CHAPTER - VI

TOWARDS NEW STRUCTURE OF COMPANY-MANAGEMENT

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PART - I

6.1 Importance of Board of Directors for management of companies :

The compsition, functions and structure of the Board of Directors differ in different countries even they differ from one company to another company within the same country.

The Company or Corporation when it is incorporated according to the law of the land becomes a legal person with perpetual succession and common seal but seperate and distinct from its members. Like any other judicial person, it can enter into contract, own, acquire, dispose of property, sue and be sued in its own name. Since, in the nature of things a Corporation or Company has no physical existence it can not act on its own, its affairs are required to be looked after by persons of integrity, merit, ability, skill, business acumen with foresightedness for the benefits of the various involved groups such as shareholders, creditors, employees, consumers and the society at large. Such 'persons' are the real agents of the company for its administration and trustees for its properties and called directors. For non-compliance or violation of any of the provisions of the law of the land or for default or for doing things wrongly such 'persons' who come into limelight are held responsible and they are known as the directors or the statutory officers of the company within the purview of section 2(30) of the Companies Act,

1956. "If a Corporation or Company has to function effectively it has to be accountable to the public at large in line with the Gandhian concept which aims to ensure that the public/private property has to be used for the common good."[1] Really, the success and failures of company administration are dependent on the responsibilities performed by the Board of Directors as the whole tasks of management are vested on them.

6.2 <u>Responsibilities of the Board</u> :

The Board of Directors of a company is entrusted with the responsibility of acting in the interest of that company. From the legal point of view, 'company' is for shareholders. But as a social institution, a company is responsible to its employees, customers, suppliers, creditors and society at large apart from its shareholders. Therefore, interest here means the interest of the associated parties connected with the affairs of the company. To do well to all the parties leads to conflict of interests. Consequently, the resources of the company are to be managed in such a way as to ensure not only its survival but also to provide a desired financial gain for distribution purposes. Direction is needed in an enterprise in order to make the activities of the enterprise co-ordinated and purposeful.

In short, the board has got triple functions-direction, management and operation. Direction is concerned with formulation of policies, fulfilment of objectives and evaluation of performance.

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1. Krishnamoorthy S. Article 'Responsibilities of Companies Role of Private Sector,' The Economic Times, Calcutta, August 21st, 1985.

The management is concerned with translating the objectives into tangible plans and operation means actual performance for giving tangible shape of the plans chalk out. In two tier-board-system the policy board is solely concerned with policy making and primarily with objective setting and evaluation, while the executive board's responsibility for strategy delineation is shared with the policy board and corporate planning with the opeating level. The policy, objective setting, strategy delineation and corporate planning are regarded as programming activity of the board while controls and evaluations are known as appraisal activity.

6.3 <u>Structure of Board of Directors</u> :

Generally three types of Board are found (i) Two-Tier Board (ii) Two-Part Board and (iii) Traditional unitary structure Board.

<u>Two-Tier Board</u> :

The principle of two-tier director system has been operating in West Germany, the most advanced capitalist form of economy. In large German Companies there are two boards, one an executive board which has full authority to run a company and a supervisory board which has the power to appoint and dismiss the executive directors and to veto decisions of the executive board of directors. Its primary responsibilities are not to manage the company nor even to direct its long-term policy but to check and report of the executive directors' performance.

In German Company Law the roles of executives and supervisors are formally and legally separated. No member of the executive board can also be a member of its own supervisory board. Supervisory board has also a member who represents the workers of the company and this workers' participation in the ultimate board has worked very successfully in West Germany. "Banks often hold seats on supervisory boards on the strength of shares on behalf of the clients. These representatives take very active interest in the board and often serve as chairman. They have a great influence because very often the banks are also large creditors to the company."[2]

Some critiques are of the opinion that though it proved successful in West Germany yet it is doubtful whether it can work so successfully in other countries where the political set up is different.

Two-Part Board :

The most important feature of this system is that the policy board and executive board have equal status and have a joint legal responsibility and operate as two parts of the same board. A diagram of this has been shown by Prof. Samuel Eilon in his book ('Aspect of Management) as follows[3] :

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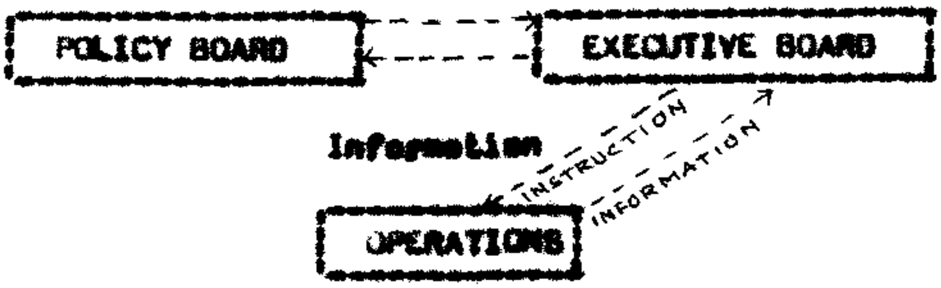
2. Sengupta Dr. N.K. 'Changing Patterns of Corporate Management' Vikash Publishing House Pvt. Ltd. New Delhi, 2nd Edn. 1983, P-275.

3. Eilon Samuel 'Aspects of Management', Pergamon Press, Oxford, 1st. Edn. 1977, P-15.

FIGURE No.3

Direction



TWO-TIER BOARD

This type of management is followed by many European Countries, such as France, Italy, Holand etc.

Traditional Unitary Structure Board :

The traditional board consists of the Chairman, the managing director (chief executive), heads of perating divisions, heads of functions (such as finance, personnel, marketing, production, administration), and some non-executive directors. Most of the full time directors have got the dual role - as directors of the enterprise, they are responsible for the company as a whole for its long term stability and better performance; and as head of operating units they are to act as representatives of their departments and look after their sectional interest and often to be concerned with the short-term benefits. This dual role sometimes leads to conflicts of interest.

There are difficulties of overlaping power in traditional, two-tier as well as two-part board. As the managing director is the only common member in later two type of boards, there is danger of inadequate and biased information flow between two boards and may result in some mutual distrust.

These difficulties can be overcome in two ways - first through appropriate procedures such as joint meeting of the two boards to approve annual accounts etc., in such a joint meeting, minutes and other documents of the executive board being circulated to all the members of the policy board and making representation of the members of the executive board at the meeting of the policy board and secondly, with increase joint membership. All these measures are designed to prove a harmonious relationship between the two boards and at the same time to emphasize that each has its own role to play.

There have been much controversy about inclusion of non-executive directors in the board. But, in our opinion, they can play a very important role by making valuable contributions for the management of the company by reason of their wider knowledge and experience gathered from outside.

6.4 Structure of Board of Directors in India as found in our emperical study :

In India, the system of unitary structure of board is usually followed. Legally, the board is the trustee of the shareholders and all the members of the board are the representatives of the shareholders. In our emperical study of 75 companies it has been seen that most of the companies are managed by the board with managing director (80%), 8% of the companies are managed by the board only and 16% by the two-tier board. There is no trace of workers/Employees' representatives in the board.

Out of the 75 companies, there is only one company where there is one peoples' representative. 75 companies as reviewed by us having 721 directors out of which 82 (i.e. only 11.28%) are nominated by the Government or public financial institutions. (Details are in the next chapter)

6.5 Functions of Board of Directors in India :

Board of directors in Indian Companies is principal management organ of the company. The management of the affairs of the company is vested with the board of directors and all powers excepting those which are specifically reserved for the general meetings by the Act or the Articles or memorandum of association or otherwise must now be done by the board of directors (section 291 of the Co. Act, 1956). Every company must have directors and it is no longer possible to have shareholder-managed-companies (section 252). The powers are, however, not conferred on directors individually but are vested in the board of directors collectively and the board must as a general rule act in boards' meetings. The company is entitled to the benefit of the collective wisdom of the board of directors. The board must meet at least once in every three calendar months (Section 285). The board may, however pass resolutions by circulations provided the draft resolution is being circulated with the necessary papers to all directors or all members of the committee and being approved by the directors. The number approving shall not be less than the quorum required (Section 289). To constitute a valid meeting of board of directors it is necessary that notice of the meeting shall be given in writing to every director for the time being in India and that a quorum be present (Sections 286 and 287). Certain powers of the board of directors can only be exercised by resolutions passed at meetings of the board, namely, power to make calls on shares, power to issue debentures, power to invest funds of the company, power to make loans etc. (Section 292). Board of directors of public company or of a private company which is subsidiary of public company cannot, except with the consent of such company in a general meeting, execute to sell, lease or dispose of the whole or substantially the whole of the undertaking of the company, remit or give time for repayment of any debt due by a director, invest otherwise than in trust securities, etc. borrow money in excess of the aggregate paid up capital and free reserves etc. (section 293).

Though the above are the functions of the board of directors, at present many are of opinion that they have become just like rubber stamp.

In this connection we can mention the statement of an expert western executive Sir Leslie Smith. According to him the board is not a rubber stamp. The ultimate responsibility in the success or failure of a company, or for that matter even minor incidents of loss or an accident, lies with its board of directors. Making his view clear during a lecture on the 'Role of the Board' at the Bengal Chamber of Commerce and industry at Calcutta on January 1985, Sir Leslie Smith said there can be no question of passing the bulk downwards. With this objective in view it should periodically and thoroughly review the performance of the company. In this connection he mentioned the role of nominee directors, which he said should not be reviewed in isolation but in the totality of the interest of the company. It should be their duty to impart their special skills towards this end. He told that the board should not have any sectional representation. On the positive side he said that it is the duty of the board to direct the affairs of the company on the strength of its collective judgement. To ensure the wisdom of the collectivity, it is important that the members of the board are carefully chosen. First and foremost, a board should have a knowledge of the company's business as also the financial resources of the company. It should have a long and good rapport with the senior management and a touch or feel of the social and economic milieu of the workers. In his company, the British Oxygen Company group, he said it was the practice of sending the directors regularly to visit the factories. Whether one is a full or part time director it was incumbent upon him to bring his special expertise to benefit the company.[4]

The above statement by an experienced and expert executive bears sufficient truth to make the 'board' effective but conditions prevailing in India is different from that of the UK and the USA in many respect.

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4. The Telegraph, Calcutta, the 28th January, 1985.

6.6 Recommendation to adopt proportional representation for the appointment of directors :

Section 265 of the Companies Act 1956 provides that notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two thirds of the total number of the directors of a public company or of a private company which is subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in, in accordance with the provisions mutatis and mutandis, of section 262.

6.7 Ineffectiveness of the Board of Directors of the Companies in India :

In India, according to Companies Act, 1955, the board is the supreme policy - making as well as executive body. "But there is still a long way to go before this becomes a fact in the great majority of the larger public limited companies. A study of the working of the boards in some typical companies supports the belief that many of them do not really manage the operations of the companies concerned and are just dummies created by rubber-stamp resolutions dictated by either a dominant chief executive or a powerful inside managerial group, or by prominent shareholders (after controlling the company with a minority interest). In their eyes the board is a necessary nuisance which exists solely because the laws says it should."[5]

Observation in this respect made by Peter Drucker is relevant to mention which is in fact true to Indian condition.

In reality, the board as conceived by the law-maker is at best a tired fiction. It is perhaps not too much to say that it has become a shadow king. In most of the large companies, it has in effect been deposed and its place taken by executive management. This may have been achieved in the form of 'inside' board, that is one composed exclusively of executive management men who meet the first Monday in every month to supervise and to approve what they themselves have been doing in other twenty nine days of the month. Or the board may have become a mere showcase, a place to inject distinguished names, without information, influence, or desire for power.[6]

It is a fact that in India still the majority of the large private sector companies are controlled by powerful families or groups resulting a general lack of understanding of a boards' responsibility for the management of a company. Dr. N.K. Sengupta states very clearly the Indian position in this regard in the following words :

"Very often directors look up themselves as just nominees of the controlling group, or of the chief executive, and forget their true role as the company's top executives. Company

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5. Sengupta Dr. 'N.K. Changing Patterns of Corporate Management' Vikas Publishing House Pvt. Ltd., New Delhi, 1983, PP 297-298.

6. Drucker F. Peter, The Practice of Management, Reprinted with corrections 1969, Heinemann:London, P-178.

officials all too often treat the board as a group of advisers, or a body whose only utility lies in public or shareholder relations. In other words, the general impression is that a board is an ornamental body to be put up with. These attitudes have to be changed before our corporate boards can rise to the position which the law has assigned to them. Once these attitudes change other steps to make boards effective will automatically follow."[7]

But the question is how can this attitude be changed? Our proposal is that this can be done by making structural components of the formation of board. The board should be composed of all the ingredients who form the company. The very idea that 'a company is a social organisation, beneficial to the society at large' must be developed. The representatives of the board if come from different angles to represent different interests, then the general observation of the boards' function as 'managing the company' or 'acting as trustees for the money and interests of the shareholders and of the Corporations' would change. The concept of trusteeship - "Directors are trustees for all ingredients including the society" might be achieved.

It is high time to find out some process in order to make the board effective, dynamic, sensible, innovative and responsive. In this respect it is worthmentioning the statement made by Sri Arabinda Ray, former Managing Director, Warren Tea

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7. Op.cit. Sengupta Dr. N.K. "Changing Patterns of Corporate Management", P-298.

Ltd., Calcutta in his article "Board of Directors", "Indian Boards are essentially controlled from outside."[8]

As a measure to make the Board effective he argues : "If Board in India have to fulfil their role in the same way as Boards of fully professionally managed companies do elsewhere, not only will non-executive directors have to be paid adequately for their labour and counsel but more important than that, shareholding needs to be widely diffused. Until that happens, the Board will tend to be the endorsing body for a particular, if controlling group's desires. Unless financial institutions exercise their rights and send in a panel of hand-picked seasoned businessmen to various Boards and brief them periodically, this will not happen easily. With the implementation of the Foreign Exchange Regulation Act (FERA) in India and the launching of Government action through enactments of its sort elsewhere and the wide dispersion of national public shareholding by Government directive. We are moving towards this desirable objective of professionally managed companies in the true sense. Once a process like this has been started on a wide scale, it will continue to move in that direction."[9]

<u>The same author recommended that</u> :

a) a board must be autonomous,

b) the post of Chairman is important as he must take it upon his shoulders to make the Board work as a team,

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8. Ray Arabinda, Board of Directors : A critique in the Book Board of Directors in India : Their Status Dynamics edited by S.K. Chakraborty, All India Management Association, Management House, New Delhi, Ist. Edn., 1983, P-287.

9. Ibid. Ray Arabinda, 1983, PP 287-288.

c) the Board must devote themselves for policy making leaving the routine work,

d) management association to be created to have a self-respecting professional management in India.

The functions of the board are expected to be performed properly and effectively if the scientific structure of management is formulated. If the structure of the board is organised on functional lines it will generate immense help to the executive management of the Corporation. The size and complexities of the company are increasing day by day. The continued demand by the labour force to participate in capital as well as in management can no longer be avoided as the constitution of India has given guarantee for the workers' participation in management. Apart from it, the banks and financial institutions have become major stock-holder of the most of the companies in India. The public institutions want to take a more direct interest in the active functioning of the boards of companies in which they have invested money. They are interested to ensure that the right kind of competent professional men are adequately represented on these boards. The Government, as the only recognised body to represent customers, suppliers and also to uphold public interest has come forward to represent the board. There is no single company in India which have not borrowed money from nationalised banks. They are required to send their nominees to the board in which they have granted loans.

In the future, by the process of evolution, the board of the company shall be composed of the representatives of all these interests involved with the affairs of the companies. These are the signs of healthy growth of the corporate system which will bound to take place in the near future.

In the next part we shall try to discuss official joint sector frorm of management and development of joint sector concept as enuciated by Dr. L.C. Gupta, Director of Research, Institute for Financial Management of Research, Madras (1974).

PART - II

6.8 Official Joint Sector form of management :

'Joint Sector' is a 'mile-stone' towards ideal form of company management i.e. 'Multiple Two-Tier Board'. This concept as a new management structure shot into prominence around 1969-70. The number of such projects had been few at the initial stage. Air India started as a joint sector, Bolani ores was also a Joint plan to invest in the State. Some experimental joint sectors have been working very successfully in India. Featurers of their capital and management structure are noticeable as follows :

a) the participating financial institutions are taking part in management;

b) the participating financial institutions extend to general control over the composition of the board;

c) they are sending proportionate representations to the board at least in some cases;

d) their control extends to the selection and remuneation of all top managerial and technical executives.

Names of some of the joint sectors in India are mentioned here :

a) The Southern Petrochemical Industries Corporation Limited : It is a 'joint sector' project of Tamil Nadu Government having project cost estimated at Rs.71.1 crores floated in February 1972.

b) <u>The [illegible] Chemical and Fertilizers Limited</u> :

It is also a large joint sector project with institutional participation floated in 1972 having project cost estimated to be Rs.57.50 crores.

c) <u>The Punjab Tractor Limited</u> :

It is an illustration of small sized joint sector, floated in the year 1972 with estimated project cost of Rs. 3.7 crores, promoted by the state owned Punjab Industrial Development Corporation Limited holding not less than 51 per cent of its capital. The board of directors is constituted with 8 members, 4 are nominees of the State Government.

d) <u>Punjab Breweries Limited</u> :

By participating in not less than 51 per cent equity by the Punjab State Government (through the Punjab State Industrial Development Corporation Limited) 24% by the private sector partner (East India Hotels Limited) and balance 25 per cent by the general public, this joint sector floated in the year 1973.

e) <u>The Modi Rubber Limited</u> :

Though it was floated in 1972 as a private sector enterprise institutional participation in its management is considerable. The IDBI, IFC, ICICI, LIC and UTI have right to nominate upto three directors so long as any portion of their loan/debentures remains outstanding or so long as they had shares as a result of underwriting. The U.P.State

Industrial Corporation Limited (wholly owned by the Uttar Pradesh State Government) will have the right to nominate upto two directors so long as it holds any share as a result of its underwriting.

Other examples of successful Joint Sector enterprises are the Gujarat State Fertiliser Corporation and the Gujarat Narmada Fertiliser Corporation. In the year 1985, Bihar Government launched successfully four joint sector projects. In West Bengal, State Government, in order to accelerate the economic growth of the State chose as a matter of policy the system of joint sector project for Haldia Petrochemical and Salt Lake Electronics Complex which has become a matter of hot discussion and gained special importance because of the left character of the State Government which is mentioned here :

Haldia Petrochemicals Project :

West Bengal Industrial Development Corporation (WBIDC) obtained a letter of indent for a petro-chemical Complex at Haldia in the district of Midnapore, West Bengal. An agreement was singed in Calcutta on 23rd May, 1985 between WBIDC and Mr. R.P. Goenka and his son, Mr. Sanjeev Goenka of the Duncans Group for setting up the project in the joint sector. The equity sharing in the company, which is to be formed soon would be as per the usual norms, whereby WBIDC would hold 26 per cent, the Goenkas 25 per cent and the rest would be offered to the public. The estimated cost of the proposed project has been scaled down to Rs.645 crores from the earlier assessment of Rs.833 crores. Very recent bulletin published by Mr. R.P. Goenka dated the Ist. November 1988 which states that the estimated Project Cost of well over Rs.1200 crores makes HPL the single biggest joint sector investment in India. The project has already made considerable progress.

<u>Board of Director consists of with the following members</u> :

P.C. BANERJI, Chairman (Chairman, West Bengal Industrial Development Corporation)

R.P. GOENKA, industrialist

T.S. BROCA IAS (Secretary, Commerce and Industries Department, Government of West Bengal)

P.K. SARKAR IAS (Secretary, Finance Department, Government of West Bengal).

S.DUTTA IAS (Executive Director, West Bengal Industrial Development Corporation)

V.G. RAJADHYAKSHA (Formerly Chairman, Hindustan Lever Limited and Member, Planning Commission)

President
A.J.A. TAURO (Formerly Chairman, Indian Oil Corporation)

Prof. Nirmal Bose, the state commerce and industries minister, told "The Economic Times" (published in the Economic Times, Calcutta, Sunday, June 9, 1985) that West Bengal is a take-off stage for rapid industrial development. The state had already made a break through in the electronics field, while the petro-chemical complex was now a reality. Stating the reasons for joining hands with the Goenka group to set up Haldia Petro-chemicals by West Bengal Indüstrial Development Corporation, Chief Minister said "I did not take even a half minute to make up my mind when Mr. R.P. Goenka met me with the proposal to implement the petro-chemical complex. I do not want my State to turn into desert" the Chief Minister pointed out.

Representatives of the large foreign multi-national Corporations have already met the Chief Minister of West Bengal to form many joint sector projects in West Bengal.

Left Front Government initially depended to the maximum on the premise that encouragement should be given to public sector projects. But the State Government did not make much headway in this respect because the State Government had no additional money to expand public sector undertakings.

Minister-in-Charge of Industries Prof. Nirmal Bose said "we found no alternative but to encourage private sector to come forward" in joint venture with State Government. He asserted that there is no objection if monopoly houses and multinational Companies come forward in the joint venture project.

The Industrial Licensing Policy Inquiry Committee (Dutt Committee) in its report (1969) recommended that wherever public financial institutions had provided substantial financial assistance to a private sector company, they should consider converting the loan into equity and should also take active interest in the management of the undertaking so as to develop it as a joint undertaking. This was accepted by the industrial licensing policy of 1970 and afterwards it was taken as Industrial Policy of 1973.

Shri J.R.D. Tata's speech at the annual General Meeting of TISCO on 4th July, 1972 stated "Considering that directly or indirectly the Government already control 40 per cent of the voting rights in the Company, it is clear that any appreciable increase in their shareholding would automatically convert the steel company into a 'Government Company' as defined in Companies Act and into a joint sector company under any possible definition of the joint sector about which we hear so much today.[10]

Naturally according to Dr. N.K. Sengupta "Private Industry viewed it as a ruse for back-door nationalisation. Coversely, leftist opinion and certain sections viewed it as a thin end of the wedge by which large houses will re-enter the Industrial scene in a big way and defeat Governments' anti-concentration policy." He concludes by stating that "clearly joint sector is no magic wand. But it could have been and can still be developed as a very useful and effective form of management, wherever Government has substantial, if not majority, financial interest.[11]

<u>Main loopholes of the joint sector are the following</u> :

a) In the method of management there is no provision for workers' participation in management;

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10. Shri J.R.D. Tatas' speech at the annual general meeting of TISCO on 4th July, 1972.

11. Sengupta Dr. N.K. Changing Pattern & Corporate Management Vikash Publishing Pvt. Ltd., New Delhi, P-284.

b) there is no provisions also for Government's nominee to the board to represent the consumers, suppliers and to uphold public interest;

c) there is no system of bank's representation to the board as authorised by the dispersed shareholders;

d) sharing of capital and participating nominees are made in arbitrary manner. Proportionate participation in board in relation to capital is not followed in all joint sector projects.

6.9 Development of the idea of Joint Sector Movement :

Dr. L.C. Gupta, Director of Research, Institute for Financial Management & Research, Madras in his famous book 'Corporate Management and Accountability Towards A Joint Sector' (1974) developed the idea of Joint Sector Movement in India. Defining the meaning of 'Joint Sector' he states "The term Joint Sector" is applied to an undertaking when both its ownership and control (which should be distinguished from day-to-day management) are effectively shared between public sector agencies on the one hand and the private group on the other. It is a total misconception to suppose that the joint sector idea implies a combination of public ownership and private management. The basic idea underlying the concept is a combination of joint ownership, joint control and professional management."[12]

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12. Gupta Dr. L.C. 'Corporate Management and Accountability: A Joint Sector, 'Macmillan, published on behalf of Institute for Financial Management and Research, Madras, 1974, P-1.

The joint sector idea was strongly advocated by the Industrial Licensing Policy Inquiry Committee popularly known as the Dutt Committee which observes.

"The 'Joint Sector' would in our view, include units in which both public and private investment has taken place and where the state takes an active part in direction and control."[13]

It may be mentioned here that Dr. Gupta's idea of Joint Sector is quite different from the Dutt Committee's recommendations of Joint Sector on the following points :

i) Dutt Committee had never the slightest thought that the joint sector could possibly be superior not only to the private corporate system, but also to a direct state-ownership of industry. Dr. Gupta's idea of joint sector as an organisational reform for the large business enterprises, can be considered as much a substitute for the public sector as for the private corporate system.

ii) Dutt Committee emphasized the idea that financial assistance and equity-holdings should not be normally used by the state and the public financial institutions for appropriate participation in the private sector concerns so assisted, needed to be firmly set aside. While Dr. Gupta's support of substitution and justification for

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13. Industrial Licensing Policy Inquiry Committee's (Dutt Committee) Main Report, Government of India, New Delhi, 1969.

the joint sector vis-a-vis the private sector is derived basically from the problem of economic power and accountability the case for the joint sector vis-a-vis the public sector rests mainly on the need to secure profitable operation.

iii) Government of India's thinking, the 'joint sector' as a formal concept, applies to new projects only. An arbitrary formula has also been laid down prescribing the respective percentages of equity capital to be held by each of the parties to a joint sector unit, the formula being : 26 per cent to be held by the Government or its agencies (generally the state industrial development Corporations), 25 per cent by the private collaborating group, and 49 per cent by the public. However, the percentage of share holdings may be flexible. Dr. Gupta advocates the proportional representation for public or institutional shareholdings. Parallel to the policy of setting up new projects as joint sector units, and standing somewhat in isolation from it, is the policy of making all public financial institutions to participate actively in the control and management of concerns assisted by them. In order to further such participation, a general policy has been adopted under which lending institutions must receive an option to convert a part of their loans into equity shares.

The two ideas - the 'joint sector' and institutional participation in managerial control - have a common element and a common aim and should, therefore, be viewed together. The official thinking on the problem has remined somewhat piecemeal and the two ideas have not been properly integrated into a coherent official policy. Further, there is no clear appreciation of the implications of these policies for operational management, nor is there clarity about the aims to be achieved.[14]

Therefore, Dr. Gupta's joint sector means the public shareholding and institutional shareholding jointly and management of the Corporation is vested to the private and institutional nominees. According to Dr. Gupta, if joint sector system of management could be introduced then control of group of family could be checked, shareholders' democracy, could be established, Governmental control will be minimised and defects of private sector i.e. evasion of tax, concentrating the activities of management for self interest as well as the demerits of public sector in bureaucratic system of management such as pro-castination, nepotism, red-tapism, strong headed administration etc. could be eliminated.

8.10 <u>Multiple Two-Tier Board System of Management is more progressive in outlook than Joint Sector Management as envisaged by Dr. L.C. Gupta</u> :

Our idea of Multiple Two-Tier Board is a development of Joint Sector Management system as envisaged by Dr. Gupta. Under

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14. Op.cit. Gupta Dr. L.C. 1974, P-3.

this system not only institutional shareholding and proportional representation have been given emphasis, the workers/employees' participation in management, Governmental participation through nominees to represent the customer, supplier and society at large have been given due consideration. Government's participation is necessary because it is the only recognised institution having power to represent all sections of people of a country. As such, we suggest that board of management of corporate sector should consist of (Policy Board) with heterogeneous elements and through proportionate representation of shareholders and financial institutions. The chairman of the Policy Board who will be always from amongst the Government nominees and be responsible to bring in homogeneity that should prevail in any board. The acceptance of the spirit of proportional representation is pre-condition to bring in any change in the structure of company management, curtailment of the power of the group or family management and democratisation in company management and subserve the interest of the shareholders and other ingredients of the company. In the name of complete homogeneity, boards of directors should not become rubber stamps of what the managing or the executive director says or does. With a chairman, possessing both ability and integrity, it should not be difficult to produce homogeneity and at the same time get the benefit of the different points of view on the functioning of an industrial units and plans for its expansion and diversification. Reciprocal interests of the participants in the board will run the company for better result.

Another point of difference between our suggested format of corporate management structure and so called joint sector view is that by direct participation by Government, banks 'representatives, workers/employees' representatives apart from shareholders and financial institutional proportionate representatives, would bring a closer relationship between Government and business and tense relationship that prevails due to misunderstanding can be minimised. A good relation between the management and trade union would help to bring in industrial peace and security. Company shall be able to get long term finance from financial institutions and short term finance for working capital from banks.

As the Policy Board will be composed of different elements, any plan or project will be discussed with pros and cons and an intelligent, judicious, relevant decisions is expected to be taken by the board. There will be a system of check and balance in corporate Government.

The executive board on the other hand will be composed of internal professional employees who will meet once or twice a week and perform their duties under the direct supervision of Managing Director.

It is to be remembered that nominees of the Government or financial institutions may be 50 per cent from outside experts and 50 per cent from the Government employees or employees of the financial institutions, Government and Bank may employ professional experts to depute nominees to the companies.

6.11 Structure of Proposed Board of Directors under Multiple (Two-Tier) Board System of Management :

Policy Board :

If we suppose that the policy board is constituted with 12 members, then members representing different ingredients are suggested to be appointed in the following manner :

1) 1/3 of the strength of the board i.e. 4 in number to be the representatives of workers/employees, duly elected by them.

2) 1 member is to be nominated by the Central Government and 1 by the State Government in the State where the company is situated, to represent customer, suppliers, creditors to uphold public interest.

3) 1 member of the board will be the representative of the Bank.

4) Say for example, the said company has issued 100,000 Equity Shares, out of which 40,000 are held by Financial Institutions and 60,000 are held by the public.

5) In such a case proportional representation of shareholders' representatives of the Financial Institutions and public will be 2 and 3 respectively.

6) The chairman of this board must be from amongst the representatives of the Government Bank or Financial Institutions. The Managing Director shall be from amongst the representatives of the public, company (holder of share) etc. Both these officers are to be elected by all the members of the Board.

Executive Board :

Similarly if we suppose that the executive board is constituted with 10 members then the composition is suggested to be as follows :

1) Managing Director of the Company will be one of the members of this board and for his position he will be the president of the board.

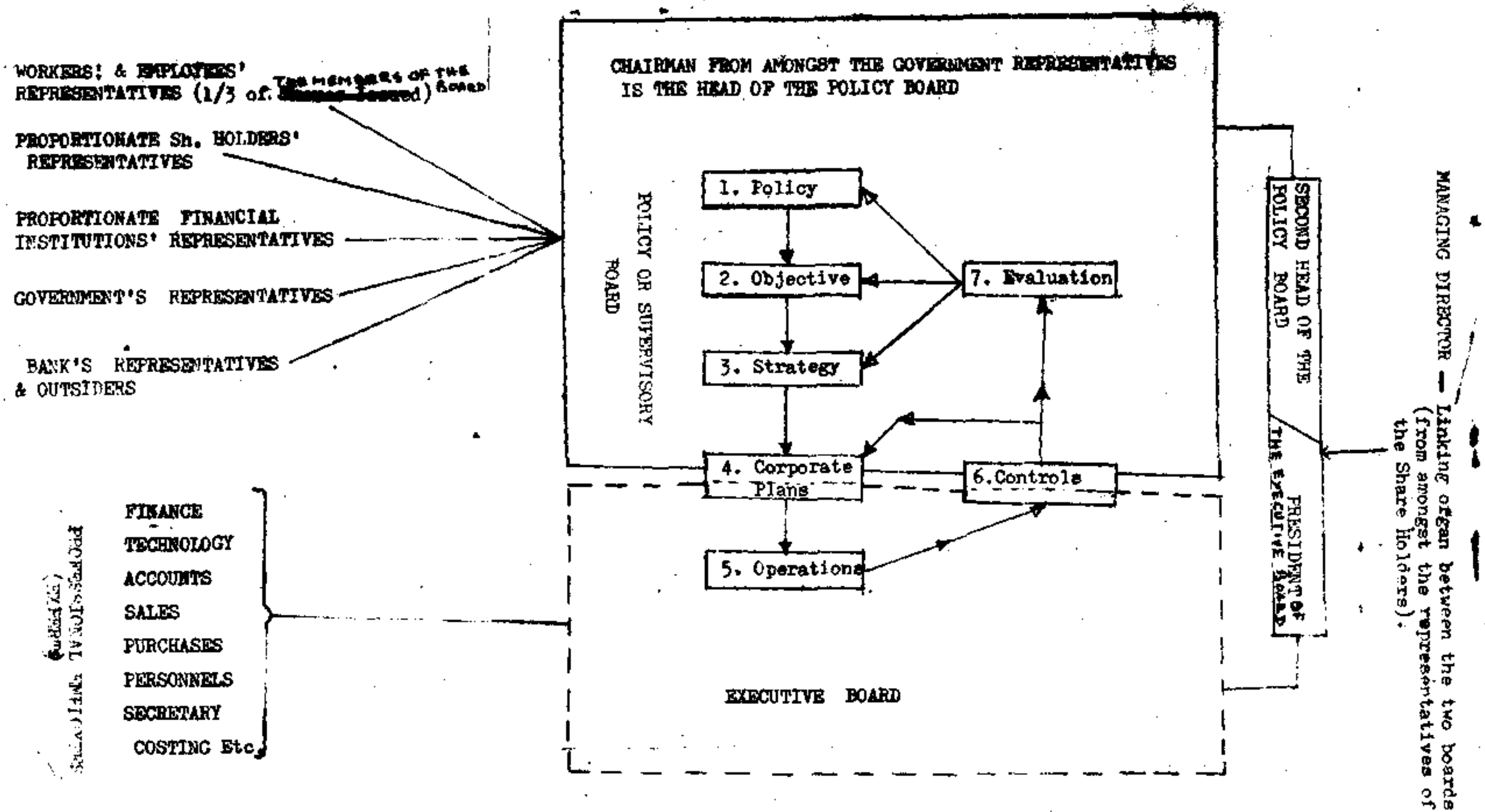
2) Other 9 members are to be selected by the Policy Board from amongst the professional employees, possibly heads of different departments.

6.12 Definition of Multiple Two-Tier Board :

According to this system of management a company is regarded as a social institution, a most important means for all round development of the country. As such, Multiple Two-Tier Board may be defined as a technique of management of a company by two boards - Policy Board, constituted with the representatives of different constituents forming a company, being innovative, responsive, effective and rational to serve their interest and uphold public interest, mainly engaged in formulating broad policy and strategy; the second board known as Executive Board constituted with professional employees who are expected to exert their full capabilities for the proper and effective execution of the policies and strategies undertaken by the Policy Board. Professionalisation, managerialism, proportionate representation on the basis of shareholding, bank's and Governmental representation to the policy board, introduction of modern technology and above all culmination of benevolent self interest with an outlook of national interest and public welfare are some of the conditions for its success. The chairman being a person possessing superb personality is placed in central position of the Policy Board while Managing Director serving as a linkman between Policy Board and Executive Board will be ex-officio president of the Executive Board.

The proposed format is shown in Figure ... 4, the details of which is given in Part III.

PROPOSED STRUCTURE OF MULTIPLE TWO-TIER BOARD



PROPOSED STRUCTURE OF COMPANY BOARD

Figure 4

PART - III

6.13 Multiple Two-Tier Board : Suggested Format of the Structure of Company Management in India :

We shall start this part by mentioning the statement of George Goyder, one of the best known exponents of the concept of 'trusteeship' idea : "Industry in the twentieth century can no longer be regarded as a private management for enriching shareholders. It has become a joint enterprise in which workers, management, consumers, the locality, Government and trade union officials all play a part. If the system which we know by the name of private enterprise is to continue, some way must be found to embrace the many interests which go to make up industry, such as that between the workers and shareholders, is at present being resolved by hit-or-miss methods; by strike, negotiation and compromise, leading to a further process in the same order, and so on 'ad infinitum'. The alternative is to create a structure in industry which recognises each of the parties as having certain definite rights (with their corresponding responsibilities) legal constitution of the single company, in such a way that the tension in industry may become capable of resolution at the board room table of the individual enterprise. But, before this is possible must be first discovered in industry, a basis of justice upon which to raise the structure of the company which determines its formal responsibilities to the party to industry, we must examine the legal structure of the limited liability company and see to what extent it is capable of adaptation make possible full co-operation between the parties to industry on a basis of justice."[15]

We are to find out certain new structure of company management which will include the best experiences from different countries, well suited to our environment and tradition but within the frame work of our constitution so that board of directors of Indian Companies can be effective, responsive, sensible and innovative to take the responsibilities of national development which are expected from them.

An ideal format for the structure of company management is to be created which will be in the line of two-tier board of management. The first board may be termed as POLICY BOARD and second board as EXECUTIVE BOARD. POLICY BOARD will be constituted with the proportionate representatives of the shareholders and financial institutions (as financial institutions, at present hold a substantial portion of equity shares in most of the large companies). There should be also one or two Government representative/representatives to look after the interest of the consumer, suppliers and society at large. Preamble of our constitution itself declares that the aim of the state among other things is to secure to all citizens social and economic justice. The Directive Principles of State Policy relating to social and economic matters (Articles 38, 39, 41-43 and 43A discarded the old doctrine of laissez

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15. George Goyder. The Future of Private Enterprise. Basil Black-well, Oxford, 1954, PP 73-74.

fair and established the right of Government to regulate and control private business in a drastic manner. These representatives will be over and above as permissible under present statutes either for sanctioning loan or under the specific provisions of some other statute like Industries (Development and Regulation) Act, 1974 (the Central Government is empowered to appoint any number of directors in a company to protect public interest) or according to section 408 of the Companies Act, 1956 to check oppression and mismanagement.

There should be also the system of inclusion of banks' representatives to the board. Provisions should be made so that small investors in share capital could deposit their shares in the banks and authorise them to represent to the board. In order to stop the ugly blank proxy battle, the german system of Bank's representative to the board is expected to play a vital role in company management. Apart from it, a company is always dependent on banks for its working capital. The representative being proximity with the management if convinced and satisfied will meet the financial requirements immediately.

There will also be workers' participation in management as the Article 43A of our constitution has provided as such.

The Sachar Committee (a high powered Committee appointed by the Government of India) Report (1978) recommended for 'workers' participation on the Board level in every company which employ 1000 or more workers as defined in the Industrial Disputes Act, 1947, provided 51 per cent of the workmen decide in its favour by secret ballot. Those who are against it, argue that the demand for such representation does not appear to be strong and that the trade unions are, in fact, against it. They are afraid of the fact that homogeneity of boards meeting could not be maintained. On the other hand, the fact remains that most of the continental countries have provided for employee-participation at all levels of company management very successfully. Being fully in agreement with the recommendation regarding workers' participation in management and capital, we suggest that one third of the board's members should be workers' representatives.

There is no doubt of the fact that a certain degree of genuine workers' participation with top management will be helpful in promoting greater productivity and ensuring better motivation and bring about industrial peace.

In the board, the need for some outside 'professional directors' in the private corporate sector has steadily grown in recent times. They come from a mixed bag of professionals, veteran companymen or industrialists and retired Government company officials, bankers or officials of the financial institutions. The professional director should be able to distinguish between routine matters and strategic matters, and concentrate his limited time and energy on the latter. He is also required to watch the functioning of the board and to propose through the chairman such changes as he considers necessary. Along with the other members of the board, he shares the responsibility of framing the corporate objectives and policies including long range planning, their implementation, and performance-rivew through reporting and monitoring, and of anticipating and initiating changes wherever the environment needs it. It therefore, appears that outside directors properly selected from the right kind of people can strengthen corporate management. Still there is a great controversy as regards the real effectiveness in company management on inclusion of directors from outside. Peter Drucker gave a solution to the problem of the issue of inside and outside directors. He has questioned the wisdom of excluding outsiders completely from the board. His agrument is that the board is essentially not an organ of action except in crisis, but of review, appraisal and appeal, and it is therefore necessary that it should contain as members persons from outside who are detached from operations, "who can look critically at the profit planning of the company, its capital investment policy, its managed expenditure budget."[16] He therefore urges that the board should consist of "persons the bulk of whom have never served as full time officers of the company, who are likely to see things differently, to disagree and to question-especially to question the assumption on which the chief executive team acts without, usually, knowing that

16. Peter F. Drucker, Practice of Management, 1969 edn. Heinemann : London, P-176.

it is making them. To obtain real benefit from the Board its membership must be carefully selected and to get the right kind of people that company needs, board membership will have to be made financially attractive.'[17] The opportunity of inclusion of outside directors in the board of Indian companies has increased as financial institutions can nominate such directors.

We also suggest that in the management of companies in our country, introduction of two-tier board is essential, due to "the gradual erosion of the Board of Directors as a functioning organ of the enterprise."[18] The study team of the Administrative Reform-Commission on the Company Law Administration also suggested the possibility of the adoption of this pattern of two-tier boards in Indian Company Law on the German model. This German practice can be said to have reconciled "the professionalisation and growing entrepreneurial role of executives leading to their increasing self-reliance and independence of judgement, with the increasing pressure and control exerted by interested groups such as employees, the state or the reviving force of shareholders"[19] the executive board symbolising the latter. In keeping with the general trend in continental countries, at least some companies in India seems to be moving in the direction of entrusting actual management to groups of employee - directors, at least informally. Guest keen and William have introduced a system of

17. Ibid P.177.
18. Ibid P.175.
19. Companies Beyond Jenkings, PEP, P-51. Quoted by Sengupta Dr. N.K. in his book changing patterns of Corporate Management (1983) P-214.

divisional board with the divisional managing director as distinct from the general board which by the nature of things can not be very much more different from the German supervisory board. A.C.C. also announced in the press on the 17th July, 1985 to be managed by the board acting through the executive committee of the board of directors. Sign of this type of management is also visible in Mahindra & Mahindra Ltd., The Bombay Dyeing Manufacturing Company Ltd., Ashok Leyland Limited and also Tata Iron & Steel Company Limited.

Mr. S.K. Bhattacharyya an eminent author in the subject also supported the introduction of Two-Tier Board in company - management in India in his leading article.[20]

Institutional Nominee :

By the end of the 70s the institutional nominee in the Board of Directors has become an endemic feature in the Corporate management scene. The total number of nominee-directors operating to-day on behalf of the central financial institutions (ISBI, IFCI, LIC, GIC and UTI) will be in the region of 700. But over the years, the nominee directors have emerged as a major instrument for enabling the institutions to protect their interests in the assisted company as also to serve the interest of the company itself. The nominee director can be said to shoulder a triple responsibility, viz. to the company, to the

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20. Bhattacharyya S.K. Article The Two-Tier Board : A response to the current legal and Managerial Dilemmas in the book Board of Directors in India their Statics and Dynamics : All India Management Association, Management House, 14, New Delhi - 110003, edited by S.K. Bhattacharyya 1st Edn. December 1983, P-26.

company's share-holder and to his parent institution.[21] The functions assigned to the nominee directors by the financial institutions under the 1971 guidelines can be summarised as follows :-

1) They should not only safeguard the interests of the institutions, but also serve interest of sound public policy.

2) They should be accountable to the institutions which they represent.

3) They should keep themselves fully acquainted with the affairs of the concern. Without undue interference in day-to-day affairs, they should have constructive suggestions to the management in all important operational matters.

These guidelines contain check-lists for nominee directors covering areas such as financial performance of the company or project execution in physical and financial terms. They also lay down that they should report to the institutions all important matters including those discussed at the board meeting, and any special points which in their opinion call for special attention in course of periodical inspection of the assisted concerns by the financial institutions. Mr. V.V. Gupta in his article 'functioning of Board of Directors : Role of Government Nominee' states that "even in the private sector,

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21. Sengupta Dr. N.K. Changing Pattern of Corporate Management, Vikas Publishing House Pvt. Ltd. New Delhi, 2nd Edn. 1983, PP 221-222.

in certain industries reached a proportion well beyond the capacity of shareholders' equity. Thus started participation either by Government directly or through financial institutions in their equity. With such participation came external control on the affairs of the Companies, invariably in the form of appointment of nominees of the participating agencies on their Boards."[22] He also observes "While they may not influence the working of the companies directly, their presence on the Boards puts the management on notice that their performance is being watched. Though it is expected that he will make in conformity with all the Government's declared policies, in reality, even having only one vote, by his position he gets an advantage which he can use when needed to swing the Board round to his views."[23]

At present, they are expected to take vital decision for or against take-over bids, taking into consideration of national interest as regards pouring of foreign exchange through the non-resident Indians. In the case of DCM/Escorts -VS- Swaraj Paul managing director of Caparo group of British based companies, the financial institutions headed by LIC took a decisive role.

We suggest firstly the representatives of the financial institutions should be on the basis of proportional share right (voting system) in which even if institution's shareholding is

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22. Article by V.R. Gupta, Functioning of Board of Directors: Role of Government Nominee in the Book by S.K. Chakraborty, Board of Directors in India : Their Statics and Dynamics, All India Management Association, Management House, New Delhi - Ist. Edn. December 1983, P-196.

23. Ibid. P-197.

less than 50 per cent they will be able to represent in the Board of directors of the companies in which they have got shares.

At present Government has become the owner of most the financial institutions and shareholding of these institutions becomes more than 50 per cent in private sector companies, though their holding varies from one company to another. This change has come from evolution in a most natural way.

The Executive Board :

The availability of managerial talents for hire and the dependence on employees even at high decision making level is fundamental to any business organisation. The specialised institutions provide trained personnel who can take charge of executive work. In every country in every form of management an executive body is inevitable for successful completion of broad policy taken by the top management body. At present, in India as there are several institutions providing managerial training in different aspect of management, the availability of technical personnel has increased to a substantial extent.

By reviewing the annual reports of the 75 companies (Vide chapter VII) it has been seen that though arrangement by board with Managing Director is popular in India, the two-tier board system is gaining popularity day-by-day.

If the first board is constituted with representatives of different categories of people as suggested by us, then it will be really an effective body for taking concerted decision and overall supervision. But only one Managing Director as executive-in-charge will not be able to discharge the complicated specialised type of activities. Managing Director, no doubt takes the assistance of the expert employees. It will be more effective if these specialised employees who are at the same time professionals are given status of Presidents, Vice-Presidents etc. and included in the executive board for entrusting collective responsibilities.

Over and above, all part-time or full-time directors including managing directors should be liable to retirement by rotation but may be reappointed in accordance with the regulations included in the articles of the company.

The manager, as a salaried executive, is not also an alternative to this. Management by Manager has not been at all popular in India. Out of seventy five companies reviewed by us only one company, Electric Lamp Manufacturing (India) Limited (a subsidiary of Pelco Electronics and Electricals Limited) is managed by a board consisting of 5 directors and with a manager. Therefore, this system should be abolished from India. The High Powered Expert Committee on Company Law and MRTP under the chairmanship of Justice Rajinder Sachar, August 1978, also holds this view. Board might change, affecting the position of the managing director. The extent of changes in the board would react on the functioning of the managing director depending on his status in the company, his relationship with the board, the extent of his interest in the company and his terms of office. One pertinent query in this regard is whether such fundamental changes in the board, liable to disrupt the continuity of management.

The presence of executive board is expected to maintain continuity of the fundamental policies of the company which would unchangeable even though changes occur in the formation of policy board.

6.14 Conditions for the successful operation of multiple tier-tier board :

i) Proportionate Representation by the system of cumulative votes :

Under sections 265 of the Companies, 1956 it is optional. This section is enacted on the recommendation of the joint committee.

This section is intended to enable minority groups among shareholders to have one or more representatives on the Board of Directors (the financial institutions also shall have the right to send their proportionate representatives).

"In the USA proportionate representation by the system of cumulative voting is in vogue in the case of several Trading Corporations. There is no reason why such an equitable way of representing minority interest should not be adopted in the public interest to give representation to minorities on the board of Directors of large companies engaged in the production and distribution of essential commodities. Over and above this system of cumulative voting is simple and workable."[24]

ii) <u>Professionalisation of the company management in the true sense of the term :</u>

Practically the proposed executive board is to be constituted with the employee-professionals who will meet regularly within a short intervals say once, if necessary, two in a week. They will be responsible for the total execution of the outline plan and programme set out by the POLICY BOARD.

The movement towards professionalisation has also been influenced by the growing development of professional and management education in the country. The legislative change in the Companies Act in 1974 providing for the compulsory appointment of a qualified company secretary in every public limited company having paid up capital of Rupees twenty five lakhs or more has now become a statutory obligation as a result of an Act passed by Parliament in 1980. Along with the existing Institute of Chartered Accountants and the Institute of

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24. Ramaiya A, 'Guide to the Companies Act, 10th Edn. 1984 Wadhwa and Company Pvt. Ltd., Nagpur, P-831.

costs and works Accountants, the Institute of Company secretaries should also make avail a large number of qualified professionals for the Indian Corporate Sector. Similarly, the three institutes of management at Ahmedabad, Calcutta and Bangalore and a number of Universities providing management education, are making available an abundant supply of qualified manager.

iii) <u>The growth of a collegiate rather than personal form of management should be encouraged</u> :

The report of the Administrative Reforms Commission also touches upon this controversial issue, whether the growth of a collegiate rather than personal form of management should not be encouraged by business leaders. There seems some force in this matter, as, apart from the professionally controlled foreign companies like Hindusthan Lever or Metal Box, most companies have traditionally viewed the board as the least effective organ, as more an ornate formality than the real top executive and policy making body. A great majority of them are creatures of the chief executive or at least of the controlling group. The management select as directors only those men who are willing to be just a kind of 'rubber stamp'. In such a situation it is difficult to lay down any law about the collegiate executive. The collegiate executive is necessarily a better from of management than one man management in terms of control or efficiency.[25]

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25. Sengupta Dr. N.K. - 'Changing Patterns of Corporate Management' Vikas Publishing House Pvt. Ltd., New Delhi, Edn. 1983.

iv) **Justified role of the nominee directors of the financial institution/Government :**

Government/Financial Institutes' nominee directors should play an effective role with their honest, intelligent and experienced endeavour and perform their duties not only for the betterment of the company but also for the development of the whole society. In future Government and financial institutions should nominate experienced and qualified persons as directors to the boards of the Companies.

v) **Justified role of the chairman and managing director :**

The chairman should be a man of vast experience and superb personality, who with his pleasant personality and behaviour will, not only conduct the meeting of the policy board but also act as an umpire of the debate and bring in homogeneity in diverse elements of the board. There should also be a very efficient Managing Director who will act as a link between the Policy Board and the Executive Board. As an executive head he will be President of the Executive Board and by virtue of his position, he will be regarded as the most effective member of the Policy Board. The policy board will receive operational report and communicate policy to the executive body through him for the proper application and translation into practice the policy and projects formulated by the POLICY BOARD.

vi) <u>Autonomy of the management</u> :

There should be complete 'autonomy' in formulating their own policy and functioning. Government must not interfere with the day-to-day administration of the company. Company will be bound to follow the broad economic principle and industrial policy formulated by the Government. They will also conduct their activities as directed by the Company Law and other relevant laws relating to company management.

Governmental regulation and control of private industries has been a common phenomenon in nearly all the developing countries and some developed countries in the world. But Japan and some other South-East Asian countries, e.g. South Korea, seem to follow a form of control which is a complete and pervasive as anything one can think of, but a control which is administered not through any discretionary case-by-case scrutiny, but through a paternal Mandarin type of administrative guidance and supervision.

"Japanese Government officials believe that business is incapable of making satisfactory decisions by itself and that it is essential for Government to provide guidance and virtually every aspect of operations"[28] Industry accepted this leadership provided by

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28. Hadley, Eleanor M., 'Anti-Trust in Japan', Princeton University Press, 1970, P-390.

the administrative bureaucracy for which there is, however, no legal or statutory basis, but a much stronger base which is provided by a deep sense of national patriotism, a desire which is shared equally by Government and business to bring Japan's economy abreast at the level of European economy measured in per capita income terms.[27]

"Out of discussions between Government and the private enterprise, mutually determined national targets are worked out. Private enterprise pledges to carry these out. Government, on its side, pledges special favours such as subsidies and taxation measures. Mutual consent and bilateral methods obviate the needs for legal compulsion."[28] The result is the emergence of a 'concerted economy' or more picturesquely, the 'Japan Incorporated'. In South Korea and France, Government controls companies through administrative guidance or through the process of indicative planning. These lessons are to be taken in India for elimination of all duplication of work, the stream-lining the administrative process and above all for creating a good relation between companies and the Government.

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27. U.S. Department of Commerce, 'Japan - The Government Business Relationship.' Quoted in the Book, Government and Business in India, by Dasgupta and Sengupta N.K. Allied Book Agency, Calcutta, 1978, P-88.

28. Ministry of International Trade and Industry, Japan : A Discussion of Co-operative Industrial Organisation Quoted in Hadley, Eleanor M. "Anti-Trust in Japan" Princeton University Press 1970, P-398.

vii) Simplification and reduction of corporate tax :

This is essential for the introduction of this method of company administration. Private sector company, try to evade taxes due to high rate of taxes and this is one of the causes of generation of black money.

Government's decision of reduction of corporate tax limit of maximum rate 50% and simplification of tax structure are expected to show good result.

viii) Mahatma Gandhi's concept of Trusteeship should be followed in the management of companies :

S.C. Sen in his famous book 'Company Action in the modern set-up' stated, "There has been a metamorphosis of the Corporation. From private capitalism it is now corporate communism of a non-marxist variety." Increasingly it is being realised that a manager in modern company is not in the position of an owner but in the position of a trustee who has the custody of the company's wealth on behalf of the company's shareholders and also has well defined responsibility towards other interests like the consumers, the workers and the public at large. With these changes the shareholders have been reduced to the position of just a supplier of capital to the company, no longer its owner. One eminent author expounded Gandhiji's philosophy as under : "Neither the shareholders, directors, managing agents, technicians, and the labourers, jointly or severally, not even the state is the absolute owner of any industry. They are all contributors to the working of the industry, and the different kinds of contributors are invested with different functions for the efficient working of the industry. Every one of them must use those power honestly and deligently and take no more from it for personal consumption that what is just and proper under the conditions in which humanity round about him lives."[29]

This indeed is the highest vision to which corporate philosophy has only now started approaching. What Mahatma Gandhi profounded several decades ago is comming to be true to-day. As the corporate management is developing, the concept of Gandhiji becoming more and more true. From this it follows that the company management must keep in view not only the interest of the owners of the capital but also of the workers, consumers and even the community at large.

Absolute poverty is a set of penalising circumstances that severely impair the individual's pursuit of that very potential. It is the direct denial of the benefits of development. During the struggle for freedom of India the leaders made a pledge to the nation. Gandhiji, the father of the nation had no doubt cautioned that the first priority for an independent India must be the removal of poverty. He said "we may not be deceived by the wealth to be seen in the cities of India it comes from the blood of the poorest. I knew village

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29. Mashruwala - Gandhi and Marx, P-78.
Quoted from the book changing pattern of Corporate Management (1983) by Sengupta Dr. N.K., P-288.

economics. I tell you that the pressure from the top crushes those at the bottom. All that is necessary is to get off their backs. The present distress is undoubtedly insufferable. Pauperism must go."[30]

For formulating new structure of company management or chalking out corporate plan, the warning given by Mahatma Gandhi must be remembered.

6.15 Objectives/benefits of suggested Multiple Two-Tier structure of corporate management :

i) Checking the powerful economic-groups holding control over management of the Companies :

The first and foremost object is to reduce the dominancy of family control over most of the large companies. Big, visible and invisible power group/groups by holding nominal amount of controlling shares are capturing the control of the management of the companies and this had created a tremendous problem in the whole economy of India.

Prof. John Kenneth Galbraith stated "so great is their power that the state may be in some measure sub-ownd. But the market in theory remains, though imperfectly, a decisive force. The monopoly presumes profits; what it can make is ultimately subject to the decisions of the consumers as to what to buy or not to buy. Though he pays more

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30. Quoted from Sachar Justice Rajinder - 'Corporate Laws : Effect on the growth of corporate sector', Articles published in Chartered Secretary Vol.XI No.1 January 1981, P.32-37.

than he should to the monopolist, the consumer is still presumably soverign. Big business has undoubtedly becomes bigger, more powerful, more monopolistic, still the anti-trust laws are absolutely indispensible to the traditional imagery of the private corporation."[31]

Famous Writer, namely, Fred R. Harris also gave illustration of corporate power in America.[32] It is equally true in India. In this respect the observation made by Mr. R.K. Hazari is important to mention.

In India, control of even the large companies, is still generally associated with the holding of a substantial block of shares, usually referred to as the controlling block. This has given rise to the phenomenon of a family groups dominating the private industrial sector, a phenomenon which has attracted much comment in recent years. The size of controlling blocks in individual companies varies widely, and in most cases the blocks represent a significant minority ownership only, the minority control being made possible as a result of the dispersal of the remaining shareholders who together own the bulk of the equity."[33]

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31. Galbraith John Kenneth : 'On the Economic image of corporate enterprise,' Articles in the Book-Corporate Power in America - edited by Nader Ralph - Mark J Greenman publishers, New York 1973, P 4-5.

32. Harris R. Red - Article "the politics of corporate power" published in the 'corporate power' in America edited by Nader Ralpu and Green J. Mark, Grossman publishers, New York 1973, P-27.

33. Hazari R.K. 'The structure of the corporate private sector : A study of Concentration, ownership and control' New Delhi - 1967. (Asia Publishing House)

Whatever be the method by which a management acquires and maintains its control over a company, it is generally true that the shareholders, even when grossly dissatisfied with the management, are invariably unable to dislodge it. This is as much a fact to-day as it was in the heyday of the managing agency system in India.

The normal recourse for a dissatisfied shareholder is to shift his investment from one company to another rather than to engage in lengthy and doubious battles for remedying managerial shortcomings. It is a better business for them, they conclude, to shift capital to a profitable company than to conduct a quixotic struggle against the inherent power and entrenched position of the management. Economic powers generate political power causing their own benefits, in most of the cases detrimental to the interest of the nation.

ii) <u>Better Accountability and social responsibility</u> :

This new structure is expected to make the companies more accountable to the shareholders, Government and society. There will be no scope to do anything illegal in their activities and accounts. The social Audit could be introduced showing not only creation of surplus as their aim and objectives but much they contribute for the welfare and well being of the nation.

iii) Better performance :

With the intelligent and honest endeavour of the different segments of persons, it is expected that, there will be better result and smooth functioning of company management, including availability of finance. A good relation will be established between Government and business.

The long standing conflict between the Public and Private Sector will be withered away if this method of management structure is applied, at least on experimental basis in Public Sector also. There may be provisions and general policy to sell shares to the private persons and allot them seat in the Board of the Public Sector. They can render their good advice for the better management of the company. It is expected that by introducing the system of management most of the problems including sickness in industries, registration of shares both by resident and non-resident Indian will be solved to a substantial extent.

In the next chapter we shall review as good as seventy five representing companies under private sector in order to grasp an idea of the present trend and pattern of the management of the companies in India.