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India: Amendments to The Architects Act, 1972: An Idea Whose Time Has Come

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An analysis of the latest judgement of the Supreme Court, and a plea for amendments to the Architects Act

March 2020 will go down in world history. Covid 19 grabbed headlines as well as the entire space for public deliberations and discussions. In the pandemonium about the pandemic, the Supreme Court's judgement *Council of Architects V/s. Mukesh Goyal & Ors.*, passed on March 17, 2020, got lost. Though much debated in the close circles of architects, a wider audience may be necessary, as it impacts the entire building and construction sector. This article attempts to decipher the judgement.

Can non-architects practice architecture?

Yes, as per the judgement, individuals not registered under the Architects Act, 1972 can practise architecture and its cognate activities. However, such individuals cannot style themselves as architects nor use the title of 'architect'. Naturally, a large faction of architects feels short changed. It is argued that if the practice of law is the sole preserve of advocates, medicine the sole preserve of doctors; architecture should, on the same premises, be the sole preserve architects. The Hon'ble Supreme Court examined the Architects Act, 1972 as well as several case laws on the matter and laid bare the cracks and services in the said argument.

Cracks and services:

The term architect under the Act has not been defined as a person who designs buildings, plans spaces, supervises construction etc. etc. According to the Act, an architect is someone whose name appears in the register of architects under the

provisions of the said Act. Broadly, the scheme of the Act is such that those individuals desiring to use the style and title of an architect, must get qualified from a recognized institution, have their names entered in the register, and comply with the code of conduct stipulated by the Council of Architects. A comparison between Section 37 of the Architects Act and similar sections in the Advocates Act (Section 29), and Indian Medical Council Act [Section 15 (2)] will certainly clear the air.

Extract from Section 37 of the Architects Act:

*"...no person other than a registered architect, or a firm of architects **shall use the title and style of architect...**"*

Extract from Section 29 of the Advocates Act:

"29. Advocates to be the only recognised class of persons entitled to practise law —Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons **entitled to practice the profession of law**, namely, advocates.

Extract from Clause 2 of Section 15 of the Indian Medical Council Act:

"(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register, —

(a)

*(b) **shall practice medicine in any State.**"*

A plain reading of the sections listed above, bear out that the practice of architecture is not prohibited by the Architects Act. However, only a registered architect can use the title and style of architect. No ingenuity of interpretation of statutes can cast any other meaning over the unambiguous language of the legislation.

In deference to the submission that one of the objects and purpose of the Architects Act was to prevent untrained individuals from designing, supervision, and construction of buildings, the Hon'ble Supreme Court examined the Statement of Objects of Reasons given by the legislature at the time of passing of the Act. The following extract from the Statement may be noted.

"3. The legislation protects the title "architects" but does not make the design, supervision, and construction of buildings as an exclusive responsibility of architects. 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."

In its lucidly reasoned judgement, the Supreme Court thus expatiated the full import of the Statement.

"Crucially, the legislature chose to define an architect as an individual registered under the Architects Act and not as an individual practicing architecture or any cognate activities. Thus, the legislature limited the regulatory regime created by the Architects Act

to the first class of individuals. In protecting the public from the risk of the second class, untrained individuals, the legislature had two options: first it could bar this second class of individuals from engaging in the profession altogether (as it had done with physicians and advocates); or alternatively it could prevent this second class of individuals from calling themselves —Architects. The Statement of Objects and Reasons makes it clear that the legislature chose the second option and in fact went to great lengths to clarify that choice.

There is no doubt that architecture is a specialized branch of knowledge. Registered architects and advocates are answerable to their respective disciplinary bodies for negligence. They can be stripped of their livelihood and right to practice if:

- a. they are convicted of an offence involving moral turpitude.
- b. proved to be an undischarged insolvent; or
- c. adjudged to be of unsound mind.

Nevertheless, there is a lot of heart burn. Responsible and qualified architects work within the confines of a strict code, nor can they advertise their services. Being qualified appears to be a heavy cross rather than a proud privilege.

Time for Change:

Every year 20,000 architects graduate from 400 institutions across India. Wouldn't it be better for them to learn on the job? The answer is not hard to find. No outfit would entrust architectural assignments into untrained hands. The role of an architect is not about the size, length, and position of columns and beams. He designs spaces. His role includes:

- a. **Concept:** He address one fundamental question: how can I improve the life of the inhabitants of the project? He also provides the solution which enhances the site and surroundings by applying design thinking and process in plans, elevations and details and incorporating appropriate materials and technology.
- b. **Context:** His designs and plans are mindful of the purpose of the project: residential / commercial / institutional. The geography of the site. And most importantly, the financial capacity of the project proponent, and the cost & profitability of the project.
- c. **Content:** He draws on the inputs from structural engineers, landscape designers, contractors, revisits the look and feel of the project. After much labour, he comes up with good for construction drawings.

Between good-for-construction drawings and as-built drawings; only he can effectively supervise the project as it he who conceptualized it. His role ends when he hands over the project to a Facility Manager with a detailed manual on how to maintain it.

The Supreme Court's judgement does not lay down a new law. It is a well- known fact. Yet, the building- and - construction- market has consistently placed a high premium on the title of an architect. Even our law makers have an admirable trust

and confidence in architects. The Real Estate Regulation and Development Act, 2016 insists on certification by an architect at every stage of construction. There is a crying need to, at the very least, carve out an exception in favour of architects as far as construction of complex and multistoried buildings is concerned. It is an idea whose time has come.

The judgment will not whittle down the faith the industry entrusts in an architect's ability. However, in the meantime, the legislature can perhaps respond to the social change.

To quote Victor Hugo: "*No army can stop an idea whose time has come. Nothing is as powerful as an idea whose time has come. There is one thing stronger than all the armies in the world, and that is an idea whose time has come.*"

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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