AI technology. Unlike specialised AI, AGI aims to perform any intellectual task that a human can, offering unprecedented speed and efficiency in data processing and decision-making.

While AGI holds great promise for transforming industries, it also raises concerns about job displacement, data privacy, and ethical issues. Balancing the benefits of AGI with responsible integration and risk management will be essential as this technology evolves.

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ARTIFICIAL INTELLIGENCE CAPABILITIES IN CORPORATE WORLD

AI is making a substantial impact on business operations by enhancing data processing, productivity, and customer experiences. AI can process vast amounts of data quickly, automate routine tasks, and deliver personalized customer interactions.

However, responsible use of AI requires human oversight to ensure ethical practices. AI cannot replace human empathy, judgment, or moral reasoning, which are crucial for effective business operations.

A 1,000-YEAR-OLD LEGAL SYSTEM NOW EMBRACES THE FUTURE

The judiciary of England and Wales has cautiously endorsed AI for drafting legal opinions, reflecting a measured approach to technological integration. While AI can assist in drafting, judges are required to maintain full responsibility for their opinions, preserving judicial integrity and human judgment.

This cautious approach highlights the global conversation about regulating AI in legal systems and underscores the need to maintain human involvement in judicial decision-making.

THE POWER OF AI: REVOLUTIONIZING BUSINESS EFFICIENCY IN INDIA

AI is driving significant changes in India's business landscape, leading to increased innovation and economic growth. AI's ability to personalise recommendations and streamline operations enhances consumer experiences and business efficiency. Initiatives like Digital India support the growth of India's AI sector, positioning the country as a potential global leader in AI.

To fully realise AI's potential, India must address challenges such as data privacy and infrastructure limitations. Investments in education and robust regulatory frameworks will be crucial for sustaining growth and innovation in the AI sector.

CONCLUSION

Artificial Intelligence is poised to reshape various aspects of society, including legal and corporate sectors. While AI offers numerous benefits, including increased efficiency and innovation, it is essential to address ethical, legal, and practical challenges. A balanced approach that integrates AI with human expertise will be key to leveraging its full potential while ensuring responsible and effective use.

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SURVIVAL OF THE ARBITRATION AGREEMENT ON THE DEATH OF A PARTY UNDER THE ARBITRATION & CONCILIATION ACT, 1996

Vijay Sharma
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PART 1: AN OVERVIEW

Introduction:

An arbitration agreement is a written agreement made by the parties to refer their disputes or claims to an alternative dispute resolution mechanism known as Arbitration instead of approaching the Court for settlement of the disputes. These are usually included in a document entitled an agreement or a deed in the form of clauses or end-up as standalone documents. Such factors make it necessary for the parties themselves to understand the prospects of a dispute evolving because the contract itself cannot be enforceable by essence of the absence of a dispute between them which makes it a kind of contingent contract but upon an uncertainty that is going to happen in due course.

Survivability of Arbitration Agreements:

One of the key issues in arbitration agreements is survivability, particularly with unexpected events ensuing such as one party dying. The question is if the arbitration agreement would bind the remaining party and also a deceased party's legal representatives or successors.

Judicial Precedents:

When one of the parties dies, courts have typically held that this does not render invalid an otherwise valid agreement to arbitrate. Reason being, the contract is not individual —rather it is a method of procedure through which disputes are solved; this methodology runs even when parties stop. In case of death the rights and obligations under an arbitration agreement shall be assumed by that party's legal heirs or successors, to maintain continuity in cases where an original member has died.

Importance in Contract Law:
This principle indicates the permanent and binding nature of arbitration agreements, ensuring that issues will be resolved according to agreed terms even when circumstances change. This ensures that arbitration will be a trusted method of resolving disputes, providing certainty and predictability in contracts.

Effect of death of a party to an arbitration agreement:
Section 40 of the Arbitration and Conciliation Act, 1996 (A&C Act)
Section 40 of the A&C Act explains how the death of a party affects the validity of an arbitration agreement and the mandate of the Arbitrator or the Arbitral Tribunal.

Meaning of Section 40 of the Act:

- Section 40 (1) - clarifies that the death of one - party must not end an arbitration agreement. Legal representatives of the deceased party would be bound by and liable under the arbitration agreement. In other words, the arbitration agreement survives even on the death of any party and can be followed up by their respective legal representatives or heirs.
- Section 40 (2) - Sub-Section (2) of Section 40 underlines that the arbitrator's authority does not end if the party who appointed them dies. The arbitrator still retains the power to settle the disagreement, allowing the arbitration procedure to proceed with the legal team of the deceased party.
- Section 40 (3) - Sub-Section (3) of Section 40 makes it clear that Section 40 does not take precedence over any current laws that could eliminate a legal claim after a person's passing. In certain areas, specific claims or rights might not continue after a person dies, and this section guarantees that these laws remain intact regardless of the arbitration agreement's validity.

Illustration:
Suppose A and B enter into a business contract with an arbitration clause specifying that any disputes arising from the contract will be resolved through arbitration. Unfortunately, A passes away before any dispute arises. B later encounters a dispute related to the contract and wishes to invoke the arbitration agreement.

Application of Section 40 of the A&C Act, 1996 in the above illustration:

- Under Section 40(1), B can initiate arbitration against A's legal representatives (e.g., A's heirs or estate executors). The arbitration agreement remains enforceable despite A's death.
- If A had appointed an arbitrator before his death, Section 40(2) ensures that the arbitrator retains their authority to resolve the dispute. The legal representatives of A will participate in the arbitration in A's place.
- Section 40(3) safeguards against conflicts with any laws that might say, for example, that a certain claim cannot be pursued after the death of a person. If such a law exists, it takes precedence over the arbitration agreement.

Relevant Case Laws:

1. **Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya (2003):** In the instant case, the Hon'ble Supreme Court of India emphasized the enforceability of arbitration agreements, by observing that they are binding and continue to apply even after changes in the parties, such as death.
2. **Datar Switchgears Ltd. v. Tata Finance Ltd. & Another (2000):** The court observed that the appointment of an arbitrator would not become voidable on the death of a party who had appointed the arbitrator. The arbitrator's mandate continues, and the legal representatives of the deceased party are bound to participate in the arbitration process.
3. **Anirudh Prasad v. Syed Abul Faiz (1960):** In this case, the Hon'ble Court had held that arbitration agreements bind the legal representatives of the deceased party, who are entitled to enforce or be subject to the same obligations and rights as the original party.

Significance:

- Reinforcement of Section 40
  This judgment underscores the application of Section 40 of the Act, which explicitly provides that the death of a party does not nullify the arbitration agreement. The rights and obligations under the agreement are transferred to the legal representatives of the deceased.
- Protection of Legal Heirs Rights
  The ruling ensures that legal heirs are not unjustly deprived of the right to resolve disputes through arbitration, even when the original arbitration clause specifically mentions the original parties (such as partners in a partnership).

(This is Part 1 of the series of publication under the title. ….to be continued)

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INDIAN JUDICIARY – ERA OF DIGITIZATION

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PART 1 – INTRODUCTION

The e-Courts Project was conceptualized under the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary-2005". e-Courts is a pan India project monitored and funded by the Department of Justice, Ministry of Law and Justice, Government of India. Its vision is to transform the judicial system of the country by Information Communication Technology enablement of courts.

The Project's overview is-

- To provide efficient and time-bound citizen centric services in accordance with the e-Courts Project Litigant's Charter.
- To develop, install and implement efficient justice delivery systems in courts.
- To automate processes easing accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, making the justice delivery system accessible, cost effective, reliable and transparent.

CORE PRINCIPLES:

Technology must be harnessed to "Empower" and "Enable."

- Technology should not merely be about the automation of conventional practices and processes but must be a vehicle for transformation. A force, which "empowers" and "enables" all citizens.

Ensuring Access to Justice to all

- Every individual must be provided with the means to approach a judicial institution for redress and relief unimpeded by any "digital divide" or other socio-economic challenges.

Creating an efficient and responsive judicial system

- Use of technology enabling the judicial system not only to provide speedy justice but the evolution of "efficiency metrics" to monitor and map the judiciary's competencies and effectiveness.

OBJECTIVES:

The e-Committee of the Apex Court, which overseas the implementation of the Project, is guided by the objectives:

- Interlinking of all courts across the country
- ICT enablement of the Indian judicial system
- Enabling courts to enhance judicial productivity, both qualitatively and quantitatively.
- To make the justice delivery system accessible, cost-effective, transparent and accountable.

Phase I & Phase II of the project focused on ensured installation of hardware and software and updation of installed systems in all courts and court complexes across the country.

Launched post Covid, in 2022, Phase III of the e-Courts project envisions a judicial system that is more accessible, efficient and equitable for every individual who seeks justice, or is part of the delivery of justice, in India.

It envisions additional infrastructure for the judicial system that is natively digital, while improving existing physical processes. It does not merely digitise paper-based processes, it transforms processes for a digital environment. Phase III will enable any litigant or lawyer to file a case from anywhere, at any time, without having to go to multiple windows in the premises of any specific court. It seeks to create a reality in which lawyers and litigants can effectively plead their cases with certainty of hearings, and judges are able to adjudicate fairly, through optimal hearings: video or audio, in-person or in writing; synchronous or asynchronous. It intends to create a system in which administrative processes such as collection of different kinds of fees and rote applications are simplified because technology enables it. It seeks to put in place an intelligent system that enables data-based decision making for judges and registries when scheduling or prioritising cases and allows for greater predictability and optimisation of capacity of judges and lawyers. Build a “smart” system, in which registries will have to minimally enter data or scrutinise files owing to foundational capabilities of data connected through leveraged technology. Design a system that integrates alternative means of dispute resolution into the judicial process, such that they are seen as extensions of the courts themselves. A system that combines the vast body of judicial data to foster legal literacy and furnish information on remedies to an aggrieved person at the click of a button. A future of macro data-driven decision making enabling targeted interventions and resource allocation both on the judicial and administrative side.

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COVID-19 has amplified the need to strengthen digital capabilities and has provided the steppingstone to an unprecedented opportunity for change. But such a change cannot be achieved without adopting a radically different approach from that adopted in Phase I and II, while building on its foundations. Given the large, diverse and constantly evolving needs of different users and the constant evolution of technology, dispute resolution must not just remain as a sovereign function, but evolve as a service: to mitigate, contain and resolve disputes by the courts (in discharge of their sovereign function of justice administration) and a range of public, private and citizen sector actors (alongside courts). To achieve this, it is critical to adopt an 'ecosystem approach' that supports scale, speed, and sustainability. Rather than focus on developing all the solutions itself, Phase III will curate the right environment and infrastructure for solutions to emerge rapidly from the ecosystem to create a multiplier effect for change. It can achieve greater adoption and impact by leveraging the collective strength of the ecosystem.

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SECTION 32A OF IB CODE, 2016

Jatin Sehgal
Sr. Partner

The Insolvency and Bankruptcy Code 2016 has proven to be a game changer in legislation regarding insolvency and bankruptcy in the Indian corporate realm. Where just a decade earlier, the insolvency of any company used to take an average of roughly 20 to 25 years, under the current Code, this time has been reduced significantly. However, despite its pros, IBC 2016 is still relatively new legislation and is still evolving rapidly to better adjust to the Corporate landscape in India. One such Section under the code is Section 32A, which is often misunderstood or taken advantage of.

This section states that the liability of the Corporate Debtor with respect to the offences committed prior to the insolvency commencement date shall stand extinguished, and the Corporate Debtor cannot be prosecuted for the same offences from the date on which the Resolution Plan is approved by the Adjudicating Authority, i.e. NCLT.

Now this golden exemption comes with its own riders, i.e. it can be only awarded if the Resolution Plan results in a change of the management of the Corporate Debtor to any person who is not: Firstly, a promoter, or in the management or control of the corporate debtor or a related party of such person; Secondly, A person against whom the Authorities have uncovered any incriminating evidence suggesting that he has abetted or conspired for the commission of any offence according to the relevant investigating authority.

While the liability of the Corporate Debtor with respect to the offences cease to exist from the date of passing of the Resolution plan, the Promoters and other officials of the Company have a different fate awaiting them as they shall remain liable for the i) offences which were committed by them or ii) for the cases and suits pending against them.

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In the landmark judgment of **Ajay Kumar Radheshyam Goenka vs Tourism finance Corporation of India Ltd.,** Criminal Appeal No. 170, 171 & 172 OF 2023; March 15, 2023, the Supreme Court opined that after passing the Resolution Plan under Section 31 of IBC by the Adjudicating Authority and in the light of Section 32A of IBC, the criminal proceedings under Section 138 of the NI Act would stand terminated only in relation to the Corporate Debtor if the same is taken over by a new management. Hence, the criminal proceedings against the natural persons, i.e. Directors or Promoters or Officers in charge of the Corporate Debtor, shall continue unaffected even if the reigns of the Corporate debtor have been handed over to new management as per IBC.

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COURTS REINFORCE AO'S BOUNDARIES IN REASSESSMENT PROCEEDINGS: INVALID NOTICES AND UNSUPPORTED CLAIMS SET ASIDE IN MULTIPLE CASES

Anil Kumar Gupta
Advisor

The Delhi High Court reaffirmed, following the precedents set by the Bombay High Court in the Ranbaxy Laboratories and Jet Airways cases, that if the issue for which reassessment under Section 148 was originally initiated is dropped and does not result in an addition in the final order under Sections 147/143(3), then the Assessing Officer (AO) cannot address other issues that come to notice during the reassessment proceedings. This interpretation aligns with the application of Explanation 3, which mandates that the AO must have valid reasons for reopening the assessment under the new Section 148 regime and in block assessments.

In the case of **PCIT vs. Jaguar Buildcon Pvt. Ltd**. (Delhi High Court, 01-08-2024, ITA No. 756/2023), the court observed:

Upon review of Explanation 3 and Section 147 of the Income Tax Act, we find no reason to deviate from the legal position established in the Ranbaxy Laboratories Ltd. case. This decision was later upheld in **CIT (Exemption) vs. Monarch Educational Society** and **Commissioner of Income-tax vs. Software Consultants.**

We conclude that the intrinsic connection between Section 148A(b) and Section 148A(d) of the Act is not affected by Explanation 3. Sections 147 and 148 must be read to independently assess the validity of reassessment initiation, separate from the powers ultimately available to the AO after valid reassessment initiation.

Explanation 3, or the corresponding explanation in Section 147, becomes relevant only after it is established that the reassessment was validly initiated. These explanations apply to issues that come to the AO's notice during reassessment, contingent on the reassessment action being valid.

Consequently, Explanation 3 does not permit the AO to deviate from the originally recorded reasons for action under Sections 147/148, nor does it allow the AO to supplement or replace the foundational reasons for initiating such actions.

The Delhi High Court reiterated these principles in **Banyan Real Estate Fund Mauritius vs. Asstt. CIT** (Delhi HC, 2024) [165 taxmann.com 210]. In this case, the AO issued a notice under Section 148A(b) based on the incorrect assumption that the assessee had not filed a return. Later, the AO sought to justify reopening the assessment on the grounds that the assessee was not entitled to treaty benefits under Article 13 of the India-Mauritius DTAA. Since it was established that the assessee had filed a return and this charge was not included in the original show-cause notice, the reassessment proceedings were set aside.

Similarly, the Bombay High Court in **Benaifer Vispi Patel vs ITO [2024]** [165 taxmann.com 5] ruled that electronic information obtained under Section 135A does not constitute a valid ground for initiating proceedings under Section 148A, especially when the assessee had already explained the matter in inquiries before the notice was issued. The AO's failure to consider the assessee's explanation before issuing a notice under Section 148 led to the setting aside of the reopening notice.

Lastly, in J**aipur, Vidyut Vitran Nigam Ltd. vs Dy.CIT [2024**] [164 taxmann.com 282] (Jaipur Tribunal), the Tribunal held that interest payable on loans taken from the State Government or World Bank is not covered under Section 43B. The Tribunal clarified that interest payable to specific financial institutions, NBFCs, or scheduled/cooperative banks is covered under Section 43B but not to the State Government or World Bank. Consequently, the Tribunal directed the deletion of the disallowance confirmed by the Commissioner (Appeals) under Section 43B.

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AMENDMENTS TO FOREIGN EXCHANGE MANAGEMENT RULES: A REVIEW OF KEY CHANGES IN FOREIGN INVESTMENTS

On August 16, 2024, the Ministry of Finance, through the Department of Economic Affairs, issued the Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules, 2024 (hereinafter referred to as "the Amended Rules"). Additionally, the Reserve Bank of India ("RBI") updated its Master Direction on Foreign Investment in India, with the revisions being applicable from August 8, 2024 (the "Master Direction"). These amendments cover critical issues such as the transfer of shares through the swap of securities, investments by Overseas Citizens of India ("OCI") on a non-repatriable basis, and renunciation of rights.

Need for the Amendments

The global investment landscape has rapidly evolved, necessitating the alignment of India's regulatory framework with international best practices. Indian businesses, particularly start-ups and entities engaged in sectors requiring foreign investments, faced constraints due to outdated provisions in the Foreign Exchange Management Act, 1999 (FEMA). The amendments aim to streamline processes, eliminate regulatory redundancies, and provide greater clarity to investors regarding cross-border transactions and other modes of foreign investments. These changes are integral in fostering a more competitive and investor-friendly environment.

Key Highlights of the Amendments

ASPECT	BEFORE	NEW
Swap and Non-Cash Transactions	Equity instruments could be issued in exchange for share swaps, but secondary share transfers via swaps required prior RBI approval.	Rule 9A permits cross-border swaps of equity instruments even during share transfers, including non-cash transactions, with government approval.

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ASPECT	BEFORE	NEW
Government Approval for Share Transfers	Government approval was required only in certain sectors for equity instrument transfers between non-residents.	Government approval is now required for all such transfers, regardless of the sector, ensuring regulatory oversight.
Downstream Investments on a Non-Repatriable Basis	Lack of clarity on the treatment of downstream investments by NRIs/OCIs on a non-repatriable basis.	These investments are excluded from the calculation of indirect foreign investment. This equalisation between NRIs and OCIs brings uniformity and legal certainty to non-repatriable investments.
Foreign Portfolio Investor (FPI) Investment Limits	A 49% cap existed on FPI investments, with government approval required to exceed this limit.	The 49% cap has been removed, allowing FPIs to invest up to the sectoral cap without needing government approval.
Renunciation of Rights	No provision for non-residents to acquire equity instruments based on rights renounced by others on a non-repatriation basis.	Non-residents can now acquire such rights-renounced equity instruments, which retain their non-repatriable status.

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ASPECT	BEFORE	NEW
Renunciation of Rights	No provision for non-residents to acquire equity instruments based on rights renounced by others on a non-repatriation basis.	Non-residents can now acquire such rights-renounced equity instruments, which retain their non-repatriable status.
Harmonisation of Control Definitions	The definition of "control" varied across regulations, and the definition of "start-up company" was outdated.	"Control" is now harmonised with the Companies Act 2013, and the "start-up company" definition is updated per DPIIT notifications.
FDI in White Label ATM Operations	100% FDI under the automatic route in White Label ATM Operations was reflected in the Consolidated FDI Policy of 2020.	The allowance is now formally codified in the Amended Rules, reinforcing India's stance on facilitating foreign investment in this sector.

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Conclusion

The amendments to the Foreign Exchange Management Rules and the updates to the Master Direction mark a significant and forward-looking approach to enhancing India's foreign investment framework. These changes are particularly beneficial for cross-border share swaps, non-repatriable investments by NRIs and OCIs, and expanding foreign portfolio investments. By aligning India's regulatory framework with international standards, the government continues to foster a more favourable environment for foreign investors. This is a positive development for Indian start-ups and sectors poised for global expansion, further contributing to India's economic growth and positioning it as a competitive destination for foreign investments.

Recommendations

To further enhance the impact of these regulatory amendments, it is recommended that the government focus on streamlining procedural requirements, particularly for smaller entities and start-ups. Simplifying compliance protocols and reducing administrative burdens will facilitate smoother entry and operation for these businesses in the foreign investment landscape. Additionally, the government should establish a mechanism for continuous review and periodic updates to these rules, ensuring alignment with evolving global best practices. This proactive approach will solidify India's standing as a premier destination for foreign investment and foster sustained economic growth.

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MODERNIZING INDUSTRIAL SAFETY: NEW BOILERS BILL REPLACES CENTURY-OLD ACT, BOOSTING SAFETY AND BUSINESS EASE

The Boilers Bill, introduced in the Rajya Sabha, marks a significant shift in India's regulatory landscape, targeting the modernization of the Boilers Act of 1923. This new bill, approved by the Union Cabinet on August 2, 2024, aims to update the century-old legislation to better align with contemporary industry needs, particularly focusing on enhancing safety standards and improving the ease of doing business.

What Is the Boilers Act of 1923?

The Boilers Act of 1923 was established to prevent accidents caused by boiler explosions, which were a significant concern during that era. The Act mandated that all boilers be certified before use, with inspections covering their design, construction, and operation. To oversee these regulations, the Act created the Central Boiler Board, which worked at the state level to ensure compliance. Any failure to comply could lead to penalties, shutdowns, or even criminal charges.

In 2007, the Act was amended to include pressure vessels and introduce new safety directives. These changes were meant to address advancements in technology and the evolving needs of industries that rely on boilers.

The New Boilers Bill: What It Proposes

The new Boilers Bill is designed to replace the outdated Boilers Act of 1923, reflecting the current requirements of industries, boiler operators, and regulators. The revised bill is structured into six chapters, providing a more coherent and straightforward legal framework.

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The revised bill is structured into six chapters, providing a more coherent and straightforward legal framework. Key highlights of the new bill include:

- **Safety Enhancements:** The new bill emphasizes the safety of individuals working with boilers by mandating that repairs be conducted by qualified professionals. This is crucial in preventing accidents and ensuring that boilers are operated safely.
- **Decriminalization:** Of the seven offences outlined in the old act, the new bill proposes decriminalizing three. Instead of facing criminal charges, violators of these provisions will incur fiscal penalties. However, four major offences that pose significant risks to life and property will still carry criminal penalties.
- **Ease of Doing Business:** The bill includes measures to simplify compliance for businesses, particularly for small and medium-sized enterprises (MSMEs). By reducing administrative burdens and offering clearer guidelines, the bill aims to make it easier for businesses to adhere to boiler regulations without compromising safety.
- **Streamlined Compliance:** The new bill consolidates provisions that were previously scattered throughout the old act, making it easier for stakeholders to understand and comply with the regulations. It also delineates the roles and responsibilities of central and state governments, as well as the Central Boilers Board, to eliminate ambiguity.

Historical Background

The Boilers Act of 1923 was a response to a series of tragic boiler explosions in the 19th and early 20th centuries. Notable incidents like the Calcutta explosion of 1863, which resulted in 13 fatalities, highlighted the need for strict regulation. The act was one of the first in India to focus on industrial safety, laying down comprehensive rules for the operation and inspection of boilers.

The act has been amended several times, most notably in 2007, to keep pace with technological advancements. However, it remained rooted in a different era, with many provisions becoming outdated as industries evolved.

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Developments Under the 1923 Act

Over the years, the Boilers Act of 1923 became associated with corruption and inefficiency. Inspectors were given significant power, including the ability to shut down units arbitrarily. Despite the 2007 amendments, which introduced improvements in safety standards, the act was seen as an obstacle to doing business in India, particularly due to its cumbersome compliance requirements.

In 2014, the Ministry of Commerce and Industry initiated a move towards self-certification to ease the regulatory burden on businesses. This was further expanded in 2019 with the introduction of third-party inspections and certifications, although the act itself was not amended to reflect these changes until the recent Jan Vishwas (Amendment of Provisions) Act, 2023, which increased penalties for non-compliance.

Key Provisions and Changes

The new bill maintains the core safety-focused provisions of the original act but introduces several important changes:

- **Registration and Inspection:** Boiler owners must still register their boilers and have them inspected regularly. However, the process has been streamlined, with the new bill offering clearer guidelines and reducing bureaucratic delays.
- **Penalties and Compliance:** While the bill decriminalizes certain offences, it increases fiscal penalties for non-compliance, ensuring that businesses take safety seriously without the threat of criminal charges for minor infractions.
- **Government Roles:** The bill clarifies the roles of central and state governments, as well as the Central Boilers Board, ensuring that there is no overlap or confusion in regulatory responsibilities.

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Impact on Industries

The new Boilers Bill is expected to have a significant impact on industries that rely heavily on boilers, such as power plants, textile mills, and the pharmaceutical sector. By reducing the compliance burden and introducing more flexible regulations, the bill aims to foster a more business-friendly environment while maintaining high safety standards.

For businesses, particularly those in the MSME sector, the new bill could mean lower costs and fewer delays in getting boilers certified and inspected. For regulators, it offers a more modern and efficient framework for ensuring that boilers are operated safely.

Conclusion

The Boilers Bill represents a major step forward in modernizing India's industrial safety regulations. By updating the century-old Boilers Act of 1923, the bill not only enhances safety standards but also makes it easier for businesses to comply with regulations. As India continues to grow its industrial base, this new legislation is poised to play a crucial role in ensuring that safety and efficiency go hand in hand.

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THE IMPACT OF RECENT CHANGES TO THE ARBITRATION AND CONCILIATION ACT, 1996

PART 1

The year 1996 witnessed the passing of the Arbitration and Conciliation Act ("A&C Act"), which is perhaps one of the most impactful legislation in India for the establishment of an effective regime for the settlement of disputes other than through litigation. Over the years, several amendments have been made in order to respond to the current business needs, enhance the arbitration process and make India more competitive as a seat for arbitration. These amendments have transformed the face of arbitration in India by changing the way disputes are managed, thereby increasing the efficiency of business operations in the country.

The 2015 Amendment Streamlining Arbitration:

One of the most significant amendments to the A&C Act came in 2015, which brought new conciliation provisions that have been governed by the largely under-resourced international legal framework for dispute resolution. The amendment curtailed the role of courts in the arbitration process. The amendment also tailored the period within which the arbitration should be completed to 12 months or with an additional 6 months in exceptional circumstances. It also prohibited the courts from interfering in the arbitral awards except on the specified grounds under section 34.

The 2019 Amendment: Strengthening Institutional Arbitration:

The 2019 amendment further built upon the arbitration framework by enhancing institutional arbitration and formalizing the Arbitration Council of India (ACI). The concept of the ACI was conceived as an umbrella body constituting an assessment of the arbitral institutions and the quality control of the adjunct by listing certified arbitrators so as to enhance the standard of arbitration in India. It also provided the preservation of the confidentiality of arbitral proceedings and for the limitation of the arbitrator's liability.

The 2021 Amendment: Clarifying Enforcement:

The 2021 amendment focused on the enforcement of domestic as well as foreign awards and on the containment of enforcement stays. Before this amendment, it was possible for a Party to file an application to set aside an arbitral award, and just that move could lead to an automatic order staying the enforcement of the award and complicating matters further. According to the latest amendment of the year 2021, a stay is only issued by the court that paralyses enforcement unless it is shown on a prima facie basis that fraud or corruption exists.

The Consequences of These Amendments

1. **Speed of Resolution of Such Disputes:**
   It made the arbitration process quicker, demanding a particular duration for the arbitration and limiting excessive court involvement. This has made arbitration a more attractive option for businesses seeking a speedy resolution of disputes.

2. **Arbitration Greater Acceptance:**
   With the promotion of institutional arbitration and the independence of the arbitrators through the amendments, the arbitration system in India is made more acceptable and is in line with international practices.

3. **Reduced Judicial Interference:**
   The intervention of the Courts in Arbitration proceedings has been curtailed effectively and the court can now only interfere when there is an error apparent on the face of the record or the award.

4. **Greater Recognition and Enforcement of Awards:**
   It has made both domestic as well as foreign awards more streamlined and robust in enforcement, which not only makes arbitration look sexy globally from the investor perspective, but they can bank on spending time and money to opt for the Western method of dispute resolution.

5. **International Recognition:**
It has brought India a closer alignment with international practice as well as International Arbitration Laws, enhancing its reputation of being a pro-arbitration country.

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Q. If an Arbitral Tribunal only fixed the time for a hearing but not place, then do proceedings should be terminated due to the failure of the claimant to ask the comprising tribunal to fix the venue.

The Supreme Court of India has held that where a claimant does not request the Arbitral Tribunal to fix statutory deadlines for hearing, it will result in termination and closure. The observations of the Court were as follows:

- There is a need for strong evidence to support Implied Abandonment – The Court steered the issue that imputed abandonment of a claim could be discerned from the very fact that it must be established with clear and convincing proof. The evidence presented has to be so extreme that the only inference that can be drawn is that the claimant has relinquished his or her claim.
- Power of the Arbitral Tribunal – The AT shall set hearing dates even in instances where the claimant does not notice the requirement. The AT has the power to continue a case in terms of Section 25 of the A&C Act. If the parties do or do not appear, the AT has the power to continue with the hearing and even issue an award if there is evidence on record.
- Abandonment Cannot Be Inferred Only From No Action - The Court approached this issue on the ground that only because a claimant does not actively call for the ways of hearing to be fixed does not mean that the claimant has abandoned their claim. Courts may only reach the conclusion that a claimant has abandoned his or her claims only when the claimant has done something that absolutely demonstrates abandonment.

RELEVANCE

The decision of the Supreme Court, for that matter, is of considerable importance in the domain of arbitration law in India for a number of reasons:

- Concept Of Abandonment Is Perfected – The judgment elaborates on the lack of understanding of what abandonment of a claim in the arbitration is. It affirms that absence of participation or inactivity does not lead to abandonment of a claim and, without more, does not advance the cause of abandonment unless there are facts that the claimant intends to abandon the claim.
- pursue the claim rather than dismissing it on the basis that no claim was ever pursued.

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·Q. Under Section 37 of the Act, the Court does not have more jurisdiction than instituting whether the arbitration award can be set aside as being unenforceable as there is no statutory sanction for it under Section 34.

The Odisha High Court in **Govt. of Odisha Vs. Jagannath Choudhury**, 2024 has explained the boundaries of its authority under Section 37 of the A&C Act, stressing judicial intervention is only warranted in cases of 'patent illegality' with what other courts do.

RELEVANCE:
This case confirms once again the traditional view that courts should play a minimal role in arbitration and must not intervene unless there is an error apparent on the face of the record.

Possible Question –
What effect does the Orissa High Court's interpretation of 'patent illegality' under Section 37 have on judicial policy regarding the review of arbitration awards?

OBSERVATION
The Legislative amendments and Judicial interpretations collectively ensure that arbitration in India is more streamlined, Credible, and in line with international practices, reinforcing its role as an effective dispute-resolution mechanism. The continued emphasis on reducing judicial intervention and enhancing the arbitration process will likely attract more international commercial arbitrations to India.

(This is Part 1 of the series of publication under the title. ….to be continued)

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