

ISSUES CREATED BY THE COUNCIL OF ARCHITECTURE

A) Public Notice Issued by Council of Architecture

In the July 2013 issue of the CEAI Newsletter it had been reported under '*From The President's Desk*' about the misinformation and the misguidance being propagated by the Council of Architecture and the steps taken by your Association to correct that. It had also been reported that a Legal Notice had been served on the Council of Architecture and that Representations had been made to the Hon'ble Minister Human Resource Development and the Hon'ble Minister Corporate Affairs, Government of India and related ministries. Thereafter the consulting engineer's fraternity under the umbrella of Consulting Engineers Association of India, Indian Association of Structural Engineers, Association of Consulting Civil Engineers (India), Engineering Council of India and The Institution of Engineers (India) convened a Press Conference on 12th September 2013 at New Delhi. Representatives from the above Associations attended the Press Conference. The Press Release that was issued to all the newspaper and electronic media to give due coverage about the Press Conference is given below.

PRESS RELEASE

A Press Conference was conducted by the consulting engineer's fraternity under the umbrella of Consulting Engineers Association of India, Indian Association of Structural Engineers, Association of Consulting Civil Engineers (India), Engineering Council of India, and The Institution of Engineers (India), on 12th September 2013 at the India Islamic Cultural Centre, Lodhi Road, New Delhi 110003.

Mr. A P Mull, President of Consulting Engineers Association of India (CEA) briefed the Press about the Public Notice issued by Council of Architecture on 20th May 2013 and cautioned against being misled by assertions made by the said Public Notice dated 20.05.2013. Parts of the notice seek to misguide and the COA, by this illegal exercise of power, attempts to overreach proceedings *sub judice* before the Hon'ble High Court of Delhi in W.P.(C) No. 934 of 2012. The COA's notice asserts an erroneous interpretation of the Architects Act, 1972 which was enacted merely to provide for registration of architects and for matters connected therewith by those who wished to use the title and style of 'architect'. The Act does not prohibit the practice of architecture or consultancy by any person. Accordingly, no person is prohibited from giving advice or practicing consultancy on architectural related works by the Architects Act, 1972. The only restriction being that the person is not entitled to use the title and style of 'architect' unless registered with the COA, as per the Act.

It was further informed that the engineering associations have sent representations to the Ministries as the issue affects 40 lakhs engineers in the country.

As compared to engineers there are very less number of architects in India and one notice issued erroneously cannot jeopardize the prospects of so many professionals.

Mr. S C Mehrotra, President, Indian Association of Structural Engineers said that the structural engineers are responsible for the safety of the building as per the National Building Code. The work done by non-technical people can prove hazardous for the nation.

Dr. Uddesh Kohli, Chairman, Engineering Council of India – a federation of engineers- said

that the architects cannot supervise engineering work, whereas the architects' have a statutory body, the engineers are still pushing for the Engineers' Act, a long pending demand of the engineers for around last 30 years. All the countries have an Engineers' Act but India does not have such an Act inspite of our very consistent efforts. If we had such a legislature, then we as a statutory body could take up this issue more emphatically. It is a total apathy on the part of the Government. By not doing this the engineers are not made responsible and accountable to the public.

Mr. Amitabha Bhattacharya, Council Member, Institution of Engineers' India, added that the issue is simply that, instead of cooperating and working together, COA has chosen to issue a public notice and misinterpret the Act. In reality, Architects and Engineers have to work in unison.

A query was raised that since the Council of Architecture's notice is not against the engineers, then how could that jeopardize the profession of engineers. It was clarified that if there are five architects working in an engineering firm, they cannot take up the job of architects as the title of the company is engineering but at the same time these architects are competent to practice on their own. Hence, the notice has created doubts and has far reaching implications on the profession of consulting and professional engineers.

Dr. P. R. Swarup, D.G., CIDC also said that what COA is doing amounts to misuse of authority, which it does not really have. The COA needs to look at it as the true intent of the Act and work with other in close coordination.

While The Architects' Act, 1972 seeks only to protect the use of the title and style of an 'architect' by persons and firms of Architects and create a registry for registration of those who wish to use the title and style of 'architect', it does not prohibit other qualified persons from practicing the profession of architecture or providing architectural services. This critical distinction had been specifically debated and provided for by the Parliament and has been upheld time and again by our Courts. However, it is now sought to be systematically blurred and obliterated at the behest of the Council of Architecture and its members in order to create a monopoly of sorts.

There are several Court judgments which have upheld the competence of engineers at par with architects for architectural work based upon an interpretation of Architects Act and other facts.

This notice of Council of Architecture is also prohibiting the foreign architects from taking up work in India. Could that jeopardize the upgradation of the profession and stymieing competition.

Architects and engineers need to co-exist in the interest of the country and in their own interest. The situation and understanding in small towns is different from that in big towns and cities, hence all issues must be looked at in their correct perspective. Hence they need to withdraw the Public Notice which is erroneous and illegal based on wrong interpretations of the Architects' Act 1972.

The Associations and Institutions representing the interests of the professional engineers of India would like to caution the public in the interest of safety, health and the well being of society and environment at large to avail services only from persons who possess requisite knowledge, expertise and qualification for building and other projects.

B) Note to Clarify the Misinterpretation and Misinformation being Indulged in by COA

1. National Building Code of India:

The complexity of projects had been recognized by the National Building Code of India brought out by the Bureau of Indian Standards and it is for that reason that when it was revised (refer its 2005 edition), it incorporated integrated planning and design and also the roles, responsibilities and capabilities of architects, civil engineers, structural engineers, utility engineers, town planners and landscape architects, *et al* which could be done by multi-disciplinary firms. The National Building Code of India 2005 lays down the essential requirements of qualification and competence of each professional viz. architects, engineers, structural engineers in its guidelines, *et al*. The Code has been adopted as an integral and mandatory requirement for construction activity by most municipal corporations in India. It would be pertinent to add that the Council of Architecture is represented on the Committees that are responsible for drafting the National Building Code of India, 2005. The other members of the Committee are eminent engineers, architects, planners, scientists *et al* who in their wisdom drafted the Code so that buildings/ structures are planned and designed in an integrated and safe manner for the function they are to perform. The intent is clearly that of interactive and coordinated planning and design by all concerned so that the structure when completed is fit for purpose.

2. Emergence of the Architects Act:

The above was a fact which our law makers were also aware of way back in the 1960's when they debated the draft of the Architects Act and modified the same before passing it in 1972. They recognized that the very basis of the critical distinction between using the name and style of "architect" and those providing architectural services, is that historically, architectural works/ services were done/ provided by qualified engineers as well, particularly civil engineers. However, in the late 1960s it was mooted that those who did not have any qualification at all in the area of building and planning should not call themselves as 'architects'. Consequently, the Architects Act of 1972 was drafted and later **circumscribed only to** protect the use of the title and style of 'architect' and specifically permitted engineers and other like professionals and persons to provide similar services.

3. Intent of the Architects Act, 1972:

The **Statement of Objects and Reasons** ("SOR") of the Architects Act, which is a clear and unambiguous statement of this intent, provides, *inter alia*, as follows:-

"The legislation protects the title 'architects' but does not make the design, supervision and construction of buildings as an exclusive responsibility of architects. Other professionals like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as architects." (emphasis supplied)

Notably, the Act of 1972 **does not contain or prescribe a definition** for "architect" or 'architecture'.

4. This was a conscious choice considering that 'architecture' is the science of imagination, aesthetics, artistic beauty and space management. It also includes structural knowledge and other disciplines. Imagination, however, is nobody's

monopoly. Traditionally, therefore, amongst the best known ‘architects’, have been artists and engineers and not only those who specifically qualified as architects. Notable examples are *Le Corbusier* (1887-1965) who was not an ‘architect’ but was commissioned by the Government of India to plan and design the city of Chandigarh and other famous structures. Closer home, *Mr. Satish Gujral*, who has designed the Belgium Embassy in New Delhi and several other notable buildings in the capital, is also not an ‘architect’.

5. While introducing the Architects Bill in Rajya Sabha in 1968, it was noted that the profession of architecture **could not be restricted only** to qualified architects. The Bill was referred to a Joint Select Committee in 1969 which reportedly had to undergo a difficult task to reconcile the profession of engineering and architecture. In one of the Parliamentary debates, the then Chairman of the Joint Select Committee, Mr. M.H. Samuel informed the House that the original Bill had a **definition of an ‘architect’** which they realized **impinged upon the function of an engineer**. As a result and after some debate, the Committee came to a conclusion that it was better **not to define an ‘architect’** generally but merely confined the provisions to an ‘architect’ registered under the Act.

6. The following part of Mr. Samuel’s speech is instructive and is extracted as under:-

“This was one of the fundamental changes that the Joint Select Committee thought it wise to make. I personally have no regrets for making it and I am happy to say that the President of the Institute of Engineers and the President of the Institute of Architects both came forward with the same suggestion ... leave out the definition; let us be just registered architects. As a matter of fact, the President of the Institute of Architects, Mr. Bhalla, who appeared before the Committee was very cooperative. He wrote a letter to the Committee suggesting that this definition need not be there at all ...”

7. After approval of the amendments mooted by the Joint Select Committee, the Architects Bill was reintroduced in the Rajya Sabha in 1972. **Prof. S. Nurul Hasan, the then Minister of Education**, while introducing the Bill *inter alia* stated as follows:-

“In this register, not only those who possess the necessary architectural qualification can be registered, but also all those who have been actually engaged in the profession of ‘Architect’ for a minimum period of five years, even though they may not be possessing the architectural qualifications, can be registered. Apart from that, any engineer or other qualified person can continue to engage himself in design, supervision and construction of buildings, as long as he does not style himself as an architect.”

The Bill was accordingly passed and became an Act in 1972.

8. **Judicial Endorsements**

Thus there can be no doubt that the Architects Act, 1972 does not restrict the practice of architecture or architectural consultancy to only registered architects. This is further underscored by **judicial pronouncements** of various Courts in India. As an illustration, the following extract from Delhi High Court would put the issue beyond the pale of controversy and debate:

The **High Court of Delhi** has vide the Judgment pronounced on **23rd September 2013** in the matter of **W.P.(C) 2106/2012 – Premendra Raj Mehta and Ors versus National Building Construction Corp. Ltd & Ors** has stated that the Architects Act, 1972 does

not restrict the practice of architecture or architectural consultancy to only registered architects. Paras, 8, 9, 10 and 11 of the same are reproduced for ready reference.

8. *A plain reading of Section 37 of the Act which appears under the heading "Prohibition against use of title" would show that though the aforesaid provision bars a person other than a registered architect or a firm of architects from using the title and style; it does not prohibit him from rendering architectural services so long as he does not use the expression architect and does not describe his firm, if any, as a firm of architects. Had the legislative intent been to prevent rendering of architectural services by any person other than a person registered under the provisions of the Act, Section 37 of the Act would have been worded altogether differently. For instance, Section 33 of the Advocates Act, 1961 prohibits a person unless he is enrolled as an advocate from practising in any Court or before any authority or persons. Section 29 of the Advocates Act also stipulates that from the appointed date there will be only one class of persons entitled to practice the profession of law, namely, Advocates. Section 15 (2) of the Medical Council Act, 1956 also expressly prohibits a person other than a medical practitioner registered in any State, signing or authenticating a medical or fitness certificate, giving evidence as an expert and hold office as Physician or Surgeon or any other office in the Government or any institution maintained by a local or other authority. No similar provision is, however, found in the Architects Act. The learned counsel for the petitioners contended and in my view rightly too that such an interpretation may result in unqualified persons providing services such as supervision of construction of buildings and the constructions supervised by such persons may not be safe and economical, but, then, the remedy lies in the Parliament amending the provision of the Act so as to prohibit unqualified persons from rendering architectural services, and not in the Court taking an interpretation which a plain reading of Section 37 does not suggest. Moreover such unqualified persons, after coming into force of the Act cannot represent themselves to be architects though they may continue to provide services such as supervision of construction of buildings.*

9. *Section 4 of the Architects Act came up for consideration before the Division Bench of Madhya Pradesh High Court in **Mukesh Kumar Manhar and another versus State of Madhya Pradesh and others** [2005(4)MPHT 270] and the following view was taken:*

"There is a significant difference between the Architects Act, 1972 dealing with the profession of Architects and enactments dealing with Medical and Legal professions. Section 15(2) of the Indian Medical Council Act, 1956 bars any person other than medical practitioners enrolled on the State Medical Registers from practicing Medicine or holding the office as 'physician' or 'surgeon' in any Government Institution or other Institution maintained by any local or other Authority. Similarly, Section 29 of the Advocates Act, 1961, provides that only one class of persons are entitled to practice the profession of law, namely, advocates entered in the Roll of any Bar Council under the provisions of Advocates Act. Thus there is a clear bar on persons who are not enrolled with the State Medical Council or State Bar Council, from practising as a Medical Practitioner or Advocate.

In contrast, the Architects Act, 1972 does not prohibit persons other than those who are registered as Architects from practising the profession. As noticed above, Section 37 only prohibits any person other than a registered architect using the title and style of Architect. It does not prohibit a person, who is not a registered as an Architect with the Council of Architecture from carrying on or discharging any function that can be carried or by a registered Architect. The functions normally associated with Architects are : (i) taking instructions from clients and preparing designs; (ii) site evaluation, (iii) design and site development, (iv) design of structure, (v) design of sanitary, plumbing, drainage, water supply and sewage, (vi) design of electrification, communications, (vii) Incorporation of appropriate heating, ventilation, air- conditioning and other mechanical systems, fire detection and fire protection systems and security systems, and (viii) periodic inspection and evaluation of the construction work.

The statement of objects and reasons of the Architects Act states that the legislation is intended to protect the title of 'architects', but does not intend to make the design, supervision and construction of buildings as an exclusive responsibility of architects. It clarifies that other professions like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as 'Architects'. Thus, as contrasted from the Advocates Act and the Medical Council Act, the Architects Act merely provides for registration of 'architects' and matters connected therewith, and does not contain any prohibition against those who are not registered or enrolled performing the duties of Architects. The provisions of the Architects Act makes it clear that persons who are not registered as Architects, can carry on and discharge the functions which the Architects normally discharge, provided they do not call themselves as Architects."

10. The following observations made by a Division Bench of this Court in **The Municipal Corporation of Delhi & Ors. Vs. Ram Kumar Bhardwaj & Ors.** 18 (1980) DLT 283 are also pertinent in this regard, which read as under:

"2.....The Architects Act, 1972 sets out the qualification to be possessed by the persons to be registered as architects "under the said Act. It also prohibits persons who do not have such registration from describing themselves as architects and also deals with disciplinary action for misconduct or architects. It is, therefore, a complete enactment the effect of which is that a person cannot call himself an architect unless he is registered under the said Act. Of course, unlike the Advocates Act, which restricts the right to practice in courts only to the advocates qualified thereunder, the Architects Act does not restrict the practice by architects to persons registered under the said Act. Therefore, some persons who cannot call themselves architects may still be free to do the work which is ordinarily done by architects and they are not dealt with by the Architects Act."

11. During the course of arguments, the learned counsel for the petitioners referring to clause (b) of the proviso to Section 37 of the Act contended that since the said clause refers to the carrying on the profession of an architect the intent behind Section 37 is to prohibit such profession except by a person who is registered under the provisions of the Architects Act, 1972. The contention, in my view, is wholly misconceived. Sub-section (1) of Section 37 in general bars any person other than a registered architect or a firm of architects from using the title and style of architect. Clause (b) of the proviso excludes, from the ambit of the main sub-section, the persons who are carrying on the profession of an architect outside India and who with the prior permission of the Central Government undertake consultancy or designing work in India for a specific project, meaning thereby that a person covered by clause (b) of the proviso despite the embargo placed by sub-section (1) can use the title and style of architect while undertaking the consultancy or designing work in India, with the prior permission of the Central Government. (emphasis supplied)

Some more judgments of the Bombay and Delhi High Courts are given below:-

Indian Institute of Architects v. Pimpri Chinchwad Municipal Corporation - WP No. 4692 of 1990 - [Bombay High Court]

“In the above circumstances we are not inclined to accept the case of the petitioners that the Architects Act restricts the practice of architect to persons registered under the Act. Therefore qualified engineers who cannot themselves call as Architects may still be free to do the work which is ordinarily done by the Architects.....” (emphasis supplied)

Municipal Corporation V. Shri Ramkumar Bhardwaj & others – LPA 59/75 – [Delhi High Court]

“Of course, unlike the Advocates Act, which restricts thereunder, the Architects Act does not restrict the practice by architects to persons registered under the said Act. Therefore, some persons who cannot call themselves architects may still be free to do the work which is ordinarily done by architects and they are not dealt with by the Architects Act.” (emphasis supplied)

Smt. Meghana A. P Desai V. Union of India – W.P (C) No. 123 and 125 of 1985 [Bombay High Court]

“We already mentioned that the objectives of the Act are to promote proper, disciplined and adequate development, guided by the needs of public health, ecology and aesthetics. We also expressed our agreement with the view that, in the circumstances, the plans for development must be prepared by technically qualified persons and that it is permissible for the Government to restrict the submission and the signing of such plans to a class of qualified persons. Architects, we believe, are fully qualified for such purposes. Their education and training is indeed aesthetics and beauty oriented with the required sound knowledge of building construction expertise and technology. But are they the only class of persons who are qualified to prepare plans of development or are Engineers also equally qualified? This is the question posed by these petitions and to which we will proceed to address ourselves.

It would thus appear from the combined reading of the aforementioned Clauses (1) and (3) [of the Statement of Objects] that actually there is no substantial differentiation in the technical qualifications of Architects and Engineers and both such professionals are qualified and have the necessary knowledge and expertise to engage themselves in building construction and development activities.

In the light of the above, it would appear that both the courses of Architects and Civil Engineers have the basic qualifications required for engaging themselves in activities of construction and development.

This being so, we fail to find any intelligible differentia distinguishing the Architects from the Engineers which justifies the classification made in the Note to Rule 13, and in any event, we find no rational nexus between the said classification and the object to be achieved, i.e. a proper, disciplined and adequate development. The said classification being therefore, unreasonable, arbitrary and discriminatory is liable to be struck down. (emphasis supplied)

9. It is thus amply clear that the practice of architecture is not limited to an 'architect' only. Most of the civil engineering professionals are practicing consultancy in architectural, civil, structural, valuation, etc. and they have license from local bodies such as Municipality, Corporation, Development authorities, etc. to submit plans and statutory approvals. They designate themselves as Planners, Designers, Architectural Consultant, Architectural Engineering Consultant, etc. in the individual capacity or as a firm/ company.

Earlier there was no Act in India specifically to regulate this work and each type of local bodies were issuing license to Architects, Civil Engineers, Electrical Engineers etc. **Civil Engineers and Architects, both, were issued the same Surveyor License.**

The Civil engineers are always entitled to submit plans and proposals for approval to any Municipality or to any Municipal Corporation or any Planning or Development Authority, when he is holding valid license to do that from the said authority.

Engineers had been doing the planning, designing, supervision and construction work as their normal vocation since the beginning of organized building construction activity. The planning and designing competence of Engineers was unquestionable since centuries. The Gujarat earthquake had brought home the importance of the role of Engineers in planning and designing where investigation of damaged structures after earthquake had revealed that buildings and various parts thereof like cantilevered staircase, funny and fancy shapes had been planned solely from aesthetic point of view with total disregard to planning from earthquake resistance design requirements. Though the aesthetics and artistic beauty is desirable, safety, stability and durability is a must. The planning for aesthetics and artistic beauty cannot be at the cost of safety and stability of the structure itself. After the earthquake of 26th January 2001, the High Court of Gujarat had appointed a three member Committee of Shri J. U. Mehta as Chairman and Shri Bimal Patel and Shri R. J. Shah as other members to go into details of Scope of work, Qualifications for registration, Roles & responsibilities of various professionals and agencies in the building industry. The Committee submitted its report on 31st December 2001.

10. It is thus abundantly apparent that the planning & designing of buildings & structures cannot be given in the hands of those professionals who do not understand its basic requirements for safety, stability, durability and economy just for so called aesthetics. Architects are professional consultants for designing space utilisation alone. The other

aspects of construction such as town planning, landscape designing, interior designing, technical specifications, designing, estimations, structural designing - foundation and superstructure, construction supervision, execution, etc. must essentially be headed and led by qualified professionals/ engineers who have training, in-depth knowledge, experience and capability to handle these fields.

11. **Circulars by Ministry of Corporate Affairs and the High Court of Delhi proceedings**

The Ministry of Corporate Affairs, Government of India had issued a Circular dated 10-10-2011 probably borne out of misinformation through the representations received by it (the circular starts “*I am directed to say that a number of representations have been received in the Ministry*”). While the first part of the notification correctly records that as per the Architects Act, 1972, only a registered Architect can use the title and style of Architect, the last paragraph issues a directive, even though interim in nature, **to stop incorporation of companies/LLPs by the Registrar of Companies & Registrar of LLPs** where one of the objects of such entities is to carry on the business of Architect. The Circular was clearly not final and conclusive as it specifically mentioned that “*the matter is under examination in consultation with the department of Legal Affairs*” and that the view of the Central Government was “*pending finalization*”.

Since the issue was still inchoate and not crystallized at that time, the matter was not agitated by engineers. However, when the RoC was made a Respondent by an architect Mr. Sudhir Vohra in a Writ Petition before the High Court (*Pending proceedings in WP (C) No.934 of 2012 – Sudhir Vohra versus Registrar of Companies and Ors. in the High Court of Delhi-Orders dated 15-02-2012 and 07-05-2012*), a direction was passed by the Hon’ble Court on 15-02-2012 to strictly implement the circular issued vide Order dated 15-02-2012, presumably based on the submissions of the parties including the Petitioner (who is an architect).

Using this as a foothold, the Ministry issued another circular dated 01-03-2012 stating that for incorporation of new companies / LLPs, having one of their objects as the business/profession of architecture **prior in-principle approval/ NOC** was required from the concerned regulator.

There are two important legal issues which arise here:

First, the power of the Ministry of Corporate Affairs to issue either of these two circulars and seek to expand the scope of the Architects Act, 1972 beyond its stated ambit and much beyond what the Parliament intended, and;

Second, the directive in these Circulars are not only *ultra vires* the Act of 1972 but also violative of the right to practice one’s profession as enshrined in Article 19(1)(g) of the Constitution of India. This is precisely what the Joint Select Committee prevented from happening by restricting The Act to ‘architects’ registered under The Act, not defining architecture and incorporating specifically that other persons could also practice architecture.

Since the Hon’ble High Court had issued a directive on 15-02-2012 to implement the Circular dated 10-10-2011 without having the assistance or perspective of other professions which are affected, the associations & institutions representing the interests of the practicing professional engineers have taken steps to challenge the same.

12. To Summarize:

- i) Projects need to be executed by a multi-disciplinary team with a competent and knowledgeable team leader, which role is clearly not that of an architect.
- ii) The Architects Act, 1972 does not *ex facie* prohibit the practice of profession of architecture to those not registered as architects. In fact as is clear from the SOR and judicial pronouncements the intention of the legislature was to permit other professionals such as engineers to carry on the business of planning, design, supervision and construction of buildings unhindered by the Act.
- iii) The Act of 1972 does not include a provision for incorporated entities like companies or LLPs. Section 36 and Section 37 of the Act prescribe restriction to person or for “firm of Architects” and that too only for use of the term “architect” as part of title and style.
- iv) There cannot be a restriction on an incorporated company or LLP to undertake practice of architecture as part of their larger trove and offering of consultancy services. This is extremely common and prevalent with consulting engineering companies and those undertaking construction projects. It is common that a large multidisciplinary entity may have a registered architect engaged as an employee or a consultant providing architectural services for and on behalf of the company to the company’s clients.
- v) For an incorporated entity to be restricted from even carrying on the practice of architectural consultancy as one of their services would be violative of Article 19(1)(g) of the Constitution of India.
- vi) Civil and structural engineers in particular are either equally qualified or better qualified to provide advice on planning, design and supervision and construction aspects in building activity. This is recognized categorically by many Municipal Corporations, planning and development authorities and statutory bodies.