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THE Amendment Bill proposes to insert 16 new Sections, substitute 34 existing Sections, amend 123 existing Sections and delete 21 existing Sections. When such a comprehensive attempt is made, complications may be inadvertently introduced, and this is what has happened. The Amendment Bill has also gone much beyond the recommendations made by the Naresh Chandra Committee, R D Joshi Committee and the JPC. The Bill addresses basically 15 issues such as holding/subsidiary companies, sale, lease or disposal of the undertaking of a company, officer who is in default, board size, age restriction, independent directors, consolidation of group accounts and qualifications and disqualification of auditors.

The basic thrust of the government's economic policy is to unleash the entrepreneurial spirit of Corporate India. Companies in India have already understood that they have to be flexible, innovative, competitive, acquire the ability to reach critical mass, and constantly strive to improve their performance. Corporate governance is accepted as a necessity and should be provided in the framework of the Companies Act. There is no need for a draconian approach. The Amendment Bill in its present form is very defensive in nature and conveys that Corporate India needs to be policed.

Is it necessary to restrict the age of a managing director, directors and independent directors to 75 years? Should we not leave this to the shareholders to decide through a Special Resolution? This is like writing-off old persons who are still fit, efficient and who have vast knowledge and who are still in a position to contribute immensely to the company. The provision for reservation for women directors is also retrograde. A board position should be based on expertise, knowledge and qualification and not on gender. Also the proposal to have a majority of independent directors on the board is not fair and equitable. Directors are essentially the trustees of shareholders in

the total strength of the board. Essentially the role of independent directors is to raise the red flag and to act as whistle-blowers.

The government is justified in stating that no independent director should remain in the board continuously for more than nine years. Over a period of time the independent director may lose his independence and a nexus may develop with the management of the company. However, it is not right to hold independent directors and nominee directors responsible for the misdeeds of the company. So you cannot have the cake and eat it too.

Now the contentious issue of having only one layer of subsidiaries—I feel this is detrimental to industrial growth and will also constrict and restrict much needed investment. It is an accepted fact and a world-wide practice for efficient companies with large surpluses to float subsidiaries to take on new businesses while at the same time retaining control on the subsidiaries. SPVs are the order of the day. The R D Joshi Committee had recommended only one layer of subsidiaries to be floated by the mother company in order to prevent diversion and siphoning of funds through pyramidal subsidiaries, to the detriment of shareholders. With all the disclosures and compliance reports that need to be mandatorily filed with Sebi, the Stock Exchange and the ROC, the corporate veil has been lifted and therefore I feel that multi-layered subsidiaries in a majority of the cases will



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not impact the transparency and the accountability to the shareholders. The Companies Act should not pre-empt or decide the financial architecture but it should give the broad guidelines to ensure transparency, compliance and accountability. The deterrent should be stringent penalties for violation.

It is a well-known fact that the apex industry associations have submitted representations to the government to redraft the Companies (Amendment) Bill, 2003. I don't think that this is giving in to pressure from the industry. There are many provisions in this Amendment Bill which need to be corrected. The recall of the Amendment Bill by the government is not because it is to be diluted but because it should be more pragmatic, realistic and conducive for economic prosperity and