

# LOK SABHA

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## SYNOPSIS OF DEBATES\* (Proceedings other than Questions & Answers)

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Friday, July 26, 2019 / Shravana 4, 1941 (Saka)

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### REFERENCE BY THE SPEAKER

**HON. SPEAKER:** Hon. Members, I have to inform the House that on this day India had won the Kargil war in the year 1999. Kargil Vijay Divas is an important day for us. On behalf of the House, I salute all those brave soldiers for their valour and bravery with which they pushed away the soldiers and intruders of the neighbouring country from our land and became victorious. Kargil war continued for around 60 days and ended on 26th of July. This day is observed as a symbol of bravery of the soldiers who were martyred in Kargil war. On the occasion of Kargil Vijay Divas on behalf of the House, I congratulate the countrymen and pay homage to the courage and bravery of the soldiers who made supreme sacrifice for the sake of the country.

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\* Hon. Members may kindly let us know immediately the choice of language (Hindi or English) for obtaining Synopsis of Lok Sabha Debates.

## **STATUTORY RESOLUTION**

### **Re: DISAPPROVAL OF COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019 (No. 6 of 2019)**

**And**

### **THE COMPANIES (AMENDMENT) BILL, 2019**

**SHRI ADHIR RANJAN CHOWDHURY** moved that this House disapproves of the Companies (Amendment) Second Ordinance, 2019 (No. 6 of 2019) promulgated by the President on 21 February, 2019.

**THE MINISTER OF FINANCE AND MINISTER OF CORPORATE AFFAIRS (SHRIMATI NIRMALA SITHARAMAN)** *moving the motion for consideration of the Bill, said:* This Bill actually took force in 2013 itself. Now, post 2013, after consultations with stake holders, many different views came on the Bill. After consultations in 2015, 22 amendments were carried out in May, 2015 in the Companies Act. Still several stake holders felt that the Act was not perfect. So, this Act is getting evolved. The amendments of 2017 were in pursuance of the recommendations made by the Companies Law Committee. Again, in July, 2018, a Committee was constituted under the chairmanship of the Secretary, Ministry of Corporate Affairs to review the existing framework for dealing with offences under the Companies Act, 2013. The Committee submitted its report in August, 2018.

The Cabinet considered it absolutely urgent and important to plug the critical gaps in the existing Companies Act. An Ordinance was promulgated in November 2018. The Lok Sabha passed the Bill, but it could not be passed by Rajya Sabha. Hence, there was a need to promulgate an Ordinance. The point of view of ease of doing business underlines this fact. That is the reason why the Bill is now being brought. This being one of the very important Bills for ease of doing business, I would like to hear the views of all the Members.

**SHRI ADHIR RANJAN CHOWDHURY:** I take strong exception to the invocation of Ordinance. I have observed that the key amendment is the re-categorisation of certain offences which are in the category of compounding offences to an in-house adjudication framework. Black money besides having certain other ill effects, creates imbalances in the economy. One of the ways of siphoning off money and accumulation of black money is through "shell companies". So there should be an unambiguous definition of the term "shell company" in the Bill. The Government had brought in demonetisation of high denomination currency but still we are in the dark when it comes to how much sum has been unearthed by way of demonetisation. I would like to know whether the corporate entities are discharging their social responsibilities as prescribed by law. A survey found that 52 of the country's largest 100 companies failed to spend the required two per cent last year.

**SHRI P. P. CHAUDHARY:** Company Act which was brought in the year 2013, was very comprehensive. Disclosure and accountability is necessary for investor protection and corporate governance. Major amendments were made in the Act of 2013 in the year 2015 and 2017. After the year 2017, it was felt that some more amendments were needed. It is an appreciable step to provide for the in-house adjudication mechanism to settle the cases of petty offences. This has facilitated that speedy disposal of cases and de-clogging of the NCLT and Courts as well. I would like to request the Government to take the decision with respect to the disposal of property and all proceeds from shell companies should be deposited in the Consolidated Fund of India. There are about 11,75,000 companies. I would request the Government to regulate these companies and see whether their affairs are conducted in accordance with the law or not, whether they are filing their returns on time or not and whether there is any fraudulent activity or not. The induction of artificial intelligence is very essential in these days. The Insolvency and Bankruptcy Code has emerged as the biggest economic reform of this century and the credit for this, undoubtedly, goes to our Prime Minister. This has facilitated the recovery of the money of bank which was stuck in the sick industries and as NPA. With these words, I support this Bill.

**SHRI A. RAJA:** I carefully perused the Bill. I can understand the intention of the Government. I think two things namely Ease of doing business by the

companies and to curb the shell companies are the prime elements which the Government wants to address besides all other issues through this Bill. As far as the shell companies are concerned, Government's intention is very clear. But still, I am having a small doubt. The term "reasonable cause" as enumerated in the subsection being added to Section 12 of the Principal Act, is a little bit tricky term. The Bill says - 'if the Registrar has reasonable cause to believe that the company is not carrying on any business or operations'. Why the Government is giving all the powers to an individual? In this respect, I would like to suggest that at least, in future, instead of Registrar, there must be some body which has to have a collective decision. I feel that there is an excessive delegation of power. More role of the Government may lead to arbitrary decision. Penalty is viewed as a means to deter the Companies from violating the law, but the five-fold increase cannot be justified. As regard CSR fund, I would like to suggest that all the unspent money can be shifted to the Prime Minister's Relief Fund instead of opening more and more accounts.

**PROF. SOUGATA RAY:** I am opposed to the Government's policy on many matters like selling and disinvesting CPSUs and divesting Air India to private parties etc. I am also against the policy of the Government which has led to NPAs amounting to Rs. 11 lakh crore which will never be recovered. But when the Government comes in for small cosmetic changes, I have no objection to the Bill. At the time of

demonetization the shell companies sprang up in a big way. Money was transferred and cash became legitimate through these shell companies. So far, not enough has been done to do away with this menace of shell companies. The only one step has been taken that the Registrar of the Companies can visit an office and if there is no existence of an office, he may close that company. The Bill has certain good points in the sense that it seeks the changes that are expected to lead to great compliance by corporates, de-clogging of the special courts, de-clogging of the NCLT and effective enforcement. An analysis of data available demonstrates that most of the cases relates to procedural lapses such as non-filing of financial statements and non-filing of annual returns etc. If such violations are re-categorized and allowed to be adjudicated through payment of monetary penalties, the burden on special courts would be drastically reduced. I think that the Government's intention are good but it is adopting the means of repeatedly resorting to Ordinances in favour of the corporates. In this country, the corporates have never played a major role in building up infrastructure. So, Governance should at least keep them under control.

**SHRIMATI VANGA GEETHA VISWANATH:** The amendments proposed to the Company Law seek to tighten corporate social responsibility compliance and reduce the load of cases on National Company Law Tribunal. The proposed legislation is intended to address the difficulties faced by stakeholders and ease of doing business in order to promote growth and employment. In the

interest of transparency and fairness, guiding principles for determination of penalties have been introduced, which would help the companies to a large extent. It is hoped that the change in the provisions of the Act will bring about a change in the way the corporate world works. Apart from that, under the amended law, non-maintenance of registered office and non-reporting of commencement of business would be the grounds for striking off the name of a company from a register. The amendments are aimed at filling critical gaps in the Corporate Governance and Compliance Framework as well as simultaneously extended great ease of doing business to law-abiding corporates.

**SHRI PINAKI MISRA:** The Companies Act, 2013, which superseded the Companies Act, 1956 has turned out to be one of most disastrous pieces of legislation in this country. My only grievance to this Government is that this Amendment Bill also does not go far enough. Otherwise, everything that they do do amend this Bill is unexceptionable. I would like to suggest some of the very urgent improvements that this Act requires, which will facilitate ease of doing business. Section 185 and Section 186 have many restrictive conditions whereby promoters are not able to bring their own funds into their own organizations. The Government should cap all the penal provisions in regard to non-filing of forms. Further, the time has come to impose 25 per cent corporate tax across the board. The discretionary powers of the Regional Directors and the ROCs to impose

penalties should be removed. The Act does not differentiate between large and MSME companies.

**SHRIMATI SUPRIYA SADANAND SULE:** The Government claims that it has shut down two lakh shell companies. I would like to know as to what difference has it made. The MoS Finance had said that the CSR can be used for the distressed districts. I feel that we should find a way where the locals could get some benefits. As regards NFRA, I would like to ask whether the Government will take some retrospective action against the companies which have duped this country. Further, will the Government take action even on directors or will it just be against the organization? With regard to the Section 212, I hope the staff is sensitized and made aware of how the legislation works so that the implementation of the Act does not result into harassment.

**SHRI MANOJ KOTAK:** This Bill has three main features namely ease of doing business, transparency and accountability. I would like to congratulate the Government for this initiative. I demand that the Government should give some concessions to the companies having turnover less than Rs. 1 crore with regard to the de-materialization of shares to incentivize the Start Ups or the MSMEs.

**SHRI JAYADEV GALLA:** I would like the hon. Minister to explain Clause 2 of the Bill by which the companies have been asked to submit



applications to the Central Government to determine any period as their financial year. I am not in favour of the proposal to change the financial year as this may not be the right time for that. The Bill has put restrictions on every company having share capital not to commence its business or to get borrowings unless the Directors file declaration within 180 days. I request the Government to please consider increasing this period to one year. I would request the hon. Minister to please iron out anomalies between SEBI regulations for governing the listed companies on the one hand and the provisions of the Companies Act on the other. The Government should look into the contradiction between the Companies Act and the Listing Agreement for payment of remuneration to the managing director and the related party transactions. In the Indian perspective, these provisions may create some hurdles because majority of the business in India are family owned.

**DR. SHRIKANT EKNATH SHINDE:** I would like to give a few suggestions on CSR. It is found that a few corporates start their own NGOs and divert the funds meant for CSR to those NGOs to carry out the works specified under Schedule VII. A penal provision should be introduced for companies who divert their CSR funds to their own NGOs. My suggestion is that the economic threshold for companies to implement CSR should be lowered to bring more companies under its ambit. The spending under CSR does not get tax exemptions. Thus, corporates prefer to take up limited activities under Schedule VII which

attract tax exemption. Hence, there is a need to bring changes to tax laws to incentivize companies for promoting and spending their CSR funds judiciously.

**SHRI RITESH PANDEY:** I request the hon. Minister that the private companies should be given some relaxation in compliance of the Clause 7 of this Bill. The Clause 33 empowers the Government to declare a manager unfit and in such circumstances the individual cannot work with any company for a period of five years. I feel the Government has adopted an unreasonably strict attitude and it will create problems for certain individuals.

**SHRI SAPTAGIRI SANKAR ULAKA:** The Bill provides for in-house adjudication for minor offences. This can be taken for a ride by some people. The reliability of technology-driven in-house adjudication mechanism is also questionable. Despite the regulation, the number of inactive registered companies continues to remain high. There is nothing that is happening to control this factor. We want to move everything from the State and form different Tribunals to the Central Government. This is something which we need to check. I would say that though I support the Bill, let us reconsider it by sending it to the Standing Committee.

**SHRIMATI NIRMALA SITHARAMAN** *replying said:* I thank all the Members who participated in the discussion on the Companies (Amendment) Bill,

2019. Amendments are not the fancy of the Government. In fact, it was more driven by the demands of the stakeholders of the companies, auditors, cost accountants, registrars etc. When the Government is constantly being told that the Act does not live up to legislative intent, there is a need for us to respond and come up with the amendments. This set of amendments are all for ease of doing business for small, medium and large companies and also any other companies which are being troubled because of the Companies Act, 2013. I do not want the system of continuing with Ordinance. Please consider passing this Bill because we want to legislate on it. One hon. Member referred to the issue of shell companies. We take pride in saying that we have actually brought down quite a number of shell companies? Nearly, four lakh inactive companies have been de-registered by us. If you did not have a proper registered office or if you did not declare the business with which you wanted to commence your business, then you become a shell company. We insist and through the amendment we are saying that non-maintenance of a registered office shall be made one of the stated grounds for striking off any company. CSR again is something on which many Members were concerned. Actually, the way in which the funds have to be spent has been defined. There are 11 or 12 such clauses under which they can use it. Let me take this opportunity to say that India is probably the first country to make CSR a mandatory requirement by putting it into the Company Law itself. The first year in

which the companies probably start making a decision and just started spending the money initially, they will be given that one year plus three years in which they will have to steadily start spending the money for which they have already said that they have decided to spend the money on some account. In case it does not happen, they will have to move their money into an escrow account. One hon. Member mentioned about the fear that there could be a discretionary element leading to corrupt practices. But all actions taken by the Registrar are expected to be and shall be in pursuance of the rules through the MCA 21 system, after due process of law and giving adequate opportunity for the companies themselves and their Directors to respond to the notices. One hon. Member referred to a point that the amendment on higher additional fees has to be brought about in the Amendment Act of 2017 to bring about greater discipline in filing of Annual Returns and Statements. The Bill already actually provides for a lesser penalty for smaller companies. The companies which did not file Annual Returns and Financial Statements for two years or more, or did not apply for dormant status but existed without main activities were the ones to get struck off by the Registrar after following, again, a due process. The proposed amendment that we are bringing in is for companies which are present in India and also which are present abroad. In case, the companies present in India want to align the financial accounting year with group companies or holding companies then they should approach the Central

Government. The proposed amendment which is here on board is only an enabling provision to empower Central Government to prescribe classes of unlisted companies. Therefore, what I would like to underline is the proposed amendments are for ease of doing business largely. I would seek all hon. Members' cooperation in having this Bill passed.

*The Resolution, by leave, was withdrawn.*

*The Bill was passed.*

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## **PRIVATE MEMBERS' BILL**

### **THE COMPULSORY VOTING BILL, 2019-Contd.**

**SHRI JAGDAMBIKA PAL** *resuming his speech, said:* A debate is going on in this country about compulsory voting for many years. It was discussed during the 16th and 15th Lok Sabha also. Compulsory voting is being discussed because in a democracy, the Government can only be 'of the people, by the people and for the people'. But this can be possible only when there is political participation of all the people through compulsory voting. In parliamentary democracy, during elections - muscle power, money power, caste politics or regional politics etc are discussed. This can, perhaps, be addressed through maximum or cent per cent voting. This Lok Sabha election had a higher turnout.

But even after this, 29 crore people didn't vote which is higher than the population of other countries. Even now, 108 countries have a voting percentage higher than us. Why can't we progress in this direction? 22 countries in the world have accepted compulsory voting and 11 important countries like Belgium, Australia, Singapore have successfully enacted compulsory voting legislation. Architects of our Constitution had also dreamt that the Government elected in the parliamentary democracy should not represent a particular section or particular region rather, it should be a Government elected by each citizen of the country. If compulsory voting is enforced today then the politics of caste and creed will come to an end in the coming days. It is natural because when there will be cent per cent voting, then one cannot lure all the voters. A report published in 2005, shows that there was a co-relation between compulsory voting, when enforced strictly and improved income distribution. This will lead country towards economic equality. We should work towards creating awareness about compulsory voting. Voters remain disinterested, we should motivate them for voting.

**SHRI RAJIV PRATAP RUDY:** Compulsory voting is considered very important for any democracy. In 1893, for the first time, Compulsory Voting Bill was introduced in Belgium. Thereafter, various countries across the world provided for compulsory voting. However, these laws were diluted over the time. On the one hand, some of the research suggests that making provisions for

compulsory voting would increase the growth rate whereas some other research work suggests that growth rate is not augmented even after the implementation of provisions pertaining to compulsory voting. Now-a-days, General Elections are held across the country. During the recent elections, 67 per cent voter turnout was recorded. There are 88 crore voters in India, out of which 61 crore had exercised their franchise. Hon. Members have proposed in this Bill that a person should be penalized if he does not take part in voting process. In this regard, I would like to say that there is a Parliamentary Constituency in India wherein compulsory polling was done virtually in 1200 polling booths during the 2004 General Elections. Out of 1200 polling booths, 1100 booths had recorded 99.9 per cent polling. So, Election Commission had to take a decision for re-polling within the period of four months in that case. So, 100 per cent voting would be detrimental to the democratic process. Apart from that, during 1952 election, per voter expense was 60 paise only, whereas in 2019, it has increased to 60 rupees per voter. In all, approximately Rs.4000 crore are spent in a General Election held in our country. Though, the expenses incurred on compulsory voting have not much significance, rather, I would say that perhaps we are not ready for making this arrangement. Today, mindsets of people are changing. They want delivery, good governance and legislation. There is also need to completely segregate executive and legislative. When this will be materialized, only then we can consider for making voting

compulsory. Today, I am not in favour of compulsory voting but it is also necessary to have a bigger dialogue on this issue on this platform.

**SHRI NIHAL CHAND:** Voting is the foundation for any democracy and it should be an essential part of democracy if we want to strengthen the democracy. Similarly, larger voter turnout would also be necessary for strengthening the democracy in our country. In our country, poor voter turnout has been recorded during the elections. As far as my Parliamentary Constituency is concerned, 75 per cent voter turnout was recorded during recent elections. More than 33 countries across the world have provided for compulsory voting. I wish that there should be provision for compulsory voting in our country also. If a person does not exercise, his vote then he may be deprived of his voting rights or may be penalized for the same. Voting should be made compulsory and the term of reservation should be doubled in order that in case of a candidate winning from the reserved constituency he stays assured of his contesting election from the same constituency next time and remains motivated to work properly. If somebody desists from voting, he should be penalised or be made to pay fine so that he may remain conscious in the next election. Compulsory voting would strengthen democracy and the Government would be formed with the participation of everyone. I support this Bill.



**SHRI BHARTRUHARI MAHTAB:** In terms of voting India stands at the bottom in the list of democracies of the world and is at 109th position. This time the percentage of voting has been recorded to be 66.40. In Parliamentary democracy every adult has a legal right to cast his vote and elect a representative of his choice. On making voting compulsory it will no more remain voluntary. That way citizens' right of liberty to make a choice would be suspended. After the 10th Schedule became a part of the Indian Constitution NOTA became a reality which means the party candidate is not supported. But it is also an opinion. Not giving an opinion is also an opinion, said the famous former Prime Minister. Article 326 of the Constitution guarantees the right to vote to every citizen above the age of 18. Section 62 of the Representation of People's Act states that every person who is in the electoral roll of the constituency concerned will be entitled to vote. This is not discriminatory but voluntary. So, I would say that compulsory voting in itself is somewhat anti-democratic in the country because the freedom to speak necessarily includes the freedom of not to speak. I would, therefore, say compulsory voting in India is a bad idea. This may be a good idea but if it is very difficult to enforce it. The way forward is to create more awareness in the country so that many people come to the polling booths and exercise their franchise.

**SHRI RAJENDRA AGRAWAL:** The conduct of the Members of Parliament must not be such as to make the common man disillusioned with the

polling. Besides, the elected representatives must be wary of social audit. On attaining the age of 18 years there should be a ritual like other Samskars for the individual as he or she becomes eligible enough to cast vote. In the recent past, it has been witnessed that nearly 2 to 3 per cent of voters are subjected to deletion from the voter list for some reason or the other. I would suggest that there should be one electoral roll for all the elections right from Gram Panchayat to Parliament.

**SHRI DUSHYANT SINGH:** Elections in our country commenced in the year 1952. We have been observing elections since the election to the first Lok Sabha in the country that voting percentage has been very low. For the first time, in the recent elections, the voting percentage has gone upto 65 to 70 per cent which has never been the case in the last many years. This became possible because of good election management by the Election Commission. In my parliamentary constituency of Jhalawar-Baran, we could reach upto 72 per cent voting for the first time. But here I need to say that if we make voting compulsory it would be an infringement on our democratic rights. *(Speech unfinished)*

*The discussion was not concluded.*

**SNEHLATA SHRIVASTAVA**  
*Secretary General*

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NOTE: It is the verbatim Debate of the Lok Sabha and not the Synopsis that should be considered authoritative.

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