the seminar. Justice *Chowdary* needs no introduction. Justice *Chowdary* is the most distinguished Judge-cum-Jurist. His contribution to the development of law is immense and innovative; he is a path-finder in the pathless horizon of law. I trust that his participation in the seminar would lead to fruitful discussion and results. My learned brothers Justice *Bilal Nazki* and Justice *B.S.A. Swamy* are ardent votaries of social justice. They have had rich experience as Judges as well as political activists before their elevation to the Bench. Their presence, I believe, will lead to fruitful discussion on the components of social justice. Then, we have many other distinguished participants drawn from varied fields. I am grateful to all of them for having kindly consented to be the participants in the seminar. I wish the seminar all the success.

I am thankful to the organisers of the seminar for having given me an opportunity to be in your midst today and preside over the inaugural function.

Now it is time to hear the Chief Guest of the today's function, Hon'ble Mr. Justice *A. Lakshmana Rao*. I had the privilege to associate myself with Justice *Lakshmana Rao*, as a colleague on the Bench of Andhra Pradesh High Court. It is said that democracy is grounded on the equality of moderation. The quality of moderation is in abundance in the personality of Justice *Lakshmana Rao*. Justice *Lakshmana Rao* is well known for his quality of moderation, sobriety and well balanced and dispassionate views on men and matters. Therefore, we are eagerly waiting to hear his balanced and dispassionate views on the subject chosen for the seminar. Now I request Mr. Justice *Lakshmana Rao* to kindly address us.

Thank You All.

THE CONCEPT OF PUBLIC INTEREST UNDER SECTIONS 397 AND 398 OF THE COMPANIES ACT, 1956

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In the year 1963, in Companies Act, 1956 under Sections 397 and 398, a new concept was introduced entitled as **Public Interest**. The Statement of Objects and Reasons appended to the Companies (Amendment) Bill, 1963 (Bill No. 46 of 1963) explained thus :

> The scope of Sections 397 and 398 and other related sections is being enlarged to provide for the entertainment of application on the grounds of public interest as well.

Under Section 397, the reliefs can be sought, if the affairs of the company **are being conducted in a manner prejudicial to public interest** or in a manner oppressive to any member or members.

This concept was introduced in sub-section (1) and also (2)(a) to Section 397.

Under Section 398, also this concept was introduced in sub-section (1)(a) and (1)(b). Thus, the CLB can grant relief against mismanagement if it is found that the affairs of the company **are being conducted in a manner (***Act 53 of 1963, came into effect from 1-1-1964***) prejudicial to public interest** or in a manner prejudicial to the interest of the company or due to a material change as stated in sub-section (1)(b), it is likely that the affairs of the Company **will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company.**

This amendment was brought by the Companies (Amendment) Act, 1963.

1. Parliamentary Debates : *Travaux Preparatories*

It is necessary to refer *travaux preparatories* (*Preparatory Records*) such as the Parliamentary Debates to understand the intention of the Parliament in introducing this concept of **public interest.**

On 28th November, 1963 the then Finance Minister Sri *T.T. Krishnamachari* introduced in the Lok Sabha the Companies (Amendment) Bill, 1963, proposing to setting up a Companies Tribunal, a Board for the administration of Company Law, provision for conversion of loans and debentures into equities one another provision ensuring that investment by trusts in equities is not misused by the people who operate trusts and introduce a concept of public interest. Sri Krishnamachari in this connection said (*Lok Sabha Debates, Vol. XXII Nov. 28, 1963, Pub. by Lok Sabha Secretariat, New Delhi, pp. 2004-8*) :

> The Bill also seeks to introduce a concept of public interest. Under those provisions of Companies Act where minority shareholders or the Central Government have been given powers to apply to the Court for prevention of oppression or mismanagement by the provision of the amending Bill, it will now be possible for the Central Government to move the Court under Sections 397 and 398 of the Companies Act or to take action to appoint two directors under Section 408, *suo motu* on grounds of public interest, and not merely where company's affairs are being conducted in a manner prejudicial to the interest of shareholders. Members may want to know why this Bill does not seek to implement the recommendations of the Vivian Bose Committee or the Daphtari-Shastri Committee for amendment of the Companies Act. The reason is that the Bill is a short one providing for matters which are of an urgent nature and Government do not want the progress to be held up or delayed by including too many provisions in it. Those recommendations will be duly incorporated in a comprehensive document and an amendment will be placed before this House, I presume, in the next session. In that Bill we will endeavour not only to block the existing loopholes but to satisfy the desire to simplify the law relating to joint stock companies and make it more comprehensive.

Speaking on the economic policy he said :

> I will say, Sir, a few words if I am permitted by way of some general remarks. As I said, we see in the Press some comments; some comments are favorable; some are unfavorable. It is likely that issues may be raised on matters which are not wholly germane to this Bill. I would like to say that while I have no intention at the moment of making any statement on behalf of Government on economic policy, the point to be underlined is that we have, the Government have, certain

> responsibilities which have to be undertaken not only because of the policy to which we are wedded, namely, for bringing into being an economy which is self-generating but one which will make life for everyone in this country something worth living. That is the major objective. We call it a socialist economic pattern that is to be produced.

Shri Daji, Member (Indore) asked : A new definition of Socialism?

Shri T.T. Krishnamachari replied : "I am not going to controvert the Hon. Members statement; he belongs to a different school and his bible is different from mine though I know what his bible is and he does not know what is mine."

Justifying the introduction of the Bill, he said :

> While we have to undertake these measures, we have to undertake similar measures not so much for putting a check on growth but more for safeguarding the basic factors necessary; there is nothing done to prevent growth. The private sector might say that this is one other chain forged around them. But one thing is quire clear. The private sector has to operate within the framework of the economic structure that we are contemplating, Hon. Members will have opportunities before long to consider the mid-term appraisal of the Planning Commission which will be placed before the House; it significantly says that the growth has been slow. In fact in this document which has been sent to us by the World Bank in which they make an appraisal of the economic position in this country, certain factors are pinpointed. Nobody can say that the World Bank is unfavourable to the private sector. While the World Bank is not unfavorable to the private sector, it has also certain obligations, namely, there should be economic development all round and the life of the individual has to be made something which is worth living. Speaking about one industry, namely, the textile industry, the World Bank report says that the industry itself is primarily to blame for the delays in carrying out modernisation schemes, and for having paid insufficient attention to ploughing back the profits to reinvestment. Of course, they say that modernisation of the Indian textile industry is a formidable undertaking; the dimension of it is Rs. 800 crores. Whether it is textile industry or the woolen industry or even jute for that matter, they do mention substantial sums which have not been utilised. Today the position of the textile industry is such that modernisation is becoming a very big problem. It means a lot of capital necessary for that purpose. Even more necessary is for us to find out the capital for making the machinery for the purpose of modernisation. I have been told by the World Wool Federation people that at least a sum of Rs. 12 crores will have to be invested in the woolen industry in order to make it efficient. That means again the modernisation of the plant. It is so in regard to the jute industry. Therefore, I would like to state in short that the particular proposals. I have made should be read in the context of the Government's desire to enlarge the scope of assistance to the private sector insofar as they are in the management of certain sets of industries, and the development of those industries to which priority is assigned by our Plan.

On the constructive role of the Government in developing private sector, the Minister said:

> In the absence of the powers that we are now seeking to assume, it would not be possible for Government or the

public sector undertakings to play a constructive role in the development of the private sector, and at the same time, to achieve the ends that we have in view. Therefore, industrial development is no longer the privilege of any particular section in this country. It is no longer a question of adding a few crores of investment to this industry or that industry. It is a question primarily of investment of crores of rupees, hundreds of them, in basic industries on which alone we can rely for fulfilling our aspirations for an economically independent and self-reliant India. Therefore, the objective of this measure is to make us lend enough money for the private sector where we are to grow, to develop, to modernise with their industries and become efficient, because we do not subscribe to the theory that they should not be helped, for, after all, there is only one sector in the country, and that is the national sector. Every individual in this country owns every bit of property that belongs to the State and to individuals also, and that should be used for the betterment of the individual in this country. Having this in view, we have framed these provisions so that Government can come forward perhaps in a bigger way to help the industries to grow. And we cannot do that unless the monies of the people of this country are safeguarded, unless we know that the money is going to be used for proper purposes and any expenditure contributes to growth. That, Sir, is my justification for introducing this Bill before the House.

Then in the midst of the discussion, Sri *Morarka*, Member, on the introduction of the clause on public interest said (*Lok Sabha Debates pp.2016-17 Refer foot note 4*) :

That the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest. Now, Sir, what is a "public interest" take, for example, the case of a company which is carrying on the mining operation in a mine. It has a lease for five years. The interest of the company or the shareholders requires that the mine should be worked properly and intensely and as much ore as possible must be taken out, whereas the public interest may require that there should be conservation of resources, that there should be no slaughtering of the mine that there should be certain rules and regulations observed. There are many cases where there could be legitimate conflict between the interest of the company or the interest of the shareholders on the one hand and the public interest on the other. I agree that the affairs of the Company should be conducted in the larger public interest. But, then, what is the guarantee that I would not be hauled up for not carrying on the business according to sound business principles and prudent commercial practice?

Thus, the statements above reveal that in the event of any mismanagement or oppressive acts of the people at the helm in the company may have an adverse impact not only on the company's business but also on the public interest. The business community if doesn't follow the usual business code it could be construed that it will result in multi-dimensional problems so that such a thing should be prevented. In the same way as the learned member gave an example of mining operation, the concept of public interest calls for conservation of natural resources, flora and fauna, the economy and general welfare of public. Thus, any such act which affects public interest can be a subject of reference under Sections 397 and 398 after the

passing of the Companies (Amendment) Act, 1963.

2. The concept of public interest as viewed by some Men of Letters:

(a) *R.A. Musgrave* expressed the classical economist's view of the public interest as the aggregate of individual utilities. Consumer satisfaction, a synonym for private utility, was the standard of efficiency of the economic system and such efficiency is the main public interest (*Published in the Public Interest, Edited by Carl J.Friedrich, New York, Atherton Press, 1962, pp. 1-13.)*

(b) *Gerhart Niemeyer* in his article on "Public interest and private utility" (*As at foot note 6, pp.1 to 13*) states that there are various conceivable relations between public interest and private ability, and a comparison between a number of them is likely to lead to the emergence of standards of criticism. The author compared four concepts of the public interest in terms of their relations with private utility, represented respectively, by (1) *Plato* and *Aristotle*, (2) *Augustine* and *Aquinas*, (3) *Locke*, *Adam Smith* and *Mill* and (4) *Marx* and *Lenin.*

(i) Plato and Aristotle :

According to the author while there is no explicit distinction between **public and private** in Plato and Aristotle, a distinction emerges from the analysis of what it is that generates community among men. Common awareness of the transcendent reason enables men to live together in order and friendship.

The expressions made by the author if compared, to the concept of public interest under Companies Act, one can say that public interest is greater than the individual interest of the shareholders and it aims at common good, the welfare of the society and preservation of capital and resources for common good. According to the author, the distinction between public and private hinges on the identification of another part of the soul, characterised by concupiscence and passion, the appetitive element. It is the energy of this part of the soul that serves for self preservation, but the appetites in their self-centeredness are not capable of generating community and sustaining order. The appetites can only make their contributions to public order when under the higher rule of reason. When not so ruled, they tend to disorient and pervert human life.

The author says that the procurement of material goods for the sustenance of life is called "household-management" (*Oikonomia*). It is an activity of the appetitive energies of the soul, and the materials it uses and procures are held in private control as private property. The community's wealth is still produced by men in whose souls the appetites prevail, private utility bring their propelling motive. The guardian and public maintenance is then the method by which the fruits of private appetites are ordered to the common good. The author says that equally noteworthy is *Aristotle's* insistence on private property as the basis of economic production, even though *Aristotle* himself insisted that the resulting division between rich and poor must always create the besetting troubles in all political communities. Like *Plato*, we felt that material production properly belongs to the appetitive forces of the soul. Economic activities, then are essentially motivated by private utility, while the public interest is oriented towards the awareness, (*noesis*), of the rational order of justice. (*dike*). The **public interest** corresponding to *Plato's* (*Refer foot note 6 - p.5 of his Article*) and *Aristotle's* **concept of order** may be termed *dikaio-noesis.*

(ii) Augustine and Aquinas :

According to Sri *Gerhart Niemeyer* (*Plato, The Republic, II S.372*):

> Essential to the *Augustinian-Thomistic* concept of order then is the limitation of Government to the functions of peace, minimal justice, and defence, and the simultaneous elevation of individual salvation to the rank of a publicly recognized though not publicly organized concern-the meaning of "public" here connoting "Governmental." The corresponding public interest is still *dikaio-noetic* in *Aristotle's* sense, but no longer oriented toward conversion in *Plato's* sense. We have here the emergence of politics as a strictly practical occupation dealing with the problems of public order and judicial administration. But in the Christian order the public interest is characterized not merely by the limitation of Government to peace, defence, and justice, but rather by the participation of this limited Government in the transcendent origin and destination of human life. The *Augustinian-Thomistic* synthesis strongly emphasizes the structural transcendent dimensions of existence, with God as the Supreme Existent and the ultimate end of all action. In this structure the Government, limited in function, participates in a twofold sense. It participates in the prime cause, the existential ground of all things, through the natural law that pervades its ordinances. It participates in the final cause, the ultimate end of all existence, through its deference to the realm of salvation. Peace is indeed the public interest, but not peace as such. It is peace, order, justice in the framework of participation, the participation in transcendent existence and destiny, which is the characteristic Christian formula for the public interest. If we were to think of a suitable term, we might call this public interest *pax participians*.

(iii) Locke, Adam Smith, and Mill

According to the author, contrary to both Greek and Christian views of public order *Locke* builds the political community not on what is common to men but rather on men's individual needs and aspirations. **Civil society, for him, exists** for the sake of private utility. He is consistent with *Plato* and *Aristotle* in seeing material acquisition as the substance of private utility. Property being **the great and chief end of men uniting into Common Wealth's**, (*Locke, Second Treatise, 124*), the political order serves above all to promote for men's acquisitive appetites a greater degree of satisfaction than would be possible under conditions of anarchy. The society, as seen by *Locke*, centers not in *Aristotle's* justice but rather in a calculable, manipulatable legality, or **rules of the game.**

Adam Smith added to this notion the concept of the Invisible Hand, the assumption of a self-regulating harmony between individual appetitive activities and individual satisfactions (*Adam Smith, Wealth of Nations, BK.IV.Ch.2*).

Mill (*Mill, on Liberty, Ch.IV*), in the name of freedom removed from the public sphere the *nous* which, according to the Ancients, is the common element per excellence. The doctrine of free speech relegated the rational activities of men's souls to the realm of the Invisible Hand, which put them out of bounds for public laws and **public interest.**

According to the author: (*Refer foot note 6, pp.9-10 of his Article*).

> The orientation of public interest toward private utility thus tends to a kind of socialism, a tendency that has made itself felt insistently, from the eighteenth century French *philosophies* through

the *Mill* of the last years to *Franklin D. Roosevelt*. One can speak here of socialism in so far as a public concern for private utility converts itself into an expanding public management of economic activities and resources. A socialism motivated by private utility and consumer satisfaction should, however, be distinguished from socialism of the *Marxist* variety. Even when the public interest motivated by private utility assumes socialistic directions, it is still likely to retain private property as the basis of individual livelihood and freedom of contract as the basis of employment. Retention of private property is not wholly incompatible with Government direction or regulation of large scale industries that have assumed the form of vast bureaucracies. If we have socialism in the West today, it is then one of the varieties of a liberal order that assigns to the **public interest** the task of satisfying private aspirations.

In this context it is pertinent to state that the Finance Minister while introducing the Companies (Amendment) Bill, 1963 on the concept of public interest stated that the bill was in consonance with the policy of the Government *i.e.* to produce socialist economic pattern (*Refer foot note No.4. The extract of the speech and debates is given in para 1*). Thus, this concept of public interest is a very old concept introduced in Sections 397 and 398 as per the present needs of the society. Its relevance has to be viewed in the context of environmental protection (*Sri Morarka, Member spoke on this aspect only in the Parliament while introducing the Bill. Refer para 1, foot note 5*), the social responsibilities of business community the general public welfare ad the individual private rights *vis-a-vis* social interest.

(iv) Marx and Lenin

On *Marx* (*Marx, Economic and Philosophic Manuscripts XXXIX, 3*) and *Lenin*, *Gerhart Miemeyer* says that for *Marx*, material production could not be, as it was for *Plato* and *Aristotle*, a private matter. The rejection of the transcendence is for *Marx*, the basis of communism. **Marx aims at the conversion of what is not a private utility into the public interest.**

According to the author this concept of the public interest in a socialized order is the same for *Marx* and for *Lenin*. *Lenin* adds a concept to define the public interest in the period of transition from the **false** would of the present to the **real** world of the future. Throughout the entire period of transition, struggle is the **law of laws**. *Lenin's* doctrine therefore deals above all with the organization of conflict instruments and conflict strategies. The period of transition is of indeterminable duration. *Lenin* speaks of protracted struggle.

According to the author, from *Lenin's* elaboration of *Marxism* these has thus emerged peculiar type of public interest, the type of interest that is connected with the idea of a combat party and a combat Government. For the duration of the period of transition, the public interest represented by militant communism is conflict management, for which the author suggested the term *polemonomia*-from *polemos i.e.* strife and *nomos, i.e.* rule, management.

(c) *Earnest S. Griffith* in his article entitled the **Ethical Foundations of the Public Interest** (*Published in The Public Interest, Edited by Carl J. Freiedrich, New York Atherton Press, 1962 pp.14-25*) says that the concept of **public interest** has been variously defined and extreme Bentlegites even claim that the public interest is not existent. The author emoted the statement of *Bertram Gross* (*Bertram Gross, The Legislative Struggle (1953) p.10*) who said:

> If the realistic approach to the legislative process is accepted, one can then obtain absolute standards of judgment only by regarding as absolute the aims and views of one social group, or cluster of groups, among the contestants in the legislative struggle. The only final decisions are made on the basis of power in form or another.

According to the author, the concept of public interest may be broadly viewed, even to the extent of rating it as roughly synonymous with **general welfare**. Such a definition holds it capable of permeating all action, both individual and institutional.

(d) *Julias Cohen* in his article "A Lawman's view of the public interest (*Publishers as at foot note 20, pp.155-161 of the book*) says that when vagueness and ambiguity beset constitutional and statutory language, thus depriming lawmen of positive legal anchorage for the support of a policy position before a Court, they are apt to employ the concept of **public interest in arguments**. The same is true of arguments before legislative committees, where technical legal language is stripped to a bare minimum and considerations of public interest are nakedly out in the open.

Further analysing this concept the author says: (*Pp.155-157 of the book referred at foot note 20*).

> What does this term mean to judicial and legislative lawmakers who take the concept seriously, and not merely as a cheap rhetorical device to soften the impact of decisions reached on narrower grounds? Aside from its use as a phrase of art, such as in the Federal Communications Act, or in the oft-used concept "business affected with a public interest", it is, I submit, used in a dual sense: first, in a logical sense-*i.e.*, to explicate the meaning of the established basic values of the community. Thus, it would be in the public interest to pursue a certain goal because it would be consistent with the *meaning* of a basic community value. Second, it is used in an instrumental sense-*i.e.*, that a policy would be in the public interest if its consequences would implement one or more of the established basic values of the community. Implicit in the expression "established" is the fact that it would *not* be in the public interest to destroy them-thus the conservative role of the concept. But, the question might be asked: What community? If the community is the font of the values, it is the values which, at the same time, define the scope and membership-*i.e.*, the outer bounds, as well as the internal configurations, of the community. In the eyes of the legal profession, the outer bounds are usually drawn on politico-geographic lines, ranging in size and importance from nation to state to town. Where there is a conflict in the values of the different communities, they are the values of the community considered to be on the highest rung of the hierarchical ladder that prevail. Implicit in this concept of community is a system of basic values which bind together and weld diverse human forces and relationships into an ordered way of life. The material that bids need not be of unpliable steel or cement; tough elastic capable of absorbing permutation and change can still sustain and outline an ordered structure. Nor are these values held by some impersonal mystic entity called "community." They are values held by humans; they concern the relational aspects of man in his social capacity; they are shared by humans, and in this sense take on the aspect of common or community values. The basic values may relate to substance as well as to the rules of the game-*e.g.*, to ideals of human well-being, to

> fundamental methods for achieving them, and to basic procedures for resolving disputes when disagreement and conflict concerning means as well as ends arise. They ultimately determine what satisfactions are to be sought, who are to be satisfied, and at whose expense. The basic values need not have originated from all or most of the members of the community; indeed, as is more likely, they spring from the more articulate and influential within it. What makes them community values in acquiescence in them by its members, either overtly, implicitly, reluctantly, or by default.

On the issue of logical use of this concept and dimension of the human values and further the interest of minority *vis-a-vis* the majority communities in general parlance, the author said (*Pp.157-158 of the book referred at foot note 20*).

> When it is urged that it would be in the public interest to grant a right to remain silent before congressional committees, what is suggested is that it would be consistent with the meaning of the Bill of Rights. This is the logical use of the concept. When it is urged that it would be in the public interest to out-law deceptive television commercials, what is meant is that it would, among other things, protect the consumer without destroying the system of private enterprise. In this sense, the concept is used instrumentally. Granted this view of the concept, it would make little sense to limit it to those cases in which "a person, or firm, or relatively small group of people with special interests is arrayed against 'the public" if by this is meant only those cases in which the interest of the public at large is sought to be protected against the unscrupulous few. For it would deny application of the concept in those instances in which the public might be arrayed against a small scrupulous group of people in a manner not in keeping with the basic values of the community. To suggest, for example that the public interest would not be involved if the *Jehovah's* Witnesses were denied freedom of expression by a statute supported by a majority of the population would fly seriously in the face of experience. For our community values include not only concern for the **majority but, under certain circumstances, for the minority as well.** Our values have a qualitative as well as quantitative dimension. To put it another way, there is a public interest in the private rights of those who elect not to follow the crowd, because it is consistent with one of our basic community values. Accordingly, it is difficult to comprehend the basis for permitting only certain conflict situations the privilege of this conceptual garb. All conflict situations which call for Government action-no matter what the specific nature of the configurations-invite a consideration of community values, and hence of the public interest. They *may* involve situations in which so-called 'special' interests are arrayed against the quantitative bulk of the community. But to limit the concept to this conflict pattern alone would, in my judgment, place an unwarranted crimp upon its usage.

The author further says that the lawmen have a vested interest in **the public interest as an operational concept** and they would be **tongue-tied** without it. "Accordingly, as long as there are lawmen, the concept will flourish. Being so hardy and indispensable a lot, it can be said with reliance that the concept of the public interest which to them is a vocabulary must will have a bright and secure future. Although the interest of the public might be jaded or directionless at the moment, trust the lawmen to argue that it still would

be in the public interest to retain what the public already has until it has discovered what it is that might be better. And, until more exact methods are devised and utilized for recording changes in values, and for translating what is, at bottom, individual and incommensurate into something called "community values", the concept of public interest will still function to embellish public goals forged by our more traditional tools and techniques."

(e) On the concept of public interest, *Horace M. Gray* in his article **"philosphy and the public interest"** has remarked as follows (*Quoted in The '**Public Interest**', edited by Carl J. Friedrich, New York, Atherton Press, 1962, p.185*).

> "The concept of the **"public interest"**, like the equally vague and undefinable common law rule of reason", has validity and usefulness as a fictional device for the ordering of human affairs though we never quite succeed in defining it with scientific precision.

3. Dictionary meaning :

(a) **Stroud's Judicial Dictionary of Words and Phrases** (*Per Campbell C.J., in R. v. Bedfordshire (24, LJ QB 84)* Also the other relevant decisions are: *Seymour v. Butterworth (3F&3F72), Cox v. Freeney (4F & F,13*) contains different meanings to the term **public interest** which are as follows:

(i) "A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have pecuniary interest, or some interest by which their legal rights or liabilities are affected (*Per Morris L.J. in Ellis v. Home Office (1953, 2 Q.B. 135*)"

(ii) "One feature of the public interest is that justice should always be done and should be seen to be done."

(iii) "Interests of the public {(Licensing Consolidation Act, 1910 (C.24), S.14)} A condition imposed by justices on a license might have been in the interests of the public although it was not in the interests of every part of the public (*R.v. Sussex Confirming Authority, 157 LT 590*).

(iv) "Cases where in the public interest a minister of the Crown is justified in objecting to the production of documents are where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service" (*Duncan v. Cammel Laird & Co. (1942) A.C. 624 at 642*).

(v) "..... when considering the public interest and what might be **injurious to the public interest** 'within the proviso to Section 28(1) of the Crown Proceedings Act, 1947 (C.44), it seems to me that it is to be remembered that one feature and one facet of the public interest is that justice should always be done and should be seen to be done" (*Ellis v. Home Office (1953) 2 QB. 135*).

(vi) "Public interest" {(Telegraph (Construction) Act, 1916 C.40, S.1)}. For the refusal of a landowner to permit telephone lines to pass over his land to be contrary to **"public interest"** it is not necessary to show that a district or large member of persons would b thereby deprived of the telephone' (*Postmaster General v. Pearce Note (1968) 2 Q.B. 463)*.

(vii) "Depriving two farmers in a remote area was held to be contrary to public interest (*Cartwright v. Post Office (1969) 2 QB 62*).

It is pertinent to note that the public interest contemplated under Sections 397 and 398 of the Companies Act, 1956 denotes the interest of the members of the

society, the public in general and beyond the interest of the shareholders of the company. In this context it is necessary to look at the meaning of the term "public", *Stroud's* Judicial Dictionary of Words and Phrases, (*5th Edition, Edited by John S. James Vol.4, London, Sweet & Maxwell Ltd., 1986, pp.2080-81*) contains several meanings of the term **public.** One such meaning relevant to the context is as follows:

> The word public is appropriate to denote those outside the immediate circle of those who control the company. One would not, on any ordinary use of the word, describe a man's child or partner and above all his wife, as being a member of the public in relation to himself (*Per Pennychick J. in Morrison Holdings v. I.R.C. (1966) 1 W.L.R. 553*).

(b) **Black's Law Dictionary** (*By Henry Campbell Black, 6th Edition St.Paul, Minn West Publishing Co., 1990, p.1-229*) states about public and public interest as follows:

> "**Public as noun:-**The whole body Politic, aggregate of the cities of a state, nation or municipality; the inhabitants of a State, country or community."
>
> "**Public as adjective:-**Pertaining to a state, nation or whole community; proceeding from, relating to, or affecting the whole body of people on an entire community; Common to all or may; general; open to common use; belonging to people at large; relating to or affecting the whole people of a state, nation or community, not limited or restricted to any particular class of the community"
>
> "**Public interest:-**Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or National Government" (*Russel v. Wheeler, 165 Colo, 296, 439P, 2nd 43, 46*).
>
> "If by public permission one is making use of public property and he chances to be the only one with whom the public can deal with respect to the use of that property, his business is affected with a public interest which requires him to deal with the public on reasonable terms. The circumstances which clothe a particular kind of business with a **public interest**, as to be subject to regulation, must be such as to create a peculiarly close relation between the public and those engaged in it and raise implications of an affirmative obligation on their part to be reasonable in dealing with the public. One does not devote his property or business to a public use, or clothe it with a public interest, merely because he makes commodities for and sells to the public in common callings such as those of butcher, baker, tailor *etc.".*

(c) Dictionary of Sociology (*Quoted in Ramaiya. A, Guide to the Companies Act, 13th Edition, 1995, Nagpur, Wadhwa & Co. pp.2219-20*) states public interest as follows:

> "A thing is said to be in the public interest where it is or can be made to appear to be contributive to the general welfare rather than to the special privileges of a class, group or individual."

4. Other Literature

A *Ramaiya* (*Refer foot note 37 - p.2220*) in his Guide to the Companies Act quoted two references on public interest.

(i) E. Pendleton Herring in Public Administration and the Public Interest

> "The expression is an **elusive abstraction** meaning general social welfare or **regard for social good** and predicating **interest of the general public in matters where regard for the social good is of the first movement.**

(ii) Justice *Felix Frankfurter* of the United States Supreme Court:

> "The idea of public interest is a vogue, impalpable, but all controlling consideration".

(iii) The American Law; The American Law places serious emphasis on corporate social responsibility. It was pointed out in **Laws of Corporations** (*Handbook Series, by Harry G. Henn and John R. Alexander*) as follows:

> Contemporaneously with increased permissiveness in corporate statutory revisions, there was antithetical increased emphasis on corporate social responsibility. In the rhetoric, production of goods and rendering of services with maximization of profits were de-emphasized in favour of achievement of human aspirations, use of corporate resources and personnel in social programs, environmental protection, special training for disadvantaged persons, and other non-profit oriented activities.

5. Analysis of this concept:

Under Section 397, even if there is no oppression caused to any member if the affairs of the company are being conducted, *i.e.* continuously, in a manner **prejudicial to public interest**, it gives raise to a cause of action to file an application to Company Law Board. As it was explained in parliament by Shri *Morarka*, member (*Lok Sabha Debates Vol. XXII, 1963, 28-11-1963, pp.2016-17, Pub. by Lok Sabha Secretariat, New Delhi*) about the mining operations while participating in the discussions on the Bill. If the activities of the company one such to exhaust natural resources thus causing detriment to public interest, any members of the company fulfilling the requirements of Section 399 can file an application before CLB under Section 397, even if there was no oppression caused to him. While the members objected to such activities of the company, causing detriment to public interest are subjected to oppression, then they can move an application under Section 397 raising both the grounds of public interest and oppression. Thus, these two grounds are independent of each other.

Under Section 398, the activities must either result in causing prejudice to the interest of the company or to the interest of the public. Thus, here also both these grounds are independent of each other. Even if there is no prejudice caused to the company if the mismanagement results in causing prejudice to the public interest, an application can be moved under Section 398.

Under Section 399(4) the Central Government can authorise any member or members *i.e.* shareholders only, of the company to file an application under Section 397 and/or 398.

Under Section 401, the Central Government can apply itself to the CLB for an order under Sections 397 or 398 or cause an application to be made to the CLB for such an order by any person, not necessarily to be shareholder, authorised by it.

Under Section 408 also, the Central Government can take appropriate action subject to the fulfillment of the requirements

to prevent such acts prejudicial to public interest.

Hence, the basic question in this context is that what is public interest? The various interpretations of this term from different quarters have been explained already in this chapter. Eventhough, it generally implies social well-being and the Parliamentarians themselves gave an interpretation of the term while discussing the Bill, a pertinent question is that what are the incidence or instances of social well-being? Further where Section 397 is basically connected with prevention of oppression, induction of this concept in this section rather appears to be unsuited and odd since even if there is no oppression caused to the members on the basis of acts causing prejudice to public interest the members can seek relief under Section 397. And again against acts of mismanagement under Section 398 the members can move an application even if it affects public interest, eventhough it does not effect the company's interest, thus, this concept rather ought not to have been inducted under Section 397 of the Act. Its induction in Section 398 serves the purpose of protecting the public interest and also preventing the acts of mismanagement. If, to this observation one can say that, if any members object to any act causing prejudice to public interest and they were subjected to oppression, such an act can be sought to be prevented under Section 397, it is submitted that such acts of the company causing prejudice to public interest can also be termed as acts of mismanagement and remedy is provided under Section 398 against mismanagement and if any member takes objection to acts of mismanagement and he is subjected to oppression, he is entitled to move an application under both the Sections 397 and 398. Thus, the induction of this concept in Section 397 appears to be causing confusion to Courts while interpreting the provisions under Sections 397 and 398 as this concept is rather not necessary to be inducted under Section 397.

The various view points of Courts on this concept of public interest are discussed in the succeeding paragraphs.

6. Judicial interpretation

(i) The Supreme Court in *State of Tamil Nadu v. M/s. Hind Stone etc.*, AIR 1981, SC 711 at p.716, on public interest held as follows:

> Rivers, Forest, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals.

Thus decision synchronises with the expression of Sri *Morarka,* Member of Parliament on public interest (*Refer foot note No.40*).

(ii) In *Babu Ram Verma v. State of U.P.*, (1971 2 Serv. L.R. 674 at p.659, the U.P. High Court held:

> The expression public interest in common parlance means an act beneficial to the general public. An action taken in public interest necessarily means an action taken for public purpose, public interest and public purposes are well-known terms, which have been used by the framers of the Constitution in Articles 19, 31 and 304 (b). It is impossible to precisely define the expression public

> interest or public purpose. The requirement of public interest vary from case to case.

(iii) In *N.R.Murthy v. Industrial Development Corporation of Orissa Ltd., and others,* (1977) 47 Comp. Cas. 389 at 405-6. Justice *R.N.Misra* of Orissa High Court held as follows:

> The words 'in a manner prejudicial to public interest' were added to the statute by Central Act 53 of 1963 by way of amendment. The expression is an elusive abstraction meaning general social welfare or regard for social good and predicating interest of the general public in matters where a regard for the social good is of the first moment. As was once pointed out by *Frankfurter,* J. of the United States Supreme Court, the idea of public interest is a vague, impalpable but all controlling consideration. Common good or general welfare of the community is conducive to public interest. A thing is said to be in public interest where it is or can be made to appear to be contributive to the general welfare. *Mahajan,* C.J., in the case of *State of Bihar v. Kameshwar Singh* (AIR 1952 SC 252) indicated that the expression is not capable of a precise definition and has not a rigid meaning and is elastic and takes its colors from the statute in which it occurs, the concept varying with the time and state of society and its needs. Thus, what is public interest today may not be so considered a decade later. In any case, the expression cannot be considered in vacua, but must be decided on the facts and circumstances. In the case of a company intended to operate in modern welfare state, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasises the idea of the idea of the of the company functioning for the public good or general welfare of the community, at any rate, not in a manner detrimental to the public good.

The Orissa High Court observed further that a company taking a sizeable loan from financial institutions must put it to appropriate use and if it does not do so, it would cause detriment to the public interest. The Orissa High Court also held:

> It is the policy of the State today that the corporate sector must work with efficiency. The companies which face stalemate should be helped to overcome the same so that they may get into production and production may be on the increase. With more of industrial and commercial activity, the scope for employment would be on the increases. The company in question has already taken a sizeable loan from financial institutions and it is in the public interest that the said capital is put to appropriate use without loss of time and optimum return is received. One of the main considerations of locating the factory at *Paradeep* was to facilitate export of its products. In fact, there is sufficient material on record to show that if the company had gone into production, it would have by now been working as an earner of foreign exchange. That certainly would have had its contribution to streamline the foreign trade of the country. As originally envisaged, the company was to go into production in the first quarter of 1973. This was delayed on account of non-availability of funds at the right time and as would appear from the directors' report for the year ending 31st of December, 1974, the plant was expected to go into production latest by end of October, 1975. This has been unduly delayed mostly on account of disputes raised over the right to manage the affairs of

> the company. In these circumstances, I would accept Mr. *Mohanty's* contention that the company's affairs have been conducted in a manner prejudicial to public interest. As would be shown later, the affairs of the company are also being conducted in a manner prejudicial to the company.

(iv) *In Balchandra Dharmajee Makajee v. Alcock Ashdown & Co. Ltd.* (1972) 42 Comp. Cas. 190 (Bom). The Bombay High Court, on this concept held as follows:

> The modern corporation has become the accepted instrument of social policy because it affects a large part of the economic life of the country. It has become an instrument for the improvement of the standard of life of the people and for the economic growth of the nation. The element of public interest also arises from the general responsibility of ensuring a minimum wage to the numerous employees in the corporate sector. Thus, in deciding whether the Company Law Board should wind up a company or change its management, the Board must take into consideration not only the interest of the shareholders and creditors but also public interest in the shape of the need of the community and the interest of the employees.

(v) In *G.Kasturi v. N. Murali,* (1992) 74 Comp. Cas. 611 (Mad.)., a division Bench of Madras High Court considered several aspects relating to public interest. It also examined the similarity of this concept in Sections 397 and 398.

> The Bench held as follows:
>
> We have already noticed that the petitioners/respondents have made one petition applying for relief under Sections 397 and 398 of the Act. Section 399 of the Act says who may apply under Sections 397 and 398 of the Act. The petitioners/respondents have claimed to comply with the requirements by bringing on record a consent in writing of such members of the company who together with the respondent/appellants hold not less than one-tenth of the issued share capital of the company. Their *locus standi* to move the applications are not under challenge. Sections 397 and 398, however, appear to have some ingredients in common, but some for Section 397 and some for Section 398 are exclusive and special. Section 397, before its amendment under the Act 53 of 1963, gave a right to the members of the Company, who complied with the conditions of Section 399, to apply to the Board for relief under Section 402 of the Act or such other reliefs as may be suitable in the circumstances of the case if the affairs of the company were; being conducted in a manner oppressive to any member or members including any one or more of themselves. After the amendment by Act 53 of 1963, the right of the members of the company to apply to the court for relief under Section 402 of the Act or as may be suitable in the circumstances of the case on the ground when the affairs of the company were being conducted in a manner oppressive to any member or members including anyone or more of themselves, has been retained. But another ground has been introduced, *viz*, the complaint that the affairs of the company were being conducted in a manner prejudicial to the public interest. The Court thus has power to make such orders under Section 397 read with Section 402 as it thinks fit if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in any manner oppressive to any member or members and that to wind up the company would unfairly prejudice such member or

> members, but that otherwise the facts would justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up. Section 398 of the Act speaks of the affairs of the company being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the Company. The first clause "being conducted in a manner prejudicial to public interest" is common to both Section 397(1) and 398, the clause that the affairs of the company are being conducted prejudicially to the interests of the company is exclusive to Section 398. The other ground to attract the provisions of the Section 398 will require a proof of material change not being a change brought about by or in the interests of any creditors including debenture-holders or any class or shareholders of the company brought in the management or control of the company, whether by an alteration in the board of directors or of its managing agent or secretaries and treasurers or manager and by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company.

On the rule of *prima facie* case, balance of convenience and irreparable injury, the Division Bench observed:

> This rule of *Prima facie* case, balance of convenience and irreparable injury, has never been ignored by Indian Courts. They are with necessary modifications and subject to peculiar facts of the case being applied by the Courts in India. It has thus to be seen whether the petitioners/respondent have complained before the Court that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members including any one or more of themselves or not and whether such facts exist which would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. It is not possible to see any public interest interfered with by the acts of commission and omission alleged in the conduct of the board meeting or alleged violation of the company law provisions by the managing director. There has, however, been an attempt to introduce as an act against public interest the decision of the managing director (editor) to withhold publication of the second installment of news on Bofors issue. Section 397 (1) talks of complaint that the affairs of the company "are being conducted in a manner prejudicial to public interest". The words "are being conducted" must mean several acts in continuity and not one isolated act. The expression "interest" in this context also must receive a meaning different from the interests of a reader of a news item, who as a member of the public, may have one or the other opinion. Public interest cannot be allowed to be confused with public opinion. *John Burke* in **Stroud's Judicial Dictionary of Words and Phrases,** volume 3, third edition, page 2381 has elucidated that the expression "a matter of public or general interest" does not mean that which is interesting as gratifying curiosity or a love of information or amusement, but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected", a definition which has been noticed by the learned company Judge also.

On the decision of the single Judge, the Division Bench commented that:

> In fact, the learned company Judge has

dealt with this aspect of the case more than needed, but held that non-publication of such news item as one released by *N.Ram* was an act prejudicial to the public interest. We have difficulty in accepting this conclusion. Our first reason not to do so is that a decision regarding publication of a news item would be in public interest. Whether interest of the public is in prejudice or not will be known only after publication but not before. That the publication of the second installment served a greater public interest can thus be no ground to say that its non-publication went against the public interest. Moreover, the two opinions reflected in the editor, *Kasturi*, deciding against publication and *N.Ram*'s insisting for publication, were/are limited to the difference of opinion between the associate editor and the editor, incidentally though the editor happens to be the managing director and the associate editor, and ex-director and a member of the company, that is to say, a shareholder. The associate editor, *N. Ram*, opined that the editor had decided arbitrarily, capriciously and in a manner highly derogatory of the traditions, norms and values of independent, ethical journalism. The editor thought, in his estimation there was nothing in it that was vitally indicative, of who might have been the recipients of the Bofors pay off, and of something that can be traced to people of this country, high or low or it could take the issue forward in any meaningful way. Since *N.Ram* was the associate editor, the editor's view prevailed. *Ram* then went beyond the role of associate editor and made a press statement and released the second installment of Bofors news which, according to *Ram,* himself was a result of investigative journalism by him in collaboration with *Chitra Subramanium* exclusively for **the Hindu.** In the press statement, it was *Ram*, who first called the editor's action as arbitrary, capricious and in a manner highly derogatory of the traditions, norms and values of independent, ethical journalism. Editor's reply was to the effect of calling press statement as reflecting gross indiscipline, lack of decency and elementary manners on the part of the individual. Could this be a matter thus affecting public interest? *N.Ram,* the associate editor, has earned laurels as stated in the petition. Public, according to the petitioners/respondents, could have been denied information if *Ram* had not chosen to go and publish the second installment of Bofors news. **The Hindu suffered injury because Ram as a member of the company and associate editor blamed the editor of caprice, arbitrariness, etc. viewed in this manner, it is difficult to find any injury to the public interest by non-publication of the second installment of Bofors news, but there has been some injury to the interests of the company by a dispute which *N.Ram* raised giving adjectives to the editorial decision of *G.Kasturi*, who besides the editor, was the managing director also.**

(iv) In *Life Insurance Corporation of India v. Escorts Ltd. & others,* (1986) 59 Comp.Cas. 548 at 560-61 per Justice *Chinnappa Reddy*:

On the public interest, the Supreme court observed that corporate battles are fought under the attractive banners of Justice, fairplay and the public interest.

The Supreme Court observed:

Problems of high finance and broad fiscal policy, which truly are not and cannot be the province of the court for the very simple reason that we lack the necessary expertise and, which, in any case, are none of our business, are

> sought to be transformed into questions involving broad legal principles in order to make them the concern of the court. Similarly, what may be called the "political" processes of "corporate democracy" are sought to be subjected to investigation by us by invoking the principle of the rule of law, with emphasis on the rule against arbitrary State action. An expose of the facts of the present case will reveal how much legal ingenuity may achieve by way of persuading Courts, ingenuously to treat the variegated problems of the world of finance, as litigable public-right-questions. Courts of justice are well-tuned to distress signal against arbitrary action. So, corporate giants do not hesitate to rush to us with cries for justice. The Court room becomes their battle ground and corporate battles are fought under the attractive banners of justice, fair play and the public interest. We do not deny the right of corporate giants to seek our aid as well as any Lilliputian farm labourer or pavement dweller thought we certainly would prefer to devote more of our time and attention to the latter. **We recognise that out of the dust of the battles of giants occasionally emerge some new principles, worth the while. That is how the law has been progressing until recently.** But not so now. Public interest litigation and public-assisted litigation are today taking over many unexplored fields and the dumb are finding their voice.

Commenting on how the corporate giants fight in the name of public interest it was observed:

> It was apparent to us from the beginning that if there was much front line battle strategy, there was considerably more back stage "diplomatic" manoeuvering, as may be expected when financial giants clash, though we are afraid neither giant was greatly concerned for justice or the public interest. For both of them, the court room was just another arena for their war, except that one of the giants carefully kept himself at the back behind a screen as it were. One was reminded of the Mahabharata war where *Arjuna* kept *Shikhandi* in front of him while fighting *Bhishma*, not that neither of the warriors in this case can be compared with *Bhishma or Arjuna* nor can the Government of India and Reserve Bank of India be downgraded as *Shikhandies*. But the case does raise some questions which do concern the public interest and we are greatly concerned for the public interest and the administration of administrative justice in the public interest. It is from that angle alone that we propose to examine the several questions arising in the case.

The Supreme Court in this case finally directed the Reserve Bank of India to make a full and detailed enquiry into the purchase of shares of Escorts by the 13 companies ad consider afresh the question whether permission ought or ought not to have been granted to the non-resident companies to invest in shares of Indian companies.

(vii) A Division Bench of the Orissa High Court in the case of *N.K.Mohapatra v. State of Orissa and others,* (1995) 1 Comp.L.J. 266 (Orissa), examined this concept and observed that one feature of the public interest is that justice should always be done and should be seen to be done. *(Quoting Morris L.J. in Ellis v. Home Office*, (1953) 2 All E.R.149).

The High Court observed thus:

> The words 'in a manner prejudicial to public interest' were introduced in Sections 397, 398 and 408, by the Companies (Amendment) Act (53 of 1963), in order that the court or the

> Central Government may have jurisdiction to interfere in cases where even though there may be no prejudice to any shareholders, the oppression or mismanagement complained of is prejudicial to the public interest. The expression 'public interests' is an elusive abstraction meaning general social welfare or regard for social good and predicating interest of the general public in matters where regard for the social good is of the first moment. To be meaningful, it must relate to the good life of those with reference to whom it is used. Justice *Felix Frankfurter* of the United States Supreme Court has said that the idea of public interest is a vague, impalpable, but all controlling consideration. While no one can formulate the abstract principle called 'public interest' and it cannot be considered in *vacuo,* it can fairly be understood and applied to policy decisions. It indicates a standard of goodness for judging private acts and conduct in the social context. As observed by *Mahajan,* C.J. in *State of Bihar v. Kameshwar Singh,* AIR 1952 SC 252, the expression 'public interest' is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state of society and its needs. In the case of a company, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasises the idea of the company functioning for the public good or general welfare of the community at any rate not in a manner detrimental to the public good. Public interest or commercial interest of the company has received statutory recommendations. Further the creditors or individual shareholders of a company cannot be permitted to initiate proceedings for feeding private grudges of warring groups or for the purpose of fighting out their private grudges.

Speaking on the restrictions of this concept it was observed:

> Restrictions in public interest are those which seek to protect public health, safety, morals and property. See *Kalyani Stores v. State of Orissa,* AIR 1966 SC 1686 and *State of Karnataka v. Hansa Corporation,* AIR 1981 SC 463). It can mean a purely inquisitive interest as well as a material interest. One feature of the public interest is that justice should always be done and should be seen to be done; (*Per Morris, L.J. Ellis v. Home Office,* (1953) 2 All ER 149). A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a peculiar interest, or some interest by which their legal rights or liabilities are affected. (*Per Campbell,* C.J. *R. v. Edfordshire)* (1855) 24 LJ QB 81 (84).

Public Interest means something in which the public has a vital interest in either a pecuniary or personal sense.

With these observations the Bench found that no case for the interference was made out and the appeal was dismissed.

(viii) In a recent decision on the concept of public interest, the Supreme Court in the case of *Sri Ramdas Motor Transport Ltd., and others v. Tadi Adhinarayana Reddy and others,* (1997) 3 Comp. L.J. 35 (SC) at pp.39-40., held that the writ jurisdiction cannot be invoked when alternative remedy is provided under the statute. In this case, for the reliefs against alleged oppression and mismanagement, a writ petition under Article 226 of the Constitution of India was filed in the A.P. High Court on the pretext

that public institutions lent moneys to the respondent company and the single judge held that since a forum to consider the grievances made out is provided under the Companies Act, resort to Article 226 should be discouraged. In appeal, the Division Bench entertained the appeal on the ground that the acts of the company involving issue held as follows:

> The only ground for intervention appears to be public interest. We fail to see what public interest is involved in disputes of the kind referred to in the writ petition. They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its shareholding is very closely held. The only other factor referred to in the writ petition to invoke the doctrine of so called public interest is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. We are distressed to find that the well reasoned judgment of the single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an *ipse dixit*.
>
> The appeal was allowed with costs.

7. It is submitted that these judgements discussed reveal that the courts are very cautious in granting any relief on the concept of public interest. If any relief should be granted, the issue must involve a common benefit, interest, the well-being of the society or the particular class of people, who form the subject matter of public interest must show some concern, pecuniary or otherwise.

Thus, the Court/CLB grants reliefs based on this concept only on established facts affecting public interest but not on vague analogies.

IS MUSLIM PERSONAL LAW SUSCEPTIBLE TO MODERN WORLD REFORMS ?

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In the recent past, a great deal of controversy has exploded all over the world about the ways to be adopted to bring in certain reforms in Muslim Personal Law. Modernisation of the Muslim Personal Law has been the subject of a lively debate between the pro-reform progressive sections and the anti-reform traditional forces. This sensitized issue refrain the Governments from legislating on the Muslim Personal Law areas on the ground of political exigency and democratic viability. To analyse the various permissible means and devices; that are not contrary to the basic teachings of Islam as adapted by some progressive states both secular and Islamic; it becomes inevitable to mention the four sources of Islamic Law in brief.

Sources of Islamic Law :

According to the fundamentals of the science of Islamic jurisprudence, there are four sources from which the whole Islamic law is derived. The *Quran*, the *Sunna*,