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EDITORIAL

FEMALE SECURITY - A MATTER OF MAJOR CONCERN



CA Vinod Jain*

The recent incidents in Delhi followed by the mass protests at India Gate and all across the nation have brought to light a major threat to safety and security of females in the country. The profession of Chartered Accountancy consists of a substantial number of female members and about 50% CA students are also female. It

is therefore important for the profession to ensure that a safe, secure and congenial working atmosphere is available both within the profession and in the society. A detailed debate is necessary to evolve appropriate safety mechanism and precaution to ensure that female chartered accountants and female CA students who are either working late in the office or are working in night shift or those who are attending coaching classes (concluding between 8 pm to 10 p.m.) are not subjected to a such risk.

It is very important for the society as a whole to change the male mentality, by not ignoring women harassment, eve teasing and indecent advancement or gestures against fair sex (females) and taking such issues head-on.

The approach of judiciary, police and the entire system towards women safety and security has to be more proactive and be sensitive with deft handling ensuring very swift action. The trial of all pending cases should be concluded in fast track mode and severe punishment be given to the accused so to provide a deterrent to all such criminals and their accomplices. It is very important that the eve teasers are treated like terrorists and entire society and social system need to react immediately against any assault or attempt against women decency.

The biggest threat to criminals will be social action and societal boycott.

In respect of female chartered accountants and female CA
Contd..... on pg 3

INDIAN GROWTH ADVERSELY IMPACTED BY BUSINESS ENVIRONMENT

The Indian Government initiated a very welcome movement in last 2 decades by de-licensing and opening up of the economy, liberalization and commencement of large number of infrastructure projects, roads, ports, power plants, etc. The zeal and commitment of the Government to improve the working condition of business in India has suffered a serious set back in last few years. The following important areas need an immediate attention to improve the growth prospects of the Indian economy :

1. Over Regulations

The bureaucratic control and formalities have been increased very significantly in the recent past in relation to various tax laws, corporate laws and other regulations. The society need to commit itself to complete liberation for the Indian businessmen with just and fair regulation. The compliances need to be reviewed on a zero base by Indian economists and experts with hands on business exposure; and, the professionals must assist the government to device smooth working mechanism for all the business processes, with least reporting requirements and compliances.

Today there is a competition between various Central Government departments, State Government departments as well as by the regulators to bring more and more requirements of filing and disclosures of all business activities. This mind set needs a reversal. The business community is overburdened with such complicated compliances and many productive man-hours are lost in complying with so many regulations.

2. Tax Laws

The hunger of the government to impose more and more taxes as well as to collect higher taxes by conducting surveys, searches, raids, litigations, retrospective amendments and frequent changes in

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LATEST IN FINANCE

1.0 HDFC BANK CUTS BASE RATE TO 9.7%

HDFC Bank's new base rate at 9.70 per cent is the lowest in India. State Bank of India and ICICI Bank Ltd., the country's top two lenders by assets, charge a base rate of 9.75 per cent.

BASE RATE	(%)	BASE RATE	(%)
HDFC Bank	9.70	UBI	10.50
SBI	9.75	IDBI Bank	10.50
ICICI Bank	9.75	PNB	10.50
Bank of Baroda	10.50	Bank of India	10.50

2.0 GOVERNMENT TO ALLOW POWER COMPANIES TO DIVERT NATURAL GAS TO OTHER PLANTS

The government has decided to allow power companies to divert natural gas from one of their plants to another to achieve optimal operations, relaxing the stringent policy that restricts fuel supply to specific units. This was done on account of plea of power firms, which complained that their plant load factor (PLF) had dropped below the economic level of power generation because of acute gas shortage.

3.0 RBI ISSUES CIRCULAR FOR PRIVATE SECTOR BANKS ON WRITING-OFF OF BAD DEBTS/LOSSES

The Reserve Bank of India (RBI) has issued a circular for private sector banks for writing off Bad Debts / Losses. It says that Private Banks may frame their own policy on writing-off of bad debts and compromise settlements, with the approval of Board of Directors. However, banks may continue to be guided by the guidelines contained in our circular DBOD.No.BP.BC.81/21.01.040/95 dated July 28, 1995 and other relevant instructions in this regard.

Circular Reference: RBI 2012-13/357, dated 01.01.2013, www.rbi.org.in

4.0 CENTRAL ELECTRONIC REGISTRY OF MORTGAGES

The Securities & Exchange Board of India (SEBI) has issued guidelines on central electronic registry of mortgages. The objective of setting up of

Central Registry is to prevent frauds in loan cases involving multiple lending from different banks on the same immovable property. This Registry has become operational on March 31, 2011.

It may be noted that initially transactions relating to securitization and reconstruction of financial assets and those relating to mortgage by deposit of title deeds to secure any loan or advances granted by banks and financial institutions, as defined under the SARFAESI Act, may be registered in the Central Registry.

Circular Reference: RBI/2012-13/332, dated 14.12.2012, www.rbi.gov.in

5.0 AS TAX-FREE BONDS FLOP, PSUs TURN TO PRIVATE PLACEMENTS

Private Placement of Corporate Bond Issues

2012	5,000	25,000	45,000	65,000	No of issues
April		23,515.39			145
May		23,993.4			158
June		26,250.4			273
July				57,745.36	202
Aug			34,891.86		186
Sept		14,419.64			122
Oct			30,492.56		202
Nov			26,096.31		325

(Amount ₹ Crore) Source: SEBI

6.0 SINGLE DOCUMENT HAVING IDENTITY, ADDRESS PROOFS ENOUGH TO OPEN BANK ACCOUNT: RBI

The Reserve Bank of India (RBI) has instructed banks to accept documents such as Passport, PAN Card, Drivers' License, Aadhaar letter and NREGA Job Card as proof of identity and address.

However, this is subject to the address on the document submitted for identity proof by the prospective customer is the same as that declared by him/her in the account opening form.

The Reserve Bank of India (RBI) has also done away with the requirement of introduction from an existing customer of the bank for opening of bank accounts.

7.0 LOK SABHA GIVES NOD TO BANKING AMENDMENT BILL

- The Bill will strengthen the sector regulator Reserve Bank of India (RBI)
- Nationalised banks can raise capital through rights and bonus issues.



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FEMALE SECURITY.....

students, as a matter of practice, it is important to ensure that no females are required to stay late beyond office hours except in emergencies that too with written permission of the senior most partner of the firm or head of department. In all such cases where females are required to work late hours for professional or business reason, their safety and security will be the personal responsibility of such senior partner/head of the department and in case of any unforeseen incident, unless adequate safeguards are put in place.

The females need to speak out and also that the parents need to commit that they will not bear any insult or threat against women decency and any such attempt or potential threat may be reported to police as well as to appropriate resident welfare association/ NGO and trade associations, so that appropriate action can be initiated against the offenders and potential offenders.

It is important to understand that all those who attempt any crime against women by their thought, misdeeds or actions are liable to be severely punished by the Almighty God. We also need to ensure that we are respectful to females at all levels and are sensitive to gender equality.

- The Reserve Bank of India (RBI) will have the powers to supersede bank board's & inspect the books of associate enterprises or banks
- Voting rights in private banks in line with shareholding but maximum of 26%
- Voting rights in state - run banks raised to maximum of 10% from 1%
- The RBI will get oversight over acquisition of shares in banking cos; prior approval would be needed in some cases.

8.0 RBI GIVES NOD TO ECB ROUTE FOR AFFORDABLE HOUSE PROJECTS

The Reserve Bank of India (RBI) has allowed developers of affordable housing projects and finance companies that provide funding to raise funds through External Commercial Borrowings (ECBs) via approval route.

The Reserve Bank of India (RBI) has said that

the funds raised so must not be used for the acquisition of land. The Reserve Bank of India (RBI) has also defined affordable housing project as a project, which has 60% of permissible floor-space-index (FSI) for units having maximum carpet area of up to 60 square meters.

A developer wishing to raise funds through Forex loans must have a proven track record, five years experience in undertaking residential projects and must have not defaulted in any of the previous financial commitments. Further, the project must be free from any litigation.

Housing Finance Companies (HFCs) with a minimum paid-up capital of ₹ 50 crore, net owned funds of at least ₹ 300 crore for last three years are eligible to borrow through ECBs.

9.0 LOK SABHA APPROVES COMPANIES BILL

KEY AMENDMENTS

- **CSR:** Spending 2% of average net profit on CSR makes mandatory for firms.
- **Pay:** A director's remuneration should not exceed 5% of a company's net profit.
- **Compensation:** If a firm winds up operations, it must pay two years' salary to its employees.
- **Auditors:** The number of firms an auditor can serve capped at 20
- **Rotation:** Appointment of auditors for five years to be ratified annually. Mandatory auditor rotation after 5 yrs / 10 yrs of proprietorship firms / partnership firms.
- **SFIO:** More statutory powers given to SFIO to tackle corporate fraud.

10.0 BANKS CAN GET REFINANCE IN FOREIGN CURRENCY IF THEY ON-LEND TO SMALL UNITS

Export-Import Bank of India is ready to give commercial banks refinance in foreign currency if they on-lend to export-oriented small and medium enterprises in the manufacturing sector.

The development finance institution has got the board's approval to lend \$500 million to banks so that they on-lend to MSMEs for technological up-gradation.



11.0 SARFAESI ACT AMENDED

Now, the Banks and Asset Reconstruction Companies (ARCs) will be allowed to convert part of their debt into equity of the borrowers.

Another important amendment was allowing banks to bid for the possessed property, in case there were no other bidders at the time of auction.

Earlier banks were allowed to convert debt into equity only if the company were to enter the corporate debt restructuring (CDR) cell and approach the banks with the offer.

12.0 CDR NORMS

NEW STRINGENCY

- Promoters' contribution upped to 25% from 15%
- Promoters must pledge 100% of their shares
- Unconditional promoter guarantee
- Lead bank can appoint director where necessary
- Concessional interest rate can't be less than the base rate
- Debt not to be converted into preference shares unless in exceptional circumstances
- Creation of Trust and Retention account to monitor receivables and payments

13.0 RBI PROPOSES SLEW MEASURES TO STRENGTHEN THE NBFC SECTOR

- Provisioning for standard assets to be raised from 0.25 % to 0.40 % of the outstanding loans.
- The limit for acceptance of deposits for rated Asset Finance Companies reduced from four times to 2.5 times their net owned funds.
- Unrated NBFCs, including AFCs, will not be permitted to accept deposits
- NBFCs will require prior nod of the Reserve Bank of India (RBI) for ownership change (increase of shareholding to the extent of 25 per cent or more of the paid-up equity capital).
- For any acquisitions and for all mergers by or of an NBFC, the NBFC involved should approach RBI (even before filing for the same in the courts) to ensure adherence to the basic tenets of corporate governance.

- Appointment of CEOs of NBFCs with asset size of ₹ 1000 crore and above would require the RBI's approval.
- RBI said that Tier I capital (core capital) will be raised to 12 per cent for all captive NBFCs (over 90 per cent of total assets are on financing parent company's products/ services). Further, for NBFCs that are into lending to/investment in sensitive sectors namely, capital market, commodities and real estate, to the extent of 75 per cent or more of their total assets the Tier I capital will be raised to 12 per cent.

14.0 PRIVATE INFRA PROJECTS CAN GET MORE FUNDS FROM IIFCL ARM

To import capital equipment, private infrastructure projects can now raise more via foreign currency loans from IIFCL's London arm. This has been made possible with the government scrapping the 80:20 rules that capped the lendable resources of IIFCL's London arm to private projects in India.

This rule had earlier required the London subsidiary to give 80 per cent of its lendable resources to Public Private Partnerships (PPPs) and the rest to private projects.

15.0 NON-PAYMENT OF DUES UNDER DERIVATIVES CONTRACT WOULD QUALIFY AS WILFUL DEFAULT

The Supreme Court has ruled that banks are entitled to declare any person as a willful defaulter who did not repay his dues under a foreign exchange derivatives contract. This is legal and within the various circulars issued by the Reserve Bank of India (RBI) in dealing with derivative transactions.

CONSEQUENCE OF BEING DECLARED A WILFUL DEFAULTER

- Additional financing facility from banks stopped
- Legal action against borrowers and guarantors
- Lenders may slap criminal suits in some cases
- Banks may initiate change of management in defaulting unit
- Promoters who siphon off funds barred from institutional funds' finance for five years



16.0 100% FDI FOR RAILWAY LINE PROJECTS

Private investors, ports, export/import companies, "other investors" and Foreign Direct Investment (FDI) will now be allowed in the railway lines meant to connect ports, industrial and logistical parks, and mines with other parts of the country. The railways will either award these projects (construction and maintenance) on nomination basis or select the investor through competitive bidding. A revenue-sharing model has already been worked out.

The move is expected to give a boost to a sector where infrastructure expansion will provide direct, tangible benefits to the economy. Currently, the PPP model in the railway sector is at a takeoff stage, with large domestic investments coming in a few areas or projects, including the Mumbai elevated rail corridor, private freight terminals and a slice of the eastern segment of the dedicated freight corridor. However, no FDI is allowed in these PPP projects and is limited to only manufacture of components.

17.0 FII DEBT BUYS HIT A SIX-YEAR HIGH

Overseas portfolio investment in equity is much talked about, but there was a silent revolution that took place in the debt segment of the securities market where overseas investors bought a record ₹ 45,000 crore of bonds last year.

Compared to just about 2% yield on government bonds of developed nations such as the euro zone and the US, Indian bonds yield more than 8%, though that may be lower if adjusted for currency risk.

18.0 GOOGLE TO SELL MOTOROLA HOME TO ARRIS FOR \$2.35 BILLION

Google Inc. agreed to sell its Motorola Home business to Arris Group Inc. (ARRS) for \$2.35 billion, finding a buyer for a division that sells television set-top boxes while it focuses on expanding in smart phones.

Arris, a cable-equipment maker, will pay about \$2.05 billion in cash and about \$300 million in newly issued shares that will give Google a stake of about 15.7 percent.

FEMA

1.0 CORE INVESTMENT COMPANIES NEED RBI NOD TO INVEST OVERSEAS

The Reserve Bank of India (RBI) has said that all core investment companies (CICs) wanting to invest overseas in the financial sector will have to take its prior approval.

These directions will be applicable to all CICs (whether registered with RBI or exempted from registration) that intend to invest overseas in the financial sector.

The Reserve Bank of India (RBI) has said that the total overseas investment by core investment companies (CICs) in the financial sector should not exceed 200 per cent of their owned funds.

2.0 GOVT UPS FDI CAP IN ARCS TO 74%

- The 74% foreign investment cap will be composite, including FDI and FII
- Shareholding of individual FII shall not exceed 10% of total paid-up capital
- No shareholder will be allowed to acquire more than 50% in an ARC
- FII investment cap in security raised from 49% to 74%

CORPORATE AND ECONOMIC LAWS

1.0 BANK RATE RAISE HIT

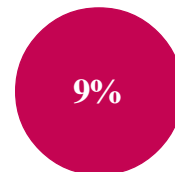
Section 372A(3) of the Companies Act says, "No loan to anybody corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934."

Bank Rate



In 2011-12*

*Till Feb 13, 2012; **as on Dec 26, 2012 Source: NSE, BSE



In 2012-13**

2.0 DISHONOURING A CANCELLED DRAFT IS NO CRIME

A payee cannot haul a bank under Section 138 of the Negotiable Instruments Act for not honoring



a demand draft that is cancelled by the person who got the draft made before being presented to it, held the Delhi High Court in *State Bank of Patiala v. Nascent Educational and Development Society*. A demand draft, unlike a cheque, is issued by a bank for consideration already received and hence cannot possibly be dishonoured on the ground of lack of funds; but a bank cannot be compelled to honour the draft in the face of a cancellation instruction by the person who got it issued from the bank. The payee, therefore, has no recourse to the bank including proceeding against it under Section 138 of the Act for criminal liability in such circumstances. However, he can proceed against the debtor under the civil laws.

3.0 PF RULES TIGHTENED

To curb the menace of manipulation and weed out ghost accounts, the Employees' Provident Fund Organization (EPFO) has tightened the rules, making it compulsory for companies to list details of employees - both permanent and contractual - on the electronic challan-cum-return (ECR), and prescribed stiff penalties including imprisonment for employers unable or unwilling to furnish details of workers eligible for PF contribution.

INDIRECT TAXATION

1.0 CENVAT CAN BE CLAIMED WHEN DISPUTE IS ON EXIGIBILITY OF EXCISE: COURT

In *Commissioner of Customs & Central Excise, Hyderabad vs. Goldstone Teleservices Ltd*, the Andhra Pradesh High Court found that the excise authorities had asked the respondent to pay excise duty on cable joining kits on the ground that the process amounted to manufacture. The respondent complied. But since the respondent was paying excise, he also started claiming CENVAT credit on the inputs used in cable joining kits. On appeal, his stand that what he was doing was merely assembly not amounting to manufacture, was upheld. Thereupon, he claimed refund of excise duty paid, which was rejected by the department on the ground that he was availing of CENVAT credit.

The High Court ordered refund on the ground that payment of excise on finished goods that were not eligible to excise was under fiat and not on own volition. Therefore, the excise duty paid on finished goods net of CENVAT credit during the pendency of dispute had to be refunded.

CAPITAL MARKET

1.0 AMENDMENT IN CLAUSE 36 OF THE EQUITY LISTING AGREEMENT

The Securities and Exchange Board of India (SEBI) have observed certain listed companies giving monthly disclosure of their turnover figures to their respective trade bodies/industry associations and not disclosing the same to the stock exchanges.

It is therefore, reiterated that all the events or material information which will have a bearing on the performance / operations of the company as well as price sensitive information shall be first disseminated to the stock exchanges as required under Clause 36 of the Listing Agreement.

Circular Reference: CIR/CFD/DIL/2/2013, dated 03.01.2013, www.sebi.gov.in

2.0 SHRI S RAMAN TAKES CHARGE AS WHOLE TIME MEMBER OF SEBI

Shri S Raman, former CMD, Canara Bank, took charge as Whole Time Member, Securities & Exchange Board of India (SEBI) in Mumbai for tenure of five years or till attainment of 65 years of age, whichever is earlier.

Circular Reference: PR No. 110/2012, dated 28.12.2012, www.sebi.gov.in

3.0 THREE-YEAR DISCLOSURE MUST FOR PROMOTER SHARE TRANSFER: SEBI

The Securities and Exchange Board of India (SEBI) has said that promoters of a listed company need to have made their shareholding disclosures at least three years before any transfer of shares between themselves without triggering an open offer for public investors.

4.0 SEBI PROPOSES OVERHAUL OF SHARE BUYBACK GUIDELINES

- Minimum buyback of 50% of proposed size



- Completion of buyback within three months
- 25% of buyback amount to be kept in escrow account
- If buyback size is 15% or more of paid up capital & free reserves, tender route compulsory
- No further capital raising for two years after buyback
- Stricter disclosure norms
- Separate window for physical shares

DIRECT TAXATION

1.0 CASH DISCOUNT CANNOT BE SUBJECT TO TDS: APEX COURT

The apex court has ruled that when the government offers bulk buyers of stamp papers commission ranging from 0.5 per cent to 4 per cent, what it is offering is cash discounted as inducement for bulk purchases and not commission on sales. The Supreme Court held that the stamp vendors did not earn their reward on sale but at the time of purchase and hence it was cash discount rather than commission.

Section 194H contemplates deduction of tax at source at the time of payment of commission whereas in these transactions there was no payment of commission at all.

2.0 CBDT FAQs FOR QFIs

The Central Board of Direct taxes (CBDT) has come out with a set of 26 frequently asked questions (FAQs) on the tax framework applicable to Qualified Foreign Investors (QFIs). According to the FAQs, Qualified Depository participants (QDPs) will primarily be responsible for tax deducted at source liability before making remittance to QFIs.

3.0 SOME LATEST JUDGMENTS

SECTION 153C

- **The Mumbai ITAT bench and Agra ITAT bench** has held that Section 153C search assessment is void if AO's satisfaction is not recorded.

Decided Case: Ingram Micro (India) Exports P Ltd. v/s Dy. DIT and ACIT v/s Global Estates

SECTION 14A

- **The Pune ITAT bench and Ahmedabad ITAT bench** has held that Section 14A does not apply to shares held as stock-in-trade.

Decided Case: Apporva Patni vs Addl. CIT and Ethio Plastic Pvt Ltd. vs DCIT

SECTION 68

- The Delhi High Court has held that all cases of share application money would not be covered u/s 68 by applying *Nova Promoters nor Lovely Exports* facts of each case has to be seen.

Decided Case: CIT vs. Fair Finvest Ltd.

- The Delhi High Court has held that despite PAN & Bank details, addition of share allotment money is valid u/s 68 if applicants do not respond to summons.

Decided Case: CIT vs. N.R. Portfolio Pvt Ltd.

SECTION 54EC

The Bangalore ITAT bench has held that Section 54EC limit of ₹ 50 Lakhs does not apply to the transaction but financial year. Cheque has to be issued within 6 months. Encashment of Cheque & Allotment of Bonds beyond 6 months is irrelevant.

Decided Case: Vivek Jairazbhoy vs DCIT

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR (\$)	0.305	0.31	0.343	0.458
3 Month MIBOR (₹)	8.75	8.72	8.70	9.35
SENSEX	19664	19355	18631	17489
NIFTY	5969	5888	5652	5306
CRR	4.25	4.25	4.5	4.75
REPO	8	8	8	8
REVERSE REPO	7	7	7	7
Gold (per 10 gm)	30797	30886	31456	29465
Silver (per kg)	58128	60699	62176	52283
Crude (USD/bbl)	112.38	108.01	114.33	99.15
Rs. vs USD	54.63	54.232	53.05	55.81
Rs. vs Euro	71.32	70.95	68.21	68.59
Rs. vs Yen (₹ 100)	61.99	64.86	67.82	70.22
Rs. vs RMB	8.79	8.70	8.44	8.67
Rs. vs Pound	87.50	87.5304	84.84	86.53
MCX Aluminium	113.30	115.45	105.65	105.45
MCX Copper	444.75	444.6	429.3	423.8

*As on 10th Jan. 2013

(Sources: Bloomberg, NSE, BSE, RBI, MCX)

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INDIAN GROWTH

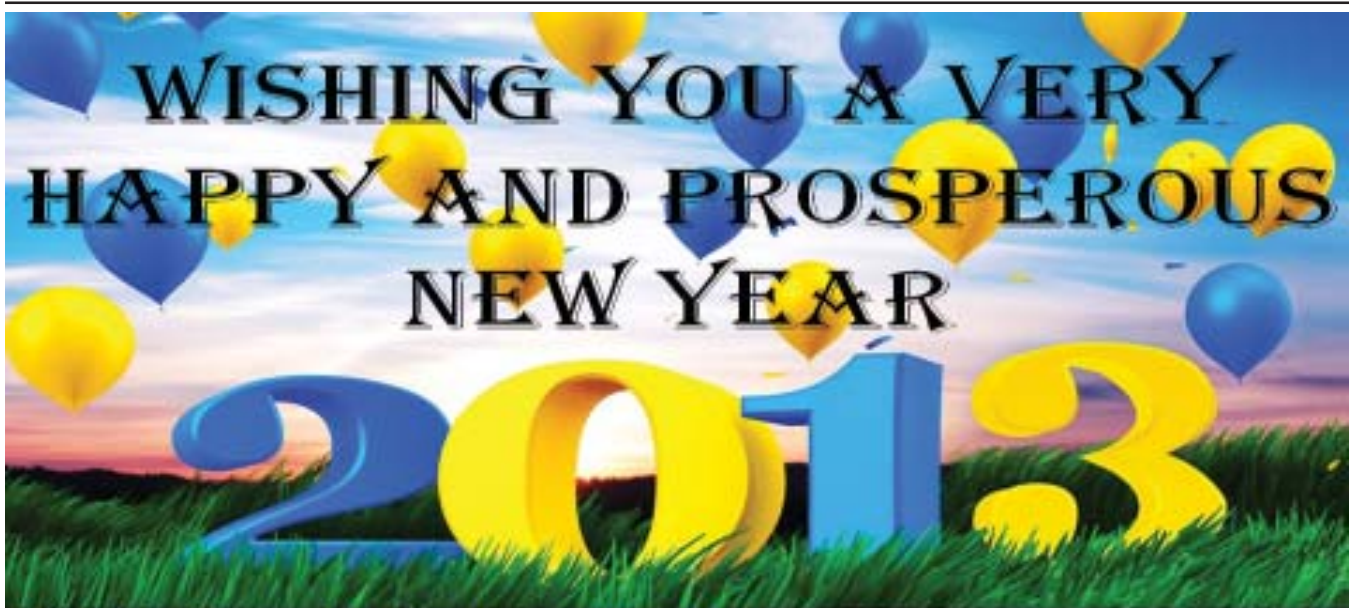
tax laws is another big dampener of business sentiments. The central government taxes have to be restricted to 6% of the GDP and State level taxes also should be restricted to maximum 4% of the GDP, so as to ensure that not more than 10% is collected as direct tax or indirect tax put together. The government can introduce incentives for growth and international development of businesses. Instead of garnering more resources through higher taxes, the government must check its expenditure by austerity and robust mechanism of controls at all levels.

3. Business Environment

It is important to improve the business environment by a serious attempt to ensure lower cost of

production, new innovations and researches, adequate availability of low cost electricity and power, availability of trained & skilled manpower, better labour laws to protect current anti labor attitude and practice, free movement of goods, better infrastructure facilities including roads, ports, telecom, sewages and anti pollution treatment mechanism. In all these areas, a sincere and severe long term visionary plan needs to be implemented swiftly.

The growth movement commenced under the able leadership of Mr. Narasimha Rao followed by a very big visionary leap by Shri Atal Behari Vajpayee, is needed to be brought back on track by Dr. Man Mohan Singh and his successors on an immediate and urgent basis to ensure that India is ranked among developed countries of the world and become the largest economy in the world.



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