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EDITORIAL

INDIAN ECONOMY - MOUNTING CHALLENGES



CA Vinod Jain*

The Indian economy is passing through a fairly rough patch, after a record performance of GDP growth for last several years. The major issues which are impacting the economy include:

Growth Slow Down

The Indian Economic Growth is apprehended for a slowdown thereby impacting GDP growth, employment, poverty alleviation. Growth in industrial production is one of the lowest in recent months as compared to last several years. The tax collection on the direct tax as well as indirect tax is much lower as compared to the budgeted estimated figure. It is important to appreciate that for last several years the tax collection always exceeded the estimate. Lower tax collection also indicates poorer health of the economy.

Heavy Government Borrowings

The Government of India plan to borrow an additional Rs. 50000 crore to Rs.80000 crore from the Indian financial market in addition to existing plan of about Rs. 500,000 crores as per its original planned budgeted borrowing.

Falling Savings

The savings and the public provident fund and other government saving schemes have gone down this year by about Rs. 30,000 crores.

Increase in Interest Rates

The interest rate has substantially gone up for last few years, thereby putting very heavy burden of finance cost for industry, services and trading sector. The increase in

CHALLENGES BEFORE THE PROFESSION - LEADING TO AN OPPORTUNITY

The government, political thinkers, intelligentsia and media and the top leadership of the country include the senior government officials have been raising an issue of independence of auditors for quite some time. No effective policy decision or action has so far been initiated. The issues which require an open debate within and outside the profession include:

1. Role, responsibility and powers of Auditors in Companies and other organizations where public interest is involved.
2. Whether the Auditors of public interest entities can be appointed independent of those who are charged with

WHERE IS THE PRIME MINISTER ?

The Indian society is repeatedly asking a question as to where is our political leaderships. The Prime Minister Dr. Manmohan Singh, who was once upon a time considered as one of the best finance ministers and policy makers of the country, is practically missing from the government. No policy initiative or direction is being given by the current leadership.

Governance by allowing minority shareholders or regulator appointing the Auditors.

3. Whether such auditors are permitted to provide other services including taxation and consulting to their audit clients. There is a strong view both in favour and against separation of audit from other than audit practices.
4. Self regulatory practices, code of ethics and code of conduct prescribed by the Institute of Chartered Accountants of India may require substantial modification to meet changing expectations of stakeholders of entities where public interest is involved.

Effectiveness of education, training and examination conducted under the guidance and supervision of ICAI may require substantial re-positioning by not only inculcating ethical values and sense of responsibility among the professionals but at the same time ensuring deep rooted and effective professional delivery.

Contd.on page 3

Contd.on page 7

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LATEST IN FINANCE

1.0 SEBI SETS RS.100 CR NET WORTH FLOOR FOR LISTED STRUCTURED DEBENTURES

Companies issuing structured products or market-linked debentures should have a minimum net worth of at least Rs. 100 crore, if they want them to be listed on the stock exchanges.

SEBI Guidelines -

- While the issuers are free to determine the face value for such securities, no invitations for subscription or allotments shall be made for an amount less than Rs. 10 lakh in any issue.
- Only intermediaries regulated by SEBI (Securities & Exchange Board of India) can sell such securities.
- The companies would also need to disclose, in all offer documents, a detailed scenario analysis or a valuation matrix showing graphically, the value of the security under different market conditions.
- Risk factors need to be suitably highlighted so that it is clear to investors that the securities are created on the basis of complex mathematical models.
- It will be mandatory for the issuer to appoint a third-party valuation agency, which shall be a credit rating agency registered with SEBI (Securities & Exchange Board of India).

2.0 TIGHTER PROVISIONING RULES LIKELY FOR HOUSING FIN. COMPANIES

The National Housing Bank (NHB) has slapped a set of stringent rules which may put housing finance companies (HFCs) under stress.

Provisioning norms for HFCs

(Figure in %)

PARTICULARS	NOW	BEFORE
Standard asset	0.4	Nil
Sub Standard asset	15.0	10
Doubtful Assets		
• Up to 1 year	25.0	20
• 1-3 years	40.0	20
• Over 3 years	100.0	50

3.0 EXTERNAL COMMERCIAL BORROWINGS FROM THE FOREIGN EQUITY HOLDERS

As per the extant ECB policy, a 'foreign equity holder' to be eligible as 'recognised lender' under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:

- for ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
- for ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and debt-equity ratio not exceeding 4:1 (i.e. the proposed ECB does not exceeds four times the direct foreign equity holding).

Henceforth, besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the equity of the foreign equity holder. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

4.0 BRIDGE FINANCE FOR INFRASTRUCTURE SECTOR

Considering the specific needs of the infrastructure sector, the existing ECB policy has been reviewed in consultation with the Government of India and it has been decided to allow Indian companies which are in the infrastructure sector, where "infrastructure" is as defined under the extant guidelines on External Commercial Borrowings (ECB), to import capital goods by availing of short term credit (including buyers' / suppliers' credit) in the nature of 'bridge finance', under the approval route, subject to the following conditions:-

- the bridge finance shall be replaced with a long term ECB;
- the long term ECB shall comply with all the extant ECB norms; and
- prior approval shall be sought from the Reserve Bank for replacing the bridge finance with a long term ECB.

5.0 DOLLAR LOANS - INCREASED EFFECTIVE COST

Companies with 'dollarized' balance sheets will pay the biggest price with the rupee crashing against the US currency. Attracted by low interest rates in overseas money markets, many Indian companies have either borrowed in dollar or converted rupee debt into dollar by striking deals, known as 'principal only swaps' in the currency market, with banks.

Such deals, kept unhedged or exposed to currency fluctuations, can dramatically lower interest outgo on loans. But interest costs jump when the dollar strengthens. The rupee ended at 49.58. Dollar has fallen about 10% in three months.

**EDITORIAL**

Contd.from page 1

INDIAN ECONOMY.....

domestic interest rate by about 3.5% as well as increase in international borrowing cost, by about 200 basis point has impacted expansion, diversification and growth plan of various businesses. The non-performing assets with the banking sector are also likely to increase substantially due to sudden increase in the financial burden.

Inflation

The government has not been able to tame the inflation, in spite of several fiscal policy interventions alibi corrections. Government has not addressed the issues of hoarding, speculative trading, supply improvements and regulatory and administrative interference in ingenuine price increase. The prices of all basic amenities and necessities are increasing sharply including the cost of fuel, milk, pulses, cereals, vegetables, edible oil, transportation, and clothing and most seriously the prices of housing have gone up very substantially. The government needs to consider banning international investment in real estate sector in the interest of a common man. Even NRI need to be given a limited access to Indian real estate.

Exchange Rates

The recent rise of US Dollar all other major currencies vis-à-vis Indian rupee by more than 10% is not only unexpected but also shocking and clearly indicate the lack of necessary policy intervention by RBI and the Government of India. The Indian society is repeatedly asking a question as to where is our political leaderships. The Prime Minister Dr. Manmohan Singh, who was once upon a time considered as one of the best finance ministers and policy makers of the country, is practically missing from the government. No policy initiative or direction is being given by the current leadership.

We urge upon the top leadership of the country including the leadership of the major political parties to have a brain storming session and give an appropriate direction to India and its economy.

ICAI**1.0 ICAI ON VIOLATION OF CA RULES**

Apex Chartered Accountants' body, the Institute of Chartered Accountants of India (ICAI) has accused multinational accounting companies of violating the CA Act and asked for joint action by agencies, including the RBI and the corporate affairs ministry, to enforce compliance. The Institute of Chartered Accountants of India (ICAI) Council shall request the Ministry of Corporate Affairs (MCA), the Reserve Bank of India

(RBI) and other relevant ministries/departments of the government to take appropriate action (to enforce compliance of law).

NBFC**1.0 RETURNS TO BE SUBMITTED BY NBFCs-REVISED FORMATS**

NBFCs are required to file various returns related to deposit acceptance, Prudential Norms, Capital Market exposure, etc. A few of these returns are as under:

Returns to be submitted by deposit taking NBFCs

1. NBS-1 Annual Returns on deposits in First Schedule.
2. NBS-2 Half-yearly returns on Prudential Norms
3. NBS-3 Quarterly returns on Liquid Assets
4. NBS-6 Monthly returns on exposure to capital market by deposit taking NBFCs with total assets of ₹ 100 crore and above.

Returns to be submitted by NBFCs-ND-SI

1. NBS-7 An annual statement of capital funds, risk weighted assets, risk asset ratio etc., as at the end of March every year.
2. Monthly Returns on Important Financial Parameters.

Such forms are available and can be filed through www.rbi.org.in

CORPORATE LAWS**1.0 MCA WATERS DOWN DECISION ON FILING OF UPDATED ACCOUNTS**

The Ministry of Corporate Affairs (MCA) has diluted its earlier decision and allowed companies not filing their updated balance sheets and profits and accounts to the Registrars of Companies (ROCs) to apply for liquidation through a speedy process. MCA has now revised its stand to allow ROCs to accept over two dozen types of submission, irrespective of the compliance level of registered firms.

2.0 FOREIGN CARRIERS SUBJECT TO INDIAN CONSUMER LAW : SC

The Supreme Court (SC) stated that the Consumer law in India will apply to foreign carriers in addition to the Carriers Act and international conventions. The remedy available under the Carriers Act by way of a suit will not bar a consumer complaint under the Consumer Protection Act.

Decided Case: *Trans Mediterranean Airways vs. Universal Exports.*



FEMA

1.0 GOVT RAISES FDI CAP IN FM RADIO TO 26%

The government has relaxed the Foreign Direct Investment (FDI) norms for the FM radio segment by raising the limit of Foreign Capital inflows to 26 per cent from 20 per cent. It has also eased the FDI norms regarding construction of old-age homes and educational institutions.

These amendments were done as part of the fourth revision of the Consolidated FDI Policy.

2.0 RBI LIBERALISES FOR INDIVIDUALS

A person resident in India can now give to a person resident outside India, by way of gift, any security, shares or debentures of value up to \$ 50,000 in value per financial year.

Individual residents in India are also now permitted to include a non-resident close relative as a joint holder in their resident bank accounts.

Non-resident Indians (NRIs) or persons of Indian origin (PIOs) are now permitted to open non-resident (external) (NRE) Rupee Account Scheme/Foreign Currency (Non-Resident) (FCNR) Account (Banks) Scheme with their resident close relative as a joint holder on a 'former or survivor' basis.

Resident individuals can now make rupee gifts within the overall limit of \$200,000 per financial year as permitted under the Liberalised Remittance Scheme (LRS) to an NRI/PIO who is a close relative.

Moreover, the sale proceeds of FDI can be credited to NRE Account Scheme/Foreign Currency (Non-Resident) Account FCNR (Banks) Scheme, provided the original acquisition was by way of inward remittance or funds held in their NRE/FCNR (B) accounts.

3.0 OVERSEAS BORROWING WINDOW FOR INDIA INC. OPENED FURTHER

In a bid to attract precious foreign exchange in the face of the global economic crisis, the Reserve Bank of India (RBI) in consultation with the Centre, has hiked the External Commercial Borrowing (ECB) limit for corporates.

Corporates in the industrial and infrastructure sectors can raise up to \$750 million or equivalent under the automatic route as against the present limit of \$500 million or equivalent.

Further, corporates in specified service sectors - hotel, hospital and software - can raise up to \$200 million or

equivalent under the automatic route as against the present limit of \$100 million or equivalent.

This is, however, subject to the condition that at least 75 per cent of the fresh ECB proposed to be raised should be utilised for capital expenditure towards a 'new infrastructure' project(s).

Further, infrastructure companies can import capital goods by utilising short-term credit (including buyers' credit / suppliers' credit) in the nature of 'bridge finance', under the approval route.

Corporates in the infrastructure sector can avail themselves of ECBs for 'interest during construction' (IDC) as a permissible end-use, under the automatic/approval route, subject to the IDC being a part of project cost and is capitalised.

4.0 RBI EASES FOREX NORMS FOR RESIDENTS & NRIs

The Reserve Bank of India (RBI) has eased foreign exchange facilities for individuals. According to the new norms, Non-Resident Indians can be joint holders in resident savings banks account and residents can be joint holders in NRIs' non-resident external rupee accounts. Residents can now lend to NRIs to the extent of Rs. 200,000 through electronic transfer and crossed cheques.

5.0 FDI IN MULTI-BRAND RETAIL ON THE BACK BURNER AGAIN

The much awaited multi-brand retail policy allowing Foreign Direct Investment (FDI) in the sector has been put on the back burner. The Government is likely to take a call on the matter only in the next financial year.

6.0 FDI DEALS SHOULD NOT COME WITH ANY STRINGS ATTACHED: RBI

The Reserve Bank of India (RBI) is hardening its stand on FDI deals to drive home the point that there should be no strings attached to such inbound flows. In eight out of 10 FDI deals, Foreign investors have a right to sell back shares to Indian promoters if certain conditions are not fulfilled. In the last few months, the Reserve Bank of India (RBI) has questioned many such deals as it thinks such inflows are foreign 'loans' and not 'equity'. This is turning out to be a hotly-debated issue amid arguments that such a regulatory stance is not only misplaced but can also slow down FDI.

But, according to recent communications, the central bank is not only sticking to its stand but also thinks that such transactions are 'illegal'. The RBI feels that a sellback right, or a put option, to foreign investors amounts to one-to-one derivative deals. Since equity



derivatives can be traded only on stock exchanges, such over-the-counter (OTC) contracts are not permitted under law.

7.0 EXTERNAL COMMERCIAL BORROWINGS (ECB) IN RENMINBI (RMB)

Considering the specific needs of the infrastructure sector, the existing ECB policy has been reviewed in consultation with the Government of India and it has been decided to allow Indian companies which are in the infrastructure sector, where "infrastructure" is as defined under the extant guidelines on External Commercial Borrowings (ECB), to avail of ECBs in Renminbi (RMB), under the approval route, subject to an annual cap of USD one billion pending further review.

INDIRECT TAXATION

1.0 E-FILING OF EXCISE, SERVICE TAX RETURNS MANDATORY

The Finance Ministry (FM) has made it mandatory for taxpayers to file their central excise and service tax returns electronically from October 1, 2011.

E-filing through the Centre's online tax payment application ACES (Automation of Central Excise and Service Tax) will be a must not only for returns due after October 1, but also for returns of past periods which have not been filed yet or are to be revised.

The Central Board of Excise and Customs (CBEC) said the returns would have to be filed electronically by all assesses, including export-oriented units, small-scale industries or those availing of certain exemptions, irrespective of the duty paid by them in the preceding financial year.

2.0 DELHI HC DISMISSES CORPORATE TENANTS' CHALLENGE TO SERVICE TAX

A division bench of Delhi High Court dismissed a large number of writ petitions challenging the constitutional validity of Section 65 (105) (zzzz) of the Finance Act, 1995 and Section 66 as amended by the Finance Act, 2010. The petitions were moved by tenant companies arguing that an "artificial liability" was imposed on them to pay service tax though the onus rested with the owners. The owners insisted upon the petitioner companies making the payment. The dispute arose due to the Finance Acts. The high court rejected the petitions, led by Home Solutions Retails (India), challenging the power of Parliament to pass a law which dealt with property. It was the state which has the power to deal with the renting of immovable property as it is a tax on lands and buildings which came within Entry 49 of List II of the 7th of the Constitution.

However in *Retailers Association of India vs Union of India*, SC has allowed an SLP against Bombay High Court Order on the same issue. SLP comes up for further hearing on 14th October.

3.0 SC: PAY EXCISE DUTY ON LAMINATED PARTICLE BOARD

The Supreme Court (SC) ruled that manufacturers of laminated particle board will be liable to pay a higher excise duty as after processing, the product becomes a distinct marketable commodity different from the original one. The panels, after lamination, become water resistant, scratch resistant and look attractive due to printed design paper. The appellate tribunal had accepted the argument of the manufacturer that laminated board was similar to particle board. The court overruled that view.

Decided Case: *Commissioner of Central Excise vs. Kitply Industries Ltd.*

4.0 REPACKING GAS ATTRACTS EXCISE DUTY

The Supreme Court (SC) stated while dismissing the appeal of the manufacturer buying gas in bulk from market and repacking them in smaller cylinders after tests and giving different grades to it to be sold in open market would attract excise duty.

Decided Case: *Air Liquide North India Ltd. Vs Commissioner.*

INSURANCE

1.0 INSURERS CANNOT REJECT CLAIMS FOR DELAY IN INTIMATION: IRDA

The insurance regulator stated that Insurance companies cannot mechanically reject claims on technical grounds, such as delay in intimation and submission of documents, particularly if the delay is due to unavoidable circumstances.

2.0 FROM OCT 1, SWITCH YOUR HEALTH INSURER IN 7 DAYS

You health insurance portability will be a quick affair now. Insurers will have to share the data on policies to be migrated within seven days from the date of request.

This has been mandated by the Insurance Regulatory and Development Authority (IRDA) in its final guidelines on the portability.

3.0 IRDA TO SLASH EXPOSURE TO PROMOTER COMPANIES

The insurance regulator has proposed that insurance companies promoted by corporate houses will not be allowed to invest more than five per cent in group companies.



CAPITAL MARKET

1.0 SEBI EXTENDS 100% DEMAT DEADLINE

The Securities and Exchange Board of India (SEBI) has extended the deadline to convert promoters' holding to demat form to December 31. SEBI said that on review of the promoters' holding in demat form it has been observed that there has been improved compliance to the circular and the companies/promoters have started the process of converting their physical holdings in dematerialized form.

2.0 THE NEW TAKEOVER CODE LAW

- ✓ New trigger for open offers at 25 per cent
- ✓ Open offer size fixed at 26 per cent
- ✓ Bar on non-compete fee
- ✓ Acquirers to cut stake if it crosses 75 per cent
- ✓ 1-year bar on voluntary delisting after open offer

3.0 SEBI MANDATES VALUATION BY CREDIT RATING AGENCY

Stock market regulator (SEBI) has made it mandatory to appoint a SEBI approved credit rating agency for valuing structured products and market linked debentures. SEBI has said that the valuation of structured products would be put up once a week on the websites of the issuer and the rating agency. Issuers are also expected to provide the value to investors on request free of cost. The cost incurred for valuation shall be disclosed in the offer document of the structured product.

4.0 SEBI CERTIFICATE MUST FOR INVESTMENT ADVISORS

Securities & Exchange Board of India (SEBI) has said in a concept paper that persons offering investment advice can do so only after registering themselves with Securities & Exchange Board of India (SEBI) and must necessarily use the title "investment advisor" after obtaining the certificate of registration.

5.0 STT IN EUROPE

Under the proposals before the 27 members of the European Union, a 0.1 per cent rate of tax will be applied to the exchange of shares and bonds, while derivative contracts will face a levy of 0.01 per cent. Revenues will be shared across member States.

6.0 SEBI REFUSES TO REVOKE ORDER AGAINST MCX-SX

The Securities and Exchange Board of India (SEBI) told the high court that it could not withdraw its order refusing permission to MCX Stock Exchange (MCX-SX) to start equities trading.

7.0 NORMS RELAXED FOR TRADING ON SPOT EXCHANGES

The futures market allows a client to give or take delivery of an asset at a fixed price on a future date, while a spot exchange, in this context, entails delivery a day after a trade is executed or t+2 basis. However, like a futures market, it also allows clients to square off or cash settle trades on an intraday basis. Positions that are not squared off result in delivery.

A client having a demat account with a commodity futures broker can now trade on commodity spot exchanges so long as the broker maintains a separate ledger account for clients on either market, issues separate contract notes and meets the capital adequacy and net worth criteria of each exchange.

8.0 SEBI ISSUES DISCLOSURE NORMS FOR IDR RIGHTS OFFERING

Securities & Exchange Board of India (SEBI) has said that the companies which offer Indian depository receipts (IDRs) through the rights issue have to file a document with the regulatory.

9.0 BSE, NSE ON COMMON TRADING PLATFORM

The Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) are joining hands to make equity trading more convenient.

Sources close to the exchanges say stock feeds coming from both BSE and NSE will be made available on a single trading platform. Till now, stock brokers had to use two separate terminals to trade or view stock quotes coming from both the exchanges. To begin with, BSE's online trading platform (BOLT), or Fast Trade, will be made available on NSE's in-house software Neat-on-Web (NOW). Traders using this platform will get access to more than 7,000 stocks listed on BSE.

NSE has more than 1,300 major companies listed on its platform and a large number of BSE-listed stocks, lying outside this universe, are punters' favourites. BSE will get access to NSE's over 200,000 trading terminals in 1,400 towns across India. Effectively, the move means integration of trading terminals and widening of reach. BSE will offer NSE's trading terminal NOW (Net On Web) free of cost to its members.

10.0 ALTERNATIVE INVESTMENT FUND-SEBI CONCEPT PAPER

The Securities and Exchange Board of India (SEBI) has released a concept paper on proposed AIF norms. These would cover venture capital funds, private equity funds, debt funds, real estate funds and PIPE (private investment in public equity) funds, among others. It



Contd.from page 1

CHALLENGES BEFORE.....

CA Education, Practical training and quality issues

The lack of sincerity towards practical training among the increasing number of students of the profession has posed a big challenge of the recent time for the profession. This is very important for the Institute to ensure that those who qualify as Chartered Accountants are fully equipped with the practical knowledge and requisite skills. The membership at large as well as **students needs to be educated, cajoled and if necessary be disciplined by tough action to ensure that the education and training is taken more seriously, efficiently and effectively by all concerned. The level of examination and course structure also require suitable modification.**

The leadership of the profession need to gear up for necessary policy, procedure and tough **initiatives to ensure continued top level positioning of the profession.** We need to present our specialized expertise and varied role to Industry, Banks, Insurance and Government sector within India and outside India. Members need to take the ownership of the quality in their trainee articulated assistants, by all means.

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)
3 Month LIBOR	0.4	0.34	0.25
3 Month MIBOR	9.37	9.41	9.29
SENSEX	16958	16867	18412
NIFTY	5099	5059	5526
CRR	6	6	6
REPO	8.25	8	7.50
REVERSE REPO	7.25	7	6.5
Gold (per 10 gm)	26988	28176	22522
Silver (per kg)	54417	65165	52981
Crude (USD/bbl)	111.73	112.77	115.96
Rs. vs USD	49.24	46.38	44.68
Rs. vs Euro	67.17	64.48	62.25
Rs. vs Yen	63.95	59.87	54.55
Rs. vs RMB	7.73	7.24	6.87
Rs. vs Pound	76.57	74.06	71.23

*As on 10th October 2011

(Sources: Bloomberg, NSE, BSE, RBI)

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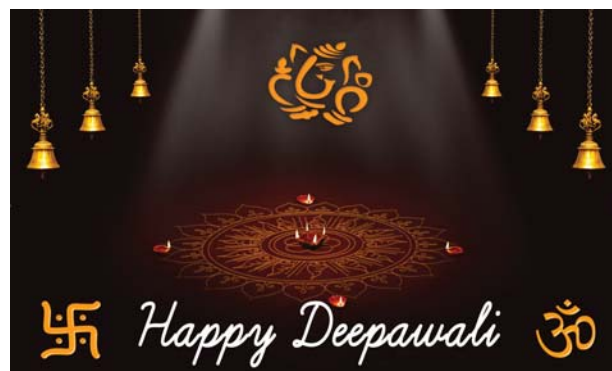
EDITORIAL**CORRUPTION**

The real issue of taking direct action against corrupt officials and simultaneously making policy and procedural changes to ensure eradication of corruption has given way to over active and over charged criminal prosecution agencies in CBI and Enforcement Directorate. The businessmen of the country are feeling not only helpless but also a sense of fear has spread among them. Rather than creating a fear among the guilty and corrupt officials and politicians, **the government is stressing 2G issue in a wrong direction. It is completely unfair to keep senior professionals and businessman behind bar without finally establishing their criminal role in corrupt practices.** We are living in a democracy and Indian tradition has been built on equity, fairness and ethics and we cannot forget our

We are living in a democracy and Indian tradition has been built on equity, fairness and ethics and we cannot forget our fundamental constitutional and traditional virtues of **not punishing an innocent at any cost.** An arrest without established evidence, amount to punishing an innocent without guilt.

fundamental constitutional and traditional virtues of **not punishing an innocent at any cost.** An arrest without established evidence, amount to punishing an innocent without guilt.

We expect statesmanship from the top Indian leadership and cleanliness in public life has to be established by taking certain tough initiatives and by setting some examples. The bribery in private sector is an issue which can be addressed by Corporate by inculcating Ethical values.



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