



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **THE NEED FOR REFORMATION IN THE CONDOMINIUM SELF-GOVERNANCE LAWS OF INDIA**

AUTHORED BY: DURGA VALLINAYAGAM

Affiliated with Christ (Deemed to be) University Delhi NCR Campus

## **Abstract**

This paper seeks to highlight the lack of comprehensive laws to govern apartment owners' associations in societies and to protect apartment owners. The crimes usually committed in these spaces are of a financial nature where the maintenance money contributed by the whole society is siphoned, elections are not held for years or collectively contributed money is siphoned under the guise of maintaining the society. The acts governing these issues lack comprehensiveness and pragmatism. The solutions to these issues faced by the majority of the middle-class population in the nation as high-rise buildings dominate the housing market are the meagre fines imposed as opposed to the crores of siphoned money, or inaction by the executive owing to no separate body existing for the governance of condominiums alone lead to crimes happening on a daily basis going unnoticed.

The author of this paper seeks to identify the different crimes that take place and the systemic issues that let such crimes proliferate without any checks and balances.

## **Introduction**

The Apartment Owners Association (AOA) is a voluntary organisation that is formed in every apartment for the welfare of the residents of the apartments and owners of the apartments as well as the office bearers. The association oversees the maintenance services and regulation enforcement in the society. It also enjoys several legal rights if registered under the State's Society Registration Act. On the formation of an AOA certain bye-laws are enacted on the basis of which the residents of the apartment consent for the apartment to be governed. Byelaws are considered the local constitution of the society or locality, the Grundnorm. Every Apartment Owner Association creates the bylaws as per their respective society in consonance with the residents of the society. The contributing factors include the nature of the society, members, size of the society, location and purpose. The registration of these associations happens under the Society Act. These associations are not considered a government body under any acts governing

condominium spaces, which leaves out direct government interference in case of non-adherence to the bylaws. The residents have to reach out in case of an omission on the part of the office bearers to the registrar themselves which is a time-consuming process within which time time-sensitive crimes of a financial nature would be successfully completed. Most of the time the registrars don't have enough time to deal with each individual society which leads to floundering of the bylaws even more commonplace and the infringement of the rights of innocent apartment owners leaving them with no quick and simple recourse other than police complaints or litigation. There is no system in place even after having a multitude of acts converging to govern apartments and condominiums.

### Keywords

Apartments, condominiums, apartment owners' association, resident welfare association, The Societies Registration Act<sup>1</sup>, State Apartment Act<sup>2</sup>, and Co-operative Societies Act<sup>3</sup>.

### Objectives

1. To understand governance in Apartments, societies and condominiums
2. To make a point of the various laws in the condominium self-governance space
3. To analyse the convergence of these laws
4. To critically analyse the relation between the omissions by the RWA and the AOA and the punishments prescribed in the act
5. Solutions to better the model of self-governance in condominiums

### Statement of problem

The governance of condominiums or apartments has been left to the violation of the residents or such condominiums, a multitude of laws regulate this space but not in a comprehensive manner. The Societies Registration Act, Companies Act, State-Apartment Act, RERA Act, State-apartment promotion of construction, ownership, and Maintenance Act all these acts talk about the formation of associations for the maintenance of condominiums, but the penalties placed for omissions or non-performance of the part of the office bearers are negligible or non-existent. These associations are not considered a government body as they form a voluntary basis shielding them from RTI claims as well. Any non-observance of the by-laws governing the condominiums

---

<sup>1</sup> Societies Registration act, 1860

<sup>2</sup> UP Apartments act, 2010

<sup>3</sup> Co-operative Societies Act, 1912

by the office bearers if brought to the notice of the registrar is still not acted upon owing to the massive workload managed by the registrars leaving a gaping lacuna for financial crimes and non-observance of natural laws of justice to take place out in the open.

#### Literature review:

There is not an abundance of literature in the Indian context for the understanding of the practical application of local condominium self-governance laws or the crossover of multiple laws in the area of self-governance and municipal and state and central law application in the sphere of resident welfare. Though there is an abundance of international papers and articles about the same and many domestic news articles and judgements which shine a light on the tumultuous condominium self-governance space in India.

##### (1) Amnon Lehavi<sup>4</sup>

This article undertakes a comparative analysis of the self-governance or private collective action as the author calls it in 3 different countries, namely The United States, Russia and China and charts a course of how urbanization came to be and the advent of the apartment and condominiums. The transition from public governance to private self-governance in these condominiums and the legal, social and cultural issues it brings along with it. The author concludes by mentioning that for any legal reform to happen in the condominium self-governance space, all aspects must be taken into consideration as this is a space where multiple disciplines converge. There is sparse literature on Indian condominium laws from this perspective.

##### (2) Evan McKenzie<sup>5</sup>

this article strives to highlight the failures of CID (common interest development, a term used in the United States homologous to RWAs in India) including financial fraud and embezzlement etc. the article further mentions the failure in associations' capabilities to manage finances consequently harms all the resident owners. The article while citing many cases of embezzlement and mismanagement argues the need for increased state oversight. This is a perspective that can be taken up for the Indian context as well.

##### (3) Ron Carlee<sup>6</sup>

This article talks about how HOAs are effectively private governments now and calls it's the latest iteration of an idiosyncratic local form of governance. The author goes on to explain the

---

<sup>4</sup> Amnon Lehavi, Law, Collective Action and Culture: Condominium Governance in Comparative Perspective, 23 Asia PAC. L. REV. 5 (2015).

<sup>5</sup> Evan McKenzie, Private Covenants, Public Laws, and the Financial Future of Condominiums, 52 UIC L. REV. 715 (2019).

<sup>6</sup> Ron Carlee, Homeowners Associations: One More Idiosyncrasy in U.S. Local Governance, PAR, Vol. 71, No. 4 (2011)

fragmentation of local authority and cites the problems that plague all owners' associations in the US and countries like India as well- namely the association leaders staying well over their term without any oversight, no oversight on the management of finances. This article too calls for more regulation to streamline this process and bring more transparency. As can be explored in the Indian sphere as well.

(4) UNECE, United Nations Geneva, 2019<sup>7</sup>

These guidelines for the management and ownership of condominium housing highlight the democratic practice of the requirement of compulsory membership of members in owners' associations, for the proper maintenance of common properties, the document further goes on to outline the requirement laws to specify the type of services and define the standards required of these services and provide solutions in case of failure of performance, the fee structure for the administrative services are to also be defined. The document reiterates the importance of legislative guidance, the need for national laws to specify and support the enforcement of consequences on the failure of the performance of the requisite services, legislation to specify the roles of management and the requirements and functions and the duties of the board, further the law according to this document should look into verifying if the board is legally competent to enter into contracts of services and utilities. It also talks about how the municipal authorities have administrative and regulatory responsibilities and how there is a need for oversight by the government authorities. The document also talks about the importance of responsible and professional maintenance of the accounts and communicating the information and having a complete and transparent database of the accounts and talks a standard of accounting to be maintained. These are present in Indian legislations for condominium and resident welfare laws but the implementation is where the lacuna lies.

(5) National Commission on Urbanisation, New Delhi. <sup>8</sup>

Details and talks about various state central and municipal legislation and policies governing the development of urban areas, this details the government bodies made with the intention to accelerate urban development, they point out the lack of coordination among the government authorities themselves though they fail to connect the local self-government authorities like the owners association or resident welfare associations to this robust system to make it readily accessible to the general residents. The implementation of the coordination and the requirement of legislation in this space is much needed.

---

<sup>7</sup> UNECE, guidelines on the management and ownership of condominium housing. 17,18,37 (2019).

<sup>8</sup> NCU, New Delhi, Report of the National Commission on Urbanization, Vol III, 369-396

(6) Mandal, Arjun Kumar<sup>9</sup>

The thesis talks about the several problems faced by the owners, tenets, and management of co-operative housing societies mainly relating to defalcation of money, transfer of title, and ownership, dishonest management, and utilisation of common spaces but all these issues are looked into only for west Bengal. The author outlines the genesis and establishment of housing societies and how under various co-operative Societies Registration Act the societies are formed then takes the readers to the specific case study of West Bengal and talks about some judgements to support his arguments and show the evolution of the jurisprudence.

(7) S.Lalitha<sup>10</sup>

This news article how flat owners in Karnataka have filed an FIR against their ex-association member for siphoning rupees 90 lakhs, a residential complex filed a complaint against their resident association alleging misappropriation of society funds. The case has been filed under sec 406 of IPC against the secretary and treasurer along with 11 other office bearers.

(8) Arsh Behal<sup>11</sup>

According to this news article an FIR was lodged against the general secretary and the treasurer of an apartment society in Indirapuram on the allegations of embezzlement of society common pool funds that were collected from the recharge of electricity and maintenance charges. The official in charge of this case holds that by his personal experience, he has come across 61 such embezzlement cases in the past 6 to 7 months of mishandling of funds amounting to 20 to 25 lakhs.

(9) Greeshma Gopal Giri<sup>12</sup>

This news article talks about how this particular society's owners association engages in unsolicited moral policing or tenets and forceful imposition of bye-laws which a lawyer from Karela says is against freedom, right to life and right to privacy.

---

<sup>9</sup> The University of Burdwan, Laws relating to group housing an empirical study with reference to West Bengal, 64-73 (2005)

<sup>10</sup> The new Indian express, Karnataka flat owner gets FIR filed against ex-association members for misusing Rs 90 lakh, (17<sup>th</sup> July 2023)

<https://www.newindianexpress.com/states/karnataka/2023/jul/17/karnataka-flat-ownergets-fir-filed-againstex-association-members-for-misusing-rs-90-lakh-2595552.html>

<sup>11</sup> the times of India, FIR filed against general secretary, treasurer for embezzling from the maintenance funds, (23 June 2017)

[https://timesofindia.indiatimes.com/city/ghaziabad/fir-filed-against-general-secretary-treasurer-for-embezzling-from-maintenance-](https://timesofindia.indiatimes.com/city/ghaziabad/fir-filed-against-general-secretary-treasurer-for-embezzling-from-maintenance-funds/articleshow/59284605.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&pcode=461)

[funds/articleshow/59284605.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst&pcode=461](https://timesofindia.indiatimes.com/city/ghaziabad/fir-filed-against-general-secretary-treasurer-for-embezzling-from-maintenance-funds/articleshow/59284605.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&pcode=461)

<sup>12</sup> the times of india, apartment owners association cant enforce bylaws, (17 june 2020)

[https://timesofindia.indiatimes.com/city/kochi/apartment-owners-associations-cant-enforce-](https://timesofindia.indiatimes.com/city/kochi/apartment-owners-associations-cant-enforce-bylaws/articleshow/77018276.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&pcode=461)

[bylaws/articleshow/77018276.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst&pcode=461](https://timesofindia.indiatimes.com/city/kochi/apartment-owners-associations-cant-enforce-bylaws/articleshow/77018276.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&pcode=461)

(10) Ravi Kumar Diwaker<sup>13</sup>

A news article by The Times of India<sup>14</sup> dated 2019 talks about how the rampant corruption in the resident welfare associations in Haryana's societies led to a case being filed in the high court of Punjab and Haryana. In order to curb corruption and make the process more transparent the court directed the societies registered under the Haryana Regulation and registration act, 2012 to become compliant with the provisions of RTI, by July 2, 2019. Section 83 of the Haryana Regulation and registration act mandates all the documents filed by the societies to the district magistrate to be accessible to the general public under the provisions of RTI. This section was enforced by the High Court, whereby the registered societies have to appoint a public information officer to provide information to the public under RTI. This judgment considers the RWA as a government body and therefore brings it within the ambit of RTI. This law is exclusive to Punjab and Haryana allowing a lacunae to exist for the RWAs in other states of India to withhold financial records and continue their corrupt practices.

Therefore, the literature gap is that there is no exploration into the interplay of the various owner and resident/condominium laws in India and India is severely lacking in the implementation of the existing laws. There is a need for stringent and more well-connected laws to be made to strengthen the most basic level of governance. i.e the maintenance of our homes.

#### Resident Welfare Association: an introduction:

A Resident Welfare Association (RWA) is a non-governmental organization that represents the interests of residents in urban societies, localities, or communities. Residents form RWAs to collectively address various issues and improve living conditions. In cities like Delhi and Mumbai, residential colonies often have RWAs for each block or locality.

RWAs undertake several responsibilities, including managing daily problems like water supply and security, organizing community events, overseeing common facilities, and advocating for residents' rights. They aim to create a sense of community and ensure the well-being of residents. RWAs also play a role in liaising with local authorities, enhancing security measures, and addressing larger issues that impact the community.

In summary, RWAs are integral to urban living, fostering community engagement and addressing

---

<sup>13</sup> times of india, is RTI a solution for curbing corruption in RWA, (15 june 2019)

<https://timesofindia.indiatimes.com/business/india-business/is-rti-a-solution-for-curbing-corruption-in-residents-welfare-associations/articleshow/69800448.cms> , Ravi Kumar Diwaker / Magic bricks /

the diverse needs of residents in cities with extensive residential complexes like Delhi and Mumbai.

A Resident Welfare Association (RWA) plays a crucial role in contemporary societies, particularly in large communities and townships where numerous families reside together. It is imperative to have a local body of members responsible for managing the organization, addressing issues, coordinating events, and ensuring a secure environment. The RWA provides various services such as soft services, support services, housekeeping, and technical services like lift maintenance, electrical power management, and pest control. These services are funded through an annual budget, collected via Common Area Maintenance (CAM) charges imposed on all residents.

To operate effectively, the RWA must adhere to the regulations set by City Development Authorities, Fire and Safety Departments, State Pollution Control Boards, and other regulatory bodies. Compliance certificates are issued by these authorities after inspecting the facilities within the premises. The association is typically recognized as an Association of Persons (AOP) under the Indian Income Tax Act, consisting of members elected by the society.

The registration of the Residents Welfare Association (RWA) is mandatory under the Societies Registration Act 1860, ensuring legal recognition and proper functioning of the association.

It is governed by constitutional documents like a Memorandum of Association, outlining the rights and goals of the association. To register under the Registrar of Societies and establish themselves as a Society under the Societies Registration Act 1860, a minimum of seven individuals can subscribe to the MOA. Legally, a group of resident owners can initiate the registration process for an RWA. The enrollment requirements may vary from state to state, but generally, at least seven individuals within a state can submit an application for RWA registration at the Jurisdictional Registrar's Office.

Builder apartments or group housing societies fall under the purview of the State Apartment Act, allowing the formation of Apartment Owners Associations (AOA) or Resident Welfare Associations (RWA) in various states. These associations are sustained by member subscriptions, which are exempted on the grounds of mutuality, as no one can generate income from themselves. RWAs, while not official government entities, can be established by slums and illegal housing colonies to advocate for citizen interests.

RWAs are typically registered under cooperative societies acts, necessitating a minimum of fifteen members from a specific area, or under the state's Apartment Owners Act as an "association of apartment owners," or under the Societies Registration Act (either central or state), with a requirement of at least ten members. These acts also lay down the guidelines for

formulating RWA bylaws, covering aspects like membership criteria, voting rights, and the circumstances under which RWA officials can initiate legal proceedings on behalf of the registered society.

Despite the prevalence of Resident Welfare Associations (RWAs) in slums and unauthorized colonies, government initiatives aimed at involving RWAs in strategic governance, such as Delhi's Bhagidari Scheme, often focus only on RWAs in planned neighborhoods. RWAs have gained increased interest in municipal politics and decision-making since the early 2000s and continue to grow in significance.

Under the Societies Registration Act of 1860, an RWA is registered as a voluntary society comprised of individuals. Once registered, the RWA becomes a distinct legal entity capable of initiating legal actions or being subject to legal actions through its office-bearers or appointed representatives. The governing body of the RWA is elected in accordance with the bylaws outlined in the Memorandum of Association. These bylaws also dictate the RWA's interactions with its members and third parties. The Governing Body is expected to exercise its powers responsibly, free from bias, in accordance with the principles laid out in the bylaws. Both registered and unregistered RWA can exist.

#### Benefits of registration of RWA

When an RWA is registered, it possesses the following powers:

1. Addressing and resolving complaints raised by members of the association.
2. Advocating for the collective interests of residents by bringing concerns to the attention of relevant authorities for the improvement of shared facilities such as community halls, electricity, water supply, drainage, roads, streetlights, sanitation, etc.
3. Planning and organizing social and community events periodically.
4. Establishing provisions for the welfare of widows, orphans, disabled individuals, elderly people, and retirees.
5. Constructing shelters or supporting the education of economically disadvantaged or vulnerable community members.
6. Approaching relevant authorities to address member complaints and concerns through proper channels.
7. Engaging in legal communication to arrange meetings and discussions with concerned authorities.
8. Coordinating services such as sanitary fittings, plumbing, electrical work, security, and cleaning for the area.

9. Accepting and utilizing legal donations or contributions to fulfil the society's objectives.
10. Contributing to the RWA fund, with the commitment directed towards the welfare and development of the society's overall goals.

As opposed to this, unregistered RWA's

1. Unregistered RWAs do not have a formal legal status recognized by government authorities.
2. They may operate informally based on mutual agreements among residents without any legal documentation or registration process.
3. Unregistered RWAs may lack legal standing to enter into contracts, own property, or take legal action in their own name.
4. They are not subject to the same regulatory requirements as registered RWAs, such as maintaining proper accounts or submitting reports to government authorities.
5. While unregistered RWAs may still provide services and represent the interests of residents, they may face limitations in terms of credibility and authority, especially in dealings with external stakeholders.

the key distinction between registered and unregistered RWAs is the formal legal recognition and status conferred upon registered associations, which provides them with certain rights, responsibilities, and legal protections that unregistered associations do not have.

Rights as a housing society member. i.e. a member of the society that has RWA:

1. Right to Access Model Bye-Laws: Members have the right to receive and understand the society's model by-laws.
2. Right to Nominate Members: Members can nominate associate and nominal members for ownership rights, with a nominal fee.
3. Right to Occupation and Possession: Members have the right to occupy and possess their dwellings.
4. Right to Inspect Records: Members can inspect society records without charge.
5. Right to Attend AGMs: Members can attend Annual General Meetings and review committee meeting minutes.
6. Right to Vote: Each residential unit has one voting privilege in society elections.
7. Right to Transfer Shares and Sublet: Members can transfer shares, and exchange apartments, and sublets with proper notification and documentation.

8. Right to Resign: Members can resign from society membership by giving a three-month notice to the Secretary.

#### Mismanagement by RWA and its implications

By virtue of the societies' act and the model bylaws in accordance with which the laws governing the residents of an apartment are to be made, the above-mentioned rights are guaranteed. Along with the already mentioned rights the constitutional rights remain vested in the residents. The issue arises when these voluntary bodies governing people at the grassroots level in the urban spaces go beyond their statutory powers and infringe on the rights the others. The recourse available to them and the procedure for availing of the recourse is tumultuous and time-consuming which puts the innocent residents in a position where they are left with no practical options for recourse.

A plethora of mismanagement in the governance of apartments and condominiums can take place like overcharging of gas or electricity prices, to siphoning of crores of money that the present infrastructure dealing with the issues of the RWA cannot handle. The institutional setup for the remedying of mismanagement and flouting of the bylaws is too fragile to deal with the extent of crimes committed by the office-bearers.

Some of the mismanagement infringing the rights of the residents can be seen in the form of Restricting entry to individuals familiar to you or infringing on your guest's privacy by selectively requesting excessive personal information.<sup>15</sup>

In severe instances of wrongdoing, the governing body might also be involved in corrupt activities such as extortion, bribery, and embezzlement of funds. For instance, overcharging residents for services like repairs to illicitly benefit from the service provider could occur. Occasionally, this is accompanied by an implied threat that non-payment could lead to harm or inconvenience for the resident. The most common issue that arises is of non-conduction of elections and holding of office even after the end of the term.

The form of wrongdoing where illicit benefit is derived from collusion with the service provider by charging the residents higher is all too common.

Corruption in Resident Welfare Associations (RWAs) in India is a complex issue that varies in its manifestation and extent across different societies and regions. While many RWAs are formed with the intention of ensuring the smooth functioning and betterment of residential communities,

---

<sup>15</sup> Editorial, Express View on RWAs and prejudice: Pettiness of power, the Indian Express, June 27, 2023, 6:00 IST <https://indianexpress.com/article/opinion/editorials/express-view-on-rwas-and-prejudice-pettiness-of-power-8687578/>

instances of corruption and mismanagement do occur.

Here are some common forms of corruption seen in RWAs:

1. **Misappropriation of Funds:** This is one of the most common forms of corruption in RWAs. Funds collected from residents for maintenance, security, and other purposes may be misused or siphoned off by RWA members for personal gain.
2. **Bid Rigging:** In cases where RWAs undertake construction or maintenance projects, there may be instances of bid rigging where contracts are awarded to favoured vendors at inflated prices, leading to financial losses for the community.
3. **Nepotism and Favouritism:** RWA positions and contracts may be awarded based on personal relationships rather than merit, leading to inefficiency and unfair practices.
4. **Lack of Transparency:** Many RWAs lack transparency in their decision-making processes and financial transactions, making it difficult for residents to hold office bearers accountable.
5. **Extortion and Bribery:** In some cases, RWA office bearers may resort to extortion or demand bribes from residents for providing basic services or resolving issues related to property disputes, parking, etc.
6. **Discrimination:** There have been instances where RWAs have been accused of discriminating against certain residents based on factors such as religion, caste, or socio-economic status.

Some cases of real-life wrongdoings are as follows:

1. Resident Welfare Associations (RWAs) display widespread corruption within the offices, asserting that elections are unfairly influenced, with administrators and returning officers appointed to favour specific individuals.
2. Officials are also accused of misappropriating funds and imposing substantial fees on residents without delivering corresponding benefits or letting the residents exercise their rights.<sup>16</sup> and the condominiums managed by these associations generate turnovers amounting to hundreds of crores of rupees.
3. Upon requesting an examination of records, which includes an attorney's bill purportedly paid for an exorbitant and disproportionate sum to defend a case against the association by a member, there are suspicions that a significant portion of the funds may have been

---

<sup>16</sup> Bhel, Abhishek, RWAs allege registrar offices in Ggm, F'bad functioning arbitrarily, 17<sup>th</sup> April, 2023, 12:47 AM <https://www.hindustantimes.com/cities/gurugram-news/gurugram-rwas-allege-corruption-in-district-registrar-s-offices-hampering-functioning-and-favoring-vested-interests-officials-refute-claims-101681672669555.html>

- utilized for bribery. The president asserts innocence but declines to present the documents for scrutiny.<sup>17</sup>
4. Queries about financial records were raised, but there is a reluctance to disclose financial information or audit reports to the residents. Subsequently, the former association members are now advocating that only flat owners listed in the agreement should participate in meetings, asserting that it is unnecessary to share financial details with everyone. Upon further investigation, a resident discovered that contracts for amenity repairs were being awarded in an unscrupulous manner. Multiple quotes were not being obtained, and even in cases where quotes were sought, they were selectively leaked to a single contractor who was charging exorbitant prices for the work.<sup>18</sup> 24 lakhs worth of loss for the residents.
  5. Representatives from 50 resident welfare associations (RWAs) staged a protest on Sunday morning, expressing dissatisfaction with the inefficiencies in the district and state registrar's offices. They submitted a memorandum to the Deputy Commissioner of Gurugram, urging the resolution of their concerns through the intervention of the Chief Minister's office. In the memorandum submitted to the deputy commissioner, the demonstrators conveyed that the district registrar's office was significantly influenced by politicians and influential real estate developers. This influence, they argued, hindered decisions that would benefit homeowners, buyers, and the RWAs advocating on their behalf.<sup>19</sup>
  6. A resident, who did not wish to be named, said that many RWAs did not have a democratic system. "In fact, on most occasions, they run the sectors tyrannically and with no transparency," he said.<sup>20</sup>

### Challenges in the path of an ideally functioning RWA

There have been challenges and failures in effectively tackling corruption within Resident Welfare Associations (RWAs) in India. Despite efforts to address this issue, corruption persists in many RWAs across the country. Several factors contribute to the failure in addressing

---

<sup>17</sup> Kodhandaraman, Loganathan, Local circles, Jan 31, 2023, <https://www.localcircles.com/a/public/post/corruption-in-resident-welfare-associations/8378742cy>

<sup>18</sup> <https://www.kaanoon.com/legal-questions/427566/corruption-happening-within-rwa>

<sup>19</sup> Bhal Abhishek, Free district registrar office from political interference, say 50 Gurugram RWAs, Hindustan times, Oct 2 2023, 5:26 AM, <https://www.hindustantimes.com/cities/gurugram-news/free-district-registrar-office-from-political-interference-say-50-gurugram-rwas-101696184405127.html>

<sup>20</sup> Sinha Meenakshi, Times of India, Sep 19 2015, 04:44 IST, <https://timesofindia.indiatimes.com/city/noida/people-stress-transparency-as-rwa-body-goes-to-polls/articleshow/49020327.cms>

corruption:

1. **Lack of Regulatory Framework:** There is often a lack of clear regulatory frameworks governing the functioning of RWAs. This absence of comprehensive guidelines makes it difficult to hold RWAs accountable for their actions and fosters an environment where corruption can thrive.
2. **Weak Enforcement:** Even when regulations exist, enforcement mechanisms may be weak or ineffective. Regulatory bodies may lack the resources or authority to monitor RWAs effectively, allowing corrupt practices to go unchecked.
3. **Culture of Impunity:** In some cases, there is a culture of impunity where those engaged in corrupt activities within RWAs face little to no consequences for their actions. This lack of accountability emboldens corrupt individuals and perpetuates a cycle of misconduct.
4. **Lack of Awareness and Participation:** Many residents may be unaware of their rights or feel apathetic towards RWA affairs, leading to a lack of oversight and accountability. Additionally, marginalized communities or residents with limited resources may face barriers in challenging corruption within RWAs.
5. **Political Interference:** In some instances, RWAs may be influenced or controlled by political interests, further complicating efforts to address corruption. Political patronage can shield corrupt individuals from scrutiny and undermine attempts at reform.
6. **Complexity of Corruption:** Corruption within RWAs often takes various forms and may involve collusion among multiple individuals. Investigating and prosecuting such cases can be challenging, particularly when there is a lack of evidence or witnesses willing to come forward.

Addressing corruption within RWAs requires a multifaceted approach that involves regulatory reforms, strengthening enforcement mechanisms, promoting transparency and accountability, and fostering active citizen participation. Efforts should also focus on raising awareness among residents about their rights and encouraging them to actively engage in the governance of their communities. Additionally, there is a need for greater collaboration between civil society organizations, government agencies, and residents to combat corruption effectively.

The above mentioned are just some of the instances in the past year, many go unreported and worse unnoticed by the residents owing to the simple fact that they are often unaware of their rights and the crimes that the office bearers commit under the guise of the serving the society.

The most prevalent crime is the siphoning of money by colluding with the contractors or service providers, the remedy for the same is to raise an complaint to the RWA in itself to be transparent to reveal the flow of funds, unfortunately many RWA will refuse or only provide you with

doctored documents that help them save face.

RWA's are further a voluntary body and not a statutory body thereby removing it from the purview of RTI's, the information with the RWA's cannot be demanded by the formal request of filing for an RTI.

The next step of recourse available to the residents is to approach the registrar of societies, the societies and the apartment owners act through its sections specifies the penalties there office-bearers have to bear in case of non-observance of the bylaws, these penalties owing to the fact that these bodies are formed on a voluntary basis are very menial but with the change in times and the increase in greed in people the penalties imposed are no more proportional to the scale of crime being committed.

The residents who wish to raise a complaint to the registrar of societies have to wait months on end for their complaint to be heard by then the crime is grown exponentially in scale and the finances involved in the crime grows exponentially as well, most of the times the registrar being only one for one state and looking after all types of societies and their registration and functioning often don't have time to entertain singular issues. Each leaves the residents with no easy recourses but either approaching the police or going for litigation.

Litigation is very times consuming and a costly affair, which is not a step all residents will be comfortable going towards. And approaching the police, some may approach the police but internal politics and bribes end up keeping the same perpetrators in power. Leaving the innocent residents with means of battling the offenders.

### Recommendations

Addressing corruption in RWAs requires a multi-pronged approach involving legal reforms, greater transparency, and active participation from residents. Some steps that can be taken include:

- Implementing stricter financial oversight mechanisms to ensure proper utilization of funds.
- Requiring RWAs to maintain transparent records of their activities and finances, which should be accessible to all residents.
- Encouraging residents to actively participate in RWA elections and hold office bearers accountable for their actions.
- Establishing independent oversight bodies to investigate allegations of corruption and misconduct within RWAs.

- Promoting awareness and education among residents about their rights and responsibilities within their residential communities.

Ultimately, tackling corruption in RWAs requires a concerted effort from both residents and regulatory authorities to promote accountability, transparency, and good governance. There are presently states who are actively taking initiatives to combat these financial crimes in self-governance in residential areas an example for that would be the Haryana government's new initiative in introducing a bill to make RWA financial transactions more transparent<sup>21</sup>, another initiative has been taken by the Madhya Pradesh government aims to secure the methods of democracy by the introduction of the new bill in making.

Other state and the center can take inspiration from these initiatives, but the best solution would be to take cognizance of the issue and acknowledge by way of introducing a central legislation or an amendment in the societies act to have an impact on all of the nation.

#### Research Methodology:

The author shall be engaging in a mixture of doctrinal (qualitative) and non-doctrinal (empirical/quantitative) research to understand the various laws applying to the self-governance of condominiums and to understand the grassroots-level implications and execution of the same. The author shall be employing the use of both primary and secondary sources of information by way of the bare acts and commentaries and other research papers on the same for the conduction of qualitative research.

For the conduction of quantitative research, the author shall procure primary data by researching already existing surveys about apartment complexes and condominiums.

The universe of this study is the state of all of India as the author shall study the society's act in consonance with the generalized sections common to all state Apartment Act.

#### Limitations:

RWAs (Resident Welfare Associations) in India encounter numerous challenges and obstacles. During the course of this research paper, the author observed a scarcity of research papers and news articles on the topic of RWAs in India. Consequently, there is an opportunity for further investigation into the issues and operations of RWAs in the Indian context

---

<sup>21</sup> TNN, times of India, MLA says will introduce a bill for accountability of RWAs, Jan 24, 2021, 09:09 IST  
<https://timesofindia.indiatimes.com/city/gurgaon/mla-says-will-introduce-bill-for-accountability-of-rwas/articleshow/80427875.cms>

Conclusion:

As understood by this paper, the flouting of the bylaws by the office-bearers in order to siphon money, the collusion with service providers and the police and political support has all be proved by the news testimonials of aggrieved residents. An comprehensive and proportionate action is required to combat this lacunae and put a stop to this blatant disregard to constitutional and democratic values at grassroot level.

