

inferior Courts as a Judge of High Court is in accordance with Constitution irrespective of his practice for ten years in the High Court or in any other Courts or Courts sub-ordinate to High Court, so that the creamy section, of the advocates, who are not practising in High Court, will also be given their share of contribution in delivering landmark judgments.

I earnestly hope and believe that my views in regard to appointment of Judges to High Court may be seriously considered by the concerned authorities and take effective steps in those lines.

It need not be separately mentioned that the present practice of Appointment of Supreme Court Judges also is not being adopted according to the spirit and heart and soul of the Constitution.

I once again request all concerned to discuss threadbare my views with a piercing

sword and after such endeavour if they agree with my views, I request them to take steps at least hereafter to fulfil the urge of the Constitution. If still the same procedure is intended to be followed, what else can I say except making an appeal pathetically to the citizens of this country to get themselves joined and prepared for getting Article 217(2) of the Constitution amended as follows :

Article 217(2) : A person shall not be qualified for appointment of a Judge of High Court unless he is a citizen of India, and

(a)

(b) has for at least ten years been advocate of a High Court, irrespective of his practice, whether in High Court or in any other Court/Courts sub-ordinate to the High Court within its territorial jurisdiction, or of two or more such Courts in succession.

Hope this will meet you all in good cheers.

THE VISION OF CORPORATE LAWS IN INDIA - ITS CHALLENGES OF 21ST CENTURY

By

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“Corporate laws should have the vision to make our Indian Nation a developed economy. Corporate laws should pave way not only for the development of the corporate sector but also for the overall growth of the Nation as a whole with making corporate sector more involved towards the welfare of the State”

It was the idea with future thought of the 11th President of India, Late Sri. Dr. Avul Pakir Jainulabdeen Abdul Kalam (as he then was) that the vision of India should be to become a developed economy by the year 2020 and in this regard, the corporate sector with its laws has an important role and major part in achieving the idea of our

beloved Former President of India. Corporate Sector with its laws plays a pivotal role in the developing or growth of the economy, notwithstanding the fact that India is mainly agricultural sector based economy. Challenges faced by corporate laws in India are multidimensional. Challenges faced by the corporate laws are like fishes in the sea fluctuating and swinging from time to time and it for the corporate laws to lay proper course of action by laying legislative nets for controlling and catching the fishy challenges. The challenges to be met by the corporate laws can be to meet the needs of the stakeholders, to meet the needs of the foreign

markets, to meet the business competitions in the domestic market, to meet the needs and interests of the various classes of its employees of the corporate sector *etc.* Since Independence, Indian corporate sector has always been receptive to the changes in and around the world to meet the demands and competition in the business market. The growth of corporate laws on Indian soil with its existing pattern of corporate sector can be traced back since the days of establishment of East Indian Company during the British Rule, much prior to the Indian Independence. Our corporate sector with its laws has crossed several barriers since the times of Indian independence and is now recognized globally as a lead runner in the world business market. The growth of the Indian corporate laws and so also the corporate governance has always be flexible and were to the tune and dance of the changing policy decisions and the legislations of the Central Government and respective State Governments. It has been a regular phenomena that with every change of reins of powers at the Centre, the policy decisions relating to primarily affecting foreign trade inevitably got effected so also did pave way for the amendments or introduction of new Central legislations effecting customs, foreign trade regulations *etc.* These series of acts have led to birth of several State and Central legislations relating to Companies Act and its allied acts over a period of time.

The Indian corporate sector in addition to its corporate laws to meet its governance are mainly governed by the legislations affecting Indirect Tax laws like Taxation Laws (Amendment) Act 2006 and 2005, The Expenditure Tax Act 1987, Income Tax Act 1961 and Wealth Tax Act 1957. My best of information makes me to submit from the gathered information that Gift Tax Act 1958 has been abolished and Direct Tax laws like Customs Act 1963, Central Excise Act *etc.* Corporate laws are framed over a period of time to time for the domestic trade or National market as well as foreign investments. The Companies Act 1956 which

governed the Indian corporate sector with its proviso in managing the affairs of the Indian Companies has been repealed.

The important corporate law legislations which govern the corporate sector in India are The Companies Act 2013, Securities and Insurance Laws (Amendment & Validation) Act 2010 with its ordinance, State Finance Corporation (Amendment) Act 2010, Securities Contracts (Regulation) Amendment Act 2007, Companies Amendment Act 2006, Special Economic Zones Act 2005, Prevention of Money Laundering (Amendment) Act 2005, Securities Laws (Amendment) Act 2004, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, The Competition Act 2002, Prevention of Money Laundering Act 2002, The Foreign Exchange Management Act 1999, The National Securities and Depositories Limited Bye Laws 1996, The Depositories Act 1996, The Foreign Trade (Development and regulation) Act 1992, Securities and Exchange Board of India Act 1992, Company Law Board Regulations 1991, S.I.C.A. Act 1985, Hire Purchase Act 1972, The Patents Act 1970, Monopolies Restrictive Trade Practices Act 1969 which paved way for the introduction of the Competition Act 2002, The Securities Contract (Regulation) Act 1956, The Companies (Donation to National Funds) Act 1951, State Finance Act 1951, The Industries (Development and Regulation) Act 1951, Sale of Goods Act 1930, Companies (Foreign Interests) Act 1918, Indian Trusts Act 1882 and Indian Contract Act 1872 respectively.

On a careful study of the history of corporate sector in India, it can be opined that Indian Companies have taken a serious step towards globalization since the 1990's only and this initiative has grown substantially since the last decade.

Indian corporate sector is in a steady seat with a growth speed of its own. Our Indian Companies are facing a tough competition

globally from other developed and developing countries. The challenges of 21st Century for Indian companies are manifold.

The advent of Companies Act 2013 in India with its reformative introduction of various provisos no doubt like restricting the number of directorships by an individual, introduction of the concept of corporate social responsibility among other various aspects no doubt *etc.*, can be reckoned as a stepping stone initiated to meet the challenges of the 21st Century's corporate governance and also to the needs and requirements of the global market. A careful study of the Companies Act 2013 indicates that there still exists contradictions with ambiguity.

The frequent governmental interferences in particular relating to foreign exchange transactions in the running of private companies are facing the situations of delay in executing transactions which *inter alia* are resulting as obstacles to private equity and venture capital transactions and this aspect can be considered as one of the obstacles or challenges to be crossed by the Indian corporate laws in the 21st Century. The corporate laws as existing requires introduction of amendments or new corporate laws to meet the competition and effective corporate governance at the national/international market with simultaneous encouraging of the importance of the Indian corporate sector in the lines to meet the vision of making the Nation as a developed economy. There is the need for framing of effective rules to attract capital with less governmental procedures to avoid delay in executing transactions.

My study also makes me to observe that most of the Governmental policies relating to foreign investments initially come in the form of Press Notes and they become *de facto* policies. It has been found that on many occasions that there were inconsistencies with the said made out policies on a later date on interpretation of the rules from the Government itself and one such glaring example being that of the Press Note 1 of 2005 as

issued relating to foreign investors. It has become a regular routine that every change of Government in the Centre has been a platform for new reforms and policies in particular affecting foreign trade policies. This aspect shall be a challenge for the drafters of corporate laws to avoid inconsistencies and to be diligent to meet the challenges in the 21st Century.

It is apt and worth to note that though our corporate sector of the 21st Century, advertises, encourages and supports globalization, seeking investment of foreign funds by foreign investor from all across the globe into our corporate sector, however does not allow a foreigner to set up a business concern in India. The existing Indian corporate laws and its allied laws indicate that with some restrictive conditions under the provisions of the Foreign Exchange and Management Act, a foreign investor can invest in Right shares issued by an Indian company. In the growing scenario and canvassing the Indian corporate sector as one believer in the logo of liberalization and with some of the developed countries encouraging establishment of business concerns by foreigners in their respective countries, there is an increase pressure and challenge in the 21st Century for the Indian corporate laws to accommodate foreigner to set up business concerns in India so as to maintain bilateral business relations with the respective country or countries.

My study also revealed that the Contract Act 1872 to a larger extent has maintained its originality with remote amendments. Many of the situations warranting amendments in the Contract Act has been conveniently side tracked with interpretations of the provisos by Courts of law. The concept like "consequential damages" is merely to be understood by interpretations, as the Contract Act does not specifically define the same. The Contract Act should be suitably amended to meet the needs of 21st Century.

Another important area of concern for the corporate laws in the 21st Century are the Labour Legislations. The Legislations covering

the labour force are in majority pro-worker legislations. The Indian Government should be able to balance the labour legislations with proper amendments on one side and also maintain the trend of growing corporate sector with foreign investments in India on the other side for a better and effective economic growth of the Nation as a whole.

The Competition Act 2002 is yet to come into operation with all its force. It is a fact that Competition Commission of India is established with its office at New Delhi by the Government for monitoring and proper implementation of the said Competition Act 2002. The effective implementation of this Act will have far reaching impact in the development and control of market in India in the 21st Century and it can be practically understood that this new Competition Act 2002 paved its way giving an end to the operation of the earlier MRTP Act 1969. The Competition Act 2002 is likely to prove as a valuable Jewel in the crown of the Indian corporate laws.

The Newly born Companies Act 2013 has on careful study proved that it has inherent limitations and that there are situations requiring interpretations with the provisos not clear and specific requiring better modifications to meet the challenges of the 21st Century.

New era has begun in India. The now Central Government in power has come up with new Foreign Trade Policy 2015 and with slogan like "Make in India" is proving that our Nation is not just

interested in encouraging its corporate sector globally but is equally interested in projecting its corporate sector's vision for a developed, self sustained balanced economy and welfare state. The main challenge to Indian corporate laws for the 21st Century among various aspects is to achieve and encourage more foreign investments in our Nation.

The present topic is worth to write a big voluminous book. My endeavor through the present article is to highlight broadly the challenges which the corporate laws have to face in the 21st Century. The present article is a humble attempt and is not a complete or comprehensive presentation on the given subject.

The challenges to corporate laws are both from the Domestic business market and also from International market. The corporate laws have to balance in such manner that foreign investments in our Nation are on the rise and at the same time are to play safe that our Nation plays pivotal role in the global business market to achieve its target to be reckoned as a developed economy. The corporate laws as existing appears to require modification and amendments to meet the challenges of 21st Century and to add further are to be vigil always to meet the needs of hour. There is no doubt that India will be a frontrunner in the corporate sector and will become leader with balanced growth and development in the near course of time in the global business market with recognition as a developed economy.

**REMEDY - DISOBEDIENCE OF PARTY WHIP – CESSATION OF
MEMBERSHIP – SCOPE OF SECTIONS 153-A AND 181-A OF A.P.
PANCHAYAT RAJ ACT 1994 – WHETHER A WRIT IS MAINTAINABLE ?
AND BURDEN OF PROOF**

By

**—POLLA SAMBASIVA RAO, Advocate
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This article perhaps, the rarest of the rare, deals mainly to resolve disputes relating to

cessation of membership for disobedience of party whip arising under Sections 153-A