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JURISDICTION OF SEBI IN TAKING ACTION AGAINST PRACTISING CHARTERED ACCOUNTANTS

CENTRAL GOVERNMENT BUDGETS: RECEIPTS SIDE - TRENDS AND LEARNINGS FOR FUTURE ACTIONS

NSE'S HIGH-TECH STOCK MARKET SCANDAL: WILL THE MASTERMINDS GO SCOT FREE?

MATERIALITY WITH REFERENCE TO THE FINANCIAL STATEMENTS



EDITORIAL

FORM AND SUBSTANCE OF EXTERNAL AND SELF-REGULATION

If there is ONE regressive belief that is perpetuated by every government of India and has generally taken the country backward, **it is: if something goes wrong, the answer lies in government control; because if government controls something, it will deliver optimum results.**

Such an approach to situations results in:

- a. stranglehold of *babudom*¹;
- b. distancing citizens' from liberty;
- c. annihilation of self-governing and self-financing institutions into monolithic government bodies;
- d. developing a false narrative that government delivers and delivers for larger good;
- e. cost overruns, inefficiencies, unaccountable ways generally known by the name 'public service' amongst others.

Lacking Government oversight: Look at the last two big scams – where CAs were blamed, but no significant government employee responsible for oversight faced any consequences! Did you see any action on SEBI for the co-location scam? Did you see action on Reserve Bank of India after the collapse of systemically important NBFC IL&FS right under its nose called 'supervision'? **One can infer that when regulators fail and/or go unpunished, insiders above them were pulling the strings!**

Connect the Dots: Two issues have been debated this week – changes in 3 Institutes and the formation of IIA.

Let's look at the past sequence of events – NACAS formed to take away Standard- Setting powers, rotation of auditors through a top secret report under Modi 1.0, Modiji makes legendary comments at the ICAI event in 2017, CAs

1 The tacit mechanism invented, nurtured and perpetuated by public servants where things are complicated to the level where responsibility cannot be ascertained, outcome remains sub optimal, and results are slowed.

stopped from giving valuation report²/certifications under a few laws and adding other professions in place of CAs³, NFRA formed to discipline errant firms, reduction of bank audit branches/quantum of advances subjected to audits, tax audits and GST audits removed significantly, NFRA 'report' on abolition of company audits except about 3,600 companies, frivolous NFRA reports and consultations and parliamentary panel report of 2022 on ICAI that makes inroads into disciplinary powers. This leaves ICAI to be an **educational, licensing and registrar of members and students body. If you connect the dots, and especially by this government, it is clear that there is a certain aversion and clear invasion on self-regulation of ICAI. This is akin to maximising government and minimising governance because lasting governance comes from people who need to be governed.**

The Parliament Debate: Seeing a string of BJP MPs shinning out during the parliamentary debate was memorable. One MP from Mumbai said there is a **need to increase the pass percentage** in CA exams. He said he is not able to understand what is the big technique in CAs⁴? Another HBS educated BJP MP from Jhansi said **Indian audited statements are not accepted in NASDAQ**, and once this amendment act is passed, such financials will be globally accepted. He even said that in CAG, there are no CAs and still they can audit the entire country. He went over the top when he said some CA firm he called Batliboi (he didn't remember the full name), which used to be a top firm, is finished when you compare it to EY⁵. After listening to astute observations, I felt glad that none of the ICAI council members have stellar qualification like 43% of winning BJP MPs of 2019 elections who have criminal records!

Statistics: The PSC report says that between 2006 and 2021, 3832 cases were resolved out of 5829 cases

2 Under the Income Tax Rule 11U and 11UA under DCF

3 DD for companies taking banking facilities

4 On the parliament website, his educational qualification is 'under matric' and one wonders whether that is a qualification to criticize those who clear one of the toughest exams on the planet.

5 In case you meet the MP, do let him know that same or similar firm was taken over by EY or calls itself EY

registered. Amongst the 1997 unresolved cases, 574 (9.8% of total) cases are more than 3 years old and 81 cases are stayed by the court. Removal from membership between 1-5 years was done in 48 cases. Totally 267 removals were either permanent debarment or between 0-5 years. Now compare this to PM Modi's speech on 1st July 2017 where he said that in the last 11 years, proceedings have been undertaken against only 25 CAs. You judge the difference between reality and rhetoric. **ICAI statistics are better than most departments, tribunals and even courts which are etymology of the word inefficiency.** The average pendency of normal cases is 2 to 3 years in ICAI. One cannot deny the scope for improvement, yet it is better than other judicial and disciplinary mechanisms in a country where decades old cases are languishing.

Comparables: National Medical Commission has a medical practitioner as Chairman. **Advocates Act 1961⁶**, requires 2 out of 3 members of disciplinary committee from Bar Council and all three have to be advocates. But CAs are treated differently. **Could it be because of special vengeance blended with arrogance?** As an MP from Kottayam put it: which Secretary has knowledge of accounting standards and auditing standards to head disciplinary mechanism? Assuming that few of the retired govt. nominees may read the standards, how many of them would have applied it practically in audits so as to understand the standards at the fundamental level so as to apply the nuances involved for deciding the cases?

Facts: The fact is that government nominees are already on ICAI disciplinary committee. And they are party to the process. All cases are generally determined unanimously. To hasten the process, timelines could have been included in the ICAI regulations. Imposing more **babudom**, is a precursor to the advent of politicians (like you see politicians and their siblings on sports bodies, temples, clubs and every other place where there are assets, popularity and power) and those who have no skin in the game.

There is nothing wrong in self-regulation so far as there is transparency, speed and appeal mechanism. There are brilliant minds who understand the situation since they have been in one, unlike one IIM Bangalore retired professor, to deliver a balanced verdict in disciplinary matters. Talking about conflict of interest, one MP from UP said *don't Babus judge themselves*

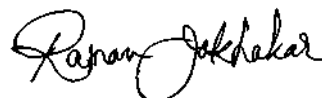
and punish themselves? How does the Army disciplinary system work? **Government is the crown jewel of conflict of interest if you go by GOI's logic.** In fact, SRO, is an essential character of balanced oversight and not an impediment.

Fitting in: To fit in to the global scheme of things, GOI propounds its own '**selective global best practices**'. Have frauds, scams, financial mismanagement reduced in other countries from where these regulations are purported to be taken as global best practices? If you look closely, this is done because of **lack of original thinking for India.** Therefore, the easy way is to **import and affix even that which has failed elsewhere and continue to propagate colonial mindset to the detriment of local ground realities. Self-governance is the epitome of democracy and responsibility.** Perhaps until the west does it, *babudom* and in turn *mantri mandal* won't believe in it.

ICAI Reforms: Does ICAI need reforms? Yes, of course! Which institution doesn't with changing times? **However, true reform is like true health that comes from inside** – cleansing from within, not by inserting artificial objects or tubes permanently. **This half-baked government action seems hazy, hasty and hazardous!**

IIA: An idea mooted by the PSC also speaks of IIA. Competition does raise the bar. **To call statutory responsibility as a monopoly is nothing short of ignorance unless it is malice!** Rigour of education, exams and practical training are critical to create public accountants. Currently, and gladly, the ICAI is not based on a regressive reservation model that mocks merit. Nor has ICAI gone with a begging bowl to the government for funds. It does much work for backward and dull-witted government bodies. One would be **wiser to use ICAI set up, and create categories of accountants majoring in various skillsets rather than creating alleged 'competition'.** I am sure ICAI would be happy to partner with industry and real-life people on the ground to create this new set of accountants.

President Kalam said CAs are partners in nation building. And no Bill can take that away. Like Kautilya said, **destiny follows the words of the wise souls. ICAI's destiny will surely follow those words.**



Raman Jokhakar
Editor

⁶ Section 9 of Advocates Act

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