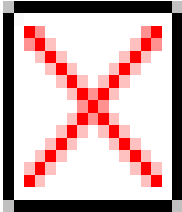


PAN for Life Time! Time to go for 'pan & scan'!

THE POLICY LAB (TPL-13)

OCTOBER 21, 2022

By J B Mohapatra



RIGHTS

and benefits guaranteed under those rights, whether constitutional or fundamental or statutory, are rarely absolute and unfettered, and always remain subject to reasonable limitations to achieve a greater public good. If the legislative goal to introduce limitations is sufficiently justified, and there is proportionality in applying those limitations with least impairment to those rights except when these become undeniably necessary, there always is critical support and societal acceptance of these limitations. From constitutional rights as sacrosanct as your rights under guaranteed universal adult suffrage to statutory rights (considered mundane in comparison to constitutional rights) such as your right to have a licence to drive a vehicle or to have and retain a passport or to incorporate and run a company, each one is circumscribed with reasonable limits either to enhance the salutary effects of the main provisions of law or to regulate the deleterious effects of misapplication of law. Few examples of provisions of relevant laws will clarify further:

Article 326 of the constitution, which reads as follows:

"Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.- The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election "

clearly prohibits anyone with specific and socially accepted intelligent differentia based on age or unsoundness of mind or past records of crime and corruption from a constitutionally guaranteed right of voting. The pressing and substantial object of denying the rights of voting in respect of persons convicted of a crime etc and thereby from any part of direct or indirect law making process fairly answers both the questions of the object behind the limitation and their proportionality.

So is the case while running a company or being director of a company. Incorporation of a company does not guarantee its continuation as an incorporated entity unless it fulfils the common minimum criteria that incontrovertibly justify its existence as an incorporated entity. Section 248(1) of the Companies Act, 2013 reads as follows:

"(1) Where the Registrar has reasonable cause to believe that--

Â (a) a company has failed to commence its business within one year of its incorporation;Â 1 [or]

****Â *Â *Â *Â ****

Â (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company underÂ 3 [section 455; or]

Â [(d) -----

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.]

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. "

Likewise, if a person is of unsound mind or is an undischarged insolvent or is convicted of an offence and certain other similar infraction and specific disability as recognised in law, section 164(1) of the Companies [Act, 2013](#)

would debar him from appointment as a director of a company. Even reappointment as a director of a company under clear vicarious liability implications is denied in case the company fails in complying with certain regulatory compliances under that Act. Section 164(2) reads as follows:

"(2) No person who is or has been a director of a company which-

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so."

Even passports issued under the Passports Act, 1967 can be refused, suspended or revoked on severest of grounds. Some grounds for refusal of passports in terms of section 6 of that Act include apprehension that the person is likely to engage in activities prejudicial to the sovereignty and integrity of India, or his presence in the other country is detrimental to security of India or will adversely impact friendly relations with a foreign country or that issuance of passport will not be in public interest. An already issued passport can be impounded or revoked under section 10 of the Act on grounds such as convictions involving an offence of moral turpitude, or pendency of any proceeding before a criminal court etc.

Driving licences under the Motor Vehicles Act, 1988 can be revoked under section 16 of that Act on grounds of disease or disability. Licencing authority furthermore can disqualify a person from holding a driving licence or revoke such licence if already granted under section 19 on grounds such as (a) is a habitual criminal or a habitual drunkard; or (b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or (c) is using or has used a motor vehicle in the commission of a cognizable offence; or (d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or (e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or (f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or (g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of section 22; or (h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care.

While many such reasonable limitations figure in the Income Tax Act (IT Act) as well, for example while registering a trust or an institution under section 12AA or seeking its continuance (fulfilling conditions of genuineness of activities, compliance with requirements under any other law and not falling within the mischief of 'specified violations' under section 12AB); or a political party intending to enjoy tax exempt status under section 13A; or entitlement to weighted deduction for in-house research under section 35(2AB); or for obtaining registration under section 80G of the Act, an exception is explicitly implanted in framing of section 139A which governs allotment of permanent account number (PAN) to a person affording the person numerous benefits from opening of a bank account to generally standing up as an acceptable photo identifier and enabling the Income Tax department (ITD) as well to arrange and link relevant person specific data including tax payment, TDS/TCS/, return of income, specified transactions in the departmental data base.

Once allotted, PAN is valid for life time of the PAN holder throughout India. E

cept surrender of duplicate PAN, PAN of the deceased, PAN on dissolution of a firm or a company, all actions initiated by the PAN holder

himself and resolved by the systems directorate through specific PAN instructions, the only occasion where ITD through legislation/ Rule and on its own can render a PAN inoperative is when a PAN holder fails to intimate his Aadhar number under section 139AA(2) and under Rule 114AAA empowers the ITD to render his PAN inoperative. Barring this Rule 114AAA, there is no explicit or implicit intentment either in the Act or the Rules to suspend or temporarily revoke or permanently cancel a PAN on any other basis.

PAN is mandatory in all taxable income cases, charitable trusts required to furnish returns of income under section 139(4A), cases where receipts from business or profession exceed Rs 5,00,000, in cases of specified financial transactions, non-individual residents and persons associated with them in case financial transactions entered into by them in a year exceed Rs 2,50,000. Entities such as a political party under section 139(4B), funds, associations and institutions under section 139(4C), university or a college under section 139(4D), business trusts under section 139(4E) and investment funds under section 139(4F) who otherwise are mandatorily required to furnish income tax returns necessarily must seek and obtain PAN. Deductees suffering TDS under chapter XVIIIB and buyers/licencees under section 206C are also required to hold PAN. In addition, under section 139A(3), any person can voluntarily seek and obtain his PAN. Compliance requirements under the IT Act for a mandatory PAN in certain situations and cases coupled with customer due diligence requirements for various other services including banking and serving as a general multi-purpose photo identification document, have all contributed to the total allotment of 50.46 crores PAN (up to February 2022) of which 97.75% alone are held by individuals.

The sheer volume of PAN allottees while on one hand testifies to the penetration and awareness of general population to compliance requirements under various laws, this simultaneously exposes system's vulnerabilities in certain instances to fraud and rogue activities particularly in the important legs of money laundering that is, while smurfing and layering, when some PANs (in names of persons of little or no means, typically money mules, who allow their accounts to be used as a temporary storage space and in effect a transit point for conversion of illicit money before its eventual injection into the system) across many states and regions are artfully employed for conversion and placement of laundered money while constantly masking the source, rendering the linkage detection tools largely otiose in majority of cases. Investigation into any professional money laundering and conversion of illicit money through this proxy network of willing and largely unsuspecting accomplices is more a logistical and less of a legal challenge, keeping in context the geographic spread across which money is routed and rerouted and large number of active PAN linked bank accounts of these accomplices lying in distant jurisdictions.

Intrusive interventions in all cases of these accomplices and abettors (sometimes known as entry-providers) to prove criminality or make out a civil case while time-consuming and logistically challenging, whether or not an investigation successfully ends up in nailing charges of criminality or adverse civil consequences on part of these entry providers/ money mules, no legislative or administrative counter-measure as yet exists to identify and quarantine the rogue PAN, off-board those from ITD's PAN database, and disempower them from further corroding the system with illicit money. As it is, PAN is as much a requirement for filing a tax return as it is for specified financial transactions under Rule 114B, 114BA, 114BB in wide ranging financial activities ranging from purchase of vehicle to obtaining a credit card, opening a demat account, payment to a hotel, purchase of units, for obtaining a demand draft, making a time deposit, for sale and purchase of shares or an immovable property, cash deposit or withdrawal from a bank account beyond a threshold limit, to opening of a current or a cash credit account. In absence of a statutory sanction for making these rogue PANs inoperative, they continue to remain a clear and present danger to further contaminate and corrode the entire universe of our financial system.

As a policy alternative, off-boarding a rogue PAN from PAN database for established and proven contumacious behaviour is no doubt a blunt instrument, but is a visible and less expensive alternative to intrusive interventions and better than doing nothing.

A rigorous risk-benefit assessment for counter-posing the probability of direct loss of taxes in the event of disablement of PAN and the overall estimate of damages to the system by the PAN had it been allowed to operate without fetters should be first in the priority while designing an appropriate counter measure as also ensuring rights of rebuttal of affected party in the process of disablement of his PAN. Lastly, while enablement for de-registering a PAN for good, credible and sufficient reasons would necessarily be through a legislative route, ability to implement and run a smart sanctions regime to identify and de-board rogue PAN, which are antithetical to the discipline and norms of a regulated financial system, will require far more robust and efficient intelligence support and coordination than what have been presently configured.