An Inquiry into Rule of Law, AWHO & We the People

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February 6, 2013

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AN INQUIRY INTO THE RULE OF LAW, AWHO & WE THE PEOPLE

Real Courage is found, not in the willingness to risk death, but in the willingness to stand, alone if necessary, against the ignorant and disapproving herd. Jon Roland, 1976

What we desire to accomplish is, the protection of rights: What we have to inquire is: The means by which protection may be afforded....That men are susceptible of happiness, only in proportion as rights are protected, is a proposition, which, taken generally, it is unnecessary to prove. The importance of the inquiry, therefore, is evident.  

I INTRODUCTION

WHO was established as a Society under the Rule of Law expressly for the welfare of its members and NOT established as a foray by Army Headquarters into Real Estate business in a thriving real estate market at this particular stage in the country’s economy. If latter was the aim, the risks of the enterprise were not appreciated fully. For all of us who are proud to swear to uphold, protect and defend our constitution from its enemies, foreign and domestic, we, the people will establish a governance of, and by and for us, we the people. “We, the people, declare today that the most evident of truths –that all of us are created equal – is the star that guides us still; just as it guided our forebears.” We, the people, still believe that enduring life, liberty, pursuit of happiness and lasting peace do not require perpetual conflict and adversarial adjudication between AWHO and its members. We, the people, still believe that our obligations as proud Indians and more importantly, as proud veterans, are not just to ourselves, but to all posterity for creating a Society of equals and not divide ourselves

\(^1\)Jurisprudence, Supplement to Encyclopaedia Brittanica http://files.libertyfund.org/files/1760/0886_Bk.pdf

\(^2\)Barack Obama, Presidential Inaugural Address 2013
into “Rulers” (powerful, autocratic and ever ready to exploit the powerless) and powerless “Subjects”.

*Edmund Burke asks a key question of political theory: quis custodiet ipsos custodes? (how is one to be defended against the very guardians who have been appointed to guard us?) (1756)*

We need to ask a similar question: How is one to be defended against usurpation, if any, of power of AWHO, a Society created for the “welfare” of the very members whose rights are usurped?

*Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all.*

## II BOARD OF MANAGEMENT AWHO

Board of Management (BoM) have fiduciary responsibilities as “independent directors” of AWHO to take action and question actions of AWHO and BoM will be failing in their duty if they fail to fulfill these fiduciary responsibilities towards member-allottees who have very high stakes running to Rs Half a Crores each these days.

This appeal is being addressed to the members of the Board of Management of AWHO and may be brought to the attention of the Independent Directors and Members of the Board.

How Board of Management (BoM) of AWHO violated the Property rights guaranteed by the constitution and statutes of India and passed Rules against the property rights of the Members of AWHO can be seen below. Is it because the Members were deprived of voting to approve/pass these Rules governing the Society? Would they have passed these rules if they had the voting rights? The English radical individualist philosopher Herbert Spencer (1820-1903) distinguished between rights properly so-called (such as the rights to life, liberty and property) and political rights so-called (such as the right to vote). In his mind the latter were merely an “appliance” or an “instrument”

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3 *Quis custodiet ipsos custodes?* is a Latin phrase traditionally attributed to the Roman poet Juvenal from his Satires (Satire VI, lines 3478), which is literally translated as “Who will guard us from the guards themselves?”

4 Aristotle, Politics (c340 BC)
for achieving the former. While we are not certain that if voting rights were
given, the Property Rights would have been preserved, but it is true that
denying of voting rights have ensured the denial of property rights because
the MoB are not there to preserve the property rights of members but were
there to usurp the property rights of the members and that too by a MD,
AWHO, a Servant of the Society!

III AN APPEAL TO BOARD OF MANAGEMENT

AWHO is established as a Society under the Rule of Law expressly for the
welfare of its members. AWHO from its practices over number of years seem
to follow the practice:

The illegal we do immediately. The unconstitutional takes a little
longer.

You have fiduciary responsibilities as “independent directors” of AWHO
to take action and question actions of AWHO and you will be failing in your
duty if you fail to fulfill these fiduciary responsibilities towards member-
allottees who have very high stakes running to Rs Half a Crores each these
days.

This appeal is being addressed to the members of the Board of Manage-
ment of AWHO and may be brought to the attention of all the Independent
Directors and Members of the Board.

IV STRICT INTERPRETATION OF POWERS

While meeting the “Strict Statutory Requirements”, the following is required
to be used in interpretation of Constitution, statutes, MoA and original rules
as registered with Registrar of Societies while Registering the Society:

A STRICT INTERPRETATION OF POWERS

Whether Powers be are right is determined by the rule
1. *Potestas stricte interpretatur.* A power is strictly interpreted.

2. *In dubiis, non praesumitur pro potentia.* In cases of doubt, the presumption is not in favor of a power.

**Right to the Presumption of Non-authority:**

1. The right to the presumption of non-authority does not depend on the support of a court, but defaults to a finding of non-authority even if a court declines to grant oyer and terminer. All that is necessary is to file or notice the court, notice the respondent and wait the customary 3-20 days for the response. It is the respondent official who has the right to oyer and terminer in such a case, to support his claim of authority if he has such authority.

2. The un-enumerated rights are not limited to the right to a presumption of non-authority, which is the basis for the prerogative writs, but also include rights to the positive duty of officials to report and disclose their activities, and not resist such disclosure without strong justification. They include the derivative rights to be assisted or facilitated in prosecuting rights, or to have the means to do so.

3. The natural rights are those that arise out of the laws of nature, and include the right to have official acts be logical, reasonable, and rational. One may not be required to do the impossible.

4. Delegations of power are never plenary, but are further constrained, beyond their subject matter, to what is reasonable and pursuant to a legitimate public purpose.

In summary:

1. There is a right not to be subjected to laws or official acts that are unknown, unknowable, incomprehensible, or too vague to allow for easy interpretation, or to have the rules governing ones behavior change adversely between the contemplation of an action and the enforcement of the law or application of the due process.

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2. There is a right not only not to have ones rights legislatively impaired, disabled, or disfavored, but also not to have some accorded special privileges or protections that favor them over the rest of the people, in ways not essential to the performance of public duties. This means official immunity for damages extends only to each act under color of law for which an official has authority and that is not an abuse of discretion, not to everything an official might do while on the job.

3. There is a right to have delegated powers construed narrowly, and complementary rights or immunities construed broadly, and when in doubt, the decision must always be in favor of the claimed right against an action of government over the claimed power of an official to so act.

4. One can recognize in these precepts the principles of natural right and justice that most of us take for granted, or that are embedded in our public processes, but which are not always made explicit or stated as positive rights.

**B ONUS OF PROVING AUTHORITY LIES WITH THE USURPER**

Can AWHO provide the legitimate public purpose served by these unconstitutional, illegal and unlawful rules? The onus of proving that MD, AWHO has the powers to pass these rules lies with the one who has usurped the powers and the onus to prove that the usurper has no authority to pass these rules does not lie on the Member.

**V LIBERTY RIGHTS AND CLAIM RIGHTS**

The “Liberty Right” to do welfare activity of any welfare society (including AWHO) comes with no ‘duty’ on part of the individuals or Government to protect it. “Liberty Rights” can only survive if and only if (and it is a very BIG IF) it does not trample over the “individual rights” guaranteed under the constitution and statutes. Where as the “Claim Rights” of the individual guaranteed under the constitution and statutes comes with corresponding “duty” to respect and protect it by AWHO not to talk of the Government
and these are enforceable with the might of the State and Police, by force, if necessary. The difference lies in fundamentals between “liberty rights” and “claim rights”. Legal Philosophers and political scientists make a distinction between claim rights and liberty rights.

A claim right is a right which entails responsibilities, duties, or obligations on other parties regarding the right-holder. In contrast, a liberty right is a right which does not entail obligations on other parties, but rather only freedom or permission for the right-holder. The distinction between these two senses of “rights” originates in American jurist Wesley Newcomb Hohfeld’s analysis.

If you do NOT understand this, you do not understand competing “claim rights” of citizen viz a viz “liberty rights” of welfare societies to do continued welfare activities. The complexity of the idea is no excuse for ignoring the difference and taking liberties with “claim rights” of mostly senior citizens which constitute the profile of AWHO Members because some of these are protected as Fundamental Rights under the constitution of India and protected under art 14 of the constitution of India as Equality before laws Equal Protection of laws: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” If you have problem with these, do not proceed before clarifying the fundamental concepts.

VI PROPERTY AS AN IMPORTANT RIGHT

A LIFE, LIBERTY AND PROPERTY

What were the three most important things man look up to from its government and society? What are they?

7Wesley Newcomb Hohfeld, “Fundamental Legal Conceptions, As Applied in Judicial Reasoning and Other Legal Essays”. See

“life, liberty and property” appear three times in the US Constitution. These words mean:

- **Life**: Needs no elaboration
- **Liberty**: Needs no elaboration
- **Property**: Executes one’s expression of liberty and insures pursuit of one’s life. Never forget that private property is not simply ‘a thing’. It is the relationship between a person and a thing. This relationship allows individual citizens to use and enjoy private property. George Washington described the essence of that relationship when he said: “Private property and freedom are inseparable.”

**RULES OF AWHO**

How BoM of AWHO violated the Property rights guaranteed by the constitution and statutes of India and passed Rules against the property rights of the Members of AWHO can be seen below.

**GOVERNANCE BY CONSENT ONLY**

And even if this charity were not commanded by reason, such a strategy for gaining dominion would prove only that the foundation of government lies in consent…. The hypothetical rise of property and civilization, in the process that the only legitimate governments are those that have the consent of the people. Therefore, any government that rules without the consent of the people can, in theory, be overthrown.

The consent of people who are ruled are obtained either directly by the participation in law making or through their representatives. In AWHO, both are non-existent by a clever manipulation/interpretation of rules. This devious trick played on the members is obtained by the ruling that the members are NOT members but “allottees” with no right to participation in the democratic functioning of the Society. This is ridiculously equivalent to, say a Mubarak declaring that they have democracy where only the ruling junta

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9John Locke, Two Treatises of Government 1689
are the citizen with power to deliberate and vote for law making and the actual citizen are just “residents” with no right to participation as citizen in democratic governance.

How the state (or the predatory class) forces the productive classes into a condition of uncertainty, insecurity, and dependence: When person and property are to a certain degree insecure, all the possessions of the weak are at the mercy of the strong. No one can keep what he has produced, unless he is more capable of defending it, than others who give no part of their time and exertions to useful industry are of taking it from him. The productive classes, therefore, when the insecurity surpasses a certain point, being unequal to their own protection against the predatory population, are obliged to place themselves individually in a state of dependence on some member of the predatory class, that it may be his interest to shield them from all depredation except his own. In this manner, in the Middle Ages, alodial property generally became feudal, and numbers of the poorer freemen voluntarily made themselves and their posterity serfs of some military lord. –

D AWHO CONCENTRATION OF POWER

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. – There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

That is exactly what has happened with AWHO. All power is concentrated in one person: The Adjutant General and Chairman, AWHO and more ridiculously, that BoM are both the rule makers and the citizens of the society

10 John Stuart Mill in The Principles of Political Economy (1848)
11 Montesquieu (1689-1755) The Spirit of the Laws(1748)
and the rest of the highest stake holders are just the “allottees”. If the BoM are the only members, why have a Board of Management? When the Society is to be disbanded, BoM will resolve as management and then approve with 3/5 majority as members of the Society! This is ridiculous indeed and is derived by ignoring the Rules of Interpretation of Powers detailed above.

VII  AWHO RULES THAT VIOLATE RULES OF LAW

Some AWHO rules that violate property rights of the Members guaranteed by the constitution and statutes are:

1. Rule 80 No sale/transfer/assigning of a dwelling unit to a third party shall be effected by an allottee.. with out prior permission in writing of the Organisation, AWHO (the Builder)

2. Rule 81: .. The Organisation (the builder) reserves the right in its absolute discretion to refuse permission to sell the dwelling unit.

3. Rule 82: .. the Organisation (the builder) reserves the right in absolute discretion to cancel the allotment of such dwelling unit to the original allottee and to take over possession of the dwelling unit.

4. Rule 83.. the Organisation (the builder and NOT the Owners Association) will charge Rs 10000/= from the seller and the buyer as transfer fee.

5. Rule 84: No allottee shall mortgage/pawn the dwelling unit for the purpose of securing any loan at any stage, except with the permission of the MD, AWHO.

6. Rule 100. MD, AWHO (the Builder) has final authority to accept/reject the application and his decision shall be conclusive and final.

7. Rule 101. MD AWHO (the Builder) has the final word on interpretation of the Rules and his decision is binding and not open to appeal/representation.
8. Rule 102 The board of management/ executive Committee of AWHO (the Builder) has the right to alter, add or delete any rules and it shall be binding.

The above rules are fit only for an empire and not for a Society bound by law in a democratic country like ours.

An empire is a despotism, and an emperor a despot, bound by no law or limitation but his own will; it is a stretch of tyranny beyond absolute monarchy. Ours is a democratic republic, a government of laws, and not of men. Even the British constitution is nothing more nor less than a republic, in which the king is the first magistrate. This office being hereditary, and being possessed of such ample and splendid prerogatives, is no objection to the governments being a republic, as long as it is bound by fixed laws, which the people have a voice in making, and a right to protect and defend and if necessary, change.  

The AWHO Rules violate even the rights “we, the people” won from the King Emperor of England as a result of Magna Carta in 1213 AD:

1. No man shall be disseised, that is, put out of seison, or dispossessed of his free-hold (that is) lands, or livelihood, or of his liberties, or free customes, that is, of such franchises, and freedomes, and free customes, as belong to him by his free birth-right, unlesse it be by the lawfull judgement, that is, verdict of his equals (that is, of men of his own condition) or by the Law of the Land (that is, to speak it once for all) by the due course, and processe of Law.

2. We shall deny to no man Justice or Right.

3. We shall defer to no man Justice or Right.

A VOX POPULI, VOX DEI

Even as we pride ourselves on having a democracy, itself normatively defined as government of the people, by the people and for the people, in Abraham

Leveller Richard Overton, ’An arrow against all tyrants’ 12 October 1646. [http://www.constitution.org/lev/eng_lev_05.htm](http://www.constitution.org/lev/eng_lev_05.htm)
Lincoln's famous phrase, it has enhanced the definition, by sharpening the distinction between what is public from what is private. This is against the background that in a democracy, politicians become people's representatives and bureaucrats as public servants precisely because these functions are deemed to be conducive to the common good. It is tragic that in such a society, we permit the servant of Society to assume powers of the King Emperor. MD AWHO is not the King but a Servant of the Society.

_The Christian kings of Europe once believed they were answerable to no one except God. This idea became known as the Divine Right of Kings. The divine right of kings began to be questioned, and its hold on the public mind was gradually weakened, until, finally, it was repudiated altogether, and the opposite principle substituted, that all governmental power is derived from the people; and instead of the king being the vicegerent of God, and the people subjects of the king, the king and other officers of the government were the servants of the people, and the people became the real sovereign through the officials. Vox populi, vox Dei, became the popular answer to all complaints of the individual against the encroachments of popular government upon his rights and his liberty._

**B LOCAL SELF-GOVERNMENTS RIGHTS**

The above quoted Rules violate not only the constitution of India and Statutes but also local self-governments rights of the AWHO Colony residents:

1. The State shall guarantee, to THE PEOPLE, local governments of the democratic republic form, and that they shall be confined to the rule of law. These regimes shall be based on rights.

2. The State shall guarantee the protection of individual rights that no majority of even the co-operatives shall be able to take away.

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\[13\] The American legal scholar Christopher Tiedeman (1857-1903): these pages are affectionately inscribed to my wife, HELEN SEYMOUR TIEDEMAN, whose scrupulous regard for the rights of others, and tender sympathy for their weaknesses, have been my guide and inspiration.
3. The legislative, executive, and judiciary powers shall be segregated into different departments and a system of checks and balances shall be infused into the structure, that are sufficient to ensure that no branch can become stronger than the others.

4. The State shall guarantee the supremacy of the interests of THE PEOPLE that live or will live in housing developments, over the interests of those that plan, develop, build or sell services to them. (If as a home owner, I can not elect the the board of management/ executive Committee of the organisation (AWHO), then that organisation has no right to make laws that govern my life and enjoyment of the property.)

5. The builder/developer should vanish from the scene once the property is registered as freehold and the owners take charge the governance in a democratic way. Any thing more that this is defective in law and hence not enforceable.

VIII   RESPONSE TO DEMOCRATIC GOVERNANCE

The attitude of AWHO towards democratic governance of a Society registered under Societies Registration Act 1860 seems clear from the actions by them so far.

*We have seen already, that if one man has power over others placed in his hands, he will make use of it for an evil purpose; for the purpose of rendering those other men the abject instruments of his will. If we, then, suppose, that one man has the power of choosing the Representatives of the people, it follows, that he will choose men, who will use their power as Representatives for the promotion of his sinister interest.*

*We have likewise seen, that when a few men have power given them over others, they will make use of it exactly for the same ends, and to the same extent, as the one man. It equally follows, that, if a small number of men have the choice of the Representatives, such Representatives will be chosen as will promote the interests of that small number, by reducing, if possible, the rest of
the community to be the abject and helpless slaves of their will. 

So what do you expect Chairman, AWHO to do for the Members of the Society? Nothing unexpected:

1. Defined that members of the BoM will be ex-officio succession only.

2. There will be no General Body meeting

3. In fact there will be no general body as the the Members are only “allottees” and not Members.

4. Members of the BoM will be the only Members of the Society. That way, democratic approval of the Members can be done away with.

5. Where General Body approval is required for a decision, BoM will propose the measure first and then later vote as “General Body”.

6. All decisions taken and rules made by BoM will be forced on the Member Allottees by coercion and not by “Consent of the Governed”

That is the perfect rape of democracy in the society that should function as required under the statutes.

I have always thought the actions of men the best interpreters of their thoughts. 

Peoples protector who, once having tasted blood, turns into a wolf and a tyrant. 

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14 Radical James Mill (1773-1836) on the sinister interests of those who wield power (1825). [Link to source]

15 John Locke, An Essay Concerning Human Understanding, Volume 1 MDCXC, Based on the 2nd Edition, Books 1 and 2

16 Plato In Book VIII of The Republic (340s BC)
To every individual in nature is given an individual property by
nature not to be invaded or usurped by any. For every one, as he
is himself, so he has a self-propriety, else could he not be himself;
and of this no second may presume to deprive any of without
manifest violation and affront to the very principles of nature and
of the rules of equity and justice between man and man. Mine and
thine cannot be, except this be. No man has power over my rights
and liberties, and I over no mans. I may be but an individual,
enjoy my self and my self-propriety and may right myself no more
than my self, or presume any further; if I do, I am an encroacher
and an invader upon another mans right to which I have no right.

.. Nature and laws would be in an ill case, if slavery should find
what to say for itself, and liberty be mute: and if tyrants should
find men to plead for them, and they that can master and van-
quish tyrants, should not be able to find advocates. And it were a
deplorable thing indeed, if the reason mankind is endued withal,
and which is the gift of God, should not furnish more arguments
for mens preservation, for their deliverance, and, as much as the
nature of the thing will bear, for making them equal to one an-
other, than for their oppression, and for their utter ruin under
the domineering power of one single person. Let me therefore en-
ter upon this noble cause with a cheerfulness, grounded upon this
assurance, that my adversarys cause is maintained by nothing but
fraud, fallacy, ignorance, and barbarity; whereas mine has light,
truth, reason, the practice and the learning of the best ages of the
world, of its side.

When I look around me in society, and see the nations of the earth
most celebrated for the rigour and despotism of their government,
groaning under the most grievous calamities, while ours from her

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17 Leveller Richard Overton, 'An arrow against all tyrants' 12 October 1646 http://www.constitution.org/lev/eng_lev_05.htm
18 John Milton (1608 – 1674) on the ease with which tyrants find their defenders (1651) http://files.libertyfund.org/pll/quotes/291.html
freedom has had safety ensured to her; can these calamities be possibly traced to any other cause than this despotism, which has destroyed every manly feeling. Can the rise of despotism in any society be ever so well resisted as at first. The first step it takes gives it additional power to take a second. It goes on thus increasing, till men’s opinions are bound up in its sanctity, and then it is irresistible.  

Implicit submission to any leader, or the uncontrolled exercise of any power, even when it is intended to operate for the good of mankind, may frequently end in the subversion of legal establishments. This fatal revolution, by whatever means it is accomplished, terminates in military government; and this, though the simplest of all governments, is rendered complete by degrees.

A Violation of Rule of Law

The existing rules of AWHO which have come to the present stage of illegality and robs the Member-allottee of their financial and property rights and interests protected under the Constitution of India because of

1. Non-application of mind by the independent Directors/ Members of the Board of Management (BoM). the BoM having only special interests of COAS and NOT the highest stakeholder, Member-allottee whose individual stakes these days run to Rs Half a crore and these investments are made purely based on trust and trust alone in the Society.

2. By these fiduciary duties, you are required to have undivided loyalty to the Members-Allottees of AWHO who have reposed their complete trust on you.

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[19] An Essay on Naval Discipline (1813) the ex-naval officer Thomas Hodgskin (1787-1869) argues that the brutal behavior of the officers has a corrupting influence which leads to outright despotism [http://files.libertyfund.org/pll/quotes/173.html](http://files.libertyfund.org/pll/quotes/173.html)

3. No contract exists and no contract is possible between Society and its own members and more importantly, there can be no law that protect the couple of “public servants” to engage in real estate business if you are engaged in selling Real Estate to people outside of the Society.

4. The biggest stake-holders’ interests are not being represented in the decision making process even though these decisions impact their and their family members’ and heirs’ and successors’ property rights for his life time and beyond!

5. Consent of the Governed (Member-Allottees) being non-existent due to non-compliance with statutes protecting such consent.

6. Lastly, it violates even Article 21 The Universal Declaration of Human Rights. Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. “Will of the people shall be the basis of any authority” [http://www.un.org/en/documents/udhr/index.shtml](http://www.un.org/en/documents/udhr/index.shtml)

7. If “we the people” do not have authority to approve and if necessary to change the rules, then “Consent of the governed” is absent and hence it is a violation of Universal Declaration of Human Rights for which India is a signatory.

If this is allowed to continue, it will be failure of fiduciary duties by the members of MoB towards the Member-allottees and a failure of fiduciary duties is a Criminal Breach of Trust.

### B Prostitution of Rule of Law

1. Rules of AWHO are so cleverly construed by AWHO lawyers (and innocently or foolishly or perhaps maliciously) approved by the Board of Management to deny the Property Rights of individuals who procure their houses from AWHO.

2. If AWHO is a Society and we are members of the Society, no Rules can be formulated without the consent of the Members.
3. For arguments sake, if we assume that we are NOT members of a Society but we are just customers of AWHO, a developer/builder from whom we are buying the houses, then AWHO do NOT have power to make rules which it can force on the buyers, their family, their heirs and successors and rule over the buyers for the rest of their lives and beyond.

4. MD, AWHO is NOT an Almighty King Emperor (even King Emperor of England lost absolute power to make law/rules in 1215 AD with magna carta, and coming to modern times, even President of USA, PM of England or President/PM of India do NOT have powers to make laws/rules with out consent of “we the people”) that he can make rules in his sole discretion and no one can question him.

5. If we are members of the Society, MD AWHO is just a “servant of the Society” and if we are not the members of the Society, then, he is just an employee of the builder/developer.

Does it require great legal acumen to understand this basic principle of law, equity and governance? Do you have problem with this? If yes, there is a big problem.

C AWHO Rules: Strict Statutory Criteria

The Rules have to meet the following strict statutory requirements:

1. Rules should be consistent with Constitution of India and NOT violative of it.

2. Compliance with statutes not only Registration of Society 1860 under which AWHO is registered but also all other statutes dealing with consumer protection and the case laws protecting the real estate consumer against the builder and developer.

3. The compliance status of the AWHO as a Registered Society has to be maintained at 100% or else the AWHO has no locus standi as a Society and can only revert to “Sole Proprietor Real Estate Business” engaged by couple of “Public Servants” as defined under IPC (Section 21 in The Indian Penal Code, 1860)
4. Under the Prevention of Corruption Act 1988 Section 11, it is an offence for a “public servant” to accept or agree to accept or to attempt to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or from any person, he knows to be interested in or related to the person so concerned. “No Profit No Loss” can not be left to trust but should be verifiable by full disclosure.

5. The process for passing of the new Rules should satisfy the statutory requirements of voting by members and the original Rules submitted with the MoA of the Society. If not, any changes made to the original rules is illegal and invalid and null and void.

6. Any rule not meeting the above criteria are illegal/ invalid/ and in the case of violation of the constitutional protections, ultra vires.

**D  Core fiduciary duties**

The BoM have fiduciary duties towards the Member Allottees who have extremely high stakes (running to Rs half a crore) in the Society while Members of BoM have no stakes at all except loyalties to authorities outside of the Society which itself is a violation of fiduciary duties of absolute and undivided loyalty to beneficiaries. Core Fiduciary duties itself impose on the trustees the following:

1. Core fiduciary duties of care

2. Absolute and undivided loyalty to beneficiaries

3. Prudence in dealing with trust funds

4. Disclose all material information ( “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” OTHER PEOPLE’S MONEY - CHAPTER V — The Louis D. Brandeis ) when seeking trust outgoes and income and their nature and disposal

5. Conflicts of interest
6. Fair Process (approval by non-interested directors) or else burden on directors to show entire fairness.

7. No co-mingling of funds

IX Wherever law ends, tyranny begins

Wherever law ends, tyranny begins, if the law be transgressed to another’s harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority to seize my person in the street, may be opposed as a thief and a robber, if he endeavors to break into my house to execute a writ, notwithstanding that I know he has such a warrant, and such a legal authority, as will empower him to arrest me abroad. And why this should not hold in the highest, as well as in the most inferior magistrate, I would gladly be informed.  

For AWHO, law has ended the very moment it started a real estate business under the garb of a Society and the Real Estate business does not fall under Society and that too under the non-democratic and tyrannical rule of a self-appointed Chairman and BoM which does not meet the requirements of functioning of the Society on democratic lines under the Registraton of Society Act 1860.

The rot has deep roots and are not just cosmetic.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others Ambition must be made to counteract ambition. The interest of the

21 John Lock, Section 202 of Chap. XVIII “Of Tyranny” in Book II of the Two Treatises of Government that even magistrates must abide by the law: [http://files.libertyfund.org/pll/quotes/115.html](http://files.libertyfund.org/pll/quotes/115.html)
man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. ...

Remember always and every time what history teaches: James Madison on the need for the separation of powers because men are not angels, Federalist 51 (1788)

X  AWHO Rules & Equity, Justice & Fiduciary Duties

“Equity refuses to confine within the bounds of classified transactions its precept of a loyalty that is undivided and unselfish. Certain at least it is that a “man obtaining his locus standi, and his opportunity for making such arrangements, by the position he occupies as a partner, is bound by his obligation to his copartners in such dealings not to separate his interest from theirs, but, if he acquires any benefit, to communicate it to them.” Certain it is also that there may be no abuse of special opportunities growing out of a special trust as manager or agent... A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion” of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.”


A Principles of Natural Right and Justice

1. There is a right not to have officials take actions, under color of delegated authority, that may be convenient or that may tend to achieve the outcome sought by the exercise of a delegated authority, but only to make the reasonable effort such a delegation authorizes, which need not be sufficient to attain the ends.

2. There is a right to have delegated powers construed narrowly, and complementary rights or immunities construed broadly, and when in doubt, the decision must always be in favor of the claimed right against an action of authority over the claimed power of an official to so act.

3. One can recognize in these precepts the principles of natural right and justice that most of us take for granted, or that are embedded in our public processes, but which are not always made explicit or stated as positive rights.

XI Who is the enemy of Society?

1. The Board of Management who retains absolute power and control if necessary even by failing the commands of rule of law and denying even Membership privileges and the protection of Fundamental Rights: Equality before law and Equal Protection of Laws to the stake-holders.

2. Or, those who assert their own Fundamental Rights and Equal Protection of Laws
You be the judge.