

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 18th 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 Chouguile 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 repatriation 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. Bhakraborty 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 foreseil 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. Bajaj Auto Ltd. - VE - N.K. Poojaria 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 - Eopabjee Bhatina,**
Bombay High Court, 1953.

legitimate, and if the Directors have acted on wrong principle on 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 bonani 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. Somaiya, 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. Somaiya 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. After all, 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 6, 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. N.E. Patvardhan 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. Somaiya, 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 MRP 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.

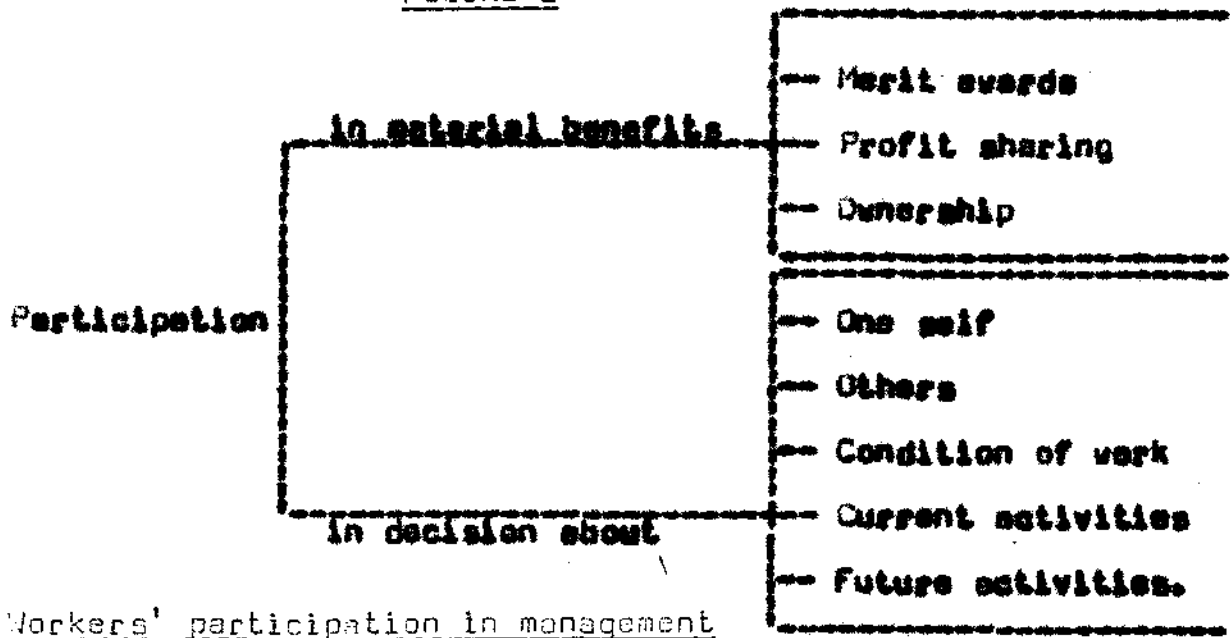
19. Commission of the European Communities (1972) Proposal for a fifth director on the structure of societies anonymes Bulletin of the European Committee, Supplement 10/72 Article - 4.

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



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 failures :

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 1968. 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, 1982 by a five judge-bench.

Justice P.N. Bahweti 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 members 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 G.E. Clarkson - 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

32. Gattani R.D. - separate note in the report of the High Powered Expert Committee on Company and MTP Acts, under the Chairmanship of Justice Rajinder Sachar, August 29, 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 Challenged 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-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 Pratap 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.

PART - IIICompany failures and sickness in industry - a great problem of present company 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 Enterprise in India, Orient Longman, Bombay, Calcutta, 2nd Edn. 1956, P-137.
46. Op.cit. - P-138.

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 authorised 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. Khandewalle based on nine complex industrial organisations. Mr. Khandewalle 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 disloyalty 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. 18%.
- 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 service guarantee 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 smelt 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.⁴⁸ 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

48. 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 58,000 sick units 272 i.e. only .4 per cent get 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 16th 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 countryside 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 fact 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 IRI 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 'prolonged 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, IRI 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 subsidiaries 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 liberalised 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 recognised 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. Jansardan 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 cask 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. Anilabha 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, 1965. 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, 1965.

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-237.

(now IRBI) 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 IRBI) 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	48	47	34
Thapar	42	43	59	33
Bangor	100	81	93	51
Scindia	-	8	8	3
Sripal	8	16	28	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	15	35	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 Enquiry Committee; M RTP - Monopolies and Restrictive Trade Practices Act, 1969.

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, 1965)
Column 3. Report of the Industrial Licensing Policy Enquiry Committee (Government of India, 1969).
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 really 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 houses for the purpose of administering industrial licensing policy according to the 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. License under MRTP Act, though aims at curbing concentration of economic power, granting licenses for expansion (Section 21), for new undertakings (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 means 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. Saha, 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 on 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-propertyied 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

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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-socialist 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 Swezy 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.