



## Era of globalization and its impact on open market

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### **Abstract:**

*Consequent on India's adhesion to the new GATT and GATS convention under WTO regime Indian Industries are under intense pressure to address and cope with unprecedented new global challenges in areas of Corporate Management and Governance which call for radically new mind set, orientation and decision making skills, adjusted and adapted to the highly competitive environment of contemporary business world. Indian economy has started to open out. The speed of reform that was slow, at the beginning has now been stepped up. The challenges of globalization and consequent privatization, the several reforms introducing far-reaching changes in company and allied law are certain to capture the mood in the new millennium.*

**Keywords:** Globalization, GATT and GATS, companies

### **Introduction**

As of September 2002, 6, 03,778 companies were registered in India. Of these, 76,429 were public limited companies. The companies are spread all over all over the country. The State-wise distribution puts Maharashtra on the top with about 22 per cent of the companies followed by Delhi which accounts for about 18 per cent. About 35 per cent the companies are in four other States- West Bengal, Tamilnadu, Gujarat and Andhra Pradesh. Between them they account for about three-fourths of the companies at work.

In the present global scenario, India's corporate sector has not only to complete with businesses world-wise but also has to achieve levels of management and governance that inspire confidence in investors- both domestic and foreign. The legal and regulatory frame work must provide comfort to investors, especially foreign investors. Keeping this in view, the Department of Company affairs (DCA) has taken several initiatives in the recent past. These include legislative changes and modernization of service with the help of information technology.

### **Legislative Changes**

The DCA, in consultation with experts in the field as also the stakeholders, has ushered in several changes in the corporate law. The Companies Act, 1956 has been amended thrice since 1999 and some further



amendments are under consideration to give effect to the police of economic liberation.

An Ordinance was promulgated on October 23, 2001 for easing terms and conditions for buy back of shares by companies. This was done keeping in view the continuing depression in the share market and also the recent developments that have taken place in the USA and elsewhere. The liberalization of conditions of buy back of shares is expected to help in improving market sentiments. This Ordinance has been replaced by the Companies (Amendment) Act, 2001.

The Government constituted a high level committee to examine and make recommendations for the legislative frame work to enable formation and conversion of cooperative business into companies. Based on the recommendations of this Committee, a Bill was introduced in the Lok Sabha in August, 2001 and passed by both the Houses of Parliament in December, 2002. This legislation is to provide 'primary producers' an option to have a new kind of business organization (Called a producer company) to produce and market the products in a modern and professional manner at par with other companies. It may enhance their efficiency and competitiveness in the present liberalized and globalized market. It would also contribute to the betterment of 'primary producers.'

The Government constituted a Committee to examine the existing law relating to winding up of companies in order to remodel it in line with the latest developments and innovations in the corporate law and governance. On the basis of the recommendations of the Committee, an Act was passed by both the Houses of Parliament. This will usher in a new era of Insolvency Laws. It provides for consultation of a National Company Law Tribunal. The jurisdiction and powers presently conferred on the Company Law Board will be vested in the proposed National Company Law Tribunal and will result in the dissolution of the Company Law Board. It also envisages to replace the Board for Industrial and Financial Reconstruction (BIFR) by repealing the sick industries (Special Provision) Act, 1985 for accelerating the pace of revival. Besides, there are several substantive improvements in the law. It provides for initiation of restructuring of a corporate at a much earlier stage of financial sickness, thereby enhancing the possibility of its revival. It provides for a safety-net for the workers and the investors through better terms by setting up a Rehabilitation Fund and other allied measures. The jurisdiction and powers relating to amalgamation and winding up presently vested with High Courts are also being brought under the purview of National Company Law Tribunal.

### **Need for National Company Law Tribunal**



One of the major flaws of India is the delay in its Legal System. Over two million cases are pending in 18 High Courts alone and more than 200,000 cases are pending in the Supreme Courts for admission, interim reliefs or final hearing. If you will look into The Guinness Book of Records you will perhaps find an entry, which says that the most protracted law suit ever, recorded was in India. A "Mahant," who is a keeper of a temple, filed a suit in Pune in 1205 AD and the case was decided in 1966-761years later! However, this is not the average time taken by the Indian Courts for deciding cases. Normally it takes between 5 to 15 years for a case to be decided in an Indian Court. The Indian Legal Hierarchy is somewhat of the following nature: In the Metropolitan Cities on Civil Side there are Courts of Small Causes Courts and above them the Sessions Courts. In the Mofussil on the civil side, there are Courts of Civil Judge, Junior Division, Civil Judge Senior Division, and District Courts. On the Criminal Side there are the Courts of Judicial Magistrates and Sessions Courts. Then there are Industrial Courts, Family Courts, Co-operative Courts and various Tribunals.

With regard to the Corporate Sector, there is a Company Law Bard constituted by the Central Government under the Provisions of Section 10E of the Companies Act, 1956 which has its Principal Bench in New Delhi and Regional Benches of Single as well as Double Members at New Delhi, Calcutta, Bombay and Madras. Above all the aforesaid Lower Level Courts, Tribunals and Boards, there are High Courts in each of the States, and above the High Courts is the Supreme Court of India in New Delhi. India has a written Constitution and codified Central and State law. Its Judiciary is of the highest integrity. The official language is English in the High Courts and the Supreme Court. The Indian Legislature and Judiciary make constant efforts to bring about improvements in Courts and dispense justice speedily. On the recommendation of the General Assembly of the United Nations to consolidate and amend the law relating to domestic arbitration, international arbitration and enforcement of the foreign arbitral awards a new Arbitration and conciliation Act has been enacted. To expedite the disposals of cases concerning the transitions related to Banks a special tribunal is being established. To facilitate foreign investment, foreign joint venture and globalization of Indian Trade & Industry, various amendments have been thought of in the existing Companies Act, 1956 and a proposal of enacting a new Take-over Code is under consideration. In Keeping with this trend, the Government has now introduced the National Company Law Tribunal, which will have exclusive jurisdiction to try and handle company matters expeditiously.