CHAPTER - II

HISTORY OF COMPANY MANAGEMENT IN INDIA

AND

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PART - I

History of Company Management in India :

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

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

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

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

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

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

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

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

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

2. Ibid. PP 22-23.

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

Development of Company Management in India happened in four stages.

2.2 First phase (1850 to 1946) : Early history and development of Managing Agency system in the Company Management in India :

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

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

Management on a Commission Basis :

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

Early History of Managing Agency System :

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

Although the exact origin of the managing agency system

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3. Vera Anstey, the Economic Development of India, Longman Edn. 1957 P.109 referred by Madon D.P. Khorshed – Management of Corporations, Progressive Corporation Private Ltd., Bombay-1, P.50-51.

4. Nigam R.K. – Managing Agencies in India (First Round : facts) Research and Statics Division, Department of Company Law Administration, Ministry of Commerce & Industry, Government of India, 1957.

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

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

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5. Op.cit., P-2.
6. Sinha H. - European Banking in India, P-4, quoted from Madon D.P. Khorshed - Management of Corporations, P-222, First published 1971 Progress Corporation (P) Ltd., Bombay-1.
7. Report of the Indian Industrial Commission, 1916-18, P-75.
8. Nigam R.K. Economic Development of India, P-114.

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

The Advent of Indian Managing Agents :

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

Inspite of the fact that the managing agency system had existed in India for several years, until the passing of the Indian Companies (Amendment) Act, 1936, managing agents were governed by the general law of contract. No direct provision relating to managing agents or to the managing agency system was made in the earlier Indian Companies Acts although there had been implied reference to the system in the Acts of 1866, 1882 and 1914. The Indian Companies Act of 1866 had empowered the Court to proceed summarily against directors, "managers" and liquidators in respect of their accountability for monies, etc.[9] In the Indian Companies Act of 1882, the words, "or other managing body" were used in connection with the delegation of the power to settle terms of an arbitrator,[10] while in the Indian Companies (Amendment)

9. Act of 1866, Section 165.

10. Act VI of 1882, Section 96.

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

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

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

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

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

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

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14. Section 32(2) of the Indian Companies Act, 1913.
15. Section 93(1) (a) of the Indian Companies Act, 1913.
16. Bulawayo Market Co. (1907) & ch. 458. It was not until the Companies Act, 1956 Section 253, that only individuals could be appointed directors.

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

Defects in company management before companies (Amendment Act, [illegible]) :

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

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17. Vide Memorandum submitted to the Company Law Amendment Committee, 1936, by the Bombay Shareholders Association.

18. Das Dr. Nabagopal - 'Industrial Enterprises in India', Orient Longmans, Bombay, Calcutta, Delhi, second revised edition 1956, P.75.

of interpreneurs who did not always belong to the established 'firms' of managing agents and who, therefore, preferred to do the major work of promotion by themselves, although they found it convenient and useful to consult managing agents or banks.[19]

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

Causes of the dominance of the Managing Agency System :

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

Firstly, in many industries, the managing agents themselves or their friends had got holding of substantial blocks of shares. In cotton textile industry it was 40% to 80% and in exceptional cases it was as high as 90%; secondly, they acted as special creditors (or guarantors of credit) or debenture

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

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

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

Remuneration of Managing Agent :

The managing agents used to exploit the companies under

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20. Das Dr. Nabagopal - Industrial Enterprise in India, Op. cit. PP 77-78.

21. Indian Tariff Board, Report on the Cotton Textile Industry Enquiry, 1932.

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

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

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

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

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

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

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

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

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

24. Op.cit. - Das Dr. Nabagopal, Industrial Enterprise in India, Orient Longmans, Bombay, Edn. 1956, P-85.

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

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

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

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25. Report of the Indian Tariff Board, 1932.

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

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

The above was the position behind which the companies (Amendment) Act, 1936 was enacted.

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

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28. Op.cit. Das Dr. Nabagopal - Industrial Enterprise in India Orient Longmans, P.88.

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

Regarding aims and objectives of this Act, it was conceived by the Government that India had however, problems peculiar to itself for example, those connected with the managing agency system and provisions designed to regulate this unique institution were included in the Act. It is to be remembered that one year after the introduction of the Bill "in 1937-38, there were 10857 Joint Stock Companies with a paid-up capital of 278 crores."[28]

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

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

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27. Parliamentary debate on the eve of the presentation of the bill before Council of States 12.1.36, vide debates, Vol.11 No.8, P.7.

28. National Council of Applied Economics Research, New Delhi. The Managing Agency system - A Review of its working and prospects of its future. Asia publishing House Bombay, Calcutta, New Delhi, Madras, London, New York, 1959, P.8.

ii) A company was further permitted, by a general resolution, to remove a managing agent guilty of certain specified offences relating to the affairs of the company. The term of office of a managing agent was limited to twenty years, with re-appointments permitted for the same duration.

iii) The Act, made provisions designed to counteract some of the more glaring malpractices in the system. It contained a fixed percentage of the net annual profits of the company as remuneration with provisions for a minimum payment in case of inadequacy or absence of profit in order to prevent managing agents from obtaining high remuneration without regard to the financial status of managed companies. Office allowances according to the terms of the agreement permitted and additional remuneration was allowed if accepted by special resolution of the managed company.

iv) It prohibited the practice of giving or guaranteeing loans to such agents. The inter-investment of funds by managing agents when they had several companies under same management was also forbidden. The employment of the funds of a company in the purchase of the shares and debentures of another company under the management of the same managing agents was prohibited.

v) They were also prevented from carrying on, on their own own account, business which was of the same nature as, and

directly competed with, the business of the managed company.

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

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

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

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

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

It is true that though some of the glaring malpractices were prevented by the introduction of the Companies (Amendment) Act, 1936, yet the managing agent firms, with the help of the expert professionals like lawyers continued their undesirable practices in a disguised form.[31] Therefore, it is evident that number of loopholes still remained in the Companies (Amendment) Act, 1936. "Large changes had taken place in the organisation and working of Joint Stock Companies. In many cases, conventional methods of company management were discarded in favour of less orthodox and more venture-some techniques, which the existing company law was unable to control adequately.[32] The most serious lucunae had been the inadequate and perfunctory manner in which Company Act was administered. Firstly, the administration of company law had been vested to the Central Government, most of its functions were delegated to the Governments of the Provinces (States) except few. The reasons for such delegation were partly historical, partly constitutional and partly financial as explained by Dr. Nabagopal Das, as under "The full social implications of Company Law were hardly realised and the administration of the Act was regarded primarily as the negative function of preventing the Joint Stock Companies from contravening the statutory requirements. This negative function could be performed as easily by the provincial Government as by the Central Government."[33] From economical point of view, the power of appointing the Registrar of Companies was delegated to the Provinces (States). They took

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31. Das Dr. Nabagopal, Industrial Enterprise India, P.88.
32. Report of the Company Law Committee, New Delhi, 1952.
33. Ibid. P.91.

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

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

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

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

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

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34. Op.cit. P.81.
35. Sengupta Dr. N.K., Journal of Management, Administrative Staff College of India, Vol.2 No.2 (March 1973) PP 71-82.

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

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

Government on matters arising out of the various applications for sanction made to them. At the very outset of its functioning, the commission laid down certain principles to guide them in their decisions and these were accepted by Government. In regard to managing agents, the accepted principles were "to restrict remuneration ordinarily to 10 per cent of net profits, not to allow any office allowance, to discourage buying and selling commissions and to restrict compensation payable to managing agents vacating office before the expiry of their agreements. Certain broad principles were also laid down in regard to the allocating managerial responsibility between directors and managing agents."[38] The Act also brought in, for the first time, the concept of "associates of a managing agent". However, this not only had a limited application, referring only to the extensions of appointments of managing agents but also a limited connotations, the explanation of the term applying only to persons directly connected through associations with the managing agency firm or company and not to other connections of the managing agent.

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

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

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

Inference drawn from the above study reveals that there

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

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

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

The bill for the Companies Act, 1956, received the assent of the president early in 1956 which was based on two consideration. Firstly, it was considered necessary that the malpractices which has come to light since 1936 should be stopped to by suitable legislation and by the setting up of appropriate machinery to administer the same and secondly, the State must step into protect the interest of the shareholders and the general public against the tyranny of managing agents, managing directors or managers. The third important consideration, viz. that private industrial enterprise, as organised under joint stock companies, must fit in with the general pattern of State Policy, which had undergone radical changes. An important directive principle of this policy, as embodied in the constitution of India, was that 'the State shall so direct its policies that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' The new Act, was therefore, said to have "for the first time attempted to bring about some

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

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

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

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

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

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

Under section 324 of the Companies Act, 1956, the Government has assumed powers to prohibit managing agencies in any industry or business. The Act states that this power will be exercised only after the Government have conducted an enquiry into the matter, consulted the Advisory commission and obtained approval of both the Houses of Parliament. The intention of the Government has been clarified by Shri C.D. Deshmukh, the then Finance Minister, seems to have been that 'the managing agency system, at a future date not at a very distant future - will be abolished. But the time, pace and the manner of its abolition are left to the Government.' Department of Company Law Administration has undertaken an exhaustive research project on the operation of this system. The first round of their study gives valuable and detailed statistics regarding the position of the managing agencies in the corporate sector relating to 1954-55 which reveals that 'there were 3,944 managing agencies in India managing 5.055 Joint Stock Companies, or 17.1 per cent of the total number of Joint Stock Companies in the country. The total paid-up capital of the

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

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

the 17 leading managing agencies managed 389 companies with an aggregate paid-up capital of Rs.114 crores or 25 per cent of the total paid-up capital of all companies under the managing agency system. Ten of these agencies were public companies and other private.[40]

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

TABLE-I

Decline in the number of managed companies

Year	Total No. of Public Companies	No. of Companies Managed by M/As.	3 as % of 2
1	2	3	4
1954-55	4091 (618.8)	1978 (439.0)	44.8 (71.2)
1960-61	5886 (826.0)	1049 (391.7)	18.4 (47.4)
1966-67	5843 (1309.4)	683 (493.0)	12.3 (37.7)
1967-68	5482 (1375.4)	642 (584.8)	11.7 (42.5)
1968-69	5432 (1402.3)	568 (57.5)	10.4 (4.1)

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

40. According to Raj K. Nigam, Managing Agencies in India (First Round : Basic Facts), Department of Company Law Administration, Ministry of Commerce and Industry, Government of India.

41. Sengupta Dr. N.K. Articles 'Trends in Corporate Management' published in the Government and Business by Dasgupta, and Sengupta N.K. Allied Book Agency, Calcutta Ist. Edn.April'78 P-146.

TABLE-2

Diminishing Managing Agency System

YEAR	Total No. of Registered Companies.	No.of Companies which came up for approval to Managing Agency system	No.of Companies where approval was given	Percentage of column 3 & 2	% of column 4 or 2
1	2	3	4	5	6
1956-57	848	10	10	1.2	1.2
1960-61	1883	15	13	0.9	0.8
1964-65	1366	6	-	0.4	-
1966-67	1039	1	-	0.1	-
1967-68	1044	1	-	0.1	-

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

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

42. National Council of Applied Economic Research, New Delhi, "The Managing Agency System" Asia Publishing House, Bombay, 1959, P - 107.

April, 1967 and finally through the companies (Amendment) Act, of May 1969 abolished the Managing Agency System (along with the newly invented law-made firm of corporate management i.e. secretaries and treasurers) from the soil of India on and from the 3rd day of April 1970. Regarding the effectiveness of the secretaries and treasurers, it was hoped that law-made newly invented form of management without their financial investments no power to nominate directors to the boards of the companies under their management and with only 7.5 per cent of the net profit as their maximum rate of remuneration, would act as an alternative form of management to the Managing Agents and exert expert managerial skill and supervision to the large scale companies for their benefits and development. But this lofty hope was never realised as this system of management had not become popular in India. It may be due to the fact that most of the Managing Agency firms had converted them into secretaries ad treasurers. "Out of 14076 companies registered during eleven years from 1956-57 to 1966-67, only 24 companies preferred this form of management at the time of their incorporation."[43] The object of this death knell on the managing agency as well as secretaries and treasurers has been to introduce professionalised group management without the evils of the managing agency system about the abuse of the concentration of economic power in few agency houses.

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

After the abolition of Managing Agency System the following

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

permissible systems of Corporate Management are left behind :

1. Direct management by the Board of Directors -

   a) With whole-time Directors,
   b) Without whole-time Directors and
   c) With Committee of Directors;

and

2. Indirect management by the Board of Directors -

   a) having Managing Directors,
   b) having Manager and
   c) having Managing Director with whole-time Directors.

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

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

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

following patterns :

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

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

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

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

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

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

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

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

46. Op.cit. P - 151.

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

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

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

48. Sengupta Dr. N.M., "Trends in Corporate Management", published in Journal of Management, Administrative Staff College of India, Vol.2 No.2 (March 1973) P - 79.

review of 75 Annual Reports (83-84) of 75 companies reveals that 12 companies, (16%) preferred two-tier bound. It seems that this system is gaining popularity in India (Table-8, Chapter - VII).

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

The list of financial institutions falling within the ambit of the public sector has expanded impressively since the beginning of the nineteen sixties both by the creation of powerful new institutions and by nationalisation of the important older ones. Among the new institutions set up during the 1960s are the Unit Trust of India (1964), the Industrial Development Bank of India (1964) and the chain of State Industrial Development Corporations. Fourteen major commercial banks were nationalised in 1969 and L.I.C. in 1955. Total sanction by different financial institutions rose from Rs. 232.8 crores in 1970-71 to Rs.4023.3 crores in 1983-84. The total disbursement in this period went up from Rs.145.8 crores to Rs.2905 crores. Of the cumulative sanctions by different financial institutions up to March, 1984, the private sector accounts for 75.5 per cent and the balance of 24.5 per cent were shared by enterprises in public joint sector and Co-operative Sector. The financial institutions now finance nearly 30% of project cost of company's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is relevent to mention here also though controversy about the investment by the non-resident Indian has not yet been settled, investments by them which is estimated to Rs.2500/- crores every year[55] has caused a great threat to the existing management having small stake of shareholding.

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

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

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

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

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

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

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

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56. Op. cit. June 27, 1985.

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

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

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57. Berle A. A., Means G.C., The Modern Corporation and Private Property, New York, 1932. [illegible]

PART - 2

Structure of Company Management under the Companies Act, 1956 and critical review.

2.6 Object of the Companies Act, 1956 :

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

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

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

2. to make full and fair disclosure of all reasonable information relating to the affairs of the Company ;

3. to assure effective participation and control by shareholders and the protection of their legitimate interests;

4. for enforcement of proper performance of their duties by Company Management ;

5. to empower for intervention and investigation into the affairs of the Companies where they are managed in a manner prejudicial to the interest of the shareholders or to the public interest.

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

2.7 Restoring the authority of the Board of Directors :

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

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

291 to the effect, says that the Board shall be subject to 'regulations made by the company in general meeting' does not mean that the company in general meeting can override the Board's powers of carrying on the business, by prescribing a regulation or passing a resolution taking always the powers given to the Board by the articles. A general meeting can interfere only consistently with the articles. (Automatic self clearing Filter Syndicate Co. Ltd. V Cunninggham (1906) 2 ch. 34; Salmon V Quin & Artens Ltd. (1909) 1 ch. 311 and on appeal, 1909 A.C. 442[59]

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

2.8 Types of Management and Managerial Personnel :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Though, in the Companies Act, 1956, there are traces of four forms of management, working very similar at time, and soon after the Act, it was felt that in a single company there was no room for the existence of more than one category, cases were found where managing agent and managing director were appointed in the same company simultaneously. Section 197A was therefore, inserted in the Act, 1960 prohibiting such appointments, a corollary to section 198 placing a limit on the cost of management.

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

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

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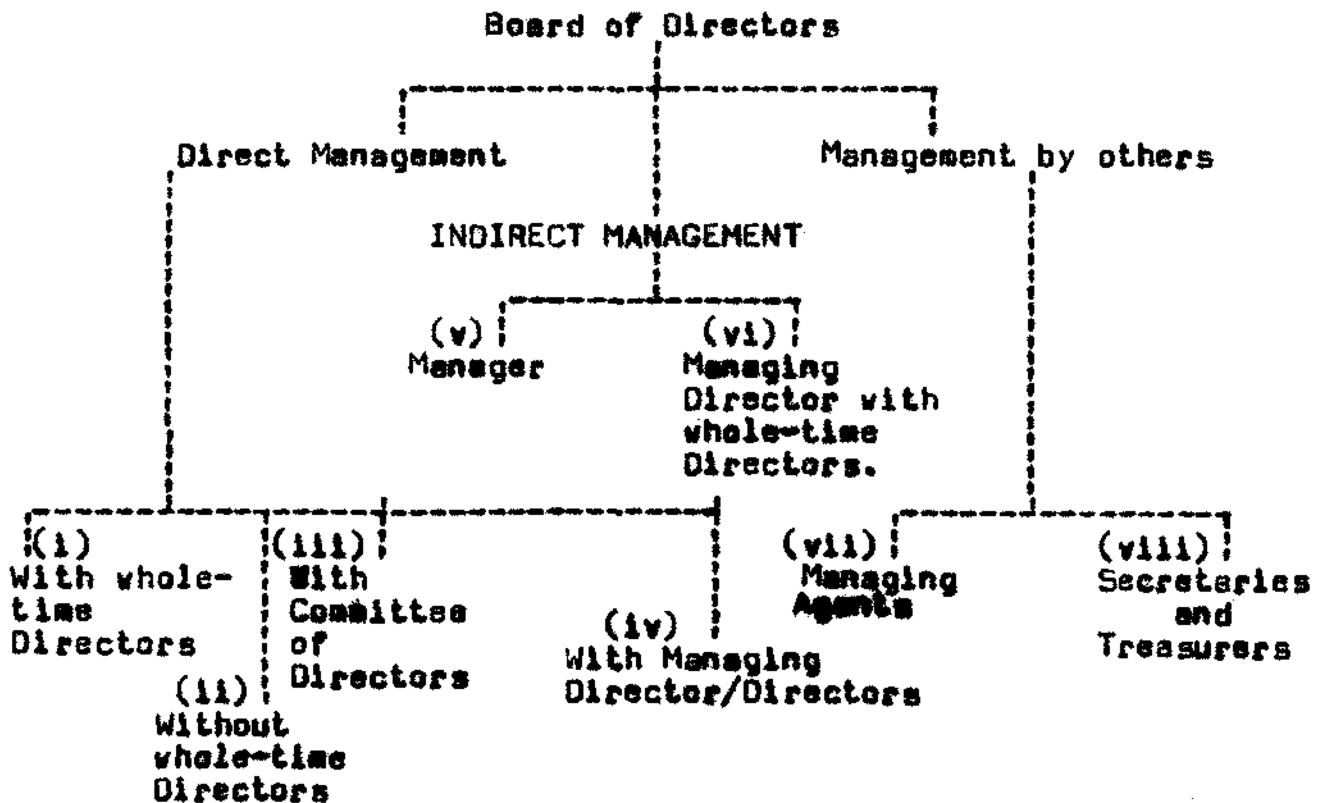
64. Sengupta Dr. N.K. changing patterns of Corporate Management, Vikash Publishing House Pvt. Ltd., New Delhi, 2nd Edn., 1983, PP 63-64.

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

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

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



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

2.9 Measures under Companies Act 1956 to decentralise economic power :

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

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

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65. Mehta M.M., combination - Movement in Indian Industry - A study in the concentration of ownership and Management in Indian Industries, 1952, Tables VIII, IX and X.

66. Sengupta N.K., Changing Patterns of Corporate Management, Vikas Publishing House Pvt. Ltd. New Delhi, 2nd revised edn., 1983, P-66.

Mr. Mehta Made the following inference :

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

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

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

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

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

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

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

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

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

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

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

Number of companies managed by 6 managing agents in selected industries.[68]

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

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

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

Name of the houses	1972	1975	1978	1980	Per annum growth
	In crores of Rs.				
Tata	635	909	1102	1539	9.6
Birla	572	859	1171	1432	12.6
Larsen Toubro	79	138	194	246	16.1
Singhania	121	209	299	413	16.4
Mahindra & Mahindra	56	114	137	186	15.3%
TVs Iyenger	50	102	135	188	17.8
Mode	58	97	135	198	15.1
Hindustan Lever	78	98	157	219	12.4
Top 25 large houses	3360	4838	4636	7200	11.5

Source of information of the above table :

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

By analysing the first table it was become evident that before Companies Act (1956) came into existence, 5 managing agents used to control major industrial companies. According to Dr. Nabagopal Das in the year 1956 the Tatas controlled 32 companies, Birlas over 125 companies, the J.K. Industries group some 50 companies and the Dalmias over 40 companies.[69]

Apart from it, it was found in the survey, made by Mr. Asok Mehta, in the year 1956, that there were 3,728 directorships distributed among 1,103 persons : 61 of these persons held 1038 directorship (an average of 16 per person), while 20 of them hold 805 directorship (an average of 40).[70] The second table indicates the amount of money is at the disposal of the renowned economic groups.

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

2.10 <u>Provisions of the Companies Act, 1956 for the improvement of management practices</u> :

In order to improve the management practices qualitatively

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

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

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

2.11 Government control over appointment of directors etc :

Companies Act, 1956 made provisions so that management of the company is not vested to any undesirable persons who try to fulfil their own interest at the cost of the shareholders and other interested persons. By means of section 293, an attempts have been made to transfer the ultimate authority to the shareholders, and to vest effective authority in day-to-day matters to their elected representatives i.e. the directors for supervision and control of the chief executive for proper

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

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

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

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

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

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

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

2.12. Government Control over Companies for prevention of mismanagement :

In order to control and check oppression and mismanagement, over and above the powers conferred under sections 397, 398, 408 and 490 by virtue of the companies amendment Act, 1974, the Central Government is empowered, interalia, under the Industries (Development and Regulation) Act to take over complete management of an industrial undertaking and intervene in the day-to-day administration. The Companies Act does not indicate the type of directors to be appointed as such or anything about

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

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

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

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

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

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

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

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

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

i) filing to the office of the Registrar of the Companies who shall maintain those records which any shareholder or number of public can see and make copy of them on payment or on request ;

ii) sending to the shareholders of the company who as a matter of right, obtain a relevant information from the Company ;

iii) to be kept by the company for the maintenance of proper books of accounts some of which are open to inspection

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

The Responsible Company Basil Blackwell Oxford.

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

Section 220 deals with procedures, rules and imposition of punishment for default in filing with the Registrar, the balancesheet and profit & loss account duly signed by the authorised persons for the preceding year. Section 159-161 deal with the submission to the office of the Registrar of the Companies an elaborate annual return. Sections 592-594 deal with the matters relating to compulsory submission of certain documents and returns by every branch of a foreign company operating in India to the Registrar of Companies, Delhi, with copies to the Registrar of Companies of the state where the company is located. A company must also furnish statement in the Annual Reports and Accounts, the statement regarding its subsidiary companies pursuent to section 212 (3) and 212 (5) of the Companies Act. It will also furnish statement pursuent to section 217 (2A) of the Companies Act, 1956 read with the Companies (particulars of employees) Rules, 1975. Appendix III contains a list of various documents or notices to be filed with the Registrar of Companies. Section 610 must be considered to be the kingpin of the disclosure provisions in the Indian Company Law. Under the provision of the section any person can inspect any document kept by the Registrar on payment of prescribed fees.

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

companies are scattered in different sections of the Companies Act. These could be brought under single section namely section 610 for simplification of the Companies Act. These are to be prepared in a legible language in simple from so as to serve the purpose of different ingredients of the company.

2.14 Rights of shareholders to receive documents as under :

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

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

Yearly furnishing annual account to the shareholders is too long an interval. A resolution adopted at the All India Shareholders' Conference[73] pleaded for the issue of quarterly progress reports to keep shareholders informed about the working of the companies and for stock exchanges to require companies, whose shares were listed, to provide periodical statements.[74] The Company Law Board is also understood to have decided to introduce the system of quarterly balance sheets in India as

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73. Held in Madras, on 16th April, 1965.
74. The Economic Times, the 17th April, 1965.

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

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

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

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

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

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

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

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

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

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

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

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

2.15 Maintenance of Records by Companies :

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

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78. The interview with Mr. Swaraj Paul on 28.12.1984, reported in the Economic Times, Calcutta, 29.12.84.
79. Op.cit. Calcutta, August 4, 1985.

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

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

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

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

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

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

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

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

2.17 Social responsibility :

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

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

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

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