

INDIAN COMPANY MANAGEMENT

ITS RETROSPECT AND PROSPECT

A THESIS

**SUBMITTED TO THE UNIVERSITY OF NORTH BENGAL
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY (ARTS)**

BY

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APRIL, 1987

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P R E F A C E

The subject "Company-Management" is of grave national importance as the economic and social well-being of the country depends, to a considerable extent, on the successful management of companies. However, as a subject of study, Company Management has been comparatively neglected, and only a few Indian scholars have come forth to explore the intricacies of the subject. Company Management involves multifarious activities - which are to be performed within a proper time by co-ordinated effort with the full co-operation, control and guidance of the top management. By "top management" is meant here the Board of Directors, Chief Executives and the other top level managerial personnel on the decision of whom the management of a company is formulated and actualized. The Top Management provides the leadership required to run the company in a desirable direction i.e. towards result-oriented functions with profit motive on the one hand and public welfare on the other. In order to achieve both of these ends, it is necessary to consider the company as a social institution - an instrument for social benefit. Everything depends upon persons constituting the top management. But the vital question that requires to be answered before entrusting persons to perform social benefits is what type of persons have got interest in the company? The activities of a company should be directed to serve the interest of all who are involved in it - such as shareholders, borrowers, customers, suppliers, banks, workers/employees, the society at large,

and the Government. Therefore, representatives from all the constituents should be on the Board of Directors of companies.

In law, though a company is regarded as an autonomous body having a separate legal personality, in fact, mostly it is managed by a board representing big powerful groups to serve their interest. As a result, the board fails to serve the interests of many. Perfect democratisation of the company management is necessary within which professionalisation in the true sense of the term is to be introduced. Our endeavour has been to suggest modalities by which the present system of the constitution of the board may be reconstructed. In our view, if the structure of the company management is reconstituted by initiating a concept of a Multiple Two-Tier Board, a company will be a perfect social institution capable of doing public good and welfare. In India, there is ample scope for such an innovation since a substantial amount of money of public financial institutions and nationalised banks are invested in private sectors. These institutions and banks are now thinking of being involved in the management of borrowing companies for the greater welfare of the country. But the concept of Workers' participation in management, the propriety of which has been specifically mentioned in our constitution and recommended by different committees like the Sachar Committee and experimented successfully in different countries of the world, is still neglected in the sphere of company management in our country. The initiative that has been taken by the present Government

regarding this issue is certainly praiseworthy. In order to serve public interests—especially to serve the interests of the consumers and suppliers, Government-representation on the Board is necessary. In our recommendation of a Two-Tier Board system of management, the first board has been termed as "Policy Board" which will be constituted of representatives of different ingredients on the basis of proportionate shareholding. This Board should be mainly responsible for the formulation of broad policy. The second board - known as "Executive Board" is to be constituted of professional employees responsible for the execution of the policies decided upon by the Policy Board. We have named this system of management a Multiple Two-Tier-Board. Such a Board will encourage professionalization, greater extent of public accountability, and develop companies as social institutions - instruments for the economic development and the social uplift of India. Businessmen of India should change their attitudes and exert their entrepreneur expertise, efficiency and energy to work wholeheartedly for the development of companies, vis-a-vis the country.

I owe a debt to Dr. N.K. Sengupta who in his book, Changing Patterns of Corporate Management has shown that the private sector has by and large accepted public accountability and social responsibility. Professional management has gained general acceptance in the private sector, as many of the traditional business houses find that families can no longer cope with

the enormity and complexity of the tasks involved in the face of vast expansion and technological advancement. Professional and technical people have got into the echelons of top management. Over and above this, Government control and other development has forced the dispersal of shareholding, professionalisation of management and improved corporate management practices. Dr. L.C. Gupta's Corporate Management and Accountability : Towards Joint Sector and the recommendations of Sachar Committee have developed the concept of corporate management and helped us to develop the new structure of corporate management i.e., Multiple Two-Tier-Board.

Our study shows the sea-changes that have recently taken place in the corporate management of the private sector in India. From the beginning of company legislation in India, the 'Managing Agency' had a tremendous influence on Corporate Management. Through the Companies Act of 1956, active efforts were made to give prominence to the long eclipsed 'Board of Directors'. This was a progressive step, but afterwards, it was found that the Board of Directors, became rubber stamps of those visible or invisible powerful economic interests which they represented and many problems crept up. Thus it has become urgently necessary to bring companies out of the powerful influence of these economic group/groups, - otherwise it will be impossible for the companies to be active enough to perform their welfare functions as expected from them.

Our review of seventy-five companies shows signs of changes in the structure of companies as well as in their functions. But we must be bold enough to initiate some new trends, such as workers' participation, proportionate representation according to shareholding, Governmental representation on the Board, as well as a Two-Tier form of management with professionalisation in the true sense of the term. In order to translate these into practice, it is necessary to amend the present Companies Act.

In our study we have discussed features of corporate management of some of the most developed countries of the world. It is advisable that some of the key features which have led to the development of companies in such countries, and which suit our environment should be considered in the structure of corporate management in India.

In our view, if we are bold enough to introduce the Multiple Two-Tier-Board system alongwith the ideas of Gandhiji's Trusteeship, problems regarding the transferability of shares, social responsibilities of the companies, workers' participation in management, accountability of the companies, investment by non-resident Indians, sickness of industries under the management of companies and last but not the least, the struggle between public and private sectors etc. will be eliminated for ever. At the same time, the companies as viable social institution, will perform their true role in the economic development of the

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country for the progress and prosperity of the people.

Sarai Krishna Dutta

(Sarai Krishna Dutta)

Raja Ramohunpur,

The 28th February, 1937.

ACKNOWLEDGEMENT

I am indebted to Dr. D.P. Panda, M.Com., A.I.C.W.A., Ph.D., formerly Reader and Head of the Department of Commerce, North Bengal University, now Professor and Head of the Department of Commerce with Management, Vidyasagar University, Midnapore, who encouraged me to work on this interesting topic - "Company-Management - its retrospect and prospect" and ultimately permitted me to submit the same for Ph.D. degree in the North Bengal University under the Department of Commerce. Apparently, he is my friend, but as guide and supervisor he rendered advice and initiative in each and every step in the preparation of this thesis. He kindly went through all the chapters and offered valuable guidance and suggestions throughout the course of my study. I have no language to express my gratitude to him for the selfless and devotional manner in which he has helped me.

I would also like to express my gratitude to the various administrative authorities of the University of North Bengal - specially to the Vice-Chancellor, Prof. D.B. Dutta, the Registrar Mr. B.K. Bajpai and the Department of Commerce as a whole, who kindly allowed me to register my name as a Ph.D. student in that University.

I owe gratitude to the different companies who kindly provided me with their Annual Reports, and responded to my questionnaire and sent letters of encouragement for my work on

the subject. I am also grateful to the office of the Registrar of Companies, Calcutta, and to the Regional Office of the Department of Company Affairs, Calcutta, for supplying me various valuable informations on my subject of study. I also render thanks to the management of the professional dailies, the Economic Times, Calcutta, and the Business Standard, Calcutta, for various up-to-date informations supplied by them, relevant to my subject. I am also indebted to Shri Jayanta Sarker, Residential Editor, the Economic Times, Calcutta, to the Statistical Officer, Department of Research Bureau, Business India, Shri Swapan Kumar Mondal, the then Deputy Registrar of the Registrar of Companies, Calcutta, Shri Swapan Kumar Ghosh, A.C.A., and Shri Robin Dutta, F.C.A. who supplied me with different data, published and unpublished, regarding different companies in India.

I also express my gratitude to the librarians of the different libraries, I frequently visited like Naresinha Dutta College Library, British Council, American Library, Gerki Soden, National Library, Calcutta University, Central Library etc., who supplied me with relevant books and journals within a very short time. Respected Prof. Charumohan Sarker, M.A., Regius Guha, Gold Medallist, C.U. helped me in different ways. No word is sufficient to express my gratitude to Prof. Sarker. Special acknowledgements are also due to Principal Kashab Mukherjee, M.Sc., and to all my colleagues in our college with whom I had

the opportunity for discussions on this subject. I would also like to thank Shri N.C. Achya, B.A., who typed the manuscript of my thesis.

Finally, I am indebted to my friend, Shri Dilip Kumar Das, and also to my elder brother Shri R.K. Dutta, M.A., B.T., who supplied me with foreign books from the U.K. and the U.S.A. whenever required, and to my wife Sita Dutta, M.A., B.Ed., whose unstinted encouragement and lofty inspiration helped me in completing my thesis. Thanks are also due to Barnali Dutta my daughter, Sabyasachi Dutta my son, Aniruddha my nephew, Somnara, my niece, for patiently bearing with me while I was occupied with the work on my thesis.

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LIST OF ABBREVIATIONS
(used in this thesis)

AIR	= All India Reporter.
ARC	= Administrative Reform Committee.
AR	= Annual Report (of Companies).
ACC	= Associated Cement Company Ltd.
AG	= Aktiengesellschaft (Incorporated Public Company in West Germany)
APIOC	= Andhra Pradesh Industrial Development Corporation.
BIFR	= Board for Industrial and Financial Reconstruction.
BHEL	= Bharat Heavy Electricals Ltd.
CORP	= Corporation.
CCIL	= Cement Corporation of India Ltd.
CLB	= Company Law Board.
Dy.MD	= Deputy Managing Director.
ESOP	= Employees' stock ownership plan.
ET	= Economic Times.
FIS	= Financial Institutions.
FERA	= Foreign Exchange Regulation Act (1973).
GOVT	= Government.
GIC	= General Insurance Corporation.
Gen H	= Gesellschaft Mit Beschränkter Haftung (Incorporated Private Company in West Germany)
HPL	= Haldia Petrochemicals Ltd.
HC	= High Court.
IFC	= Industrial Finance Corporation.
ICICI	= Industrial Credit and Investment Corporation of India.

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IDBI	= Industrial Development Bank of India.
IRBI	= Industrial Reconstruction Bank of India.
IDR ACT	= Industrial Development and Registration Act, 1986.
ILPIC	= Industrial Licensing Policy Inquiry Committee.
ILP	= Industrial Licensing Policy.
INC.	= Incorporated.
JIT	= Just-in-Time.
KGa-A	= Kommanditgesellschaft Auf Aktien (the incorporated Public Company, the directors of which are personally liable for the debts (Germany)).
LIC	= Life Insurance Corporation (India).
LTD	= Limited Liability.
MD	= Managing Director.
MP	= Member of Parliament.
MCC	= Madras Chambers of Commerce.
MIC	= Monopolies Inquiry Commission.
MATP	= Monopolies and Restrictive Trade Practices Act, 1980.
MITI	= Ministry of International Trade and Industry (Japan).
NRI	= Non Resident Indians.
PFI	= Public Financial Institutions.
IAC	= Industrial Reconstruction Corporation.
ROS	= Return on sales.
ROI	= Return on Investment.
R & D	= Research and Development.
SC	= Supreme Court of India.
SC(Reg)	= Securities Contracts (Regulation) Amendment Act, 1985.

SAIL	= Steel Authority of India Limited.
TV	= Television.
TQC	= Total Quality Control.
TIDCO	= Tamilnadu Industrial Development Corporation.
USA	= United States of America.
USSR	= Union of Soviet Socialist Republic.
UTI	= Unit Trust of India.
WBIDC	= West Bengal Industrial Development Corporation.

CHAPTER - I
INTRODUCTION

CHAPTER - I
INTRODUCTION

1.1 Importance and growth :

The importance of corporate form of business organisation in the overall economic development of a country is beyond criticism. Composition and method of operation of corporate bodies may vary from place to place under regulated economy of different countries but its role in the perspective of industrialisation and growth in multifarious directions in a country is hardly over emphasized.

Joint stock form of business organisation, better termed as corporate business sector has, at present, become a way of life and it plays a vital role for the allround development of a country. Specially, in India where there are various problems, such as unemployment, under employment, poverty, malnutrition, illiteracy, health and medical treatment, housing etc., the companies are expected to raise the national income and per-capita income and take the responsibility of proper distribution of national wealth amongst all the people of India by running the companies efficiently primarily with social and profit motive but with final object of bringing in social justice.

There are many persons, such as, Mr. Jayanta Sarker, Resident Editor, the 'Economic Times', Calcutta Office, and Mr. Swapan Kumar Mondal, Deputy Registrar of Companies, West Bengal Zone, Calcutta, who are of the opinion that 'growth of economy'

and 'social justice' can not be brought at a time. We are to make choice which one is to be realised first - 'social justice' or growth of economy. According to them, growth of economy must be given priority to social justice. Without the growth of wealth, distribution amongst the masses i.e. bringing social justice will mean only distribution of beggary. They argue that our economy is lacking in comparison with other industrial developed countries because we have been going for a long time to a wrong direction i.e., giving priorities to both 'growth' and 'social justice' at a time. Social justice can wait but the growth of economy can not be deferred.

But in a country like ours we can not deny the people the long-cherished social justice. What is the utility of the growth of the national income if the poor masses do not get a square meal a day? Poverty must be abolished. Provisions must be made within the framework of our constitution to find out ways and means to alleviate the pains of the people.

Corporate legislation and management of corporate sector impart the greatest influence on the economy of a country. Therefore, persons who control the management are expected to perform their duties and responsibilities by which the interest of the whole nation can be achieved. The management body of the Company has undoubtedly to look after the interest of the Company but at the same time it must not forget that the law has recognized the body as a statutory instrument for serving the public interest. This is vitally important.

At present, in India, almost all economic activities are directly or indirectly connected with or incidental to corporate form of business. In a recent statistics, it is seen that, of the total number of 96,470 companies at work in India as on March 31, 1984, 93,294 companies were in the non-Government sector and 970 were government companies. As early as 1956-57 i.e. soon after the coming of the Companies Act, into force in 1956, the number of government companies was only 74 but they rose by more than 13 times by 1983-84. On the other hand, during the same period, the number of non-Government Companies increased by only 3.2 times from 29,283 to 93,294. Of the Companies at work in India on March 31, 1984, there were 232 Companies with unlimited liabilities and companies limited by guarantees. There were 1598 Companies, registered under the Companies Act, which are actually associations not for profit. Foreign Companies as defined under the Section 591 of the Companies Act, 1956 numbered 326 on March 31, 1984.

The paid-up capital of 93,294 private sector Companies stood at Rs.5,514 crores, whereas the paid-up capital of 970 Government Companies stood at Rs.16,415 crores. The paid-up capital of Government Companies increased from Rs.73 crores in 1956-57 to Rs.16,415 crores in 1983-84 (nearly 226 times) while the paid-up capital of non-Government Companies increased from Rs.1,005 crores to Rs.5,514 crores during the same time (a rise of about 5½ times).

Besides, the companies registered under the Companies Act, 1956, there are branches of foreign companies as defined under section 591 of the Companies Act, 1956 operating in India. These Companies which stood at 551 in 1956-57 showed a gradual decline with coming into force of the Foreign Exchange Regulation Act, 1973 and at the end of 1983-84 stood at 326.¹

According to the Sachar Committee Report, as March 31, 1977, there were over 58.04 lakhs of people employed by the non-Government Companies in Private Sector. Investment of five financial institutions in total paid-up capital of 388 Companies with a paid-up capital of Rs.1 crores or more, comes to a little above 18 per cent of the paid up capital.²

On that date number of Companies in Private Sector had been 46155 with total capital of Rs.2,769 crores. As per figure stated above on 31.12.1984, number of Companies has become more than double i.e. little over 102.15 per cent and rate of paid-up capital also rose little over 100 per cent. There is every possibility that number of workers also increased in the same proportion. There is also likelihood of the fact that the Government's shareholding/loan in the Private Sector Companies had increased at a higher rate.

Ours is the era of Corporation. At present, large scale business means business organised as a Company form. According

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1. The Economic Times, Calcutta, April 17, 1985.
 2. Report of the High-Powered Expert Committee on Companies & MTP Acts, August 1978, under the Chairmanship of Justice Rajinder Sachar, Para 12.3, P.98.

to Justice Rajinder Sachar, "Private Corporate Sector's contribution is 10 to 12 per cent of the total investment in the country while 40 per cent of the investment in the country is in public sector and nearly 50 per cent of the investment was in the household, small and cottage sector."³ It is evident that total Corporate Sector's investment is (Public Sector together with Private Sector) about 60-62 per cent of the total national investment. Not only that, Corporate Sector supplies infrastructure raw materials, creates and helps to expand demand of the products of the household, small and cottage Sector. Company Management is expected to provide more employment which our country badly needs.

a) Importance of Companies as regards revenue earnings by the Government :

Companies and their nature of management is important from the point of view of tax-collection by the Government. The Union budget for 1985-86 has placed the yield from Corporate Tax at Rs.3,055 crores as against Rs.2,824 crores in 1984-85 (revised estimates), showing a rise of 8.2 per cent. Between 1983-84 and 1984-85, the yield from Corporate Tax has increased by 13.3 per cent.

During the five-year period of the sixth plan, the Corporation tax-yield has risen by more than 115 per cent from Rs.1,311 crores in 1980-81 to Rs.2,824 crores in 1984-85.

3. Sachar Rajinder, Judge, Delhi High Court, New Delhi in his the Article "Corporate Laws; Effect on the Growth of Corporate Sector" - Chattered Secretary, January, 1981.

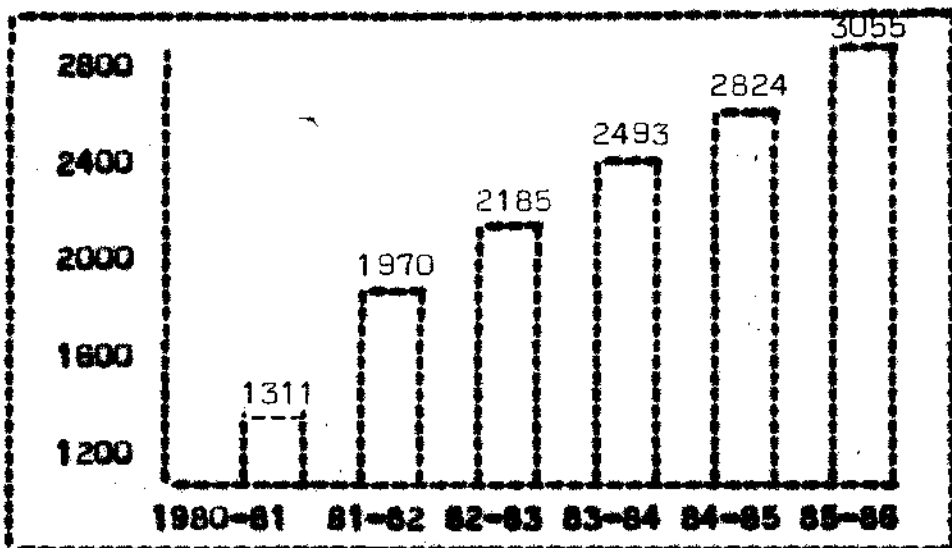
FIGURE NO.1

DIAGRAM showing increase in Corporate Tax Revenue from the financial year 1980-81 - 1985-86 in crores of Rupees.

Besides the Corporate Tax, other heads of revenue with a spurt of more than 100 per cent during the sixth plan period were customs duty (108.3 per cent) and other direct taxes (other than income-tax, corporate tax, hotel receipts tax and interest tax) - 117.7 per cent.

The overall gross tax revenue of the centre showed an increase of 79.8 per cent during the sixth plan period. It rose from Rs.1318 crores in 1980-81 to Rs.23,702 crores in 1984-85. The 1985-86 budget expects the gross tax revenue at Rs.25,945 crores.

The smaller rise in the expected Corporation tax-yield, during 1985-86, has obviously come out of the allowance of certain concessions, a cut of 5 per cent in the corporate tax-

rate and other modifications of the provisions under the Income Tax Act.

In spite of the laudable efforts of the Government in bringing down the effective tax-rate, Corporation Tax yield has been quite high, as compared with the other heads of revenue. In other words, there is an in-built growth in Corporation Tax yield arising out of the better performance of the corporate units in profit-generation. The Corporation Tax yield at Rs.3,055 crores for 1985-86 forms 12.0 per cent of the gross total revenue budgeted by the Government for that year.⁴

b) Importance of companies for the improvement of the agricultural sector in India :

The Corporate Sector directly or indirectly exerts great influence on the agricultural sector for its improvement and development. Industries relating to fertilizer, pesticides and power, agricultural implements, provision for protection of seeds and warehousing of agricultural commodities are generally organised in the Corporate Sector. Apart from it, private Corporate Sectors have shown their interests in direct involvement in agricultural production in comparatively underdeveloped areas. Indirectly, the Corporate Sectors create demand and expand market for agricultural goods not only for raw materials

4. The Economic Times, Calcutta, March 23, 1985.

required for industrial production but also for food, shelter and clothings. On the contrary, agriculture sector also plays most effective role for the improvement of Corporate Sector by creating demand; supplying raw materials, labour-force etc.

c) Importance of companies to overcome the foreign exchange crisis :

Importance of companies to overcome the foreign exchange crisis from which India has been suffering for a long time can hardly be overemphasized. A substantial portion of foreign exchange earnings is made by the Corporate Sector not only by exporting goods and technical services in different countries but also by alluring and encouraging non-resident Indians to invest in Indian Private Sector Companies. Government's initiative and encouragement in this regard is praiseworthy. Though discussion on these matters, as a whole, is not within the purview of our study, yet investment by non-resident Indians only has been discussed in some relevant chapter in our study.

d) Company-management and national interest :

The well-managed companies certainly will serve the national interest. Ninety per cent of the economic activities of a country is directly or indirectly dependent

upon the development of the company and its better management. In this respect, it is worth mentioning the statement made by Mr. M.A. Write, Chairman of the Board, Humble oil and Refining Company which is quoted below :

"If we want to preserve the principle of individual freedom and private initiative, we must devote an increasingly larger proportion of our time to meet the nation's social needs. The day has passed when our public responsibility can be met merely by offering sideline criticisms of the Government's efforts. In effect, we must move into the social welfare field and offer constructive alternatives to the Government's programmes. At the same time, we continue to encourage policies which will promote economic growth, still the greatest force in the fight against poverty."

The author speaking as an oilman said, "The petroleum and auto industries cannot be satisfied until the automobile is made virtually smogless. This is an economically feasible goal and industry is working toward this end." But in this context he warned that if business did not move swiftly and effectively enough tomorrow our action may be tightly controlled by Government regulations." And he added this double-edged idea, "If our efforts in this area are not made mandatory, not only will we be forced to take more costly and less efficient action, but we will also forfeit our claim to being a responsible segment of society."⁵

5. Wright M.A. The Business of Business - Private Enterprise and Public Affairs, Rupe & Co., Calcutta, Allahabad, Bombay, Delhi - special edition, 1971 P.VIII.

In India also different companies in their Annual Report, have stated the social responsibilities they have undertaken in different fields of activities.

Potentialities for industrial growth :

India has got tremendous potential power for industrial development through proper management of companies.

The following lines will justify the potentialities of India as referred to in Kothari's 'Economic & Industrial Guide of India 1982-83.'

"India already hold the eighth place amongst the industrially advanced countries of the world in terms of volume of its industrial production while it is the third largest reservoir of scientific and technical man power and skilled labour force, next only to the U.S.A. and U.S.S.R. Though its continued and sustained planned efforts since 1951 the country has laid a strong and viable foundation which can enable the economy to make rapid strides. India's striking, economic achievements through planned development are lessons of great relevance to other backward economies of the third world."⁶

In fact, India has come out from the stagnant growth rate of 2.5 per cent, and during the year, 1984-85 the growth rate was 7 per cent. Mr. D.N. Patodia, President of the Federation of Indian Chambers of Commerce and Industries said in

6. Kothari's Economic and Industrial Guide of India, 1982-83 Kothari & Sons, Kothari Buildings, Madras.

Madras on 15th July, 1985 that the private sector could achieve an annual industrial growth rate of ten per cent provided it were able to reduce the estimated big resource gap of Rs.16,000 crores.⁷

He also advised the business communities to take full advantage of the liberalisation movement initiated by the present Government.

1.2 Origin of company form of business organisation :

"The 20th century, particularly after the First World War, can be called the new era of the Corporation. Industrial revolution brought about a great change in the way of life of human beings. It requires collective organisation of men and materials. To bring its human structure and physical plan into existence, to carry out its operations, to distribute its products, to meet the growing demand made on it in peace and war, proved wholly beyond the capacity of individual entrepreneurs."⁸

As the 20th century moved into the afternoon, two systems have emerged as vehicles of modern industrial economics. One is the socialist commissariate; its highest organisation, at present, is the Soviet Union. The other is the modern Corporation, highly developed especially in the United States (and also in West Germany and Japan).

Henry Maine in his half-forgotten classic, 'Ancient Law',

7. The Economic Times, Calcutta, July 16, 1985.

8. Berle in the Corporation in Modern Society quoted from S.C. Sen : The New Frontiers of Company Law, Eastern Law House, 54, Ganesh Chandra Avenue, Calcutta 700 013, 1st. Edn., 1971, P-2.

seems to have made the best judgment, guess and myth though it may be, about the origin of the Corporation in the Roman Republic. He observes that it arose in the frequent occasion of the crisis when father of a family died and the family with its sons, daughters, adopted children and slaves, had to be recognised in order to perpetuate the property and the civil functions of the members of the family. In this context the fiction of 'legal persons' had raised its fearsome head.⁹

The similar idea of worshipping Hindu deities representing human beings furnishes the legal identity of juristic personality. While delivering the judgment in the famous case *Rambhadr Chatterjee V : Kedar Nath Banerjee* (1922) 36, C.L.J. 478, 483, Mukherjee J. states "we need not describe here in detail the normal type of continued worship of a consecrated image - the sweeping of the temple, the process of swearing, the removal of the precious day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servants. The daily routine of life is gone through with minute accuracy; the vivified image is regarded with the necessities and luxuries of life in due succession, even to the changing of clothes the offering of cooked and uncooked food, and the retirement to rest."¹⁰

9. Scott Buchanan's :
The Corporation and the Republic quoted from S.C. Sen :
The New Frontier of Company Law, Eastern Law House,
Calcutta-13, 1st. Edn. 1971, P-10.

10. *Pramath Nath Mullick V. Pradyumn Kumar Mullick*,
52, Indian Appeals, PP 250-251.

Mr. S.C. Sen draws inference from discussing the fact that "Tendency of associates is a part of human nature. The natural development is growth of institutionalism. A number of human beings driven by a common interest or a common faith formed groups and out of these group-associations started institutionalism, the ancestor of Corporations. The oldest associations known had been formed under a belief in God or a power. The christian Church as an association of men became the mystical body or the Corporation of Christ. This was one of the earlier institutions known in Corporations. Perpetual association and a belief in a common faith led to a state where the manyness of the members and the oneness of the association were merged."¹¹

1.3 The Constitution of India And Company Management :

The Constitution of India in its Preamble has enshrined socialism as one of its objectives. The Directive Principles of State Policy, envisage to secure to all persons justice- social, economic and political. Various corporate laws have been formulated, amended and brought upto-date in pursuance of this obligation.

Corporate laws are absolutely essential for the proper growth of the economic system on the right line. The company is an artificial person created by the law of the society. In a democracy, the state represents the society and the economy

11. Sen S.C., The New Frontiers of Company Law, Eastern Law House, Calcutta, 1st Edn. 1971, P-10

and Corporation is an artificial person created by the State. Normally, in case of natural person, all personal rights end with death. On the death of natural person, the heirs succeed to the estate and the estate duty is payable on each successive death. As against this, the society or state creates a legal person with perpetual succession. A sort of immortality is conferred on it subject to winding-up. The artificial persons do not pay estate duty. While a private individual has to pay his liabilities out of his entire estates. In the case of Corporations, state limits its liabilities to the extent of share-holding. An artificial person created by the state is the child of the state and state creates its child for the greatest good of the greatest number. It must be created only in the public interest and not otherwise.

1.4 Income Distribution And Company Management :

While discussing the growth of corporate sector, one must remember that a mere increase in the G.N.P. is not necessarily an indication of happiness and welfare of the nation. In 1978 there were a minimum of 20 million unemployed and this number is being enhanced per year, at least, by five millions. If our country is to be claimed to be a democratic republic with socialism at its objectives, it stands to reason that it can not have vast and immeasurable gaps amongst different segments of population.

Justice Rajinder Sachar describes the real position of uneven distribution of wealth and poverty in his article, "Corporate Laws : Effect on the growth of corporate sector" which is as follows : "In the urban cities 1 per cent wealthiest control 20 per cent of the total urban wealth and 4 per cent of the top, control 41 per cent of the urban wealth, 20 per cent of the top, control 53 per cent of disposable income,"¹²

According to the central statistical organisation, the per capita national income from agriculture at 1970-71-prices stagnated at the same figure as it was in 1950-51. The poor people in India (309 millions in 1977-78) have been counted as those who did not even have Rs.2.16 to spend per capita per day in the rural areas and Rs.2.50 in the urban areas in the prices of 1977-78. The all India figure showing the difference between the richest and the poorest in the rural areas is 164.2 times while in Andhra and Karnataka it goes to 195 times and 200 times. The type of poverty and misery found in our country has hardly a few parallel. "Such colossal disparities in the standard of living of millions of the people scoff at the democratic pretensions and the often reputed commitment to setting up an egalitarian society. To the extent that the corporate sector modulates policies in full realisation that above all it must play a constructive role in removal of poverty, it would have justified its rational."^{12A}

Professor Gunnar Myrdal, the Swedish economist and Mr.

12. Sachar Justice Rajinder : Article - Corporate Laws Effect on the growth of corporate sector : Chartered Secretary Vol x i No.1 January 1981, P-7.

12A. Ibid, P-7.

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Macromere have given stress on the removal of injustice. If it is neglected in the plea of economic growth, it will be a direct denial of the benefits of development.

Mahatma Gandhi also during the freedom-struggle promised that the first priority for an independent India must be the removal of the poverty. He said "We may not be deceived by the wealth to be seen in the cities of India - it comes from the blood of the poorest - I know village economics. I tell you that the pressure from the top crushes those at the bottom. All that is necessary is to get off their backs. The present distress is undoubtedly insufferable. Pauperism must go."¹³

Should we forget the warning of the Father of the Nation and provisions of the constitutions (Articles 38, 39, 40-43 and 43A) ?

In fact the adoption by parliament of 'the socialistic pattern of society' as the objective of our social and economic policy in December, 1954 followed directly these directive insertion of the constitution of Article 43A which states, "The state shall take steps by suitable legislation of workers in the management of undertakings, establishments or other organisations engaged in any industry."¹⁴

In the draft of different five-year-plans, the same principle of social justice, equality, and provisions for

13. **Social Justice Rajinder : Article - Corporate Laws Effect on the growth of corporate sector ; Chartered Secretary Vol XI No.1 January 1981 PP 36-37.**

14. **The Constitution of India, Article 43A**

adequate means of livelihood are stated. The corporate sector, for its bright image and rational outlook must continuously remember it and plan its strategy accordingly.

As the impact of the corporate sector on the economy of a country is stupendous and as its involvement is overwhelming, it cannot be allowed to go alone. The new outlook of the structure of management must be sought for in order to fulfil the aspiration of the nation, the utilization of manpower and natural resources of the country in a desirable way and finally for upholding the public interest.

Sachar Committee recommended for a considerable relief to companies having paid-up capital of Rs.5 lakh or less. But big companies having thousands of crores of rupees as paid up capital and with millions of employees as workers they must be under the regulation and control of the State.

1.5 Indian Companies Act with Amendments and Relevant Acts:

To keep parity with the changing social and economic needs of the country like India the Indian Companies Act has undergone changes for a number of times since its first introduction in 1850 in the name of 'Joint Stock Companies Act, 1850.' But company management is answerable for its activities to different parties, creditors, customers, employees, shareholders and society at large. There are other relevant Acts

like securities contracts (Regulation) Act, 1956, MRTP Act, 1969 and also other regulations and guidelines like Foreign Exchange Regulation Act, 1973, Industries (Development and Regulation) Act, 1951, Guidelines of the Reserve Bank of India and different financial institutions, own directives and also Company's own policies towards lending are all meant for safeguarding the interest of different parties. Therefore, all these Acts and Regulations are also to be considered to highlight how far the objectives are fulfilled.

The continuous controversy over investment by non-resident Indians in the Indian Corporate Sector vis-a-vis the role of the financial institutions in the Company Management, the arbitrary decision of the existing management for non-registration of transfer of shares, problem of workers' participation in management, the decision of the Bombay High Court in *Suresh Pal Escot/DCM* case, sickness of the industry which amounts to 80,000 as on 31.12.83, separation of the relationship between shareholders and management in one hand and management and control on the other, question of concentration of economic power and accountability and professionalisation of Company Management need further indepth study.

Inspite of amendments of Companies Act and other relevant Acts for a number of times in India the present form of Company Management is not a full proof to keep track with the diversified

interests of different parties and to fulfill the clear objectives of nation-building considering its social responsibility. That is why a number of committees, commissions and study groups have often been formed to suggest means and measures to create congenial relationship between Company Management and shareholders and other parties and their contributions as partners for social uplift.

There are different case laws decided by the Supreme Court and different High Courts mostly to the relationship between company management and shareholders, creditors and different regulatory bodies. From all these, inference can be drawn that there exist in dimension some loopholes in the functioning of Company Management and its composition.

1.6 Objectives of the study :

- a) whether the amendments and different changes in the Companies Act, since 1950 have been in conformity with the objectives laid down leading to such enactments;
- b) the existing ways and means of safeguarding the interest of parties associated with the companies, in the light of existing practices in different countries like the USA, the USSR, West Germany, Japan etc. In our socialistic pattern of society there is every likelihood that the socialist form

of management of the state-owned enterprises of the USSR and China exerted great influence on the management pattern and practices in this country. Therefore, the system of management of State-enterprises of those countries is also to be discussed;

- c) the existing norms of 'democratization' when there is dispersal of shareholdings, negligence on the part of the shareholders and lack of knowledge in the laws and affairs of the Company and to analyse whether it is possible to establish democratization of shareholders by providing enactment or amendment in this regard;
- d) the need for greater professionalisation in Company Management to get rid of mutual suspicion between management and ownership, company and Government; and
- e) to suggest an ideal form of Company-Management which will create healthy relationship among all the parties concerned, which will play a greater role in nation-building, in social and economic spheres and which will invite lesser number of litigations and assure least wastage of time and money leading to rational form of Company Management. But it should be remembered that the society is always a dynamic one and to suit the needs of changing society, no format should be taken as an ideal one for ever.

1.7 The Scope of Study :

'Corporate Management' bears two meanings - one is broader which covers all management functions in a corporate business enterprise such as production, marketing, finance, material and personnel management and all corporate planning and execution according to planning. In other words, it relates to the total process of management of a corporate enterprise. In a narrower sense it is concerned with the structure of the top management in a company with the persons manning it and covers such technical aspects as the functions and role of the board of directors, its relationship with the shareholders and with the chief executive, the rights and responsibilities of the shareholders and the various legal or institutional forms to express them. In doing so, it also enters into the more general issues of the relationship between society and corporate business and latter's responsibility towards the former and in its most visible symbol, the Government.¹⁵

It is in this second sense we have understood corporate management. This is our first limitation.

Managing Agency is the first institutional form of Company Management in India. For the period 1810 to 1970 it dominated the scene of company management in India and eclipsed the institution of board of directors. The domination by the managing agency

15. Sengupta Dr. N.K., Changing Pattern of Corporate Management; Vikes Publishing House Pvt. Ltd., New Delhi, 2nd Revised Edn. 1983, P-1.

was gradually declining after independence. In the earlier part of the history of company management the main theme constitutes the managing agents. Detailed discussion has been made on the origin and background of the class of people who comprise director of large scale companies, their entrepreneurial attitude, promotional role, family or group from which traditional business classes appear, their role to accommodate the new circumstances appear and finally the growth of professional management. We have also tried to highlight the other correlated forms of management, such as, secretaries and treasurers, manager and managing director etc. After abolition of managing agency and secretaries and treasurers from the soil of India on and from 3rd April, 1970, the only alternative forms remains is the management by board of directors. Our study of 75 companies reveals that 25 companies are managed by the board with 1 managing director-cum-chairman (33.3%), 17 companies by the board of directors without any managing director/manager/whole-time director (22.7%), 19 companies by the board with managing director including executive director/directors/more than one managing director (25.3%), 2 companies are managed by board with managing director including whole time director (2.7%), 12 companies are managed by two-tier board (16%).

Two tier management of company is a new out-look of the history of company management in India. This tendency is visible

from the Annual Reports (1983-84) of the following companies :

- 1) Associated Cement Companies Limited;
- 2) Mahindra & Mahindra Limited;
- 3) The Bombay Dyeing And Manufacturing Company Limited;
- 4) Ashok Leyland Limited;
- 5) Tata Iron & Steel Company Limited.

The board of directors of Associated Cement Companies (ACC) announced at Bombay on the 17th July 1985 that the company will not have a managing director, but will be managed by the board acting through the executive committee of the board of directors.

A press release, issued by the Company in the evening issue, says that Mr. T.V. Balan, whole-time director, and Mr. A.L. Kapur who has been appointed as a whole-time director on the board will share the day-to-day responsibilities for running the organisation under the direct supervision of the executive committee of the board of directors.¹⁶

Out of 300, industrial giants in the private sector ranked according to net sales in 1983-84 published in a special issue of Business Standard reveals that 289 companies (96%) are managed by the board with managing director/chief executive/executive director/president.¹⁷

It is expected that new style of management i.e. two-tier

16. The Economic Times - Calcutta, July 18, 1985.

17. Business Standard, Calcutta - 300 Corporate Giants. A special study Table A, June 28, 1985, PP 25-35.

system is going to be popular day by day and it will go on increasing in a number as a process of historical evolution.

Top management of a company, whose duties encompass the management of managers, has a crucial part to play in this direction right from the beginning of employment of Managers/Managing Director possessing motivational attitude. Success of the top management depends on and starts with knowledge and therefore, it must aim at creating a thirst for knowledge amongst their managers/managing director or executives. Knowledge when put to practice invariably brings about confidence and this leads to success, thereby putting greater efforts to work harder for perfection. A desire for greater knowledge along with success drives him on and on.

Executives should have the attitude of entrepreneurship, who should constantly search in their environment the opportunity which they can exploit. The resources are land, labour, capital and organisation to work with and such scarce resources must be utilised with greater caution to expand their business and activities to avoid any calamity due to bad management.

The second limitation of our study is that we have tried to highlight the affairs of top management of the private sector companies and therefore, the subject-matter of our analysis is based on the working of the organised private sector companies in the light of the experience of the successful management techniques

followed by different countries for management of their own enterprises. In our study, it will reveal that techniques and methods of management of companies adopted by different countries are exerting their influence on the Indian method of company management. As for example, we can say that two-tier system of West Germany, professionalization of company management of the USA, whole-life employment policy of Japan, the executive like manager/managing director system of Great Britain and above all, the socialistic management of the state-owned enterprises of the USSR and China - all these techniques and styles have embellished our form of company management.

There are also some peculiar characteristics of private sector company management culture in India. Dr. R.K. Hazari, in his article, 'Management : Hereditary and professional', states, "One of the business groups in India is having a system of financial control, which probably is one of the finest systems of control anywhere in the world."¹⁸ Mr. Ashok Mehta observes in his article that most Indian organisations have shown a remarkable insensibility to the attitudes and values of their people - which roots to this attitude lie in the joint family system, wherein there is precisely the equation between the individual and the system.¹⁹

The most important feature of the Indian system of private sector corporate management - specially the large ones

18. Hazari Dr. R.K. Article : Management : 'Hereditary and Professional' published in Chartered Secretary, VOL. NS, June, 1980.
19. Mehta Ashok Article 'Value erosion and managerial alienation in Indian Organisations' Business India January 14 to 27, 1985.

which constitute groups enjoy a lot of power, has become the root of problem of management. During the first and second decades of independence, the Government concentrated on industrial growth. During this period, the private sector companies did excellent job for the industrialisation of the country, of course, by receiving financial and other helps from the Government. This caused concentration of wealth in few hands, accumulation of black or unaccounted money, inequality of income and disparity between have's and have-not's. Naturally, the new course where a democratic Government wedded to socio-economic reform of the society had to take stock of the actual and potential politico-economic power which the private sector has come to acquire and think of appropriate steps to keep it under control. But the course of the flow of a river can not be turned just opposite direction by statute. As a result of the strict control, though claimed by the Government, has improved economy but in actual practice, it neither proved satisfactory to the businessmen nor brought the social justice to the ordinary people of India. On the contrary, it causes uneconomic growth of economy which is not viable and capable of standing in world competition. On the other side, problems relating to concentration of economic power and accountability have increased.

In order to solve the problem of restraint, present Government has taken the initiative to liberalize policies and to reduce cumbersome procedures. It has sought to give a new

direction to economic policy via liberalisation of imports and industrial licensing, relaxation of MRTP restrictions by increasing ceiling from Rs.20 crores to Rs.100 crores, relaxation of corporate tax rate from 55 per cent to 50 per cent, import of technology, invitation of multinational companies to establish business in India in the specific field of sophisticated export oriented goods, imports of technical know-how, encouragement of non-resident Indians for investment in Indian industries, concession of custom and excise duties in certain cases, formulating new textile policy and all making suitable provisions for sick industries. Moreover, priority so far given on public sector has been thrust upon the private sector.

While inaugurating a workshop on 'high-cost of economy' at New Delhi, on July 18th, 1985 the Union Minister for Industry and Company Affairs, Mr. Veerendra Patil urged the industry to respond to the moves made by the Government. The minister maintained that the Government on its part had brought about major changes in the import policy, electronics policy, industrial policy and allied areas. Therefore, the 'ball is now on the court of the industry and you have to respond positively by raising production, improving productivity and bringing about cost reduction and quality improvement.' This, the Minister averred, would indicate the Government's faith in the strength and dynamism of the Indian industry. Otherwise, it would not only lose the sympathy of the people but also the moral right

to approach the Government. Speaking on the occasion, Mr. S.K. Birla, complemented the Government on the policy-measures taken recently. It was imperative to capitalise for the rapid expansion of the economy so that the benefits reached the weakest sections of society, he said.

In our view, under the present structure of management, problems would not be solved as the board of directors of the company is powerless and acts like dolls at the hands of the visible or invisible powerful groups or individuals possessing substantial stake. Members of the board remain in power so long they serve the interest of the groups or individuals holding power.

The structure of the top management must be changed in order to make it a rational, result-oriented and effective, to maintain industrial peace, to solve problems of economic power and accountability, to establish greater amount of professionalisation and to provide the boards of directors with representation from major financial institutions and banks which invest a substantial part of finance amounting Rs.12,195 crores as on March, 1983²⁰, representation of Government mainly for upholding the public interest and of workers as promised by the constitution of India.

20. The Economic Times, Calcutta, October 2, 1984.

**COMPONENT - WISE
 ASSISTANCE DISBURSED
 BY FINANCIAL INSTITUTIONS**

END OF MARCH 1983. RS. CRORES

FOREIGN CURRENCY LOANS(8.2%)	EQUITY & PREFER- ENCE (4.8%)	DEBEN- TURE (3.1%) GUARAN- TEES (0.3%)
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**The cumulative assistance to the
 Companies.**

 The cumulative assistance dis-
 burged by all financial institu-
 tions upto the end of March, 1983
 amounted Rs.12,195 crores. More
 than four-fifth of the total
 assistance was in the form of
 rupee loans. Foreign currency
 loans amounted to Rs.995 crores
 only. The balance amount were
 disbursed against shares, deben-
 tures and guarantees.

ET Research Bureau.

TOTAL RS.12,195 CRORES

In order to understand the amount of investment made by the public financial institutions, two quotations are worth mentioning. These are as follows :

"A recent compilation of the top 542 private sector companies ranked according to their net assets shows that the aggregate net assets of these companies which should account for the bulk of the entire private sector amounts to Rs.14,780 crores.²¹

 21. Commerce, Bombay, March 20, 1982.

"As on 31st March, 1984, the total paid-up capital of 93,294 private sector companies stood at Rs.5514 crores, whereas the paid-up capital of 970 Government Companies stood at Rs.16415 crores.²²

The above mentioned figures show what a colossal amount of public money has been invested in the private companies by the financial institutions. This is a peculiar feature of the scene of the private sector companies in India. As all of these financial institutions are owned by the Government, it has become a moral obligation on the part of the Government to nominate a number of directors to the board in which public money from these institutions has been invested and to look-after and guide for its proper utilisation. This experiment has proved successful in company management in other developed countries of the world. Two-tier board with consequential effect of the emergence of the workers' participation and professionalisation seems to be the process of evolution of the company management in India. These trends are bound to get more pronounced and have paved the way towards the system of Multiple Two-Tier board.

Multiple Two-Tier Board :

Of the Two-Tier Board, the first board will be named as Policy Board consisting of proportionate representatives of directors on the basis of shares held by individuals, banks and

22. Op.cit, April 17, 1985.

financial institutions. Besides these, there will be one or two representatives of the Government depending on the largeness/capital investment or public interest. One third of the number of members of the Policy Board will be represented by workers' representatives. Bank will also nominate representative/representatives as a trustee of small holders of equity stake. From amongst the representatives of Government/Bank and Financial Institutions Chairman of the Policy Board will be selected. The managing director will be selected from amongst the individual shareholders (the representative of major shareholding by an individual or group/groups will be selected managing director). The managing director being ex-officio member of the executive board would be the President of the Executive Board and act as a link between the two boards. Policy Board will formulate policy and supervision of the actual implementation of those policies will be made by the Executive Board.

The Executive Board will consist of the professional employees, possibly, in-charge of or departmental heads including the managing director. Their duties would be to implement and translate into practice of those policies formulated by the Policy Board. The difficulties in the way of actual working or hurdles they face or their expertise opinion are to be communicated through the managing director or by inviting them to the meeting as special invitee or by written communication as assigned to them.

This system can be applied with profit both in public and private enterprises. Mr. S.L.N. Sinha while forwarding the book *Corporate Management and Accountability* by Dr. L.C. Gupta states, "In the running of public sector units the assistance of private entrepreneurs should be mobilised. What is standing in the way of this being done is a lot of suspicion on the part of the Government regarding the bonafides of the private entrepreneurs. There are a lot of able and honest entrepreneurs who are ready to make their services available to the Government on an honest basis. As regards the regulation of the private sector, the trouble in the country is not lack of legislative authority but unwillingness and incapacity to administer the laws. But the private sector must reform itself in a spirit of enlightened self interest. A sense of trusteeship should prevail in private sector management, which must also make profits on the basis of efficiency, rather monopolistic and unfair practices. There is ample evidence to prove that private benefit and public good can be harmonised."²³

We sincerely believe that Multiple Two-Tier Board form of management will be able to solve many problems such as economic power and accountability, hurdles in the way of implementation of new economic policy, better utilisation of man power and natural resources and elimination of sickness in industries "which amounts to 80,000 units as on 31.12.83"²⁴ promote greater productivity and ensure better motivation.

23. Sinha S.L.N. Director, Institute for Financial Management and Research, Kothari Road, Madras 39, while forwarding book, *Corporate Management and Accountability towards Joint Sector* by Dr. L.C. Gupta. The Macmillan Company India Ltd. 1st Edn. 1974, P.IV.

24. The Economic Times, Calcutta, October 2, 1984.

The main objection to this new format may be that homogeneity of the board may not be maintained for taking decision which is too vital for any economic enterprise. Our view is that the chairman with his skill, personality, education, sincerity and efficiency can bring in homogeneity at boards' meetings. On the plea of homogeneity, the members of the board should not be made rubber stamp.

Secondly, it may be argued against this system that there is a danger of the Government representatives waiting to consult, at every stage, the numerous departmental officials and the Ministers, thereby delaying decisions. Ultimately, either Government representative or the private entrepreneur will have to be entrusted with the decision making authority. In the new scheme of board, there will be representatives of different components which constitute a company. Therefore, it will continue to be a going concern for serving reciprocal interests. The fact is that the company goes on in normal time as a running concern without any difficulty. The problem arises during the time of crisis. In our view this crisis can be overcome by the combined strength of the board. Financial difficulties can be easily solved by the initiative taken by the bankers' representatives, industrial unrest can be solved with the sincere efforts by the workers' representatives.

Business community may consider it as back-door nationalisation. Against this argument, it can be said that any democratic

Government would not allow an enterprise unbridled to go on recklessly wherein so much public money, so many workers, and above all, public interest are involved. On the contrary, power and prestige depend upon honest performance of entrusted work performed by an individual. An honest entrepreneur must accept this challenge and adapt himself to the new situation and exert his full energy, efficiency, skill and sincerity for the better performance of the enterprise in which he is involved. An example, collaboration of Goenka group with the Government of West Bengal in Haldia Petro-Chemical Complex in joint sector enterprise will encourage other businessmen to come forward in the similar joint sector project and ultimately welcome Multiple Two-Tier Board system of management.

The socialists may argue that under 'Multiple-Two-Tier Board system' private sector businessmen or group in substantial shareholding will run the company and their illegal activities might be approved by the inefficient representatives of the Government or financial institutions.

Nationalisation of all companies is the best solution, no doubt. But under the present condition it is neither possible nor feasible. We are to remember that there is no dearth of talents in India who want to act honestly and sincerely. Government must select such efficient, honest and experienced professionals as nominees.

1.8 Methodology :

The study is mainly based on theoretical approach showing the evolution in company management and different problems attached thereto. Such theoretical approach has been duly analysed on the basis of empirical evidence supported by different case laws, existing relevant statutes so as to verify different hypotheses evolved from theoretical studies. Over and above the analysis based on a number of specific companies' reports, field study has also been made to suggest some concrete steps to reorganise the present pattern of company management. Therefore, we can say that the methodology adopted in the present study is both theoretical and empirical or in other words, it can be said that it is an admixture of both theoretical and empirical approach.

1.9. Present literature and limitations :

We have gone through all the available literatures dealing with the system of management of business enterprises both of capitalist and socialist countries, for upkeeping ourself of recent developments in this respect.

We are referring here some of the contemporary books published after 1950 which supplied us sufficient materials for our study.

Short findings of the available literatures are given below :

1. **Dr. N.K. Sengupta**
Changing Pattern of Corporate Management,
Second Edition 1983
Vikas Publishing House Pvt. Ltd.,
20/4, Industrial Area,
Sahibabad - 201010.

This book scans the development of corporate management in the large scale private sector in both organisational and entrepreneurial aspects since the Companies Act, 1913 and more specifically since independence.

2. **S.K. Chakraborty, edited**
Board of Directors in India
Their statics & dynamics,
Edn. December, 1983
All India Management Association,
Management House,
14, Institutional Area,
Lodi Road,
New Delhi - 110003.

This book is a compendium of contribution covering practically every aspect of Board Room, practices in the Indian context. The contributors, who include eminent management experts, top executives of leading enterprises, prominent industrialists and distinguished academicians have dealt with a wide range of issues that bear on the effective working of Board of Directors in the Public and Private Sectors.

3. **Dr. Nabagopal Das, Ph.D. (Econ.)**
Land. I.C.S.,
Industrial Enterprise,
Second Edn. 1966,
Orient Longmans.

This book published in 1936, contains comments on the momentous developments of subsequent years including a

detailed analysis of the new Indian Companies Act which was supposed to come into operation at approximately the date of publication of this second edition (1956).

4. National Council of Applied Economic Research, New Delhi,
The Managing Agency System, Edn. 1959,
Asia Publishing House,
published by P.S. Jaysingha,
Bombay.

This book reviewed of the Managing Agency system and its working and prospects of its future.

5. S.C. Sen,
The New Frontiers of
Company Law
Edn. 1971
Eastern Law House,
Calcutta.

The book focuses the attention of Corporation Lawyers to the modern developments in Corporation. Due to the fundamental changes that take place in recent time, the English Company Law is no longer the only source, the impact of modern Corporation in the U.S.A., West Germany etc. and the new accounting methods in the U.S.S.R. have set into motion for reaching changes in the conventional approach to company jurisprudence.

6. R.K. Hazari,
The structure of the Corporate Private Sector,
A study of Concentration, ownership and control Edn. 1967,
Asia Publishing House,
Bombay.

This Book is a study of twenty business groups which represent a cross-section of the corporate private sector

in India, describes the nature and extent of their control over industry, finance and trade, and examines their participation in share capital, directly as well as through investing companies and nominees.

7. Peter F. Drucker,
The Practice of Management Edn. 1989
Heinemann : London.

This book attempts to guide men in major management position enabling them to examine their own work and performance, to diagnose their weaknesses and to improve their own effectiveness as well as the results of the enterprise they are responsible for. It provides a vision of what management is and concrete guidance in the knowledge, performance and discipline.

8. Aravinda Ray,
The Manager,
Beyond the Organisation 1st Edn. 1980
The Macmillan Company of India Ltd., Bombay.

This book deals with the important matter that the possibility of success for an Indian lies in an intelligent appreciation of his living environment and in his adaptation to that particular ethos and not by setting examples from the west which are irrelevant in Indian context.

9. Aravinda Ray
The Indian Manager in Search of a Style,
Edn. 1970,
The Macmillan Co.,
Bombay.

This book renders guidance to the manager for the adoption

of new changes that took place in India and these have given them opportunity to take managerial profession which had never arose in Indian history.

10. **Brajraj Mohanty**
Management Control systems,
 1st. Edn. 1980,
 Macmillan Co., Bombay.

This book contributes to the cause of good management in India through detailed study of the various aspects of management planning and control systems recently designed by too specialist consultants in a very large technology based on Indian organisation and provides realistic options and guide lines for a systematic implementor.

11. **Brecht E.F.L.**
Managing For Revival
 a plan of action towards effective
 management through marketing
 1st published 1972
 Published by Management Publication Limited
 for the British Institute of
 Management London.

It is a simple and urgent message to boards of directors and heads of firms, in the context of the serious plight of the nation's economy and suggests the ways and means of remedying this plight on the basis of determining economic viability.

12. **Honour T.F. and Main varing R.M.**
Business and sociology Edn. 1982
 Groom Helm : London & Canberra.

This book provides the business studies with a board understanding of the sociological theories and concepts relating

to the business world by bringing together the best of organisation theory, industrial relations theory and industrial sociology in common cause rather than factions disputes.

13. John Blagden
Management Information Retrieval, Edn. 1980,
 M.P.L. Publication London.

It provides 'information explosion' in management subject. It also includes a classical key to the main alphabetical sequence, a treasures of industries, and a list of management education terms.

14. Roger Falk
The Business of Management Art and Craft,
 4th Edn. 1970 Published by Management
 Publications Limited for the British
 Institute of Management, London.

This book deals in greater depth with Britains situation and states that the aim of full employment had produced a national commitment to, and pre-occupation with, a declared objectives which gives a keen edge to the management problem and which makes the British situation the more challenging. Enlightened leadership in management can play a decisive part in solving the problem of human survival.

15. Dr. L.C. Gupta,
Corporate Management and Accountability,
 A Joint Sector, Edn. 1974, Macmillan,
 Published on behalf of Institute for
 Financial Management and Research,
 Madras.

The author in this book developed the idea of joint sector movement in India. The basic idea underlying the concept is a combination of joint ownership, joint control and professional management for greater accountability and checking economic power of the big business houses. Our recommendation of Multiple Two-Tier Board is the extension of the idea of Dr. L.C. Gupta.

Apart from these references are also made of some important books in which the authors deal with the subject matters of company management.

Short findings of the available literatures are given below :

1. J.W. Humble
Improving Management Performance
Edn. 1969, 1970.

It contains a dynamic approach to Management by objectives, describing an integrated approach to management development and company planning which increase profitability.

2. Roger Mace,
Management Information and the Computers,
1st. Edn. 1974.

Accountancy Age Book, published by Haymarket Publishing Ltd., London.

In this book author describes his appreciation of the interrelationships between management techniques and computer technology.

3. **A. Ramoys**
Guide to the Companies Act,
10th Edn. 1984,
Wadhwa and Company Pvt. Ltd.,
Nagpur.

It is a legal classic of our times. Most authoritative and dependable. It is a leading commentary company law and effectively meets the problems of company law and management.

4. **Samuel Eilon,**
Aspect of Management Edn. 1977,
Pergamon Text Book,
Pergamon Press,
London.

This book contains realistic approach in form of articles on different aspects of management.

5. **Peter F. Drucker,**
Management in Turbulent Times,
Edn. 1980,
Heinemann,
London.

This book contains subject matter on the functions of the management in turbulent times which are really important tasks.

6. **Johnson Bruch, Edited,**
The attack on Corporate America,
Edn. 1978.

Articles of different authors regarding social responsibility of business.

7. **M.A. Wright,**
The Business of Business,
Private Enterprise and Public Affairs, Edn. 1967,
Mc Graw - Hill Inc. Rupa & Co.,
Calcutta.

Taking a positive view of the business-men's role in public affairs, the author offers constructive suggestions for business participation in areas now almost exclusively the province of Government activity.

8. Eli Goldston,
Morton C. Herbert and Ryland G. Neal Edited,
New American Business Corporation,
2nd Edn. 1972,
The MIT Press, Massachusetts,
Institute of Technology Cambridge.

It contains of the answer of the question what business is and the great issues of modern society.

9. Oscar Tivis Nelson (Jr.)
The Best of Peter Drucker on Management,
Heinemann : London.

It contains the methods as to how to use this book and definition of key terms.

10. John Kenneth Galbraith,
The New Industrial State,
3rd Edn. Revised (1978),
Houghton Mifflin Company,
Boston.

In the book, author describes that in the entrepreneurial enterprise power rests with those who makes decisions. In the mature enterprise this power has passed inevitably and irrevocally, from the individual to group.

11. Nadar Ralph and J. Mark Green edited
Corporate Power in America,
1st. Edn. 1973.

This book contains different articles on corporate enterprises in U.S.A.

12. S.K. Roy,
Corporation Image in India,
 Edn. 1974,
 Published by K.R. Seshagiri Rao for Shriram Centre
 for industrial relations and human resources,
 New Delhi - 5.

This study was undertaken by Shriram Centre for industrial relations and human resources in collaboration with all India Management Association.

13. Prchalid Kumar Basu,
Public Enterprises,
 1st published, 1982,
 Allied Publishers Pvt. Ltd.,
 New Delhi.

It contains policy, performance and professionalisation of public enterprises.

14. T. Thomas,
Managing A Business in India, 1st Edn. 1981,
 Allied Publishers Pvt. Ltd.,
 New Delhi.

This book contains the fact that a distinct trend in the net work of Government controls in India has been made despite the intentions and pronouncements to the contrary for liberalisation.

15. Justice Rajinder Sachar,
Chairman of High-Powered Expert Committee
Report of the Committee on Companies and
MRTA Acts, August, 1978,
 Ministry of Law, Justice and
 Company affairs,
 Government of India,
 New Delhi.

It contains matters which are necessary to consider and report on what changes are necessary in the Companies Act,

1956, and the Monopolies and Restrictive Trade Practices Act, 1969.

16. Alfred D. Chandler (Jr.)
The Visible Hand the Managerial Revolution in American Business, Edn. 1977, the Belknap Press of Harvard University Massachusetts and London.

This book contains a chronological study of Managerial capitalism.

17. L. John Paluszak,
Will The Corporation Survive ?
10th Edn.
Reston Publishing Co., Inc.,
A Prentice-Hall Co.,
Reston, Virginia.

This book contains a research work conducted by Management Centre (MC) Europe, in late 1974 regarding Corporate Social Responsibility of British Companies and Companies head quarters in the European Economic Community (EEC).

18. Dr. N.K. Sengupta and A. Dasgupta
1st Edn. 1976,
Government and Business in India,
Allied Book Agency,
Calcutta.

In this book, authors described the relationship between the Government and the Business under the present context of the regulated economy.

19. D.P. Kherkshad, Madan
1st Edn. 1971
Management of Corporation,
Progressive Corporation Pvt. Ltd.,
Bombay - 1.

This book contains a comparative study of development of Company Management of different countries in the world and

recommendations have been made for the development of the management of the Indian Companies.

20. A. Yetimov
Soviet Industry 1st Edn. 1968
Progressive Publishing
Moscow.

The author in this book gives a general idea about the most important features and particularities of Soviet Industry.

21. F. William Glueck,
Business Policy and Strategic Management,
3rd Edn. 1982
Mc - Graw - Hill.

This book designed to meet the needs of students of business policy and strategic management.

We have tried to keep ourselves in touch with the findings of various research bureaus, like that of the Business Standard and The Economic Times, Calcutta, valuable articles, statistics and information obtained from daily papers dealing with economic matters, monthly magazines, magazines issued by the professional institutions. We sent letters requesting one hundred companies listed on the basis of assets. The letter contains questionnaires and request to send their annual reports for two years 1982-83 and 1983-84. We received 26 replies and answers of the questionnaires put to them. We have compiled from these annual reports. Considering the inadequacy as regards the number of companies who have sent their Annual Reports, we have collected Annual Reports of 49 Companies from different sources at random. Kothari's

Economic and Industrial Guide of India (1982-83) rendered us immense help in this regard. We personally met members of the board and Chief Executives of different Companies situated at Calcutta and collected valuable information. We have also collected different case laws decided by the different courts relating to the management of companies. Thus, our research study is based on both fundamental and applied approach. Some reference in the form of case studies have also been given in relevant places to substantiate the subject matter of our study.

1.10 Research Gap :

Many authors in their books and articles have pointed out the loopholes of the present form of Company Management in India and also have suggested measures in some cases to improve the process of the Company Management. These sporadic studies are far off the needed goal and have touched the fringe of the problem only. We have tried to deal with the subject in the canvas of broader perspectives in terms of its social relevance. In our thesis we have dealt with almost all kinds of lacunae in Company Management which exist even to-day. An honest attempt has also been made to discuss the multifarious factors in Indian Company Management in the canvas of the world situation so as to develop an ideal model of company management to safeguard our national interest. By discussing the history of Company Management which renders great lessons for the future and by going through in detail the Annual Reports of 75 Companies with their subsidiaries

it has become possible to understand the trend of management pattern of the Companies in India. In other words, we have tried to analyse both macro and micro aspects of company management as against sectional view of the process itself.

1.11 Sources of Data :

The work has been completed consulting the available authentic literature on the subject, different Government reports, relevant publications from professional journals and newspapers, different guidelines on the company affairs issued by the Reserve Bank of India and Company Law Board and Ministry of Finance, Industry and Company Affairs from time to time and different relevant case laws decided by learned judges in Supreme Court and different High Courts. Statistical data have also been collected and compiled taking valuable information from the Annual Reports (1982-83 and 1983-84) of 75 Companies including subsidiary Companies if they have got any. We have also tried to review the reports of different committees, commissions and study groups as required for our study.

1.12 The Plan of the Study :

The study has been divided into 8 chapters:

CHAPTER I comprises 'introduction' dealing with importance and growth of companies, its origin, Indian Constitution and its effect on company management, distribution of income, amendments and relevant Acts, etc.

CHAPTER II deals, in detail, with the history of Company Law and Management, and structure of management pattern under the Indian Companies Act, 1956.

CHAPTER III deals with some of the recent problems of company management which require immediate solution such as problem of economic power and accountability, problem for non-registration of shares by the existing management, problem of the sickness of industries, problem of divorce relationship between company management and shareholders in one hand and management and control on the other, problem of the workers' participation in management and problem of establishment of professionalisation in Company Management.

CHAPTER IV comprises - Constitution of India - its impact on economic policy and legislation vis-a-vis company management.

CHAPTER V deals with the features of the Company Management of different developed countries of the world such as Japan, the U.S.A., France and West Germany. It also includes nature of management practiced in state-owned industrial enterprises of socialist countries such as the U.S.S.R. and China and the influence of such systems of management on the Company Management of India.

CHAPTER VI highlights the concept of the 'Joint-Sector' as prevalent in India, defects of the system, suggestions for further improvement of the existing joint-sector ideas and

Introduction of Multiple Two-Tier Board of management in companies.

CHAPTER VII deals with the review of existing systems of management of seventy-five companies. For this purpose, their audited annual reports for the years 1982-83 and 1983-84 have been utilised.

CHAPTER VIII, the concluding chapter is mainly confined to the summary of all the previous chapters and shows the specific recommendations as to the form of management in private corporate sector to fulfil the aspirations of different parties having conflicting interests in most of the cases.

CHAPTER - II

HISTORY OF COMPANY MANAGEMENT IN INDIA

AND

ITS STRUCTURE UNDER COMPANIES ACT, 1956

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HISTORY OF COMPANY MANAGEMENT IN INDIA
AND
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PART - I

History of Company Management in India :

Nature of British Enterprises and British Laws led to the evolution of the Joint Stock Companies, Corporate Laws and its management in India.

2.1 Early of stage of Corporate Law and Company Management in India :

Modern industrial enterprises in India developed only after 1850. Its earliest manifestations came in the wake of the construction of railways which made it essential to have modern workshop for repair and maintenance of the rolling stock. The effects of the introductions of railways vis-a-vis industry in the form of joint stock company were described by Marx in the following words :

"I knew that the English millocracy intend to endow India with railways with the exclusive view of extracting at diminished expenses the cotton and other materials for their manufactures. But when you have once introduced machinery into the locomotion of a country, which possesses iron and coal, you^{are} unable to withhold it from its fabrication. You cannot maintain a net of railways

over an immense country without introducing all those industrial processes necessary to meet the immediate and current wants of railway locomotion, and out of which there must grow the application of machinery to those branches of industry not immediately connected with the railways. The railway system will, therefore, become in India truly the fore-runner of modern industry. Modern industry resulting from the railway system, will dissolve the hereditary divisions of labour, upon which rest the Indian castes, those decisive impediments to Indian progress and Indian power."¹

"The development of railways broke down the isolation of the villoges, made the world market available to the Indian producer, facilitated both foreign and domestic trade and created the necessary condition for the growth of large scale factory industry. It was no coincidence that this was followed in the latter decades of the century by the establishment and quick growth of jute, cotton textile and coal mining industries, and also of new forms of business organisation in the shape of Joint Stock Companies and managing agency."²

Joint Stock Companies and form of management in the 19th Century :

In the nineteenth century a number of Joint Stock Companies came on the scene but these were largely depended upon foreign capital and were registered abroad, mainly in England. Some joint stock companies, particularly in banking, trading and for industrial purposes, had been formed in India but their capital and

1. Marx, "The Future Results of British Rule in India,"
Quoted from Dasgupta A and Sengupta N.K, Government and
Business in India, Allied Book Agency, Calcutta 1st Edn.
April 1978, P.22.

2. Ibid. PP 22-23.

influences were comparatively negligible with those of companies registered abroad. The tea, coffee, rubber, textiles, coal, mining engineering, iron and steel and chemical industries grew up during the middle of the nineteenth century most of them being promoted by Europeans.

Development of Company Management in India happened in four stages.

2.2 First phase (1850 to 1846) : Early history and development of Managing Agency system in the Company Management in India :

Seeds of Managing Agency System sown on Indian Soil by Europeans. Most of the firms dealing in foreign trade and large scale industries dealt in a large variety of goods and managed most of the plantations and industrial enterprises which were under European control. This particular system is known today as Managing Agency system. This system was most suitable for the conditions then prevailing in India, where the external trade was developed by foreigners who did not take up permanent residence in the country. The East India Company which used to trade in India following the principles of earlier foreign traders, ceased to trade in India in 1833 as private merchants replaced the servants of the company but it was difficult for them to maintain the same degree of continuity of policy and obligation as had been maintained by East India Company. Ultimately corporate organization which tended towards greater continuity replaced private firms and partnerships. These Corporations were usually British Joint

Stock Companies with a sterling capital and their head offices in London. With the expansion of Trade and Commerce efficient direction and management became difficult in the case of British Companies which had their head quarters in London. They, therefore, needed the services of managers in India who could render first class knowledge of local conditions.

Management on a Commission Basis :

When, therefore new companies were formed, the task of management were vested to well established business firms on commission basis and these were the managing agents of early stage "with the growth of Joint Stock enterprises. Merchants who wished to retire but did not want to dissociate themselves completely from their business formed a company and handed over the actual management of it to a well known firm of agents. These managing agents exercised more or less the same control as is exercised by managing directors of Joint Stock Companies in England."³

Early History of Managing Agency System :

"Little is known about the early twilight zone of the history of our industrial development in which managing agency and the Joint Stock Companies played a great part."⁴

Although the exact origin of the managing agency system

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3. Vere Anstey, the Economic Development of India, Longman Edn. 1957 P.109 referred by Madan D.P. Khurshed - Management of Corporations, Progressive Corporation Private Ltd., Bombay-1, P.50-51.
 4. Nigam R.K. - Managing Agencies in India (First Round : facts) Research and Statistics Division, Department of Company Law Administration, Ministry of Commerce & Industry, Government of India, 1957.

is lost in time, traces of it in embryo form have been found as early as the eighteenth century.⁵ In a more recognisable form, its history dates back to the British Agency Houses at Calcutta whose primary function consisted of importing British goods and exporting Indian goods as agents of the British Merchants.⁶ These agency houses gained importance with the introduction of the joint stock form of enterprise in India.⁷ The need of new companies for efficient managerial personnel, particularly directors, managers, and managing directors, could not in those early days of joint stock enterprises be met in sufficient numbers by India itself. While foreign investors who at that time held the majority of the shares in these companies were unwilling to entrust their finances in Indian hands. British managers were reluctant to remain in India for long as the climatic conditions affected their health. The only solution to such a problem was to entrust the management of these new enterprises to the old established British Agency Houses which were run in partnership and whose partners could take turns to remain in India.⁸

It soon became practice for new companies to enter into agreements of management with these old agency firms which had the confidence of British investors and were quick to see the opportunity provided by India's need for finance and managerial

5. Op.cit., P-2.

6. Sinha H. - European Banking in India, P-4, quoted from Madan D.P. Khorshed - Management of Corporations, P-222, First published 1971 Progress Corporation (P) Ltd., Bombay-1.

7. Report of the Indian Industrial Commission, 1916-18, P-75.

8. Nigam R.K. Economic Development of India, P-114.

skill. The terms of tenure and remuneration were mentioned in these agreements and thus through this arrangement British capital flowed into industrial enterprises in India.

The Advent of Indian Managing Agents :

Following the British example, Indian entrepreneurs appointed themselves as managing agents of the companies they promoted. At the early stage, these agency houses used to perform triple functions of promoting, financing and managing. On the later part they gave up the majority of the share holdings but retained control through their long term managing agreements.

In spite of the fact that the managing agency system had existed in India for several years, until the passing of the Indian Companies (Amendment) Act, 1935, managing agents were governed by the general law of contract. No direct provision relating to managing agents or to the managing agency system was made in the earlier Indian Companies Acts although there had been implied reference to the system in the Acts of 1886, 1882 and 1914. The Indian Companies Act of 1886 had empowered the Court to proceed summarily against directors, "managers" and liquidators in respect of their accountability for monies, etc.⁹ in the Indian Companies Act of 1882, the words, "or other managing body" were used in connection with the delegation of the power to settle terms of an arbitrator,¹⁰ while in the Indian Companies (Amendment)

9. Act of 1886, Section 185.

10. Act VI of 1882, Section 95.

Act of 1914 the words, "manager or other agent" were used in relation to contracts in which the company was an undisclosed principal.¹¹ The result of this statutory lacuna was that managing agents wielded tremendous power and enjoyed many privileges of the principle of the sanctity of contracts.¹²

At that time there was no legal provision requiring an elected Board either in the English or the Indian Companies Act, managing agents usually appointed themselves or their nominees on the Board but there was no compulsion to disclose this fact. There was no check on the activities of managing agents, who, together with their associates, formed a substantial majority of the Board of Directors.¹³ Thus managing agents were virtually in full control of all the affairs of the companies managed by them and were in no way bound to disclose to the shareholders their interest in these companies and it was quite normal to find the Board of Directors comprising of some, if not all, of the partners of the managing agency firm together with a few select business associates. Though, at earlier stages, managing agent did well because the investors had been satisfied with the results achieved, but there was, however, considerable scope for unscrupulous persons obtaining control of the affairs of the company to play havoc with it.

By the 1913 Act, it was made necessary for companies to

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11. Act VII of 1913, Section 910 inserted by Act XI of 1914.
 12. Report of the Indian Tariff Board (The Cotton Textile Industry), Vol.II, 1934, P.223.
 13. Section 87(1) of the Indian Companies Act, 1913.

keep a register of directors, to file a copy of such register and to file from time to time notice of any change among its directors or 'managers' with the Registrar of Joint Stock Companies,¹⁴ and these particulars were also required to be included in the Annual Summary to be filed with the Registrar.¹⁵ Full details of directors and 'managers' or proposed directors and 'managers' were required to be stated in prospectus issued by company.¹⁶ Thus, the Act of 1913 brought managing agents under legislative control without actually naming them as such.

Public opinion was considerably influenced by the Bombay shareholders' Association on matters relating to company law. The Association contended that there was no need for managing agents provided companies were floated with sufficient capital. To ensure this, they suggested a legal provision regarding a suitable minimum subscription to prevent under capitalisation. The hereditary character of the managing agency system was, according to the Association, one of its greatest defects and that it made inevitable the passing of the agency ultimately into weak hands. The Association suggested that the managing agency system should be prohibited by law in the case of new companies and recommended measures for statutory control of existing managing agents. It suggested the limitation of the terms of office of the managing agents to seven years in the first instance,

14. Section 32(2) of the Indian Companies Act, 1913.

15. Section 93(1) (a) of the Indian Companies Act, 1913.

16. Balaoy's Market Co. (1907) & ch. 486. It was not until the Companies Act, 1956 Section 253, that only individuals could be appointed directors.

safeguarding the freedom of the majority of the Board of directors from the influence of managing agents, and preventing unjust and unfair provisions being included in the articles or in the agreement.¹⁷

Defects in company management before Companies (Amendment Act, 1938)

The managing agents played an important role for the industrial development in India acting as promoter, financier and manager. Their function as pioneers and promoters, it is undoubtedly true that in the past they had been more or less instrumental in developing many of the industrial enterprises in India. According to Dr. Nabagopal Das, in due course, managing agents were definitely pushed into the background in so far as their pioneering and promoting activities were concerned.¹⁸ This happened for three reasons. Firstly, not every managing agent could claim the ability, prudence, or resources of the great business house by which the system was founded although every agent had benefited by the tradition, secondly, with progressive industrialisation of India, the pioneer enterprises became steadily restricted as new enterprises started on the model of older ones already in existence, the problems that arose were more of management and finance than pioneering. Finally, the most important change that occurred very slowly and steadily was that there grew up a separate class

17. Vide Memorandum submitted to the Company Law Amendment Committee, 1938, by the Bombay Shareholders Association.
18. See Dr. Nabagopal - 'Industrial Enterprises in India', Orient Longmans, Bombay, Calcutta, Delhi, second revised edition 1946, P.78.

of entrepreneurs who did not always belong to the established 'firms' of managing agents and who, therefore, preferred to do the major work of promotion by themselves, although they found it convenient and useful to consult managing agents or banks.¹⁸

The part played by them as financier and guarantor of finance for companies as also their activities as managers faced bitterest criticism from public.

Cause of the dominance of the Managing Agency System :

Dr. Nagesopal Das has stated (with the application of statistics particulars of which have been given in the Investors' India Year Book for 1935 and 1955 respectively - an authoritative publication by Messrs. Place, Siddons & Gough of Calcutta) that the percentage of companies managed by managing agency firms increased from 75 in 1935 to over 95 in 1955. As a cause he mentioned that this system had been found to be convenient to the industrial entrepreneurs and they as a rule entrusted the management of companies to firms of managing agents. It also suited to the conditions in India due to some special circumstances.

Firstly, in many industries, the managing agents themselves or their friends had got holding of substantial blocks of shares. In cotton textile industry it was 40% to 60% and in exceptional cases it was as high as 80%; secondly, they acted as special creditors (or guarantors of credit) or debenture

18. Memorandum of the Bombay Shareholders' Association on the Indian Companies' Act (Amendment) Bill, 1936.

holders having charge on the assets and undertakings of the companies; thirdly, due to diversified distribution of shareholdings over long distances, the shareholders were unable to write themselves effectively against their dictatorial management, fourthly until 1936, there was no provision in companies Act to control or check their powers of activities and lastly, they secured enormous control by means of their written agreements.²⁰

The agreement had been terminable and non-terminable (the usual period being in Bombay 30 to 40 years, in Calcutta 10 to 20 years and in Ahmedabad permanent and non-terminable).²¹ Being outside the purview of law until the passing of the Indian Companies' Amendment Act of 1936, they tended to be very arbitrary and autocratic - particularly in Bombay and Ahmedabad, e.g., 'The Ajit Mills Ltd.' Ahmedabad, started in 1931, appointed agents who were the sole managing agents and were non-changeable, non-removable and permanent secretaries, treasurers, and agents; the agreement of 'The New National Mills' in Ahmedabad in the agreement with their managing agent provided that the appointment of the agents was irrevocable and could not be cancelled on any other ground except their voluntary resignation in writing.²²

Remuneration of Managing Agent :

The managing agents used to exploit the companies under

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20. Das Dr. Nabagopal - Industrial Enterprises in India, Op. cit. PP 77-78.
 21. Indian Tariff Board, Report on the Cotton Textile Industry Enquiry, 1932.
 22. Memorandum of the Bombay shareholders' Association on the Indian Companies Act (Amendment) Bill, 1936.

their management by virtue of the agreement, entered into by them and managed companies; first, in the name of office allowance fixed monthly or yearly basis,

secondly, payment in the name of commission on the basis of production/sale/profit, with a stipulated minimum was payable under all circumstances, by all concerns under managing agency, whether the companies made profits or not.

The main objection of critics has been not so much to the office allowances and regular commissions paid, but to certain arbitrary devices that were sometimes adopted to get additional or secret profits or both.

The method of calculating the managing agents' remuneration on profit was before charging depreciation. Over and above, very often, in calculating the percentage, interest on loans and advances, profit by way of premium on shares sold, profits on sale, proceeds of forfeited shares, or profits from the sale of the whole or part of the undertaking in the company, were not considered in calculating profits before charging their remuneration with the result that the managing agents were able to bite off a much larger share of the cake than they should. To quote some instances, in 1921, the simplex Mills Co. Ltd., earned a premium of over Rs.10 lakhs on the issue of additional capital, and the managing agents charged commission on this : Again, in

1935, The Tata Power Co. Ltd., issued on its shareholders as well as sold in the open market certain shares which had been previously forfeited for non-payment of calls, and earned a large amount of premium on the sale of these shares, the managing agents charging their commission on the premium so earned.²³ This commission was normally round about 10 per cent. Sometimes they used to squeeze even at a higher exorbitant rate of 15 to 20 per cent.

The second method to get additional remuneration was charging compensation if the business of a company was transferred during the pendency of the agreement to another party. The managing agents had the right of continuing in office in spite of the change of ownership; in case of refusal, he was entitled to claim compensation. The third device was by inserting a clause in agreement for supplementary or secret profit.

"All these show that although the normal office allowance and commission payable to managing agents were not excessive, the special devices resorted to by some managing agents to get more out of the company were both unfair and excessive. The managing agency system came into dispute mainly because it had given opportunities to some unscrupulous (and dishonest) persons to get various kinds of extra remuneration without actually transgressing the law relating to companies."²⁴

23. Memorandum of the Bombay Shareholders' Association on the Indian Companies' Act (Amendment) Bill, 1935.

24. Op.cit. - Das Dr. Nabogopal, Industrial Enterprise in India, Orient Longmans, Bombay, Edn. 1936, P-85.

There were several other means such as the practice of assignment of functions and interest to third parties without the specific sanction of the directors.

The Indian Tariff Board came across a case in 1932 where "Messrs Currambhoy Ebrahim & Sons Ltd., mortgaged their agency commissions in several companies under their control, and as a result the mortgagees acquired considerable influence in the management of the affairs of the companies; again, the partners of Messrs Maharjee Gokuldas & Co. mortgaged their commission in the Sholapur and Maharjee Mills with the result that the mortgagees acquired undue influence over those mills."²⁵ These assignments caused undue influence on the companies by the undesirable outsiders making the shareholders and directors powerless to exercise check on the outsiders. It also transferred the interests of the companies under management as financial stability was dependent on the goodwill of the managing agents behind them.

Inter-investment of funds by managing agents among companies under same agent was another feature which used to create not only serious unfairness to the shareholders of the concern whose funds were thus transferred, but the practice rendered to perpetuation of thoroughly insolvent concerns which for the interest of the industry as a whole should be closed down.

25. Report of the Indian Tariff Board, 1932.

The managing agents used to take huge amount of loan as a practice from the companies under their management and thus abused their position. Dr. Nabhagopal Das referred in his book the following fact : The allegation that many managing agents took such loans or advances was hotly denied by the Bombay and Ahmedabad Millowners' Associations before the Indian Tariff Board on Cotton Textile Industry Enquiry in 1932, but the Bombay Shareholders' Association proved in 1935, with the help of facts and figures that the evil existed. The loans taken by Messrs. Vakil Anklesoria & Co. from the Western India Oil Distributing Co. Ltd., brought infinite trouble upon the company which was eventually saved only by reorganisation. The loans obtained by Messrs. J.F. Madan & Co. from the Madan Theatres Ltd., tell a similar story.²⁸

This type of abuse of power rudely shaken the integrity of the managing agents and their methods of management.

The above was the position behind which the companies (Amendment) Act, 1938 was enacted.

The Law Member while presenting the Bill expressed his opinion that "it is not use proposing an alternative system unless the whole organisation of commercial and banking credit is changed." However, the need to regulate the system was also emphasized, particularly in regard to the exorbitant sums drawn by some agencies by way of remuneration. Members of the opposition were also

28. Op.cit. Das Dr. Nabhagopal - Industrial Enterprises in India Orient Longmans, P.88.

moderate in their views. Shri Shulabhai Desai stated that "the managing agency institution has served the country fairly well and it must not be judged by instances where, undoubtedly, they have been more or less a sponging institution." Pandit G.B. Pant viewed that "in spite of what one might wish, we can not at present stage get rid of the managing agency system. We feel that it will not be desirable in the interest of the industrial advancement of the country to give up this system altogether."²⁷

Regarding aims and objectives of this Act, it was conceived by the Government that India had however, problems peculiar to itself for example, those connected with the managing agency system and provisions designed to regulate this unique institution were included in the Act. It is to be remembered that one year after the introduction of the Bill "in 1937-38, there were 10857 Joint Stock Companies with a paid-up capital of 279 crores."²⁸

The Amending Act of 1936 presented, for the first time, a definition of managing agents. The Act provides the following :

- 1) Some requirements, fundamental to the protection of shareholders' rights were specified. The approval of the managed company by resolution passed at a general meeting was made necessary for the initial appointment, reappointment, transfer of office or variation in contract of any managing agents

27. Parliamentary debates on the eve of the presentation of the bill before Council of States 12.1.36, vide debates, Vol.11 No.6, P.7.

28. National Council of Applied Economics Research, New Delhi, The Managing Agency system - A Review of its working and prospects of its future. Asia publishing House Bombay, Calcutta, New Delhi, Madras, London, New York, 1958, P.6.

- ii) A company was further permitted, by a general resolution, to remove a managing agent guilty of certain specified offences relating to the affairs of the company. The term of office of a managing agent was limited to twenty years, with re-appointments permitted for the same duration.
- iii) The Act, made provisions designed to counteract some of the more glaring mispractices in the system. It contained a fixed percentage of the net annual profits of the company as remuneration with provisions for a minimum payment in case of inadequacy or absence of profit in order to prevent managing agents from obtaining high remuneration without regard to the financial status of managed companies. Office allowances according to the terms of the agreement permitted and additional remuneration was allowed if accepted by special resolution of the managed company.
- iv) It prohibited the practice of giving or guaranteeing loans to such agents. The inter-investment of funds by managing agents when they had several companies under same management was also forbidden. The employment of the funds of a company in the purchase of the shares and debentures of another company under the management of the same managing agents was prohibited.
- v) They were also prevented from carrying on, on their own own account, business which was of the same nature as, and

directly competed with, the business of the managed company.

- vi) The practice of packing the board of directors of the managed companies by the managing directors with their own nominees was rendered difficult directing that no managing agent should be allowed to nominate more than one third of the total number of directors.

The Amendment Act of 1938 was assailed by certain sections of businessmen as violation of the principle of the sanctity of contract. It stated that "undue legislative restrictions like those embodied in the Act would kill a system which had rendered such splendid service to industry in the past."²⁹

The Federation of Indian Chamber of Commerce and Industry suggested that limiting the period of managing the companies to twenty years was quite inadequate by stating that "it takes about ten to fifteen years for any industry to be established on a profitable and economic basis and it would not, therefore, be sufficient inducement to managing agents to develop an industry if they are to relinquish the fruits of labour so soon after they have succeeded in developing it. Further, the restrictive clauses, by dissuading managing agents from embarking on new industrial ventures, would only retard the industrial development of the country."³⁰

29. Circular letter no.193/1936 of 20 June, 1936, from the Bengal Chamber of Commerce, Calcutta on the Indian Companies' Act (Amendment) Bill, 1936.

30. Memorandum of the Federation of Indian Chamber of Commerce and Industry on the Indian Companies' Act (Amendment) Bill, 1936.

It is true that though some of the glaring malpractices were prevented by the introduction of the Companies (Amendment) Act, 1935, yet the managing agent firms, with the help of the expert professionals like lawyers continued their undesirable practices in a disguised form.³¹ Therefore, it is evident that number of loopholes still remained in the Companies (Amendment) Act, 1935. "Large changes had taken place in the organisation and working of Joint Stock Companies. In many cases, conventional methods of company management were discarded in favour of less orthodox and more venture-some techniques, which the existing company law was unable to control adequately."³² The most serious lacunae had been the inadequate and perfunctory manner in which Company Act was administered. Firstly, the administration of company law had been vested to the Central Government, most of its functions were delegated to the Governments of the Provinces (States) except few. The reasons for such delegation were partly historical, partly constitutional and partly financial as explained by Dr. Nebogopal Das, as under "The full social implications of Company Law were hardly realized and the administration of the Act was regarded primarily as the negative function of preventing the Joint Stock Companies from contravening the statutory requirements. This negative function could be performed as easily by the provincial Government as by the Central Government."³³ From economical point of view, the power of appointing the Registrar of Companies was delegated to the Provinces (States). They took

31. See Dr. Nebogopal, Industrial Enterprise India, P.88.

32. Report of the Company Law Committee, New Delhi, 1952.

33. Ibid. P.91.

little interest in this matter and until 1952, barring Bombay and West Bengal, none of the States appointed full time 'Registrar' although number of Joint Stock Companies at work exceeded 22,000 (in 1947) but total budget in respect of the establishments of the Registrars of Joint Stock Companies in all the States never exceeded Rs.5 lakhs per annum.³⁴

However, the cry for reform of company law as regards its management gathered momentum after independence in the year 1947 and as a result, national leaders having realised the importance of the company management felt that it could no longer be left as it had been in the companies (Amendment) Act, 1936 and therefore reform of it was urgently needed. This is the history and feature of company management in the first phase.

2.3 Second Phase of Company Management (1947-1956) : Deterioration of the effectiveness of the Managing Agents forced independent India to make provisions to control them

The 2nd phase started from the year 1947 and continued upto the 1956. (Before the present companies Act, came into force).

During this period there was phenomenal increase of number of companies with huge volume of capital. "In March 1948, there were 22,875 companies with paid-up capital of Rs.570 crores as against only 11,114 companies in 1938 with a paid capital of Rs.290 crores."³⁵ Though there was increase in number of companies and volume of paid up capital, the quality of management started deteriorating. Mismanagement, practice of dishonesty and malpractices

34. Op.cit. P.91.

35. Sangupta Dr. N.K., Journal of Management, Administrative Staff College of India, Vol.2 No.2 (March 1973) PP 71-82.

were in full swing during that time. The demand of the public was to control over the functioning of corporate management. Consequently in October, 1950, the Government of India set up a Committee (popularly known as the Company Law Committee) with Mr. C.H. Shaha, a former Commerce Minister of the Government of India and a prominent businessman as chairman, "to consider and report what amendments were necessary in the Indian Companies Act, 1913, as amended as Act XXII of 1936, with particular reference to (a) the formation of Companies and day-to-day conduct of their business, (b) the powers of the management vis-a-vis shareholders, and the relations between them, (c) the safeguards required against abuse of such practices as the interlocking of directorates, voting control by majority interest in company ownership and management etc., which might be prejudicial to the public interest, and (d) the measures necessary to promote efficient and economic management of companies. But as the position became too critical, before the report of the Committee in the year 1951 an ordinance was promulgated by the Government of India.

The principal feature of the amendments to the law made in 1951, through an ordinance, later replaced by an Act, was the introduction of the requirement of Government's consent. Various matters relating to company management such as the appointment and reappointment of directors and managing agents, changes in the constitution of managing agencies and in the remuneration of managing agents and directors, required the sanction of the Central Government. The Act also made provision for a commission to advise

Government on matters arising out of the various applications for sanction made to them. At the very outset of its functioning, the commission laid down certain principles to guide them in their decisions and these were accepted by Government. In regard to managing agents, the accepted principles were "to restrict remuneration ordinarily to 10 per cent of net profits, not to allow any office allowance, to discourage buying and selling commissions and to restrict compensation payable to managing agents vacating office before the expiry of their agreements. Certain broad principles were also laid down in regard to the allocating managerial responsibility between directors and managing agents."³⁶ The Act also brought in, for the first time, the concept of "associates of a managing agent". However, this not only had a limited application, referring only to the extensions of appointments of managing agents but also a limited connotation, the explanation of the term applying only to persons directly connected through associations with the managing agency firm or company and not to other connections of the managing agent.

Other features of the Amending Act included a provision allowing for remedial action by courts in cases of gross mismanagement of a company's affairs or in cases of oppression of some members of a company. Such action was allowed to originate from an application by a required minority of shareholders or on the initiative of Government. In several important aspects,

36. National Council of Applied Economic Research, New Delhi: The Managing Agency System. Asia Publishing House, Bombay, Calcutta etc. 1959 P.23.

the reforms of 1951 can be said to have culminated in the Companies Act, 1956. This was also the beginning of the reform of Governmental control for regulating the activities of corporate management. During those years, the corporate management had been in the hands of closeknit family group or their associates. One important cause which accentuated this trend, was the acquiring of the controlling interest by large Indian houses in companies which were formerly European-owned or European-managed. According to Mr. M.M. Mahta's study around 1950-51, 600 industrial concerns were controlled and managed by 36 managing agency firms in 1951. Of them more than 250 were managed by nine leading British managing agency houses - Andrew Yule, McLeod, Martin Burn, Bird, Jardine Henderson, Duncan, Octavius Steel, Cilianders Arbuthnot, and the British Indian Corporation. The leading Indian Managing Agency houses were the Tatas, the Birlas, and The Dalmia-Jains, the Sishenias, The Thapars, The Gankas, Controlling 26, 24, 38, 42, 32, and 41 companies, respectively. This study also indicated that managerial concentration of families or business groups was in general a common feature. The nine leading Indian families held nearly 600 directorships. 100 persons held 1,700 directorships, and among them again 30 held as many as 860 directorships. This illustrates to what extent multiple directorship prevailed in corporate industry.³⁷

Inference drawn from the above study reveals that there

37. Mahta M.M., Combination - Movement in Indian Industry, 1951 PP 5-26.

were two distinct corporate sectors, one dominated by foreigners and the other by Indians. The organisational structure was also in the way of change of managing houses from partnership to private limited companies and again from Private Limited Companies to Public Limited Companies. This change over occurred both in the Foreign Business Houses and Indian Business Houses to absorb smaller houses.

2.4 The Third Phase 1956-1969 : Enactment of the Companies Act 1956 made strict control over Managing Agents :

The bill for the Companies Act, 1956, received the assent of the president early in 1956 which was based on two considerations. Firstly, it was considered necessary that the malpractices which has come to light since 1935 should be stopped to by suitable legislation and by the setting up of appropriate machinery to administer the same and secondly, the State must step into protect the interest of the shareholders and the general public against the tyranny of managing agents, managing directors or managers. The third important consideration, viz. that private industrial enterprises, as organised under joint stock companies, must fit in with the general pattern of State Policy, which had undergone radical changes. An important directive principle of this policy, as embodied in the constitution of India, was that 'the State shall so direct its policies that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' The new Act, was therefore, said to have "for the first time attempted to bring about some

changes in the law by superimposing on the traditional legal concept a system of partial social control in the public interest."³⁸

By this new Act, an attempt has been made to restore the dying authority of the directors and shareholders. Large degree of Government control has been made over the companies for upholding public interest. It has been recognized that the shareholders are the ultimate source of authority of company management but as they can not exercise the powers, the actual managerial powers have been vested in hands of the Board of Directors, who manage the company directly or indirectly through any one from amongst the categories of corporate managers, such as -

- 1) Managing Agents,
- 2) Secretaries & Treasurers,
- 3) Managing Director and
- 4) Manager.

It imposed a ceiling of 20 directorships in public companies to be held by an individual at any time to reduce the scope of multiple directorships. According to this law no one could be a manager or managing director in more than two public companies without the Central Government's approval. By these provision, the concentration of managerial control in fewer hands has been reduced. By providing widest possible disclosure of the company, working and financial position to the shareholders and public in general, this Act, has envisaged judicial remedy and also direct

38. Indian Administrative Reforms Commission, Report of the working group on Company Law Administration, Delhi, Manager of Publications, 1968. P-36.

control over a very large area of corporate management. "The objective of the regulatory provisions is to impose a degree of discipline on corporate management so as to ensure a clean administration for the benefit of the shareholders and of the community, and also to provide a proper code of conduct under which an enlightened top management is able to achieve the highest standard of performance."³⁹

Under section 324 of the Companies Act, 1956, the Government has assumed powers to prohibit managing agencies in any industry or business. The Act states that this power will be exercised only after the Government have conducted an enquiry into the matter, consulted the Advisory commission and obtained approval of both the Houses of Parliament. The intention of the Government has been clarified by Shri C.D. Deshmukh, the then Finance Minister, seems to have been that 'the managing agency system, at a future date not at a very distant future - will be abolished. But the time, pace and the manner of its abolition are left to the Government.' Department of Company Law Administration has undertaken an exhaustive research project on the operation of this system. The first round of their study gives valuable and detailed statistics regarding the position of the managing agencies in the corporate sector relating to 1954-55 which reveals that 'there were 3,944 managing agencies in India managing 5,055 Joint Stock Companies, or 17.1 per cent of the total number of Joint Stock Companies in the country. The total paid-up capital of the

39. Desgupte A and Sengupta N.K., Government and Business in India, Allied Book Agency, Calcutta, Delhi, 1978, P-146.

Companies under the managing agencies amounted to Rs.485.4 crores which was 48 per cent of the aggregate paid-up capital in the entire corporate sector in 1954-55. In certain classes of companies that are legally prohibited from being under managing agents, such as Banking and Insurance Companies and Government enterprises are excluded from the total, the proportion of the paid-up capital of companies under managing agencies goes up to 50.4 per cent. Management by managing agencies was a more common feature in the case of public than private companies out of the total paid-up capital of all public companies, excluding banking and insurance companies, 71.2 per cent belonged to Companies under this system. On the other hand, only 8.6 per cent of the total paid-up capital of private companies was controlled by managing agents. Out of the total 3944 managing agencies, 2522 being unincorporated firms, 1238 private companies and 184 public companies. The total paid-up capital of the public and private managing agency companies was Rs.76.1 crores. While paid-up capital of the companies under their management was nearly five times greater than that of the capital of the managing agency companies which was Rs.370.2 crores. There were 1601 managing agencies in West Bengal, 895 in Bombay and 437 in Madras. These together, controlled about 80 per cent of the total number of agency managed joint stock companies. As many as 3526 or 89.4 per cent of the total of 3,944 managing agents, managed only one company each, only 17 managing agents managed 10 or more companies each; the largest number of companies under a single managing agency was 40. Between them,

the 17 leading managing agencies managed 359 companies with an aggregate paid-up capital of Rs.114 crores or 25 per cent of the total paid-up capital of all companies under the managing agency system. Ten of these agencies were public companies and other private.⁴⁰

This is the clear picture of the scene of the managing agency system when the companies Act, 1956 came into existence. Between 1954-55 and 1968-69, the managing agency system was steadily declining both in terms of the number of managed companies and their paid-up capital which can be seen from the following tables.⁴¹

TABLE-1

Decline in the number of managed companies

Year	Total No. of Public Companies	No. of Companies Managed by M/As.	3 as % of 2
1	2	3	4
1954-55	4091 (616.8)	1978 (438.0)	44.8 (71.2)
1960-61	5888 (826.0)	1049 (391.7)	16.4 (47.4)
1966-67	5843 (1306.4)	683 (483.0)	12.3 (37.7)
1967-68	5452 (1375.4)	642 (584.8)	11.7 (42.5)
1968-69	5432 (1402.3)	568 (57.5)	10.4 (4.1)

NOTE : Figures in Column 2 exclude the banking, insurance and Govt. Companies. Companies which could not have M/As under the Law. Figures in parenthesis indicate paid-up capital in crores of rupees.

40. According to Raj K. Nigam, Managing Agencies in India (First Round : Basic Facts), Department of Company Law Administration, Ministry of Commerce and Industry, Government of India.
41. Sen Gupta Dr. N.K. Articles 'Trends in Corporate Management' published in the Government and Business by Sen Gupta, and Sen Gupta N.K. Allied Book Agency, Calcutta 1st. Edn. April '78 P-146.

TABLE-2

Diminishing Managing Agency System

YEAR	Total No. of Registered Companies.	No. of Companies which came up for approval to Managing Agency system	No. of Companies where approval was given	Percentage of column 3 & 2	% of column 4 or 2
1	2	3	4	5	6
1956-57	648	10	10	1.2	1.2
1960-61	1883	15	13	0.9	0.8
1964-65	1386	8	-	0.4	-
1966-67	1039	1	-	0.1	-
1967-68	1044	1	-	0.1	-

In the sixties the controversy over the abolition became intense after the publication of the findings of the Vivien Bose Inquiry Commission and a new dimension was added to it was its relationship with the growth of concentration of economic power.

Abuse of this power, frequently mentioned, is the manipulation of funds of the managed companies by managing agents to their personal benefit and to the disadvantage of the companies as well as against the public interest.⁴² The Managing Agency Inquiry Committee appointed in 1965 under the chairmanship of Dr. I.G. Patel recommended in its report the abolition of the system in sugar, cement and cotton textile but the central Government went beyond the balanced recommendations of this Committee and decided to abolish the managing agency system in all five industries (including paper) on and from the 2nd day of

42. National Council of Applied Economic Research, New Delhi, "The Managing Agency System" Asha Publishing House, Bombay, 1969, P - 107.

April, 1967 and finally through the companies (Amendment) Act, of May 1969 abolished the Managing Agency System (along with the newly invented law-made firm of corporate management i.e. secretaries and Treasurers) from the soil of India on and from the 3rd day of April 1970. Regarding the effectiveness of the secretaries and treasurers, it was hoped that law-made newly invented form of management without their financial investments no power to nominate directors to the boards of the companies under their management and with only 7.5 per cent of the net profit as their maximum rate of remuneration, would act as an alternative form of management to the Managing Agents and exert expert managerial skill and supervision to the large scale companies for their benefits and development. But this lofty hope was never realized as this system of management had not become popular in India. It may be due to the fact that most of the Managing Agency firms had converted them into secretaries and treasurers. "Out of 14076 companies registered during eleven years from 1956-57 to 1960-67, only 24 companies preferred this form of management at the time of their incorporation."⁴³ The object of this death knell on the managing agency as well as secretaries and treasurers has been to introduce professionalised group management without the evils of the managing agency system about the abuse of the concentration of economic power in few agency houses.

2.5 Fourth Phase from 1970 to up-to-date : Abolition of Managing Agency System and the management by Board with Managing Director and some recent development in Company Management :

After the abolition of Managing Agency System the following

43. Company News and Notes, Department of Company Affairs, Vol. VI, April 18, 1968, P - 782.

permissible systems of Corporate Management are left behind :

1. Direct management by the Board of Directors -
 - a) With whole-time Directors,
 - b) Without whole-time Directors and
 - c) With Committee of Directors;

and
2. Indirect management by the Board of Directors -
 - a) having Managing Directors,
 - b) having Manager and
 - c) having Managing Director with whole-time Directors.

Dr. N.K. Sengupte also mentioned in his book that "on the basis of a study of the pattern of management in the public limited companies with paid-up capital of Rs.1 crore and above as on April 1, 1968 it seems that on that date, 141 among them were under the management of managing agents (including seven secretaries and treasurers) and 176 had been other forms of management. An analysis of the forms of management in these 176 companies would indicate the following break-up :

	<u>Public Limited Companies</u> -----
Managing Directors (with or without whole-time directors)	105
Board of Directors	69
Authorised controller under Industries (Development and Regulation) Act	1
General Manager	1

A detailed analysis of the management pattern in the 105 companies having managing or whole-time directors reveals the

following patterns :

	Public Limited Companies-----
Persons educationally qualified as well as professionals	81
Persons educationally qualified but not professionals	9
Persons who are professional managers but not educationally qualified	3
Persons neither educational qualified nor professionals but ordinarily having substantial financial state	7
Details not immediately available	5
	--- 105 ===

It will be seen that the number of companies led by professional managers in widest sense of the term was surprisingly large. Others were led by the large investors and yet others represented a compromise between the two. One reason why professional management seems apparently to be in such a dominant position is that in India professional management is very often equated with non-proprietary management. But the available data do not indicate that we are, on the whole, still a long way from the stage at which the ancient regime of owner-manager-entrepreneur can be replaced by a management revolution although there are indications that our top corporate management is proceeding in that direction.⁴⁴

44. Sengupta N.K., Trends in Corporate Management since independence, published in the Book "Government and business in India" by Dasgupta A and Sengupta N.K. Allied Book Agency, Calcutta, First Edn. April, 1978, PP 149-150.

There have been some important features during this period such as the Indianisation of the top management in a very significant scale, the shareholding of the directors is reducing to a considerable extent. This does not indicate gradual process of replacement of proprietary management by professional management, rather the domination of proprietary class whether visible or invisible in the Board of Directors, still persists. But due to increase in the complexity of law and procedure and involvement of technicalities in the production, day-to-day management demands the professionals to include in the Board of Directors.

Moreover, during this period there has been divorced relationship between the shareholding and management control resulting small number of group of families with relatives and friends control the management of the big companies having own shareholding as little as 10 per cent. Variety of reasons are responsible for it, diversified shareholding, little knowledge about the company law and ignorance about the affairs of the Company, the lack of knowledge about the benefit of forming shareholders association, closing of the share transfer book, loopholes in the Company Law regarding transfer of share and enlistment in the Registrar of shareholders' Book, inactive attitude of the employee shareholders, disunity amongst the shareholders and above all satisfaction by the shareholders to get dividend and disinterest to take part in management, are some of the reasons for the most of the Companies shareholding does not bear any significant relationship to management control.

These have created a condition in which, as Merchant observes : "unless one belongs to the charmed circle' of the family or friends of the existing management which more often than not has only a minor share interest in the company, one has no chance whatsoever of becoming a director, however competent one might be. Hence, the only legitimate method available to anyone to crash into management is by buying up the requisite number of shares."⁴⁵ Sometimes heinous struggle is carried only to take over management. Even when control passes from one group to another and the new one claiming to be professionalis, the same features of family control still persists. Dr. N.K. Sengupta observes "this has stood in the way of our large companies going under truly professional management or developing along the lines of the giant Corporations of the West. As a result there is in fact no indication as yet that this family or group management control is withering away on any significant scale."⁴⁶

The distinction drawn by some authors between entrepreneurial Board and an Executive Board has become unreal in the Indian context because even the foreign equity holders preferred reliance on particular Indian families to direct participation in top management. Yet changes are taking place as observed by A Desgupta : "In fact, one finds both modern and traditional social skills side by side with modern technology. Also the younger members of the Indian business class are showing great

45. Merchant K.T., Management Change in Companies, Economic and Political Weekly, 1970, 5(23), PP 921-3.

46. Op.cit. P - 151.

inclination towards modern methods and techniques in working with men. All these have come about from a genuine conviction of the need for change in technology and social skills. Their success will, no doubt, influence many non-changers in the class in no time. However, the process of growth in which technology and social skills can move with modern thinking has been still slow."⁴⁷

Due to the complexities of the law, procedures and technicalities, it has become necessary to maintain a close relation between the top executive, with the line management, composed of professional qualifications and experience. It has become necessary that the policy making body should be composed of full timers which would enable them to exert more attention to the interest of all the ingredients of the companies such as shareholders, workers, employees, consumers, suppliers and society at large. Though it is said that system of two-tier Board is not suitable in India, but its influence on the management structure of the company is inevitable. According to Dr. N.K. Sengupta "some companies in India seem to be entrusting actual management of groups of employee-directors, if not formally, at least informally. Guest Keen Williams have introduced a system of Divisional Board with the Divisional Managing Directors as distinct from the General Board, which by the nature of things cannot be very much more different from the German Supervisory Board. This method is bound to be adopted increasingly."⁴⁸ Our

47. Dasgupta A - Indian Business and Management, 1978, University of Delhi, P - 28.

48. Sengupta Dr. N.M., "Trends in Corporate Management", published in Journal of Management, Administrative Staff College of India, Vol.2 No.2 (March 1973) P - 78.

review of 75 Annual Reports (83-84) of 75 companies reveals that 12 companies, (16%) preferred two-tier board. It seems that this system is gaining popularity in India (Table-5, Chapter - VII).

Another significant change in top corporate scene in India occurred due to the power of the financial institutions and Government to nominate nominee directors and their role in the corporate management.

The list of financial institutions falling within the ambit of the public sector has expanded impressively since the beginning of the nineteen sixties both by the creation of powerful new institutions and by nationalisation of the important older ones. Among the new institutions set up during the 1960s are the Unit Trust of India (1964), the Industrial Development Bank of India (1964) and the chain of State Industrial Development Corporations. Fourteen major commercial banks were nationalised in 1969 and L.I.C. in 1955. Total sanction by different financial institutions rose from Rs. 232.8 crores in 1970-71 to Rs.4023.3 crores in 1983-84. The total disbursement in this period went up from Rs.145.6 crores to Rs.2905 crores. Of the cumulative sanctions by different financial institutions up to March, 1984, the private sector accounts for 75.5 per cent and the balance of 24.5 per cent were shared by enterprises in public joint sector and Co-operative Sector. The financial institutions now finance nearly 30% of project cost of company's

issued capital. The institutions have thus assumed a position that without their support hardly any large project in private sector can materialise (The Economic Times, Calcutta 29.7.85). The financial institutions are now holding substantial portion of equity stake in the large companies. For statutory provisions and to look after the public interest, Government also is nominating directors to the board of the companies. Government had decided, as a matter of policy, that the public financial institutions would not remain mere spectators and will actively participate in the management of the Corporations. As the shareholdings by the public financial institutions can not be sold easily to the public, large portions is left in their hands which necessitates more effective control over management through their voting power in order to safeguard their investments.

There has been tremendous controversy about the role of the nominee director in the management of a company. But as because they are small minority, the role of the Government or financial institution-nominees is limited no doubt but very useful from the point of view of public interest. The contribution would depend on their own character, efficiency, skill, personality and above all sincerity. Therefore selection of right persons is very important.

Here, it is important to refer the recommendations of the Industrial Licensing Committee popularly known as Dutt Committee which stated that the public institutions should show keen interest

in the management of the private sector companies which they assist and that the concept of Joint Sector Companies should be encouraged. "It may be that for some time to come when Government may decide to permit projects with significant proportions of public financial assistance to remain in the public sector. In that case, however, we would like to emphasise that they should be clearly treated as belonging to the 'joint sector' and not to the private sector. The 'joint sector' would, in our view, include units in which both public and private investment has taken place and where the state taken an active part in direction and control."⁴⁹

But, though there has been an increase in size and growing complexities in corporate business, the introduction of professionalisation and appointment of whole time executives in significant scale have not yet taken place. Dr. N.K. Sengupta observes : "The majority of the newly formed companies during the years 1956 to 1968 seem to have preferred the board of directors form of management. Thus, in 1966-67, nearly 70 per cent of the newly incorporated companies opted for direct management by the board and only 28 per cent preferred to have managing directors on the whole, the abolition of the managing agency system and the 1969 guidelines paved the way towards functional boards and also the introduction of professional managers in the higher echelons of company management in India."⁵⁰

49. Industrial Licensing Policy Inquiry Committee's Main Report (New Delhi, 1969) P - 186.

50. Sengupta Dr. N.K., Article - Trends in corporate management since independence, published in the Book, Government and Business in India by Dasgupta A and Sengupta N.K., Allied Book Agency Calcutta, Delhi, First Edn. April, 1978, PP 153-154.

In our empirical study of 75 companies on the basis of Annual Reports (1983-84) reveals that 80% of companies are managed by the board with managing directors and 20% by the board without managing director.

The most important matter as regards the company management in recent years is the liberal policy that has been taken by the Government by liberalising import licenses, enhancing the M.R.T.P. limit, income tax concessions etc. etc. and formulation of the policy for the sick industries, policy for the textile industries, import of technology and free entrance of the right-minded foreign multinational companies in specified conditions.

It is important to mention Government's initiative to implement workers' participation in management as well as shareholding both in public and private sector. "The Union Government has decided to make an obligatory for the private corporate sector to provide for a minimum of five per cent shareholding in favour of workers and staff, in the case of all new capital issues. Besides, it has been decided to introduce a special type of salary savings linked convertible debenture issue for the employees in the private corporate sector."⁵¹

Another important feature in recent years is the industrial sickness caused primarily for managerial inefficiency. According to latest estimate as indicated by Mr. Amitabha

51. The Economic Times, Calcutta, July 11, 1985.

Ghosh, Deputy Governor of the Reserve Bank, at a meeting with the Madras Chamber of Commerce on the 11th day of July, 1985 the number of sick industries as on December 1983 were more than 80,000 industrial units financed by banks.⁵²

The Reserve Bank is taking a serious view of the growing industrial sickness in the country. It is likely to introduce an 'accountability concept' in the banking system itself so that the lending banks can take corrective measures as soon as the symptoms of sickness are noted.⁵³

Different State Governments also declared for the best use of IRBI credit line. As for example, twenty sick and closed small industrial units have been helped by the West Bengal Government to obtain loan assistance from the recently constituted Industrial Reconstruction Bank of India, as announced by the State Minister for cottage and small scale industries, Mr. Proloy Talukder, in Calcutta on July 9, 1985. The units have been sanctioned assistance of Rs.50 lakhs he added.⁵⁴

It is relevant to mention here also though controversy about the investment by the non-resident Indian has not yet been settled, investments by them which is estimated to Rs.2500/- crores every year⁵⁵ has caused a great threat to the existing management having small stake of shareholding.

On the whole it may be said that the infra-structure of the industries in India has been improved considerably. The

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52. Op. cit. July 12, 1985.
 53. Op. cit. July 12, 1985.
 54. Op. cit. July 10, 1985.
 55. Op. cit. June 22, 1985.

joint sector projects in different states of India are increasing day by day. As for example 'the West Bengal Industrial Development Corporation (WBIDC) had joined hands with the R.P. Goenka group to set up the Haldia Petrochemical Complex which was hanging fire for many years.⁵⁶

The above are some of the important changes that have taken place in very recently in industrial sphere which have got tremendous effect on the company management in India.

In conclusion it can be said that the concept of social responsibility has not yet been taken seriously by the company management. The tremendous economic power is enjoyed by the group which manage the corporate world in India. This group which hold power whether visible or invisible manage companies through their nominees for their own interest at the cost of the shareholders, customers, Government, suppliers as well as working force.

The companies have not yet been able to create a proper image as an instrument for social change for the betterment of the society. They are in majority cases neither taking responsibility of social upliftment of the poor economy nor accountable to the different ingredients which form the company.

As a result a mistrust between the company and Government always prevails. These must be eliminated. It is also expected that companies are to conform to the broader economic and social

56. Op. cit. June 27, 1985.

goals accepted by the country, and to play their role as an agent for achieving these goals. These goals can only be achieved by a company management which is to be constituted with persons of best minds, ultimately responsible to a community consensus which sets up general objectives, standards of performance, and results. A built-in-system of company management is required in India which will include the representatives of all the ingredients which form a company and who will perform their duties to the best interest of the nation."⁵⁷

New industrial policy resolution reflecting the politico-economic will of the Government under the Prime-Ministership of Mr. Rajib Gandhi is in the vake. Should we not expect that private sector companies will fulfil the aspiration of the people of India by utilising their full efficiency?

57. Berle A. A., Means G.C., *The Modern Corporation and Private Property*, New York, 1932. and 1933.

PART - 2Structure of Company Management under the Companies Act, 1956 and critical review.2.6 Object of the Companies Act, 1956 :

The Companies Act, 1956 enumerated a number of provisions and it has gradually emerged as a major instrument for the Government's socio-economic policies for the development of the country through proper management of companies. The Companies Act, 1956 (and its afterwards amendment) is the largest substantive law for corporate business in India containing 658 sections and 13 schedules backed by a large number of rules and regulations, guidelines and relevant legislations. There are many provisions for not only to secure shareholders' democracy but also to serve several other objectives such as the prevention of malpractices in the management of companies, the induction of professional management, the promotion of sound company practices and imposing checks on concentration of economic power, disclosure of corporate secrecy and making imposition of accountability. This Act "for the first time attempted to bring about some changes in the law by super imposing on the traditional legal concepts of a system of partial social control in the public interest"⁵⁸ The basic objectives of Companies Act 1956 as announced before the Parliament by the then Finance Minister Mr. C. Deshmukh were as follows :

1. to fix up minimum standard of business integrity and conduct in promotion and management of companies ;

58. Government of India, Report of the Working Group of the Administrative Reforms Commission on Company Law Administration, 1968, P - 54.

2. to make full and fair disclosure of all reasonable information relating to the affairs of the Company ;
3. to assure effective participation and control by shareholders and the protection of their legitimate interests;
4. for enforcement of proper performance of their duties by Company Management ;
5. to empower for intervention and investigation into the affairs of the Companies where they are managed in a manner prejudicial to the interest of the shareholders or to the public interest.

Under this Act, Central Government has assumed wide powers of approval and intervention in large areas of decision making supposed to be preserved by the corporate management. Some of these areas are - the appointment of managing directors and functional directors in public limited companies and the fixing of their remuneration; inter-company investment and loans; the protection of the interests of minority shareholders; mergers and amalgamations; and maintenance of proper books of accounts and their auditing, inspection and investigation by Government appointed officials. In addition to the Companies Act, there are direct administrative controls exercised by the Central Government or the Company Law Board. We shall try to high light some of the major areas which are dealt in by the new Companies Act and significant from corporate management point of view.

2.7 Restoring the authority of the Board of Directors :

Attempts have been made by this Act to restore the eclipsed authority of the board of directors by the emergence of managing agency system. This Act made a conscious efforts to put managing agents under the superintendence of the board, to make the board responsible and accountable to the shareholders directly to ensure the approval of the shareholders in a large area of corporate policy and decision making. The entire report of the Bhabha Committee under the Chairmanship of C.H. Bhabha, seeks to curtail the power of the managing agents and reactivate the institution of directors. In order to make the shareholders ultimate source of authority in company management but not to involve them to take part in actual day-to-day management, it confers compulsorily for the board of directors in every company and recognises it as the top corporate management body. This has been provided in Section 291 of the Companies Act, 1956 which provides that except where express provision is made, the powers of a company in general meeting, in all other cases, the Board of Directors are entitled to exercise all their powers. Where any provision says that the company shall do such and such thing, it has to be taken to mean, unless the context otherwise requires, or there is anything to indicate the contrary, that the Board of Directors are to do the things. That is to say, 'Company' in such cases means the 'Board of Directors of the Company.'

The provision of proviso two of sub-section (1) of section

291 to the effect, says that the Board shall be subject to 'regulations made by the company in general meeting' does not mean that the company in general meeting can override the Board's powers of carrying on the business, by prescribing a regulation or passing a resolution taking away the powers given to the Board by the articles. A general meeting can interfere only consistently with the articles. (Automatic self clearing Filter Syndicate Co. Ltd. V Cunningham (1906) 2 ch. 34; Salmon V Quin & Artens Ltd. (1909) 1 ch. 311 and on appeal, 1909 A.C. 442⁵⁹)

In other words, according to this Act, the board of directors is responsible for the actual management of the company's business, for its growth and in general for carrying out the objectives and aspirations of the company as enshrined in the Memorandum and Articles of Association. There are many sections in this Act such as sections 262, 292, 293, 294, 297, 316, 372, 386 etc. to uphold these principles could have to be brought under one chapter. There should be proper regulation which is expected to check which of the powers could be delegated and which are not subject to delegation.

2.8 Types of Management and Managerial Personnel :

Companies Act, 1956, section 197A provides that "Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, after the commencement

59. Ramaiya, A Guide to the Companies Act, 10th Edn 1984, Wadhwa & Company Pvt. Ltd., Nagpur 440012 P-665.

of the companies (Amendment) Act, 1960, appoint or employ at the same time, or after the expiry of six months from such commencement, continue to appoint or employ at the same time, of more than one of the following categories personnel, namely :

1. Managing Agents, (prior to abolition in 1970) ;
2. Secretaries and Treasurers (prior to their abolition in 1970) ;
3. Managing Director ; and
4. Manager.

Of the above four, first two categories have been separately dealt with and therefore, here we shall discuss about the last two categories of management i.e., Managing Director and Manager.

As regards the position of a manager who is also director and that of a Managing Director is equivalent, though these officers are seemingly distinguishable as there is a difference of the mode of appointment of each. Whereas, in the case of a manager who is also appointed director, if for any reason his office of directorship is vacated, the office of manager held by him is not affected; but in the case of a managing director, if he ceases to be director for any reason whatever his office of 'managing director' will also cease along with it. The very definition of managing director according section 2(28) as a director, who by virtue of an agreement with the company, or of

a resolution passed by the company in general meeting, or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management, and includes a director occupying the position of a managing director, by whatever name called, provided that the power to do administrative acts of a routine nature when so authorised by the board shall not be deemed to be included within substantial powers of management. It also indicates that a managing director shall exercise his powers subject to the superintendence, control and direction of the board of directors. The managing director is the most important functionary in a company wherever there is one. He is the chief executive head, and although the law does not give him any specific power as such, he is usually clothed with very wide powers by the articles, or by resolutions of general meetings or board meetings. The term 'manager' as defined in section 2(24) means an individual who, subject to the superintendence, control and direction of the board of directors, has the power of management of the whole or substantially the whole of the affairs of the company and includes any director, or any other person occupying the position of a manager by whatever name called, and whether under a contract of service or not. Such a manager, however, has to be distinguished from so many executives in companies who also share the same nomenclature but are not manager as defined in the Act. The above definitions show that a person cannot be managing director without being director, but manager can continue to be manager whether or not he holds the office of a director also.

The subtle, distinction will be of no practical significance in most cases, as a manager who is also a director is, as regards his functions, in no way different from a managing director. Further, where as managing director is a whole-time director, there is no difference between a whole-time director and managing director, except that as per section 316, a managing director may be managing director of more than one company, while a whole-time director, being whole-time employee, cannot be whole-time director in more than one company. A further distinction between a 'manager' and 'managing director' is that while a manager by virtue of his office has the power of management of the whole or substantially the whole of the affairs of the company, a managing director has to be entrusted with such powers of management as may be though fit. For a managing director or any other director has, as director, no power of management except when acting as one of the members of the Board; and if he is to have any power, it will have to be delegated to him by articles or by an agreement or resolution of the Board or by the company in general meeting.

A managing director can not be equated with an ordinary director. Sections 2(26) and 2(13) show the intention of the legislature to treat the two as separate categories. Therefore, when the term of a Managing Director expires, he can not continue as a managing director without being reappointed.⁶⁰

60. Sishu Ranjan Dutta V. Bhole Nath Paper Mills House Ltd. (1983) 53 Com. Cases 883 (at 898) (Cal).

According section 197A, there cannot be both a manager and managing director at the same time in a company. The question whether a managing 'employee' should in his capacity of employee be considered as 'servant' or 'agent' of the company is unimportant for purposes of the Companies Act, though it may be relevant for determining whether his remuneration is salary or business income for purposes of the Income-Tax.⁶¹ The civil court will not grant an injunction to restrain the Company from interfering with managing director carrying out the duties of 'managing director' who is removed from his office.⁶² When the interests of the managing director do not conflict with the interests of the company, the court may allow him to appear in a Court and make representation on behalf of the company notwithstanding the fact that he does not hold a power of attorney as required by O.3 of the Code of Civil Procedure.⁶³ Afterwards it appears that the correctness of this judgment is doubtful.

The study of 316 public companies made by and referred to in his book, changing patterns of Corporate Management by Dr. N.K. Sengupta, reveals that only four companies had preferred management by managers. There are, however, indications that after the abolition of the 'managing agency' this form has been preferred by at least two large agency houses, for example, EID - Parry and Bird - Heilgers in respect of their erstwhile

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61. Ram Prasad V CIT (1972) 42 Com. Cases 544 (SC)
 62. Joginder Singh Palta V Time Travels (PVT) Ltd. 1983 Tax L.R. 2487 (Cal).
 63. Puri Construction Pvt. Ltd. V.N.L. Mehta (1982) 2 Comp. L.J. 765 (Del).

managed companies.⁶⁴ On review of 75 companies we have come across only one company managed by Manager (Chapter VII).

Though, in the Companies Act, 1956, there are traces of four forms of management, working very similar at time, and soon after the Act, it was felt that in a single company there was no room for the existence of more than one category, cases were found where managing agent and managing director were appointed in the same company simultaneously. Section 197A was therefore, inserted in the Act, 1980 prohibiting such appointments, a corollary to section 198 placing a limit on the cost of management.

If a director is appointed as manager, and if as per the terms of his employment he is not to be also manager or employee of any other company, he is a whole-time director. Though, appointment of whole-time directors have become a common feature in the corporate sector to-day, the lack of a definition of a whole-time director is a major lacuna of Act, as this expression can cover a wide variety of officials ranging from those who are very nearly in the position of managing directors to those who, for all practical purposes, are salaried executives; for example, secretaries, factory managers, or sales managers who are often called directors, but not provided seats on the board.

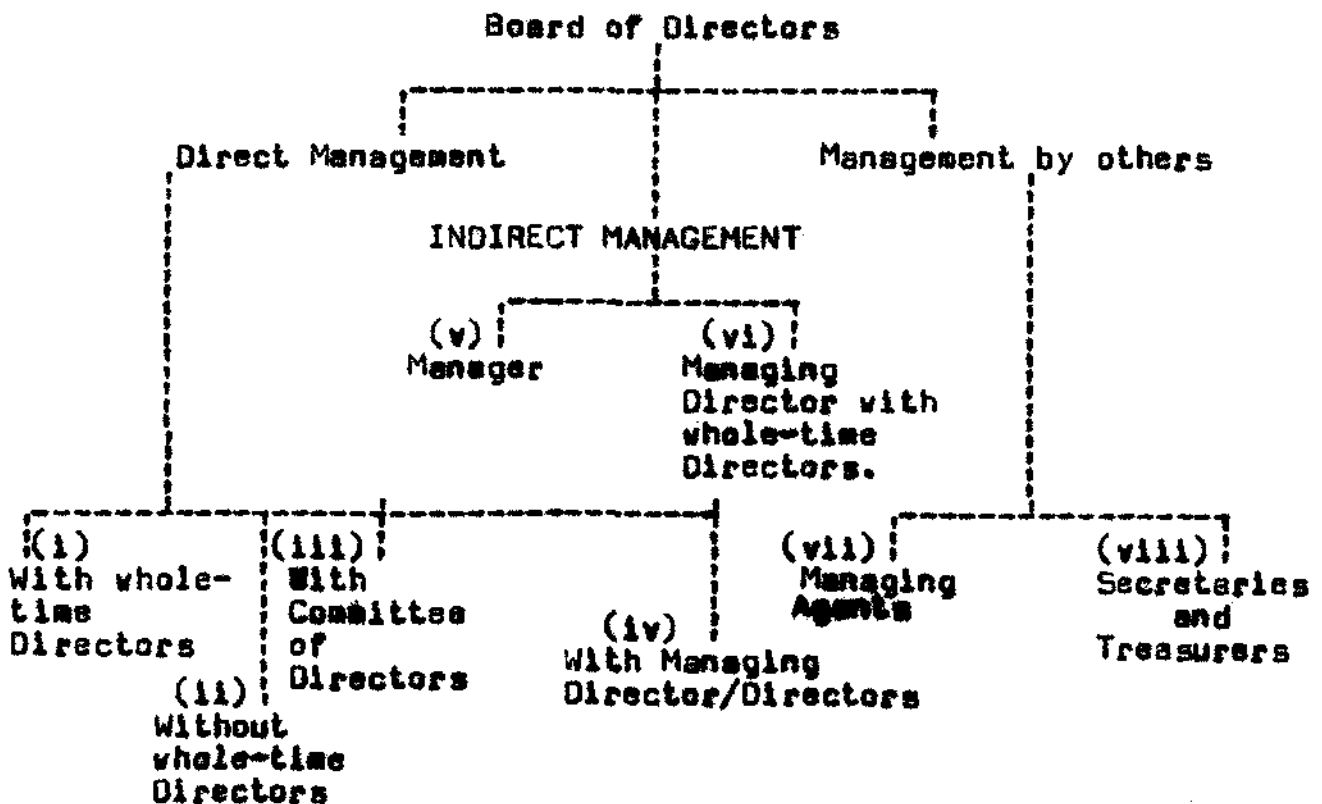
Apart from the above categories of management, there is trace of another form of management recognised by section 292

64. Sengupta Dr. N.K. changing patterns of Corporate Management, Vikash Publishing House Pvt. Ltd., New Delhi, 2nd Edn., 1983, PP 63-64.

which provides for delegation of certain powers by the board to "any Committee of Directors" or managing directors etc. Regulation 77 of Table A also provides for the Committee of Directors. The articles of some companies also provide for authority to directors to delegate their power to committees. But delegation of powers does not absolve the Board of its responsibilities. There may be one man Committee which is in no way different from the position of a managing director.

In order to make the corporate management more flexible it is necessary that company law in India should contain clear legal provisions for such 'committee of directors.'

Immediately after the commencement of the Companies Act, 1956 up to 3rd day of April, 1970 there had been the following categories of company management :



After the abolition of managing agency along with the secretaries and treasurers system on and from April 3, 1970, in India at present there exist only first six forms of management of the companies as mentioned above.

2.9 Measures under Companies Act 1956 to decentralize economic power :

Companies Act, 1956 provides several provisions to check the concentration of managerial power in few hands and practices of multiple directorships which had developed along with the managing agency, partly on account of lack of adequate commercial experience to serve on the Boards of newly floated companies, and partly on account of the conscious policy pursued by the managing agents to control Boards of interrelated companies through trusted friends and colleagues.

Mr. M.M. Mehta's study reveals that "nine leading families in 1952 held 600 directorship of partnerships."⁶⁵ "The Singhanias and Dalmias together held more than 200 directorship. Birlas and Goenkas were directors in almost every variety of industrial undertaking from small jute and cotton pressing factories to the biggest of automobile and engineering concerns. This study further showed that two well-known industrialists were on the boards of 50 companies; 100 persons held 1,700 directorships in important companies, and that on the top, ten eminent industrialists held 400 directorships."⁶⁶

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65. Mehta M.M., combination - Movement in Indian Industry - A study in the concentration of ownership and Management in Indian Industries, 1952, Tables VIII, IX and X.
66. Sengupta N.K., Changing Patterns of Corporate Management, Vikas Publishing House Pvt. Ltd. New Delhi, 2nd revised edn., 1983, P-66.

Mr. Mehta Made the following inference :

"The Board of Directors, to-day, is a close preserve. Sons and relations - community people at the farthest - alone have access to the citadel of industrial leadership. Thus for all practical purposes, a few leading families in India control and guide the industrial destinies of the country. Young seldom find an opportunity to enter the closely preserved and well organized industrial oligarchy."⁶⁷

Companies Act, 1956 provides that a person can not be director of more than 20 companies (except private Ltd. Company which is not subsidiary to a Public Limited Company) at a time in order to check the evils of multiple directorships. This liberal ceiling, actually did not serve a very useful purpose and therefore recent demand is that this limit is to be brought down to ten or even five.

Under present provision, a manager or managing director can - not act as such in more than two public companies or in private company subsidiary of public company without Central Government's approval. This limit has been imposed so that the manager or managing director can devote his time, energy and experience for the primary company in which he serves first. The recent demand is that he shall be manager or managing director of only one company. Along with it there is provision in the Companies Act and in its afterwards amendment such as (Amendment Act of 1974 section 383) makes it obligatory for

67: Op.cit. Mehta. M.M., Combination Movement in Indian Industry, PP 27-28.

companies with paid-up capital of rupees twenty five lakhs or more to have a whole-time secretary. The administrative guidelines issued by the Central Government, department of company affairs, in 1969 stated that as a matter of policy the Central Government will not approve the appointment of an individual, managing director or manager in two companies unless -

- 1) these are small or
- 2) situated at the same place or
- 3) are engaged in the same line of business.

These guide lines are expected to accelerate the movement of professionalisation in company management. Other provisions (like/^{by} section 373, restriction has been imposed on intercorporate investment, by sections 108A, B and C on acquisition and transfer of shares, by section 370 imposing restriction on inter company loans, by section 294A restrictions on the appointment of sole selling agents) are readily examples of preventive measures against concentration of economic power in corporate management. The legislations made like MRTP Act, 1969 and new definition of group under section 2 and 18A of the Companies Amendment Act, 1974 and powers given to the Company Law Board for the proper functioning of the Companies in India are important to mention here as they are meant to restrict concentration of power of company management.

But in actual practice, we can see that there is concentration of economic power in few hands holding substantial

equity shares by making group with members of the family or friends. Sometimes, they are directly nominating managing directors from amongst the group members. Sometimes it is not possible to recognise by name to what group he belongs. Thus, visible or invisible hands, holding powers captures all the powers of management of the company and actually making the board just like a rubber stamp. The Board with managing director can remain as such so long they will serve the interest of the group/individual/individuals holding power. Shareholders holding small number of shares can not be in anyway hope to exercise their rights as shareholders being elected as directors and thus concentration of economic power has made the company management mockery of democratic form of organisation.

Though the managing agency system has been abolished from India, the concentration of economic powers still exists. Powers are accumulated in few hands by way of forming or purchasing controlling power of other companies and making them subsidiary companies. Recently, it has been seen that by holding only 10 to 12 per cent shares (equity) one can capture the management of a company.

The position of concentration of economic power and preponderance of managing agency can be also envisaged from the following Table.

Number of companies managed by 5 managing agents in selected industries.⁶⁸

68. These figures as compiled by Mr. Nabagopal Das in his book, Industrial Enterprise in India, Orient Longmans, 2nd Edn., 1956 P-130 taken from relevant editions of the Investors India Year Book, published by Messrs place siddons & Gough of Calcutta.

	1911	1955	Percentage of increase.
Jute	22	40	91 %
Cotton	24	39	62.5 %
Sugar	6	32	433.33 %
Tea	58	100	72.4 %
Engineering	6	34	466.6 %

The following table shows the growth of total assets of selected large houses :

Name of the houses	1972	1975	1978	1980	Per annum growth
In crores of Rs.					
Tata	635	909	1102	1539	9.6
Birla	572	859	1171	1432	12.6
Larsen Toubro	79	138	194	246	16.1
Singhania	121	209	299	413	16.4
Mahindra & Mahindra	58	114	137	186	15.3%
TVs Iyenger	50	102	135	188	17.8
Mode	58	97	135	198	15.1
Hindustan Lever	78	98	157	219	12.4
Top 25 large houses	3360	4838	4636	7200	11.5

Source of information of the above table :

Answer to a parliament questions as reported in Financial Express, New Delhi, 22nd March 1973 and answer to another parliament question (Lok Sabha Q.No.3403) on July, 8, 1980. Also replies to a Rajys Sabha (Q.No.22, March 1982) and Lok Sabha (Question on 2nd March 1982).

By analysing the first table it was become evident that before Companies Act (1956) came into existence, 6 managing agents used to control major industrial companies. According to Dr. Nabagopal Das in the year 1956 the Tatas controlled 32 companies, Birlas over 125 companies, the J.K. Industries group some 50 companies and the Dalmias over 40 companies.⁶⁹

Apart from it, it was found in the survey, made by Mr. Asok Mehta, in the year 1956, that there were 3,726 directorships distributed among 1,103 persons : 61 of these persons held 1038 directorship (an average of 16 per person), while 20 of them hold 805 directorship (an average of 40).⁷⁰ The second table indicates the amount of money is at the disposal of the renowned economic groups.

Therefore, we can safely conclude that concentration of economic power still exists in India in respect of Company management. This is most visible lacuna and it has created enormous problems in company management in India. In ideal form of management, there should be provision for proportionate representation. In this connection it may be mentioned that it is urgently needed to amend the section 265 of the Companies Act, 1956 to adopt proportional representation for the appointment of directors in order to make it compulsory for the companies.

2.10 Provisions of the Companies Act, 1956 for the improvement of management practices :

In order to improve the management practices qualitatively

69. See Dr. Nabagopal - Industrial Enterprises in India, Orient Longmans, 2nd Edn., 1956, P - 131.

70. An unofficial survey carried out by Mr. Asok Mehta, 1956.

and to bring about some degree of discipline in the management of corporate sector for ensuring an honest and efficient administration for the benefit of the shareholders and community as a whole and also to provide some sort of code of conduct for top corporate managers under which they are able to achieve a high standard of performance in realizing corporate goals, upholding public interest, doing social benefit and advancement, Companies Act, 1956 provides a number of provisions to tune with above mentioned objectives. Some of them are meant for the removal of mismanagement and malpractices, making management responsible to the shareholders, providing for a large number of decisions of vital importance to be compulsorily approved by the shareholders' meetings by creating a built-in-mechanism for widest possible disclosures of a company's working and financial position by providing judicial remedy in a large number of institutions, Governmental intervention and control over a large area of operation of the corporate management.

2.11 Government control over appointment of directors etc :

Companies Act, 1956 made provisions so that management of the company is not vested to any undesirable persons who try to fulfil their own interest at the cost of the shareholders and other interested persons. By means of section 283, an attempts have been made to transfer the ultimate authority to the shareholders, and to vest effective authority in day-to-day matters to their elected representatives i.e. the directors for supervision and control of the chief executive for proper

functioning of the company's affairs. Section 269 and 387 lay down that the appointment (and reappointment as provided by 1974 Amending Act) of Managing Directors, whole-time Directors and Managers in such a Company that appointment/re-appointment should be made by the company only after obtaining approval from the Central Government. It indicates that such appointments would be invalid if Central Government refuses to approve them. With view to wipe out the lacuna that existed as to what type of people would be appointed as managing/whole-time directors or managers, the Companies Amendment Act, 1974 provided to Section 269 a new section III which provides that the Central Government shall not accord its approval in any case unless it is satisfied with fulfilment of some specific requirements.

The Central Government may, however, by notification in the official gazette, remove the disqualification incurred by any person by virtue of cl.(d) relating to conviction and the one incurred by any person by virtue of cl.(e) of Section 274 of Companies Act, 1956 relating to non-payment of any calls. A private company, which is not a subsidiary of a public company, may, by its articles, provide additional disqualifications.

Indian Companies Act imposes restrictions under section 54 not only against known and widely criticised malpractices connected with managing agents, it also imposes variety of restrictions on 'associate' in relation to an individual relating to a managing agent.

The most prominent lacuna in the pattern of Government control over the board of directors is in regard to the position of whole-time directors. Nowhere in the Act the term has been defined and yet many sections bracket it with managing directors, specially with regard to their appointment and remuneration and the need for Government approval for both. For all practical purposes, a whole-time director is distinguished from the managing director. Section 197A does not include whole-time directors in the category of managerial personnel. Thus, against the intention of the framers of the Act, under the present law a company may appoint whole-time director even if it is managed by Managing Director. Lacuna is also visible in section 316 which does not specifically restrict the number of companies in which one person can serve as whole-time director. The absence of specific provisions regarding appointment of whole-time director of more than one company as has been in the specific in the case of a managing director is a definite loophole in the general scheme of management. Again, although, a managing director can not be appointed under section 217 for a period of more than 5 years at a time, this rule is not applicable in the case of whole-time director. Consequently a whole-time director may be appointed permanently.

The scheme of remuneration of these officials is said to be unique in the Indian Companies Act, but it still requires to be made justified considering the size of the company linking it

with the profit made by the company. It neither takes into account the genuine requirements of a large sized company nor it make provision for regular monthly payment as the personnel of the management has to wait under uncertainty until the closing of the year.

The present day need is to ensure the availability of efficient management personnel with vast experience and ability and therefore companies Act should make provision to encourage these persons to get entry in a company with assured regular minimum salary in the capacity of managing or whole time director making the scale of remuneration in tune with the capital base of the company, its turnover or the volume of business, the nature of responsibility and other allied factors; and this should be coupled with a provision for commission based on it in accordance with the basic socio-economic policy of the State.

2.12. Government Control over Companies for prevention of mismanagement :

In order to control and check oppression and mismanagement, over and above the powers conferred under sections 387, 398, 408 and 490 by virtue of the companies amendment Act, 1974, the Central Government is empowered, inter-alia, under the Industries (Development and Regulation) Act to take over complete management of an industrial undertaking and intervene in the day-to-day administration. The Companies Act does not indicate the type of directors to be appointed as such or anything about

their mode of working. Though many experts criticise the utility and validity of the appointment of directors under sections 408 and 409 and see in it the unhealthy control over management, but there are many instances where it proved on the whole, beneficial to the company e.g. the case of National Rayon.

In order to make the provisions of the amendment of 1974 effective, the persons to be appointed must be efficient and they are to be provided with special power to play a vital role in time of crisis.

2.13 Management's Accountability - And disclosure under Indian Companies Act, 1956

The basic concept of Company Law has undergone a radical transformation. A company is to-day treated as a vital nationally important, socio-economic institution.⁷¹

In a complex society with its socio-economic problems, the management of Corporations can not be as simple as it was fifty years ago, and as the structure of commerce and industry grows in complexity the whole concept of management comes under sharper scrutiny. The Corporation today is not regarded as belonging to the shareholders themselves; hence management is not only accountable to the shareholders. Today, corporate reality demands that good corporate management should have regard not only for the shareholders but also for many other interests. Mr. George Goyder, is of the opinion that the obligations of the company to its shareholders, employers, consumers

71. Mukherjee J.P.B. of the Calcutta High Court, in his inaugural speech at the company law seminar held on 30th May, 1984 at Calcutta under the auspices of the Association of Company Secretaries and Executives.

and the community should be stated as one of its fundamental objects in its memorandum of association and protected by special articles, and that every director should be responsible for watching the interest of each of these classes.⁷²

Indian Companies Act, 1956 includes elaborate provisions regarding corporate disclosure including maintenance of books and accounts by companies and auditing of these accounts by competent qualified auditor and submission of a large number of relevant information to the shareholders and to the appropriate Government agencies, viz. Registrars of Companies located in every state and to the public at large.

Disclosures under Companies Act, 1956 are required to be made in prescribed document/returns information. These include :

- i) filing to the office of the Registrar of the Companies who shall maintain those records which any shareholder or member of public can see and make copy of them on payment or on request ;
- ii) sending to the shareholders of the company who as a matter of right, obtain a relevant information from the Company ;
- iii) to be kept by the company for the maintenance of proper books of accounts some of which are open to inspection

72. Goyder George, The Future of Private Enterprise, Basil Blackwell Oxford, 1954.

by the public and all of which are open to inspection by the Registrars of Companies or official authorised to inspect.

Section 220 deals with procedures, rules and imposition of punishment for default in filing with the Registrar, the balance sheet and profit & loss account duly signed by the authorised persons for the preceding year. Section 159-161 deal with the submission to the office of the Registrar of the Companies an elaborate annual return. Sections 592-594 deal with the matters relating to compulsory submission of certain documents and returns by every branch of a foreign company operating in India to the Registrar of Companies, Delhi, with copies to the Registrar of Companies of the state where the company is located. A company must also furnish statement in the Annual Reports and Accounts, the statement regarding its subsidiary companies pursuant to section 212 (3) and 212 (5) of the Companies Act. It will also furnish statement pursuant to section 217 (2A) of the Companies Act, 1956 read with the Companies (particulars of employees) Rules, 1975. Appendix III contains a list of various documents or notices to be filed with the Registrar of Companies. Section 810 must be considered to be the keystone of the disclosure provisions in the Indian Company Law. Under the provision of the section any person can inspect any document kept by the Registrar on payment of prescribed fees.

The documents that are to be filed to the Registrar of the

companies are scattered in different sections of the Companies Act. These could be brought under single section namely section 810 for simplification of the Companies Act. These are to be prepared in a legible language in simple form so as to serve the purpose of different ingredients of the company.

2.14 Rights of shareholders to receive documents as under :

Shareholders of the companies are entitled to receive the following documents or relevant information from the company on prescribed occasions, or from time to time :

- | | | |
|----|---|---------------|
| 1. | Share Certificates | (Section 113) |
| 2. | Notices of general meeting | (Section 171) |
| 3. | Members' resolutions | (Section 188) |
| 4. | Dividend warrants | (Section 207) |
| 5. | Balance sheet etc. | (Section 219) |
| 6. | Documents relating to subsidiary | (Section 212) |
| 7. | Abstract of terms of contracts of managing director | (Section 302) |

Yearly furnishing annual account to the shareholders is too long an interval. A resolution adopted at the All India Shareholders' Conference⁷³ pleaded for the issue of quarterly progress reports to keep shareholders informed about the working of the companies and for stock exchanges to require companies, whose shares were listed, to provide periodical statements.⁷⁴ The Company Law Board is also understood to have decided to introduce the system of quarterly balance sheets in India as

73. Held in Madras, on 16th April, 1965.

74. The Economic Times, the 17th April, 1965.

the Government feels that such a step would give the shareholders a more intimate knowledge of the performance of the company from time to time and also help in enlarging the horizon of investing class. It is also thought that quarterly balance sheets would effect greater efficiency in management as 'covering up' would become more difficult.⁷⁵

Corporate law is constantly moving towards better management practices and the trend is for better and fuller accounts. The thinking of Company Boards is also changing from the old fashioned policy of keeping away as much information as possible from the shareholder so as to prevent the information passing into the hands of rivals. Companies are now entering into healthy competition in the presentation of practical information which is both enlightening as well as attractive.⁷⁶

The fiduciary relationship between the management and its shareholders should be borne in mind by the managerial community and malpractices such as nepotism, diversion of profits into their own pockets through various devices, should be shunned so that shareholders may have confidence in those to whom they have entrusted their surplus funds. Dr. N.K. Sengupta suggests that "Many of the non-essential items in the balance sheet, viz., schedule VI may be dispensed with, making it shorter and more meaningful and reducing the cost of servicing the shareholders. As regards section 212 (document relating to subsidiaries) the present requirement may be substituted by a consolidated balance-

75. The Economic Times, Calcutta, April 17, 1965.

sheet and profit and loss accounts of a group as a whole. This will give a more correct picture to the members of the holding company as to the extent of their interest.⁷⁷

Disclosure through Annual Report is not at all sufficient. From the Annual Reports of seventy five companies reviewed by us it reveals that these contain only those information which are necessary to comply with the legal formalities. They fail to furnish sufficient information regarding composition of the board, big economic group to which the company belongs. The amount of profit earned does not contain how much by manufacturing or trading and how much by deceiving the sub-contractors and small business firms by not paying the dues in time. The interest for that period is not counted and accounted for. Amount of money taken as a loan from financial institutions or shareholding by those institutions is not clearly stated in the Annual Accounts.

For this purpose, though auditing of the Accounts has been made compulsory the auditors are reluctant to report any type of mismanagement of the board of directors. U.K. based industrialist Mr. Swaraj Paul during his interview with a representative of the Economic Times, Calcutta stated at Calcutta on 29.12.84 that "we have to ensure that company auditors do not get away with putting their signatures to audit reports and abdicate their basic responsibility of actual auditing. On the other hand, in Britain once an auditor certified the annual

77. Sengupta N.K. - Changing Patterns of Corporate Management, Vikas Publishing House Pvt. Ltd., New Delhi, 2nd Revised Edition 1983 P - 78.

reports of companies, on that day the responsibility for any mess-up in stock would be on his head."⁷⁸

Regarding cost audit it can be mentioned that very few companies appoint cost auditor though made compulsory for companies engaged in production, processing and mining.

Regarding workers' participation in management, there is no provision in the Companies Act 1956. There should be at least some provisions to make in reality of the promise made by our constitution in this regard and culminate the propriety of it as experimented successfully in different developed countries of the world in order to bring in harmonious relationships between management and workers for the purpose of establishing industrial peace.

The President of India, Mr. Zail Singh, while inaugurating the 27th annual general meeting of the Tea Association of India at Calcutta on the 3rd day of August, 1985 said, the industry should treat workers as its partners and see that workers had a share in the wealth generated. Participative management would help to promote harmonious relations between capital and labour and thereby contribute to the overall prosperity of the country.⁷⁹

2.15 Maintenance of Records by Companies :

Under Companies Act, 1956 there are provisions for the maintenance of 15 types of books and registers by the companies for the purpose of giving access to the shareholders for varieties

78. The interview with Mr. Swaraj Paul on 28.12.1984, reported in the Economic Times, Calcutta, 29.12.84.

79. Op.cit. Calcutta, August 4, 1985.

of information if they require. Sections 202-233A state provisions relating to the maintenance of the books of accounts etc., in accordance with generally accepted accounting methods.

Section 209 requires that every company is to keep at its registered office proper books of accounts.

The accounts maintained by the company must give a true and fair view of the state of affairs of the company and these are to be preserved relating to eight preceding years in good condition. Every director is entitled to inspect the company's books of accounts during business hours. These are also subject to inspection by the Registrar or any other officer authorized by the Central Government. If articles so provide, members of the company are also entitled to inspect books and accounts of the Company. The responsibility for maintenance of books and accounts is vested, according to section 209, on the company's Managing Director or Directors.

There are other provisions under the Companies Act, 1956, regarding full disclosure to auditors. The auditor being an officer of the company may ask for any information necessary for the discharge of his duties (Section 227). He is required to report to the members on the accounts of the company. Auditor's report is to be placed before the company in a general meeting and is open to inspect by the members. The auditor is entitled to attend the Annual General Meetings and to be heard at this meeting on any part of the business concerning the audit. Recent

development of the modern practices has made the auditor responsible not only to check accuracy of accounts but also to go into detailed correctness of the state of affairs of the company.

Registrar of the company can call for special information and explanation under sections 234 and 234A if he is of the opinion that documents required to be submitted to his office is inadequate. There is provision for punishment in default of such information and explanation on the part of the company and its officer. This is really an wide power enjoyed by the Registrar of Companies.

2.16 Disclosure by directors under section 299 for any transaction where a director is interested :

No decision is to be taken in a board's meeting on that particular matter in which a director is interested and his presence is not to be counted for quorum of such a meeting (Section 300). A register is to be maintained which will contain disclosure by the directors regarding the offices he holds in other body corporate (Section 305) and this register is open for inspection by any shareholder (Section 304).

2.17 Social responsibility :

There is no provision under the Companies Act, 1956 regarding the social responsibility to be undertaken by the companies. The old idea that 'the company is for the shareholders' has changed. Now a days the success of a company will not be judged by the amount of profits it made for paying high rate of dividends to the shareholders only. On the contrary, the success depends more on

the responsiveness for social cause. In reality, all the ingredients, viz., shareholders, suppliers, customers, financiers, workers and employees and above all society at large which constitute a company, must be benefitted by the activities of the company. The Companies Act of any country must contain certain provisions as social institution to solve different problems faced by the country. But our companies Act is silent about it. By reviewing seventy five annual reports of companies for the year 1984-85 we have seen that few companies are spending some money for the social cause and most of the companies are silent about it.

In conclusion it can be said that Government should make company laws up-to-date. The company law of India was enacted in 1956 on the model of the British Company Law of 1948. Since then, the British law has gone through complete rewritings - the last one being in 1981, while India is still working with its company law of 1956. Thus Indian laws need complete rehashing.

In the next chapter we shall deal with some recent problems of company management. These are to be immediately solved or at least to be minimized. Unless something is done in this regard, companies will be unable to play their role as important social institutions.

CHAPTER - III

SOME CONTEMPORARY PROBLEMS RELATING
TO COMPANY MANAGEMENT

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3.1 Transferability of Shares And Registration thereof :

a) Indian Contemporary Cases :

Now a vital problem which has become very important to solve immediately is - Can the company management refuse transfer of shares under the Indian Companies Act, 1956 ?

There has been of late of great fury amongst the existing management of some of the well-known established company on account of brisk and speculative purchase of some shares for the acquisition of controlling interest of such companies by new industrial magnets comprising both the resident and non-resident Indians.

Generally this type of purchase of shares is made with funds of companies or trusts or other bodies which they control. The recent instances of such bids to acquire the controlling interest may be found in Indian Tobacco Company's venture to obtain control of Indian cement and general venture in respect of Premier Auto Ltd.

Recently, Hindusthan Sanitary Ware and Industries Ltd. with its registered office in Calcutta was the target of cornering of shares in small lots. Story of corporate manipulation pieced together makes an interesting reading as any thriller.¹

1. The Economic Times, Calcutta, August 18, 1960.

There has also been a state of take-over attempts by groups within India (e.g. ITC/Indian Cements, Goenka/Premier Auto, Thapar/Scindia Steamship etc.). The reasons are many as far as Indian groups are concerned. It is increasingly more difficult to find large new projects which are economically viable and attractive in view of rising capital costs, delays in obtaining governmental clearance and other impediments arising from Government policies and procedures. It is often more profitable to acquire an existing company which is either undervalued in the stock market or is capable of significant improvement with better management. This is not peculiar to India and this trend has also been visible in the USA and elsewhere too (e.g. Conoco/DU Point, Bendix/Allied Chemicals).

b) Contemporary Cases of Non-Resident Indians :

The new concession and dispensations for portfolio investments by non-resident Indians have made it possible and attractive for NRIs to make take-over attempts.

The Government is seized to these phenomenon when section 108A to 108D of the Companies Act, 1956 was incorporated in the Companies Act, 1956 by the Amendment of 1974 with a view to control the acquirement and disposal of shares in bulk. Particularly mention may be made of section 108A which provides that except without the previous permission of the Central Government, no person or group of persons (including firms and bodies corporate) would be allowed to acquire a total quantum of more than 25% of the nominal value of paid up Equity Share capital of a public

company or any private company which is subsidiary of a public company.

But the safeguards envisaged in Section 10BA is far from adequate as under the present circumstances it has been seen that acquiring only 10% equity shares is sufficient to take over management of company provided it can enlist a support of other major shareholders including financial institutions which at present hold a substantial portion of equity shares obtained through conversion of loans and/or general body of small shareholders directly or through proxies.

On 16th August, 1983 the then finance minister disclosed in Rajya Sabha a list of cases where various foreign firms or non-resident Indians have invested monies in shares and debentures of Indian Companies. The total purchase upto the period in question (upto August 16, 1983) came to nearly Rs.23 crores. Alien companies purchased shares worth nearly Rs.22 crores of Reliance Textiles between April 1, 1982 and July 1, 1983. Shares and debentures were purchased from such well known companies as Chougule Steamship (Rs.1,38,000) by Miss Arati P. Shrike of Dubai, Larsen and Tourbro (Rs.52,285), Kelvinator of India (Rs.10,000), Glaxo Laboratories (Rs.18,450), Hindustan Lever (Rs.8,137) all by Mr. P.J. Davis of Abu Dhabi, Wiltech of India (Rs.15,512) by Mr. Hari Pinto and Mrs. S. Pinto of Saudi Arabia; Lohia Machines (Rs.5,300) by Mr. Surendra S. Naik of the U.S.; Crompton Greaves (Rs.3,800), Indian Rayon (Rs.8,200) Tisco all by Mr. M.V. Mehta jointly with Mr. J.V. Mehta both of Ethiopia and I.T.C. Limited (Rs.6,250) by Lock Mohsein Zarivale of Dubai.²

At a cost estimated unofficially of Rs.28 crores, Dunlop Holdings PLC of the U.K. announced that it had sold 9.8% of their share in Dunlop India to a non-resident Indian Mr. Chhabria and a resident Indian Mr. Sanjib Goenka, youngest son of R.P. Goenka in equal share of 4.9% each. Very recently Mr. Chhabria bought Sine Derby's holding in Shaw Wallace 38.7 per cent of the shares, which is the largest block. Though, in many cases, the investments made by the non-resident Indians are purely for investment purposes, yet in a majority of cases the main motivation is to acquire control over the management in view of the prestige as well as the many tangible advantages which flow from the right of management as a result of our regulatory policies; this is possibly also the main motivation for take-over attempts by Indian groups. The fact that the promoter's share is low in many cases provides the opportunity for predators.

So far as the take-over is concerned, the nationality of the bidder is of little consequence except the tax concessions available to NRI investors giving some advantage deemed to be unfair over the Indian promoters. In other words, it is necessary to consider and evolve guidelines for take-overs by all bidders irrespective of whether they are N.R.I. or resident Indians, with special attention on the protection of small shareholders.

As regards the N.R.I. the incentives in respect of taxation, irrespective of sources of income etc. as declared in the year 1982 has been further liberalised in 1983, considering the fact that the Government of India would be benefitted by pouring foreign

exchange money in the reserves when India is suffering from precarious foreign exchange crises. The incentives provide that they can purchase shares of company quoted on stock exchange subject to specified limit of 1 lakh worth of shares at their face value or 1% of the paid up Equity Capital of the company whichever is lower with repatriation rights. Without re-patriation rights, the purchase of shares in the existing company is unlimited. Similar facilities for the investment in non-resident (external accounts) and in Indian Companies were extended to Foreign Companies, partnership firms, trusts, societies and corporate bodies owned to the extent of at least 60% by non-resident Indian origin.

Recent two cases - one Escorts/DCM - VS - LIC & others regarding purchase of shares of Escorts/DCM by Caparo group of companies, headed by Suresh Paul and another Shaw Wallace - VS - Chhabria regarding purchase of 38.7% shares of Shaw Wallace by Mr. Chhabria have become important issues of debate by the press. The later is under subjudice. Bombay High Court awarded judgement in the 1st. case in favour of Mr. H.P. Nanda Chairman cum Managing Director and his group. Against this judgement appeal has been made in the Supreme Court. The final verdict of the Supreme Court has been in favour of L.I.C. & others. As regards the 2nd case, Chhabria has been told by the Company Law Board to prove bonafides in Shaw Wallace deal. After hearing the arguments of Mr. Chhabria, Shaw Wallace will be allowed to counter them. After that both the parties will be called by the Company Law Board to decide the issue.

Company Law Board also ordered an investigation under section 247 of the Companies Act to determine the bonafides of the real owners of the shares. The Company Law Board, in the meantime, issued an interim order directing the said company to allow the extension of present management for a period of 5 years on the ground of public interest with limited powers. Existing Indian Management whose share-holding is proportionately small and who may not cope with the non-resident securing substantial share holding in the companies have naturally been frightened.

Considering the above fact, the Government has decided that under portfolio investment scheme, investment by expatriates and overseas corporate bodies owned to the extent to at least 60% by such non-resident, without the prior permission of Reserve Bank of India, would be subject to overall ceiling and 5% of the paid up capital on any company and the 5% of the total issue of each series of convertible debentures of the company already issued. The, then Finance Minister also assured that financial institution controlling the substantial portion of share capital of big companies would support the existing management having a good record of efficiency. "But these modifications of policies and assurances are not without loop-holes which may be exploited by these powerful and ambitious adventurers. Further while the Finance Minister's declaration would go back on the Government's earlier assurance to the non-resident investor, who would now be naturally shy in the matter of further investment. It is apprehended that a great deal of confusion and the litigation would result particularly in

the area of registration of transfer of shares by the companies and also for want of any clear cut pragmatic guidelines for determining the quantum of natural investment by the non-resident in the case of any particular company. It is understood that the Reserve Bank of India has been entrusted to keep a watch on the quantum of portfolio investment in the company by the non-resident."³

3.2 Legal aspect of the problem under Companies Act, 1956 :

An important feature of shares is their transferability, and section 82 empowers every shareholder to transfer his shares in the manner prescribed by the Act and articles of the company. The right of a shareholder to transfer his shares in a company 'is absolute as it is inherent in the ownership of the shares' subject only to the provisions of the Act and restrictions, if any, laid down in the Articles. In the absence of restrictions in the Articles, a shareholder has unfettered right to transfer his shares to any person even to a pauper, for the purpose of avoiding liability, provided that the transfer is an absolute one and the transfer is without retaining any interest in the share.

Where a company refuses to register a transfer, section 111(2) requires it to send a notice of refusal to the transferor and the transferee within two months from the date on which the instrument of transfer was delivered to the company. Any party dissatisfied with the refusal may appeal to the Central Government within 2 months of receiving the refusal notice where

3. Prof. Bhakreorty B.K., Article 'Can the company management refuse transfer of shares under the Indian Companies Act, 1956, EIRE NEWS of the Institute of cost and works Accountant of India, June 1984.

the company is a public company or its subsidiary. The Government may, after giving opportunity to the transferee, transferor and the company to make their representations, order the company to register the transfer within 10 days of the order, if it is satisfied that the refusal was not justified. An aggrieved party may also apply to the court under section 155 for rectification of the Register of members.

Companies Amendment 1974 inserted new section 108A to 108H imposing restrictions on the transfer or acquisition of shares by groups, firms etc., under the same management and making Central Government's prior approval an essential condition in certain circumstances. Central Government can intervene where it is satisfied that the transfer would change the composition of the Board of Directors in a manner which would be prejudicial to the interests of the company or to the public interest. Where shares proposed to be transferred are held in a company engaged in any industry specified in schedule XIII of the Act (more or less covering all the priority industries enumerated in schedule A & B of the Industrial Policy Resolution, 1956) the Central Government may acquire the share or transfer them to a Government Corporation.

The new sections 187C and 187D provide for declaration to be made to the company by a person holding or not holding beneficial interest in any share and also indicating any change that may take place. Central Government is empowered to appoint inspectors to investigate into beneficial ownership of shares in certain cases.

Therefore it is evident that transfer of share in the present context takes place where registered shareholders transfer by sale or otherwise his shares to another person voluntarily. It can not have any application voluntary or foretell such as Court Auction sale or sale of forfeited shares.⁴

A shareholder has an inherent right to transfer his share to anybody, he likes. Absolute restriction on the right of transfer content in the article shall be ultra-vires. But the Board of Directors may refuse to register transfer of shares on bonafides and by prescribing reasonable ground only.

Usually the Articles of the Company empower the Directors to reject transfer of shares on the following grounds :

- a) where partly paid-up shares are to be transferred to a partner or a minor.
- b) Where the transferee is a person of unsound mind.
- c) Where the call is unpaid against the shares to be transferred.
- d) Where the company has a lien on the shares indebted to it.
- e) Where the stated consideration is less than real consideration. The Director may insist on proper stamp duty on the market value of the shares.
- f) Where the instrument of transfer content some apparent defects e.g. not signed or stamped properly.

4. Unity Co. Pvt. Ltd. - vs - Punda Diamond Sugar Mills, 1920. Company Law Journal 184, P-106.

The management of the company can not refuse transfer of shares effected by a Court-Sale inspite of power given to them by Articles.

So long as the Directors act within the scope of the Articles, their decision can not be challenged except on the ground of bad faith. Where it is proved that they have not exercised the power of refusal in good faith for benefit of the company, the court may set aside that decision of the Directors and the order of the registration of transferee's name as a member of the company.⁵

The transferee will also be entitled to damages which would be equal to the full value in the market price of shares between the date of refusal and the date of court's decision. Special rights of appeal to the Central Government under section 111 of the Companies Act, 1956, must be lodged within 2 months of either of notice of refusal or of the failure to register the transfer within the specified period of 2 months as the case may be together with a fee as prescribed by the Government not exceeding Rs.50/-. After receiving the petition the Central Government shall issue notices to the company, transferor, transferee in order to provide them an opportunity to make their representation on the consideration of the whole case, if the refusal does not seem to be justified, the Central Government will issue an order to the company to register the transfer which must be given effect within ten days on receipt of the order and a defaulter is fined and penalties are imposed both on the company and the authorized

5. *Sehaj Auto Ltd. - VE - N.K. Parodia and others (1971)*
Company cases, Supreme Court.

representative of the company upto Rs.1000/- and with a further fine extending to Rs.100/- for everyday during which default continued.

The mode and form of transfer is provided in section 108 to 110 and 114(3) of the Act.

Therefore, it is evident that by virtue on this special rights of appeal, free transferability of shares of public companies is almost secured by the Companies Act.

Remedial measures which can be adopted by the transferee if his appeal fails :

In case his appeal fails by the action of the Company Law Board (Central Government) in order to enforce his rights relating to the shares or if the transferee so chooses, he may sue the transferor for registration of the consideration under section 65 of Indian Contract Act. Where transfer of shares is refused the transferor continued to be the legal owner thereof so far as the company is concerned. The remedy of aggrieved person is not limited to the application, he has also the remedy to file a suit for registering his name. The remedy under section 111 is an additional, speedy legal remedy. The object of providing an early and quick remedy is to reduce the possibility of any arbitrary action on the part of the Directors. Section 111 does not provide for a second appeal. Where the appeal is against refusal by the company to transfer or transmission, the Central Government may require the company to disclose the reasons for such refusal and if the company fails to do so, the Central Government may

presume that if such disclosure was made, it would have gone against the company. The power exercised by the Central Government under this section being judicial, any finding of the fact will not be re-opened by the Supreme Court.⁶

Principles laid down by the Supreme Court of India :

The Supreme Court has laid down the following principles with reference to exercise the power of refusal :

- i) Discretion does not mean a bare affirmation or negation of proposal. Discretion implies just and proper consideration of the proposal in facts and circumstances of the case. In the exercise of that discretion, the Directors will act for the permanent interest of the Company and for the general interest of the shareholders since the Directors are in a judiciary position both towards company and towards every share-holders.
- ii) The Court will assume that the Directors acted reasonably and bonafidely and those who alleged to the contrary would prove and establish the same by evidence. Where the directors give reasons, the court would consider whether they were legitimate and whether the directors proceeded in the right or wrong principle.
- iii) Where the Directors have uncontrolled and absolute discretion in regard to declaring registration of transfer of shares, the court will consider if the reasons are

6. **Amalgamated Electricity Ltd. - VS - Eorabjee Bhatnag,**
Bombay High Court, 1933.

legitimate, and if the Directors have acted on wrong principle or for corrupt motive. If the court found that the Directors gave reasons which were legitimate, the court would not overrule the decision merely on the ground that the court would not have come to the same conclusion.

- iv) The discretion of the Directors is to be tested as to the opinion of fair and sensible men in the interest of the company.
- v) In the absence of evidence on circumstances to the contrary, the power will be presumed to have been exercised properly.⁷

Under the present Companies Act, there is no power of the existing management to register the shares sold through the Stock Exchange and purchase by any body, Indian or non-resident Indian origin or through his agent.

As regards purchase of shares by an Indian or his agent the case is clear. But as regards the non-resident Indian origin the following things are important to be considered :

1. The Government of India invited non-residents to come forward to purchase shares of Indian Companies within a limitation of the ceiling of 5% of the paid-up capital of any company and 5% of the total issue of each series of convertible debentures of the Company already issued.

7. Charles Fort Insurance Ltd. - VS - Ananda 1963 AIR-240.

2. The Government assured that the financial institution, controlling a substantial portion of share capital of the big companies, would support existing management having a good report of efficiency. Moreover, the Government is empowered to direct not to give effect to a transfer if Government considers that due to some transfer, a change in the controlling nature in the company is likely to take place and such change will be prejudicial to the existing interest of the company or public.

The Government may make order to the effect that :

- a) no such transfer would be registered by the Company,
- b) even if such transfer has already been done, the transferee will not be allowed to exercise any voting right and the status of the company to be maintained.

Legal aspect under Securities Contracts (Regulations) Act, 1956 :

On May 18, 1985, the Lok Sabha passed the securities contracts (Regulation) Amendment Bill 1985, which seeks to ensure 'unrestricted transferability' and 'free marketability' of securities of Public Limited Companies. The Bill seeks to incorporate a new provision of Section 22A in the Act for the purpose.

At present, sections 82 and 111 of the Companies Act, 1956, permit board of directors of companies to assume powers under the articles of association to refuse registration of transfer of securities without assigning any reason. Though there is a provision for appeal against such a refusal to the Company Law

Board, it places an undue burden on a aggrieved person who often happens to be a small investor. The present position is not conducive to the free marketability of listed securities and healthy growth of capital market. Unrestricted transferability is particularly necessary for securities of public limited companies which are listed on the stock exchanges.

According to new Amendment, subject to the provisions (of Section 22(L)) of the Securities (Regulation) Amendment Act, 1985, securities of companies shall be freely transferable.

Section 22(3) states notwithstanding anything contained in its articles or in section 82 or section 111 of the Companies Act 1956, but subject to the other provisions of this section, a company may refuse to register the transfer of any of its securities in the name of the transferee on anyone or more of the following grounds and on no other ground, namely :-

- A) That the instrument of transfer is not proper or has not been duly stamped and executed or that the certificate relating to security has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with ;
- B) That the transfer of the security is in contravention of any law;
- C) That the transfer of security is likely to result in such change in the composition of the board of directors as would be prejudicial to the interests of the company or the public;

D) That the transfer of security is prohibited by any order or of any court, tribunal or other authority under any law for the time being in force.

In case a company wishes to refuse transfer of securities on the ground that any requirement under law has not been complied with, it has to notify the transferor and the transferee of the same within two months from the lodgement of the instrument of transfer. In other cases, the company will have to make a reference to the Company Law Board and act accordingly to the directions of the board.

The bill also confers powers on the Company Law Board to treat such as reference as appeal under section 111 of the Companies Act, 1956. According to the provisions of the bill, the Company Law Board is required to give notice to the Company, the transferor and the transferee of securities for a hearing and to issue directions allowing or not allowing the refusal to the registration of transfer.

Once the Company Law Board comes to the conclusion that the transfer should be put through, the company must give effect to the direction within 10 days of the receipt of the order. If it comes to the conclusion that the transfer need not be registered the company must inform the transferor and transferee as such within 10 days.

If there is any default in complying with the provisions of this section, the company and every officer would be punishable

with fine which may extend to Rs.5000/- and if any statement is made when making the reference which is incorrect, the person making the statement is liable to punishment which may extend to 3 years imprisonment and also to fine. This last penalty would presumably apply not only to officer of the company but also the transferor and transferee.

But it is evident from the fact that far from achieving its objective, the amendment will create problems for both the company and the shareholders. The Law Board is not equipped to adjudicate on all the matters that will be referred to it. With every good intention, it would not be able to do so due to inadequacy of staff. Though it is expected to ease the transferability of shares, yet to some authorities, the securities contracts (Regulation) Amendment Act, 1985 will be remedy worse than disease.

3.3 Effect on small investors :

After the introduction of Section 208(1A) of the Companies Act, 1956, restricting the currency and validity of the blank transfer form, innumerable problems have cropped up in the stock exchange operations. Out-dated transfer forms have been the nightmare of share brokers and the scourge of investors. This restriction on the currency of the transfer form was intended to limit the operations of sharp operators and shrewd speculators, to prevent bonami transactions and concealment of speculative profits on the stock exchange. In other words, the restriction was intended to limit the operations of big investors and

speculators, but the effect has been just the opposite. Contrary to expectations, this section has done more harm than good to the stock exchange operations, putting the small investors in great difficulty. According to one estimate shares worth more than Rs.30 crores are locked up or thrown out of circulation on account of outdated transfer forms and what is more, 90% of these shares belong to small investors, who almost lost their capital.

3.4 How to solve :

As a remedial measure to solve the problem of transfer of share and its registration Mr. C.C. Somaish, Secretary, Union Ministry of Law and Justice and Company affairs, on October 20, 1984, Calcutta, suggested that powers to intervene in the matter of refusal to register transfer of shares should be vested in a single authority.

Referring to present provisions enabling High Court and the Company Law Board to intervene in suitable cases, Mr. Somaish pointed out that there was also a certain amount of overlapping between the provisions of section 155 and 111, dealing respectively with powers of the court and the board. He therefore, suggested that the provisions of the two sections be combined into a single section. In order to protect investors' interests, he felt, certain provisions of the Companies Act giving arbitrary powers of company's board of directors to refuse registration of shares transferred should be amended. Afterall, free marketability of shares and debentures is the most important factor which encourages public to invest in new issues." He observed, that

any restriction on transfer in lots of less than the stipulated minimum or, in certain cases, restriction on the transfer of a single share might act harshly on shareholders. He also stressed the need for protecting interests of small unorganised shareholders of taken over Companies.⁸

Mr. M.S. Patvardhan in his article "Ownership & Management - Nomination of Company directors"⁹ suggested the following measures as solution to the problem.

The voluntary take-over code which prevails in London provides an illustrative model for us to consider, but it will need modification to suit Indian realities. It is suggested that the following propositions in broad outline might meet the case. There should be a threshold for shareholding in percentage terms where the bidder should be required to make a broad based offer to the totality of shareholders. This will ensure fairness in particular, in small shareholders. For NRI investors, he suggested that this limit should be placed at say, 5 per cent of the voting stock, a limit presently set by Government. As far as Indian bidders are concerned (whether individual or corporate entities), a threshold of 10% is proposed by him. Where an NRI or Indian bidder wishes to acquire more than the threshold percentage of shares in any company (5 and 10 per cent respectively), he should be required to make a public offer in a standardised form to all shareholders. It would not be practicable to say that he must accept all the shares that may be offered, since in theory this

8. The Economic Times, Calcutta, October 21, 1984.

9. Ownership and Management - nomination of company directors by Mr. M.S. Patvardhan. The Eco-Times, Calcutta, January 8, 1983.

would amount to 90-95 per cent of the shareholding, if the terms offered are attractive, this would virtually rule out all take-over attempts for large companies.

These principles will preclude private deals between holders of shares, whether institutional, and potential buyers of lots exceeding 10 per cent of the total shareholding of a company, assuming that the buyer had no holding to stand with (principles relating to interconnections between different shareholders and their relevance to the take-over question will need to be defined).

Even with the proportion set out here, it is conceivable that a bidder can acquire a shareholding greater than that of the promoter who happens to be responsible for the management of the company, since shareholding under the letters control may be less than 10 per cent in some large companies. Under these circumstances the role of the institutions can often be decisive where their shareholding is large, even if not a controlling one. There can, of course, be assurance in perpetuity that the existing management with a good track record must be left in command with institutional support, particularly where the heirs of the promoter have to prove their ability and experience. Nevertheless, the concept of good management should not be arbitrarily disturbed by the intervention of the institutions in a good one.

Suggestion made by Mr. M.S. Patwardhan seems to be impractical because it will be difficult to translate the scheme into practice. On the contrary, he does ^{not} give any practical suggestions

for solving the problems arise for refusal by the existing management to register transfer. In this respect we think that the suggestion given by Mr. C.G. Somaiyah, Secretary, Union Ministry of Law and Justice and company affairs to combine the powers given under section 155 to the court and under section 111 to the company law board, in order to make single final authority to decide the problem of refusal to register transfer of share by honest bidders whether private or corporate body, is more practical at least regarding registration of shares. In the light of this increasing volume of take-over bids, it is necessary to examine the socio-economic significance of this type of operation and the economic background that gives rise to it. Sometimes the take-over bids are made through the directors of the company while in other cases the directors are by-passed and a struggle ensues between the Board and the bidder. Sometime it is made through peaceful negotiations with the approval of all those immediately concerned as well as of public opinion. It is the more spectacular type of bid made direct to shareholders and carried through in spite of violent opposition which is controversial. When the take-over bid is made without the approval of the directors, the bidder may purchase the shares through the stock exchange, obtaining sufficient number of shares to constitute legal control so as to be in a position to remove the existing directors and replace them with the nominees of the bidder. Even where the bidder does not succeed in getting a sufficient majority of the shares the existing Board could be unseated by passing an ordinary resolution particularly where the other shareholders are widely dispersed. In such a case it may be possible for the Board to resist its

displacement and the existing management to perpetuate itself as it would have control over the machinery for collecting proxies which it may succeed in doing from the shareholdings not taken over by the bidder.¹⁰

The take-over bidder today comes on the scene because he wishes to put the assets of the business, he wants acquire to better use. If successful, his operations may contribute towards greater efficiency of management, not just internal management but the employment of all the factors of production, including management in that particular industry.¹¹

However in India, the Report of the Vivian Bose Commission of Inquiry into the administration of the Dalais Jain Companies¹² had recommended the need for checking malpractices in relation to take-over offers and acquisition of shares of dissenting shareholders under the scheme or contract approved by the majority. In order to prevent such malpractices it was necessary to take effective measures, on the line suggested in the said report, to ensure that adequate information is required to be disclosed in a take-over offer to the shareholders so that they could judge for themselves whether or not to accept the offer. The Companies (Amendment) Act 1955¹³ has accordingly been amended.

Similar suggestions have also been made by Sachar Committee (1978).¹⁴

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10. Gower L.C.B. Modern Company Law 2nd edn. Steven & Sons Ltd. London 1963, P-489.
11. Madon, D.P. Khorshed - Management of Corporations, Progressive Corporation Pvt. Ltd., Bombay 1, 1st published 1971 P-175.
12. Vide report of the Vivian Bose Commission of Inquiry, Paras 37 to 43.
13. Act No.31 of 1955.
14. Report of the High-Powered Expert Committee on Companies and MTP Acts, August, 1978 Para 7.21 P-57.

We also think the stock exchange should take vital role in solving the issue under consideration.

A company should not exercise discretionary power on the registration issue if the document is in order. The committee headed by Mr. G.S. Patel stated that a company can not refuse registration of shares without assigning any reasons unless it has obtained clearance from the Company Law Board. For this purpose, the Company Law Board should lay down clear guidelines stating the circumstances in which a company may exercise such right under the Articles of Association. It is also suggested that if the Company Law Board allows any rejection, the company should intimate the ground to the concerned stock exchange. The Calcutta Stock Exchange also suggested the abolition of Section 108 of the Companies Act relating to transfer of deeds of facilitate delivery and settlement of transactions.¹⁵

Our recommendations :

Simplification of the procedures of transferability should be worked out. We should remember that so long there is scope to fulfil the personal gain by capturing the managerial power, the problem of take-over bids could not be solved permanently. Uncertainty of the small investors for non-registration of their shares could not be solved. The problems are of two sided as by imposing control over unfair bids of take-over the small investors are harassed. On the contrary, if there is no restriction of transferability of shares, the small investors are saved but unfair take-over bids are encouraged. These can be solved by

15. The Economic Times, Calcutta, October 31, 1964.

restructuring the top management of the company. In our new format of company management i.e. Multiple Two-Tier Board (Chapter VI) the board members are expected not to seek personal benefit. They are expected to do benefit for the society at large and uphold the ideas of trusteeship as enunciated by Mahatma Gandhi. The new structure of management will act as a balancing force for fulfilling public interest and thus the problem of transferability and registration of shares will be solved permanently.

As regards non-resident Indians, it is to be remembered that India is in urgent need of foreign exchange and NRIs are to be encouraged who have funds to the order of about Rs.20,000 crores a good part of which can be a profitable investment in India's development. Available statistics reveal that the average monthly remittances jumped from Rs.47 crores in 1974 to Rs.231 crores in 1979 and Rs.370 crores in 1980-81. Thus the annual figure in 1980-81 worked out of Rs.4500 crores which constitutes about half of the country's annual export earnings. The flow of investment (monthly) under this source touched Rs.850 crores in 1984-85.¹⁶

NRIs have a genuine interest in the growth of the Indian economy. In order to exploit the full potential of inviting NRIs capital into India the following recommendation could be made :-

- 1) NRIs are to be allowed such portion of shares in the capital by which they can not dethrone the existing

¹⁶. Op.cit. Calcutta, June 18, 1984.

management. A definite long term policy is to be made regarding NRI investment.

2. A business like task-force is to be appointed comprising of NRIs and professional bureaucrats to indentify the real potential of NRI investment in the country.
3. An effective monitoring system is to be developed to ensure that the needs of NRI are met and problems in the way of investment by them are solved.
4. False promises are not be made by Government authorities as it can have a chain reaction on the noted efforts. Only the truth is to be communicated to the NRIs through proper media.
5. NRIs are to be treated as partners by the Indian business magnates in the progress and growth of the country. An on-going panel of advisers/consultants is to maintained and they are to be paid by international standards.
6. NRIs have vast resources that are available to India both in terms of technical and financial assistance. They can really help in the socio-economic development of India. They know their country of origin and have the capability of adjusting to the Indian environment. However, the infrastructure of business is to be established by the Government, favourable to investment. They are to be allowed favourable conditions of return on investment in comparison with other countries and relief in taxation

barriers and procedural complexities. Indian business magnets should not be frightened for no reason, on the contrary, they should create a friendly relation with non-resident Indians in order to share their responsibilities of nation building with financial and technological assistance from NRIs.

As financial institutions hold substantial number of shares in most of the big companies, they can play an important role in supporting or by discouraging the take-over bids both by resident and non-resident Indians as well as for transferability of shares from the transferor to the transferee considering the issue from the point of view of national interest. The Government may make order to the effect that :

- a) no such transfer would be registered by the company;
- b) even if such transfer has already been done the transferee will not be allowed to exercise any voting right and the status of the company maintained. Lastly
- c) Reserve Bank of India has to be entrusted with to keep watch on the quantum of portfolio investment in the company by the non-resident Indians.

PART - II

3.5 Workers' participation in company management : Need to introduce in India :

In this part we have discussed the utility of the workers' participation in management which is not only needed for maintaining industrial peace, but also assist for better management of the company. Though workers' participation in management has already been adopted in different industrial developed countries with successful results, this method has not yet been experimented in private sector of India. After independence, the need for workers' participation in management was felt by the businessmen, politicians and trade union organizations. As a result, the constitution of India in its directive principles on State Policy has directed in Article 43A that "The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishment or other organisations engaged in any industry." Earlier the second five year plan document has also laid down, "a socialist society is built not solely on monetary incentives but on ideas of service to society and willingness on the part of the latter to recognise such services." But it is difficult to understand why there is no provision in Companies Act, 1956 and several amendments thereafter, about the workers' participation in management.

Discussions have been made in this chapter, the co-ordination undertaken in different countries, the pros and cons of the principle of co-ordination, the justifiable recommendations of the High Powered Expert Committee on Companies and MTP Act, under the chairmanship

of Justice Rajinder Sachar, August, 1978. We are of the opinion that all the obstacles in the way of its implementation could be overcome by sincere efforts by the Government, Companies and union organisation.

We have given greater stress in this matter because we believe that in the new structure of company management, the representatives of the working force shall take a vital role to play for the proper management of the company. The recognition that the workers, should be associated in a meaningful way in the running of the institutions in which they are working is not only in consonance with the modern thought throughout the world but also urgently needed to shape the constitutional principle in practice through the statute. It is also necessary from the point of view of humanitarian aspect. The labour force attached to an enterprise is investing the valuable labour for the benefit of the organisation which is not at all less important than the capital investment. If they are made responsible for the management, by their participation in decision making as well as in share capital, then only they will feel the organisation in which they are working as their own and exert their full energy, efficiency, dexterity and faculty for the organisation. It will not only bring industrial peace but also render immense help for increasing the production and productivity. Thus, the company would be benefited directly and whole economy of the nation would be indirectly march towards prosperity and development.

3.8 Form of Workers' participation in management :

A great deal of attention has been drawn in recent years by all sections of the public to the question of workers' participation in the management in which they work. Some attitudes to participation are admirably summarised by Mc Gregor, who observes "participation is one of the most misunderstood ideas that have emerged from the field of human relations. It is praised by some, condemned by others. The differences in point of view between its proponents and its critics are about as great as those between the leaders of iron curtain countries and those of the Free World when they use the term 'democracy'.¹⁷

Some proponents think it will eliminate industrial unrest and solve management problems, some think it as managerial abdication, some consider it as useful item in the bag of managerial tricks and lastly some think that manager may make successful use of it.

Mc Gregor proceeds to point out that all these approaches as - incorrectly in his view are concerned with participation of group and not of individuals, also, they do not regard participation as having any relationship to delegation, whereas he contends that "the effective use of participation is a consequence of managerial point of view which includes confidence in the potentialities of subordinates - and a desire to avoid some of the negative consequences of emphasis on personal authority."¹⁸

17. Mc Gregor D. The Human side of Enterprise, Mc - Graw Hill (1960) P 124-125.

18. Ibid Mc Gregor PP 126-127.

In recent years another point has gained importance. It is the feasibility of worker director. This idea has been pronounced because of the German experience with the two-tier board system, in which there are workers' representatives on the supervisory board. The 'fifth director' of the common market commission which advocates such a structure and specified that at least "one third of the members of the supervisory organ shall be appointed by the workers or their representatives or upon proposal by the workers or their representatives."¹⁹

Likert states that "in the process of decision making the spectrum may cover the following :

no information is given to employees, all tasks are highly prescriptive,

limited information is given to explain the background for highly prescriptive tasks,

a fair amount of information is given, but tasks remain prescriptive,

information is provided and employees are asked to comment on proposed action,

information and problems are defined and employees are asked to propose solutions for management to choose from them,

problems are solved jointly by management and employees within constraints imposed by both sides.

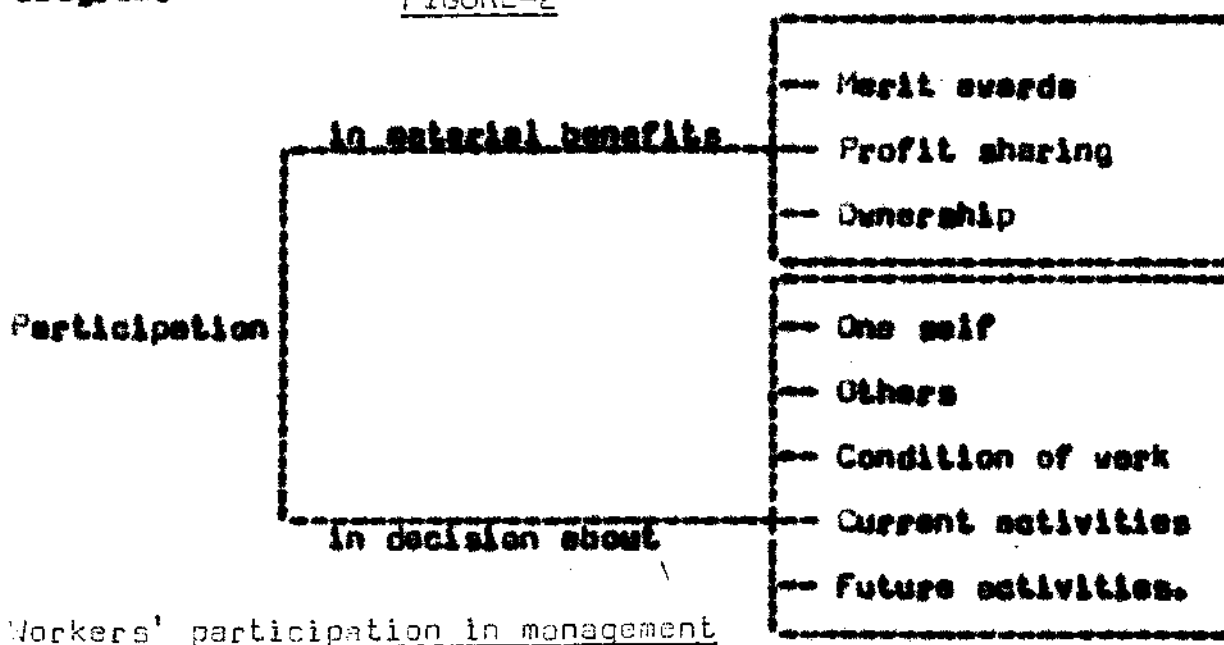
19. Commission of the European Communities (1972) Proposal for a fifth director on the structure of societies anonymes Bulletin of the European Committee, Supplement 10/72 Article - 4.

problems are jointly defined, thereby involving employee participation in setting the objectives of the enterprise and questioning constraints,

solutions allow a fair measure of decentralized decisions and local personalistic control",²⁰

Participation by the workers in the management may be considered along with separate dimensions as stated by Samuel Eilon in his "Aspects of Management" through the following diagram.²¹

FIGURE-2



Workers' participation in management

Participation involves material benefits on one hand and power sharing in decision making on the other. Both the points are to be provided in the legislation for workers' participation in order to make it meaningful both for workers as well as organisation.

20. Likert R.C. New Patterns of Management, McGraw Hill, New York (1961) P-243.

3.7 Co-Determination and Worker-Directors :

Workers' co-determination may be defined in the following words :

"It means a right for employees or their representatives, to share in the ultimate authority within a firm, that which appoints and discusses the firm's chief executives and calls them to account. It further includes, the case where employee representatives share in the firm's ultimate power atleast on equal footing with those who supply the firm's capital - with or without the further presence of representatives of consumers and the public interest."²²

A 'director' to be appointed for his inherent qualities of professional abilities, experience and contribution to the firm as a whole, and not to represent specific sectional interest. The question whether the worker director will look after the sectional interest or interest of the firm is very important. Sverre Thon argues strongly : "The main objection to legal co-determination is the split loyalty that the representatives of the employees must become subject to as members of the board of directors. They are elected as workers' representatives and should answer to them for their behaviour on the board."²³

There are many who are of the opinion that the conflict of interest is inevitable as short term benefits and gains to employees can often be obtained at the expense of benefits to other interested parties (the customers, the suppliers, the

22. Industrial Education and Research Foundation (1970), Worker Representation on Company Boards, discussion Paper No.2 P-5.

23. Ibid. P-15.

shareholders, the environmental amenities). But all these arguments against workers-director do not prove vital as on the German experience of two-tier board shows that instead of diversity it makes unity amongst diverse interests for smooth working of the board.

3.8 Origin and Development of the Co-Determination Idea and Co-determination in different countries :

Basic idea of co-determination is almost as old as the workers' movement although it has developed in stages. Industrialisation has completely transformed the whole economic structure. It has decisively affected social environment and indeed society itself. In West Germany, the movement for co-determination has been very strong.

Co-determination in different countries have been expected not only in West Germany but also in U.S.A., UK, Japan and U.S.S.R. although each has its own features :

In West Germany the personnel representation law of 1954 provides for representation in the work-people in public services, though with qualifications taking due account of the fact that the employer in this case is a body whose policy is decided by the elected representative of the people.²⁴ In the United States, co-determination is not known as such. In his famous book 'The visible Hand - The Managerial Revolution in American Business, Prof. Alfred D. Chandler, Jr. observes, "until the 1930s, these middle managers were rarely forced to consider seriously the demands of labour unions to represent the workers in making such

24. San S.C. The New Frontiers of Company Law : Eastern Law House, Calcutta, 1st Edn. 1971, P-288.

decision. Even with the strong support of the Roosevelt administration, the American Federation of labour was unable to leave the challenge of organising the mass production industries. Only in 1936, after the creation of the committee for industrial organisation began to be extensively unionized only then did the managers of large enterprises in the automobile, machinery, electrical, chemical, rubber, glass and primary metals industries began to share their decisions with representatives of their working forces. Wartley Act of 1947 the retained control over hiring, a prerogative that has never been seriously challenged since that time the unions have made few determined efforts to acquire more of management prerogative."²⁵

Co-determination in Great Britain :

Co-determination in Great Britain, Canada, France, Holland and Belgium is in similar line of United States. But labour Government in Great Britain has been taking more of a socialistic posture. Government nominee in the board of directors of companies is far more common than United States and to that extent there is a co-determination by participation between representative of the shareholders and the representative of the states which in term means representative of the workers' also.

In this respect it is interesting to mention the position of Japan. In a fine article in the Encyclopaedia Britannica Inc. Mr. Frank Gibney states "the most conspicuous characteristic of Japanese capitalism is its belief that long term investment in people - which includes training them, partly educating them,

25. Chandler Alfred D. Jr. The visible Hand - The Managerial Revolution in American Business. The Belknap Press of Harvard University Press, 1977. P-483.

and developing them within a company is fully as important as long term investment in plant. They made the company a village. And so doing not only have they given the workers a sense of belonging; they have also given the company a constituency that speaks up for it; its own workers. A variety of practices - a system of life time employment used by Japan's major corporations.²⁶

Co-determination in U.S.S.R. :

Participation of the masses, that is, of the non-managerial workers, in the administration of industry is a key soviet theoretic doctrine. Mass participation in industry takes four forms. One of these is supervision by the workers in a firm over the work of the management and their strict criticism of all its deficiencies. A second is the offering of suggestions, particularly through employee conferences. A third is the direct performance of administrative tasks by workers, who do this in addition to their regular work. Lastly is the movement upward of the rank and file workers into posts in management. Mass participation is not an experiment tried duly in times of prosperity but is most put to use in times of difficulty.²⁷

"An industrial enterprise in U.S.S.R." is entitled to draw up long term and annual plans for all aspects of its activity. These plans are drawn up in accordance with the control figures and with the wide participation of the staff.²⁸

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26. Gibney Frank Article "Japan's Economic Secret" Encyclopaedia Britannica Inc. Chicago, Edn. 1983.
27. V.V. Giri's Labour problems in Indian industry published in 1968 as quoted by S.C. Sen in The New Frontiers of Company Law - Eastern Law House, Calcutta, Edn. 1977, P-292.
28. Yefimov A. Soviet Industry Progress Publishers Moscow, 1988, P-231.

Co-determination in India : upto 1983, co-determination has not known in India. According to Dr. V.V. Giri, the main causes of the failure (various) of measures in India are that there is no change in the attitude of the employers and the workers. They do not believe that they have a community of interest in the industry, which has to be run not only for the mutual benefit but also for the consumer. Steps must, therefore be taken to secure a change in their attitude.²⁹

3.9 The position of worker in Company Law Vis-a-vis workers participation in Management :

Constitution of India in its Directive principles of State Policy in Article 43A states in favour of workers' participation.

But as a rule it may be stated that the worker is hardly recognised in company law. The position may appear to be strange and illogical but it is a fact that orthodox approach to company law suffers from a strange illusion. In the matter of a company only the shareholders or the creditors having a financial claim are the only persons concerned or interested and the Court will not take notice of other persons who do not come within any of these above categories.³⁰

In this respect it may be mentioned that the opinion of the judiciary about the right of workers of corporate enterprise is also changing in this country based on the principles of natural justice and emerging social values as was evident from the famous Supreme Court Judgement in the case of National Textile Workers' Union V. Ranganatha Industry Private Limited

29. V.V. Giri, Labour Problems in Indian Industry Published in the 1988. Ref. by S.C.Sen, The New Frontiers of Co.Law, P-293.

30. Re-Standard General Insurance Co. A.I.R. 1965, Calcutta-16.

which was delivered on December 10, 1962 by a five judge-bench.

Justice P.N. Bahvati said "it is not only the shareholders who have invested capital who are interested in the enterprise which is being run by a company by the workers, who supply, labour are equally, if not more interested because what is produced by the enterprise is the result of labour as well as capital. While the owner invests only a part of his money, the labour invests their sweat and toil and in fact their life itself. He further went on to hold that so far the Companies Act does not provide for petition, their right to be heard in support or composition to such a petition can not be taken away."

It is equally pertinent to note the remarks of Justice Baharul Islam and Justice Reddy in this case. Justice Islam said, "the workers are no longer ciphers, they have to be given the pride of place in our economic system. The workers' right to be heard in a winding up proceedings has to be spelt out from the preamble of the Constitution and Articles 30 and 43 of the constitution and from the general principles of natural justice.

In our review of seventy companies we get no stretch of workers' participation atleast in top management.

Scheme for workers' participation :

Following the second plan document which laid stress on industrial participation, the Indian Labour Conference of 1957 decided to push through the concept of Joint Management Councils. There was however little enthusiasm for the scheme from both

labour unions and management. The Government of India in 1975 notified a scheme for workers' participation in India. The scheme was applicable to manufacturing and mining units in the public, private and co-operative sectors as well as to industries run departmentally employing 500 or more workers. In January 1977, another scheme was introduced to include commercial and service organisations in the public sector which had large scale public dealings. The intention was to render better service to customers.

The scheme announced on 30th December, 1983 will be applicable to all public sector undertakings under the Central Government except those which will be given specific exemption by the ministry concerned in consultation with the ministry of labour. The scheme will operate at the shop level and at the plant level. There is also provision for introducing it at the board level at a later stage. This has been left to for the concerned ministry to do in consultation with the ministry of labour. Under this scheme, the representatives of the workers are to be selected by the arrangement through consultation with the employer and the workers. The management will consult the concerned trade union leaders and evolve through consensus the mode of presentation of workers at all levels of the scheme. There is equal representation for workers and management at the shop floor and plant levels. Each side will have five to ten numbers at each level. The notification says that in persuading union leaders to reach a consensus, the management may point out that in the absence of such consensus the scheme would not be "capable of implementation."

Some loopholes of this scheme :

Large industrial public sector units like Coal India, SAIL and BHEL are virtually monopolies and do not have to compete for survival. Most workers in the large public sector industry do not know what the final product of their company is. It will not make the workers pride in the product and ensure quality. There is also the lack of compulsion to stay in the competitive market. Shop level workers in the steel industry do not know that their industry is making losses. In the present system it is too much to expect an ordinary worker to know why his company is making losses. Information does not flow down adequately. By this scheme, the workers are not given chance directly to take part decision making, sitting at the top level management. We are still far away from this position. The scheme does not include private sector industries.

The recommendations made by the Sachar Committee regarding workers' participation in company management specially in private sector is highly commendable work. The Committee seriously thought out the magnitude of this problems and recommended to provide for workers' participation in an enterprises employing 1000 or more workers, of course it does not in any way prevent the corporate sector employers from themselves agreeing to have a scheme of workers' participation in a company even when the employees are less than 1000. This committee suggested suitable detailed procedures to implement the scheme in practice.

Regarding workers' participation in share capital the Committee suggested that in all future issues of shares by the Companies, they should reserve a portion of new shares say about 10 to 15% exclusively for the workers as workers' share.

On the 3rd June 1985 at Calcutta, the union labour secretary, Mr. Bhatnagar said that "The Union Government is considering the introduction of legislation to make labour participation in management obligatory for the private sector."³¹

3.10 Need for workers' participation as suggested by eminent authors :

Working force now-a-days has become prominent factor for any type of business enterprise specially company. It is worth mentioning here the views of the two members of the High Powered Expert Committee on Companies and MRTP Acts submitted on 29th August, 1978, Shri R.D. Gattani, Member of Parliament (Retired Judge of Rajasthan High Court) and Shri K.P. Tripathi, Labour leader (former Minister of Assam) who gave separate notes on the said report. Mr. Gattani in his separate report said - "It is presumed that the capital of an industrialist is the only factor responsible for the growth of economy. Suffice, it to say that capital, now-a-days in this country as well, has lost its importance which it has a few decades ago. Alone industrialist with any amount of capital can do nothing if he has no co-operation of the working class. As a matter of fact, proper functioning of a factory now-a-days depends largely

31. Information to newsmen by the Union Labour Secretary, Mr. Bhatnagar on the 3rd June, 1985 at Calcutta.

upon the labour force and the working class. Moreover with the change of the values of life, the society will pay more and more regard to the cult of body of labour and will detract its attention from money.³²

Mr. K.P. Tripathi, while supporting the Sachar Committee's thought on suggesting workers' participation in company management states that "the aim of the workers' participation is to saddle them with the responsibility of higher productivity and profit and loss. This responsibility will be better discharged by workers once they are in the Board. So the representation should be adequate to make them responsible and not symbolic. If it is symbolic, it will miss the purpose."³³

We are also of the opinion that as in European countries, provision should be made so that workers' of a company can elect one third of the members of Board in which they are working from among themselves.

We can quote with profit the theory of the famous thinkers in this respect from article by Max B.E. ciarson - the 'Management is the development of the People' - "The interest of both society and business will best be served by devoting substantially increased attention and efforts to the development of human potential."³⁴

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32. Gattani R.D. - separate note in the report of the High Powered Expert Committee on Company and MRTP Acts, under the Chairmanship of Justice Rajinder Sachar, August 28, 1978 P-296.
33. Tripathi K.P. - Ibid. P-297.
34. Goldston Eli-edited : The American Business Corporation New Perspective on Profit and Purpose Herbert C. Morton & G. Neal Ryland, The MIT Press Cambridge, Massachusetts and London, England 2nd Printing, 1972 P-246.

Mr. Rensis Likierk goes onward by saying in his article "The Human Organisation - its management and value (New York, 1967) P-1, "All the activities of any enterprise are initiated and determined by the person who make up that institutions. Plants, offices, computers, automated equipment, and all else that a modern firm uses are unproductive except for human effort and direction."³⁵

Clarkson Max B.E. says that .. "the essential nature of man is either good or, at least, not bad; and that man possesses a basic, almost biological characteristic the need to grow, develop and reach its potential. Therefore it is needed for developing people and allowing them to express themselves. Every employee must have an opportunity to learn as much as he can make a maximum contribution in his present job and aspire to higher levels of responsibility."³⁶

The management must now accept that the workers' place on the board of directors and this issue can no longer be avoided. The fact is well established all over the world that the workers' participation in management will result in smooth working of company and generate a more cordial relation. Workers' major part of the life and welfare is associated with the welfare on the company as they are not likely to resort to irresponsible behaviour which may damage the company and inevitably their own interest and future. "If the board consisting of the share holder's representatives can be expected to act with restraint and not to harm the interest of the company even though the

35. Op.cit., article by Likierk "The Human Organisation - it's Management and value, New York 1967, P-1.

36. Ibid., article by Clarkson Max B.E. Management is the development of people, P-246 and P-249.

interest of the shareholder may be very small, so far as the welfare is concerned, there is every reason to hold and expect that the worker - representative whose major part of life and welfare is intimately concerned with the development and welfare of the company will not act in any manner detrimental to the interest of the company."³⁷

For workers' participation in capital we can suggest employees' stock ownership plan (ESOP) as practiced in the U.S.A. Companies. Basically, an ESOP works in this way, a Corporation seeking to raise cash, establishes an employee trust. The trust borrows money from a bank and buys stock in the company. The company invests the money in the new plant or equipment or services and in time, generates enough profit to pay back the loan. The employees get the stock free when they retire and the company is allowed to deduct both the principal and interest from its taxable income.³⁸

The above system can be introduced in India in revised form, so that during tenure of employment workers can get the benefit of ownership including right of voting as shareholders.

3.11 Government's recent announcement in this respect :

In this respect it is interesting to note here the news published in The Economic Times, Calcutta on the 11th July, 1985 which states that (on 10th July 1985, New Delhi) the Union Government has decided to make it obligatory for the private

37. Sachar Justice Rajinder - Article Corporate Laws : Effect on the growth of corporate sector in Chartered Secretary Vol. XI January 1981 P-34.

38. Poluszak John L. Will the corporation survive? Rest on publishing company, Inc. A Prentice - Hall Company, Reston, Virginia 1977 10th Edn. P-147.

corporate sector to provide for a minimum of five per cent shareholding in favour of workers and staff in the case of all new capital issues. Besides it has decided to introduce another special class of salary savings linked convertible debenture issue for the employees in the private corporate sector, where they would have the option to buy the same at a predetermined fair price formula or at 80 per cent of the average prevailing price of the shares in the stock market.

The Government is also considering a new scheme whereby the financial institutions, while off-holding shares in bulk would earmark a certain percentage for off-holding in favour of workers and staff. The scheme is still to be discussed with the respective agencies.

Announcing these decisions here to-day (New Delhi, July 10, 1985), the finance minister, Mr. V.P. Singh, told the meeting of the parliamentary consultative committee attached to those ministry that these schemes would be introduced shortly as part of the Government's commitment to ensure workers' participation in management. The minister had indicated some measures to this effect in the budget speech.

In the case of convertible debentures, the conversion will take place after a period of five years and the locking period would be for another three years, after which only the workers would be able to off-load the shares in the market if they so wished.³⁹ These schemes have been formally announced by the finance minister in Parliament on August 1st, 1985.⁴⁰

39. The Economic Times, Calcutta, July 10, 1985.

40. Ibid. Calcutta, August 1, 1985.

3.12 Evaluation of the schemes so far made of workers' participation in India :

All the schemes so far made by the Government leave no one in any doubt about the Government's initiative and interest in this matter. But that, one is constrained to say, has not helped in making it much of success. At the state labour ministers' conference in May 1985, an official review concludes that the scheme has so far worked satisfactorily in only a few undertakings like Bharat Heavy Electricals Ltd., Cement Corporation of India Ltd., and the four integrated steel plants, speaking of the situation in the National Textile Corporation which comes under the charge of his ministry Mr. Chandrasekhar Singh mentioned that the scheme has been put into effect in 44 of a total of 125 mills run by the undertaking. By the end of this year 1985 about 80 per cent of the mills are likely to be covered, statistically, this does not read too bad, although Mr. Singh, Union Minister of state for textile has not expressed his dissatisfaction about its success.

3.13 Suggestions for workers' participation in management via-a-via co-determination in India :

As the constitution of India promises to provide socialistic pattern of society and make India a welfare state, economic development of the country is urgently needed by adopting new pattern in management in economic field, specially in corporate form of organisation. Public sector in India has already made provision for workers' participation in their management structure. In private sector enterprises also provision must be made in this

regard. The technique of two-tier system of board as practised in Germany should be introduced here at least on experimental basis. Economic benefit is not sufficient, with it, belongingness and power of management are essential to utilise the faculty, skill and experience of the workers for production purposes. The workers may be given opportunity to provide capital (which has been announced in the parliament very recently by the finance minister Mr. Bishwanath Prasad Singh) by purchasing a definite portion of shares on priority basis, so that they will become shareholders and because of their proximity in the same industry may elect directors of their own choice.

Reference may be made here the thoughtful inaugural address given by the then Prime Minister Mrs. Indira Gandhi at the convention of international seminar of coordination of Labour Force in state owned enterprises, at New Delhi on April 4, 1984, where she stated "Co-ordination means the satisfied workers, efficient yielding result. Its introduction would lead to prosperity in production and enhancement of profit. Success of co-ordination is dependent on the fact that the working force is realised their full power as human being"⁴¹

while inaugurating the meeting of the Central Board of Workers Education and the All India Organisation of Employees, Mr. Veerendra Patil, minister for Labour Union Government, on July 27, 1984 at New Delhi, called upon the employees to lay greater stress on workers education so that they could participate

41. Inaugural lecture given by the then Prime Minister of India Mrs. Indira Gandhi at the convention of international seminar regarding workers' participation in management of public sector enterprises held at Delhi on April 4, 1984.

in the development progress. With growing emphasis on workers' participation in management, the education would help them to participate in the management process effectively.⁴²

In the editorial column of the Economic Times, Calcutta, 18.7.1985 it had been stated that 'the concept of participative management, like that other equally high-flying idea of profit-sharing, remains alien to industrial culture as it has evolved in India and most other so called free world countries. The fact is that such a scheme can succeed only when a minimum level of understanding and adjustment already exists between management and Union. Such understanding has to precede, not follow, the introduction of this scheme in management.'⁴³

But it can be safely argued why should not we introduce the system which proved successful in several western countries. If it is not immediately considered, then we shall avoid indirectly the principle laid down in the chapter of Directive Principles of State Policy of our constitution. Though in the above mentioned editorial comments, it was stated that minimum understanding between the workers and management is precedent to the introduction of this scheme, there are many who may justify their arguments by saying that participation in management will bring in industrial peace, good relation and understanding between the workers and management. We support the recommendations made by Sachar Committee in this respect. But our view is that 1/3 of

42. Speech delivered by the minister for labour Mr. Veerendra Patil at the meeting of the Central Board of Workers Education and All India Organisation of consultation, held at New Delhi on July 27, 1984.

43. Editorial column, The Economic Times, Calcutta, July 18, 1985.

the strength of the board should be workers' representatives. For participation in capital we suggest Government's proposal of 5% shareholding by the workers, etc. should be worked out along with ESOP Scheme.

However, it can be said that in the new form of top management structure of big companies with a view to providing a built-in-mechanism of control over concentration of economic power and for making the companies to be more socially accountable, workers' participation in management is inevitable. We firmly believe that in future management structures, this scheme is bound to get momentum.

Now-a-days large enterprises in which the agglomeration of capital and workers has reached such a high degree that the enterprise is considered to be not only as an economic, but also a socio-political institutions. One of the important ingredients of the company, the working force, now-a-days placed their arguments for their active participation in company management.

Like the interest of capital the interests of the workers in the enterprise are very much more vital for the enterprise has at one and the same time two important features : it is an economic unit, in which they earn their income, it is a social unit, in which each one, as an individual, but also as a member of a social group, must assert his own individuality. In consequence, their interest in the enterprise are many and variety.

So far their economic interests are concerned - security of employment, amount of earnings and just and equitable determinations of earning are important. From the point view of functional and control structure in large enterprises, their involvement in management are needed to be recognized.

P A R T - IIICompany failures and sickness in industry - a great problem of present economy management - How to avoid it.**3.14 Present position :**

Perhaps the greatest problem that has been faced by the Government at present is the sickness of industries and ultimately causing failures of Companies, throwing out huge number of employees out of employment and total loss of the capital employed thereon.

In a T.V. talk Mr. Vishwanath Pratap Singh, Union Finance Minister stated that in India there were 66,000 sick industries, according to the survey of Reserve Bank of India, in the list of sick private sector companies in the year 1983. According to that survey only ten per cent of these can be revived. He also contended that broadly there were two causes of industrial sickness - external and internal. The external causes might be due to change of policy of the Government or as they had not been modernised and their equipment became obsolete. As a result, their productivity was out of the line with international levels. According to the survey of Reserve Bank of India, 80% of the industrial sickness was due to internal causes such as defalcation of money, fraud on the part of the management and inefficiency of the management. Those who are in the management hold at best 20% of the stake. As a remedial measures he suggested that those who were responsible for causing sickness in the industry would be blacklisted and they would not be considered in the

future for granting any assistance by Government sponsored financial institutions.⁴⁴

If we look at the history of the industrial revolution of India, it gives the evidence that although the number of joint-stock companies increased steadily since the beginning of the present century, between 1921 and 1935, the paid-up capital did not register much of an increase. This was due to the fact that during this period there occurred a very large number of company-failures, with the result that the Indian investor, habitually shy, became shyer still. During the period 1948-55, there was a net loss of Rs.2.4 crores of capital per annum (Rs.9 crores - Rs.6.6 crores).⁴⁵

Dr. Nabagopal Das stated that "To put it bluntly, in India depraved business morality perhaps account for the largest number of company failures. The old company law (Act of 1913) left several loopholes for unscrupulous promoters, and the shareholders had no protection against their actions unless these were found to be within the orbit of criminal breach of trust."⁴⁶

Another cause of industrial sickness resulting in failures of companies may be due to limitation of 5% of the application money as minimum subscription with which it was impossible to meet the preliminary expenses to start the company. Companies Amending Act of 1936 introduced a number of safeguards to deal with mushroom and fraudulent companies. Until 1936, apart from

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44. T.V. talk statement (special programme on budget, Delhi) by Mr. V.P. Singh, Union Finance Minister, March 23, 1965.
45. See Dr. Nabagopal : Industrial Enterprises in India, Orient Longman, Bombay, Calcutta, 2nd Edn. 1956, P-137.
46. Op.cit. - P-136.

the ordinary remedies available under the Indian Criminal Law, there was really no provision for the investigation and detection of frauds practised by some of the companies. Under the Amending Act, 1936, the Registrar of Joint-Stock Companies has been authorized to institute the investigation of cases of fraud and any officer or director of the company convicted as a guilty could not be permitted to take part in the management directly or indirectly for a period of five years. These safeguards, as we witnessed had not checked fraudulent activities of the management. Although several provisions have been made under the present Companies Act, 1956 specially for the protection of the public interest and interest of the shareholders the procedure for launching prosecutions or resorting to other effective methods have been considerably simplified, the sickness to companies still exists and creates enormous problems to the economy of the country.

3.15 Problems for sickness of industries :

The Industrial revolution in this country has been incomplete and uneven in distribution, resulting in concentration of high degree of success and prosperity in some areas and continual, seemingly perpetual backwardness in others. This country is poor, its financial resources are limited and extent of unemployment is a matter of concern. The ranks of the poor and jobless is getting swollen. Expansion of both industry and employment is a vital need but the requisite capital is lacking. The provision of employment per human being is now highly capital

intensive, but the country is not in a position to provide adequate finances for this purpose, nor for giving unemployment benefits. The number of jobless persons specially educated unemployment has become a burning problem of today. Under these circumstances, problem of sickness in industry has added and intensified the dimension of the problem.

3.18 Studies made on sickness of industries :

In India an intensive study had been made by Mr. Khedwalle based on nine complex industrial organisations. Mr. Khedwalle in his analysis attributes industrial sickness of large complex organisations to the bureaucratic structure, low morale, alienation, apathy, conflict, buck passing, resistance to innovation, lack of collaboration or efficiency, poor adaptation to changing situations disorientation towards customers, etc. According to him, while an unavoidable external environment may be a preceptive factor for disaster, its effect may be greatly magnified by the problems caused by a complex structure of growth. In Western World, sickness has also been attributed to the lower price level, recession, labour and raw material problems etc. The study concentrated on large organisations and apprehended that the causes of sickness differed from country to country and from industry to industry. According to this study in India there are about 81,000 sick units in the large, medium and small-scale sectors with a total outstanding bank credit of Rs.3,100 crores.

In the year 1985 a similar study in this matter has been

organized jointly by Mr. K.S. Bhat, R.K. Mishra and M.G. Hedge mainly based on the managerial point of view. They furnished the following findings :

- 1) The sickness in industries has been on the steady growth over the last seven years. By the end of June, 1978 there were about 289 large and medium-scale industrial unit classified as sick with an outstanding bank credit to the tune of Rs.858 crores. Similarly small-scale units numbering 20,326 were sick during the same period with an amount of outstanding bank credit of the order of Rs.231 crores. On May 3, 1985 the number of large and medium-scale sick units had shot up to 1747 with an amount of outstanding bank credit to the tune of Rs.2,352 crores. The number of small-scale sick units and the amount of bank credit locked up in small-scale units were Rs.78,383 and Rs.728.98 crores, respectively, on the same date.
- 2) Over two-thirds of the large and medium scale sick units in June, 1983 were only from engineering and electricals, sugar, iron and steel and textile sectors.
- 3) State-wise distribution of large and medium scale sick units shows that West Bengal has the maximum of sick units 108 with amount of outstanding bank credit Rs.423.94 crores followed by Maharashtra 82 with amount of outstanding bank credit of 405.48 crores.

The above researchers took a small sample of 23 types of medium and small scale industries, having 55 industries units in Andhra Pradesh, and showed factors responsible for sickness as follows :

- 1) Improper project planning and management caused sick of 12 industries i.e. 22%.
- 2) In-efficient operation caused sick of 12 industries i.e. 22%.
- 3) Financial problems caused sick of 9 industries i.e. 16%.
- 4) Defective Corporate Management caused sick of 8 industries i.e. 14%.
- 5) External factors caused sick of 7 industries i.e. 13%.
- 6) Problems of technology caused of 6 industries i.e. 11%.
- 7) Labour problems caused sick of 1 industry i.e. 2%.

According to these factors responsible for industrial sickness are broadly grouped as follows :

- 1) Promoters and management,
- 2) Development institutions (including financial and infrastructure institutions).
- 3) Government agencies.
- 4) Personnel of the company, and lastly
- 5) Competitors, suppliers and consumers.

3.17 Causes of sickness :

Experts on this matter listed out thirty-five different causes to explain this dismal phenomenon. These can be grouped under four main heads - managerial, operational financial and environmental. The fact is that the sickness is the cumulative effect of several complex factors. The Government of India finds itself saddled with thousands of ailing enterprises, most of them apparently beyond survival, at any rate.

Though mismanagement or even lack of sufficient control is definitely one of the reasons for sickness of industry; but Government has taken very simplistic view in the last budget by putting all blame on the promoter-management for sickness of units. Various examples may be sighted to show that it is not due to mismanagement but the Governmental Policy causes sickness. In the mid 70's almost all mini-steel plants closed down due to insufficient excise relief previously granted to these plants in comparison to main-steel plants. Sugar industry faces tight control on major production. Uncertain sugar cane prices with continuous demand from farmers and State Governments' decision to increase cane prices and dis-allowance by the Central Government of this in calculation of sugar price, are some of the causes for sickness in Sugar Industries. For almost three decades, cement industry in India suffered heavily with strict control and unremunerative prices. It is only now that dual pricing policy has helped this industry. The automobile and two-wheeler industry was also under price control for almost two decades and

suffered heavily. Sudden changes of Government policy or controls have affected companies like paper industry with too controlled prices, engineering industry depending on policy of imports, custom duties etc. and recently electronics industry with sudden liberalisation of imports. Similar is the case with extreme power cuts. Apart from Government fiscal policies the labour policy has also played havoc specially in labour intensive industries like textiles, engineering, etc. The wage Board has increased wages and perquisites on the basis of consumption norms but disregarded simultaneous productivity norms to maintain health of industry. Continuous inflation, increased DA and perks have made labour cost very high causing loss to the industry.

Even Government has seen that in revival of sick industries, rationalisation of workers' strength becomes absolutely essential. Hence, labour laws should be so changed that no industrial dispute should be allowed to be raised by workers.

Mr R.N. Sen has stated that "Many of the companies become sick because of mis-management at the top, and labour trouble at the bottom, and the non-executive directors are in the helpless position of lookers - on."⁴⁷

The employees, particularly in lower grade, want the sick companies to be nationalised because that would strengthen their position further by improving their terms of service and

47. Sen R.N. Article A Few problems of Sick Industries and some functions of Directors, Board of Directors - Their statics and Dynamics edited by Chakraborty S.K., New Delhi, 1st. Edn. 1963, P-283.

reducing their responsibilities. It is impossible for reduction of staff as the law and attitude of the Government are such that no body can touch unionised employees. The problem is so grave that no insurance company in the world will be prepared to give cover comparable to the terms of services guaranteed in India by its law and its implementation thereof.

Mr. R.N. Sen is of the opinion that when a company goes sick the shareholders, the creditors and the employees should make some sacrifices to bring the company into a healthy condition. A twenty five per cent cut in wages would make three fourth of the sick companies viable almost immediately. He also states that unless the whole attitude of the Government, the unions and the management undergoes a thorough change, no attempt to stop sickness can be of any avail. He recommended a central cell should be created for collecting information, diagnosing the disease of sickness and this cell may be attached to the Ministry of Industrial Development. The banks, E.S.I., P.F. Department can smell the disease at an initial stage and inform this cell. Once an unit is reported to be sick immediate measures should be prescribed and implemented. Any delay will make the problem more difficult.⁴⁸

Some of the suggestions rendered by Mr. R.N. Sen are commendable no doubt, but it is impractical idea that employees would agree to reduce their wages. To make change of the attitude of the Government, Union and management, without the changing the structure of management, will be an utopia idea.

48. Op.cit. PP 283-284.

Mr. M.R. Rathnam in his article 'sickness in industries, How to avoid it' stated that inflation enhancing the cost for renewal of machines is the cause behind sickness of industries. Depreciation at a higher rate on inflationary method of accounting can solve the problem by mitigating the problems of fund to a considerable extent.⁴⁹ A completely reoriented and streamlined policy is obviously called for to ensure reconstruction of Indian industries to a satisfactory degree so as to prevent relapsed into seedlings. It is suggested that really sick ones beyond repairs should be identified and allowed to die or close down without second thought. Their continuance is an avoidable financial strain. Only those which can be revived with proper assistance in various forms should be saved. From the initial stage, arrangement should be made so that private industries should rely more on their own resources for financing its projects. Regarding causes and solution to the problems of sickness, Rathnam has discussed the subject only from the point of view of Cost Accounting. There may be some truth in it, but there are many causes of sickness. Solutions suggested by Rathnam accordingly are part of the whole picture.

The above discussion reveals that different persons show different causes for sickness and suggest measures for its eradication. But we fully appreciate the following statement by C.W. Gerstenberg, a famous writer on business management. According to him the causes of Joint-Stock Company sickness and

49. Rathnam M.V. article "sickness in industries - how to avoid it" published in the Management Accountant, Student's edition, Vol.19, No.6, June 1964, from the I.C.W.A. of India.

consequent failures can be broadly divided into two classes :

- a) those operating from outside and
- b) those operating from inside.

To the former class belong such causes as competition, change in the demand for products of the company, operation of the business cycle and normal casualties. In the latter class lie such causes as archaic methods of production, slowness of collections, unwise distribution of cash dividends, incompetent sales organisation, high operating expenses, over-capitalisation, excessive floating debts, failure to make adequate provision for depreciation and fraud. According to the same writer all these causes are ultimately due to 'incompetence'. Inside causes are, of course, obviously signs of 'incompetence', but even outside causes may be said to be due to 'incompetence', because, with good management, the evil effects of most of these causes can be modified even if the causes themselves cannot be humanly avoided.⁵⁰

3.18 The existing arrangement to tackle this problem :

The Industrial Reconstruction Corporation of India (IRCI) set up by the Central Government early in the 1970's and duly registered under the Indian Companies Act, was expected to reduce the sickness by a notable degree, but its efforts have been only partially successful. The Corporation provided assistance to 242 industrial units, the largest number being in West Bengal - 128. The loans given by it to 190 units were outstanding at the end of March, 1984. The Union Finance Minister

50. Gerstenberg C.W., Financial Organisation and Management, New York, 1924, referred by Das Dr. Nabogopal ; Industrial Enterprise in India, Orient Longmans, 2nd Edn. 1956, P-137.

recently contradicted the general impression that the Corporation had failed to function satisfactorily. He claimed that about 70% of the enterprises assisted by the Corporation had either been revived or were showing signs of recovery. But, out of official estimate of 68,000 sick units 272 i.e. only .4 per cent got assistance from I.R.C.I. consequently 99.6 per cent are remaining as sick. At present the problem seems to be irremediable unless the administration's policy and correlative devices are completely reoriented.

3.19 New Reconstruction Bank :

Mr. V.P. Singh Union Finance Minister announced in his budget speech on 18th March, 1985 that a Board is to be set up for the financial and industrial reconstruction of sick units.

In order to facilitate the process of treating the sick, Parliament passed a Bill during its monsoon session (1985) to convert the Reconstruction Corporation into a statutory body with wider powers, the new name being the Industrial Reconstruction Bank of India (IRBI). The Bank, which will take over the functions of the Reconstruction Corporation, is expected to expand them and exercise wider authority and jurisdiction. The aims of such bank are :

- a) to overcome, through the conversion of the IRCI into the IRBI, the inherent difficulties which were being faced by the Corporation during the 12 years of its existence.

These difficulties had hindered its efforts to rehabilitate and reconstruct the countries ailing industrial enterprises;

- b) to function as the principal credit and reconstruction agency for industrial revival and co-ordinates the work of other institutions engaged in industrial revival and resurrection;
- c) to assist and promote industrial development and rehabilitation of industrial units by providing or procuring assistance and operating schemes and also by granting loans and advances.

The bank will have power to take over management of assisted sick industrial units, lease them out or sell them as running concerns or prepare schemes for reconstruction by scaling down the liabilities with the approval of the Government. The new bank will complement the activities of the Industrial Development Bank of India.

Mr. V. Dixit, Chairman IRBI announced that "The Industrial Reconstruction Bank of India (IRBI) is shortly going to announce a package of guidelines for financial institutions and banks to revive sick units.⁵¹ He said this package would comprise various kinds of relief and concessions for reviving units. The IRBI, after discussion with the Reserve Bank of India had formulated a 'modus operandi' to tackle the revival of several sick units on a priority basis, whereby the units which were in fast becoming

51. Mr. V. Dixit, Chairman, IRBI while addressing Indian Chamber of Commerce on 14.5.1965.

sick would be taken up first, while those which were not so badly affected would be taken up at a later date. At present, there are 499 large units which are sick, apart from the host of small and medium units. The amount locked up in these units is as much as Rs.3500/c crores.⁵² Mr. Dixit said the proposed board for the revival of sick units (as has been announced by the Union Finance Minister) will simplify mergers and amalgamation of sick units with healthy ones. The intention was to make IRBI the nodal institution which would propose scheme, for such mergers, which could then be implemented by the board. The operation would simplify the procedure and the concerned parties would not have to run from pillar to post as in the past. Mr. Dixit said 'financial institutions and banks were, by nature, not keen on taking over the management of companies.' 'We may carry out temporary holding on operations, but would not like to take-over the management permanently.'⁵³ Criticising the management of units which were sick for prolonged periods extending to 10 to 20 years, he termed the phenomenon as 'programmed sickness', whether the units were held by their management in order to reap short lived profit occasionally. In this context, he mentioned the jute industry where this phenomenon was most pronounced. He wondered why these units did not go into liquidation instead of remaining sick for such long periods. He suggested that such units should fix a time period of five to six years to eradicate losses. If it is not possible to break-even or show improvements by that time, they should go

52. Statement by Mr. V. Dixit Chairman, IRBI before Indian Chamber of Commerce on 14.5.65 reported in the Economic Times, Calcutta on May 15, 1965.

53. Ibid; The Economic Times, Calcutta on May 15, 1965.

in for liquidation, he added.

Mr. R.S. Laha President to the Indian Chamber of Commerce suggested that the proposed board for reviving sick units should have representatives from the country's technocrats. There should be regional boards to tackle specific problem in the regions concerned and they should have full mandate. Referring to the long delays in achieving turn around in the financial performance of sick companies in India, he said efforts should be initiated to achieve such turn around in less time as it done in Western Countries.

Mr. K.K. Somani in his article 'sick industries' has suggested that banks and financial institutions may play an important role to eradicate sickness of industries.⁵⁴ To pin point the cause of sickness, greater responsibilities should be put on the banks and financial institutions through yearly review of the working of the units. By finding out the deficiencies in connection with these units, Banks and Financial Institutions should suggest suitable steps necessary to avoid sickness. In fact, best arrangements would be to convert the existing institutions into expert technical bodies to study the overall working of different units in each industries and to set up norms of capital expenditure as well as working results in utilising of different inputs, etc. They should also keep a watch on market situation of demand and supply. Excessive capacity creation should be avoided as it creates fierce competition and ultimately causes sickness. Shortage of capacity

54. Somani K.K. Article Sick Industries published in the Economic Times, Calcutta on May 23, 1985.

utilization should also be avoided by taking regular steps for creating additional capacity. Surplus, if any, should be exported even with subsidies like in sugar industries. Actual financing of project for both term loan and working capital can then be left to banks who will act on the basis of study reports of the institution. Since banks are very widely dispersed, these will help in greater dispersion of industries and avoid unnecessary running about of the entrepreneurs. Only one institution like IDBI cannot finance very large industries with investment exceeding, say, Rs.15 to 20 lakhs. Apart from it, promoters, whether big or small business, face some special problems. They are required to take high risks even though these are supposed to be limited in public and private limited companies. Financial institutions and banks while granting loan, insist on personal guarantee by the promoters with threats of calling them to the courts for all losses even if caused by outside agencies like trade union leaders through long drawn strikes or by Governmental action in change of policies. Sometimes, they are required to invest from personal fund during the sickness of existing companies. Therefore, the promoters who are taking so much risks are to be relieved from their day-to-day anxieties by suitable facilities such as relieving tax on dividend on the promoter's share held permanently, deduction of Income-Tax under section 80 c.e. but steps so far taken by the Government are partly negative in fashion. It will be better to make it positive by allowing inter-company assistance for sick units. But there are many obstacles in this regard, in company

law, by the procedures of the financial institution, Government department as well as to the independent shareholders of different companies. For the overall interest, the rules have been liberalized to allow transfer of funds from a profitable company to a sick unit. One of the way is of course merger of sick unit with profitable one. Unfortunately Government's intentions have not been fully appreciated by bureaucracy by virtue of section 72A of the Income Tax Act, 1961. The finance minister has recognized this and proposed setting up of a board. It will be better if the board issues only guidelines from time to time and allow the companies to carry out merger etc. based on audit certificate if these conditions are met. Only those observing these guidelines should be asked to apply to the board. Another method without merger would be that Government should allow a profitable unit to transfer its surplus before being taxed, to sick units for a temporary period. It should carry interest as paid to financial institutions so that the shareholders of the profit making companies are not adversely affected. Any penal provision would not solve the problem. The problem can be solved only if regulation made by the Govt. is materialised with sincere efforts.

3.20 Contemporary proposed Government measures :

We welcome the "sick Companies Bill" placed in the parliament by the minister of State for finance, Mr. Jaganmohan Poojary on August 29, 1985. The bill makes a special provision to secure timely detection of sick and potentially sick companies and for

setting up of a board of experts for speedy determination of the preventive, ameliorative, remedial and other measures. The Bill was introduced in the Lok Sabha on the August 29, 1965. A sick Industrial Company has been defined as an "Industrial Company. (being a company registered for not less than seven years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and also suffered such losses in each financial year immediately preceding such financial year."

The Bill seeks to set up a 'board for industrial and financial reconstruction' (with experts and members having status of a judge of a High Court) and also an "appellate authority for industrial and financial reconstruction" (the chairman will be of the status of a judge of the Supreme Court and members of a judge of a High Court.)

The Bill provides for reporting to the board and holding a general meeting of the shareholders of the company if the accumulated losses of the industrial company as at the end of any financial year have resulted in erosion of 50 per cent or more of its peak net worth during the immediately preceding five financial years. The fact of loss will have to be reported to the board within 60 days from the date of the finalisation of the audited accounts of the company for the financial year.

The board of directors will, at least 21 days before the date on which the meeting of the company a report of such erosion

and the causes for such erosion. Default in complying with the provision is sought to be made punishable with imprisonment which shall not be less than 6 months but which may be extended to two years and with fine.

The new law will make it mandatory on the part of the management to report sickness in time. The management will have to seek a fresh mandate from the shareholders if 50 per cent of the net worth of the company is eroded. If the company continues to slide and 100 per cent of the net worth is eroded with cash losses for two consecutive years it will invite the intervention of BIFR which will have the powers to seek the management and take all possible measures to keep the unit going. BIFR will not take over any industrial unit, but will have powers to sell and merge sick units. However, its essential function is to ensure that the industrial units keep working. For this, the board can work out financial package.

According to our opinion the projected Act suffers from two defects - firstly it is a long drawn process to come to the knowledge of the authorities when measures would be taken and secondly financial capability of the Board for industrial and financial reconstruction would not be as sufficient as to revitalize all the sick industries numbering more than 80,000 industrial units and bankers state in them was Rs.3855 crores as on 31st December, 1984 as reported by Mr. Asitabha Ghosh, Deputy Governor General Reserve Bank of India. "We also welcome the measures of" accountability concept in banking system so that the

leading banks can take corrective measures as soon as the symptoms of sickness are noticed. This was indicated by Mr. Anitabha Ghosh, Deputy Governor of the Reserve Bank, at a meeting with the Madras Chambers of Commerce and Industry on the 11th day of July, 1955. Mr. Ghosh said that it was the banks which would first notice the symptoms of sickness.⁵⁵

We whole-heartedly support this project. As there are several branches of banks dispersed in the different parts of the country, they can take effective measures with sufficient fund capacity. But there must be banks representatives to the board of each and every company who as a member of the board will be able to arrest the sickness in time by providing fund and inferring advice at an early stage. By taking representative of the bank in the board, the company will be benefitted as banks representative will be intimately connected with the affairs of the company. The banks in their own interest of safeguarding their investment in those units would be too ready to extend rehabilitation assistance. Bank-extended rehabilitative package to units could be nursed back to health of the sick companies with in a reasonable time. If however, the banks were asked 'for other reasons' to extend the same concessions to units beyond redemption, the monetary sacrifices they made would have to be protected.

3.21 Solution of the problems of sickness in industries already suffering :

To deal with the problems of sickness in industries already

55. The Economic Times, Calcutta, July 12, 1955.

suffering from diseases, etc, along with Mr. R.N. Sen prescribe the following procedural steps for their remedies :

FIRSTLY, viability study is to be made before a company is declared sick to enable it to get help from the Government directly, or through IFCI, or from any other financial institution. "Before any long term assistance is sanctioned remedial measures must be discussed and settled so that funds sanctioned are not frittered away according to the whims of the people in control. The real difficulty is that no training is provided by any institution to prepare a body of experts for determining the remedial measures for different sick companies."⁵⁶

SECONDLY, Directors are to be trained and paid proper fees.

THIRDLY when a company goes sick an attempt should be made to go in for capital reduction and/or composition with creditors.

FOURTHLY in every company, vigilance by the non-executive Directors is a must. In a sick company it is even more so.

FIFTHLY a training department should be set-up in the IFCI (now IFCI) to train people specially in the art of running sick companies. The function of a director or manager of a sick company cannot be taken so lightly by appointing retired Government officers. It is a very, very difficult task and has to be approached as such. Some honest original entrepreneurs and/or Directors may be taken in new board. It is necessary for IFCI

56. Sen R.N., Article 'Sick Industries' in the book - Board of Directors in India edited by S.K. Chakraborty, All India Management Association, New Delhi, 1983, P-257.

(now IABI) or some Government Department to take the responsibility of appointing the managers for sick units from a pool for sick units. The post of Chairman (no executive) and managing director should be separated.

SIXTHLY, the IACI (now IABI) or any other financial institution lending money to a sick unit naturally nominates Directors to represent itself on the Board. These Directors should be required to perform various functions including :

- i) to activate the management of the company,
- ii) to motivate the management to exert proper control,
- iii) to monitor from internal management level all the information relevant for diagnosing the problems standing in the way of normal working,
- iv) to call for a monthly performance report at the Board level for evaluating of the working, and
- v) to help and guide the chief executive for setting up proper organization, financial planning and control systems.

The directors should be executive directors, free from political interference, and baseless Government pressure.

SEVENTHLY, Statutory Corporations with statutory powers under the IDR Act should be brought into existence to look after the sick companies. They should be given power to sell the unit free from encumbrances, power to permit amalgamation in

specified situations, grant indemnity, to officers in suitable cases.

In conclusion it can be pleaded for proper initial selection and recruitment to the boards; and then inflict the least restriction in their management of enterprise affairs. Sick companies require much faster and nimble adjustments to factors surrounding them. Boards of such companies cannot be hamstrung by narrow, one-sided and covert or overt pressure tactics from any quarter especially the vocal minorities. Knowledge from local conditions will help to solve this burning problem.⁵⁷

3.22 Permanent solutions :

We firmly believe that as the main cause of sickness of industries under company management is due to the incompetence on the part of the top management, the evils of sickness will be substantially banished by reconstructing the top management of the companies as suggested by us in chapter VI. It will eliminate sickness as under this Multiple Two-Tier Board system of management, a company will not be managed for any sectional interest. On the contrary it will be managed as a social institution for up-holding public interest and look after the interests of all the ingredients which constitute a company. If sickness at all happens, it will be solved by mutual understanding and open hearted discussion at the meeting of the board consisting of the representatives of the shareholders, workers, financial institutions, banks and above all Government. With the consent

57. Op.cit. Sen R.N. PP 282-281.

of all the representatives for reciprocal interest, certainly some methods acceptable to all will be evolved. These, if implemented with the guidelines framed by the Government to meet the problem of sick industries considering the procedures suggested by us, the problems of sickness of the companies could be eradicated permanently.

PART-4Problems of Economic Power and professionalisation of company management in India.3.23 Concentration of economic power by the group and control of companies in their subsidiaries :

With a view to ascertaining the extent of concentration of economic power, several studies have been conducted in India during recent years. Important of them are (a) Study conducted by Prof. R.K. Hazari to ascertain the changes of concentration of power between 1951 and 1956, (2) Study made by Monopolies Inquiry Commission; and (3) Study conducted by the Industrial/Licensing Policy Inquiry Commission. In all these studies, concentration is measured on the basis of control exercised by few business houses or groups over large number of companies engaged in each line of product. But each of these studies adopted a different approach in defining the concept of 'business house'. After the passing of the MRTP Act, 1956, an entirely different criteria has been adopted by the Government for defining a business house. As a result, there is variations of the number of companies included under each large industrial house by Hazari, MIC, ILPIC and MRTP Act.

House	RKH	MIC	ILPIC	MRTP
	1	2	3	4
Total	82	53	70	37
Birla	280	151	203	71
Mafatlal	17	21	34	20
J.K. Sighania	52	45	47	34
Thapar	42	43	59	33
Banger	100	51	93	51
Scindia	-	8	8	3
Sriren	9	16	38	14

House	RKH 1	MIC 2	ILPIC 3	M RTP 4
ACC	-	5	5	5
Walchand	15	25	29	20
Mahindra and Mahindra	7	12	10	13
Modi	-	10	12	14
Sarabhai	-	27	29	12
Kasturbhai Lalbhai	15	16	36	19
T.V.S.	-	17	21	22
Bajaj	-	21	22	29

Notes: R.K.H - R.K. Hazari, MIC - Monopolies Inquiry Commission, ILPIC - Industrial Licensing Policy Inquiry Committee; M RTP - Monopolies and Restrictive Trade Practices Act, 1980.

Sources : Column 1. Hazari, "The structure of Corporate Private Sector (Asia, Publishing House, Bombay, 1966).
Column 2. Report of the Monopolies Inquiry Commission Volumes I & II (Government of India, 1985)
Column 3. Report of the Industrial Licensing Policy Enquiry Committee (Government of India, 1989).
Column 4. Company News & Notes April, 1979.

There is no denial of the fact that concentration of economic power stands in the way of the efficient company management in particular and other economic fields in general. It has been urgently necessary to curb the powers of the group or family concentrating power in their hands.

The rigour of application of industrial licensing policy of the Government, which is one of the instruments of curbing concentration of economic power will also be restricted by the use of MRTP Act concept of 'house.' Under the present industrial licensing policy large business houses are not allowed entry into areas other than those specified in the appendix - I of the Industrial Licensing Policy Statement of 1973. Government of India in 1973 adopted the MRTP Act concept of large business house for the purpose of administering industrial licensing policy discarding Dutt Committee's concept. In such a situation companies which actually belong to large business houses, but have not been registered so, have scope for undertaking activities other than those listed in Appendix - I, thus making the licensing system an ineffective tool for curbing concentration of economic power. Licensee under MRTP Act, though aims at curbing concentration of economic power, granting licenses for expansion (Section 21), for new undertaking (Section 22), for merger or takeover (Section 23) if these do not lead to the concentration of economic power to the common detriment. Assistance from public financial institutions also do not give correct picture about the proportion of total assistance going to the large

industrial houses, as they are covering only those companies which are registered under section 25 of the MRTP Act.

As a result, all the these instruments (MRTP Act, Industrial Licensing Policy, Public Financial Institutions) generally used by the Government for curbing concentration of economic power became less effective due to adoption of MRTP Act concept of business house and afterwards raising the limit of capital structure from Rs.20 crores to Rs.100 crores.

What is necessary is to dispense with section 2(g) of the M.R.T.P. Act as suggested by the Sachar Committee whether or not an undertaking belongs to a large group should be decided on the basis of all relevant facts and not only on the basis of its inter connection with one or more companies in terms of the criteria laid down in section 2(g).

3.24 Problems of economic power :

There is no denial of the fact that the question of economic power has become a pressing socio-political issue of this time. In India, individual business firm or group possess significant economic power to have appreciable effects on the economy of India. The decision of big business houses as regards prices, output, product character, investment, research, location, employment, market, etc. exert great influence on the growth, stability, distribution, employment and social justice. The significance of these decisions would be greater if the firm produces basic materials like oil, electricity, steel etc. By creating the position of monopoly and oligopoly, big business houses try to extinguish the free flow of competitiveness of the

market. As a result, state intervention becomes inevitable to control excessive profit as well as to prevent sub-optimal resource allocation resulting from monopolists' restriction of supply. In India, through the MRTP Act industrial licensing system, restrictions are imposed as an antidote against monopoly, but these could not give forth effective result to solve the problem of economic power. Prevailing system of company management is that, though there is existence of a board, but in fact, the board, is ineffective. The controlling power is in the hands of economic group who dictates the board through the managing director and any other person or persons nominated by them. "This system ruled out the elimination of, or pressure on, the existing inefficient firms by new efficient ones. Further, by not allowing freedom to expand the business, the system also ruled out competitive pressures from the more efficient existing units. Thus, with foreign competition completely shut off by import restrictions and with domestic competition severely restricted by the industrial licensing system, Indian industry has worked in an environment of near-monopoly. Even the creation of the Monopolies Commission does not so far seem to have brought about significant change in the situation."⁵⁸ A conglomerate may be organized as a single company with a number of divisions or as a group of inter-connected companies, operates in many markets may or may not have monopoly power in or more of these specific product markets. Here also by intervention causes, as stated by Dr. L.C. Gupta,

58. Gupta L.C. Corporate Management And Accountability Towards A Joint Sector. Macmillan Company of India Limited; Delhi First Published, 1974 PP 24-25.

detrimental effect on the economy of the country. Apart from it, the revised sequence which seems to influence by the large firms by way of advertisement on consumers preference exerts great influence on the taste of the consumers, no doubt it has got its limitations. Certain institution like monopoly represents organized instrument of exploitation the public. These should be either controlled or abolished. By asking control by Government, the small and dependable many firms which act as supplier and as customers are also suffered. Dr. L.C. Gupta is of the view that "enlightened public opinion in India generally concedes that neither the imposition of direct Govt. controls on private firms, nor the nationalisation of such firms, provides a satisfactory solution on the problem of economic power as each of these leads to scandalous corruption and inefficiency."⁵⁹

The only satisfactory solution lies in reforming the top management structure. Galbraith John Kenneth in his article, on the Economic Image of Corporate Enterprise, stated that "great currents of history can not be reversed by small laws."⁶⁰ It indicates that the MRTP Act 1969, has not produced any effective results to curb the monopoly power created by the big economic groups of India. While forwarding the book, corporate management and accountability written by Dr. L.C. Gupta, Mr. S.L.N. Sinha, Director, Institute Financial Management and Research, Madras, on June 8, 1974 stated that "undoubtedly, private sector industrial and business units, especially the large ones and those which

59. Op.cit. Gupta L.C. Corporate Management & Accountability-P-27.

60. Galbraith John Kenneth, article "on the Economic Image of Corporate Enterprise, in the Book Corporate Power in America, Edited by Ralph Nader And Mark J. Green 1st. Edn. 1973, P-5.

constitute a group enjoy a lot of power, not all of which, like the iceberg is visible. But in fact that this state of affairs is not something deliberately planned. In the first 10-15 years after Independence, the Government naturally concentrated on industrial growth, though socio-political aspects of the growth were not overlooked and indeed some steps were taken in the direction of what one may broadly call "social control" of industry. It would be widely agreed that the private sector did an excellent job, of course receiving valuable help from Government in a variety of ways. The next stage was naturally one where a democratic Government wedded to socio-economic reform of the society had to take stock of the actual and potential political power which the private sector came to acquire and think of appropriate steps to keep it under check. So, if intellectuals talk of growing power of the private sector, one should not dismiss it as academic hallucination. Nor should the range and depth of the power be exaggerated, creating a wrong impression in India and abroad that the Central and State Cabinets and Legislatures are wholly under the vicious influence of private sector merchants and manufacturers. The situation undoubtedly needs watching by a vigilant community."⁸¹

3.25 Resolution of the problem :

Mr. Sinha in his forwarding, concluded by stating that a democratic society has to balance the need for growth and efficiency - in fact, if not in theory, the private sector has so far been generally much more efficient than the public sector

81. Sinha S.L.N. While forwarding the book Corporate Management And Accountability Towards A Joint Sector. The Macmillan Company of India Limited. First Publish, 1974.

on the one hand and curbing concentration of economic and political power on the other hand. This balance can only be brought by restructuring the top management of the company. It is said that if top management is constituted with professionals then only, the problem of economic power can be eliminated.

We fully agree with the views of the Mr. Sinha. By introducing the system of Multiple Two-Tier Board wherein the top management can be constituted with professional the problem of economic power can be brought under control.

3.26 Professionalization of Company Management :

Due to the separation of ownership from capital, a tendency was visible that in between the labour and capital a new non-propertied, expert and elite class came into prominence acquiring and holding managerial power. They are known as professionals. As the Corporations are becoming bigger and bigger with the consequent development of complacency and technology, these professional managers possess tremendous power of controlling the company. This system is called managerialism. Berle and Means state that "Concentration of economic power separate from ownership has, in fact, created economic empires, and has delivered these empires into the hands of a new form of absolutism neglecting the 'owners' to the position - whereby the new princes may exercise their power."⁶² The famous managerial theorist, Dahrendorf, argues that the joint-stock company has brought about a

62. Berle A.A. and G.C. Means, The Modern Corporation and Private Property, New York, 1952.

complete break with the earlier capitalist traditions and that "by separating ownership and control, it gave rise to a new group of managers who are utterly different from their predecessors."⁶³

Many eminent theorists like A.A. Berle, G.C. Means,⁶⁴ P. Sargent Florence,⁶⁵ E.A. Gordon,⁶⁶ George Goyder,⁶⁷ Dahrendorf and even Karl Marx,⁶⁸ although differ in their opinions as regards the causes behind emergence and position of the managers, they conceived that a new class of non-propertied managers have emerged replacing the owner-managers and are holding their position due to their managerial ability rather than to property ownership. Their different social backgrounds, trainings and experiences make them both think and act differently from the owner managers or capitalists in its traditional sense.⁶⁹

Marxist do not accept that such a divorce exists. They believe that even if it exists, it is not important. Marx observes, "Development of Joint Stock Companies had brought matters to a such a point that the labour of superintendence

63. Dahrendorf, a famous managerial theorist, class and class conflict in Industrial Society, P-42.
64. Berle A.A. and Means G.C. The Modern Corporation and Private Property, New York, 1932.
65. Florence P. Sargent ownership, Control and success of Large Corporations, London, 1961.
66. Gordon E.A. Business Leadership in the Large Corporation, Berkley 1945.
67. Goyder George, the Responsive Company, American Economic Review, (54) Op.cit. 94.
68. Marx Karl Das Capital, Volume III, Chapter XXVII.
69. Sengupta Dr. N.K. Changing Pattern of Corporate Management, Vikas Publishing Pvt. Ltd., New Delhi, 1983, PP 267-272.

himself."⁷⁰ Mark emphasizes that a result of highest stage of capitalism, the capital will be no longer the property of the individual producers, but as common property of all associates, as social property. According to him so long both the non-propertied managers and the non-managerial owners belong to the same social classes, the labour force will continue to be exploited and the basic class relations will not change.⁷¹

But it is true that emergence of the managerialism has brought out almost some fundamental changes in the concept of company management as regards ethics of human relationship, social responsibility and ruthless self interested company director has given place to the picture of a modern non-propertied professional corporate director responsible to society at large, and free to subordinate the old fashioned hunt for profits to a variety of other qualitatively less precise, but quantitatively more worth objectives."⁷²

Therefore, statement made by Mr. S.C. Sen regarding Corporation's aim and objective that "there has been a metamorphosis of the corporate communism of a non-marxist variety."⁷³ has not become materialized.

But it is also to be remembered that a manager in a modern company is not in a position of a owner but in the position of a trustee who has the custody of the company's wealth

70. Op.cit.

71. Op.cit.

72. Baron P.A. and Swozy P.M. Monopoly Capital, Monthly review, Vol.XIV, Nos.3 and 4 and August 1962 PP 136-139.

73. Quoted from Sen S.C. - Company Actions in the Modern set-up by Dasgupta Dr. A and Sengupta Dr. N.K. in their book, Govt. and Business in India, Allied Book Agency, Cal. Ist. Edn. April, 1976, P-137.

on behalf of not only the shareholders of the company but also has well-defined responsibility towards other interests like the consumers, the workers and the public at large. With these changes the shareholders have been reduced to the position of just a supplier of capital to the company, no longer its owners.

3.27 Meaning and concept of professionals in India :

Dictionary meaning of profession is an employment not mechanical and requiring some degree of learning. Though there are many definitions of 'profession' given by many authors the main characteristics may be stated as follows :

- i) A high degree of generalised and systematic knowledge derived from experience, experiment and empirical analysis and research.
- ii) Systematic application of this knowledge to practical problems satisfying the needs of a class of people.
- iii) A code of conduct is introduced by a representative professional institution.
- iv) Enforcement of social responsibility.

The distinction between profession and occupation is necessary because in India professional Management denotes non-proprietary management. Means of livelihood of a person is his occupation on the contrary, when a person after completing specialised learning and training, obtains licence to

practice the particular craft or calling he is known as professional.

The High Powered Expert Committee, under the Chairmanship of Justice Rajindar Sachar (August, 1978) (Chapter V) stated that a 'wide-gap' has arisen between control and ownership on the one hand and management and ownership on the other in the structure of company management.

In order to fill up the gap, according to the said Committee management requires certain professional expertise, apart from entrepreneurial skill. The expert committee thus feels that "professionalisation of management is therefore, not a mere concept but is, in fact, an inevitable necessity for the well-being of the company itself."

In India the development of a distinct managerial class has not taken place. During the reign of Managing Agency, Managing Agents though claimed themselves as managerial expert, in practice they represented the controlling group of shareholders of the company and the divorce between ownership and management in managed companies was more illusory than real. As an alternative form of management the system of secretaries and treasurers was introduced in the Companies Act, 1956. But in vain, the new system of 'Secretaries and Treasurers' would only help the managing agents to put on a new garb resulting the abolition of this system along with the abolition of Managing Agency system on and from the 3rd day of April, 1970.

After the abolition of managing agency system, in order to cope with the complexities of modern business, more and more professional people are taking up the position in companies previously held by owner manager. In our empirical study of the pattern of management of 75 companies, our hypothesis had been verified showing the growth of professional management in recent years. The bold step that had been taken in India in this matter in the Companies Amendment Act, of 1974, provided for the compulsory appointment of a company secretary in the companies having paid up capital of Rs.25 lakhs or more. This process of professionalisation of management needs to carry forward.

According to the Sachar Committee 'there are certain areas which are beyond doubt within the competence of professionally qualified people but instances are not rare where professional approach has been developed and applied by people without professional qualifications but having considerable experience.' Therefore, while defining the term professional manager the above committee has taken into account the element of specialised knowledge as well as specialised experience.

"The movement towards professionalisation of the top management structure of large companies is bound to gather momentum. This trend has been aided particularly by the emergence of a strong public sector in so far as recruitment is made in public undertaking not on the basis of family but on the technical and professional competence of the candidates."⁷⁴

74. Op.cit. Sengupta Dr. N.K. Changing Pattern of Corporate Management, Vikas Publishing House Pvt. Ltd. New Delhi, P-281.

Indeed, it is often asserted by many writers on the subject that professionalisation of management is a concomitant of the public sector in India.⁷⁵

According to Dr. N.K. Sengupta, the interchange of services between public and private sector undertakings by the professionals, the Indianisation of FERA Companies, the opening of professional institutions will help to enhance the movement towards professionalisation of company management in India. But, the guidelines issued by the Company Law Board regarding ceiling of managerial remuneration will stand in the way of professionalisation movement. This ceiling of managerial remuneration will not in any way affect the interest of the owner managers 'who have other ways of compensating themselves from the company than by the mere drawal of official remuneration.'

In this respect, it is worth mentioning here that there is growing trend among the younger members of traditional business families taking professional qualifications in order to equip themselves to take part in management with modern scientific knowledge.

Dr. N.K. Sengupta observes four norms essential for the professional managers - a body of empirical knowledge, its application in the day-to-day pursuit of the profession, a code of conduct formulated and enforced by the representative professional institution and lastly a pervasive non-proprietary

75. Chattopadhyaya P. "Managerial Revolution in India : a comment on its character and context", Part I Indian Management, March April, 1988.

or non-hereditary interest in the organisation. The last norm is important in the Indian context, but must not be viewed as a sine-qua-non for professional management.⁷⁶

Dr. R.K. Hazari in his article Management : Hereditary and professional states "one of the business groups in India is having a system of financial control, which probably is one of the finest systems of control anywhere in the world."⁷⁷ He admits that the management is conducted with trusted kins but at the same time there is need of the rise of the professional management. According to him "what is required is to keep the hereditary principle on a family basis such that one does not think of the heredity of the same family but of more and more families coming into the picture so that one gets a much broader base rather than one restricted to a few alone."⁷⁸ Dr. Hazari is of the opinion that like bare footed doctor, persons having practical experience in profession may be appointed in companies for professional work.

Though there is truth in the statements of both Dr. N.K. Sengupta as well as Dr. Hazari yet they seem to be conservatives and not in favour of structural change required to be made in the company management in India.

Justice V.R. Krishna Iyer states that the corporate

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76. Op.cit. Sengupta Dr. N.K. Changing Patterns of Corporate Management - P-283.
77. Hazari Dr. R.K. Article : Management 'Hereditary and Professional' published in Chartered Secretary Vol.X, No.8, June, 1980.
78. Ibid.

sector which owns and controls the material resources of the country and plays a dominant role in the economy, requires professionals such as company secretary to act dual role - community commitment which makes the company a vital factor in the progress of a nation - being an inside of the company vibrates to the wave - length of the country's interest. Professional efficiency and true independence are necessary to a professional including a company secretary to him with legal protection against arbitrary actions.⁷⁹

The success of a company today depends on the effective management of its human resources, available funds, machinery, technology and other few factors that may have made some relationship with a particular industry. Corporate business policy and strategy for each company is generally formulated taking into consideration of these factors.

Though all the companies have a decision making machinery they are seeking professional help for the correct implementation of previously planned activities and for monitoring their progress to correct irregularities. In India, not much thought is always given to systematic approach towards the formulation of management policy although many are adopting processes of discretionary control which would help them to fight the constant hurdles arising out of the changing situations of our country.

Many organisations have the honest desire to effect

79. Iyer Justice V.R. Krishnaiah Article the role of Company secretaries in corporate sector published in Chartered Secretary, Vol.X, No.6, June 1980.

professional business decisions for the best chances of survival, but lack of resources for availing of the services of a professional may negate the chances of overcoming the professional hurdles.

Judgement remains a necessary consideration for any forecasting method. A good analysis takes several steps to complete and includes several components. A professional expert has to seek the perfect balance between the cost of application and value of results. It has been observed that many new projects result in a failure because of an ineffective project management. A dynamic professional organisational structure is needed because it assures a free flow of ideas, appropriate technology input, co-ordinates operations and encourages better decision making for ultimate success. When such organisation structure is found to be absent in industrial organisations proper organisation management audit should be initiated and continued.

In a developing economy like India the organisations often are associated with complicated problems. Gone are the days where anyone having administrative flair could manage an industry. The situations have changed and accordingly the style of management has changed. Appropriate management techniques have been evolved to fight various constraints. While some organisations acquire such professional strength through

establishment of their own set up, some prefer to acquire the same through consultants.

The Government should protect the interest of dependable and professionals since this skilled profession can only convert the present industrial scene to a highly developed one.

3.28 Solutions of these problems :

Four our format of the Multiple Two-Tier Board the professionals are inevitable part. In the policy board they will come as nominees by the Government, financial institutions and banks (either employee of the nominating body or outsiders deputed by them) on part-time basis.

The executive board will be constituted with the professional employees having vast experience, upto-date knowledge of modern technique of their discipline and power of taking individual independent judgement. This board will be responsible to translate into practice the broad decisions taken and principles formulated by the policy board.

The family members if can prove themselves as efficient, expert, sincere and equipped with modern knowledge of their own discipline would get a chance to the board. In other words, only family connection, and background, loyalty or representative of the visible or invisible family or group or hereditary influence will not be considered to take them in either of the two-tier board of directors.

In this way, professionalization of company management will bring in sea change of the power problem which retarded the growth of economy for a long time in India. The new in built structure of Company Management will improve efficiency, raise production, reduce cost of production, promote investment and savings, generate larger revenues for the Government, stimulate private initiative, undertake social responsibilities, uphold public interest and check and control foul play of large business houses.

In the next chapter we shall deal with the provisions under Indian Constitutions to regulate business in general and company management in particular.

CHAPTER - IV

CONSTITUTION OF INDIA - ITS IMPACT ON ECONOMIC POLICY

AND

LEGISLATIONS VIS-A-VIS COMPANY-MANAGEMENT

CHAPTER - IVCONSTITUTION OF INDIA - ITS IMPACT ON ECONOMIC POLICYANDLEGISLATIONS VIS-A-VIS COMPANY-MANAGEMENT4.1 Major constitutional provisions on economic policy of India.

Constitution is the source of all laws including economic policy formulated by a country and naturally it exerts greatest influence on the legal aspects of the most important business organisation, i.e. Company and its management structure. In this chapter we shall try to discuss the main provisions of the Constitution of India with its upto-date amendments including some of the courts' decisions relevant to our economic policy and legislation, the policy of the Government of India so far adopted in this regard and critical review of the 1984-85 budget which is supposed to be most liberal regarding private investment in economic fields. We shall also try to evaluate how far the policy of the present Government is in consonance with the principles laid down in the constitution of India.

The Indian Constitution is based on the concept of the socialistic welfare state. The Preamble itself declares that the aim of the State among other things is to secure to all citizens social and economic justice. With this end in view, the Constitution contains number of provisions which empower the State not only to intervene in private business, but also to

commence and conduct business units under its ownership.

The Directive Principles of State Policy relating to social and economic matters (Articles 38, 39, 41 - 43 and 43A) discarded the doctrine of Laissez-fair and establish the policy enabling the Government to regulate and control private business in a drastic manner. Special reference can be made regarding Articles 38 and 39 - the former declares that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all the institutions of national life. The later directs that the State shall in particular direct its policy towards securing:

- a) the citizens, men and women equally, have the right to an adequate means of livelihood;**
- b) the ownership and control of the natural resources of the community which are so distributed as best to subserve the common good;**
- c) the operation of the economic system which does not result in the concentration of wealth and means of production to the common detriment;**
- d) equal pay for equal work for both men and women;**
- e) the health and strength of workers, men and women, and the tender age of children are not abused and that**

citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;

- f) the protection of childhood and youth against exploitation and against moral and material abandonment.

Of these provisions, particularly the provisions (b) and (c) are relevant on the basis of which a number of specific laws or policy measures have been adopted affecting business. Such provisions are driving force which led the Government to nationalise many existing business concerns or vesting the business of the private ownership in statutory public Corporations set up under public sector. In December, 1954, Government adopted the principle to lead our economy on the path of Socialist Pattern of Society - which itself exerted great influence on economic activities in our country. As for example, special reference can be made of the Article 43A which states : "The State shall take steps, by suitable legislations or in any other way, to secure the participation of workers in the management of undertakings, establishment or other organisations engaged in any industry." Any objection against the workers' participation in the management of companies is unconstitutional and in our suggested format of new management structure, we have given due regard to this issue.

Lists I and III in Schedule VII of the Indian Constitution contain a number of provisions for control and regulations of economy which are worth mentioning.

Item numbers 43 to 52 of list I are more relevant for the Company Management. Under item 52 of list I Government is empowered to control industry, under item 42 and 43 of list II Government can regulate inter State Commerce, under item 33 of list III Government can control products of controlled industry, imported goods, and important raw materials like cotton and jute and under item 34 in list III, it can control prices. In other words today Government enjoys wide powers to regulate not only trade, industry and commerce but also the structure of business firms.

The fundamental rights enumerated in Articles 14 and 19 are subject to several restrictions empowering the Government the right to make laws for the public interest. The restriction has also been made on the rights of the citizens to acquire, hold and dispose of property or to carry on any occupation, trade or business. Our Constitution strives to strike a balance between individual liberty and social control. Prior to the award of the Supreme Court on nationalisation of bank in 1969 the legal view was that by enacting statutes, Government used to take away the rights given by Constitution. Soon after the Constitution came into being in the year 1950, it was realised that Article 19 is in contravention of the Directive Principles of State Policy, resulting Constitution (First Amendment) Act, 1951 by introducing Article 19 (1) sub clause B (11) which authorises "the carrying on by the State or by a Corporation owned and controlled by the State, of any trade, business,

industry or services, whether to the exclusion, complete or partial, of citizens or otherwise."¹ In order to materialize the principles enunciated in the 'Directive Principles of State Policy' Government has nationalised many enterprises and created public institutions in a number of fields like insurance or other commercial organisations operating side by side with privately owned organisations. By virtue of this amendment it is possible for the Government to introduce socialism by abolishing the private sector altogether. In this context, some important judicial references are worth mentioning here. In *Balsara -VS- State of Bombay*, 1951, S.C.R. 682, the Court held that if a law seeks to carry out an object in pursuance of the Directive Principles, it can not be called unconstitutional even if it offends a fundamental right, for what the State is required by the Constitution itself to do, cannot be said to be unreasonable e.g., Article 43 (Minimum wages), Article 47 (restriction on sale of liquor etc.). In the famous case of *Subodh Gopal -VS- Government of West Bengal*, 1954, the Supreme Court held that "under our Constitution the legislature possessed a larger measure of police power than what had earlier been supposed. Nevertheless, the Courts have intervened in innumerable cases and invalidated State regulatory measures on the ground that these violated the Constitutional Guarantee of fundamental rights. But once the legislature has proceeded to plug the loopholes and enact a new law the attitude of Courts had

1. Desgupta A and Sengupta N.K., *Government and Business in India*, Allied Book Agency, Calcutta, 1st. Edn., 1978, P-48.

not generally been one of confrontation, but of defence of the wisdom of the legislature."²

Several amendments made on Article 31 (1st., 4th, 7th and 25th) with the object of the fulfilment of Article 39 for making effective control of the material resources and means of production and for transfer of ownership to the State. But making 4th amendment (1955) by recasting Article 31A, provisions have been made, among other things, for :

- 1) Taking over of the management of any property by the State for a limited period in the public interest or for proper management;
- 2) amalgamation of two or more Corporations in the public interest or for proper management;
- 3) the extinguishment or modification of any rights of managing agents, managing directors, directors etc. or of any voting rights of shareholders, or
- 4) the extinguishment or modification of any rights arising out of any agreement, lease or licence in respect of any mineral or mineral oil, and no law regarding the above shall be void on the ground of inconsistency with the rights stated in Articles 14, or 31. For taking away the private ownership by the Government adequate compensation is required to be paid which is equivalent to the value

2. Subodh Gopal - VS - State of West Bengal, A.I.R. (1954) Supreme Court 170.

of the property or its market value.³ By making 25th amendment in the year 1971 and by introducing new Article 31-C which substitutes the word 'Compensation' by the word 'Amount' and provides that any law which seeks to implement the directive principles in Articles 28(b) or (c) shall be void on ground of being inconsistent with Articles 14, 19 or 31, and no law which declares that it is for giving effect to these principles shall be challenged in any Court on the ground that it does not give effect to this policy. This change over of the Constitution has been made on the background of Supreme Courts' judgement striking down the banks nationalisation. 42nd amendment (1976) confers to the Parliament sovereign power to amend the Constitution and declares this power as beyond the judicial review.

Apart from the above Constitutional provisions Part XIII (Articles 301 - 307) of the Constitution contains some vital rules regarding trade, commerce and intercourse within the territory of India. Of these Articles, Article 306 had been repealed. Article 301 states that subject to the other provisions of the Part, trade, commerce and intercourse throughout the territory of India shall be free. Article 302 states that Parliament may by enacting law impose such restrictions on the freedom of trade, commerce or intercourse between one state and another or within any part of the territory of India as

3. Cooper VS Union of India A.I.R. 1970 S.C. 564 (608,614).

may be required in the public interest. Article 303(1) imposes restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. Article 303 (2) states that nothing in clause (1) of Article 303 shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so in the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. According to the provisions Cl. (a) of Article 304 "the principle of freedom of inter-state trade and commerce declared in Article 301 is subordinate to the State power of taxing goods imported from the sister states provided only no discrimination is made in favour of similar goods of local origin."⁴ Article 304(b) allows the legislature of States to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

"A law imposing a 'Sales Tax' is, in its pith and substance a legislation under Entry 54 of List II and not under the Entry relating to trade or commerce and does not therefore, require the previous assent of the President."⁵ Article 305 states that nothing in Article 301-303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide. "Thus in view of Art 305, it is

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4. State of Bombay VS United Motors, A.I.R. 1953 S.C. 252.
 5. Bengal Immunity VS State of Bihar, (1953) B.O.L.R. 17(22) Pat; A.I.R. 1953 Pat 87.

not possible to contend that the Motor Vehicles Act, 1939, is invalidated by Art. 301.⁶ "Rules made under the Defence of India Act and continued by the Miscellaneous Provisions Act (XX of 1947) form the existing law and hence, orders made thereunder are not void".⁷ Article 307 empowers parliament to appoint authority for carrying out the purpose of Articles 301 to 304.

In reality Indian Constitution has established a mixed economy where private undertakings are allowed to maintain their existence but with serious restrictions and limitations under Articles 19, 31, 302, 303 and 304. Article 19 (15) confers wide powers to the Government in the name of public interest and State enjoys wide authority on the ground of the general, social and economic policies of the State. In the famous case *Dwark Prasad VS State of U.P., 1954*, the Supreme Court declared that a restriction is reasonable only when there is a proper balance between the rights of the individual and those of the society between his fundamental rights to freedom and the over riding need for social control and public interest. This principle is followed since then.

4.2 Government's regulations of private industry under constitutional framework :

Under the constitutional framework it is interesting to discuss how the Government regulates private industry. Dr. N.K. Sengupta in his article - Government Regulation on private industry - an international comparison, states - "For nearly

6. *Motilal VS Uttar Pradesh, A.I.R. 1951 AU 257 (270) 314 F.B.; C.S.S. Motor Service VS State of Madras (1952) 2 M.L.J. 694 (1954).*

7. *Government of Mysore VS Mahanta (1951) 6 D.L.R. 44 (Mys.)*

a quarter of a century now India has experimented with the regulation of private industrial development through a multitude of administrative controls operated by different Central agencies under different laws and policies with an insistence on scrutiny of almost every single prospect of significance. Apart from the direct control exercised by industrial licencing, there are also the controls through capital goods import clearance, foreign investment or collaboration clearance, control over the matter which conforms to the laid down by the Government ^{principles} priorities and the Monopolies and Restricted Trade Practices Act. The declared objectives are to curb the evils of private enterprises and to make it conform to the Governmentally laid down priorities and the overall goals of social and economic justice."8

Dr. Sengupta has attacked the procedural complexities of licensing etc. and given illustration of Mandarin type of administrative guidance and supervision followed by Japanese and South Korean Government in order to eliminate all duplication of work as evidenced in India for streamlining the administrative process and the creation of a unified system for dealing with industry as a whole.

However, many persons hold the view in favour of introducing more severe regulations to exercise control over business. On the contrary, there are many who think that there is no need for such controls. As a matter of fact many policies and

8. Sengupta, Dr. N.K., Article - 'Government Regulation of Private Industry - An international comparison,' published in Government and Business in India, Sengupta A and Sengupta N.K., Allied Book Agency, Calcutta, Edn., 1970, P-84.

controls have brought a heavy sense of disappointment in business. Government also is aware of the need for some liberalisation of control and relaxation of regulations in certain areas as well as for streamlining the procedures.

The policies for the intervention are formulated within the framework of the Constitution of India, the Five Year Plans and the Industrial Policy Resolution of 1948 and 1956. "There is hardly any area of business activity effecting social interest which is not regulated by the Government, and it is well-nigh impossible for an executive to make any decision in such area without being familiar with types of controls and their implications."⁹ This control has become necessary in a country, like India where there is presence of a strong business class in the country, the domination of private industry for long with acquisitive interest. The Government's concern about shortage of resources and its determination to develop a pattern of economic development with clear objectives are sufficient reasons for the Government to exercise close control through various measures.

We generally do not support the large variety of administrative control measures some of which have further gone on multiplying themselves, and caused detrimental effect for the growth and development of the country. Business has definite role to play for the benefit of the country. "The Government has certain definite expectations from business. One expectation

9. Op.cit. Dasgupta A and Sengupta N.K., Government of Business in India, P-378.

of the Government is that businessmen will not resort to restraint of trade, hoarding, cornering, adulteration of products, unreasonable price and other unfair practices. The other expectation is that business will co-operate with the Government in respect of all policies for the economic and social welfare of the country. Similarly, the business expectation is that nothing in the policies of the Government should disturb the growth and continuity of business in a major form. All these are mutual expectations. But the relationship between the Govt. and business which is becoming more and more direct on account of several policies and measures of the Government is not one of mutual understanding.¹⁰

This misunderstanding and mistrust caused serious effects on business houses vis-a-vis company. Both Government and business houses should come forward and take the task of joint venture for the upliftment of the country. Such gap between the Government and business houses is not to be bridged over but removed. But it is certain that those who criticise Government regulation and controls forget the aspiration of the people of India which is clearly indicated in the Constitution of India.

In conclusion it can be safely argued that the Government has got constitutional rights and responsibilities to send their representatives to the industries for the cause of public interest.

Mr. S.L.N. Saha, Director of the Institute for Financial Management and Research while forwarding the book 'Corporate

10. Op.cit. Dasgupta Dr. A. and Sengupta, Dr. N.K. Government and Business in India, P-380.

Management and Accountability Towards a Joint Sector' states, "As regards the regulation of the private sector, the trouble in the country is not lack of legislative authority but unwillingness and incapacity to administer the laws. But the private sector must reform itself in a spirit of enlightened self-interest. A sense of trusteeship should prevail in private sector management, which must also make profits on the basis of efficiency, rather than monopolistic and unfair practices. From the modest contacts which I have had with private sector management, I should say that while the initial reaction of management of any proposal for reform is not quite favourable, there is a gradual willingness to improve. There is ample evidence to prove that private benefit and public good can be harmonised. This process can be speeded up by independent directors with academic and professional background."¹¹

4.3 Control and regulation of Indian economy :

The importance and role of Board of Directors in Company-Management in the overall economic development of any country particularly for safeguarding the interests of different constituents of Company is beyond criticism. Under the present socio-economic conditions when Government is trying to fulfil the aspirations of people to give social justice in order to establish socialistic pattern of society, Government's involvement in business activities has become inevitable. To find out the means of achieving social justice, control and constraint have

11. Sinha S.L.N., while forwarding, the Book 'Corporate Management and Accountability.' The Macmillan Company of India Ltd. 1st published 1974, P-VIII.

been instituted through Companies Act, 1956 and making amendments thereafter and formulating other enactments relating to the Companies Act. Too much control may generate many evils like tax-avoidance, diversion of fund, accumulation of black money, etc. Practically in competition with the official money in circulation, black money is circulated more. But it can not be invested in the trade, industry and commerce openly. It may be used in various ways to operate transactions fulfilling reciprocal interests of black money holders. This unaccounted money is mainly responsible for uncontrolled inflation by creating tremendous strain upon common people of average income. As a result, poverty, malnutrition, unemployment, illiteracy and other sins of human life are reigning in full swing. The industrial growth has been retarded.

But the Government headed by Prime Minister Sat. Indira Gandhi was of the opinion that controls have promoted industrial growth.

In a statement on July 8th, 1984 Mr. N.D. Tivari, Union Minister for Industries asserted that "Regulations and controls have promoted rather than hindered Indian industrial development during the last three decades of planning. Speaking at the annual general meeting of the Hindustan Chamber of Commerce at Madras, Mr. Tivari rejected the contention that regulations and controls had stifled industrial development. Referring to the current economic crisis being faced by some of the Latin American countries, he pointed out that Governments in these countries

were now seriously contemplating controls and regulations to pull them out of their mess. Mr. Tivari said that the choice was clear - whether to have controls and regulations after the mess or whether one resorted to controls in order to avoid a mess. India had chosen the latter path and had been proved right. This had been recognized by even the International Monetary Fund. It is matter of satisfaction that India achieved a large measure of self sufficiency to provide the capability to sustain the future growth of vital sectors of the economy.¹¹

The above is not a biased opinion. Aid-India Consortium meeting in Paris in 1984, where 14 countries of the world assembled, awarded India's economic performance with high marks and optimistic forecast. The first three years of the adjustment programme witnessed a historic break through. India overcame from its traditional constraint of a 3.5 per cent growth rate and reached a new level of 5 per cent. And growth rate during the last quarter reached as high as 7 per cent. During this short period India recorded dramatic increase in crude oil production which almost doubled from 10.5 million tonnes in 1980-81 to 26.2 million tonnes in 1983-84. The share of oil import in total oil consumption declined from 66 per cent in 1980-81 to only 27 per cent in 1983-84. Finance Secretary P.L. Kaul called the increase in domestic oil production the single most important factor in bringing a turn round in the balance of payment situation. But there was an equally important

11. The Economic Times, Calcutta on July 9, 1984.

windfall that helped remittances from non-resident Indians to Indian banks that had averaged about Rs.200 crores, jumped to a whopping Rs.800 crores in 1983-84. Real investment in energy and basic infrastructure sectors, although lower than initial plan targets, increased at substantially higher levels than in previous years. Hopper also noted that thanks to external debt management, India succeeded in raising its growth rate without endangering its high credit worthiness.¹²

Mr. Pranab Mukherjee, the then Finance Minister of India also unfolded the rosy picture of growth of the Indian economy in his article published in *The Economic Times*, Calcutta.¹³

The National Council of Applied Economic Research, in its review of the Indian economy, estimates that economic growth rate for 1983-84 may go up to 8%, against the 6.7% estimated in the pre-budget Economic survey.

In this connection it is worth mentioning the fact that a mere increase in the GNP is not necessarily an indication of happiness and welfare of the nation.

According to Justice Sachar, in 1977-78, 309 million people had been below starvation level (means Rs.2.16 to spend per capita per day in rural areas and Rs.2.50 in urban areas)

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12. Letter from Washington, (Aid India Consortium) Put on the back, by Inderjit Bedhwar, Page 50 INDIA TODAY August 15, 1984 (Magazine).
13. Article 'scope for better growth rate' by Mr. Pranab Kumar Mukherjee, former Union Finance Minister, published in the *Economic Times*, Calcutta, August 15, 1984.

in the prices of 1977-78. The disparity between the poor and rich is increasing day-by-day. Millions of people are unemployed and create a colossal problem. Under such conditions, the corporate sector has got the responsibilities to solve such problems.¹⁴

In this context it is necessary to discuss the policy of the present Government which is supposed to be the policy of 'liberalisation' and 'privatisation.'

4.4 Attitude of the Government for Industrialization :

It is reported that Prime Minister directed the Cabinet Secretary to work out a system by which 'single window clearance' could be effected in all matters where the Government had to deal with the public including industrialists. The directive came during a meeting that the Prime Minister had with 42 Secretaries of the Union Government. It was pointed out that in the working of the Government there was lack of co-ordination between various ministries and within the ministries. The people had to go from one place to another and from one place to another and from one person to another several times to get clearance.¹⁵

Another hopeful direction given by the then Finance and Commerce Minister, Vishwanath Pratap Singh on 26th February, 1985 assured industrialists of stability in fiscal and trade

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14. Sachar Justice Rajinder - Article, Corporate Laws; effect on the growth of Corporate Sector - published in Chartered Secretary, Vol. XI No. 1 January 1981, P 36-37.
 15. A Report appearing in the Financial Express, Bombay, June 23rd, 1985.

policies. Moreover he agreed to review the clearance policy so as to make it meaningful. The budget for 1985-86 placed by the the Finance Minister Mr. Vishwanath P. Singh on the 16th March 1985 gave basket of concessions to the private corporate sector, mainly designed to reduce rigidities and improve the environment of industrial growth. To mention a few, twenty five industries have been delicensed and the value of assets of large industrial houses for purpose of MRTP Act raised from Rs.20 crores to an incredible amount of Rs.100 crores, thereby reflecting the Government's political will. He also raised the investment ceiling for the small-scale and ancillary industries and also granted excise duty concessions to the small scale sector. Rate of Corporate tax in the case of widely held companies was reduced from 55 per cent to 50 per cent. Companies engaged in growing and manufacturing tea in the Country to be entitled to a deduction of upto 20 per cent of their profits deposited in a special account with the National Bank for Agricultural and Rural Development. Exporters will be entitled to a deduction of amount not exceeding 50 per cent of export profits to be carried to a Reserve account to be utilized for business promotion. It is said that the budget expresses the Government's overall commitment to development, though economic engineering remains to be spelt out in several areas. Apart from the said concessions the proposal for raising the interest payable on convertible debentures of non MRTP and non FERA Companies from 13.5 per cent to 15 per cent would naturally attract a broader section of investors to smaller companies for investment. ¹⁸

indicating that India would further liberalize foreign investment rules, Mr. Rajiv Gandhi the Prime Minister of India, on April 15, 1985 invited foreign investors to participate in the high technology sections of the country's economy. Mr. Arif Mohammed Khan, Union Minister of State for Industry and Company affairs has urged industrialists in the eastern regions to break new grounds and enter high technologies of the future be it electronics, bio-technology or new materials.¹⁷

4.5 A little say about the Government's economic policy :

Different Chambers of Commerce in India welcome the budget for 1985-86 for several concessions made and liberalization shown towards the private sectors. "A silent revolution," says Palshivale, an eminent jurist in India.

Famous economist Dr. Shobatosh Dasgupta, while reviewing the budget (1985-86), stated that "after years of ineffective talk about the desirability of 'planning from below,' the Central Budget has reversed the angle of vision and has adopted the hypothesis that the economy will attain an all round gain if the planning efforts start at the top. This is not the thing as the Mahalanobis' model of developing the infrastructure and the commanding growth - stimulants. The idea now seems to be that if the private industrial sector is given a large measure of stimulus - through reliefs in personal and corporate taxation and in customs and excise duties on producers' goods

17. The Statesman, Calcutta - April 25, 1985.

and through the elimination of restrictions (like the MRTP ceiling on assets), output and employment will grow. The non-official spokesmen from the industrial sector have gone so far to say that it is "true socialism" to encourage entrepreneurship among the upper middle class. They seem to believe that the benefits from such stimulation of private enterprise at fairly high levels will filter down to the lower levels in the form of higher incomes and employment. There has been a deliberate choice in favour of the private sector and against the public sector. If the tax receipts sacrificed were added to the allocation of rural employment, the total efforts would have been much larger than what would be achieved by releasing the funds to the private sector, particularly when it is known that the whole of the released funds may not be available for investment. There is of course the fact that the public industrial sector has weakened its case by inefficiency and losses. But no one has cared till now to estimate the sacrifice which the whole economy has ultimately to undergo resulting from inefficient and corrupt management of large number of private units. The public sector at least operates under public scrutiny and is accountable to the legislature. The private sector does not abide the question of accountability. Industrial units have been made sick by mismanagement, sometimes unintended, but sometimes planned also. Investments by private equity holders have been completely eroded. Internal funds have not been generated and the heaven of the private control with public funds (liberally provided by the financial

institutions) has been created for money. The individual owners gain from both sides, when any profit they claim as theirs and when there is loss that can be transferred to the tax payers who finance the sick units. The cases of frauds and tax evasion that have been exposed are perhaps only a small part of the picture.¹⁸

Several leading economists are of the view that the Union Budget for 1985-86 marks shift in policy of increasing reliance on public sector and that the important role assigned to it in the economy was being curtailed.

But the then Finance Minister, Mr. V.P. Singh and senior officials of his Ministry have asserted that there was no question of giving up the public sector, which has provided the much needed push to the economy.

However the Congress party declared in 1985 at its session in Delhi that 'there is no other convincing way to develop our economy than the way of socialism.'

4.6 Problem of accountability and economic cover :

As has been discussed earlier that the public sector has the burden of responsibility for establishing super structure for all business whether for private or public sectors, remaining under strict control of accountability to the parliament and public at large. Therefore, they could not able to make as

18. Dutta, Dr. Ghabetosh Article "The Union Budget" planning for the top - published in the Economic Times, Calcutta on April 8, 1985.

gainful economic results as expected from them. The problem could be easily solved if all the business enterprises are nationalized and are managed directly by the Government agencies. But under present context, it is neither possible nor feasible. Constitution of India guarantees the existence of private sector and thus a system of mixed economy with a view to creating welfare state is the aim and objective of our national attitude. Corporation to-day is viewed as a social institution. According to this modern concept, "the business enterprise is viewed as a complex organization of pressure group, including workers and managers, consumers of products and suppliers of materials, shareholders and creditors, as also the general public. Therefore, the Corporation does not belong to the shareholders only but represents a 'Community of interests'. 'The shareholder' is some one who simply provides capital in a particular form to an enterprise which is a distinct collection of interests in its own right, he is only a special type of creditor."¹⁹

From this view emerges a distinctive corporate personality to which Prof. Galbraith has given the name of 'The Techno-structure'. The technostructure may have goals of its own which may, and often will, conflict with the achievement of the maximum value for the equity holders. The Corporation, therefore should be accountable to all the ingredients which constitute a Corporation.

19. Curwighan, N.J. Capital Investment and the cost of Capital, A.M. Bourn (ed) Studies in Accounting for Management Decision, London, 1968, P-190.

"In India, over the last two decades about 50-60 per cent of gross corporate investment has been internally financed. Another about 25-30 per cent is supplied by Commercial Banks, development banks and saving institutions. The individual saver directly provides only 10-20 per cent of the funds for financing corporate expansion"²⁰ With this small investment private sector enjoys tremendous economic power. The growing dominance of the corporate form, the increasing decision making power of corporate management and increasing by passive position of shareholders which have together contributed to an increasing concentration of economic power of the Corporations. "In India, undoubtedly managerial discretion in important areas, such as size, location, product-mix, price, process, foreign collaboration, etc. etc., is severely restricted by direct Government controls which have been found to be generally inefficient and can be regarded as the principle cause of corruption, both political and individual. The problem of political corruption is much more intricate than it appears at first sight. The complexity of the problem arises from the fact that, in a democratic system, the political parties attempt to collect huge election funds and an important, albeit disguised, source of such funds is the big business."²¹ Companies (Amendment) Act, 1969 prohibited completely the making of any contribution by companies to any political parties for any political purpose. The object was to eliminate power. The present budget 1985-86 has made the

20. Gupta, Dr. L.C. Corporate Management And Accountability : Towards a joint sector, Macmillan, published on behalf of the Institute for Financial Management and Research, Madras, 1st. Edn. 1974, P-11.

21. Ibid. Gupta Dr. L.C. Corporate Management and Accountability PP 21-22.

contribution as such as legalized and thus receivable amount of money due to the Government indirectly will go to political party. The object is said to curb black money. Much debate has been made as to how to regulate the business by the Government, specially remedies of the problems arise due to donation of the businessmen to political parties. Neither strict regulation nor liberalisation gives forth satisfactory results.

If control and regulation by the Government are not properly adhered to these may generate corruption and do more harm to the economy. On the contrary "the impact of the corporate sector on the economy of the country is too great and too involved for it to be allowed to be left alone. The existence of Corporate Sector must rest on regulations framed in public interest and meant to sub-serve public benefit."²²

What type of control is necessary in India? Has the system of control so long adopted, solved the colossal unemployment problems, the problem of poverty and inequality of income?

In our view the change in the very 'structure' and 'ownership view' of the present management should be totally reviewed. The management needs to be vested to a body composed of representatives of share holders, workers employees, consumers, financial institutions including banks and Government. The two tier body - policy board and executive board, the former concentrating on the determination of policy and supervisions and latter constituted with professional employees having independent authority

22. Sachar J. Railinder, Article "Corporate Laws Effect on the growth of corporate sector" published in Chartered Secretary Vol.XI No.1 January 1981, P-33.

to work, really expert, sincere and experienced - would solve our present problem. The 'multiple two-tier form of board' would probably lead the country towards progress and development in accordance with the principles laid down in our constitution. The system of the form has become viable through the process of evolution in India where huge amount of public fund has been invested in corporate business and as a natural consequence, financial institutions have become interested to nominate proportionate representation to the board. Not only that, this system embraces all the good systems experimented and tried successfully in different countries of the world. On one hand it will reduce the so much complications of regulations and control on the other hand it will reduce corruption and encourage liberalisation. We support the liberalisation movement of the Government with precondition of restructuring the top management of companies under the system of multiple system of two-tier board but not privatisation. The system of multiple-two-tier Board might be applicable both in public and private sector undertakings with profit.

4.7 Corporate Sector-Post-Sudant realities and applicability of proposed format of management in corporate bodies.

The adoption of proposed structure of Corporate Management i.e. the system of 'multiple-two-tier board' would gain importance even if we suppose the present policy of shifting importance from public sector to private sector proves result oriented. The

responsibility of the corporate sector has become very much important to give concrete shape of the policy of the Government's post budget realities. The aggregate Seventh Plan investment was visualized at Rs.3,20,000 crores, of which the public sector investment is to be Rs.1,50,000 crores and the private sector investment Rs.1,70,000 crores. To translate this change of philosophy into action the Government is in hurry and wants the private sector to waste no more time in taking the new role assigned to them. This hurriness shows the sincerity of Government Policy.

The fulfilment of those heavy tasks endowed on private sector depend on several external factors also which are beyond the control of the private sector itself.

Every one knows that private sector industry is efficient and it knows best how to make profit. But there are other aspects or areas in respect of which its performance and ability is relatively unknown. The ignorance arises partly from the fact that the one single statement which is generally published by every company in its annual report which is addressed to its shareholders only and not to other ingredients of the company. This report naturally explains the company's financial performance and the efficiency with which its operations were conducted, and is all tailored to communicate with the shareholders. Perhaps, they have never considered themselves to be responsible to any one except their shareholders. Few companies have made an

attempt to communicate with other sectors of society.²³

Mr. D.R. Pensee has suggested the submission of half yearly statement to the shareholders; providing opportunities for employment for the millions of the unemployed people in the country notably the unskilled rural people; supplying goods to match the increasing needs of the people due to industrialisation; checking of inflation; taking responsibility of generating at least 75% of the total tax revenue of the Government (Corporation tax, the relative excise duties and the customs duty and excluding income tax paid by the employees of the Companies) and finally assisting the country from the severe foreign exchange crisis by way of promoting exports and also by way of reducing imports - the problems likely to be faced by the private sector to be solved. Some key personnel in the public sector should be taken from the private sector organisations for its efficient management. As most of the infrastructure activities in the country are now under public monopolies e.g. steel, coal, electricity, rail, transport, air transport, post and telegraphs and telecommunications, the prices of these items should not be allowed to be raised as that will exert spiralling effect of increasing prices of all goods and services and generate a high cost economy.

Mr. D.R. Pensee concludes his articles to which we share our opinion that "in the meanwhile, industry has no time to

23. Pensee D.R. Article - Corporate Sector - Post - budget realities published in the Economic Times, Calcutta, May 30, 1965.

less nor any justification for sitting on the fence. If it gives results, as it seem to be giving results, a grateful nation would certainly offer further concessions without hesitation. On the other hand, if industry fails even now, it may forfeit any claim for sympathy and it should not be surprised to see an intense wave in the opposite-direction which will be difficult to stop.²⁴

We are of the opinion that all these problems could be minimized only if 'Multiple Two-Tier Board system' is adopted both in private and public sector enterprises. As, this type of board is an assembly of the representatives of different segments of the society any type of danger as stated above could be avoided and any type of aspiration expected from private sector could be fulfilled.

In the next chapter we shall try to highlight the management pattern of Companies in different countries - their features and techniques and lessons from them which can be gainfully employed in the Company Management of India.

24. Pandas B.R. Article : Corporate Sector - Post - Budget realities, published in the Economic Times, Calcutta, May 30, 1985.

CHAPTER - V

MANAGEMENT PATTERN OF COMPANIES IN DIFFERENT COUNTRIES

AND

THEIR INFLUENCE ON INDIAN COMPANY-MANAGEMENT

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A N D

THEIR INFLUENCE ON INDIAN COMPANY-MANAGEMENT

5.1 Introduction :

Object of this chapter is to discuss the features of Company-Management in some of the important countries of the world specially Japan, France, the U.S.A., the U.S.S.R. and China. These countries having selected techniques of management suited to their social, economical and cultural environment and thus following that techniques or systems of management they have made tremendous progress in trade and industries. It will be seen that all these countries have directly or indirectly exerted great influence on the sphere of corporate management in India. Our discussions on this matter are relating to public companies only as envisaged in different names and styles in different countries.

As both public and private sector companies are allowed to work in India in their respective field of activities the study of the techniques of corporate managerial practices in the capitalist as well as socialist countries is important.

In this chapter the British techniques of control and management of companies as adopted there have not been discussed separately as the British Company Law and Management pattern have directly influenced the Indian Company Law and its nature

of management. The British Company Law and Indian Company Law are so interwoven that any change in the British Company Law has generally been inserted in the Indian Company Law within a very short time.

5.2 Japanese Technique of 'Management' :

There are two types of Joint Stock Companies in Japan :

- 1) Stock Company or KABUSHIKI KAISHA - Public Limited Company and
- ii) GAIEN KAISHA - Private Limited Company.

At least seven promoters are required for the incorporation of a KABUSHIKI KAISHA. They are required to prepare and sign articles of incorporation which contain inter alia, the object, name, total number of shares authorized to be issued, the seal of the principal office and each branch office, manner in which the company is to give its public notices, full name and permanent residence of each of the promoters etc. etc. The articles of association is like our memorandum of association and this is to be attested by a notary public. The Company is entitled to issue shares having par value or shares without par value or both, the liability of a share holder being limited to the value at which he has taken his own shares. The amount of each of the shares without having par value must be equal but not less than 500 YEN, while the issue price of shares having par value must not be less than the face value. Japanese

Commercial Code lays down rules to issue both of the kind of bearer and non-bearer transferable shares.

There are three organs of the management :

- a) General Meeting of shareholders,
- b) The Board of Directors and
- c) The Auditor.

The general meeting, inter-alia is empowered to appoint an inspector to examine the documents submitted by the directors and the written report of the auditors. Resolutions of the meetings of the general body are passed on by a majority vote of the shareholders present, holding shares representing more than one half of the total number of the issued shares. A shareholder is precluded from voting at a general meeting on a resolution in which he has separate and particular interest.

The Commercial Code prescribes a minimum number of three directors which constitute the board and they must not be shareholders but are appointed at general meeting of shareholders for a period not more than two years at a time except the appointment of first directors who are appointed for a period not exceeding one year. Cumulative system of voting is permitted by Japanese Law for the appointment of directors.

The general meeting has the power to remove a director before the expiry of his term of office. In this case the director so removed can claim damages from the Company. The administration of the affairs of the Company is to be decided by

the board of directors who will also have the power to appoint and remove the Company's manager. Resolutions of the Board are to be adopted by a majority of directors present but articles may prescribe stringent conditions. Under Japanese Commercial Code, an auditor may at any time inspect or make extracts from the books, records and documents of accounts or call on the directors for a report on the accounts. He is even entitled to investigate the affairs of the Company and the state of its properties. It is the duty of the auditor to examine the documents which directors propose to submit to a general meeting of shareholders and to report their opinion thereon to such general meeting. The main qualification of an auditor is that he must be sincere but need not be independent and member of a professional body of accountants. There is no disqualification except that he is not entitled to be director or employee of the Corporation. The accounting documents (balance sheet and Profit and Loss Account, containing an inventory, business report, proposal for reserve fund, distribution of profits or interest) have to be submitted by the directors to the auditor at least two weeks before the day appointed for an ordinary general meeting. After the documents are approved by the general meeting, the directors are required to give public notice of the balance sheet without delay.

Lessons from Japanese system of Company-Management :

The success behind the Japanese industrial development has been stated by many authors as the existence of good relation

between the Corporation and Government.

Japanese Government officials believe that business is incapable of making satisfactory decisions by itself and that it is essential for Government to provide guidance on virtually every aspect of proposition.¹

Industry accepts this leadership provided by the administrative bureaucracy for which there is, however, no legal or statutory basis, but a much stronger base which is provided by a deep sense of national patriotism, a desire which is shared equally by Government and business to bring Japan's economy abreast at the level of European economy measured in per capita income terms.² "Out of discussions between Government and private enterprises, mutually determined national targets are worked out. Private enterprise pledges to carry these out. Government, on its side, pledges special favours such as subsidies and taxation measures. Mutual consent and bilateral methods obviate the need for legal compulsion."³

The result is the emergence of a 'concerned economy' or more correctly the 'Japan incorporated'. Shri Sudhir Gulji has contributed on the subject "Government and business in

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1. Hadley, Eleanor M. "Anti-Trust in Japan", Princeton University Press, 1970, P-390.
 2. U.S. Department of Commerce, "Japan - The Government Business Relations". Quoted from essay by Dr. N.K. Sengupta in the Indian Journal of Public Administration Vol. XX, No.3, July-September, 1974, PP 565-575.
 3. Ministry of International Trade and Industry, "Japan ; A discussion of co-operative Industrial Organisation," Quoted in Hadley, Eleanor M, "Anti-Trust in Japan", Princeton University Press, 1970, P-390.

Japan in his article and observes - "an unique feature of Japan's success in corporate field".⁴ Apart from the inter-
 meshing of the Government and business, for the policies and
 strategies towards achieving super ordinate goals (what has
 become known as Japan Incorporated) due credit should be
 given to the achievement of organisational development suited
 to the socio-cultural milieu and traits of the Japanese, the
 practice of basic and pragmatic business methods, and lastly
 quality-cum-productivity scheme covering the entire manufac-
 turing spectrum. These development of the last twenty five
 years are due to respect of seniority, group decision making,
 paternalism etc., over and above the features of life-time
 employment.

Japanese business strategy is nothing more mysterious
 "than a total commitment to working a whole lot harder at the
 basic,"⁵ - says Kenich Ohno.

Some of the findings of Ohno are summarised below :

1. The Japanese do not rigidly adhere to pre-determined long-range strategies, but pay scrupulous attention to performance on a monthly or even a weekly basis performance measured not against a three or five years plan, but against budget, against return on sales, against competitive performance.

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4. Mulji Sudhir 'Business in India' Calcutta, March, 12, 1984.
 5. Ohno Kenich "Japan : From Stereotype to specifics." The Mc Kinsey Quarterly, Spring 1982.

2. Return on sales (R O S) not return on investment (ROI) is the yardstick by which Japanese Companies measure their success. ROS rather than ROI is the measure used for investment decisions. People (or employees) are treated as fixed assets and business generates to justify their utilization. Decision on new investment is made not on the basis of ROI or payback period or discounted cash flow, but on whether the new business will be good for the Corporation as a whole, i.e. overall or aggregate ROS should sustain investment. Managerial autonomy is a corollary of the focus on total ROS performance.
3. One of the driving forces behind corporate action is "the action of the competition" that is matching the action of competitors and out-doing it.
4. In Japan, perpetuation of the enterprise and not profit is the driving force. The slogan is that the Company is forever.' This is manifested, e.g. in ploughing back capital rather than increasing dividends; transfer of funds from one part of the company to another in order to seek future business. A conscious attempt is made to avoid an "embarrassment of profits."

In regard to manufacturing techniques, recent research by Schonberger concludes that Japan has rejected complex management prescriptions and obsession with programmes, controls,

behavioural interventions, mathematical modelling etc. Instead, they have simplified problems.⁶

The simplifications relates particularly to productivity and quality. The system dealing with productivity is called the Just - in - Time (JIT) system. JIT directly addresses the material cost components of productivity. In regard to quality movement, the system is that of total quality control (TQC). JIT and TQC overlap and often jointly introduced, playing a control role in Japan's strategy. JIT and TQC procedures are nurtured on the shop floor, focussing on the worker and the line management and not on or by staff advisers and specialists.

Peter F. Drucker gives much importance on 'life-time employment' and company shareholders' relation for success of Japanese Company.⁷ He states "Life-time employment" means that the Japanese enterprise is run for the benefit of the employees.

The right of the employees to their jobs take precedence over every thing and everybody else. Equity ownership in Japan is largely a symbol of supplier-customer relationships rather than 'Property', in the legal sense. Capital itself is essentially not provided through common shares but through bank loan, which are legally considered debt. Say for example, the steel company that supplies the automobile manufacturer with steel will own 8% of the automobile company's shares; and the automo-

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6. Richard J. Schonberger - 'Japanese Manufacturing Techniques: Nine hidden Lessons in simplicity.' The Free Press Macmillan, 1982.
7. Drucker Peter F. "Management in turbulent times Heinemann: London, 1980 PP 183-194.

bile company, in turn, will own 5% of the shares of the steel company. Or the automobile company, while not owning a smaller supplier of parts, will guarantee the bank loans that constitute the supplier's capital.

In major Japanese companies, these cross-holding between customer and supplier run to collect half of the equity capital and to save very often, of the smaller Company's bank debts. Obviously, the holder of such shares is not a bit interested in the dividend; is concerned with the orders for steel he receives from the automobile company. 'Ownership' is in effect a relationship of mutual obligations rather than a right. All the rights are with the employees, who are entitled to 'lifetime employment'.

Mr. K.K. Kothari in his article 'Management-should India adopt Japanese techniques'^B has given stress on the Japanese tradition and culture, - side by side life employment as the causes behind the success and achievement of Japanese enterprise.

Second feature of the secret of the Japanese success in the economic development is the correct 'role-behaviour'. The Japanese accept their place in society and their behaviour is role-bound and not spontaneous. The Japanese society has rigidly stratified the roles. Thus a wife knows exactly how her husband would behave and what her obligations towards him are and vice versa. They believe in the "Confusion" concept of

B. Kothari K.K. - "Management - should India adopt Japanese techniques" published in the Economic Times, Calcutta, November 21, 1984.

harmony which emanates only from correct role behaviour. This role acceptance helps the Japanese relate better to their colleagues because each one knows what is expected of him. To this extent their ambitions are somewhat limited. Hence they perform better in a production system. But this role-bound behaviour does not inhibit creativity. Each individual is free to make any suggestion he likes though he can not enforce it till he discusses with all concerned and a consensus is evolved. Then it does not remain his suggestion. It is sent forward as group suggestion.

The third component is MITI - i.e. Ministry of International Trade and Industry in Japan which has tremendous contributions in production, technological and marketing in Japanese industries. It plays an important role in selection of industries with growth potential, rapid development of the textile industry in Japan in the 1950, emphasis shifted to steel in 60s, automobile in 70s and development of electronics and computers thereafter. "Not only does MITI identify projects with growth potential but also nurtures them thereafter by funding research and also brings about consensus between competing units so that resources are productivity-utilized in the best interest of Japan. Thus MITI plays a constructive and supportive role - that of a partner in growth and development of industry rather than that of a bureaucratic Government agency."⁹ Its active role with the industrial development of the country is quite different from that of 'planning commission' in India.

9. Op.cit. Kothari K.K. November 21, 1984.

It is sometimes, argued that as Japan is our neighbouring country and is making tremendous development of trade and industry and therefore we should follow Japanese system of management.

While inaugurating the Indian Merchant Chamber's Walchand Centre for Business Training and R.D. Birla Board room on 11th June, 1984 Dr. I.D. Patel, former Governor of the Reserve Bank of India and at present director London School of Economics, said that Japanese management style was suited to India. Harmonisation of all interests involved in the process of production by treating them as segments of one big family in the enlarged sense, as is being done in Japan, is also part of the Indian tradition for ages. The Japanese style of management, which is part of the Japanese culture^{and} heritage can also work well in India if the system is operated as part of India's ancient heritage. The interest of consumer, workers, industry and the Government can be blended and synthesised if we decide to come together towards a common goal. It is not only an lauding outlook of co-ordination but also the whole concept of one entity has to be operated and understood in its modern concept.¹⁰

The success of business organisation would lie in showing the spirit of enterprise involving an element of risk-bearing capacity on the part of those who preside over the destiny.

There is one more glorious tradition of our national heritage - that is the pursuit of plain living and high thinking.

10. I.D. Patel inaugurating address to the Indian Merchant Chamber's Walchand Centre for business Training on the 11th June 1984 published in the Economic Times, Calcutta, on June 12, 1984.

treating our wealth as one that is at the service of the community. The philanthropic tradition, which is rooted in our culture, symbolises that what we earn in business is a trust for being put to use for welfare and greater good of the largest number.

Mr. Vasant Sethi, Union Minister of chemicals and fertilisers on April 22nd, 1984 at New Delhi, underlined the need for changing the traditional concepts of discipline, authority and managerial prerogative. It must be realised, he said, that self discipline was the best form of discipline; that the concept of authority devoid of moral influences and the power of expertise was outdated. He concluded that decision making by consensus was far more efficacious than vain attempts to preserve archaic notion of managerial prerogative.¹¹

Mr. K.K. Katheri raised question whether the techniques which have paid rich dividends in Japan be successfully transplanted into India.

He answered in the following lines :

The success or failure of any managerial technique depends upon the historical and cultural background and ethos of the participating workers and managers. And in many ways India and Japan are culturally very different. To understand why certain techniques have succeeded in Japan some appreciation of their

11. Vasant Sethi - concluding session of the two day national convention "effective management for national growth" on April 22nd 1984. New Delhi published in the Economic Times, Calcutta on April 23, 1984.

culture and tradition is required. After all, history is a great teacher. The Indian culture is totally different from the Japanese cultures, tradition and way of life. We should not forget that the Japanese are a martial race. After the second World War they have temporarily given up their ambitions of world domination. But these ambitions and energies have been channelised into industry and their ambitions now appear to be domination of the world markets and not political domination. Corporate strategies of Japanese Companies are strategies for dominance of global markets, and they are flooding the world market with goods.¹²

In conclusion he said "it has become fashionable to talk of Japanese management techniques. Many management experts are of the solemn view that the Indian industry can flourish merely by copying Japanese management techniques forgetting that their culture, tradition and history have played a vital role in forging these practices. There are many things which can be learned from all races including the Japanese, but we must adopt what is relevant in the context of the prevailing environment in the country."¹³

5.3 French Technique of Management :

The law governing companies are provided in the French Commercial Code and partly in special laws. Apart from it, public Companies are governed by a special law of July 24, 1967,

12. Kothari K.K. in his article "Should India adopt Japanese techniques?" The Economic Times, Calcutta, November 21, 1984.

13. Ibid. Kothari K.K.

while the special law relating to Private Companies is to be found in a law of March 7th, 1925.

In France, there are the 'Societe Anonyme' or Public Limited Company and a 'Societe a Responsabilite' or Private Limited Company which are similar to our public or private Limited Companies. The technique of management of these Companies are discussed below :

Companies are managed by Board of Directors called COUNCIL d' ADMINISTRATION, consisting of not less than three and not more than twelve members - and they may be individuals or Companies.¹⁴ The Board of Directors must appoint one of their members as managing director, DIRECTOR GENERAL and delegate to him the Board's powers to manage the Company's affairs from day to day.¹⁵ The effective functions of the Board are to call meetings of shareholders, present the directors' report, recommend dividend and obtain the authority of a general meeting, for any far reaching transactions. A Company employing fifty or more workers has to form a Works Council, COMITE D' ENTERPRISE with the elected members by its employees. One or more qualified auditors, COMMISSAIRES AUX COMPTES are to be appointed for a period of three years by a general meeting of shareholders, failing which by the President of the Commercial Court for the district in which the Company is domiciled.¹⁶ At least one qualified auditor, selected from

14. Law of July 24th, 1883, Arts. 22 and 25; Law of 16th November, 1940 Art. 1.

15. Law of November 16th 1940, Arts. 2 and 12.

16. Art. 40.

a list prepared by the judges of the local civil and commercial courts, is required only in the case of Companies having published a prospectus inviting the public to subscribe for its shares or bonds.¹⁷

No shares can be issued without voting rights or with diminished voting rights. Voting must be in proportion to the nominal value of shares.¹⁸ Shares with double voting right may be issued provided they are registered shares which are fully paid when the Company comes into existence or which have been held by the same holder for two years.¹⁹

There are "three types of meetings of the members :

- i) The Annual General Meeting ASSEMBLEE GENERAL ORDINAIRE ANNUELLE to be held in each year on a fixed date stated in the Articles for the approval of the annual accounts and the directors' and auditors' reports, the declaration of dividends and the appointment of directors and auditors,²⁰
- ii) the specially convened meeting, ASSEMBLEE GENERAL ORDINAIRE CONVOQUEE EXTRA ORDINAIREMENT, to deal with any other matters except those for which an extraordinary general meeting is required; and
- iii) the extraordinary general meeting, ASSEMBLEE GENERAL EXTRA ORDINAIRE, to resolve an amendment to the articles, for

17. DECRET - Loi of 31st. August 1937, Art 1.
 18. Law of November 1935, Art I.
 19. Law of 13th November 1933, Art I.
 20. Art 32.

increase and reduction of capitals, amalgamation and dissolution²¹ and for the conversion of the public company into a private company by a simple majority of the votes passed.²²

Voting at annual and specially convened general meeting is by a simple majority of the votes passed.²³ while at extra-ordinary general meeting the majority required is two-thirds of the votes of the shareholders present or represented,²⁴ in which case the votes of those who abstain from voting are counted as having been cast against the resolution.

The accounts including Balance Sheet and Profit and Loss Accounts must be available for inspection by shareholders at the Company's office during the fifteen days preceding the Annual General Meeting together with the reports of the directors and auditors.²⁵

Until one tenth of the Company's capital is accumulated, dividend can not be declared. One twentieth of the year's profit is to be transferred to the legal reserve fund from profit before dividend is declared.²⁶

Lessons from French system of Company Management :

- a) Vital role taken by the Works' Council in Company management;

21. Art 31
 22. Law of 7th March, 1925 Art I.
 23. Art 28.
 24. Art 31.
 25. Art.12
 26. Law of 7th March, 1925, Art 33.

- b) shares of double voting right may be issued under some specific conditions;
- c) in extra-ordinary general meeting, those members who abstain from voting are counted as having been cast against the resolution;
- d) mainly, traditional type of board as in U.K. and India is in vogue.

5.4 American Techniques of 'Management' :

There are six types of business associations in the United States of America. They are -

- i) The partnership firm.
- ii) The Statutory Limited Partnership.
- iii) Common Law Joint Stock Companies which are unincorporated Companies established by contract providing for centralised administration and management but enjoy no legal entity;
- iv) Statutory Joint Stock Companies - which are unlike the Joint Stock Companies of Great Britain, enjoy many attributes of the Corporation in some States, including limited liability²⁷ but do not enjoy the benefit of the fiction of citizenship as conferred on the corporations of U.S.A. for the purpose of federal jurisdiction. Therefore Statutory Joint Stock Companies are not popular in U.S.A.

27. Pennsylvania Comp. Stat (1874)

- v) **Business Trusts** are created by trust agreement to perform business activities. All the powers of management are vested to the trustees, the beneficiaries being passive investors with transferable certificates for shares or units of interest.
- vi) There are two types of Corporations - Private and Public. Private Corporations are voluntary associations of individuals with a contractual relationship between the Corporation and its members. On the contrary, public corporations are those which are created for some public purpose may or may not exercise Governmental powers, but are controlled by the Government. These corporations are created by State Government. State laws are not similar. So, many of these State Corporation Acts are based on the model recommended by the Commissioners on Uniform State Laws in 1928.

"Although there is no general federal Corporation Act or compulsory federal system of licensing of Corporations in conduct of inter-state business, the corporations are regulated for a long time by the American Congress through important statutes relating to particular fields which need regulation, e.g. the Inter-State Commerce Act of 1887 which established among other federal administrative control authorities, the Inter-State Rail roads; The Securities Exchange Act of 1933, etc. These federal corporation statutes have been described as a

system of legislative and administrative checks on corporation management rather than of share holder control."²⁸

Rules regarding formation of Corporations varies from one State to another. If incorporated in particular State, the Corporation must follow its rules regarding its business activities. In some states the rules are flexible, e.g. Statutes of the State of Delaware which appears to have a number of advantages such as, there is no 'blue sky law' like the requirement of resident director. It is not compulsory for the incorporators to subscribe for shares or stock, the meetings of share-holders and directors need not be held in Delaware and the formation of the Company can be arranged by an incorporating Company within twenty four hours without any publicity.²⁹

In the articles, various matters including name, object, domicile, number of directors, name of resident agent and post office address, the amount of minimum subscription (some states follow these rules) whether the existence is perpetual or for limited period of time etc. are to be stated. Apart from the generalities, many states require other formalities.

The general administration and management are vested in the hands of the Board of Directors which is the supreme authority in such matter. The power to make fundamental changes

28. Dodd, E.M., The Modern Corporation, Private Property and Recent Federal Legislation, No.54, *Harv.L.Rev.*917, PP 930-948.

29. *Ibid.* Dodd E.M. The Modern Corporation, PP 917, 930-948.

in the organization is, however, given by statute to the shareholders.³⁰ In the U.S.A. distinction is made between directors acting as permanent managers and those who only take part in decisions on policy and in general direction. The main executive is designated as President. His deputies are the executive vice-presidents. There is also a post of chairman in some corporations who presides over the meetings of the Board of Directors. Unless statutes or by-laws provide otherwise, the general meeting of shareholders are to be called by the directors. Notice of the special meetings is required by law but not for regular or annual meetings. Unless statute or by-laws provide otherwise, laws do not deprive members from voting on matters in which they may be interested.

The most important feature of the Corporations' shareholding is the voting Trust to which several shareholders agree with one or more trustees to transfer the legal ownership of their shares in order to enable them to exercise at the discretion of such trustees the voting rights attached to such shares. The beneficiary ownership is reserved to the transferrors, particularly the right of dividends and other distributions. After the termination of the trust agreement, the shares are reconveyed to the holders of the certificates. There are several criticisms against this system.

The Corporations of U.S.A. are not compelled to issue

30. Ballantine, Henry Winthrop 'on Corporations', Callaghan & Chicago (1946) P-19.

share certificates. If the articles provide for issue of share certificates, members can insist on the issue of such certificates. The transfer of shares may be done by endorsement even in blank in which case the possessor of the share certificates is entitled to insert his own name in it. The capital of the corporations is known as share capital while shares are termed as stock. There is also provisions to acquire additional finance by means of issuing redeemable bond or debentures.

By the introduction of Federal Securities Act of 1933 and other statutes and regulations, it has become compulsory on the part of the Corporations to publish financial statements with proper valuation of assets and liabilities. Many questions entrusted to the Security Exchange Commission, in the U.S.A. e.g. the solicitation of proxies may also be regulated by the Commission and Corporations are required to disclose the holdings of directors, officers and all persons who own beneficially 10 per cent or more of stock and all so-called equities in general, the statement being filed with the Securities Exchange with a copy to the Commission, any change in the ownership of such holdings to be reported monthly. Profit made by purchase and sale of Corporation's equity securities within six months of the purchase by the directors and officers are required to be disclosed and may be recovered from them by the Corporation.³¹ Considerable reserve is created for variety of purposes.

31. Levy A.B., 'Private Corporation and their control' Vol. I & II, Routledge and Kegan Paul Ltd, London, 1950, P-193.

Lessons from American system of Company Management :

The greatest feature of U.S.A. Corporation is that there is complete separation of ownership from management. There are several causes of it, primarily, in the U.S.A. statutes, there is no compulsion on the directors to call general meetings, although in practice, meetings are regularly held. The salaried managers, directors and officers hold the managerial power while the shareholders have become passive owners and absentee profit sharers.

Even in the board, there may be some representatives of the shareholders but they are becoming inactive day by day. Prof. Alfred D. Chandler, Jr. in his book 'The visible Hand : The Managerial Revolution in American business' stated "by 1917, representatives of an entrepreneurial family, a banking house also almost never took part in middle management decision on prices, output, deliveries, wages and employment required in the co-ordinating of current flows. Even in top management decisions concerning the allocation of resources, their power remain essentially negative. They could say no, but unless they themselves were trained managers with long experience in the same industry and even the same company, they had neither the information nor experience to propose positive alternative course of action. Nevertheless, members of the entrepreneurial family rarely became active in top management unless they themselves were trained as professional managers. Since the profit

of the family enterprise usually assured them of a large personal income, they had little financial incentive to spend years working up the managerial ladder. Therefore, in only a few of the large American business enterprises did family members continue to participate for more than two generations in the management, of the Companies they owned. The descendant of the founders of the early investors in such industrial enterprises continue to reap the profits of successful administrative coordination. Indeed, the majority of the American fortunes came from the building and operation of modern business enterprises. These families remain the primary beneficiaries of managerial capitalism, but they were no longer involved in the operation of its central institution. By mid twentieth century, few had only direct say in the decisions concerning current flows and future allocations so essential to the operation of the American economy. By mid century the legal fiction of outside control was beginning to disappear. A study of the 200 longest non-financial companies in 1963 indicates that in none of these firms did an individual, family, or group hold over 50 per cent of the stock. None were still privately owned. In only 5 of the 200 did a family or group have a majority control by owning as much as 50 per cent of the stock. In 26 others a family or group had majority control by holding more than 10 per cent of the stock (but less than 50) or by using a holding company or other legal device. In 1963 then, 170 or 84.5 per cent of the largest longest non-financial companies were management controlled. In 5 of these firms,

families did still have influence, but because they were professionals, full-time salaried executives, not because of stock they held. Thus, by the 1980s the managerial firm had become the standard form of modern business enterprise in major sector of American economy. In those sector where modern multi-unit enterprises had come to dominate, managerial capitalism had gained ascendancy over family and financial capitalism."³²

John Kenneth Galbraith stated that the technocrats are holding power in the management of Corporations. They are professionals and experts.

This professionalisation and managerialism have probably exerted influence in the management structure of companies in India.

In the language of John Kenneth Galbraith "The Corporation allows the adaptation of organization to need. As the need is different for different purposes, so is the resulting adaptation. The modern large Corporation is adapted to the needs of advanced technology and the large amount of capital and comprehensive planning which this requires. It reflects the need of its techno-structure for freedom from outside interference. It wins this freedom in various ways, including the provision to itself of its own supply of capital."³³

5.5 General Techniques of 'Management' :

There are three types of company -

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32. Chandler D. Alfred Jr. "The visible Hand : The Managerial Revolution in American Business" Harvard University Press 1977 PP 481-493.
33. Galbraith John Kenneth 'The New Industrial State', 3rd Edn. 1978, Houghton Mifflin Co. Boston, Chapter VIII P-91.

- 1) AKTIENGESELLSCHAFT (AG), the incorporated Public Company;
- 2) GESELLSCHAFT MIT BESCHRANKTER HAFTUNG, the incorporated Private Company (GmbH) and
- 3) KOMMANDITGESELLSCHAFT AUF AKTIEN (KGaA), the incorporated public company, the directors of which are personally liable for its debts. Out of these, AG and GmbH are common and prominent in Germany.

The Law governing German Companies is partly to be found in the German Commercial Code and in special laws and partly in the German Civil Code, viz., the BGB, where the Commercial Laws are silent on any point, the gaps are to be filled by the provision in the BGB. Thus, the AG and the KGaA are primarily governed by a special Act, the AKTIENGESETZ of 1937, while the GmbH is governed by special Acts of 1882 and 1898, the GmbH GESETZ. AG is just like public company can be incorporated by five promoters by executing contracts for its formation i.e. SATZUNG corresponding to our Memorandum and Articles of Association, before a Judge or Notary. The SATZUNG must set in, the name of the Company, the domicile of the company, the nature of company's business, the amount of the company's share capital which must be at least DM 100,000 to be divided into shares the nominal value of which is to be at least DM 100; the classes into which the Company's shares are divided and the rights attached to each class, the number of directors to be appointed, the newspapers in which the company will publish notices about its

affairs. Major changes occurred by the introduction of Companies Act of 1937 are, bearer shares with plural voting rights can be issued with the previous permission of the Government in the interest of the welfare of the company or in the national interest. German laws also recognize the issue of shares with necessary duties requiring the shareholder to perform certain additional duties for the company which is obligatory, otherwise penalties are imposed by the articles for non-observance of such duties.³⁴

The right of a single shareholder to ask for information is recognised in principle by the Act of 1937.³⁵

The new company Law of 1966 has put the shareholder in a stronger position by empowering them to place their case before the Court of the district when they are of the opinion that their question should have been answered. Shares may be lodged by German shareholders with a bank under a contract permitting the bank to exercise voting rights in respect of those shares for 15 months at a time. In order to check the abuse of power the new company law of 1966 makes provision that the bank is required to inform the shareholders in what way it intends to vote and to ask the shareholders whether he has any other instruction.³⁶

Shares may be issued by the company in favour of a named person or to bearer. In practice, bearer bonds are issued entitling the holders to convert them into shares. After the

34. AKTG See 81

35. AKTG See 112

36. Economic Times, Calcutta, August 26, 1965.

completion of a year from the date of its formation an AG may apply for permission for its shares or bonds to be dealt in on a stock exchange, unless the Government permits, it will apply earlier. Stock exchanges in West Germany are regulated by a special law directly under the supervision of the State.

There is a two-tier board for the administration of AG :

- 1) The Board of Directors known as the VORSTAND, and
- 2) The Committee of Supervision, called the AUFSICHSRAT. The Board of Directors is also referred to as the Board of Management. The Committee of supervision is sometimes referred to as the council of supervision. The VORSTAND i.e. the Board of Directors is required to act for the company and to represent it against third parties and public authorities, while the AUFSICHSRAT i.e. Council of supervision is entrusted to supervise the management.

Although originally it was the intention that the Committee of Supervision should have supremacy over business policy and that the Board of Management should run the business and act as its executive organ, in practice, the trend was the reverse. One significant provision of German Law is that one-third of the Committee of Supervision is appointed by the company's employees over eighteen years of age.³⁷

To Co-determination Act of 1976 makes supervisory board

37. Madan D.P. Kherkhed - 'Management of Corporations', Progressive Corporations Private Ltd., Bombay I, First published 1971, P-107.

compulsory in every company and provides that the supervisory board must have half of its strength from employee representatives instead of the one-third proportion that existed before for major companies outside the Coal and Steel Industries.³⁸

Though powers of a general meeting of shareholders i.e. HAUPTVERSAMLUNG is strong enough, yet the company's annual accounts must be audited by qualified auditors known as the ABSCHLUSSPRUFER who are to be appointed in a general meeting.³⁹ The Annual Balance sheet and Profit & Loss Accounts are required to be prepared by the Board of directors and can not be placed, before the general meeting unless the Council of Supervision, does not approve them or if the Committee and the Board decide to submit them to the shareholders.⁴⁰

But there are various provisions for the protection of the minority shareholders. There have been considerable changes regarding the position of shareholders by the reforms introduced in 1966 by the Act of 1965 including fuller disclosures by the Board to the shareholders who now have a greater say in Company affairs.⁴¹

Every year statutory reserve fund, the GESETZLICHE RUCKLAGE is to be created by one twentieth of the profit until the adding figure becomes equal to one-tenth of the capital. The reserve

38. Sengupta Dr. N.K. Changing Patterns of Corporate Management' Vikas Publishing House Pvt. Ltd., New Delhi, 2nd revised Edn. (1983) PP 273-274.

39. AKTG SECTION 135 and 136 (1)

40. AKTG Section 125.

41. Knensberg N.C.O. "German Company Law Turns Left" The Chartered Secretary, Vol.VII, No.6, June 1967, PP 245-48.

fund is not to be used to cover a single loss by a surplus of all liabilities over all assets.⁴²

Lessons from German system of Company Management :

- a) Two-Tier Board of management delineating the functions of each;
- b) Workers' participation in policy or supervisory board and their successful role having equal status of other directors;
- c) the involvement of banks' representatives in the board of directors.
- d) creation of reserve fund which is compulsory in order to make a company to be more independent and viable.

5.6 Socialist Countries' Techniques of 'Management' :

In fact, the subject management under socialism is a multilevel and multi-component system of bodies and individual participating in management.⁴³

The main principle of socialist management is the principle of democratic centralism. Its essence lies in ensuring an organic unity of integral, planned, and centralized management of all the social institutions and processes and of the local initiative and creative activity, the responsibility of each

42. Akt G Section 130.

43. Stolyarenko A - 'The psychology of Management of Labour collectivities' - Progress Publishers, Moscow (1978) P-26.

state body and official for carrying out their duties. It is a unity of two principles - centralism and democracy.

Socialist society encourages not only the development of management science but also the raising of practice to a scientific level. Lenin paid great attention to the development of the science of management. He wrote "This is the most difficult task, because it is a matter of organising in a new way the most despoiled, the economic foundation of life of scores of millions of people. And it is the most gratifying task because only after it has been fulfilled will it be possible to say that Russia has become not only a Soviet, but also a socialist republic."⁴⁴ He stated again "The raising of the productivity of labour first of all requires that the material basis of large-scale industry shall be assured, namely, the development of the production of fuel, iron, the engineering and chemical industries. Another condition for raising the productivity of labour is, firstly, the raising of the educational and cultural level of the mass of population. Secondly, a condition for economic revival is the raising of the working people's discipline, their skill, the effectiveness and intensity of labour and its better organisation."⁴⁵

On the basis of the above principles we shall try to discuss the history of the management of enterprises in Socialist Economy.

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44. Lenin V.I. "The immediate tasks of the Soviet Govt." Collective work, Moscow, Vol.27 1935, PP 242-243.
45. Ibid. Lenin V.I. "The immediate tasks of the Soviet Government, PP 257-258.

In order to make all round development and to solve different problems including unemployment, at the initial stage both Russia and China exerted their fullest energy for the development of industries. The factories were rigidly controlled by the state enterprises and the performances were closely monitored providing funds for setting up and running the factories from state budget and all receipts were taken over by the state. Targets in minute details were laid down for each enterprise in respect of items to be produced and utilized. Every item of expenses, whether for purchase of materials, payment of wages and other expenses were predetermined by the state authorities and banks and financial institutions released the budgeted funds. Enterprise administrators enjoyed very little, if any, flexibility in the matter of either investment decisions or day to day operation of the enterprises. As capital funds were provided by the state, the depreciation fund was to be deposited with the state banks and could be utilized only for specific purpose of repairs and replacement of assets. The enterprises were granted to and integrated with governmental system of accounts emphasizing on keeping the actual inputs within the bounds of budgeted outlays. As the enterprises were not autonomous, there was no question of maintaining separate accounting and control system for each enterprise which were considered as parts of the vast state machinery. The enterprises need not required to maintain and render accounts as they had been under strict control of state authorities. Funds for construction of the factories and establishments of

the enterprises having come from the state budget, the capital investments made in the enterprises were considered 'free' in the sense that no liability accrued to enterprise' managements either to repay monetary investments or to show that the investment have been worth its outlay. The day to day running and management of the enterprises being under close scrutiny, need for any separate, overall evaluation of the effectiveness of the investments actually made in the enterprises were not felt. This system produced very efficient result with extensive phase of development. The variety and complexity of industrial enterprises became such that an elaborate hierarchically-structured machinery of the Government became necessary for exercising the type of rigid control to which the enterprises had been subjected so long. Apart from the fact that the control system became evidently self defeating, it had disfunctional effects on enterprise managements. The motive of the enterprise management became somehow to reach to the target neglecting the quality of production.

Historical experience confirms that the system of management by the sectoral principle is in full correspondence with the organisational forms of large scale industry. However, flaws in the implementation of cost accounting and the slow development of economic methods of management became responsible for parochial barriers between enterprises subordinated to different ministries, which harmed specialisation of production and arrested the rates of technical progress. In 1957, manage-

ment in industry construction of the U.S.S.R. was re-organised on a territorial basis. From then onward, industry was administered by economic councils. The industrial ministries were abolished and the enterprises they had been in charge of were put under the control of these councils. With time, however, there appeared major flaws in the economic council system of management. Over and above, funds for continued development and diversification of industry could no longer be provided except by squeezing other sectors of the economy or depriving the people of high standard of living. The existing enterprises were required to generate more surplus fund from internal sources through higher productivity of labour, capital and other sources of production. The administrative system by which enterprises had so long been supervised and controlled were found wanting in the changed context. Therefore, fundamental changes, under the prevailing circumstances, in the management of socialist state enterprises had to be initiated by providing wide measure of autonomy in matters of day to day administration of the enterprises. Higher organs of the state content themselves by setting a few key targets and overall indicators of efficiency in consonance with the national economic plans and projections.

Mr. Sanjib Kumar Senyal in his article "Evolution of 'Cost-Accounting' enterprises in Socialist Economics" stated that the enterprises have been accorded the status of independent business units much in the same as corporate enterprises are in capital economies. The socialist state enterprises are encouraged

to maintain their own, independent accounting systems and prepare periodical operating statements and balance sheets. These make the enterprises accountable for the funds placed at its disposal, money value of the investment is credited to a "business fund" which is akin to "equity capital" of capitalist corporate enterprises. The business funds invested in the enterprises comprise those made in capital equipments, plant and machinery and in the permanent working capital which the enterprises would be required to carry irrespective of their fluctuating volumes of business. Interest - bearing loan from banks and financial institutions are made available to the enterprises for financing incremental working capital requirements and for minor additions to plant and machinery. Higher organs of the state ceased to lay down rigid targets and budgets for each and every items of receipts and payment, for every physical and other activities of the enterprises. The enterprises enjoy the authority to organize and re-organize the production plan, plant layout, organization structure, supervisory levels etc. In short, managements are given a free run of the enterprises so long as they do not violate the laws of the land and succeed in reaching the targets. They enjoy the authority to 'hire and fire workmen; a capitalist encroachment upon and inroad into a socialist bastion. The enterprises are permitted to use their surplus or reserve capacity for producing items upon which the state has no claim; these could be sold by bilateral agreements and the profit enjoyed by the enterprises

and their employees.⁴⁶

The most important matter as a result of the structural changes is that responsibility reposed on the enterprise management to pay for the resources at its disposal. Differential rents had to be paid by enterprises enjoying the advantages somewhat expanded the possibilities for intersectoral specialisation and co-operation in industry within the economic regions. The September 1965 Plenary Meeting of C.P.S.U. Central Committee admitted that "industrial management on a territorial basis simultaneously retarded the development of sectoral specialisation and national production ties among enterprises in different economic regions, weakened the ties between science and production, led to the fractionalisation and pacification of industrial management and the decline of administrative efficiency."⁴⁷

Outlining the main features of the new system of industrial management, the September, 1965 Plenary Session stressed that the measures taken to improve the organisation of management combine single state planning with complete self-support of enterprises, centralised sectoral management with broad republican and local initiative, and principle of one-man management with the growing role of production personnel.⁴⁸

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46. Sanjib Kumar Senyal - article "Evolution of Cost-Accounting Enterprises in Socialist Economies" published in the 'Management Accountant' Vol.19, No.6, June 1964 from the Institute of cost and works Accountants of India, Calcutta, P-318.
47. Yefimov A - 'Soviet Industry', Progress Publishers, Moscow, 1966, P-220.
48. Ibid Yefimov - 'Soviet Industry' PP 212-221.

The management structure now operating in the U.S.S.R. is made up of State (administrative) management bodies and bodies managing production at the enterprises and in associations on cost-accounting principles. The state bodies in their turn can be sub-divided into bodies for the management of the economy as a whole (the U.S.S.R. Council of Ministers, the U.S.S.R. State Planning Committee, etc.) and into specialised bodies of industrial management (Ministries State Committees and Boards). There are three stages (links) in the industrial management of production: Union and Union republican control management bodies, republican management bodies and local bodies of industrial management.

"The enterprise is headed by the director who organises all economic activity and is fully responsible for the conditions at the enterprise and the results of the work. The director is appointed and relieved of his duties by the enterprise's superior body.* The director of an enterprise in all institutions and organisations, disposes of its funds in accordance with the law, enters into agreements, issues powers of attorney, opens current and other accounts with banks."⁴⁹

The director has to be ever responsible to the suggestions and criticisms of the different categories of employees' representatives acting as watch-dogs on his activities.

49. Yefimov, A - 'Soviet Industry' - Progress Publishers, Moscow (1968) P-231.

* Superior body - means the U.S.S.R. Council of Ministers and All Union Central Council of Trade Unions.

The participation of the masses, that is, of the non-managerial workers, in the administration of industry is a key Soviet theoretic doctrine. Mass participation in industry takes into four forms. One of these is supervision by the workers in a firm over the work of the management and their strict criticism of all its deficiencies. A second is the offering of suggestions particularly through employee conferences. A third is the direct performance of administrative tasks by workers, who do this in addition to their regular work. Last one is the movement upward of the rank-and-file workers into posts in management. Mass participation is not an experiment tried only in times of prosperity but it is also put to use in times of difficulty.

The association of vast numbers of the rank and file of the employees with management is established through 'production conference' and 'productive actives' which is constituted of a highly select group.

For additional capital, enterprises are entitled to take loan from banks which is to be invested properly so that additional income derived from it would be sufficient to refund the principle and interest thereof at an agreed time.

The surplus earned by the enterprises, after payments of interest and rents, are shared between the state and the enterprises. A portion of the surplus remaining with the enterprise is used as incentive or bonus payment to the employees and

managers. Higher the surplus, greater shall be the share of the employees as material incentives.

Enterprises which are thus, treated as independent business accounting units with accountability to the state authorities for its overall performance are called 'Cost Accounting' in socialist literature.

New Chinese Model :

Den Xiaoping, the Chinese supreme, has brought about some radical changes in China's industry. In substance the reforms amount to a "dismantling of the central planned system in favour of a free market structure."

The Chinese reforms aim at releasing over a million state owned enterprises from central planning and state control. These enterprises are now made to compete for survival in the western market sense with all the attendant free market facilities like managerial independence and powers to decide on a pricing formula based on supply and demand. These state-units are now free to plan their own production schedules, marketing strategies and wages structures (including bonus). More significantly, the managers would have the right to 'use or remove personnel' in the best interest of the business. The control of Government Departments over these enterprises is being lifted. However, these enterprises will be responsible for their profits and losses. In other words, the plant manager will be accountable

for their decisions. These units will come under "guidance planning" as opposed to "central planning" which would apply to the commanding sectors of the economy like steel, energy, cement and fertilizer. Perhaps, a sea-change would come over China's price structure, when subsidies which eat-up a quarter of the national budget now, are eliminated once for all. Under the new price structure, the Government would fix up as few prices as are necessary. The prices of a majority of commodities "will be allowed to float." Even the state administered prices would be so adjusted as to reflect market forces. The document emphasizes that every care would be taken to prevent a "general and spiralling price rise" while making out a case for collective and individual business enterprises. The documents have proposed that some small state-owned units may be leased to the individual businessmen or run by them on contract. All in all, it is not incorrect to characterize the change as the introduction of mixed economy, a concept familiar in this country.⁵⁰

Lessons from socialist system of Company Management :

1. In socialist countries management in industrial enterprises is considered as 'a matter of organizing in a new way the most deep rooted, the economic foundation of life of scores of millions of people.'

50. Editorial in the Economic Times, Calcutta, October 26th, 1984 on the 'The Chinese Communist Party Central Committee document' issued on September 19, 1984.

2. The enterprises have been accorded with the status of independent business units much in the same as corporate enterprises are in capital economics - but they are run under the strict control of state regulation, of course free from bureaucratic net.
3. The enterprises are to pay the dues to the state fund and to the banks for money taken as loan including interest.
4. In every level of management workers' participation is effectively encouraged although singleman manager remains primarily responsible to run an enterprise.
5. The enterprises are allotted to utilise surplus or reserve capacity for producing items upon which the state has no claim and the profit so earned is enjoyed by the enterprises and their employees. It clearly indicates that the monetary incentive is still the primary means to encourage the working force for production.

Some of these lessons can be gainfully adopted in the management of companies in our country, both in public and private sector for utilising faculty of the vast working force engaged in companies.

5.7 Influence of different techniques of management of the companies, co-operations and enterprises on the management of companies in India :

It is true that the technique of management-practice in

One country can not be transplanted in another country as it would not suit the soil, environment, culture and social milieu of another country but definitely best techniques followed in one country can be suitably applied in another country with profit. As for example, two-tier system of board as practised in Company Law of West Germany very efficiently and with certain modification followed in other European Countries and Workers' participation in Management in two-tier board have influenced the Company Management in India. The administrative Reform Commission, in its report on economic administration, recommended that consideration should be given to this important issue in keeping with the trend in democratic countries or by giving workers a sense of participation in Management. Those who are against it argue that the demand of such representation does not appear to be strong and that trade unions are, in fact against it. There is also a talk about the need for homogeneity in the composition of the board of directors which can not be maintained by worker directors as they are bound to disclose the secret decision of the board. They may often influence the board to serve their interest at the cost of the interest of the company. On the other hand, the fact remains substantive that most of the continental countries have provided for employees' participation in all spheres of management with effective result.

Professionalism and managerialism, with the objective of social responsiveness as practised in the U.S.A., the UK and Japan very efficiently in company management of large companies,

are still important issues for consideration as regards their applicability in the company management in India after considering their suitability and adaptability and above all, the attitude of Indian businessmen in these respects. The attitude of the Indian businessmen regarding professionals has been amply stated by Umash Anand in PANORAMA - THE MODERN MARWARIS : 'Professionals are needed as trusted lieutenants, for keeping the wheels of growing empires greased and moving. By decisions on expansion and survival, aggression and tactical retreat are still the domain of the malik with his uncanny intuition honed over generations in the topsyturvy future markets of Rajasthan.'⁵¹ This attitude of the Indian businessmen should be changed, otherwise they will not be able to cope with the changing circumstances which are bound to appear.

Professionalisation of management is pre-conditioned to the fact that the professionals should take the tasks of implementing social responsibility and intellectual leadership. Indian top corporate manager, Arbind Ray stated the fact that "Top management has many personal examples to set before the Indian population. Its first function is to breed professionalism, and to do this it must be basically equipped to understand the language of the specialists in the new sciences emerging in business."⁵² The policy of whole-life-employment, vendor-customer

51. Articles by Anand, Umash, Panorama, The Modern Marwaris, The Telegraph, Calcutta, 23rd September 1964, P-5.

52. Ray Arbind, The Indian Manager in search of style, Bombay, Edn. 1970, P-13.

relationship between company's issuing shares and purchase of shares, the perfect desirable relationship and application of advanced technological discoveries, the seniority - oriented value system, the complete consensus in taking decisions are some of the key aspects for advancement of Japanese Companies. The question remains whether these could be applicable to Indian Company Management considering the fact that Japan is our neighbouring country situated in the Asian Continent.

Involvement of banks' representative to the board of directors as practised in German Companies as authorised by shareholders, or double voting rights of the shareholders in the extra-ordinary general meeting of French Companies, or traditional single board management with amendments and changes according to the needs of the circumstances in the company management of the U.K. and French - are some of the causes for the success of company management in those countries. It has become necessary to examine whether these could be applied in the management of Indian Companies considering the developments that have already occurred in management scenery of Indian Companies. Even the system of proportionate representation as practised in Japan, the U.S.A. and Canada regarding election of directors of the Companies has exerted influence on company management in India. All these techniques and procedures are casting shadow on the Indian corporate management scene.

If, without considering the effect and suitability of the

management practices of abroad are hurriedly imposed on the Indian management, it may be detrimental in effect. An observer in this respect states :

"Imported practices may sometimes so violently clash with the values and beliefs of people working in an organisation as to cause serious dysfunction. After all, whatever decision is taken has to be put into effect by people. And if a decision is traditionally and culturally unacceptable to the individuals who are going to implement it, that decision is bound to fail, regardless of how technically perfect it is."⁵³ Really it has become urgently needed to develop our own tradition and we should bring in as many foreign techniques as will suit our culture and heritage. In this respect opinion of a scholar is relevant to mention :

Indian organisations have shown a remarkable insensibility to the attitudes and values of their people. On the one hand, they have tried to impose upon them borrowed organisational models evolved in the western social context; and on the other hand, they have made no attempts to equip their people' with the attitude and values required by these modern organisations. The lack of congruence between the Indian ethos and the requirement of modern organisation, and the absence of conscious attempts to bridge this gap has already caused considerable havoc. It has not merely prevented us from using the positive elements in our psycho

53. Basu K.S. 'Tradition and Modernity - Problem of Management', The Economic Times, Calcutta, the 22nd October, 1971.

cultural heritage, but on the contrary has led us to a situation of value erosion, alienation and loss of commitment.⁵⁴

But we firmly believe that how far a technique of management is adaptable to another depends upon the degree of adjustments made between the guest and the host. It is just like a marriage adjustment to lead a happy conjugal life. The bride comes from a completely different culture and environment to the family of the bridegroom which has its own culture and tradition. Here, both the parties have to sacrifice some of their culture and heritage and a new culture is born. In this way happiness of the conjugal life is fostered. The same truth lies in case of the import of foreign techniques of management in Indian management culture.

Therefore, it is very important to grasp an idea about the echelon of top management of Indian companies. In the next chapter we shall try to review and analyse some of the representative companies in India to get an idea of development and changes in the top management scene of Indian Companies.

54. Mahendra Ashok 'Value erosion and management Alienation in Indian Organisation', Business India, Bombay, January 14th to 27th, 1985.

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CHAPTER - VI

TOWARDS NEW STRUCTURE OF COMPANY-MANAGEMENT

CHAPTER - VITOWARDS NEW STRUCTURE OF COMPANY-MANAGEMENTPART - I**6.1 Importance of Board of Directors for management of companies :**

The composition, functions and structure of the Board of Directors differ in different countries even they differ from one company to another company within the same country.

The Company or Corporation when it is incorporated according to the law of the land becomes a legal person with perpetual succession and common seal but separate and distinct from its members. Like any other judicial person, it can enter into contract, own, acquire, dispose of property, sue and be sued in its own name. Since, in the nature of things a Corporation or Company has no physical existence it can not act on its own, its affairs are required to be looked after by persons of integrity, merit, ability, skill, business acumen with foresightedness for the benefits of the various involved groups such as shareholders, creditors, employees, consumers and the society at large. Such 'persons' are the real agents of the company for its administration and trustees for its properties and called directors. For non-compliance or violation of any of the provisions of the law of the land or for default or for doing things wrongly such 'persons' who come into limelight are held responsible and they are known as the directors or the statutory officers of the company within the purview of section 2(30) of the Companies Act,

1956. "If a Corporation or Company has to function effectively it has to be accountable to the public at large in line with the Gandhian concept which aims to ensure that the public/private property has to be used for the common good."¹ Really, the success and failures of company administration are dependent on the responsibilities performed by the Board of Directors as the whole tasks of management are vested on them.

6.2 Responsibilities of the Board :

The Board of Directors of a company is entrusted with the responsibility of acting in the interest of that company. From the legal point of view, 'company' is for shareholders. But as a social institution, a company is responsible to its employees, customers, suppliers, creditors and society at large apart from its shareholders. Therefore, interest here means the interest of the associated parties connected with the affairs of the company. To do well to all the parties leads to conflict of interests. Consequently, the resources of the company are to be managed in such a way as to ensure not only its survival but also to provide a desired financial gain for distribution purposes. Direction is needed in an enterprise in order to make the activities of the enterprise co-ordinated and purposeful.

In short, the board has got triple functions-direction, management and operation. Direction is concerned with formulation of policies, fulfilment of objectives and evaluation of performance.

1. Krishnaswamy S. Article 'Responsibilities of Companies Role of Private Sector,' The Economic Times, Calcutta, August 21st, 1955.

The management is concerned with translating the objectives into tangible plans and operation means actual performance for giving tangible shape of the plans chalk out. In two tier-board-system the policy board is solely concerned with policy making and primarily with objective setting and evaluation, while the executive board's responsibility for strategy delineation is shared with the policy board and corporate planning with the operating level. The policy, objective setting, strategy delineation and corporate planning are regarded as programming activity of the board while controls and evaluations are known as appraisal activity.

6.3 Structure of Board of Directors :

Generally three types of Board are found (i) Two-Tier Board (ii) Two-Part Board and (iii) Traditional unitary structure Board.

Two-Tier Board :

The principle of two-tier director system has been operating in West Germany, the most advanced capitalist form of economy. In large German Companies there are two boards, one an executive board which has full authority to run a company and a supervisory board which has the power to appoint and dismiss the executive directors and to veto decisions of the executive board of directors. Its primary responsibilities are not to manage the company nor even to direct its long-term policy but to check and report of the executive directors' performance.

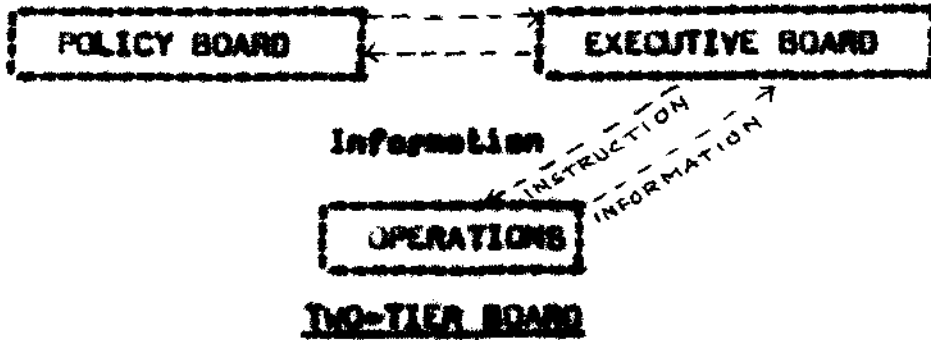
In German Company Law the roles of executives and supervisors are formally and legally separated. No member of the executive board can also be a member of its own supervisory board. Supervisory board has also a member who represents the workers of the company and this workers' participation in the ultimate board has worked very successfully in West Germany. "Banks often hold seats on supervisory boards on the strength of shares on behalf of the clients. These representatives take very active interest in the board and often serve as chairmen. They have a great influence because very often the banks are also large creditors to the company."²

Some critiques are of the opinion that though it proved successful in West Germany yet it is doubtful whether it can work so successfully in other countries where the political set up is different.

Two-Part Board :

The most important feature of this system is that the policy board and executive board have equal status and have a joint legal responsibility and operate as two parts of the same board. A diagram of this has been shown by Prof. Samuel Eilon in his book ('Aspect of Management) as follows³ :

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2. Sarypta Dr. N.K. 'Changing Patterns of Corporate Management' Vikash Publishing House Pvt. Ltd. New Delhi, 2nd Edn. 1983, P-275.
 3. Eilon Samuel 'Aspects of Management', Pergamon Press, Oxford, 1st. Edn. 1977, P-95.

FIGURE No.3**Direction**

This type of management is followed by many European Countries, such as France, Italy, Holland etc.

Traditional Unitary Structure Board :

The traditional board consists of the Chairman, the managing director (chief executive), heads of operating divisions, heads of functions (such as finance, personnel, marketing, production, administration), and some non-executive directors. Most of the full time directors have got the dual role - as directors of the enterprise, they are responsible for the company as a whole for its long term stability and better performance; and as head of operating units they are to act as representatives of their departments and look after their sectional interest and often to be concerned with the short-term benefits. This dual role sometimes leads to conflicts of interest.

There are difficulties of overlapping power in traditional, two-tier as well as two-part board. As the managing director is the only common member in later two type of boards, there is danger of inadequate and biased information flow between two boards and may result in some mutual distrust.

These difficulties can be overcome in two ways - first through appropriate procedures such as joint meeting of the two boards to approve annual accounts etc., in such a joint meeting, minutes and other documents of the executive board being circulated to all the members of the policy board and making representation of the members of the executive board at the meeting of the policy board and secondly, with increase joint membership. All these measures are designed to prove a harmonious relationship between the two boards and at the same time to emphasize that each has its own role to play.

There have been much controversy about inclusion of non-executive directors in the board. But, in our opinion, they can play a very important role by making valuable contributions for the management of the company by reason of their wider knowledge and experience gathered from outside.

6.4 Structure of Board of Directors in India as found in our empirical study :

In India, the system of unitary structure of board is usually followed. Legally, the board is the trustee of the shareholders and all the members of the board are the representatives of the shareholders. In our empirical study of 75 companies it has been seen that most of the companies are managed by the board with managing director (80%), 8% of the companies are managed by the board only and 16% by the two-tier board. There is no trace of workers/Employees' representatives in the board.

Out of the 75 companies, there is only one company where there is one peoples' representative. 75 companies as reviewed by us having 721 directors out of which 82 (i.e. only 11.22%) are nominated by the Government or public financial institutions. (Details are in the next chapter)

6.5 Functions of Board of Directors in India :

Board of directors in Indian Companies is principal management organ of the company. The management of the affairs of the company is vested with the board of directors and all powers excepting those which are specifically reserved for the general meetings by the Act or the Articles or memorandum of association or otherwise must now be done by the board of directors (section 291 of the Co. Act, 1956). Every company must have directors and it is no longer possible to have shareholder-managed-companies (section 252). The powers are, however, not conferred on directors individually but are vested in the board of directors collectively and the board must as a general rule act in boards' meetings. The company is entitled to the benefit of the collective wisdom of the board of directors. The board must meet at least once in every three calendar months (Section 285). The board may, however pass resolutions by circulation provided the draft resolution is being circulated with the necessary papers to all directors or all members of the committee and being approved by the directors. The number approving shall not be less than the quorum required (Section 289). To constitute a valid meeting of board of directors it is

necessary that notice of the meeting shall be given in writing to every director for the time being in India and that a quorum be present (Sections 286 and 287). Certain powers of the board of directors can only be exercised by resolutions passed at meetings of the board, namely, power to make calls on shares, power to issue debentures, power to invest funds of the company, power to make loans etc. (Section 292). Board of directors of public company or of a private company which is subsidiary of public company cannot, except with the consent of such company in a general meeting, execute to sell, lease or dispose of the whole or substantially the whole of the undertaking of the company, remit or give time for repayment of any debt due by a director, invest otherwise than in trust securities, etc. borrow money in excess of the aggregate paid up capital and free reserves etc. (section 292).

Though the above are the functions of the board of directors, at present many are of opinion that they have become just like rubber stamp.

In this connection we can mention the statement of an expert western executive Sir Leslie Smith. According to him the board is not a rubber stamp. The ultimate responsibility in the success or failure of a company, or for that matter even minor incidents of loss or an accident, lies with its board of directors. Making his view clear during a lecture on the 'Role of the Board' at the Bengal Chamber of Commerce and

industry at Calcutta on January 1985, Sir Leslie Smith said there can be no question of passing the bulk downwards. With this objective in view it should periodically and thoroughly review the performance of the company. In this connection he mentioned the role of nominee directors, which he said should not be reviewed in isolation but in the totality of the interest of the company. It should be their duty to impart their special skills towards this end. He told that the board should not have any sectional representation. On the positive side he said that it is the duty of the board to direct the affairs of the company on the strength of its collective judgement. To ensure the wisdom of the collectivity, it is important that the members of the board are carefully chosen. First and foremost, a board should have a knowledge of the company's business as also the financial resources of the company. It should have a long and good rapport with the senior management and a touch or feel of the social and economic milieu of the workers. In his company, the British Oxygen Company group, he said it was the practice of sending the directors regularly to visit the factories. Whether one is a full or part time director it was incumbent upon him to bring his special expertise to benefit the company.⁴

The above statement by an experienced and expert executive bears sufficient truth to make the 'board' effective but conditions prevailing in India is different from that of the UK and the USA in many respect.

4. The Telegraph, Calcutta, the 26th January, 1985.

5.6 Recommendation to adopt proportional representation for the appointment of directors :

Section 285 of the Companies Act 1955 provides that notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two thirds of the total number of the directors of a public company or of a private company which is subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in, in accordance with the provisions mutatis and mutandis, of section 282.

5.7 Ineffectiveness of the Board of Directors of the Companies in India :

In India, according to Companies Act, 1955, the board is the supreme policy - making as well as executive body. "But there is still a long way to go before this becomes a fact in the great majority of the larger public limited companies. A study of the working of the boards in some typical companies supports the belief that many of them do not really manage the operations of the companies concerned and are just dummies created by rubber-stamp resolutions dictated by either a dominant chief executive or a powerful inside managerial group, or by prominent shareholders (after controlling the company with a minority interest). In their eyes the board is a necessary nuisance

which exists solely because the law says it should."⁵

Observation in this respect made by Peter Drucker is relevant to mention which is in fact true to Indian condition.

In reality, the board as conceived by the law-maker is at best a tired fiction. It is perhaps not too much to say that it has become a shadow king. In most of the large companies, it has in effect been deposed and its place taken by executive management. This may have been achieved in the form of 'inside' board, that is one composed exclusively of executive management men who meet the first Monday in every month to supervise and to approve what they themselves have been doing in other twenty nine days of the month. Or the board may have become a mere showcase, a place to inject distinguished names, without information, influence, or desire for power.⁶

It is a fact that in India still the majority of the large private sector companies are controlled by powerful families or groups resulting a general lack of understanding of a boards' responsibility for the management of a company. Dr. N.K. Sengupta states very clearly the Indian position in this regard in the following words :

"Very often directors look up themselves as just nominees of the controlling group, or of the chief executive, and forget their true role as the company's top executives. Company

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5. Sengupta Dr. 'N.K. Changing Patterns of Corporate Management' Vikas Publishing House Pvt. Ltd., New Delhi, 1983, PP 287-288.
6. Drucker P. Peter, The Practice of Management, Reprinted with corrections 1969, Heinemann:London, P-175.

officials all too often treat the board as a group of advisers, or a body whose only utility lies in public or shareholder relations. In other words, the general impression is that a board is an ornamental body to be put up with. These attitudes have to be changed before our corporate boards can rise to the position which the law has assigned to them. Once these attitudes change other steps to make boards effective will automatically follow."⁷

But the question is how can this attitude be changed? Our proposal is that this can be done by asking structural components of the formation of board. The board should be composed of all the ingredients who form the company. The very idea that 'a company is a social organization, beneficial to the society at large' must be developed. The representatives of the board if come from different angles to represent different interests, then the general observation of the boards' function as 'managing the company' or 'acting as trustees for the money and interests of the shareholders and of the Corporations' would change. The concept of trusteeship - "Directors are trustees for all ingredients including the society" might be achieved.

It is high time to find out some process in order to make the board effective, dynamic, sensible, innovative and responsive. In this respect it is worth mentioning the statement made by Sri Aravinda Ray, former Managing Director, Warren Tea

7. Op.cit. Sengupta Dr. N.K. "Changing Patterns of Corporate Management", P-298.

Ltd., Calcutta in his article "Board of Directors", "Indian Boards are essentially controlled from outside."⁸

As a measure to make the Board effective he argues :
 "If Board in India have to fulfil their role in the same way as Boards of fully professionally managed companies do elsewhere, not only will non-executive directors have to be paid adequately for their labour and counsel but more important than that, shareholding needs to be widely diffused. Until that happens, the Board will tend to be the endorsing body for a particular, if controlling group's desires. Unless financial institutions exercise their rights and send in a panel of hand-picked seasoned businessmen to various Boards and brief them periodically, this will not happen easily. With the implementation of the Foreign Exchange Regulation Act (FERA) in India and the launching of Government action through enactments of its sort elsewhere and the wide dispersion of national public shareholding by Government directive. We are moving towards this desirable objective of professionally managed companies in the true sense. Once a process like this has been started on a wide scale, it will continue to move in that direction."⁹

The same author recommended that :

- a) a board must be autonomous,
- b) the post of Chairman is important as he must take it upon his shoulders to make the Board work as a team,

8. Ray Arbinda, Board of Directors : A critique in the Book Board of Directors in India : Their Status Dynamics edited by S.K. Chakraborty, All India Management Association, Management House, New Delhi, 1st. Edn., 1983, P-287.

9. Ibid. Ray Arbinda, 1983, PP 287-288.

- c) the Board must devote themselves for policy making leaving the routine work,
- d) management association to be created to have a self-respecting professional management in India.

The functions of the board are expected to be performed properly and effectively if the scientific structure of management is formulated. If the structure of the board is organized on functional lines it will generate immense help to the executive management of the Corporation. The size and complexities of the company are increasing day by day. The continued demand by the labour force to participate in capital as well as in management can no longer be avoided as the constitution of India has given guarantee for the workers' participation in management. Apart from it, the banks and financial institutions have become major stock-holder of the most of the companies in India. The public institutions want to take a more direct interest in the active functioning of the boards of companies in which they have invested money. They are interested to ensure that the right kind of competent professional men are adequately represented on these boards. The Government, as the only recognized body to represent customers, suppliers and also to uphold public interest has come forward to represent the board. There is no single company in India which have not borrowed money from nationalised banks. They are required to send their nominees to the board in which they have granted loans.

In the future, by the process of evolution, the board of the company shall be composed of the representatives of all these interests involved with the affairs of the companies. These are the signs of healthy growth of the corporate system which will bound to take place in the near future.

In the next part we shall try to discuss official joint sector form of management and development of joint sector concept as enuciated by Dr. L.C. Gupta, Director of Research, Institute for Financial Management of Research, Madras (1974).

PART - II**6.8 Official Joint Sector form of management :**

'Joint Sector' is a 'mile-stone' towards ideal form of company management i.e. 'Multiple Two-Tier Board'. This concept as a new management structure shot into prominence around 1969-70. The number of such projects had been few at the initial stage. Air India started as a joint sector, Holent ores was also a Joint plan to invest in the State. Some experimental joint sectors have been working very successfully in India. Features of their capital and management structure are noticeable as follows :

- a) the participating financial institutions are taking part in management;
- b) the participating financial institutions extend to general control over the composition of the board;
- c) they are sending proportionate representations to the board at least in some cases;
- d) their control extends to the selection and remuneration of all top managerial and technical executives.

Names of some of the joint sectors in India are mentioned here :

- a) The Southern Petrochemical Industries Corporation Limited :
It is a 'joint sector' project of Tamil Nadu Government having project cost estimated at Rs.71.1 crores floated in February 1972.

b) The Bangalore Chemical and Fertilizers Limited :

It is also a large joint sector project with institutional participation floated in 1972 having project cost estimated to be Rs.57.50 crores.

c) The Punjab Textile Limited :

It is an illustration of small sized joint sector, floated in the year 1972 with estimated project cost of Rs. 3.7 crores, promoted by the state owned Punjab Industrial Development Corporation Limited holding not less than 51 per cent of its capital. The board of directors is constituted with 8 members, 4 are nominees of the State Government.

d) Punjab Beverages Limited :

By participating in not less than 51 per cent equity by the Punjab State Government (through the Punjab State Industrial Development Corporation Limited) 24% by the private sector partner (East India Hotels Limited) and balance 25 per cent by the general public, this joint sector floated in the year 1973.

e) The Modi Rubber Limited :

Though it was floated in 1972 as a private sector enterprise institutional participation in its management is considerable. The IDBI, IFC, ICICI, LIC and UTI have right to nominate upto three directors so long as any portion of their loan/debentures remains outstanding or so long as they had shares as a result of underwriting. The U.P.State

Industrial Corporation Limited (wholly owned by the Uttar Pradesh State Government) will have the right to nominate upto two directors so long as it holds any share as a result of its underwriting.

Other examples of successful Joint Sector enterprises are the Gujarat State Fertiliser Corporation and the Gujarat Naphtha Fertiliser Corporation. In the year 1985, Bihar Government launched successfully four joint sector projects. In West Bengal, State Government, in order to accelerate the economic growth of the State chose as a matter of policy the system of joint sector project for Haldia Petrochemical and Salt Lake Electronics Complex which has become a matter of hot discussion and gained special importance because of the left character of the State Government which is mentioned here :

Haldia Petrochemicals Project :

West Bengal Industrial Development Corporation (WBIDC) obtained a letter of indent for a petro-chemical Complex at Haldia in the district of Midnapore, West Bengal. An agreement was signed in Calcutta on 23rd May, 1985 between WBIDC and Mr. R.P. Goenka and his son, Mr. Sanjeev Goenka of the Duncans Group for setting up the project in the joint sector. The equity sharing in the company, which is to be formed soon would be as per the usual norms, whereby WBIDC would hold 26 per cent, the Goenkas 25 per

cent and the rest would be offered to the public. The estimated cost of the proposed project has been scaled down to Rs.645 crores from the earlier assessment of Rs.833 crores. Very recent bulletin published by Mr. R.P. Goenka dated the 1st, November 1988 which states that the estimated Project Cost of well over Rs.1200 crores makes HPL the single biggest joint sector investment in India. The project has already made considerable progress.

Board of Director consists of with the following members :

P.C. BANERJI, Chairman (Chairman, West Bengal Industrial Development Corporation)

R.P. GOENKA, Industrialist

T.S. BROGA IAS (Secretary, Commerce and Industries Department, Government of West Bengal)

P.K. SARKAR IAS (Secretary, Finance Department, Government of West Bengal).

S.DUTTA IAS (Executive Director, West Bengal Industrial Development Corporation)

V.G. RAJADHYAKSHA (Formerly Chairman, Hindustan Lever Limited and Member, Planning Commission)

President

A.J.A. TAURD (Formerly Chairman, Indian Oil Corporation)

Prof. Nirmai Bose, the state commerce and industries minister, told "The Economic Times" (published in the Economic Times, Calcutta, Sunday, June 9, 1988) that West Bengal is a take-off stage for rapid industrial development. The state had already made a break through in the electronics field, while the petro-chemical complex was now a reality. Stating the reasons for joining hands with the Goenka group to set up Haldia Petro-chemicals by West Bengal Industrial Development Corporation, Chief Minister said "I did not take even a half minute to make up my mind when Mr. R.P. Goenka met me with the proposal to

implement the petro-chemical complex. I do not want my State to turn into desert" the Chief Minister pointed out.

Representatives of the large foreign multi-national Corporations have already met the Chief Minister of West Bengal to form many joint sector projects in West Bengal.

Left Front Government initially depended to the maximum on the promise that encouragement should be given to public sector projects. But the State Government did not make much headway in this respect because the State Government had no additional money to expand public sector undertakings.

Minister-in-Charge of industries Prof. Nirmai Bose said "we found no alternative but to encourage private sector to come forward" in joint venture with State Government. He asserted that there is no objection if monopoly houses and multi-national Companies come forward in the joint venture project.

The Industrial Licensing Policy Inquiry Committee (Dutt Committee) in its report (1969) recommended that wherever public financial institutions had provided substantial financial assistance to a private sector company, they should consider converting the loan into equity and should also take active interest in the management of the undertaking so as to develop it as a joint undertaking. This was accepted by the industrial licensing policy of 1970 and afterwards it was taken as Industrial Policy of 1973.

Shri J.R.D. Tata's speech at the annual General Meeting of TISCO on 4th July, 1972 stated "Considering that directly or indirectly the Government already control 40 per cent of the voting rights in the Company, it is clear that any appreciable increase in their shareholding would automatically convert the steel company into a 'Government Company' as defined in Companies Act and into a joint sector company under any possible definition of the joint sector about which we hear so much today."¹⁰

Naturally according to Dr. N.K. Sengupta "Private Industry viewed it as a ruse for back-door nationalization. Conversely, leftist opinion and certain sections viewed it as a thin end of the wedge by which large houses will re-enter the industrial scene in a big way and defeat Governments' anti-concentration policy." He concludes by stating that "clearly joint sector is no magic wand. But it could have been and can still be developed as a very useful and effective form of management, wherever Government has substantial, if not majority, financial interest."¹¹

Main loopholes of the joint sector are the following :

- a) In the method of management there is no provision for workers' participation in management;

10. Shri J.R.D. Tata's speech at the annual general meeting of TISCO on 4th July, 1972.

11. Sengupta Dr. N.K. Changing Pattern & Corporate Management Vikash Publishing Pvt. Ltd., New Delhi, P-284.

- b) there is no provisions also for Government's nominee to the board to represent the consumers, suppliers and to uphold public interest;
- c) there is no system of bank's representation to the board as authorized by the dispersed shareholders;
- d) sharing of capital and participating nominees are made in arbitrary manner. Proportionate participation in board in relation to capital is not followed in all joint sector projects.

6.8 Development of the Idea of Joint Sector Movement :

Dr. L.C. Gupta, Director of Research, Institute for Financial Management & Research, Madras in his famous book 'Corporate Management and Accountability Towards A Joint Sector' (1974) developed the idea of Joint Sector Movement in India. Defining the meaning of 'Joint Sector' he states "The term Joint Sector" is applied to an undertaking when both its ownership and control (which should be distinguished from day-to-day management) are effectively shared between public sector agencies on the one hand and the private group on the other. It is a total misconception to suppose that the joint sector idea implies a combination of public ownership and private management. The basic idea underlying the concept is a combination of joint ownership, joint control and professional management."¹²

12. Gupta Dr. L.C. 'Corporate Management and Accountability: A Joint Sector', Macmillan, published on behalf of Institute for Financial Management and Research, Madras, 1974, P-1.

The joint sector idea was strongly advocated by the Industrial Licensing Policy Inquiry Committee popularly known as the Dutt Committee which observes.

"The 'Joint Sector' would in our view, include units in which both public and private investment has taken place and where the state takes an active part in direction and control."¹³

It may be mentioned here that Dr. Gupte's idea of Joint Sector is quite different from the Dutt Committee's recommendations of Joint Sector on the following points :

- i) Dutt Committee had never the slightest thought that the joint sector could possibly be superior not only to the private corporate system, but also to a direct state-ownership of industry. Dr. Gupte's idea of joint sector as an organisational reform for the large business enterprises, can be considered as much a substitute for the public sector as for the private corporate system.
- ii) Dutt Committee emphasized the idea that financial assistance and equity-holdings should not be normally used by the state and the public financial institutions for appropriate participation in the private sector concerns so assisted, needed to be firmly set aside. While Dr. Gupte's support of substitution and justification for

13. Industrial Licensing Policy Inquiry Committee's (Dutt Committee) Main Report, Government of India, New Delhi, 1969.

the joint sector vis-a-vis the private sector is derived basically from the problem of economic power and accountability the case for the joint sector vis-a-vis the public sector rests mainly on the need to secure profitable operation.

- iii) Government of India's thinking, the 'joint sector' as a formal concept, applies to new projects only. An arbitrary formula has also been laid down prescribing the respective percentages of equity capital to be held by each of the parties to a joint sector unit, the formula being : 26 per cent to be held by the Government or its agencies (generally the state industrial development Corporations), 25 per cent by the private collaborating group, and 49 per cent by the public. However, the percentage of share holdings may be flexible. Dr. Gupte advocates the proportional representation for public or institutional shareholdings. Parallel to the policy of setting up new projects as joint sector units, and standing somewhat in isolation from it, is the policy of making all public financial institutions to participate actively in the control and management of concerns assisted by them. In order to further such participation, a general policy has been adopted under which lending institutions must receive an option to convert a part of their loans into equity shares.

The two ideas - the 'joint sector' and institutional participation in managerial control - have a common element and a common aim and should, therefore, be viewed together. The official thinking on the problem has remained somewhat piecemeal and the two ideas have not been properly integrated into a coherent official policy. Further, there is no clear appreciation of the implications of these policies for operational management, nor is there clarity about the aims to be achieved.¹⁴

Therefore, Dr. Gupta's joint sector means the public shareholding and institutional shareholding jointly and management of the Corporation is vested to the private and institutional nominees. According to Dr. Gupta, if joint sector system of management could be introduced then control of group of family could be checked, shareholders' democracy, could be established, Governmental control will be minimized and defects of private sector i.e. evasion of tax, concentrating the activities of management for self interest as well as the demerits of public sector in bureaucratic system of management such as pre-destination, nepotism, red-tapism, strong headed administration etc. could be eliminated.

8.10 Multiple Two-Tier Board System of Management is more appropriate in subject than Joint Sector Management as envisaged by Dr. L.C. Gupta :

Our idea of Multiple Two-Tier Board is a development of Joint Sector Management system as envisaged by Dr. Gupta. Under

14. Op.cit. Gupta Dr. L.C. 1974, P-3.

this system not only institutional shareholding and proportional representation have been given emphasis, the workers/employees' participation in management, Governmental participation through nominees to represent the customer, supplier and society at large have been given due consideration.

Government's participation is necessary because it is the only recognised institution having power to represent all sections of people of a country. As such, we suggest that board of management of corporate sector should consist of (Policy Board) with heterogeneous elements and through proportionate representation of shareholders and financial institutions. The chairman of the Policy Board who will be always from amongst the Government nominees and be responsible to bring in homogeneity that should prevail in any board. The acceptance of the spirit of proportional representation is pre-condition to bring in any change in the structure of company management, curtailment of the power of the group or family management and democratisation in company management and subserve the interest of the shareholders and other ingredients of the company. In the name of complete homogeneity, boards of directors should not become rubber stamps of what the managing or the executive director says or does. With a chairman, possessing both ability and integrity, it should not be difficult to produce homogeneity and at the same time get the benefit of the different points of view on the functioning of an industrial units and plans for its expansion and diversification. Reciprocal interests of the participants in the board will run the company far better result.

Another point of difference between our suggested format of corporate management structure and so called joint sector view is that by direct participation by Government, banks 'representatives, workers/employees' representatives apart from shareholders and financial institutional proportionate representatives, would bring a closer relationship between Government and business and tense relationship that prevails due to misunderstanding can be minimized. A good relation between the management and trade union would help to bring in industrial peace and security. Company shall be able to get long term finance from financial institutions and short term finance for working capital from banks.

As the Policy Board will be composed of different elements, any plan or project will be discussed with pros and cons and an intelligent, judicious, relevant decisions is expected to be taken by the board. There will be a system of check and balance in corporate Government.

The executive board on the other hand will be composed of internal professional employees who will meet once or twice a week and perform their duties under the direct supervision of Managing Director.

It is to be remembered that nominees of the Government or financial institutions may be 50 per cent from outside experts and 50 per cent from the Government employees or employees of the financial institutions, Government and Bank

may employ professional experts to depute noniness to the companies.

**6.11 Structure of Proposed Board of Directors under
Multiple Two-Tier Board System of Management :**

Policy Board :

If we suppose that the policy board is constituted with 12 members, then members representing different ingredients are suggested to be appointed in the following manner :

- 1) 1/3 of the strength of the board i.e. 4 in number to be the representatives of workers/employees, duly elected by them.
- 2) 1 member is to be nominated by the Central Government and 1 by the State Government in the State where the company is situated, to represent customer, suppliers, creditors to uphold public interest.
- 3) 1 member of the board will be the representative of the Bank.
- 4) Say for example, the said company has issued 100,000 Equity Shares, out of which 40,000 are held by Financial Institutions and 60,000 are held by the public.
- 5) In such a case proportional representation of shareholders' representatives of the Financial Institutions and public will be 2 and 3 respectively.

- 8) The chairman of this board must be from amongst the representatives of the Government Bank or Financial Institutions. The Managing Director shall be from amongst the representatives of the public, company (holder of share) etc. Both these officers are to be elected by all the members of the Board.

Executive Board :

Similarly if we suppose that the executive board is constituted with 10 members then the composition is suggested to be as follows :

- 1) Managing Director of the Company will be one of the members of this board and for his position he will be the president of the board.
- 2) Other 9 members are to be selected by the Policy Board from amongst the professional employees, possibly heads of different departments.

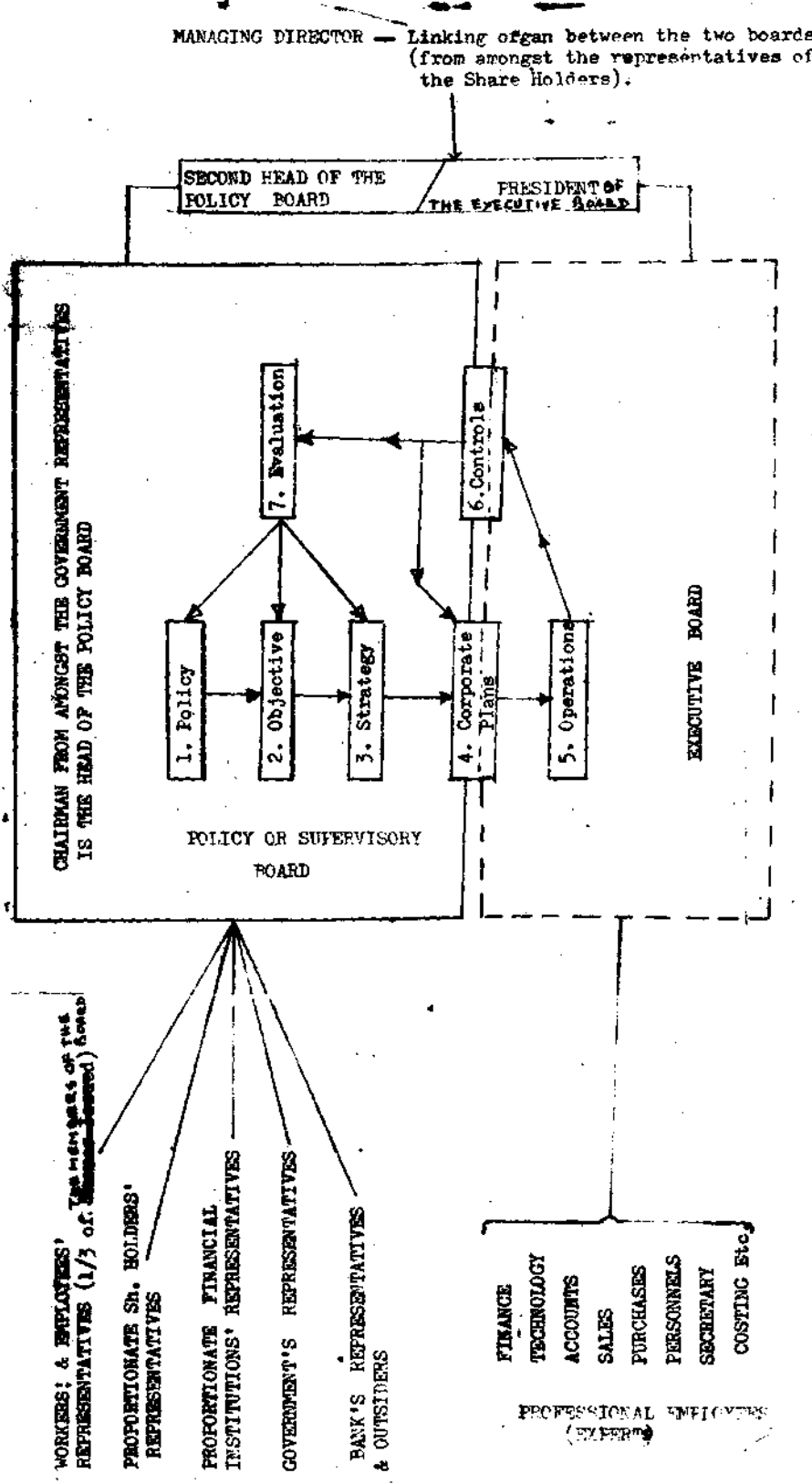
6.12 Definition of Multiple Two-Tier Board :

According to this system of management a company is regarded as a social institution, a most important means for all round development of the country. As such, Multiple Two-Tier Board may be defined as a technique of management of a company by two boards - Policy Board, constituted with the representatives of different constituents forming a company, being innovative, responsive, effective and rational to serve

their interest and uphold public interest, mainly engaged in formulating broad policy and strategy; the second board known as Executive Board constituted with professional employees who are expected to exert their full capabilities for the proper and effective execution of the policies and strategies undertaken by the Policy Board. Professionalisation, managerialism, proportionate representation on the basis of shareholding, bank's and Governmental representation to the policy board, introduction of modern technology and above all culmination of benevolent self interest with an outlook of national interest and public welfare are some of the conditions for its success. The chairman being a person possessing superb personality is placed in central position of the Policy Board while Managing Director serving as a linkman between Policy Board and Executive Board will be ex-officio president of the Executive Board.

The proposed format is shown in Figure ... 4, the details of which is given in Part III.

PROPOSED STRUCTURE OF MULTIPLE TIER BOARD



PROPOSED STRUCTURE OF COMPANY BOARD

Figure A...

PART - III**6.13 Multiple Tie-Up Board : Suggested Format of the Structure of Company Management in India :**

We shall start this part by mentioning the statement of George Goyder, one of the best known exponents of the concept of 'trusteeship' idea : "Industry in the twentieth century can no longer be regarded as a private management for enriching shareholders. It has become a joint enterprise in which workers, management, consumers, the locality, Government and trade union officials all play a part. If the system which we know by the name of private enterprise is to continue, some way must be found to embrace the many interests which go to make up industry, such as that between the workers and shareholders, is at present being resolved by hit-or-miss methods; by strike, negotiation and compromise, leading to a further process in the same order, and so on 'ad infinitum'. The alternative is to create a structure in industry which recognises each of the parties as having certain definite rights (with their corresponding responsibilities) legal constitution of the single company, in such a way that the tension in industry may become capable of resolution at the board room table of the individual enterprise. But, before this is possible must be first discovered in industry, a basis of justice upon which to raise the structure of the company which determines its formal responsibilities to the party to industry, we must examine the legal structure of the limited liability company and see to what extent it is

capable of adaptation make possible full co-operation between the parties to industry on a basis of justice."¹⁵

We are to find out certain new structure of company management which will include the best experiences from different countries, well suited to our environment and tradition but within the frame work of our constitution so that board of directors of Indian Companies can be effective, responsive, sensible and innovative to take the responsibilities of national development which are expected from them.

An ideal format for the structure of company management is to be created which will be in the line of two-tier board of management. The first board may be termed as POLICY BOARD and second board as EXECUTIVE BOARD. POLICY BOARD will be constituted with the proportionate representatives of the shareholders and financial institutions (as financial institutions, at present hold a substantial portion of equity shares in most of the large companies). There should be also one or two Government representative/representatives to look after the interest of the consumer, suppliers and society at large. Preamble of our constitution itself declares that the aim of the state among other things is to secure to all citizens social and economic justice. The Directive Principles of State Policy relating to social and economic matters (Articles 38, 39, 41-43 and 43A) discarded the old doctrine of laissez

15. George Goyder. The Future of Private Enterprise. Basil Blackwell, Oxford, 1954, PP 73-74.

fair and established the right of Government to regulate and control private business in a drastic manner. These representatives will be over and above as permissible under present statutes either for sanctioning loan or under the specific provisions of some other statute like Industries (Development and Regulation) Act, 1974 (the Central Government is empowered to appoint any number of directors in a company to protect public interest) or according to section 408 of the Companies Act, 1956 to check oppression and mismanagement.

There should be also the system of inclusion of banks' representatives to the board. Provisions should be made so that small investors in share capital could deposit their shares in the banks and authorize them to represent to the board. In order to stop the ugly blank proxy battle, the german system of Bank's representative to the board is expected to play a vital role in company management. Apart from it, a company is always dependent on banks for its working capital. The representative being proximity with the management if convinced and satisfied will meet the financial requirements immediately.

There will also be workers' participation in management as the Article 43A of our constitution has provided as such.

The Sachar Committee (a high powered Committee appointed by the Government of India) Report (1979) recommended for 'workers' participation on the Board level in every company

which employ 1000 or more workers as defined in the Industrial Disputes Act, 1947, provided 51 per cent of the workmen decide in its favour by secret ballot. Those who are against it, argue that the demand for such representation does not appear to be strong and that the trade unions are, in fact, against it. They are afraid of the fact that homogeneity of boards meeting could not be maintained. On the other hand, the fact remains that most of the continental countries have provided for employee-participation at all levels of company management very successfully. Being fully in agreement with the recommendation regarding workers' participation in management and capital, we suggest that one third of the board's members should be workers' representatives.

There is no doubt of the fact that a certain degree of genuine workers' participation with top management will be helpful in promoting greater productivity and ensuring better motivation and bring about industrial peace.

In the board, the need for some outside 'professional directors' in the private corporate sector has steadily grown in recent times. They come from a mixed bag of professionals, veteran company men or industrialists and retired Government company officials, bankers or officials of the financial institutions. The professional director should be able to distinguish between routine matters and strategic matters, and concentrate his limited time and energy on the latter. He is also required to watch the functioning of the board and to

propose through the chairman such changes as he considers necessary. Along with the other members of the board, he shares the responsibility of framing the corporate objectives and policies including long range planning, their implementation, and performance—review through reporting and monitoring, and of anticipating and initiating changes wherever the environment needs it. It therefore, appears that outside directors properly selected from the right kind of people can strengthen corporate management. Still there is a great controversy as regards the real effectiveness in company management on inclusion of directors from outside. Peter Drucker gave a solution to the problem of the issue of inside and outside directors. He has questioned the wisdom of excluding outsiders completely from the board. His argument is that the board is essentially not an organ of action except in crisis, but of review, appraisal and appeal, and it is therefore necessary that it should contain as members persons from outside who are detached from operations, "who can look critically at the profit planning of the company, its capital investment policy, its managed expenditure budget."¹⁸ He therefore urges that the board should consist of "persons the bulk of whom have never served as full time officers of the company, who are likely to see things differently, to disagree and to question—especially to question the assumption on which the chief executive team acts without, usually, knowing that

18. Peter F. Drucker, *Practice of Management*, 1969 edn. Heinemann : London, P-176.

it is making them. To obtain real benefit from the Board its membership must be carefully selected and to get the right kind of people that company needs, board membership will have to be made financially attractive.¹⁷ The opportunity of inclusion of outside directors in the board of Indian companies has increased as financial institutions can nominate such directors.

We also suggest that in the management of companies in our country, introduction of two-tier board is essential, due to "the gradual erosion of the Board of Directors as a functioning organ of the enterprise."¹⁸ The study team of the Administrative Reform-Commission on the Company Law Administration also suggested the possibility of the adoption of this pattern of two-tier boards in Indian Company Law on the German model. This German practice can be said to have reconciled "the professionalisation and growing entrepreneurial role of executives leading to their increasing self-reliance and independence of judgement, with the increasing pressure and control exerted by interested groups such as employees, the state or the reviving force of shareholders"¹⁹ the executive board symbolising the latter. In keeping with the general trend in continental countries, at least some companies in India seem to be moving in the direction of entrusting actual management to groups of employee - directors, at least informally. Guest, Keen and Williams have introduced a system of

17. Ibid P.177.

18. Ibid P.178.

19. Companies Beyond Jenkins, PEP, P-51. Quoted by Sengupta Dr. N.K. in his book changing patterns of Corporate Management (1983) P-214.

divisional board with the divisional managing director as distinct from the general board which by the nature of things can not be very much more different from the German supervisory board. A.C.C. also announced in the press on the 17th July, 1985 to be managed by the board acting through the executive committee of the board of directors. Sign of this type of management is also visible in Mahindra & Mahindra Ltd., The Bombay Dyeing Manufacturing Company Ltd., Ashok Leyland Limited and also Tata Iron & Steel Company Limited.

Mr. S.K. Bhattacharyya an eminent author in the subject also supported the introduction of Two-Tier Board in company - management in India in his leading article.²⁰

Institutional Nominees :

By the end of the 70s the institutional nominees in the Board of Directors has become an endemic feature in the Corporate management scene. The total number of nominee-directors operating to-day on behalf of the central financial institutions (ISBI, IFCI, LIC, GIC and UTI) will be in the region of 700. But over the years, the nominee directors have emerged as a major instrument for enabling the institutions to protect their interests in the assisted company as also to serve the interest of the company itself. The nominee director can be said to shoulder a triple responsibility, viz. to the company, to the

20. Bhattacharyya S.K. Article The Two-Tier Board :

A response to the current legal and Managerial Dilemmas in the book Board of Directors in India their Status and Dynamics : All India Management Association, Management House, 14, New Delhi - 110003, edited by S.K. Bhattacharyya 1st Edn. December 1983, P-26.

company's share-holder and to his parent institution.²¹ The functions assigned to the nominee directors by the financial institutions under the 1971 guidelines can be summarised as follows :-

- 1) They should not only safeguard the interests of the institutions, but also serve interest of sound public policy.
- 2) They should be accountable to the institutions which they represent.
- 3) They should keep themselves fully acquainted with the affairs of the concern. Without undue interference in day-to-day affairs, they should have constructive suggestions to the management in all important operational matters.

These guidelines contain check-lists for nominee directors covering areas such as financial performance of the company or project execution in physical and financial terms. They also lay down that they should report to the institutions all important matters including those discussed at the board meeting, and any special points which in their opinion call for special attention in course of periodical inspection of the assisted concerns by the financial institutions. Mr. V.V. Gupta in his article 'functioning of Board of Directors : Role of Government Nominees' states that "even in the private sector,

21. Sengupta Dr. N.K. Changing Pattern of Corporate Management, Vikas Publishing House Pvt. Ltd. New Delhi, 2nd Edn. 1983, PP 221-222.

in certain industries reached a proportion well beyond the capacity of shareholders' equity. Thus started participation either by Government directly or through financial institutions in their equity. With such participation came external control on the affairs of the Companies, invariably in the form of appointment of nominees of the participating agencies on their Boards.²² He also observes "While they may not influence the working of the companies directly, their presence on the Boards puts the management on notice that their performance is being watched. Though it is expected that he will make in conformity with all the Government's declared policies, in reality, even having only one vote, by his position he gets an advantage which he can use when needed to swing the Board round to his views."²³

At present, they are expected to take vital decision for or against take-over bids, taking into consideration of national interest as regards pouring of foreign exchange through the non-resident Indians. In the case of DCM/Esso -VS- Swastj Paul managing director of Caparo group of British based companies, the financial institutions headed by LIC took a decisive role.

We suggest firstly the representatives of the financial institutions should be on the basis of proportional share right (voting system) in which even if institution's shareholding is

22. Article by V.R. Gupta, Functioning of Board of Directors: Role of Government Nominees in the Book by S.K. Chakraborty, Board of Directors in India: Their Statics and Dynamics, All India Management Association, Management House, New Delhi - 1st. Edn. December 1983, P-196.
23. Ibid. P-197.

less than 50 per cent they will be able to represent in the Board of directors of the companies in which they have got shares.

At present Government has become the owner of most the financial institutions and shareholding of these institutions becomes more than 50 per cent in private sector companies, though their holding varies from one company to another. This change has come from evolution in a most natural way.

The Executive Board :

The availability of managerial talents for hire and the dependence on employees even at high decision making level is fundamental to any business organisation. The specialised institutions provide trained personnel who can take charge of executive work. In every country in every form of management an executive body is inevitable for successful completion of broad policy taken by the top management body. At present, in India as there are several institutions providing managerial training in different aspect of management, the availability of technical personnel has increased to a substantial extent.

By reviewing the annual reports of the 75 companies (Vide chapter VII) it has been seen that though arrangement by board with Managing Director is popular in India, the two-tier board system is gaining popularity day-by-day.

If the first board is constituted with representatives of different categories of people as suggested by us, then it

will be really an effective body for taking concerted decision and overall supervision. But only one Managing Director as executive-in-charge will not be able to discharge the complicated specialised type of activities. Managing Director, no doubt takes the assistance of the expert employees. It will be more effective if these specialised employees who are at the same time professionals are given status of Presidents, Vice-Presidents etc. and included in the executive board for entrusting collective responsibilities.

Over and above, all part-time or full-time directors including managing directors should be liable to retirement by rotation but may be reappointed in accordance with the regulations included in the articles of the company.

The manager, as a salaried executive, is not also an alternative to this. Management by Manager has not been at all popular in India. Out of seventy five companies reviewed by us only one company, Electric Lamp Manufacturing (India) Limited (a subsidiary of Palco Electronics and Electricals Limited) is managed by a board consisting of 5 directors and with a manager. Therefore, this system should be abolished from India. The High Powered Expert Committee on Company Law and MRP under the chairmanship of Justice Rajinder Sachar, August 1978, also holds this view. Board might change, affecting the position of the managing director. The extent of changes in the board would react on the functioning of the managing director depending on

his status in the company, his relationship with the board, the extent of his interest in the company and his terms of office. One pertinent query in this regard is whether such fundamental changes in the board, liable to disrupt the continuity of management.

The presence of executive board is expected to maintain continuity of the fundamental policies of the company which would unchangeable even though changes occur in the formation of policy board.

6.14 Conditions for the successful operation of multiple
two-tier board :

1) Proportionate Representation by the system of cumulative
voting :

Under sections 285 of the Companies, 1956 it is optional. This section is enacted on the recommendation of the joint committee.

This section is intended to enable minority groups among shareholders to have one or more representatives on the Board of Directors (the financial institutions also shall have the right to send their proportionate representatives).

"In the USA proportionate representation by the system of cumulative voting is in vogue in the case of several Trading Corporations. There is no reason why such an equitable way of representing minority interest

should not be adopted in the public interest to give representation to minorities on the board of Directors of large companies engaged in the production and distribution of essential commodities. Over and above this system of cumulative voting is simple and workable."²⁴

ii) Professionalisation of the company management in the true sense of the term :

Practically the proposed executive board is to be constituted with the employee-professionals who will meet regularly within a short intervals say once, if necessary, two in a week. They will be responsible for the total execution of the outline plan and programme set out by the POLICY BOARD.

The movement towards professionalisation has also been influenced by the growing development of professional and management education in the country. The legislative change in the Companies Act in 1974 providing for the compulsory appointment of a qualified company secretary in every public limited company having paid up capital of Rupees twenty five lakhs or more has now become a statutory obligation as a result of an Act passed by Parliament in 1980. Along with the existing Institute of Chartered Accountants and the Institute of

24. Ramalys A, 'Guide to the Companies Act, 10th Edn. 1984 Wadwa and Company Pvt. Ltd., Nagpur, P-531.

costs and works Accountants, the Institute of Company secretaries should also make avail a large number of qualified professionals for the Indian Corporate Sector. Similarly, the three institutes of management at Ahmedabad, Calcutta and Bangalore and a number of Universities providing management education, are making available an abundant supply of qualified manager.

111) The growth of a collegiate rather than personal form of management should be encouraged :

The report of the Administrative Reforms Commission also touches upon this controversial issue, whether the growth of a collegiate rather than personal form of management should not be encouraged by business leaders. There seems some force in this matter, as, apart from the professionally controlled foreign companies like Hindusthan Lever or Metal Box, most companies have traditionally viewed the board as the least effective organ, as mere an ornate formality than the real top executive and policy making body. A great majority of them are creatures of the chief executive or at least of the controlling group. The management select as directors only those men who are willing to be just a kind of 'rubber stamp'. In such a situation it is difficult to lay down any law about the collegiate executive. The collegiate executive is necessarily a better form of management than one man management in terms of control or efficiency.

iv) Justified role of the nominee directors of the financial institutions/Governments :

Government/Financial Institutes' nominee directors should play an effective role with their honest, intelligent and experienced endeavour and perform their duties not only for the betterment of the company but also for the development of the whole society. In future Government and financial institutions should nominate experienced and qualified persons as directors to the boards of the Companies.

v) Justified role of the chairman and managing director :

The chairman should be a man of vast experience and superb personality, who with his pleasant personality and behaviour will, not only conduct the meeting of the policy board but also act as an umpire of the debate and bring in homogeneity in diverse elements of the board. There should also be a very efficient Managing Director who will act as a link between the Policy Board and the Executive Board. As an executive head he will be President of the Executive Board and by virtue of his position, he will be regarded as the most effective member of the Policy Board. The policy board will receive operational report and communicate policy to the executive body through him for the proper application and translation into practice the policy and projects formulated by the POLICY BOARD.

vi) Autonomy of the management :

There should be complete 'autonomy' in formulating their own policy and functioning. Government must not interfere with the day-to-day administration of the company. Company will be bound to follow the broad economic principle and industrial policy formulated by the Government. They will also conduct their activities as directed by the Company Law and other relevant laws relating to company management.

Governmental regulation and control of private industries has been a common phenomenon in nearly all the developing countries and some developed countries in the world. But Japan and some other South-East Asian countries, e.g. South Korea, seem to follow a form of control which is as complete and pervasive as anything one can think of, but a control which is administered not through any discretionary case-by-case scrutiny, but through a paternal Mandarin type of administrative guidance and supervision.

"Japanese Government officials believe that business is incapable of making satisfactory decisions by itself and that it is essential for Government to provide guidance and virtually every aspect of operations"²⁸ Industry accepted this leadership provided by

28. Hadley, Eleanor M., 'Anti-Trust in Japan', Princeton University Press, 1978, P-390.

the administrative bureaucracy for which there is, however, no legal or statutory basis, but a much stronger base which is provided by a deep sense of national patriotism, a desire which is shared equally by Government and business to bring Japan's economy abreast at the level of European economy measured in per capita income terms.²⁷

"Out of discussions between Government and the private enterprise, mutually determined national targets are worked out. Private enterprise pledges to carry these out. Government, on its side, pledges special favours such as subsidies and taxation measures. Mutual consent and bilateral methods obviate the needs for legal compulsion."²⁸ The result is the emergence of a 'concerted economy' or more picturesquely, the 'Japan Incorporated'. In South Korea and France, Government controls companies through administrative guidance or through the process of indicative planning. These lessons are to be taken in India for elimination of all duplication of work, the stream-lining the administrative process and above all for creating a good relation between companies and the Government.

27. U.S. Department of Commerce, 'Japan - The Government Business Relationship.' Quoted in the Book, Government and Business in India, by Dasgupta and Sen Gupta N.K. Allied Book Agency, Calcutta, 1978, P-85.

28. Ministry of International Trade and Industry, Japan : A Discussion of Co-operative Industrial Organization Quoted in Hadley, Eleanor M. "Anti-Trust in Japan" Princeton University Press 1970, P-393.

vii) Simplification and reduction of corporate tax :

This is essential for the introduction of this method of company administration. Private sector company, try to evade taxes due to high rate of taxes and this is one of the causes of generation of black money.

Government's decision of reduction of corporate tax limit of maximum rate 50% and simplification of tax structure are expected to show good result.

viii) Mahatma Gandhi's concept of Trusteeship should be followed in the management of companies :

S.C. Sen in his famous book 'Company Action in the modern set-up' stated, "There has been a metamorphosis of the Corporation. From private capitalism it is now corporate communism of a non-marxist variety." Increasingly it is being realized that a manager in modern company is not in the position of an owner but in the position of a trustee who has the custody of the company's wealth on behalf of the company's shareholders and also has well defined responsibility towards other interests like the consumers, the workers and the public at large. With these changes the shareholders have been reduced to the position of just a supplier of capital to the company, no longer its owner. One eminent author expounded Gandhiji's philosophy as under : "Neither the shareholders, directors, managing agents, technicians,

and the labourers, jointly or severally, not even the state is the absolute owner of any industry. They are all contributors to the working of the industry, and the different kinds of contributors are invested with different functions for the efficient working of the industry. Every one of them must use those power honestly and diligently and take no more from it for personal consumption than what is just and proper under the conditions in which humanity round about him lives."²⁹

This indeed is the highest vision to which corporate philosophy has only now started approaching. What Mahatma Gandhi profounded several decades ago is coming to be true to-day. As the corporate management is developing, the concept of Gandhiji becoming more and more true. From this it follows that the company management must keep in view not only the interest of the owners of the capital but also of the workers, consumers and even the community at large.

Absolute poverty is a set of penalising circumstances that severely impair the individual's pursuit of that very potential. It is the direct denial of the benefits of development. During the struggle for freedom of India the leaders made a pledge to the nation. Gandhiji, the father of the nation had no doubt cautioned that the first priority for an independent India must be the removal of poverty. He said "we may not be deceived by the wealth to be seen in the cities of India it comes from the blood of the poorest. I know villages

29. Mahatmas - Gandhi and Marx, P-78.
Quoted from the book changing pattern of Corporate Management (1983) by Sengupta Dr. N.K., P-258.

economics. I tell you that the pressure from the top crushes those at the bottom. All that is necessary is to get off their backs. The present distress is undoubtedly insufferable. Pauperism must go."³⁰

For formulating new structure of company management or chalking out corporate plan, the warning given by Mahatma Gandhi must be remembered.

6.15 Objectives/benefits of suggested Multiple Tier structure of corporate management :

1) Checking the powerful agencies/groups holding control over management of the companies :

The first and foremost object is to reduce the dominancy of family control over most of the large companies. Big, visible and invisible power group/groups by holding nominal amount of controlling shares are capturing the control of the management of the companies and this had created a tremendous problem in the whole economy of India.

Prof. John Kenneth Galbraith stated "so great is their power that the state may be in some measure sub-owed. But the market in theory remains, though imperfectly, a decisive force. The monopoly presumes profits; what it can make is ultimately subject to the decisions of the consumers as to what to buy or not to buy. Though he pays more

30. Quoted from Sachar Justice Rajinder - 'Corporate Law : Effect on the growth of corporate sector', Articles published in Chartered Secretary Vol.XI No.1 January 1981, P.32-37.

than he should to the monopolist, the consumer is still presumably sovereign. Big business has undoubtedly become bigger, more powerful, more monopolistic, still the anti-trust laws are absolutely indispensable to the traditional imagery of the private corporation.³¹

Famous writer, namely, Fred R. Harris also gave illustration of corporate power in America.³² It is equally true in India. In this respect the observation made by Mr. R.K. Hazari is important to mention.

In India, control of even the large companies, is still generally associated with the holding of a substantial block of shares, usually referred to as the controlling block. This has given rise to the phenomenon of a family groups dominating the private industrial sector, a phenomenon which has attracted much comment in recent years. The size of controlling blocks in individual companies varies widely, and in most cases the blocks represent a significant minority ownership only, the minority control being made possible as a result of the dispersal of the remaining shareholders who together own the bulk of the equity.³³

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31. Galbraith John Kenneth : 'On the Economic Image of corporate enterprise,' Articles in the Book-Corporate Power in America - edited by Nader Ralph - Mark J Grossman publishers, New York 1973, P 4-5.
32. Harris R. Red - Article "the politics of corporate power" published in the 'corporate power' in America edited by Nader Ralph and Green J. Mark, Grossman publishers, New York 1973, P-27.
33. Hazari R.K. 'The structure of the corporate private sector : A study of Concentration, ownership and control' New Delhi - 1967. (Asia Publishing House)

Whatever be the method by which a management acquires and maintains its control over a company, it is generally true that the shareholders, even when grossly dissatisfied with the management, are invariably unable to dislodge it. This is as much a fact to-day as it was in the heyday of the managing agency system in India.

The normal recourse for a dissatisfied shareholder is to shift his investment from one company to another rather than to engage in lengthy and dubious battles for remedying managerial shortcomings. It is a better business for them, they conclude, to shift capital to a profitable company than to conduct a quixotic struggle against the inherent power and entrenched position of the management. Economic powers generate political power causing their own benefits, in most of the cases detrimental to the interest of the nation.

ii) Better Accountability and social responsibility :

This new structure is expected to make the companies more accountable to the shareholders, Government and society. There will be no scope to do anything illegal in their activities and accounts. The social Audit could be introduced showing not only creation of surplus as their aim and objectives but such they contribute for the welfare and well being of the nation.

111) Better performance :

With the intelligent and honest endeavour of the different segments of persons, it is expected that, there will be better result and smooth functioning of company management, including availability of finance. A good relation will be established between Government and business.

The long standing conflict between the Public and Private Sector will be withered away if this method of management structure is applied, at least on experimental basis in Public Sector also. There may be provisions and general policy to sell shares to the private persons and allow them seat in the Board of the Public Sector. They can render their good advice for the better management of the company. It is expected that by introducing the system of management most of the problems including sickness in industries, registration of shares both by resident and non-resident Indian will be solved to a substantial extent.

In the next chapter we shall review as good as seventy five representing companies under private sector in order to grasp an idea of the present trend and pattern of the management of the companies in India.

CHAPTER - VII

**REVIEW OF MANAGEMENT STRUCTURE OF SOME
SELECTED COMPANIES**

CHAPTER - VIIREVIEW OF MANAGEMENT STRUCTURE OF SOME
SELECTED COMPANIES7.1 Scheme for analysis :

We sent letters containing questionnaire to one hundred companies (50 large and 50 medium size companies)* requesting them to send their Annual Reports for the years 1982-83 and 1983-84 on 5th February 1985.** We got endearing responses from 26 companies together with their Annual Reports. We are thankful indeed to those companies who have boosted up our research initiative by sending their valuable and confidential information along with Annual Reports including letters of encouragement.

For reasons more than one, we collected 49 Annual Reports at random through personal contact from different companies and chartered firms in order to raise the total number to 75.

We do not claim that these seventy five companies can be taken as representatives of all the companies so far registered in India, but it will be evident from the Table A that they include different types of companies as regards their capital structure, ownership, nature of business or etc.

These seventy five companies on the basis of their

* Large and medium size companies as listed by the Research Bureau of the Economic Times, Calcutta, dated the 6th March, 1985 on the basis of sales for the years 1982-83 and 1983-84.

** Specimen copy of the letter is attached herewith in Annexure I.

Annual Report 1983-84 have been grouped under six categories - first of all ten companies under category 'C' having paid-up-capital of rupees twenty crores or more; secondly, sixteen companies, grouped under category 'D' having paid-up-capital of rupees ten crores or more but less than rupees twenty crores, thirdly, fourteen companies under category 'E' having paid-up-capital of rupees five crores or more but less than rupees ten crores, fourthly, nine companies under category 'F' having paid-up-capital of rupees two crores or more but less than rupees five crores, fifthly, nine companies under category 'G' having paid-up-capital of rupees one crore or more but less than rupees two crores and sixthly, seventeen companies under category 'H' having paid-up-capital of less than rupees one crore (Table A).

Detailed study with critical analysis of these Annual Reports of 75 companies reveals many important features from which it will be easy to have a glimpse of present trends of company management in India.

7.2 Management pattern :

There is definite trend of management of Indian Companies towards Boards with Managing Directors. Out of 75 companies, 43 companies are managed by the Boards with Managing Directors i.e., about 70% and only 30% of the companies are managed by the Boards without Managing Directors. Again, out of 43 companies, 14 are managed by the Managing Directors with the help of the

Joint/Whole-time/Deputy/Executive Director or Directors and Executive President, Executive Vice-President. It amounts to about 32.5% of the total number of companies under review (Table B).

The inference that can be drawn from it is that companies have shown their preference to management by the Board with Managing Director/Directors to, the style of management by only the Board without Managing Director. In this respect, it is relevant to refer to the recommendations of the High Powered Expert Committee on Companies and MRTTP Acts (August, 1978) which states that "Public Limited Companies having paid-up capital of rupees fifty lakhs or more must have at least one managing or whole time director. Large size companies can not be successfully managed without somebody being specifically empowered with substantial authority of management."¹ (Para 5.9)

Propriety of the recommendation is discernible to critical analysis of the Annual Reports of the 75 companies in the Reports and Accounts for the year ending 1983-84.

7.3 Nominee Directors :

Out of 75 companies under review, 36 companies have nominee directors and 39 companies do not have similar managerial staff and structure. Total number of directors of the seventy five companies is 731 and total number of nominee

1. Report of the High-Powered Expert Committee on Companies and MRTTP Acts, Ministry of Law, Justice and Company Affairs Department of Company Affairs, Government of India, New Delhi, August 1978, P-32.

directors is 82 i.e. nearly 11.22 per cent. An examination of the table 'K' will reveal that comparatively small companies have greater number of nominee directors. Companies under group G (Companies having capital Rs.1 crore or more but less than Rs.2 crores) have 19 per cent and companies under group 'H' (paid up capital less than Rs.1 crore) have 13 per cent of nominee directors of the total number of directors.

Different types of State Finance Corporations nominated 21 of the total number of 82 nominee directors i.e. nearly 25%, while Industrial Finance Corporation of India nominated 14 (17%), IDBI and ICIC nominated 11 each (13.4%) and G.I.C. 8 (nearly 10%) (Table J).

Critical analysis of Table J (25 large public Limited Companies) reveals that total capital employed in these 25 companies i.e. Rs.3059, 04, 48,081, total equity capital being Rs.339,86,12,249 and total amount of loan taken by these companies from Bank/Financial Institutions being Rs.1314,88,55,803. The amount of capital employed is nearly 10 times more than total amount of equity capital. Therefore, only one-tenth of the owners of capital have their representatives to the board of directors and nine-tenth of the owners of capital employed in these companies have no representatives. Over and above, total amount sanctioned by the Financial Institutions to the Companies has been published in the Economic Times, Calcutta, dated July, 29, 1985. It shows that total amount sanctioned by different

financial institutions rose from 232.9 crores in 1970-1971 to Rs.4023.3 crores in 1983-84. The total disbursement in this period went up from 145.8 crores to Rs.2905.9 crores in those period.

The publication further shows that out of the total cumulative sanctions by different financial institutions up to March, 1984 the private sector accounts for 75.8% and the balance i.e. 24.5% were shared by enterprises in public, joint and co-operative sectors.

The financial institutions now finance nearly 30 per cent of project cost of companies' issue capital. The institutions have thus assumed a position that without their support hardly any large project in private sector can materialise.

The cumulative assistance disbursed by financial institutions upto the end of March, 1983 amounted to Rs.12,195 crores. More than three-fifth of the total assistance was in the form of rupee loans. Foreign currency loans amounted to Rs.985 crores only. The balance were disbursed against shares, debentures and guarantees.²

2. The Economic Times, Research Bureau, published in the Economic Times, Calcutta, October 2, 1984.

From the above, the following deduction can be made :

	1970-71	1983-84	Difference
Total amount sanctioned by the Financial Institutions	Rs.232.9 cr.	Rs.4023.3 cr.	Rs.3,709.4 cr.
Total disbursement	Rs.145.8 cr.	Rs.2905.9 cr.	Rs.2,760.1 cr.

Disbursements by financial institutions on 31.3.1983.

Rs.12,195 - Rs.10,095 (Rupee Loans) = Rs.2100 crores.

On 31.3.84 total disbursements to the Private Corporate sectors amounted to Rs.2905.9 crores. Therefore in one year it increased by Rs.805.9 crores.

Year	1	2	3	4
	Total amount of paid up capital of private sector companies registered. (In crores of Rs.)	Total amount of disbursement in companies by the financial institution. (In crores of Rs.)	Percentage of 3 on 2	Total No. of nominee directors
1970-71 (31.3.71)	2439 ³	232.9	9.55	700 ⁴
31.3.84	5314	2194.00	more than 41	Figure not available

The disbursement of financial institutions has been 9.55% of the paid-up-capital of the private sector companies in the

3. Sengupta Dr. N.K. 'Changing Patterns of Corporate Management, Vikas Publishing House, New Delhi, 2nd Revised Edn. 1983, P-232.
4. Sengupta N.K. Ibid P-221.

year 1970-71. It has increased to a great extent and more than 41% in the year 1983-84.

Representatives of the financial institutions had been in the region of 700. Actual figure upto the year 31.3.84 is not available. Yet it can be assumed that representatives of the financial institutions have not been increased in the same proportion of increase in shareholding by the financial institutions.

7.4 Workers' participation in management :

It is very surprising to note that although in the constitution of India, workers' participation in management has been directed and several recommendations including valuable suggestions by the High Powered Expert Committee on Company and MRTP Acts under the chairmanship of Justice Rajinder Sachar (August, 1978) and several guidelines issued by the Government, there is no representative of the workers in the management of the 75 companies reviewed by us. It is high time to consider the recommendations of the High Powered Expert Committee on company and MRTP Acts under the chairmanship of Justice Rajinder Sachar (August 1978) with some modifications. This is, not only necessary for bringing industrial peace but also to formulate modern structure of company management for the smooth working of the affairs of the company. Mention may be made here, of the statement of Branton Neol, in his book 'Introduction to the theory and practice of management' wherein he states,

"After all, the success of any board depends on the amount of co-operation which it can secure from below. But if those whom it governs have no sympathy for its aims because they can not understand them, the prospects for co-operation can hardly be described as good."⁵

7.5 Social Responsibilities :

At present, the performance of a company is judged not only by the inflated amount of profit or high rate of dividend, declared but by the social responsibilities undertaken by it. In this connection it is worth mentioning the concept of social values by the companies in the Encyclopedia of Professional Management which reads :-

"Business has been considered and accepted as a dominant economic institution in society. Business may already be a dominant social institution, with social objectives pursued jointly with economic and political objectives."⁶

The business leaders in U.S.A. in 1971, while giving top priority to social 'Responsiveness of Business Corporation' formulated the policy statement and wrote as follows :

"There is now a pervasive feeling in the country that the social order somehow has been upset : and that greater affluence amid a deteriorating environment and community life

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5. Noel Branton M.Com. Phd. London Professor of the Dept. of Commerce, University of Strath Clyde - Introduction to the theory and Practice of Management, New and Revised Edn. 1971, Chartered Window, London, Chapter-V, P-69.
 6. Encyclopedia of Professional Management, Editor in Chief Brittel Lester Robert, Grollier International, Danbury connectical, 1978, 2nd Vol. P-643.

does not make much sense. The discontinuity between what we have accomplished as producers and consumers and what went in the way of a good society has engendered strong social pressure to close the gap - to improve the way the overall American system is working so that a better quality of life can be achieved by the entire citizenry within well functioning community. The goals include : Elimination of poverty and provision for good health care; equal opportunity for each person to realize his or her full potential regardless of race, sex or creed; education and training for a full productive and rewarding participation in modern society; ample jobs and career opportunities in all parts of the society;

Liveable communities with decent housing, safe streets, a clean and pleasant environment, efficient transportation, good cultural and educational opportunities and a prevailing mood of civility among people."⁷

But in India social responsibilities have become more in theory than in practice. The seventy five companies reviewed by us clearly reflect the negligence or indifference attitude towards social obligations on the part of the companies. Though most of the companies are negligent of it, some of the large companies, practically all belonging to category 'C' and 'D' paid-up-capital varying from Rs.10/- crores or more have mentioned in their Annual Reports the matters regarding social

7. Op.cit. Encyclopedia of Professional Management, P-644.

obligations. Social obligations as identified by five companies out of seventy five companies reviewed by us are stated below in the same language as reported in the Annual Reports of those five companies.

SOCIAL OBLIGATION

**Tata Power Company
Limited (AR. 1983-84)**

Our efforts in rural development and village welfare have continued. Promising candidates from among our employees' children have been selected for training in diverse disciplines. These include technical trades, watch and ward, Industrial Home Guards, Yoga and the martial arts. The efforts of the companies in their family planning Programmes have continued with new laparoscopic equipment in and around our divisions.

**The Tata Hydro-Electric
Power Supply Company Ltd.
(AR - 1983-84)**

Our efforts in rural development and village welfare have continued. Our companies have rendered assistance in repairs of village wells, in the construction of village schools and in road repair works. To alleviate hardships caused by severe draught conditions in the Mulshi and Naval

talukas, your companies have supplied water regularly by tankers to 24 villages till the commencement of the 1983 monsoon. Our immediate response towards relieving the draught situation has been much appreciated by the villagers and the Government of Maharashtra. Promising candidates from among our employees children and from the villages adjoining our divisions have been selected for the Apprenticeship course in our training schools at Khopoli and Bhira. We hope that they will form a nucleus of skilled manpower for the developing regions of Maharashtra State. In addition to these welfare schemes, your companies efforts in their Family Planning Programmes have continued with renewed vigour with new laprescopic equipment in and around our division in Maharashtra and Karnataka States.

The Andhra Valley
Power Supply Company
Ltd.(AR - 1983-84)

Our efforts in rural development and village welfare have continued. Your companies have rendered assistance in repairs of village wells, in the construction of village schools and now repair

work. To alleviate hardship caused by severe draught conditions in the Mulshi and Naval Talukas your companies have supplied water regularly by tankers to 24 villages till the commencement of the 1983 monsoon. Our immediate response towards relieving the draught situation has been much appreciated by the villagers and the Government of Maharashtra. We have tried to develop in this locality animal husbandry, poultry farming, drinking water, link roads etc. Over 1 lakh rural folk from 109 villages had avail of the comprehensive health care services delivered at their door steps at several places. As reported earlier, the company is also opening a large net work of new rural markets so that cement is made available to these remote and undeveloped areas.

Tata Iron & Steel
Company Ltd.
(AR - 1983-84)

The Company's Rural Development Programme continued to be extended during the year and now covers 230 villages, 120 around Jamshedpur and 110 around its mines and collieries. The Tatas Rural Development

Society received the award for 1983 for corporate initiative in rural development work from the Federation of Indian Chamber of Commerce and Industries.

All the Companies in India should follow the illustration as mentioned above, in order to prove their worths as socially viable.

7.6 Two-Tier Form of Management :

The study team of the Administrative Reforms Commission on Company Law Administration suggested the possibility of the adoption of this pattern of two-tier boards in Indian Company Law on the German Model. This system has reconciled "the professionalisation and growing entrepreneurial role of executives leading to increasing self-reliance and independence of judgement, with the increasing pressure and control exerted by interested groups such as employees, the state or the reviving force of shareholders"⁸ the executive board symbolising the later. Being influenced by the successful results of the company management in Western Countries some companies in India seem to be moving in this direction of entrusting actual management to groups of employee directors, at least informally. The Two-Tier Board is visible in number of companies within 75 companies reviewed by us. Some of the illustrations are given below :

8. Recommendation of the study team of the Administrative Reforms Commission on Company Law Administration, Government of India, New Delhi, 1969.

1) **Good Year India Limited :**

There is an executive committee excluding the board of Directors. This is in the tune of Two-Tier Board.

2) **The Grab Tea Company Ltds**

There are five members in the Board. Board conducts its affairs with the help of a committee of local management of 12 members.

3) **A. C. C.**

Total number of directors in the Board is 18 - one Chairman, one Deputy Chairman, one Vice Chairman cum Managing Director, seven Directors, one Joint Managing Director, two whole Time Directors, two Financial Institutions' Nominee-Directors and three Special Directors.

There are six executive directors i.e. 1/3 of the total number of the board (33.33%) and 2 financial Institutions' nominee nearly 11% but percentage of equity shares held by Government, Government companies and statutory Corporation is 37.77.

In this regard the declaration made by the ACC as published in the Economic Times, Calcutta on the 18.7.1985 may be worth noted :

'Bombay, July 17, the board of directors of Associated Cement Companies (ACC) announced that the company would not have a managing director, but would be managed by the board acting through the executive committee of the board of directors.'

A press release issued by the company in the evening on that date states 'Mr. T.V. Balan, whole time director, and Mr. A.L. Kapur, who has been appointed as a whole time director on the board, will share the day-to-day responsibilities for running the organisation under the direct supervision of the board of directors.'

- 4) Ion Exchange (India) Ltd. :
Two-Tier Board is visible in the top management structure of the company.
- 5) Polysarings Industries Ltd. :
There is a policy board of 4 members. Over and above, there is an executive committee of five members - 1 Vice President advisory, 3 G.M. and 1 Purchase Manager.
- 6) Ashok Leyland Limited :
There is a policy board with 11 members and executive directors of 5 members.
- 7) Indian Oxygen Limited :
In addition to a regular board, there is an executive committee consisting of 6 members - 4 from board and 2 from employees and outsiders.
- 8) Bombay Dyeing[&]/Manufacturing Company Ltd. :
Over and above the regular board, there is an executive committee consisting of 10 members - 3 Presidents and 7 Vice-Presidents/General Managers.

9. In Tata Iron and Steel Company there is an executive committee in the line of Two-Tier Board.

In Table-B, it has been clarified that there are 12 companies (3 from companies of 'C' category, 5 of the companies grouped under 'D' category, 1 each of the category 'E' and 'F' and 2 of the category 'H') which are managed by the system of Two-Tier Board.

Though Administrative Reforms Commission opined that the time is not yet ripe for writing into our company law, a specific provision for setting up two-tier boards seems wise council and the Sachar Committee Report (1978) in para 5.7 also express itself against the scheme of compulsory adoption of a two-tier board in India, yet there is visible sign of introduction of this system of management in as many as twelve number of companies within 75 companies under review (Table B). We firmly hope that this trend is bound to get more and more pronounced.

7.7 Peoples Participation in Management :

Out of the 75 companies reviewed by us, there is only one company namely KALLERU PAPER LIMITED that has one director representing the public (Table G). It is very interesting and commendable no doubt.

7.8 Professionalisation of Company Management :

Though we sent letters with questionnaires to one hundred companies, we received replies only from 26 companies. From the answers of the questionnaires, it is very difficult to determine professionalisation of top management of companies in India. "In the Indian context, professional management is used as a synonym for management by non-proprietary managers."⁹ This has been justified once again by the study of 26 filled in questionnaires regarding queries about professionalisation of company management. Out of 26 companies 20 companies claimed that their top managements are manned by professionals. It indicates more than 80 per cent of the companies.

Total number of executives belonging to different categories of those 26 companies are as follows :

Sl. No.		No.
1.	Chairman cum Managing Director	1
2.	Managing Directors	17
3.	Deputy Managing Directors	8
4.	Joint Managing Directors	2
5.	Executive/Financial/Chief Executive/ Technical Directors	21
6.	Whole-time Directors	2
7.	Vice Chairman Cum Managing Directors	5
8.	President cum Managing Director	1
TOTAL		57

(1st two category of companies under Table - A)

9. "Recommendations of the Administrative Reform Commission Relating to the Companies Act", paper presented by Dr. N.K. Sengupta at a seminar, Calcutta, February, 1980.

General, educational professional qualifications of the top management (here, top management indicates only Managing Directors and Whole-time Directors) of the 26 companies reveal as under :

Sl. No.	Nature of qualifications	No. of Executives	Percentage
1.	Persons both professionally and educationally qualified	27	47.4
2.	Persons educationally qualified but not professionals	21	37
3.	Persons claim professionals but not educationally qualified	4	7
4.	Persons neither professionals nor educational qualifications but substantial financial stake	4	7
5.	Detail information not available.	1	1.6
		57	100

It is very difficult to get exhaustive data from companies about the educational or professional qualifications of the governing directors, companies in general expressed their inability to furnish information about educational qualifications or professional qualifications on the ground that this information are not required to be kept by them under the Companies Act, 1956. Regarding queries about professionals, practically all claim that all the directors are professionals including nominee directors of the Government and financial institutions.

From the figures stated above it may be apparent that number of companies are now led by professional managers.

In reality, perhaps the fact is reverse, because despite legislative change, there is persistence of divine right of management which stood in the way of truly professionalisation of management in Indian Companies. 'In the West, the form of control has been described as management control but the difference is that, in the West, management now means, highly professional group while in India it is still by and large a family group'. The general notion of Indian businessmen is that they need professionals, but they (professionals) would be under their control. Professional will act like lieutenants having no decision making authority. The policy making authority will be exclusively in the hands of the entrepreneurs. By studying the Annual Reports of the Tata group of companies, A.C.C., Bombay Dyeing and Manufacturing Co. Ltd., Indian Oxygen Ltd. etc., we may say that, these companies have included some employees, technically experts in their board of directors.

However, in fact, the healthy trend is that, gradually the young members of the controlling family are becoming professionally equipped. This is good sign no doubt, although according to Arabinda Ray, "it is the owner manager or the entrepreneurial class which to-day constitutes the greatest challenge to the professional manager in India."¹⁰

10. Ray Arabinda, The Indian Manager in Search of Style, The Macmillan Co. Bombay, 1970, P-40.

7.9 Public Disclosure :

Annual Reports of the companies are the only source through which Government, share-holders, public and academicians can be aware of the affairs of the company and their activities during the preceding year. But most of the companies under review do not disclose clearly many facts. They try to disclose only those matters which are legally obligatory to state. As for example, except a few companies, it is very difficult to find out distribution of share holding of different categories of share-holders, financial contributions made by the financial institutions both in (equity and preference) debentures and loan. Detailed information regarding subsidiaries, and even group or business-house to which they belong are not clearly understandable. Not only that, the annual reports of the companies are not easily available. Microscopic letters in the Annual Reports about the subsidiary companies of some of the Holding companies are not at all legible.

Yet some of the companies have given sufficient informations regarding shareholding etc. They are stated as follows :

- I. The Tata Iron and Steel Company Limited, Seventy Seventh Annual Report - 1983-84 Distribution of share holding :

Number of shares			No. of shareholders	
			31.3.1984 (%)	31.3.1983 (%)
1	to	10	52.06	50.85
11	to	50	32.03	32.84
51	to	100	8.12	8.29
101	to	1000	7.53	7.83
Over		1000	0.26	0.29

Categories of shareholders :

Category	Number of shareholders		Voting strength		Number of ordinary shares held	
	31.3.84	31.3.83	31.3.84	31.3.83	31.3.84	31.3.83
Individuals	88,138	102,292	45.01	46.91	3241,714	3,378,329
Companies	286	211	5.37	5.94	346,953	427,980
Government Public Financial Institutions and Insurance Companies	29	44	43.28	40.46	3116,553	2,913,758
Nationalized Banks and Trusts	21	27	6.34	6.69	456,418	481,571
TOTAL	88,454	102,574	100.00	100.00	7261,638	7,201,638

Note : The number of shareholders for the previous year is inclusive of Preference shareholders, who have been allotted 14% Non-convertible Bonds in cancellation of shares.

Comment : It is evident from this chart that on 31.3.1994, Government, Public Financial Institutions and Insurance Companies have 43.28 per cent shares by holding 3,116,553 shares out of total 7,201,638 shares (all ordinary). But there are only 3 nominee directors, two by financial institutions and one by Government. According to proportionate shareholding, nominee directors by the Government and Financial Institution should be at least 5.

Tata Iron and Steel Company (AR.1984) seems to us an illustration of ideal disclosure.

II. The Tata Power Company Limited (Shareholding Organs)
(Sixty-fourth Annual Report 1982-83)

Shareholding organs	No. of Members	Prof. shares		Ordinary shares	
		Face Value Rs.	Percent	Face Value Rs.	Percent
L.I.C.	1	22,41,500	13.92	88,62,700	5.43
Other Insurance Co.	5	11,04,500	6.86	55,84,400	4.13
Nationalised Banks	7	5,81,500	3.61	27,70,500	1.73
Other Banks	5	40,000	0.25	2,19,800	0.14
U.T.I.	1	38,99,500	23.85	91,84,000	5.78
Other Financial Institutions	6	1,000	0.01	24,84,000	1.56
	25	7,80,800	48.50	2,99,08,300	18.75
Individuals	68,983	77,34,200	48.04	12,15,72,200	78.21
Miscellaneous	222	5.58,300	3.46	80,47,000	5.04
T O T A L	89,230	1,81,00,800	100.00	15,95,27,500	100.00

Comments :-

- 1) Though Government sponsored financial institution held 18.75% shares, there is no nominee directors to the Board.
- 2) Preference share holding by these institutions is 48.50% whereas equity shareholding is on 18.75%.

III. Tata Hydro-Electric Power Supply Company Limited
 Distribution of shares
 (as on 31st. March, 1984)

Shareholding Organs	No. of shares	Preference Shares		Ordinary Shares	
		Face Value	Percentage	Face Value	Percentage
		Rs.		Rs.	
Life Insurance Corporation of India	1	21,84,400	24.48	,58,10,400	8.55
Other Insurance Companies	5	93,300	1.05	44,45,800	6.78
Nationalised Banks	7	2,69,400	3.02	10,94,100	1.67
Other Banks	4	5,800	0.06	87,100	0.10
Unit Trust of India	1	14,77,700	16.55	33,20,200	5.06
Other Financial Institutions	5	-	-	22,40,600	3.42
	23	40,32,600	45.17	1,67,78,200	25.58
Individuals	27,885	44,37,800	49.70	4,73,14,800	72.12
Miscellaneous	155	4,57,800	5.13	15,07,000	2.30
T O T A L	38,063	89,28,000	100.00	6,56,00,000	100.00

TATA POWER COMPANY LTD. (as on 31st March 1983)

	No. of shares	Preference Shares		Equity Shares	
		Face Value	Percentage	Face Value	Percentage
L.I.C.	1	22,41,500	13.92	86,62,700	5.43
Other Insurance Companies	5	11,04,500	6.88	65,84,400	4.13
Nationalised Bank	7	5,81,500	3.61	27,79,500	1.73
Other Banks	5	40,000	0.25	2,19,800	0.14
U.T.I.	1	38,39,500	23.85	31,84,000	5.76
Other Institutions	6	1,000	00.01	24,86,900	1.56
	25	78,08,000	48.50	2,99,08,300	18.78
Individuals	68,983	77,34,200	48.04	12,15,72,200	76.21
Miscellaneous	222	5,58,300	3.46	80,47,000	5.04
	69,230	1,61,00,500	100.00	15,95,27,500	100.00

IV. The Bombay Dyeing And Manufacturing Company Limited (1983-84)

- i) It possesses executive board in the line of policy board consisting of 3 presidents and 7 Vice-Presidents/General Manager.
- ii) It has issued and subscribed capital of Rs.1500.00 lakhs. But total loan capital in year 1983 secured loan Rs.7,713.78 lakhs and unsecured loan of Rs.1,488.99 lakhs, in the year 1984 secured loan Rs.10,111.66 lakhs and unsecured loan of Rs.2,297.57 lakhs.

Loan from banks and financial institutions -

In the year 1983 secured Rs.5585.44 lakhs unsecured

Rs.1,105.99 lakhs Total Rs.7,691.43 lakhs and

In the year 1984 secured Rs.7890.05 lakhs unsecured

Rs.1,432.08 lakhs Total Rs.9,322.16 lakhs.

- iii) Almost total holdings of the share capital of subsidiary companies, there is also substantial portion of loan from banks by the subsidiary companies.

V. Mature Costs :

Total loan from banks and financial institution 2724.53

lakhs but there only one nominee by IC.I.CI. to the

Board. 40% are executive directors getting 1% of the

share of net profit.

VI. Glaxo Laboratories (India) Limited
Distribution of Equity Shares as on 30th June 1984

Holding of	No. of shareholders	share held
1 to 25	26,979	6,41,802
26 to 50	32,642	15,51,144
51 to 100	43,011	32,85,749
101 to 1,000	10,767	24,00,225
1,001 to 10,000	155	2,65,567
10,001 and above	12	1,18,55,723

Glaxo Laboratories (India) Limited
Distribution of Equity Shares as on 30th June 1984

Holding of	No of shareholders	Share held
Held by		
Glaxo Group	1	80,00,000
Unit Trust	1	13,11,542
L.I.C.	1	7,61,888
ICICI	1	4,80,000
GIC and its subsidiaries	8	12,48,766
Nationalised Banks	29	23,584
Other Companies	187	49,921
Individuals	1,13,340	81,27,279
	1,13,566	2,00,00,000

These tables showing distribution of shareholdings of some large companies.

VII. A.C.C.

Distribution of shareholding (Equity)

Number of shareholders and shares held

as on July 31, 1984 (as per 48th Annual Report 1983-84)

1984

Number of share holders	Number of share held
1 to 10 shares	32,293
11 to 25 "	15,103
26 to 50 "	7,803
51 to 100 "	5,080
101 shares and over	3,834
	64,213
	33,23,117

**Share holding by individuals, Corporation and
Government, Government Companies and
Statutory Corporations**

Shareholding Organs	Number of shareholders	Number of shares held
a) Individuals	3,933	19,46,386
b) Corporate shareholders	244	1,21,420
c) Government/Government Companies and Statutory Corporations	38	12,55,331
T O T A L	64,213	33,23,117

Percentage of shares held
by Government Companies &
Statutory Corporations 37.77%

**7.10 Concentration of economic power by making group with
the inter connected companies and through subsidiaries:**

Our review of 75 companies gives some light of concentration of economic power. Most of the companies belong to different big business houses and they control the power which are sometimes visible and some-times not. As for examples, Tata & Steel Company, the Indian Hotels Company Limited, the Tata Hydro-Electric Power Supply Company Limited, The Andhra Valley Power Supply Co. Ltd., Ashoke Lay Land, Tata Power Company Ltd., Bombay Suburban Electric Supply Ltd. belong to Tata Group. Hindustan Motors, the Indian Cable Company Limited, The century spinning And Manufacturing Co. Ltd., etc. belong to Birla group.

We have specifically taken some samples of the subsidiaries of the larger companies on which they have established full

control concentrating their power. They are stated as follows in accordance with the Annual Reports 1983-84 :

1. Subsidiaries of Duncans Agro Industries Ltd.
Annual Report & Account 1984

Sl. No.	Names of subsidiary Companies	Financial yrs. ended	Extent of shareholding by Duncans Agro Industries Ltd.
1.	Abaya Investments Ltd.	30.07.84	The entire issued share capital consisting of 4,50,000 E. shares of Rs.10 each and 4850 11% R.C. Pref. shares of Rs.100 each fully paid.
2.	Cape Investments (P) Ltd.	30.09.84	348080 E. shares out of the total subscribed shares of 348097 E. shares of Rs.10 each.
3.	Colorado Investments Ltd.	30.11.84	The entire issued share capital consisting of 4,50,000 E. shares of Rs.10 each and 4850 11% R.C. Pref. shares of Rs.100 each, fully paid.
4.	Dall Consultants Ltd.	30.06.84	39,993 E. Shares of Rs.10 each out 4,40,000 total subscribed share capital and 990-117. Non-Redeemable, Non-C. Pref. shares of Rs.100 each out of total 1000 pref. shares fully paid.
5.	Dall Investments Ltd.	30.09.84	The entire issued cap. consisting of 49,000 E shares of Rs.100 each and 100 11% R.Pref. shares of Rs.100 each fully paid
6.	Danube Investment Ltd.	30.11.84	The entire issued cap. consisting of 447870 E. shares of Rs.100 each and 4850 11% R.C. Pref. shares of Rs.100 each, fully paid.
7.	Duncans Tea Ltd.	30.06.84	9100 E. shares out of the total subscribed share capital of 10,000 E. shares of Rs.100 each, fully paid.

E = Equity;

R = Redeemable;

C = Cumulative;

Sl. No.	Names of subsidiary companies	Financial yrs.ended	Extent of shareholding by Duncans Agro Industries Ltd.
8.	Golconda Investment P.Ltd.	30.06.84	397590 E. shares out of the total subscribed share capital of 397592 E. shares of Rs.10 each, fully paid.
9.	New Tobacco Co. Ltd.	31.12.84	The entire issued share capital consisting of 450107 E. shares of Rs.10 each, fully paid.
10.	Quan Dong Investments Ltd.	30.11.84	The entire issued shares capital consisting of 4,50,000 E. shares of Rs.10 each and 4850 11% R.C. Pref. shares of Rs.100 each, fully paid.
11.	Stage Investments Ltd.	30.06.84	379090 E. shares and 1850 10% Non R., Non-cum. Pref. shares out of total subscribed share capital of 379160 E. shares of Rs.10 each and 11920 Pref. shares of Rs.100 each, fully paid.
12.	Uma Gouri Investment P.Ltd.	30.09.84	397590 E. Shares out of the total subscribed Equity share capital 397592 shares of Rs.10 each fully paid.
13.	Veeryalakhmi Investments P.Ltd.	31.8.84	299940 E. Shares out of the total subscribed E. share capital of 4,99,900 shares of Rs.10 each fully paid.

E = Equity.

Total investment in the subsidiaries Rs.9,19,96,000 sub/paid-up-capital Rs.2,91,84,000.

2. **Subsidiaries of Cast Tyres of India Limited**
26th Annual Report 1983-84

Sl. No.	Name of Subsidiary company	Financial year ended	Extent of Interest of Cast Tyres of India Ltd.
1.	CTI Investment Ltd.	31.3.84	The entire issued 2,39,500 E. Shares of Rs.10 each and 50 12½ Pref. shares of 100 each fully paid.
2.	Cast Investment Ltd.	31.3.84	The entire issued 2,39,500 E. Shares of Rs.10 each and 50 12½ Pref. shares of Rs.100 each fully paid.
3.	Cast Finance Co. Ltd.	31.3.84	Same as above.
4.	Mahabhar Coastal Holdings Ltd.	31.3.84	The entire issued 10 equity shares of Rs.10 each and 7550 Pref. shares of Rs.100 each fully paid.
5.	Allantic Holdings Ltd.	31.3.84	The entire issued 10 Equity Shares of Rs.10 each and 10,050-12% Pref.

Total investments in the subsidiaries Rs.1,59,66,000

Out of total paid up capital of Rs.6,21,44,000

3. **Subsidiaries of Mahindra & Mahindra Limited**
Annual Report 1983-84

The Indian Eastern Engineering Co. Ltd.	Cap. Employed Rs. 256,070	Share capital Rs. 226,070	Loan from Holding Co. Rs. 30,000	All the shares are held by the Holding Company.
Mahindra Oven Ltd.	Cap. Employed Rs. 27980,787	Share capital Rs. 4541,500	Loan taken from Bank and Maharashtra State F. Corporation Rs. 13863,073 from Holding Co.	All the shares are held by the Holding Company.

Nagubdra Sintered Products Limited	Rs. 51082,802	Rs. 5839,610	Loan of 21130,535 taken from Bank Maharashtra I.O. Corporation.	Most of the shares are held by the holding Co.
Mahindra Engineering Chemical Products Ltd.	Rs. 11738,825	Rs. 3335,820	Loan 11737,825 All the amount taken from Bank & Financial Institutions.	All the shares are held by the Holding Co.
Mahindra Export Limited	Rs. 1000,070	Rs. 100,007	No loan	Wholly owned 2 directors.
Mahindra Hellent Auto Industries Ltd.	No information given	No information given	No information given	No information given.

4. Subsidiaries of the Bombay Dyeing and Manufacturing Co. Ltd.

Sl. No.	Name of the subsidiary Co.	Capital employed	No. of Directors	
1.	Archway Investment Company Pvt. Ltd.	Share cap. 2,000 Loan 50,000 (from the B.D. & M Co. Ltd. 0-1982-83 E. Share of Rs. 100 E. Fully paid up - 200 11% No. cv. R/P/ shares of Rs. 100 1800 each 2000	2 Directors	All shares held by the B.D. & M. Co. Ltd.
2.	Scal Investments Ltd.	Share cap. Rs. 25,00,000 Loan Rs. 1,78,25,000	5 including 1 c.m.	Entire shares are holding B.D. & M. Co. Ltd.
3.	Pentafil Investments Ltd.	Share cap. 6898 4898 E. share of Rs. 100 each 18 of Rs. 100 each.	2 Directors	All shares
4.	Macrofil Investment Ltd.	Share cap. 1,00,000 Loan Fund 25,00,000	5 Directors	Entire shares held by B.D. & M. Co. Ltd.
5.	Blue Bell Investment Ltd.	Share cap. 2,00,000 Prof. shares of Rs. 100-18 Investment Ltd. shares held by		

E = Equity.

5. Subsidiaries of Associated Cement Company Ltd.

1.	A.C.C.-Babcock Ltd.	Share cap Rs. 12.4200	6 directors including (M.D.)	Out of 1242000 E. shares of Rs.100 each 815482 shares are held by Holding Co. Total loan of Rs.29.5409 crores 26.5409 crores secured loan and 205475 unsecured loan from Bank & F. Ins. & Army Group Insurance.
2.	Babcock & Hilcox India Limited	Share cap Rs. .3400 R/surplus " .7500 Loan " .7500 Rs. 1.8605	6 directors with one chairman.	Out of 3400 E. share of Rs.100 each 22,00 E. share are held by ACC-Babcock Ltd. total loan from Bank.
3.	Associated Tyre Machining Co.Ltd.	Share Rs. .2000 R/Surplus " .2234 Loan " .2234 Rs. .6828	4 directors including one chairman one M.D.	Out of 20,000 equity shares of Rs.100 each the A.C.C. Co. Ltd. holds 14800 equity shares Total Loan of Rs.2234 crores is taken from Nationalized Bank.
4.	The Cement Marketing Company of India Ltd.	3510 E. Shares of Rs.10 each paid - Rs. 35100 all held by Holding Company Ltd.(A.C.C. Co. Ltd.) Re/surplus Rs. 4336 Rs. 70436		

E = Equity; R = Reserve; F.Ins. = Financial Institutions;

6. Subsidiaries of the Indian Hotels Company Ltd.

1.	Tata Investment & Finance Co. Limited (TIFCO)	246,100 E. shares of Rs.10 each all held by the Holding Co. Total loan - Rs.1840888 are from H.Co.	7 directors with 1 chairman.
2.	Tag International Hotels Incorporated U.S.A. (TIHI)		5 Directors with chairman.

Both are wholly owned subsidiary by the Indian Hotel Company Ltd.

7.11 Review of 75 Companies :

TABLE-A

75 Companies grouped on the basis of paid-up capital in the business 1983-84

Sl. No.	Categories according to paid-up capital	Number of Companies	Percentage of the numbers included in the group	CATEGORY
1.	Companies having paid-up capital of Rs.20 crores or more.	10	13.3%	C
2.	Companies having paid-up capital of Rs.10 crores or more but less than Rs.20 crores.	16	21.3%	D
3.	Companies having paid-up capital of Rs.5 crores or more but less than Rs.10 crores.	14	18.7%	E
4.	Companies having paid-up capital of Rs.2 crores or more but less than Rs.5 crores.	9	12%	F
5.	Companies having paid-up capital of Rs.1 crore or more but less than Rs.2 crores.	9	12%	G
6.	Companies having paid-up capital of less than Rs.1 crore.	17	22.7%	H
TOTAL		75	100	

TABLE-B
Pattern of management of 75 companies according to paid-up capital 1983-84

TYPE OF management	Percentage of companies having paid-up capital, more than										TOTAL NUMBER	Percentage of type of management on the total number of Cos.
	2	3	4	5	6	7	8	9				
1. By Board with single person as Managing Director cum Chairman or 1 Managing Director and 1 Chairman or 1 Managing Director	3	4	2	1	5	9	25	33.3				
2. By the Board with Managing Director with the assistance of Executive Director/Directors or more than one Managing Director or Deputy Director/Directors.	3	6	4	3	2	1	19	25.3				
3. By the Board with Managing Director assisted by whole time director/directors.	-	-	1	1	-	-	2	2.7				
4. By the Board with chairman (without managing director)	1	1	6	3	1	5	17	22.7				
5. By the pattern of Two-Tier management	3	5	1	1	-	2	12	16%				
	10	18	14	9	9	17	75	100%				

Table-B on analysis shows a very interesting result.

Firstly, approximately 33.3% of the companies are managed by the Board with single person as Managing Director cum chairman or with 1 chairman and 1 managing director. This type of management has got preponderance over all other types of management. 25 per cent of the companies are managed by the Board with Managing Director, assisted by Executive Director/Directors/Deputy Director/Deputy Directors. But percentage of the companies managed by the Board with Managing Director, assisted by whole time Director/Directors is only 3 (approx.). While companies managed by the Board with a chairman but without Managing Director are 23 per cent. The last category i.e. pattern of Two-Tier Management is of 16 percent.

Inference drawn from the results of this table is that the system of Management by Board with single person CM cum MD or 1 CM and 1 MD is still popular in India. Next comes the position of multiple executives. The most important point which is worth mentioning here is that the pattern of Two-Tier Management is gaining popularity day by day in company Management process and pattern in India.

TABLE - C

Management pattern of Companies having Paid-up-capital of Rs.20 crores or more.(1983-84)

1	2	3	4	5	6
Sr. No. of the Company	Paid-up capital in Rs.	No. of Directors	No. of F.Inst./Government Members	Form of Management	Number of Executive
1 Tata Iron & Steel Co.Ltd.	62,85,82,113	13	1 (Govt.)	Board of Directors with 1 chairman, 1 vice-chairman and Managing Director. There is also executive type of Board with 14 members with Managing Director and head of the Department.	2
2 Tata Engineering Locomotive Co.Ltd.	43,20,08,800	18	Nil	Board with Managing Director, 1 Chairman 1 Deputy Chairman, 1 Managing Director, 1 Vice-Chairman and Managing Director, 4 Executive Director with Executive Board.	4
3 A.C.C. Ltd.	33,23,12,000	18	2 (F.I ²)	Board with M.D., 1 Chairman, 1 Dy. Chairman, 1 Vice-Chairman cum M.D., 1 Joint M.D., 2 whole time directors. There is executive type of Board with 14 members declared to adopt Juristic Board.	6
4 Hindustan Lever Ltd.	29,16,10,000	9	Nil	1 Chairman, 1 Vice-Chairman cum M.D.	2
5 Indian Exploration Ltd.	28,98,36,670	10	2 (Govt.) 2 (IFC) 1 (ICICI)	Board with Managing Director, 1 Chairman 1 M.D., 1 Joint Managing Director.	3
6 Polco Electronics & Electricals Ltd.	21,60,00,000	8	Nil	Board with Managing Director Single person holding post of chairman cum M.D.	1

1	2	3	4	5	6
7. The Delhi Cloth and General Mills Co. Ltd.	21,34,55,913	12	Nil	Board with Managing Director. 1 Chairman 1 Managing Director.	2
8. Gwalior Rayon	21,32,27,539	8	Nil	Board with 1 chairman.	1
9. Mahindra & Mahindra Ltd.	20,82,28,800	13	1 (COBI) 1 (UTI)	Board with Managing Director, 1 Chairman, 1 Managing Director.	2
10. Glaxo Laboratories (India) Ltd.	20,00,00,000	11	Nil	Board with Managing Director, 1 Chairman, 1 Vice-Chairman, 1 President cum Managing Director.	3
	3,02,52,41,435	114	12		28

1. Capital
There are 10 companies under this group having total paid up capital of Rs.302,52,41,435 the average being Rs.30,25,24,143 varies from Rs.82,85,8213 to Rs.20,00,00,000.

2. Director
There are 118 directors, varies from 18 to 6, the average being 11.8 or say 12 in number.

3. Management :
All are managed with board with Managing Director. In the Tata Iron & Steel Co. Ltd., A.C.C. and Tata Engineering and Locomotive Co. Ltd. the boards are definitely on the line of two-tier. There is only one company having singleman holding two posts of chairmanship and Managing Directorship. There is only one company having one chairman and one managing directors. In 8 companies, there are more than one executives.

4. Nominee Directors:
There are 4 companies having 12 nominee directors. Out of total 118 directors there are 12 nominee directors, either by Government or financial institution, the percentage is 10% (Approx.)

5. Executives:
Out of total 118 directors there are 26 executives (21.2%). Apart from it, there are 26 executives who are not members of the Board. By including these non-board members, number of executive directors becomes 52 i.e. (more than 50%) of the total boards' strength.

6. Characteristics:
Most of the companies spend sufficient amount of money for social benefits and Research and Development works.

Management pattern of Companies having paid-up capital of Rs.10 crores or more but less than Rs.20 crores.
(Annual Reports 1983-84)

1	2	3	4	5	6	7
Sl. No.	Name of the Company	Paid-up capital	No. of Directors	No. of Financial Inst./Govt. Nominees.	Form of Management	Number of executives
1.	Ashok Leyland Ltd.	18,13,04,000	16	Nil	Board with M.D. 1 Chairman and Deputy Chairman. It is also on the line of Two-Tier Board. The Executive Board with 5 members headed by Managing Director.	7
2.	The Tata Power Co.Ltd.	17,47,33,811	10	Nil	Board with M.D., 1 Chairman, 1 Vice-Chairman and 2 Deputy Managing Directors.	4
3.	J.K. Synthetics Ltd.	16,19,00,000	12	1 (Govt. of Registrar) 1 (G.I.C.) 1 (ICICI)	Board. 1 Chairman, 1 President, 1 Vice-President, 1 Executive Director.	4
4.	Century Spinning & Manufacturing Co.Ltd.	15,98,95,900	9	Nil	Board. 1 Chairman.	1
5.	Hindustan Motors Ltd.	15,47,04,000	10	Nil	Board. Executive Board consists of 1 Chairman, 1 Vice-Chairman and one President (not member of the Board)	3
6.	Balmer Tyres Industries	15,45,32,081	9	Nil	Board with Managing Director. Single person is Chairman and Managing Director.	
7.	Bombay Dyeing & Mfg. Co.Ltd.	15,00,00,000	14	1 (Govt. nominee)	Board. Two-Tier Board. In policy Board there is 1 Chairman and 1 Vice-Chairman. The executive board consist of 3 Presidents, 7 Vice Presidents/General Managers. There is also of two tier board.	

contd.

1	2	3	4	5	6	7
8	Madura Coats	14,69,00,000	14	1 (ICICI)	Board with M.D. having two chairs plus directors, 1 Chairman, 1 Dy. M.D., 1 Financial cum Secretary. There are four executive directors. There is a class of two-tier board.	5
9	The Borsada Rayon Corpn. Ltd.	14,44,38,000	10	1 (ICICI)	Board with M.D. 1 Chairman, 1 M.D., 2 Representatives of Financial Institution.	2
10	Railways Textile Industries Ltd.	13,25,82,910	12	2 (GIC)	Board with Managing Director. There are 5 Executive Directors.	
11	Polyalatives Industries Ltd.	12,66,86,000	19	1 (IDBI)	Two-Tier Board. Executive Board with 4 members, 1 Chairman, 1 M.D., 1 Deputy Managing Director, 1 Technical Director.	4
12.	A.C.C. Babcock Ltd.	12,42,00,000	7	1 (IDBI)	Board with M.D. 1 Chairman, 1 M.D., 2 Dy.Mds. Though it is a subsidiary of A.C.C. yet a large Co.	4
13.	Mysore Paper Mills Ltd.	11,84,81,700	14	3 (Govt. Directors 1 (IDBI) 1 (IFC) 1 (GIC)	Board with Managing Director. Single person is Chairman cum Managing Director.	1
14.	The Calcutta Electric Supply Corpn. (I) Ltd.	11,65,20,580	11	1 (ICIC) 1 (IDBI) 1 (UTI) 1 (Govt. of W. Bengal (L.I.C.))	Board with Managing Director, Two-Tier Board, 1 Chairman, 1 Managing Director, 1 Executive (Financial), 1 Executive (Administration)	4

contd.

1	2	3	4	5	6	7
15	Indian Oxygen Ltd.	10,95,11,000	9	Nil	Board with Managing Director, 1 Chairman, 1 Managing Director.	2
16	The Andhra Valley Power Supply Co.Ltd.	10,20,67,000	9	Nil	Board with Managing Director, 1 Chairman, 1 Vice-Chairman cum Managing Director, 2 Deputy Managing Directors.	4

Notes on Table-D

1. Paid-up-capital :

There are 16 companies under this group having total paid-up-capital of Rs.238,02,58,037 and average being Rs.14,87,65,126 paid-up-capital varies from Rs.18,13,04,000 to Rs.10,20,67,100.

2. There are 196 directors in this group consisting of 16 companies. Number of directors varies from one company to another 19 to 7, the average being 12 (Approx.).

3. Management :

In this group except one all the companies are managed by the board of directors with Managing Director/Directors, i.e. about 98%. Out of these 16 companies, in the management of 5 Companies e.g. Ashok Leyland Ltd., Bombay Dyeing and Manufacturing Company Ltd. Madras Coals, the Calcutta Electric Supply Corporation and polyolefins Industries Ltd., there is definite sign of Two-Tier Board. There is only one company having management by Board (Hindustan Motor Ltd.). There are

11 companies under this group where there are either deputy managing director/directors, executive director/directors to assist the Managing Director or they are managed by the board with one Managing Director.

4. Nominee Directors :

There are 22 nominee directors in 9 companies one being Government nominee in Bombay Dying and Manufacturing Company Ltd. The percentage of nominee directors out of 196 directors being 11% (Approx.).

5. Executives :

Out of total 196 directors, there are 58 executives i.e. 29% (Approx) of the total board's strength.

6. Characteristics :

Categorically, it is evident that there are 5 Companies under this group who are managed by the process of Two-Tier Board (29.4%), 10 companies by the board with Managing Director (58.6%), and only one company by the board (Without Managing or whole-time Director or Manager) (11.78%).

Worker's Participation :

There is no trace of the provision for workers' participation at board level.

Social responsibilities :

Particular mention may be made of the performance of social responsibilities undertaken by the companies under this

category. The important event under this group of companies is that most of the companies spent substantial amount of money on social activities.

Public Accountability and Public disclosure :

Traditional informations are published which are binding by law.

Type of control and subsidiaries :

Controlled by the group/individual holding substantial stake of equity shares.

Board of Directors :

The number of directors varies from 7 to 19, the average being 11.5. Total number of directors is 185. There are 57 executive directors, representing 29% of the total number of directors.

There are 5 companies managed by the process of Two-Tier Board i.e. 29.4%.

10 companies of this group are managed with Managing Directors i.e. 58.8%, 2 companies are managed by the board i.e. 11.8%.

T A B L E - E

Management pattern of Companies having paid-up capital of Rs.5 crores or more but less than Rs.10 crores.

1	2	3	4	5	6	7
Sl. No.	Name of the Company	Paid-up Capital	No. of directors	No. of financial Inst./Govt. Nominees	Form of Management	No. of Executive
1	Metal Box (1) Ltd.	8,76,12,000	13	NIL	Board with M.D., Two Dy. M.Ds., (Executive Director, 1 Chairman.	5
2.	Kesoram Industries & Cotton Mills Ltd.	7,94,84,400	7	NIL	Board, with 1 Chairman	1
3.	The Indian Rayon Corporation Ltd.	7,94,58,540	9	NIL	Board, with 1 Chairman.	1
4.	Good Year India Ltd.	7,48,25,000	9	NIL	Two-Tier Board, Executive Committee with 1 Managing Director, 3 executives.	4
5.	The Tata Hydro-Electric Power Supply Co.Ltd.	7,42,25,548	10	NIL	Board with Directors, 1 Chairman, 1 Vice-Chairman cum Managing Director, 2 Deputy Managing Directors.	4
6.	Bombay Suburban Electric Supply Ltd	6,98,04,000	10	NIL	Board with Managing Director, 1 Chairman, 1 Managing Director, 1 Special Director.	3
7.	Kleofaker Oil Engines Ltd.(Est.1948)	6,70,50,000	11	1 (IFCI)	Board with Managing Director, 1 Chairman cum Managing Director, 1 Vice-Chairman.	2
8.	Indian Hotels Co. Ltd.	6,35,04,000	13	NIL	Board with Managing Director and whole-time Directors, 1 Chairman, 1 Vice-Chairman cum M.D., 3 whole time Directors.	5

contd.

T A B L E - E

1	2	3	4	5	6	7
9	Indian Cables Co. Ltd.	6,25,88,900	9	1 (ICICI)	Board	
10	Cast Tyres of India Ltd.	6,21,44,000	16	Nil	Board with M.D., 1 Chairman, 1 Executive Vice-Chairman, 1 Managing Director.	3
11	Orient Paper and Industries Ltd.	6,07,64,800	8	Nil	Board. 1 Chairman, 1 Vice-Chairman.	2
12	Jagjitt Cotton Textile Mills Ltd.	5,65,01,415	11	1 (IFCI) 1 (IDBI) 1 (GIC)	Board with Managing Director. 1 Chairman cum Managing Director.	1
13	Andhra Pradesh Paper Mills Ltd.	5,62,50,000	9	1 (IDBI)	Board. 1 Chairman.	1
14	Electric Lamp Manufacturers (India) Ltd.	5,50,00,000	5	Nil	Board. 1 Chairman.	1
		96,12,12,604	140	6		33

Notes on Table - E :

There are 14 companies under this group having total paid-up capital of Rs.96,12,12,604 the average being Rs.6,15,15,186 varies from Rs.9,76,12,000 to Rs.5,50,00,000.

Directors :

There are 140 directors, varying from 16 to 5 in number, the average being 10.

Management :

8 of the companies under this category are managed by Board with Managing Director/Directors, 6 companies are managed by Boards with Chairman without Managing Directors. Of the 14 companies 8 are managed by Board with Managing Directors, 2 companies are managed by Board with single person as Managing Director cum Chairman or one Chairman or 1 Managing Director. 4 Companies are managed by the Boards with Managing Directors with the assistance of Executive Director/Directors or more than one Managing Director/Directors, 1 company is managed by the Board with Managing Director assisted by whole-time director. There is only 1 company which is managed by the pattern of Two-Tier Board.

Nominee Directors :

There are 4 companies having 6 nominee directors by the financial institutions. Out of total 140 directors there are only 6 nominee directors, the percentage being only 4.3.

Executive Directors :

Out of total 140 directors there are only 33 executive directors (23.57%).

Characteristics :

There is no trace of workers' representatives to the Board. There is no visible evidence of spending money for schemes on social benefits.

TABLE - F

Management pattern of Companies having paid-up capital of Rs.2 crores or more but less than Rs.5 crores.

1	2	3	4	5	6	7
Sl. No.	Name of the Company	paid-up capital	No. of Directors.	No. of financial Inst./Govt. nominees	Forms of management	Executives including Chair man
1.	Lakshmi Machine Works Ltd.	4,06,38,400	12	1 (TIIC)	Board with M.Ds. 1 Chairman 2 Managing Directors.	3
2.	Central Pulp Mills Ltd.	3,80,31,300	16	1 (IDBI) 1 (IFCI) 1 (ICICI) 1 (SICOM)	Board with Managing Director 1 Chairman 1 Managing Director 1 Executive Director	3
3.	Sundram Fasteners Ltd.	3,18,88,880	7	1 (ICIC)	Board with M.D. Single per Chairman cum Managing Director.	1
4.	Zenith Steel Pipes & Industries Ltd.	3,15,00,000	8	2 (GIC)	Board. 1 Chairman.	1
5.	Duncans Agro-Industries Ltd.	2,51,81,000	10	Nil	Board. 1 Chairman.	1
6.	Automobile Corporation of Goa Ltd.	2,32,58,709	10	Nil	Board with M.D. But there is one Chairman and 1 chief executive there is also a shape of Two-Tier Board with 4 members.	3
7.	Steel Complex Ltd.	2,24,44,400	7	Nil	Board with M.D. There is 1 Financial Director, 1 Technical Director, Plural Executive System.	

contd.

TABLE - F

1	2	3	4	5	6	7
8.	Paysha Industrial Co.Ltd.	2,10,83,906	13	1 U.P. SIDC	Board with 1 chairman, 2 M.Ds. & 2 whole time Directors. This is another illustration of plural executives.	5
9.	Bharat Nidhi Ltd.	2,01,31,875	4	Nil	Board with 1 Chairman.	1
		25,41,56,470	87	10		21

Notes on Table-F :

5 companies of this group are managed by boards with managing directors, 2 by board with chairman, 2 companies have two managing directors. One company has 2 managing directors and two whole-time directors. One company is managed by 1 Managing Director with two technical directors and one company is managed by board with one Managing Director and an Executive Director. 75 per cent and 25 per cent companies are managed by boards with Managing Directors and Board respectively. Nominee Directors: Out of 9 companies 5 have nominee directors, i.e. 62.5%. Out of total 87 directors of these 9 companies 10 are nominee directors, i.e. 11.5 per cent approximately.

Executive directors :

There are 21 executives of the total number of 87 directors, it amounts to 24% per cent. Of these 21 executives there are 7 Chairmen, 8 managing directors, 1 chairman cum managing director, 2 executive directors, 1 Financial Director, 1 Technical Director, 2 whole-time Directors.

Workers' representative to the board :

There is no workers' representatives to the board.

Two-Tier Board :

There are at least three companies having plural executives on the line of TwoTier Board.

Social Responsibilities and Public Disclosure :

Traditional system of preparing Annual Reports are followed. There is no mention of spending any amount of money for public welfare or social benefit.

Characteristics :

Companies under this category have 10 nominee directors out of 87 total number of directors which is 8.7 per cent and highest of all other types of companies under review. There are 21 executive directors out of 87 directors, who are about 25% of the total number of directors. Out of 9 companies under this group 5 have plural executives.

Directors :

Total number is 87, varies from 16 to 4 the average being 9.8

T A B L E - G

1	2	3	4	5	6	7
Sl. No.	Name of the Company	Paid-up capital	No. of Directors	No. of financial Institutions/ Govt. Nominees	Form of Management	Chief Executives including Chairman
1.	Gangappa Paper Mills Ltd.	1,64,95,520	8	2 TIDCO 1 ICICI 1 IFCI	Board with Managing Director. There is also a Chairman.	2
2.	Air Control and Chemicals Co. Ltd.	1,48,03,125	9	1 IFCI 1 Nominee by Gujarat Govt.	Managed by Board with Chairman.	1
3.	Star Industrial and Textile Enterprise Ltd.	1,42,50,000	12	1 IDBI	Board with Managing Director 1 Chairman cum M.D. & 1 Joint Director.	3
4.	Pandichay Paper Mills Ltd.	1,31,50,000	12	1 ICICI 1 IFCI 1 PIP DIC	Board with one Managing Director and 1 Executive Director. There is also one Chairman.	3
5.	Kalluru Paper Ltd.	1,22,72,625	9	1 Andhra Pradesh I.D. Corpn. 1 IDBI 1 representative of the public	Board with Managing Directors. There is also a Chairman.	2
6.	Paper Products Ltd.	1,21,60,000	7	Nil	Board with Managing Director. There is also a Chairman.	2

T A B L E - G

	2	3	4	5	6	7
1. Nipon Paper & Board Mills Ltd.		1,09,25,125	9	1 IOBI 1 IFCI	Board with Managing Director	1
2. Genslec Ltd.		1,07,85,000	5	Nil	Board with Managing Director. There is also a Chairman.	2
3. A.C.M.E.Co. Ltd.		1,02,40,200	7	Nil	Board with Managing Director. There is also one Chairman.	2
		91,50,11,575	78	75		17

Notes on Table-G :

1. Capital :

Total paid up capital of the 9 companies under this category is Rs.11,50,11,575, the average being Rs.1,27,79,004. Paid up capital varies from Rs.1,64,85,500 to Rs.1,02,40,200.

2. Directors :

There are 78 directors in the group of 9 companies. Number of directors varies from 5 to 9, the average being 8.7 (Approx.).

3. Management :

Except one company all the other 8 companies are managed by the board with managing director.

There are two companies having plural executives. There is no visible instance of two-tier board.

4. Nominee Directors :

There are 6 companies under this group having nominee directors from different financial institutions. The number of such nominee directors is 15 out of total number of 78 directors. It comes to 19% (Apprex.)

5. Executive Directors :

There are 17 executive-directors out of 78 directors i.e. about 22% of the total strength of the board. The executives are of different designations such as chairman, Managing Director, Joint Managing Director and Executive Director.

6. Workers' participation :

There is no trace of top management.

7. Social Responsibilities and Public Disclosure :

From the review of Annual Reports of the companies under this group it is seen that traditional method of furnishing Annual Reports has been followed. There is no sign of worthmentio-
ing for informations regarding expenditure made for public welfare or social benefits.

8. Type of control :

Controlled by the group having substantial holding of equity shares. Though substantial amount has been contributed by the State and Central Financial Institutions, they have no controlling power.

T A B L E - H

Management pattern of Companies having paid-up capital of less than Rs.1 Crore.

1	2	3	4	5	6	7
Sl. No.	Name of the Company	Paid-up Capital	No. of Directors	No. of Financial Inst./Govt. nominees	Form of Management	E X E C U T I V E
1.	Ion Exchange (I) Ltd.	98,08,800	9	Nil	Two-Tier Board	1 Chairman 1 President-cum-Director 2 Vice-Presidents not being members of the Board-2
2.	Stone India Limited	89,28,300	8	Nil	Board	1 Chairman, No M.D. = 1
3.	India Paper Pulp Co. Ltd.	88,22,000	It is to be decided by the W.B. Industrial Dev. Corpn.	1 M.D. & others members' nomination to be decided by the Govt. of W.B.	A Joint Sector Project Board with M.D.	At present = 1
4.	Jaganta Paper Mills Ltd.	79,10,475	9	1 G.I.C.I.	Board with Managing Director.	1 Chairman 1 Managing Director = 2
5.	National Rolling & Steel Ropes Ltd.	64,00,000	12	Nil	Board with Managing Director.	1 Chairman 1 M.D. = 2
6.	Associated Pulp and Paper Mills Ltd.	49,99,760	8	1 ICRCI 1 IFCI	Board	1 Chairman = 1
7.	Arunachal Plywood Industries Limited	48,06,844	5	Nil	Board	1 Chairman = 1

1	2	3	4	5	6	7
8.	Eastend Paper Industries Ltd.	46,59,440	7	1 W.B.F.C. 1 IFCI	Board with Managing Director	1 Managing Director=1
9.	The Grab Tea Co.Ltd.	46,58,170	5	NII	Two-Tier Board with 12 members excluding 5 directors	There is a committee with local members.
10.	Accumessures Punjab Ltd.	41,00,000	7	1=IFCI 1=IRBI	Board with Managing Director.	1 Chairman 1 Managing Director=2
11.	Particle Board India Ltd.	30,00,000	3	NII	Board.	NII
12.	Lakshmi Automobile Looms Works Ltd.	29,94,350	14	1=IRCI 1=IDBI 1=S.I.P COT	Board with Managing Director	1 Chairman 1 Managing Director=2
13.	The A.P.V.Engineering Co. Ltd.	29,50,000	5	NII	Board with Managing Director	1 Chairman 1 Managing Director=2
14.	Chomulp Tissues Ltd.	24,87,625	9	1 UP SIDC 1 PICUP	Board with Managing Director	1 Managing Director=1
15.	Tej Investment & Finance Co. Ltd.	24,80,100	7	1 UPEC NII	Board	1 Chairman No Managing Director=1
16.	Agricultural Discos (India) Ltd.	18,00,000	8	1 SICOM 1 IFCI	Board with two Managing Directors.	1 Chairman. 2 Managing Directors=3
17.	The Ahmedabad Victoria Iron Works Ltd.	9,08,500	7	NII	Board with Managing Director.	1 Chairman. 1 Managing Director=2
		8,14,94,954	123	16		24

Notes on Table-H :1. Capital :

There are 17 companies under this group having total paid-up cap. of Rs.8,14,94,954, the average being Rs.47,93,232.80, varies from Rs.96,09,600 to Rs.9,08,500.

2. Board of Directors :

There are 123 directors (excepting India Paper Pulp Co. Ltd. where there are only directors nominated by the W.B.I.D.C.). Number of Director of this category varies from 12 to 3, the

3. Type of Management :

Out of 17 companies 10 companies are managed by the board with managing directors and 5 are managed by the board and two are managed by the two-tier Board. In otherwords 59 per cent of the companies are managed by board with managing directors, 29 per cent by board without managing directors and 12 per cent by the type of two-tier board respectively.

4. Nominee Directors :

Only 8 companies have nominee directors approximately 50 per cent of the companies under this category. Out of total 123 directors (except India Paper Pulp Co. Ltd.) total number of nominee directors are 16 i.e. approximately 13% of the total number of directors.

5. Executive Directors :

There are 24 executives under this category of companies. The proportion between number of directors and executive directors is 5 : 1. In a company namely the Grob Tea Company Ltd., there are 12 executives (not board members) for total management.

6. Workers' participation in the Board :

None of the Companies have any representatives to the Board to represent workers.

7. Social Responsibilities :

There is no substantial amount of money spent by the companies under this group to uphold social responsibility.

8. Public Accountability and Public disclosure :

Traditional system of publication of Annual Reports is mentioned. There is no special features.

9. Type of Control and Subsidiary Companies :

None of the companies have any subsidiary company.

TABLE - I

ANALYSES OF DISBURSEMENTS BY FINANCIAL INSTITUTIONS AS ON 31.3.1984.

(1)	(2)	(3)
	Investment of Financial Institutions. Rs. in crores	Percentage of holding by Financial Institutions on total paid up capital
Total paid capital of 93,254 companies	1. Equity & Pref. Rs.590 crores. 2. Foreign Currency Loan Rs.995 crores. 3. Debenture-Rs.374 Crs. Guarantee-Rs. 41 " TOTAL = 415 Crs. 4. Rupee Loan Rs.10,195 crores.	10.7% 18% 7.53% 185%
Rs.5,514 crs.	5. Total Rs.12,195	221%

Notes on Table-I :

This table shows that colossal amount of public money has been invested in private sector companies. As all these financial institutions are owned by the Government, it has become responsibility on the part of the Government to nominate proportionate representatives to the board of the companies in which so much public money has been invested to look after its proper utilisation and supervision and guidance. Companies are also expected to mention clearly in their Annual Reports, amount of money taken from these financial institutions either in the form of loan or share capital. But, except a few, most of the companies are negligent in this matter. Even, on the basis of Equity and preference share capital holding by Financial Institutions if proportionate representation system is

applied, they can nominate at least 10% of the numbers of the directors to the boards of the companies.

On critical review of the capital structure of 25 Companies (having paid-up-capital of Rs.1 crore or more) showing total amount of employed capital and loan taken by them from Banks/Financial Institutions, it is evident that the number of nominee directors are not in the same proportion to other directors in relation to capital employed by them.

TABLE-2

Review of the capital structure of 25 companies

1	2	3	4	5	6	7	8	9
Sl. No.	Name of the Companies	Total capital employed	Total amount of Equity capital	Loan from Bank/Financial Institutions	Total number of Directors	Total number of nominees Directors	Percentage of nominees on 5	Proportion of directors that should be 3 to 4 ratio
		Rs.	Rs.	Rs.				
1.	Tata Iron & Steel Co. Ltd.	613,25,00,000	72,02,00,000	513,59,00,000	13	3	23 (Appx)	7
2.	Associated Cement Co. Ltd.	367,36,04,000	33,23,12,000	198,77,00,000	18	2	11 (%)	8
3.	Calcutta Electric Supply Co. Ltd.	301,85,00,000	11,65,00,000	171,00,00,000	11	5	45.5	2+
4.	Ashok Leyland Co. Ltd.	233,31,00,000	01,67,28,200	32,50,00,000	11	NIL	-	1+
5.	Tata Power Co. Ltd.	173,00,00,000	17,56,28,000	82,28,00,000	10	NIL	-	8
6.	The Bombay Dyeing & Manufacturing Co. Ltd.	185,86,18,000	11,24,20,000	93,22,18,000	15	NIL	-	8
7.	Indian Rayon Corpn. Ltd.	183,41,00,000	7,96,00,000	81,56,00,000	9	NIL	-	5
8.	Mahindra & Mahindra Co. Ltd.	102,15,33,584	20,82,28,800	101,14,77,984	13	2	15.5	13
9.	Madura Casts	94,43,89,000	14,66,94,000	40,25,00,000	10	1	10	4
10.	Andhra Valley Power Supply Co. Ltd.	66,83,00,000	9,35,05,200	40,00,00,000	9	NIL	-	4
11.	Coat Tyres of India Ltd.	70,63,00,000	11,65,00,000	-	16	NIL	-	5
12.	The Tata Hydro Electric Power Supply Co. Ltd.	70,52,66,000	1,67,28,200	32,58,00,000	10	NIL	-	0

TABLE - 2

1	2	3	4	5	6	7	8	9
13.	Kirloskar Cummins Ltd.	69,07,00,000	13,90,00,000	10,56,00,000	15	N11	-	5
14.	Baroda Rayon Corpn. Ltd.	68,33,00,000	14,44,00,000	22,00,00,000	10	2	20	2
15.	Jagatjit Cotton Textile Mills Ltd.	68,15,00,000	5,65,00,000	11,56,00,000	14	3	21.5	3
16.	Bombay Suburban Electric Supply Ltd.	63,06,00,000	6,98,00,000	7,12,00,000	10	N11	-	2
17.	Indian Oxygen Limited	61,96,00,000	10,95,00,000	-	9	N11	-	0
18.	Glaxo Laboratories (India) Ltd.	58,24,00,000	20,00,00,000	77,34,000	11	N11	-	0
19.	Duncan Agro Industries Ltd.	47,23,30,000	2,51,81,000	14,08,59,000	10	N11	-	0
20.	Indian Hotel Co. Ltd.	45,40,00,000	6,35,04,000	1,66,22,500	15	N11	-	3
21.	Britania Industries Ltd.	18,25,65,000	8,80,56,340	N11	6	N11	-	0
22.	Genelec Limited	6,91,00,000	1,08,00,000	3,10,01,576	5	N11	-	2
23.	Automobile Corpn. Ltd.	5,69,30,730	2,32,56,709	4,84,00,000	11	N11	-	9
24.	Palco Electronics & Electricals Ltd.	128,88,94,379	21,60,00,000	88,63,44,733	6	N11	-	6
25.	Electric Lamp Manufacturing (India) Ltd.	4,03,27,369	55,00,000	3,52,00,000	5	N11	-	4
		3089,04,46,087	339,66,12,249	1314,86,55,803	280	16	6.4%	98

Notes on Table - J :

This table shows that 43 per cent of the employed capital of these companies is invested by the financial institutions and banks either in the form of share capital and guarantee for issue of shares or debentures or loan, but their representatives to the boards is only 6.4 percentage. Whereas by subscribing only 11 per cent of the employed capital, individual shareholders have 93.6 per cent representatives to the boards. If proportionate representation could be applied as regards investment in relation to the employed capital then number of representatives of the financial institutions should have been 98 instead of 18.

TABLE - K

Nominee Directors in the 75 Companies.

	NOMINEE DIRECTORS OF THE FINANCIAL INSTITUTIONS/GOVT./PUBLIC											Total number of Nominee Directors	Total number of companies having Nominee Directors	Total number of companies having Nominee Directors in Financial Institutions	Total number of companies having Nominee Directors in Govt. Companies	Total number of companies having Nominee Directors in Public Companies	Total number of companies having Nominee Directors in all	Total number of companies having Nominee Directors in all	Total number of companies having Nominee Directors in all	Total number of companies having Nominee Directors in all	Total number of companies having Nominee Directors in all	Total number of companies having Nominee Directors in all
	ICICI	IOBI	ICICI	UTI	LIC	No. Fin	IRBI	IORI	Departments of the Govt.	Public Companies	Financial Institutions											
Companies having capital of Rs.20 crores or more CATEGORY-C	4	6	3	2	1	1	NIL	1	NIL	4	-	-	-	-	12	116	11.00					
Companies having capital 10 crores or more but less than Rs.20 crores CATEGORY-D	9	7	6	1	4	5	4	1	2	NIL	-	-	-	-	23	185	12.42					
Companies having capital of Rs.5 crores or more but less than Rs.10 crores. CATEGORY-E	4	10	NIL	2	2	1	1	NIL	NIL	NIL	-	-	-	-	6	140	4.8					
Companies having capital 2 crores or more but less than Rs.5 crores. CATEGORY-F	5	4	2	1	NIL	2	2	1	NIL	1	-	-	-	-	10	87	11.5					
Companies having capital of Rs.1 crore or more but less than Rs.2 crores. CATEGORY-G	6	3	3	4	3	2	NIL	NIL	NIL	2	-	-	-	-	15	78	19.00					
Companies having capital of less than Rs.1 Cr. CATEGORY-H	8	9	7	4	1	NIL	1	NIL	NIL	1	-	-	-	-	16	123	13.00					
	36	39	21	14	11	11	8	3	2	7	1	1	1	1	82	734	11.23					

Notes on TABLE-K:

Our review of 75 companies reveals that out of 721 directors, there are 82 directors nominated by the financial institutions. It comes to about 11.23%.

Out of these 82 nominee directors, 21 represent different State Governments' finance Corporations, 14 by IFCI, 11 by IDBI, 11 by ICICI, 8 by GIC, 3 by UTI, 2 by LIC, one each by IRBI and IDRI and public and lastly 7 by miscellaneous financial institutions.

Regarding nomination, Category 'G' nominates the highest i.e. 19%, then in order of descending order, H, 13%, D 12.42%, F, 11.5%, C, 11% and lastly E, 4.5%.

It is evident from the above that companies having less amount of paid-up/^{capital} have more number of nominee directors.

TABLE-1

Different type of executives in 75 companies under review

	No. of Companies	Total no. of Directors	Chairman	Vice-Chairman	Deputy Chairman	Chairman- cum- Managing Director	Managing Director	President	Vice-President	Executive Chairman	Dy. Managing Director	Jt. Managing Director	Executive Director/ Financial/Chief Execu- tive Insp. Director	Whole-time Director	Special Director	Vice-Chairman cum M.D.	President cum M.D.	Total number of Executive Director	Percentage of Executive on total no. of Direc- tors.	Executive Director per Company.
1. First Group of Companies	10	118	7	2	1	1	5					2	4	2		3	1	28	23.75	2.8
2. 2nd Group of Companies	16	188	10	2	3	12	1	4			8		17			2		58	31.36	3.6
3. 3rd group of Companies	14	140	10	2		2	4			1	4		4	3	1	2		33	23.57	2.4
4. 4th group of Companies	9	87	6			1	8						4	2				21	24.0	2.3
5. 5th group of Companies	9	76	7			1	7					1	1					17	22.0	2.6
6. 8th group of Companies	17	125	12				11		2								4	24	19.5	1.8
	75	731	52	6	4	5	48	1	4	1	12	5	30	7	1	7	2	161	26	2.4

Notes on TABLE - L :

From this table it is evident that in the 75 companies under review there are 721 directors and 181 executive directors, approximately 25%. The executives are of different designations such as Chairman, Vice-Chairman, Deputy Vice-Chairman, Executive Chairman, Chairman cum Managing Director, Managing Director, Joint Managing Director, Deputy Managing Director, Vice-Chairman cum Managing Director, Executive Director, Financial Director, Technical Director, Special Director, President, Vice-President, President cum Managing Director and Whole Time Director. Out of total 181 executive directors, there are 62 Managing Directors, 3 Joint Managing Directors and 12 Deputy Managing Directors. There are 52 Chairmen 6 Vice-Chairmen, 4 Deputy Chairmen, 1 Executive Chairman and 5 Chairmen cum Managing Director. The number of Executive Directors including Financial, Technical and Special Directors is 32. Total number of whole time directors is 7.

Inference that can be drawn from this Table is that 25 per cent of the members of the Board are executive directors, and 75 per cent are non executive directors.

Executive Directors have a vital role to play in the running of a company. They have the best insight into the organisation, its men, its strength and its weakness. Even success of their lives is closely entailed by the success of the organisation and, therefore, their commitment must necessarily be great.

What is needed in India is that with the searching knowledge about the company by the Executive Directors, the broader out-look and suitable guidance of the non-executive directors are to be intimately and carefully blended and complementing one another.

Another change that is required is to increase the emoluments and other benefits of the executive directors so that they can exert their full capacity, efficiency, faculty and skill for the benefit of the organisation.

It is interesting to note here the news published in the Economic Times, Calcutta, the 29th October, 1985 regarding raising remuneration of top managers. 'New Delhi, October 28, 1985, the Union Government has decided on principle to amend the companies Act to provide for a higher slab of remuneration for the top managers in the corporate sector. Reckoning of ever rising standard of living the remuneration of the managing directors, which is pegged at a gross of Rs.7500/- per month is proposed to be raised to Rs.10,000/- per month (gross) through the amendment of the Companies Act.'

It is also necessary to increase the sitting fees of the non-executive directors, the ceiling limit of which, at present is Rs.250 per meeting. Generally directors' meeting is held 8 times in a year. Directors acting as representatives of Government or some large organisations forego the personal use of the sitting fees. This is really a small amount to attract a man of high calibre.

7.12 How to make the board effective :

Indian 'Boards' are virtually controlled from outside. Specially private sector companies are controlled by power groups which dictate policies in all major areas, including composition of the Board.

Mr. Arabinde Ray in his article "Board of Directors : A critique" in the Book, Boards of Directors in India-their statics and Dynamics, edited by Chakraborty S.K. published by All India Management Association New Delhi, 1st. Edn. 1985 P-267 stated "such a power group could be a family, an individual or two in a multinational headquarters many thousand miles away, or a civil servant, or a politician. Company Boards in India rarely discuss a crucial issue in the knowledge that its own discussions on the subject will be final. That power to decide rests with the majority shareholders and is often delegated in the latter's organisation to an individual or two, since very conveniently it is not possible for that top Board in its entirety to be involved in the affairs of a particular subsidiary or associate. If Boards in India have to fulfil their role in the same way as Boards of fully professionally managed companies do elsewhere, not only will non-executive directors have to be paid adequately for their labour and counsel, but more important than that, shareholding needs to be widely diffused."

We also fully agree with the opinion of the above mentioned

author. Our prescription is that by the introduction of Multiple Two-Tier Board (explained in Chapter VI), the controlling authority of power group may be eliminated. There would be dispersal of shareholdings and made effective of the performances of board of directors.

CHAPTER-VIII

OVERALL REVIEW, RECOMMENDATIONS AND CONCLUSION

8.1 Introduction

National contribution of company form of business is beyond doubt. It has already been recognized and established all over the world that business houses, mainly organized in the form of companies, has a clear role in the formulation of economic, political and social objectives and policies of Govt. of any country and India is not an exception. The ladder of such business-houses is, no doubt, the management pattern. Its relevance is all the more important in developing countries. Our Govt. is also trying to revamp and rationalise the existing pattern of company management through different legislations and control. Sincerity on the part of the Govt. is commendable, no doubt, but for reasons more than one, the effective and desired result has not yet been achieved. That necessitates innumerable amendments of existing laws and imposition of new laws over the years. By such amendments and new legislations more problems have been created rather than its solution.

We have endeavoured to present detailed analysis of multifarious problems regarding the company management in our studies and tried to give some concrete suggestions which might help to overcome the prevailing hurdles and to achieve the desired results.

Different chapters have dealt with different aspects of

of company management starting with its historical aspect. Empirical analysis has also been offered in relevant chapters with reference to as many as seventy-five public limited companies in the private sector to highlight our studies.

We have endeavoured to set forth our main approach and findings in different chapters in brief and show the suggestion for effective company management in this concluding chapter.

8.2 Summary of the preceding chapters :

In the introductory chapter we have dealt with the structure of the company management in India. Our endeavour has been concentrated to top management structure of the private sector companies only. We have tried to highlight some of the inherent defects of the company law of India for which responsibilities undertaken by the private sector companies could not be fulfilled satisfactorily by them as it was expected of them to ameliorate the sufferings of the masses. Businessmen in India are of the opinion that they are performing their activities remaining within the purview of the company law as far as possible and sometimes overstraining themselves to bring about the true economic well-being of the country. They hold that Govt. control and regulations are in the way of their full-fledged effectiveness. On the other hand, Govt.'s view is that the progress so far achieved is due to the regulated economy and constant vigilance on all the economic activities of the nation

including company management. In the present day context, in every country, as company management is regarded as the most important architect of national prosperity and as in it, so many persons and so much amount of wealth are involved, Govt. can not remain an indifferent spectator. Therefore, regulation is needed no doubt, but that must be in the form of statutory and Mandarin type, regulated by legislative rather than administrative control but provisions must be there for inflicting severe punishment on those who will violate the law. After forty years of independence, not being satisfied with the result of preponderance given on the public sector over the private sector and with the strict regulation so far made, present Govt. is thinking of alternative means to accelerate Indian economy to reach the new era of the 21st century. This movement started since 1985. Let us hope for the better. We earnestly believe that the aspiration of the Govt. may be fulfilled if traditional structure of the company management is reconstituted as suggested by us in Chapter VI.

In the second chapter, we have discussed the history of company legislation in India, the first enactment being made in the year 1850 and thereafter in 1913, 1936 and 1956. Afterwards, every year, upto the date, the Act had been amended several times to keep pace with the changing circumstances. There had been also see-changes in the management structure in four stages. During the first period, 1850-1946 management of

the company had been in the hands of foreign managing agents although seeds of Indian managing agency firms germinated and developed. The board of directors as an organ of management had been completely eclipsed. In the second stage after independence, i.e. in 1947-1955, there had been abolition of foreign managing agents and since then efforts were being made to give authority to the board of directors for the management of the company. In the third stage, i.e. during the period, 1956-1970, the most remarkable event in the history of company management in India, among many other things, was the abolition of the managing agency system including the law-made executive organ of management, namely, secretaries and treasurers from the soil of India on and from the third day of April, 1970. In the fourth stage i.e. during the period 1971 upto date, development took place regarding the dispersal of shareholdings as a result of the enforcement of the FERA and MRTP Act and also in the ascendancy of the management pattern by board with the managing director. Incentive also came in investment by non-resident Indians in Indian Companies. There were also emergence of joint sector enterprises and dependence of private sector companies on the financial institution for finance etc. etc. Review of the structure of Company Act, 1956 including amendments thereon reveal among many other things, the unpopularity of the management by manager, severe restrictions on appointment and remuneration of the managing director, active interference of the Govt. by the abolition of the existing

board replacing it by the nominees of the Govt. by virtue of the section 40 of the Companies Amendment Act, 1974 making compulsory for the appointment of a qualified company secretary of a company having a paid-up capital of Rs.25 lakhs or more. This Act tried to (i) fix up minimum standard of business integrity, (ii) make full and fair disclosure, (iii) ensure effective participation by the share-holders in management to protect the interest of the share-holders in one-hand and company and society on the other, (iv) enforce proper performance by the company management and above all, (v) arrange provision for the investigation of the affairs of management to uphold public interest. But the amendments so far made and development occurred, they, instead of solving the problems, aggravated them.

In the third chapter, intricate studies have been made on some recent problems which have cropped up and require immediate solutions, such as, (i) non-registration of shares held both by the resident and non-resident Indians and Govt.'s role in this matter in view of the fact of pouring in of foreign exchange by investments made by them to the Indian Companies, mobility and transferability of shares, and fair and unfair take-over bids; (ii) persistent demand of the working force for participation in management and capital in the top management of the companies in which they are employed, there being propriety of this issue as guaranteed by our constitution and its successful implementation with good result in different developed

countries of the world; (iii) the problem of economic power which still subsists and dictates the management paralyzing the effectiveness of the board of directors; (iv) problem of public accountability and professionalization of management etc. It has been explained that these problems could be easily minimized by introducing the Multiple Two-Tier Board of Management - a new style of management technique enunciated by us.

The Fourth Chapter contains the description of the fact that our Constitution contains many provisions to control economy vis-a-vis company management. Within the scope of our constitution, structure of the company management can be reconstituted to make it more effective, economically viable and socially responsive.

The Fifth chapter contains different types of company management practised in different parts of the world, their features and lessons from those management patterns which can gainfully be implemented in Indian structure of company management which will suit the Indian condition and environment.

In the Sixth chapter discussions have been made to highlight the joint sector movement in India, its further development due to emergence of shifting of economic power by the Govt. to companies for nationalisation of all the financial establishments in different stages. Change of ownership of capital must bring about the change of the structure

of management and thus the establishment of the joint sector will pave the way towards the new format of company management - the Multiple Two-Tier Board. It is a developed form of joint-sector wherein all the ingredients who form the company will represent on the Policy Board. The executive board will consist of professional employees. It embodies in it most of the good lessons derived from the company management practised in different countries of the world. The development of contemporary situations in the process of evolution has created scope for its origin. It is suited to the tradition, culture and heritage of Indian ethos. It is within the purview of our Constitution and expected to fulfil the aspirations of the framers of our Constitution. It will make the companies not only viable from the economic point of view but will also convert them into social institutions to serve the public interest more creditably.

Our seventh chapter contains the review of the structure of the top management of seventy-five companies on the basis of the Annual Reports of those Companies (1983-84). This review reveals many interesting features of which the most important are the preponderance of the company management by a board with a managing director, emergence of the Two-Tier Board, dependence of the companies on the banks and financial institutions for the capital. But at present, there is no such proportional representation by those banks, financial institutions and Government. There is no trace of workers' participation but there is only a single case of people's representation on the board. There is

a substantial number of executive directors. Although they claim to be professionals, the fact is that professionals are only a few in number. There is only one company which is managed by board with manager.

8.3 Some specific suggestions :

Broad suggestions have already been given in each chapter. In addition, some specific suggestions are also given below to achieve the objective :

1) Workers' participation in management :

In spite of the constitutional guarantee and the increasing demand by the labour force for their representation to the Board of Directors, we have noticed no trace of workers' participation in top management of the seventy five companies reviewed by us (Chapter VII). We recommend that one third of the total number of members of the Board of Directors should be workers' representatives. Regarding method of election and all other matters we are fully in agreement with the recommendations of the High-Powered Expert Committee on Companies and MRTTP Act, August 1978 Chapter XI. The recommendations of the said committee in this regard is not only rational and justified but also adaptable in the present context of the Indian Company Management.

Govt.'s policy as regards workers' participation in Company Management :

Regarding workers' participation in company management, Govt. of India has enacted law to appoint a worker director to the board of the public sector enterprises (1983 guide lines). Over and above Union Govt.'s decision to make it obligatory for the private corporate sector to provide for a minimum of 5 per cent share-holding in favour of workers and staff in case of new capital issue and introduction of special class of salary-savings-linked convertible debenture issue for the employees in the private sector, where, they would have the option to buy the same at a pre-determined fair formula or at 80 per cent of the average prevailing price of the shares in the stock market¹; these are in right direction towards workers' participation in capital which will ultimately elevate the principle of workers' participation in management. In New Delhi, on July 10, 1985 Mr. V.P. Singh, the then Minister-in-Charge, Finance and Industry Govt. of India said, "The Govt. is considering to evolve a new scheme whereby the financial institutions while offloading shares in bulk, would earmark for certain percentage for offloading in favour of workers and staff."²

ii) Introduction of Two-Tier Board :

There is a great necessity of introducing Two-Tier Board

1. The Economic Times, Calcutta, July 11, 1985.

2. Ibid. July 11, 1985.

system of company management in India. This system has proved successful in Germany and other European countries. Mr. S.K. Bhattacharyya, an ardent advocate of Two-Tier Board, states in his article, "The Two-Tier Board is a such a pragmatic and feasible proposition in the specific Indian context. The problem of manning the Supervisory Boards by professionals, academics and senior business executives is not really insuperable, given the array of talents available to-day. It can be implemented provided the personnel for the supervisory Boards except that the guidelines regarding their appointment, tenure and compensation are reasonable and attractive. There is good evidence to believe that many large companies would like to sponsor their executives to supervisory Board of other companies."³

Nationalised Commercial Banks being suppliers of major working capital and sending representatives to the board to the companies as authorised by share-holders can make the board effective. We are also of the opinion that German system of representation through banks on behalf of the share-holders who authorise their banks to represent to the board should be introduced in India. The following lines by an eminent author are worth mentioning here who is also in favour of Two-Tier Board :

"When a board consists largely of outside directors, the directors are in any case forced into a sort of supervisory role by the limited time and the limited information they have,

3. Bhattacharyya S.K. Article, The Two-Tier Board. A response to the current legal and Managerial Dilemma in the Book : 'Board of Directors in India : Their Status and Dynamics. All India Management Association, New Delhi, Edn. 1983, edited by S.K. Chakraborty, P-29.

and the actual management comes to devolve on the executive management committee which meets frequently and conducts the day-to-day affairs of the company. In such a situation irrespective of the legal form, the result is for all practical purposes a two-tier board.⁴ It is very difficult to know why High-Powered Expert Committee on Companies and MRTP Acts outwardly rejected the possibility of introduction of two-tier board in the companies of the private sector regarding their management in India. But for all practical purposes there are traces of Divisional Management Board system in Guest-Keen Williams, Tata Iron and Steel Company, A.C.C. Companies etc. This trend is visible in India. We recommend positively for its introduction with some modification as set forth in Chapter VI.

iii) Proportionate Representation according to share-holdings to be made mandatory :

In order to make the true democratic organisation, proportionate representation of share-holding must be introduced immediately in respect of share-holding both by private individuals and financial institutions. This method will not be applicable in case of workers' directors or representation by the banks and financial institutions which look after the amount of money granted as loan by them for proper utilisation. It is not also applicable in case of Government's nominee to the board

4. Sengupta Dr. N.K. - changing pattern of Corporate Management, Vikas Publishing House, New Delhi, 2nd revised edn., 1983, P-276.

for statutory purposes or to represent customers or suppliers for upholding the public interest. This method will encourage in one hand greater range of disclosure resulting enhancement of accountability to all the ingredients which form a company and on the other hand, concentration of the economic power would be controlled and checked automatically. Under these circumstances, we recommend the enforcement of sections 262 and 265 of the Companies Act as mandatory.

iv) Professionalisation of Company Management :

The question of professionalisation is interlinked with the question of two-tier management. It has already been mentioned that the policy board is to be constituted of the mixed bag of substantial number of professional personnel from different segments. The executive board must be formed with employee professionals having experience and technical knowledge, sincerity and independent decision making powers. Growing establishment of management education in India has also encouraged the movement towards professionalisation of company management in India. Though the process started after the independence, it was accelerated as a result of the FERA, 1973 which required every foreign company to reduce foreign holding to 40 per cent unless it was mainly engaged in certain specified priority industries or in activities involving sophisticated technology or exports. It is evident that "at the end of FERA

process there were only about 180 foreign controlled companies with more than 40 per cent foreign sharing and few foreign branches as against some 892 foreign companies and branches in 1974."⁵ Introduction of the FERA requires high technology in producing export quality sophisticated goods. It also causes wide dispersal of shareholdings due to the policy of Indianisation. Both these causes indirectly encouraged professionalisation of the company management in India.

Another important point which deserves to be mentioned here from the point of view of corporate management in India is that "There were about 228 Indian Joint Ventures with investment of over Rs.1200 million functioning in about 40 countries on 1st. July, 1982."⁶

This will certainly effect the inflow of foreign capital in one hand and outflow of Indian managerial technology in abroad. This has also unfolded the scope of professionalisation of company management. This movement is to be encouraged.

Dispersal of shareholdings causes professionalisation. Here in India apart from the FERA, wide dispersal of shareholdings has already been started by the introduction of MTP Act and the Capital Issues Control Act which forced Companies to issue new shares or convertible debentures to the public whenever they applied for expansion. These companies directly approach public subscribers for convertible debentures in order to weaken

5. Answer to Lok Sabha, Q.No.241, July, 1982.

6. Op.cit. Sengupta Dr. N.K. Changing Patterns of Corporate Management, P-287.

the holding of the public financial institutions on account of convertible clause stipulated by those institutions since 1971 in their long term loan agreements. Professionalisation of company management should immediately be introduced in India in order to make the company management flexible, adaptable, more viable from economic and social point of view.

v) Registration of shares and investment by non-resident Indians :

Problem of shareholding and registration thereof by the non-resident Indians : The news published in the Economic Times, Calcutta on the 30th of June, 1985 which states that non-resident Indians have acquired substantial stake by way of shares in about 20 companies, causing threat to the management of few companies. They have bought shares of both new and old companies and some sick units as well. Some of the non-residents have expressed willingness to buy shares even at a high premium and a large number of applications are still pending with the Reserve Bank of India. Striking off section 111 of the Companies Act which is related to share registration in respect of listed companies is understood to have encouraged the NRIs to enter the market.⁷

Investment in shares by non-resident Indians has already created problems specially after the decisions issued by the judgement given by the Bombay High Court in the case of Mr. Suresh Pal VS Escot D.C.M. Ltd. At last, the Supreme Court

7. The Economic Times, Calcutta June 30th, 1985.

issued final verdict in favour of L.I.C. and others declaring the action of the Reserve Bank of India 'legal' and thus it has solved the problem of registration of shares by the non-resident Indians at least to some extent. The decision of the legality of the claim of Mr. Chhabria for the purchase of the major part of shares of Shew Wallis and Co. is still pending before the Company Law Board. The investment potentialities of the non-resident Indians should be fully utilized in order to overcome the foreign exchange crisis from which India has been suffering for the last two decades. Provisions should be made so that non-resident Indians are encouraged to invest their potentialities in greater extent in Indian Companies. This project has given birth to managerial problems when the investment is sufficient enough of equity stake to overthrow the existing set of management.

As a process of liberalisation movement, the Reserve Bank brought radical changes in its policy in allowing investments by non-residents in 1982. The new policy sought to liberalise, to a great extent, the investment opportunities available to the non-resident Indians specially with repatriation facilities and introduced measures to simplify the existing regulations under the Exchange Control Regulation Rules to enable the non-resident Indians to acquire and dispose of the shares easily. The new regulations also enlarged the scope of eligible investors of the two schemes—direct subscription scheme

and portfolio scheme - the former has been operating smoothly and has thrown up very few operating problems. But the portfolio scheme has been subjected to several amendments and all kinds of impractical restrictions. These restrictions are to be liberalized.

We are of the opinion that by the introduction of 'Multiple Two-Tier Board' system of management, these problems would be solved automatically. Under this system, there will be no struggle for keeping managerial power in hand. Only problem is the selection of the post of 'Managing Director' who would be certainly the representative of the group belong to resident or non-resident which holds majority of shares. The only impediment in the way of it is the fear of the Indian businessmen to loose their control of management which they hold even with 6 to 10 per cent equity shares. If they prove themselves really better for the management they will be in power of management but if in the process of proportionate representation, even if they have a small number of shares they will get chance of representation. Over and above, the nominees of the financial institutions and Govt. including workers' directors will cast their votes for the post of the Managing Director in favour of the persons, whether resident or non-resident considering the ability of the person to serve the company for the best interest of the nation.

VI) Control of Economic Power to make the Board effective and Independent :

One of the major hindrances to the corporate management of India is caused by the existence of strong economic powers or groups which send their representative/representatives to the board to keep management in their hands and run the companies through the nominated directors. Such power groups remain sometimes visible and sometimes invisible. As long as the members of the board serve the interest of the group or house, they remain as director/directors. They have no independent power of taking decision to run well the companies. As a result, the concept of the board of directors and the suitability and effectiveness of the Board as an instrument of corporate governance are being questioned. "Not only are there allegations of widespread environmental damage, dumping hazardous products of unvarying customers, poor consumer services, improper connections between big business and sections in Government, favouritism and anti-competitive practices, such as, price-fixing and inter-locking directorships, but also more heinous charges of white-collar board-room crimes such as corruption, bribery and misuse of company's assets and immoral use of privileged company information by directors in self interest. Inevitably, there is both public glamour for fundamental reform and a reassertion of control by the members of the corporate board."⁸

8. Sengupta Dr. N.K. Changing Patterns of Corporate Management New Delhi, 2nd Edn. Revised 1983 PP 277-78.

We are also of the view that in order to bring in true democratic traditions to make the companies economically viable and for undertaking the social responsibility "the board is to be a sort of Govt. of best minds, ultimately responsible to community-consensus which sets up general objectives, standards of performance and results."⁸ In Multiple Two-Tier Board there will be no sectional or individual interest or preference be given to any one. Every member of the board will uphold the common interest and exert his full faculty for the benefit of the company taking into consideration fully the social responsibility and remaining within the boundary of the rules and regulations and Governmental policies for the fulfilment of the aspiration of the millions of people of India. Our suggested Multiple Two-Tier Board will help to plug the gap between shareholders and directors in one hand and the management and control on the other hand as it envisages the professional approach, proportionate representation of shareholding by the public, banks, financial institutions, workers' representations and above all, Governmental nominees.

VII) Meaningful disclosure of the affairs of the company :

There are many authors who are of the opinion that the Annual Reports published by various companies and served on the share-holders, contain matters as statutory obligations only.

8. Berle A.A. and Means G.C. The Modern Corporation and Private Property, New York, 1932, P-10.

The chairman's annual statement, the individual shareholders' right to get answers from the company on enquiries, the representations of the financial institutions to the Board of the companies in which those financial institutions have invested money, and the Governmental and parliamentary debate about the affairs of the company - all these make the company management almost an open book and nothing should remain hidden. But from our critical study of the Annual Reports of 75 companies (82-83, and 83-84), we can safely conclude that, these may serve the legal requirements but these are not clear-cut disclosures to the public. Except a few companies, mainly of Tata group (The Tata Iron & Steel Co., The Tata Power Company Limited, The Andhra Valley Power Supply Company Limited, The Tata Hydro Electric Power Supply Company Ltd.), others have failed to disclose clearly the number of shares held by the Government and financial institutions, proportionate percentage of voting power, even loan from banks. Microscopic small letters are also used for statement of Accounts for subsidiary companies to keep matters, obscure. As a remedy of these flaws there should be proper public disclosure which must be legible, intelligible and meaningful. It is to be remembered that legal honesty and fair reporting are by no means synonymous. Reporting must be fair and frequent and must reach every concerned party in time so that the purpose of everyone is fulfilled.

VIII) Control over the post of Managing Director and abolition of the post of the Manager :

Present day practice is that Central Government does not give permission to hold the post of managing director to a single person for more than one company. We also encourage such a sound principle but at the same time, we recommend the change of the company law regarding present ceiling of 20 directorship by the professionals outside part-time directors and make it 10. We recommend plural executive system of management. In the system of Multiple Two-Tier Board, there will be one executive board consisting of the professional employees. The Executive Board will be independent, no doubt, but remain under the supervision of the Policy Board. The managing director should be made the vital point of connecting link between the two boards - policy and executive. He should be shareholders' representative in private companies but to be elected by all the members of the policy board. As a full-timer he should not be allowed to act even as a part-time director to other company. The old argument of the paucity of managerial personnel in India, often used in the past, to justify the inter-locking of directorships, can not be justified any longer.

The post of manager being unpopular should be abolished. In the Company Act, the position of whole-time director and other executives should be clarified. The

issue of non-registration of shares by the existing management, held both by the resident and non-resident Indians, has created a serious problem and as an effect, it has retarded the mobility of shares, collection of capital and pouring in much-needed foreign exchange. Amendment of the Companies Act in 1974 and the enactment of Securities Contracts (Regulation) Act, 1985 intending to ease the problem of registration have in effect, aggravated it. Suitable arrangements are to be made to solve these problems immediately in order to make beneficial uses of foreign money for the development of the country. Refusal to register shares is evident when the existing management is afraid of losing its control over management. Introduction of Multiple Two-Tier Board will mostly be able to minimize this problem as under this system of management, the management body will concentrate its energy to look after the interest of all the ingredients which constitute a company instead of upholding the interest of a group or family.

IX) Need for changing the attitude of the private sector companies in order to create a good relation with the Government :

Since independence, there had been preponderance of the public sector over the private sector and a spectacular development in the company management was evident in the growth of public sector both in volume and in capital structure of which private sector had been junior partners. This view has recently been changed since the passing of the budget

of 1985-86 and declaration made by the Prime Minister of India and Chairman of the Planning Commission on February 8, 1985 in New Delhi. Now, there is a clear indication of more reliance on the private sector companies. The public sectors have been asked to run their companies with efficiency and take effective result-oriented performances. Instead of needless extension, the public sectors should concentrate on their policies for efficiency and profit and make a reasonable input output ratio. Govt. promised to take active and reasonable steps to encourage the growth and development of private sectors. One of the means of encouragement is to withdraw unnecessary administrative controls over private sector which stand in the way of the growth, extension and expansion. More reliance is to be made on the statutory control and companies which violate the rules and regulations framed by the Govt. should be punished without any mercy. If this is done, it will be possible for the Govt. to frame the desirable policy rather than to be busy with the routine affairs. Apart from this, it will help in creating a good relation between the Govt. and Companies which is urgently needed for the rationalisation of company management.

Private sector companies should acquire honourable position by changing their traditional attitude!

There is no doubt of the fact that the Indian Companies Act which was enacted in the mid fifties and amended afterwards provide a number of restrictions on the private sector. Dishonest businessmen always try to find out flaws to regularise their

misdeeds. Govt. also takes steps to plug the loopholes. In this way hide and seek game is going on. But in this respect, one should remember that the Govt. has the supreme power to say the last word. Time has come when the old motive of making huge profits will have to be replaced by a new benign motive of serving the country and its people, with only reasonable profits. Workers will have to be treated as partners in companies and not as mere producers of goods. They should be abreast of the social responsibilities and the concept of trusteeship which are the most important issues of discussion for both businessmen and authors of company management. "If the mental outlook can be adjusted in this fashion, business enterprise will be inspired by new kind of incentives, the incentive of service and promoting the general welfare."¹⁰

According to the same author "There are two important facts inherent in the economic situation which afford cogent reasons for cherishing the hope that enterprise in the private sector has been considerably stimulated by the impact of heavy developmental expenditure undertaken by the State. This demand will increase still further as more money is injected into the economic system. Secondly, every outlay in the public sector directly generates demand for goods and services in the private sector."¹¹

Not only that till now as public sector's capital investment

10. See Dr. Nagesopal - Industrial Enterprise in India, 2nd Edn., 1956 Orient Longman, Bombay, P-120.
11. Ibid. See Dr. N.G. Industrial Enterprise in India, P-176.

is many times more than that of the private sector, public sector will not only supply goods, services and finance, basic materials and power at a fair price but also it will help accelerate the economic growth of the private sector by developing infrastructure of the business. The private sectors by their activities will prove themselves worthy of holding an honourable position in the society by performing an important role in the country in effecting the 'socialist welfare state.'

As already mentioned, on and from the year 1985, the attitude of the Govt. has been changing. Several provisions have already been made so that private sector can exert their full energy and efficiency for performance of desired achievement.

XI) Research and Development activities :

It forms a major part of any progressive business or industry. It is, therefore, essential that industrialists and businessmen should be familiar with the subject and that students and practitioners of business and industrial management should follow the doctrines of research from the very early stage. They should keep their eyes and ears open to arrive at a decision and take advantage of its necessities and techniques in all aspects of business activities. A considerable amount of money is spent in industrially developed countries for their 'research and development' purposes. It is also evident that one of the causes for the success behind Japanese Corporation is the proper

spending of the huge amount of money for R. & D. activities. Mr. Paul E. Holden and others in their book *Top management* states "The management of research and development in to-day's dynamic and changing society has captured interest and challenged the ingenuity of top management of every major manufacturing Corporation."¹² While describing the means for evaluating R. & D. activities Mr. Steward P. Blake stated very clearly : "The operational aspect of R. & D. activity should be evaluated in terms of its performance in meeting planning goods. Adequacy of the infrastructure is determined by evaluating the facilities and equipments, technical support services, library services, and other functions supporting R & D effort. R & D performance is measured in terms of efficiency and effectiveness of the program and by evaluating the management control function."¹³

R & D activities help companies for proper and effective planning which is the key to success. But in India except a few large reputed companies, most of the companies do not spend any amount of money for R.& D. which is vital for the development of any company. But at the time of reviewing the Annual Reports of seventy five companies (1983-84), we see provisions have been made for Research and Development only in a few companies, such as, Mahindra & Mahindra Limited, Tata Iron & Steel Co. Ltd., Glaxo Laboratories (India) Limited, The Andhra Valley Power Supply Company Limited, The Baroda Rayon Corporation

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12. Holden E. Paul, Pederson A. Carlton and Germans E. Gayton- *Top Management* (McGraw Hill, New York, 1968) P-78.
13. Blake P Stewart - while evaluating R.D. Activities : *Managing for Responsive Research and Development*, W.H. Freeman and Company, San Francisco, U.S.A., 9th Edn. 1978, P-257.

Ltd., The Tata Hydro-Electric Power Supply Company Limited, Britania Industries Limited, Kirloskar Ginning Limited, Peisco-Electronics & Electricals Limited, Indian Oxygen Limited, The Associated Cement Companies Limited, Jagatjit Cotton Textile Mills Limited, Ashok Leyland Limited etc. All these are big companies. It is perhaps not possible for small companies to spend money for Research and Development work. The truth is revealed by UNCTAD study of capital goods sector, New Delhi, July 17, 1985, which states that despite considerable strides made in developing the capital goods sector in developing countries, such as Brazil, China, India and the Republic of Korea, the resources utilized for Research and Development by the firms are not very substantial except in the case of India.¹⁴

We welcome the Governments' decision (New Delhi, July 17, 1985) for risk - sharing fund for R & D. The Union Government has decided in principle to establish a special fund to finance research projects on a risk-sharing basis with industry. Disclosing this Mr. R.R. Lohy, Secretary, Technical development to the Government and Director General of technical development (DGTD) told a news conference that, while the details of the proposed fund were still being worked out, his organisation had been assigned the task of identifying the areas of research which the industry could take up in foreseeable future. He said that there was no reason why India could not be a world-leader in industries like bi-cycles, two-wheelers and for that matter even in sugar given the requisite "excellence" through research.¹⁵

14. The Economic Times, Calcutta dated July 18, 1985.

15. Ibid. Dated July 18, 1985.

A significant statistics, as published in the Economic Times, Calcutta, by T.C. Viswanathan of the E.T. Research Bureau disclosed that financial assistance to industrial units under the Technical Development Fund Scheme (TDFS) aggregated to Rs.212 crores during the 9 year period of 1976-77 to 1984-85. The total Foreign Exchange permitted so far under this scheme was Rs.80 lakhs per year per unit. According to a recent modification, made by the Union Govt. for foreign exchange allocations, under the TDFS for modernisation of industry, the ceiling has been raised from Rs.80 lakhs to Rs.1 crore per unit. The Govt. has also modified the scheme to enable the industries to enter into foreign collaboration for the import of drawings and designs and capital goods beyond the ceiling of Rs.1 crore.¹⁶

We welcome the initiative taken by the Govt. of the Research and Development activities. If individual Company's R & D project is assisted by the centrally installed TDFS, it will certainly give forth good results, no doubt, specially regarding standardisation and quality of articles produced by a firm. Management of business in general and private sector companies in particular should take full advantage of this scheme initiated by the Govt. to achieve the challenge of the change of circumstances going to take place.

8.4 Sickness of industries and the role of banks vis-a-vis Multiple Tier-Tier Based form of Management.

Of the 75 companies, reviewed by us, (Table A Chapter VI) it is revealed that 12 companies are managed by Two-Tier Board

(having a policy board and a multiple executive committee). It amounts to 16 per cent of the 75 companies reviewed by us. A clear inference that can be drawn from it, is that, due to its propriety, the Two-Tier Board system of management has been gaining importance to the Indian business magnates for its scientific and result-oriented approach. It has already been discussed that for the success of the Two-Tier Board system of management, three important ingredients are essential, viz. : (a) representation by bank (b) workers' participation in management and (c) professionalization of company management.

First, representation of the banks has become essential considering the magnitude of the problem of sick companies in India. Bank's representative can feel the pulse of financial requirements and by supplying the requisites at the initial stage Banks can save the companies from financial crisis and sickness. Financial review of Annual Reports (1984-1985) of 25 Companies, analysed by us, shows that out of a total employed capital of Rs.3059 crores (approx), Rs.1315 (approx.) has been taken as loan from Banks and financial institutions which amounts to about 46 per cent of the total employed in those companies. It indicates that banks and financial institutions have got the right to look after the amount of money invested in the borrowing companies through sufficient number of their representatives.

News published in the Economic Times, Calcutta, dated the 12th day of July, 1985 stated that there were 80,000 indus-

trial units, financed by banks, were sick and the bankers' stake in them was Rs.3855 crores (as in December, 1983)¹⁷ as stated by Mr. Amitabha Ghosh, Deputy Govt., Reserve Bank of India, who upheld the magnitude of the problem.

In this respect, for relevance, and also for checking the industrial sickness, attention may be drawn to the following : The Reserve Bank is taking a serious view of the growing industrial sickness in the country. It is likely to introduce an 'accountability concept' in the banking system itself so that the lending banks can take corrective measures as soon as the symptoms of sickness are noticed. This was indicated by Mr. Amitabha Ghosh, Deputy Governor of the Reserve Bank, at a meeting with the Madras Chamber of Commerce and Industry, on the 11th July, 1985. Mr. Ghosh said that it was the banks which would first notice the symptom of sickness. Under the accountability concept, proposed to be introduced, as soon as the banks' staff notice such symptoms in any accounts, they would be required to report the matter to the manager, who, in turn, would be expected to put such accounts on the caution list and desist from further assistance to the account-holders beyond a cut-off point, pending a scrutiny by higher authorities. Of the 80,000 industrial units declared as sick on December, 1983, 491 were large borrowers with credit limits of over Rs.1 crore. The bankers' stake in the larger units was Rs.1,087 crores. He said that sickness in industry could be averted in time if corrective measures were taken at an early stage. Unfortunately, some borrowers tried to be smart and hid

17. The Economic Times, Calcutta, July 12, 1985.

the fact of illness from the bankers. If only the borrowers took the bankers into confidence as soon as the sickness was noticed, the banks in their own interest of safeguarding their investment in these units would be only too ready to extend rehabilitative assistance."¹⁸

In order to feel the pulse of industrial illness, it is essential that every company which borrows money from the banks must have one representative of banks on the board of the borrowing company. Bank can appoint expert professionals for this purpose. It can also nominate outside part-time expert professionals with proper fees. We welcome the proposal of Mr. Ghosh which will be effective in solving sickness of industries in India.

8.5 Outlook of the Central Government regarding the industrial policy :

The Prime Minister, Mr. Rajib Gandhi, speaking at the meeting of the newly constituted Planning Commission of which he is the Chairman, on February 8, 1965, in New Delhi states among other important things that the major changes that had occurred in the industrial scenario since the mid-fifties should properly be taken into account. He observes "The industrial policy has been formulated in such a way that it caters for new technologies and scientific discoveries so that the country could keep pace with and benefit from them. The policy of the plan

18. Op.cit. Calcutta July 12, 1965 on Madras July 11, 1965.

will also take into account the rising expectations of the people." He opines that "the people expect faster and tangible results. People will co-operate with us as long as we give evidence of moving fast, and development remains the key factor holding the country together. We should look into our instruments and see whether they are geared to meet the basic requirements of alleviating poverty, providing social justice and giving an impetus to economic growth. We should deliver substantial growth to the people and bring about necessary changes in the administration while maintaining stability." The Prime Minister further states that "we want to redirect our technological services and informational industries as in other advanced countries. India has the capacity, natural wealth and vast human resources. We should harness the same to our advantage by letting ourselves go freeing ourselves from mental blockade and self imposed shackles." He is also keen that "a massive fillip should be given to the electronic industry which will be the trend setter for the 21st century."¹⁹

In accordance with the objectives of the 7th Five Year Plan, the first budget 1985-86 is considered as innovative and experimental. It provides with several packages including reduction of corporate tax and wealth tax, discontinuation of surcharge, offering stable fiscal policy, reformation and simplification of tax structure, increasing the level of the limit of monopoly houses, etc. etc.

19. Competition Success, New Delhi, May 1985 review.

As regards the black money though the Govt. has not yet spelt out any definite measures either to curtail its growth or unearth it and bring it to open, yet Govt. has threatened stern measures and expects that the reliefs provided in the direct taxes set-up will serve as adequate inducement for black money to be declared and taxes paid. Another feature of the budget is that, companies will now be permitted to donate openly to political parties. The controls and licences are also being liberalised, if not totally done away with. This, along with reducing the burden of income tax and surcharge on corporate income, provides positive attempt to curtail black money. In the budget of 1986-87 also several schemes have been chalked to give sufficient incentives to private sectors. It has been clearly envisaged that private sectors have been given preponderance over public sectors.

The above are the main policies in short, through planning and ancillary budget to banish poverty and to bring about equitable distribution of wealth in conformity with the national objectives of ushering in domestic socialism. However, according to 1981 census and the review of the progress of sixth plan, nearly 50 per cent of our population is still below the poverty line. Over 370 million men, women and children do not get two square meals a day.

People expect many things from companies managed efficiently. They expect good achievements so that their sufferings are alle-

visited in short time. Private sectors are required to show their creditable performances as a great importance has been attached to them.

We sincerely believe that expectation of the Govt. and people would be fulfilled if new technologies are introduced, structure of the management is reconstituted in accordance with suggested Multiple Two-Tier Board, the efficiency of the company management is made effective by making it free from the presence of the powerful economic groups or families, establishing true professional management independent of taking decision, increasing the scope of public accountability, introducing workers/employees' participation in capital and management, arranging proportionate representation in shareholding both by private individual and financial institutions. These are the preconditions for successful company-management. The very idea of social responsibility of the business is also to be developed.

8.6 Managerialism and its effect on the company management of India :

Discussing the history of the company management, many renowned theorists observe that, though most of the modern giant Corporations in the West, started as family enterprises, have gradually outgrown the limits of family control and developed into corporations with widely dispersed shareholding and professional management. As a result of separation of ownership and management, and ownership and control, it leads more and more to

the concentration of power in the hands of the corporate managers. This is known as managerialism. Many eminent authors including A.A. Berle, G.C. Means, P. Sargent Florence, E.A. Gordon, George Goyder, Dahrendorf including Karl Marx are of the opinion that a new class of non-propertied managers have emerged replacing the owner managers and are owing their position to their managerial ability rather than property ownership. Their different social backgrounds, trainings and experiences make them think and act differently from the owner-managers or capitalists in the traditional sense.

Under this system of managerialism private sector has to overcome its traditional view. It has to improve its corporate image. It has to rely on professional managers, replacing the control of family members by a control through a system. With this system, social responsibility and more recently, innovated idea of trusteeship have emerged. The ideology is that company will not only distribute its profit for the society but also treat the companies as a force for social change towards the development of the country. For performing social responsibilities, the principle of social audit has been prescribed by Goyder. In order to perform social responsibilities, private businessmen must improve their performances and image and leave their ostensible style of living. They should develop the art of adapting themselves to the changing environment. Though in recent years, this awareness is evident in advanced countries, regarding social responsibilities in India it is utterly neglected. In this

respect, it is worth quoting here the following lines as corporate managers are facing the challenge :

"It will be their task to convince society that they are not a band of socially irresponsible self-seekers but they have an important role to play in the country's economic development and social reconstruction as the ministers and civil servants and that they are anxious to play this role and become partners in this endeavour. It is interesting to note that the move towards social responsibility, along with the various other conceptual developments in the thinking of Corporations in the West, bring corporate management very close to Mahatma Gandhi's philosophy of trusteeship."²⁰

8.7 Upholding the philosophy of Trusteeship of Mahatma Gandhi :

Really future developments of the company management will depend on upholding the concept of trusteeship as enunciated by Mahatma Gandhi by the effective Board of Directors readily accountable to the public as to the shareholders for their decisions and actions. But in India it is long way to go towards managerialism with social responsibility and trusteeship ideas. Though emergence of it is visible in some cases, opinion of an eminent author is summed up as follows : "The perceptible resistance to change in Indian Industry hardly requires elaborate proof. Absorption of the new into the fold of the old has clouded many further developments. Deliberate side-tracking and soft pedalling of the changes have stunted growth. To cap these all, even adaptation to change

20. Sengupta Dr. N.K. "Mahatma Gandhi's concept of Trusteeship and corporate management - What Relevance", presented at a seminar, Calcutta, June 1969 and published by Young Alliance, New Delhi, Vol. V, October, 1969.

has been half-hearted, making the transition to a new productive order incomplete. The emergence of a managerial class has become a signpost in conditions in which industry and its management have never really become free from 'ownership motivation.' Even the so called public enterprises have not been free from this force. Without scientific objective management, the emergence of the managerial class becomes rather perverse. Managers themselves become magnified clerks, performing as post office, a centre of relay, who can elaborate the orders and decisions received from the top for communication down below, but can not change them, nor can they pass such orders as their own. A close look at the management practices in Indian history would unfold the existence of similar management conditions even in many large enterprises. In the circumstances emergence of managerial class becomes uncertain. The uncertainty can not be removed till managerial class as such is distinguished from the entrepreneurs by virtue of its responsibility to run the enterprises as against the establishment of such enterprises by entrepreneurs.²¹

In India it has become urgently necessary for the company management to come out from family bondage serving their interest. The Board of Directors is to be given proper authority to run the company so that they can take independent decisions. Their attitude and outlook are to be changed. These objectives can be

21. Chattopadhyaya P. "Managerial Revolution in India : a comment on its character and context," Part - I, Indian Management, May-June, 1959.

achieved only if the Board is constituted with professional personels having modern outlook, patriotic mentality and calibre of adjustments, bold enough to entertain technological development. They should be efficient, honest, initiative and socially responsible.

8.8 Concept of shareholders' democracy and ways to fill in the gap between ownership and control :

Along with the legal provisions for reconstructing the Board of Directors, the wide gap that has arisen in the changed development of the structure of the Corporation between control and ownership in one hand, ownership and management on the other has to be filled in (Paragraph 5.3 of the Report of the Sachar Committee, 1978). Consequently, as a corrective measure, the committee suggested that "the law must see to it that the gap between the shareholders, who are the owners, and the directors, who are in control of the destiny of the company, does not become so wide as to endanger the interest of the shareholders." Having said this, however, the committee has also correctly recognised the fact that the size of modern companies requires a professional approach to their management thereby conceding the need for exercise of powers by the directors unfettered by day to day control from shareholders who in the committee's opinion, must gradually be content to act as investors rather than as persons in control.

But we have yet to see in India the development of companies of such large size that shareholders' democracy is a matter

of fact rather than of judicial theory. Under this circumstances formation of shareholders' Association is necessary to wield influence over the company's affairs through collective action based not only on a grouping of interests but also on the ability to secure professional service and advice. Secondly, we fully support the committee's suggestion of greater degree of professionalisation of management which includes professionalisation of directors and effective and meaningful participation of shareholders will minimise the wide gap between company and management.

8.9 Introduction of Multiple Two-Tier Board to undertake the challenge :

All the above flaws will be removed by the board if it is constituted of the representatives of different segments of the societies. The membership on the board must not be on the basis of family-status and background representing a group/groups of families/individual family. It should be on the basis of professional qualification, ability and experience. Once the board comes out of family-bondage and prove to start independent on taking own decisions, other requirements of effectiveness will automatically follow. In this respect the truth revealed by famous author, Harold Koontz is worth mentioning :

"The main essential is that those who control the company must want to have such a board. Even though, it may take time, particularly if a board has fallen into slovenly, irresponsible

of ineffectual ways, it can be done. And in a surprising number of instances, the change over has come more rapidly than had been thought possible. Ordinarily, there is talent on even an ineffectual board. If challenged by doing what a board should, this talent is often ripe rather than quickly to the opportunities for contribution thus provided. In addition, when it is understood that what a board should do it, it becomes clear what kind of directors are needed as board vacancies occur.²²

We fervently believe that Multiple Two-Tier Board will be able to cure all maladies from which companies are suffering at present. At least, it will be able to minimize the problems and make the top management more effective, innovative, sensible and responsive.

We are to remember that the major developments that took place in company management in India after 1970 were the ever-increasing percentage of shareholding in the private sector companies by public financial institutions, and the private sector's increasing reliance on the institutions for long finance; and the significant and growing presence of a large number of joint sector companies in various parts of the country.

We have already mentioned that the joint sector movement is a step to march towards the Multiple Two-Tier Board. In

22. Koontz Harold, *Board of Directors and Effective Management*, Mc Graw - Hill, New York, 1967 P-248.

this Board, the best lessons learnt from the successful company management in different parts of the World can be incorporated. As for example, the concept of Two-Tier Board of West Germany with the consequent result of workers' participation in company management and involving bank's representative in the Board of the company who takes loan from the bank or bank's representation as authorised by small shareholders, the professionalisation and managerialism of the U.S.A., Two-Part Board system of European Countries, proportionate representation system of the U.S.A. and Canada, whole-life employment and mechanism through which desirable relationship established between Govt. and Companies of Japan, socialist style of management of the U.S.S.R. and China can be introduced, at least, to a substantial extent for making the company management of our country more effective. At the same time, the changes and developments that have taken place render opportunity to introduce this system. This system of management may be applicable to both the public and private sectors with profit.

B.10 Logic of introducing Multiple Two-Tier Board :

We are of the opinion that logic of Multiple Two-Tier Board is right, the talent is there and the legal and administrative requirements also justify its introduction. The present day development of company management in India has provided scope for its formation. We should have noble vision and courage to take action on it. This system remaining within the purview of

our pious constitutions will enable the people, engaged in top company management, to further their personal and career interests in a dignified manner making full adjustment with the interest of the country. This system may be regarded as the 'workable principle and practices' through which interest of all will be served resulting development of the whole nation. The outstanding feature of Indian economy over the last forty years relating to the company management is that there has been much expansion in public sector on the one hand and a tight system of multifarious direct controls on private sectors on the other hand. Controls have been inevitable for economic co-ordination and planning and prevention of mismanagement and abuse of power by the companies. The responsibility lies with the board that fails to check the executives. There has been also widespread public complaints against the company management. This necessitates the Government to interfere with the internal management of the companies.

If the company boards were more independent and vigilant, there would have been less need for the direct Government interference with managerial matters. In the Multiple Two-Tier Board system management, the Policy Board will enjoy true independence. It will have full control over the executives.

We also recommend that both Central and State Governments should take initiative in forming a large number of companies on joint sector basis and introduce Multiple Two-Tier Board for

management of these companies. These will be models. Many businessmen will follow the ideals of these companies. Some shares of the public sector companies may be issued to the private businessmen and introduce Multiple Two-Tier Board system of management in order to bring about efficiency, stability and viability specially of those companies which are running at a loss.

In spite of our best efforts there might be some errors and duplication of ideas or some minor inconsistencies in different chapters, we have made an honest attempt to present most effective and workable format of the structure of 'Company-Management' in India. But no format can be treated as standard and ideal for all time and for all the companies, big or small. Our proposed format of the so called management pattern is mostly applicable in big companies specially for those under private sector. That does not mean that such type of format, as suggested is not at all applicable in case of small companies or companies under public sector. The Multiple Two-Tier Board system is equally applicable for big or small companies of both under public or private sectors. But the format may be conveniently used in big companies under private sector for more than one reason narrated briefly in different chapters.

However, the indepth study of Company Management starting from its historical aspect, constitutional effect, different relevant legislations, existing pattern of management in different

developing countries and the prevailing pattern of management of a number of joint stock companies in India will help future researchers to work on different aspects of company form of business in India.

ANNEXTURE - ISpecimen copy of the letters sent to the Companies

From : Prof. Saral Krishna Dutta,
1-A, Ram Chandra Das Row,
Calcutta-700 013.

Phone : 24-2963

Dated 5th of February, 1985.

To
The Secretary,

Sir,

I take the privilege of informing you that I have been undergoing research work in the area of company management for sometime.

As I am sure that you will appreciate my stand about the role of corporate sector in the allround growth of our national economy, I may be allowed to request you for any kind of help in this regard.

With the understanding that you are no less an academicien than an academic in the outward sense I request you to kindly send your Company's Audited Annual Reports for preceeding two years and the attached proforma duly filled in at your earliest convenience to help me of my research work.

Your active co-operation in my research work is highly solicited.

University of North Bengal

Ref.No.168/Ph.D/Com/9725/R84
dated 8.9.84.

Title of Thesis

'Indian Company Management-
Its retrospect and prospect'
under Dr. D.P. Pande,
Head of the Deptt. of Com.
N. B. University.

Yours faithfully,

(Prof. Saral Krishna Dutta)

M.A., M.Com., LL.B. Adv.

Lecturer, Narasimha Dutta
College, Commerce Dept.
Howrah.

PROFORMA

- A. Name of the Company -
- B. Composition of the Board -

No. of Directors	Executive		Shareholders' Representative	Nominated by -
	Executive	Non-Executive		
			Employees "	Managing Director
			Workers' "	Wholesale Director
			Nominee of the Govt. "	Manager
			Nominee of the Financial Institutions.	Remuneration

PROFESSIONAL QUALIFICATION

- C. (a) No. of Directors, professionally qualified with experience -
- (b) No. of Directors with experience but not professionally qualified
- (c) No. of Directors neither professionally qualified nor experienced -
- (d) No. of Directors working as full time -
- (e) No. of employees employed professionally qualified -

D. Nominee Directors :

(a) No. of Professionally qualified -

(b) Employee of the financial Institutions/
Govt./Outsider -

(c) Whether attending the boards meeting regularly -

No. of meetings in
the preceding year

No. of meetings
attended by them.

(d) Financially or otherwise improvement after
their joining the company -

E. Subscribed capital of the company -

(a) Subscribed by the Public Rs.

(b) Subscribed by Central/State Govt. Rs.

(c) Financial Institutions shareholding/
Subscribed capital -

F. Whether take over bid occurred anytime
to change the management Yes No

G. Whether belong to any group Yes No

If Yes name of the Group _____

Dated :

Signature
Seal with Designation.

ANNEXURE - II
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