

**LOSS OF REVENUE DUE TO IRREGULAR TAX
EXEMPTION – SOUTH ASIAN UNIVERSITY
(SAU)**

MINISTRY OF EXTERNAL AFFAIRS

**PUBLIC ACCOUNTS COMMITTEE
(2023-24)**

EIGHTIETH REPORT

SEVENTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

EIGHTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE **(2023-24)**

(SEVENTEENTH LOK SABHA)

LOSS OF REVENUE DUE TO IRREGULAR TAX EXEMPTION – SOUTH ASIAN UNIVERSITY (SAU)

MINISTRY OF EXTERNAL AFFAIRS



सत्यमेव जयते

Presented to Lok Sabha on: 18.12.2023

Laid in Rajya Sabha on: 18.12.2023

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2023 /Agrahayana, 1945 (Saka)

CONTENTS

	PAGES
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2023-24)	(iii)
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2022-23)	(iv)
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22)	(v)
COMPOSITION OF THE SUB COMMITTEE III OF PUBLIC ACCOUNTS COMMITTEE (2021-22)	(vi)
INTRODUCTION	(vii)

REPORT

PART-I		
(i)	INTRODUCTORY	1
(ii)	REPORT	2-9
PART – II		
	OBSERVATIONS/RECOMMENDATIONS	10-14
APPENDICES		
*I	Minutes of the fifth sitting of Sub Committee III of the Public Accounts Committee (2021-22) held on 06-04-2022.	
*II	Minutes of the fourteenth sitting of Public Accounts Committee (2023-24) held on 14-12-2023.	

* Not appended to the cyclostyled copy of the Report

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2023-24)

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri Thalikkottai Rajuthevar Baalu
3. Shri Subhash Chandra Baheria
4. Shri Bhartruhari Mahtab
5. Shri Jagdambika Pal
6. Shri Vishnu Dayal Ram
7. Shri Pratap Chandra Sarangi
8. Shri Rahul Ramesh Shewale
9. Shri Gowdar Mallikarjunappa Siddeshwara
10. Shri Brijendra Singh
11. Shri Rajiv Ranjan Singh *alias* Lalan Singh
12. Dr. Satya Pal Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabbhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Shaktisinh Gohli
17. Dr. K. Laxman
18. Shri Derek O' Brien*
19. Shri Tiruchi Siva
20. Dr. M. Thambidurai
21. Shri Ghanshyam Tiwari
22. Dr. Sudhanshu Trivedi

Secretariat

1. Smt. Bharti Sanjeev Tuteja - Director
2. Dr. Faiz Ahmad - Under Secretary
3. Ms. Khyati - Assistant Committee Officer

* Elected w.e.f. 19.08.2023 consequent upon retirement of Shri Sukhendu Sekhar Ray, MP on 18.08.2023.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2022-23)

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Bhartruhari Mahtab
4. Shri Jagdambika Pal
5. Shri Pratap Chandra Sarangi
6. Shri Vishnu Dayal Ram
7. Shri Rahul Ramesh Shewale
8. Shri Gowdar Mallikarjunappa Siddeshwara
9. Dr. Satya Pal Singh
10. Shri Brijendra Singh
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Shri Jayant Sinha
13. Shri Balashowry Vallabbhaneni
14. Shri Ram Kripal Yadav
15. Shri Shyam Singh Yadav

RAJYA SABHA

16. Shri Shaktisinh Gohil
17. Shri Bhubaneswar Kalita
18. Dr. Amar Patnaik
19. Dr. C. M. Ramesh
20. Shri V. Vijayasai Reddy[†]
21. Dr. M Thambidurai
22. Dr. Sudhanshu Trivedi

[†] Shri V. Vijayasai Reddy was elected as Member of Public Accounts Committee w.e.f. 13.12.2022.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22)

Shri Adhir Ranjan Chowdhury - **Chairperson**

MEMBERS

LOK SABHA

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Shri Bhartruhari Mahtab
6. Shri Jagdambika Pal
7. Shri Vishnu Dayal Ram
8. Shri Pratap Chandra Sarangi[†]
9. Shri Rahul Ramesh Shewale
10. Shri Gowdar Mallikarjunappa Siddeshwara[§]
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Dr. Satya Pal Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Shaktisinh Gohil
17. Shri Bhubaneswar Kalita
18. Dr. C.M. Ramesh
19. Shri Sukhendu Sekhar Ray
20. Dr. M. Thambidurai
21. Shri V. Vijayasai Reddy^{**}
22. Dr. Sudhanshu Trivedi^{††}

[†] Elected w.e.f. 29.07.2021 *vice* Smt. Darshana Jardosh, MP appointed as Minister of State w.e.f. 07.07.2021.

[§] Elected w.e.f. 29.07.2021 *vice* Shri Ajay Kumar Mishra, MP appointed as Minister of State w.e.f. 07.07.2021.

^{**} Elected w.e.f. 09.08.2021 *vice* Shri Rajeev Chandrasekhar, MP appointed as Minister of State w.e.f. 07.07.2021.

^{††} Elected w.e.f. 09.08.2021 *vice* Shri Bhupender Yadav, MP appointed as Union Minister w.e.f. 07.07.2021.

**COMPOSITION OF SUB-COMMITTEE III OF THE PUBLIC ACCOUNTS
COMMITTEE (2021-22)**

1.	Shri Adhir Ranjan Chowdhury	-	Chairperson
2.	Shri T.R Baalu	-	Convenor
3.	Shri Vallbhaneni Balashowry	-	Member
4.	Shri Bhubaneswar Kalita	-	Member
5.	Shri Jagdambika Pal	-	Member
6.	Shri Gowdar Mallikarjunappa Siddeshwara	-	Member
7.	Dr. Satya Pal Singh	-	Member
8.	Dr. Sudhanshu Trivedi	-	Member

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2023-24), having been authorised by the Committee, do present this Eightieth Report (Seventeenth Lok Sabha) on “**Loss of Revenue due to irregular Tax exemption – South Asian University (SAU)**” based on Para 5.2 of C&AG Report number 2 of 2021 relating to the Ministry of External Affairs.

2. The Report of Comptroller and Auditor General of India was laid in Rajya Sabha on 11 August 2021 and in Lok Sabha on 29 November 2021.

3. The Public Accounts Committee (2021-22) selected the subject for detailed examination and report. The subject was allocated to Sub-Committee III who took briefing from Officers of C&AG of India at their sitting held on 07.09.2021. Thereafter, the Sub-Committee took oral evidence of the representatives of the Ministry of External Affairs at their sitting held on 06.04.2022. The Sub-Committee obtained detailed information in connection with the examination of the subject. The subject was carried forward for examination by the successive Public Accounts Committee during their current term i.e. 2023-24. The Public Accounts Committee (2023-24) considered and adopted this Report at their sitting held on 14 December, 2023.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in **bold** and form Part-II of the Report.

5. The Committee thank their predecessor Committee for taking oral evidence and obtaining information on the subject.

6. The Committee would like to express their thanks to the representatives of the Ministry of External Affairs for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

7. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Committee Secretariat and the office of the Comptroller and Auditor General of India.

NEW DELHI:
14 December, 2023
23 Agrahayana, 1945 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

REPORT

Part-I

INTRODUCTORY

This Report is on the subject "Loss of revenue due to irregular tax exemption – South Asian University (SAU)" based on Para 5.2 of Comptroller and Auditor General of India's Report No. 2 of 2021.

2. The Sub-Committee - III (Railways, Communications, Jal Shakti & External Affairs) of the Public Accounts Committee (2021-22) considered the subject for detailed examination, took oral evidence of the representatives of Ministry of External Affairs and obtained written replies on the same. The subject was carried forward to subsequent session (2022-23) and thereafter, the Public Accounts Committee (2023-24) examined the subject based on the oral evidence and written replies provided by the Ministry of External Affairs.

3. In Para 5.2 of Report No. 2 of 2021, Audit found that a notification dated 15 January, 2009 issued by the Ministry of External Affairs in respect of South Asian University has wrongly extended privileges to the Registrar of the University for grant of income tax exemption since it was clearly set out in the Headquarters' Agreement signed by the SAARC countries for the establishment of South Asian University that tax exemption would be extended to the President and the faculty members of the University only. The reasons for inclusion of the post of Registrar in the Gazette notification were not on record.

4. An Inter-Governmental Agreement was signed in April 2007 by the eight countries in response to the Prime Minister's declaration at the Thirteenth South Asian Association for Regional Cooperation (SAARC) Summit in November 2005 envisaging that a South Asian University would be established, with the main campus of the university to be located in India. The Government of India and the SAARC Secretariat subsequently signed the Headquarters' Agreement in November 2008 to provide a general framework for the administration of the University and to govern its relationships with the host nation. The South Asian University (SAU) Act, 2008 was passed and published in the Gazette on January 11, 2009, giving the Inter-Governmental Agreement's provisions legal force.

5. The taxation of citizens of the Founding States employed by the University shall be governed in accordance with the national legislation of the respective States, as stated in Article 4 of the Inter-Governmental Agreement. The employees of the University from countries other than the host country will be governed by the income tax laws of the home countries and will not be taxed as per the laws of the host countries.

6. Further, Clause 14 of the SAU Act provides that the University, the President and the members of the academic staff would enjoy such privileges and immunities as the Central Government may notify under Section 3 of the United Nations (Privileges and Immunities) Act, 1947. The Headquarters' Agreement makes detailed provisions for the said privileges and immunities.

7. Section 3 of the United Nations (Privileges and Immunities) Act, 1947 gives power to the Central Government to confer certain privileges and immunities on other international organisations and their representatives and officers in pursuance to any international agreement, convention etc. by issuing notification in the Official Gazette to give effect to such agreement, convention etc.

8. In accordance with Section 3 of the United Nations (Privileges and Immunities) Act, 1974 and to give effect to the Headquarters' Agreement, Ministry of External Affairs (MEA) issued Notification on 15 January 2009 according the privileges and immunities to the University, Project Office & its officials, President, Registrar and faculty members which inter alia included tax exemption. The Notification inadvertently included the term 'Registrar' thereby erroneously extending the privileges and immunities to Registrar.

9. However, Ministry clarified to the University in September 2011 and July 2012 that the Gazette Notification can only give effect to the Headquarters' Agreement and cannot go beyond it, and therefore, it was not possible to issue tax exemption certificate to the Registrar.

10. During the Audit conducted in Dec 2017-Jan 2018, the audit observed that the notification issued on 15 January 2009 extending privileges and immunities to the Registrar was irregular and Registrar being an Indian national was subject to the taxation laws of India. Further, it observed that the irregular tax exemption availed by the Registrar on his

salary resulted in a loss of revenue to the exchequer aggregating to ₹ 90.06 lakh during the period July 2011 to December 2017.

11. The subsequent communications exchanged with the University revealed that notwithstanding Ministry's directions, the University granted tax exemption certificates to the Registrar. The University insisted on amending the Headquarters' Agreement with retrospective effect as was recommended by the Third Governing Board Meeting of SAU in Dec 2012 and reiterated by the Eighth Governing Board Meeting in Feb 2016.

12. In the light of the audit observation and non-compliance of Ministry's direction by the University, the Ministry decided to amend the principal Gazette Notification. After prolonged consultations with the Ministry of Law & Justice and the Ministry of Finance, the Ministry of External Affairs published an amendment Gazette notification on 13 May 2021 deleting the term "Registrar" in the principal notification, with retrospective effect from 15 January 2009.

13. The Audit observations show that in this notification the privileges were wrongly extended to the Registrar of the University for grant of income tax exemption since it was clearly set out in the Headquarters' Agreement that tax exemption would be extended to the President and the faculty members of the University only. Further scrutiny by Audit revealed that the incumbents on the post of Registrar were Indian nationals who are subject to the taxation laws of the Government of India. They had not paid income tax aggregating to ₹ 90.06 lakh on their salary income aggregating to ₹ 3.31 crore during July 2011 to December 2017. Thus, notification of MEA to grant tax exemption to the Registrar of the University was irregular and led to loss to the Government exchequer to that extent. MEA accepted (January 2019) the irregularity pointed out by audit and intimated (August 2020) that the Ministry of Law and Justice has concurred with its proposal to amend the Gazette Notification of 15 January 2009 with retrospective effect deleting the term 'Registrar' from it.

14. When the Committee sought to know from the Ministry as to whether the Notification issued on 15 January 2009 was in contravention to the provisions of the Act passed by the Parliament, in reply, it has been stated that:

"The SAU Act of 2008 provides the enabling provisions to commitments undertaken by India under two international agreements: i.e, (a) the "Agreement for Establishment of South Asian University (2007)" signed by all SAARC member states and (b) the related "HQ Agreement

between the South Asian University and Government of the Republic of India (2008)" signed between India and the SAARC Secretary General. Under Article 14 of the SAU Act, tax 'exempt status' was conferred to three legal-personalities within the University namely: "the University", "the President", and the "academic staff".

However in the Gazette Notification (2009) tax exempt status was operationalized for "the University", "the President", "the Registrar" and "the faculty members". In other words while the Notification of 2009 remains in compliance with all provisions of the SAU Act, it also extends tax exempt status to the additional person of "Registrar". This anomaly was noticed by MEA in 2011 when the University appointed its first "Registrar", and immediate corrective action was initiated."

15. When the Committee desired to know the necessity for issuing such Notification and whether the Notification was vetted by the Ministry of Law and Justice, the Ministry in their written response mentioned as under:

" The wording of Article 14 of the SAU Act makes it clear that to 'activate' the tax exempt status envisaged for "The University", "the President" and "the members of the academic staff", Government should make a notification under the UN(Privileges and Immunities) Act, 1947.

As per the standard process being followed by this Ministry, the draft texts of all subordinate legislation are vetted by both the L&T Division of MEA and the M/o Law and Justice, before issuance. "

16. On being enquired by the Committee whether the University had sought clarification about tax exemption to the Registrar and if so, what was the query and reply of the Ministry thereto, the Ministry replied as under:-

"The Ministry first became aware of the anomaly in the Gazette Notification of 2009 in 2011 when the University appointed its first Registrar and the individual approached MEA's Protocol Division for a diplomatic identity card and tax exemption certificate. This was denied to him. Subsequently, Ministry also issued a Note Verbale to the University authorities apprising them of the anomaly and advised them to stop granting tax exemption to the Registrar. This advice

was reiterated once again in 2012 when the University came back to MEA with the request for a review of its advice.

Notwithstanding MEA's clear advice in 2011 and 2012, the University kept issuing Tax exempt certificates to the "Registrar" between 2011-20. MEA had proceeded with the assumption that as a responsible international organization, the University would comply with the formal advice given to it by the host country (i.e, India)."

17. When the Committee asked the Ministry whether the Gazette notification was also violative of the provision included in Article 4 of the Inter Government Agreement, they replied as under:

"The Gazette Notification issued by MEA is in keeping with SAU Act (2008) enacted by Parliament. The SAU Act provides the enabling provisions for commitments undertaken by India under two international agreements i.e, (a) the "Agreement for Establishment of South Asian University (2007)" signed by all SAARC member states and (b) the "HQ Agreement between the South Asian University and Government of the Republic of India (2008)" signed between India and the SAARC Secretary General.

Except for the anomaly of the person of the "Registrar" being granted tax exempt status, all other elements of the Gazette Notification (2009) are in compliance with SAU Act 2008"

18. During the course of oral evidence, with regard to the issues raised by the Audit, the Secretary, MEA stated as follows:

"It is unfortunate that the Gazette Notification issued by the Ministry of External Affairs in 2009 included the person of the Registrar along with persons of the University, the President and the faculty members. We regret this oversight. From the records available it is neither clear how this anomaly crept into the Gazette Notification, nor why it was not picked up during the scrutiny and vetting process conducted by two Ministries, that is the Ministry of External Affairs and the Ministry of Law & Justice. The anomaly in the Gazette Notification first came to our notice in 2011 when the University appointed its first Registrar and the individual approached the Protocol Division of the Ministry of External Affairs for a diplomatic identity card and a tax exemption certificate."

19. When the Committee enquired from the Ministry whether any action has been taken by the Ministry in case of the officials issuing the certificate, the Ministry gave the following reply:

"Sir, going through our record, which we did very thoroughly, our assessment is that there was no mala fide intent on the part of the processing which took place."

20. On being enquired whether any action against the officials concerned for issuing a wrong notification and whether any action was taken on the University/concerned Officer for non compliance of Ministry's direction, the Ministry stated as under:

"The anomaly in the Gazette Notification of 2009 was discovered by MEA in 2011, and immediate corrective advice was provided to the SAU University. At the time it was clear that the anomaly in the Gazette Notification arose out of a genuine error at the time of printing of the Notification, and there could be no mala fide intention on the part of any officer of the Ministry. It was felt that as the main 'beneficiary' of this wrongly conferred tax exemption could only be the person of the "Registrar" in SAU university, there was, therefore, no reason to suspect complicity/conspiracy by any official from MEA.

Also, in view of the institutional architecture of the University, action against its officials for not heeding advice of the host country can be taken only after consultation and consensus of other Governing Board members who will direct the President to take action under the University's internal Rules/Regulations/Bye Laws related to discipline and dereliction of duty. "

21. Upon being asked regarding duration for which the exemption from income tax was given to the Registrar, the Ministry replied that:

"It is understood that the "Registrar" of the University, on the basis of Tax Exempt certificates issued by the University between 2011-2020, has been granted exemption from payment of personal income tax by Indian tax authorities."

22. When the Committee desired to know the updated status of the recovery of the said amount from the then Registrar of the University and whether the University and/or Ministry of External Affairs has proposed to recover the amount along with penal interest, the Ministry stated as under:

"Following the Gazette Notification of 13th May 2021 amending the anomaly of the earlier Notification (2009) with retrospective effect, Indian Income Tax authorities have initiated recoveries from the concerned individual under Section 147 and 148 of the Income Tax Act 1961. Recoveries will be effected by the Income tax authorities as per due legal processes specified under the Income Tax law. "

23. Upon being asked regarding the nature of powers that MEA exercises over the University and to give details of the powers that can be exercised by MEA in the event of the University not heeding their clarification, the Ministry, in their written reply stated as under:

"The SAU Act of 2008 provides the enabling legislation to give effect to India's commitments under the two international agreements that pertain to the setting up of SAU in India. Under SAU Act, the South Asian University has been conferred the status of an autonomous, self governing, international university, with its own Rules and Regulations, run with financial resources provided by SAARC member states. The 8 SAARC member states, nominate two members to the Board of Governors which is the University's supreme governance body. India has only 2 nominated members on the 17 member Governing Board. The Board operates on the basis of the consensus principle. In the present instance of University authorities not heeding the advice given to it by India (as host country), action can be initiated after consultation and consensus of other member states on the SAU Governing Board who will mandate the University to take action as per the University's internal Rules/Regulations/Bye Laws related to discipline."

24. When the Committee asked whether any action has been taken against the University or the officer concerned for non-compliance of the Ministry's directions, it gave the following reply:

"On this front, no penal action has been taken. As far as the notification was concerned, it was a deviation from what was envisaged in the Act. We have a thorough vetting process."

25. On being asked about the justifications behind including the line "it is hereby certified that no person is being adversely affected by giving retrospective effect to this notification" in the amended notification, the Ministry replied that:

"This reflects the final considered legal opinion of Government in respect of the issue of retrospective application of an amendment that was introduced by Gazette Notification (2021) removing the anomaly of tax exemption to the Registrar. Government's considered legal view is that no vested rights were ever created by the mistaken Gazette notification of 2009 as an instrument of subordinate legislation cannot create vested right for a citizen, in a manner that is inconsistent with/in contravention of/or in the teeth of, an already standing law of Parliament."

26. When the Committee desired to know the reason as to why the Government of India chose MEA and not Ministry of Education to represent Government of India in the collective decision of the Governing Board of the University, the Ministry replied as under:

"Under the law, the SAU University has been conferred the status of an autonomous, self governing, international university, with its own Rules and Regulations, run with financial contributions from SAARC member states. SAU Rule 3 ("The Governing Board") and SAU Regulation 1.2 ("Governing Board") creates the 17 member SAU Governing Board. In particular, SAU Regulation 1.2 specifies that: "Each SAARC Member State will nominate two members to the Governing Board, one of them being the Chairperson of the University Grants Commission/Higher Education Commission or equivalent bodies or a distinguished academician of that Member State". In other words, senior professionals of both Ministries (i.e, Ministry of External Affairs and Ministry of Education) are already serving on the SAU Governing Board as Indian members of the Board. "

27. When the Committee desired to know whether MEA has the powers to check the University from attempting to amend HQ Agreement, the Ministry submitted in their written replies as under:

"Though the SAU Governing Board has resolved to request the SAARC SG (signatory to the HQ agreement) to seek an amendment to its HQ agreement with India, the SAARC SG has not been mandated to do so by SAARC member states."

28. When asked whether the University sought any advice from the MEA with regard to amending the HQ Agreement with retrospective effect, the Ministry replied as under:

"Subsequent to the Minutes of 3rd GB Meeting, SAU approached the SAARC Secretariat seeking amendment to the HQ Agreement. The SAARC Secretariat merely sought the views of

Member States on the proposal. India being one of the Member States received such a communication from the SAARC Secretariat, but has taken no follow up action."

29. When the Committee desired to know whether MEA had the explicit and implicit concurrence in University's attempt to amend the HQ agreement retrospectively, the Ministry replied as under :-

"The proposal to amend the HQ Agreement was placed as one of the Agenda items by the University in the 3rd GB Meeting of 2012. The Indian member in the GB did not express any view on this matter. It may be noted that the GB takes all decisions on the basis of consensus."

PART-II
OBSERVATIONS/RECOMMENDATIONS

INTRODUCTORY

The Committee observe from the audit findings that in pursuance of the proposal to establish the South Asian University (SAU), a Headquarters' Agreement was signed by the member nations of the South Asian Association for Regional Co-operation (SAARC) for providing world-class facilities with a professional faculty to students and researchers drawn from the SAARC countries. To give effect to the Headquarters' Agreement, South Asian University Act of 2008 was introduced by the Government of India *vide* which the President and other faculty members were to enjoy such privileges as the Central Government may notify under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), which essentially pertain to the privilege of exemption from paying taxes on their salary. Audit observed that there was a violation of the SAU Act of 2008 that was traced to the notification issued by the Ministry of External Affairs on January 15, 2009 for granting privileges i.e. exempting individuals holding notified offices from paying taxes on their salary, by erroneously including therein, the office of Registrar amongst the offices enjoying the privileges. As a result of the erroneous income tax exemption granted to the Registrar, the exchequer suffered a loss of ₹ 90.06 lakh as reported by the Audit. The issues contained in the Report have been examined by the Committee and commented upon suitably in the succeeding paragraphs.

Need for a standard operating procedure

2. From the audit observation, the Committee find that the privileges were wrongly extended to the Registrar of the University *vide* the gazette notification issued in 2009. The Committee also note that the reasons for inclusion of the post of Registrar in the Gazette notification were not on record. The Committee note from the reply of the Ministry that Government of India was required to make a gazette notification under the United Nations (Privileges and Immunities) Act, 1947 for extending the privileges to the University, the President and the members of the

academic staff as envisaged under Article 14 of the SAU Act. As per the Ministry, the notification was issued on 15 January, 2009 after the due process followed by the Ministry of External Affairs(MEA) whereby the draft texts were vetted both by the L&T Division of MEA and the Ministry of Law and Justice before issuing the notification. The Committee note that the MEA first became aware of the error of including the office of Registrar amongst the offices enjoying the privileges in the gazette notification in 2011 when the MEA was approached for a diplomatic identity card and tax exemption certificate for its first Registrar who was appointed in 2011. The Committee are perplexed to note that an error crept in despite the notification being vetted by various departments of Government of India. The Committee are, therefore, of the view that the procedure followed for the issuance of gazette notification by the Ministry needs to be reviewed and strengthened, more so for the notifications issued by the Ministry of External Affairs that may have international ramifications. The Committee in this regard feel it to be preferable to have a separate 'Procedural Standards Cell' for examining all aspects related to provisions being notified and published through a gazette notification so as to prevent such aberrations in the future.

Fixing Accountability

3. The Committee note that the Inter-governmental Agreement signed for the establishment of the South Asian University by the member nations of the SAARC states that the Taxation and social protection of the citizens of the Founding States employed by the University is regulated in accordance with the national legislation of the respective States. The Committee note from the audit observations that the incumbents to the post of Registrar were Indian nationals who are subject to the taxation laws of the Government of India. However, the submission made by the MEA that the anomaly in the Gazette Notification was a genuine error which occurred at the time of printing and that there is no *mala fide* intention on the part of any officer of the Ministry is neither convincing nor sufficient to completely rule out the possibility of complicity. The Committee, therefore, desire that the Ministry investigate the matter in detail and take appropriate action on the officials who may be found responsible for the lapse.

Consultation & coordination

4. The agreement for establishment of South Asian University envisaged that the Taxation of the citizens of the Founding states employed by the University shall be regulated in accordance with the national legislation of the respective states. Accordingly, the Registrar, being an Indian citizen, should have been subject to taxation in accordance with the rules of the home country. The Committee also understand that the Headquarters' Agreement between the South Asian University (SAU) and Government of India requires that the University shall cooperate with the appropriate authorities of the host Government to prevent the occurrence of any abuse in connection with the privileges mentioned in the agreement. Consequent to appointment of the first Registrar by the South Asia University in 2011, the Committee note that the individual appointed to the post approached the MEA's Protocol Division for a diplomatic identity card and tax exemption certificate which was denied. Further, the Committee find that the MEA informed the University of the anomaly and advised them to not to grant tax exemption to the Registrar and reiterated the same in 2012. However, notwithstanding MEA's clear advice in 2011 and 2012, the University kept issuing tax exempt certificates to the "Registrar" between 2011-20. According to the submission made by the Ministry, it had proceeded with the assumption that as a responsible international organization, the University would comply with the formal advice given to it by the host country (i.e. India). The Committee are surprised by that the South Asian University overlooked the advice of the Ministry of External Affairs and granted tax exemption certificate to the Registrar. This disregard led to a substantial loss of revenue to the Government of India amounting to ₹ 90.06 lakhs from July 2011 to December 2017. The Committee are of the considered view that the Ministry of External Affairs instead of merely assuming compliance should have followed up the matter appropriately. The Committee further opine that there should be constant consultation and coordination between international organizations and the host Government to ensure effective management of situations involving international agreements and regulations thereby fostering a harmonious and mutually beneficial relationship for both sides.

Shared Responsibility

5. The Committee observe that the Governing Board of the South Asian University resolved that the President of the University should approach the SAARC SG to seek an amendment of the HQ Agreement for extending the privilege to the Registrar of the University in 2012, subsequent to which SAARC Secretariat sought the view of the Member States but no follow up action was taken by the Ministry. While considering the complexities of international relations and the University's reputation, it is essential that matters of this nature are approached with appropriate seriousness and sensitivity, particularly by the Ministry of External Affairs. The Committee acknowledge the right of the University to seek extension of privileges but nevertheless the University should have, in the interim suspended the issuance of tax exemption certificates and pursued the matter further through the Governing Body (GB) and SAARC Secretary General. The Committee, also note that the representatives of Government of India chose to remain silent when the GB in its third meeting resolved to recommend amendment in HQ agreement to include the Registrar for being given the benefits also when SAARC Secretariat sought comments on the issue. The Committee, in this regard, would emphasize on the aspect of shared responsibility of both the University and the Ministry, and urge for more effective coordination and proactive measures to prevent such irregularities in the future.

Scrutiny by Income Tax Department

6. The Committee observe that as per the Article VI (5) of the Headquarters' Agreement, the persons enjoying the privileges and immunities enshrined in the Agreement shall be provided a special identity card by the protocol division of MEA which shall identify the holder in relation to appropriate authorities and certify that the holder enjoys the privileges and immunities in the agreement. The Committee feel that in case of non issuance of any such special Identity Card, the tax exemption certificates issued by the SAU, should have been considered void. The Committee note that there has been lack of vigilant scrutiny by the Income Tax Department in verifying the eligibility of individuals for tax exemptions and acceptance of such tax certificates without consultation with MEA. The Committee also find that the Ministry

of External Affairs lagged in providing timely information to the Income Tax Department despite being aware of the status of the wrongly extended tax exemption. The Committee emphasize the need for more vigilant and thorough approach in scrutinizing tax exemption certificate applications, more so in case of international organisations.

Consequent to issuance of the amended notification in 2021 by MEA removing the post of Registrar from enjoying the wrongly extended privileges and immunities, the Committee would like to be apprised of the status of the recovery carried out by the Income Tax Department in this case.

Internal Audit mechanism

7. The Committee find that the though there is a system of Internal Audit being conducted via independent auditor in the South Asian University, the University issued tax exemption certificates regularly while being aware of the ineligibility of the Registrar to receive such exemption from 2011-2020 i.e. even after audit made its observations. The Committee observe that a prudent attitude of the South Asian University towards the advice from MEA regarding the issuance of tax exemption certificates could have prevented substantial revenue loss to Government of India. The Committee strongly advise the Ministry of External Affairs (MEA) to liaise with SAU authorities and India's representatives in their Board of Governors to pursue for strengthening of the existent Internal Audit Mechanism by extending its scope to cover critical financial and operational areas that affect the interests of the Host country. The Committee desire to be kept informed about the concrete actions taken by the Ministry and SAU in response to this recommendation.

NEW DELHI:
14 December, 2023

23 Agrahayana, 1945 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson
Public Accounts Committee