CHAPTER - IV

CONSTITUTION OF INDIA - ITS IMPACT ON ECONOMIC POLICY

AND

LEGISLATIONS VIS-A-VIS COMPANY-MANAGEMENT

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4.1 Major constitutional provisions on economic policy of India :

Constitution is the source of all laws including economic policy formulated by a country and naturally it exerts greatest influence on the legal aspects of the most important business organisation, i.e. Company and its management structure. In this chapter we shall try to discuss the main provisions of the Constitution of India with its upto-date amendments including some of the courts' decisions relevant to our economic policy and legislation, the policy of the Government of India so far adopted in this regard and critical review of the 1984-85 budget which is supposed to be most liberal regarding private investment in economic fields. We shall also try to evaluate how far the policy of the present Government is in consonant with the principles laid down in the constitution of India.

The Indian Constitution is based on the concept of the socialistic welfare state. The Preamble itself declares that the aim of the State among other things is to secure to all citizens social and economic justice. With this end in view, the Constitution contains number of provisions which empower the State not only to intervene in private business, but also to commence and conduct business units under its ownership.

The Directive Principles of State Policy relating to social and economic matters (Articles 38, 39, 41 - 43 and 43A) discarded the doctrine of Laissez-fair and establish the policy enabling the Government to regulate and control private business in a drastic manner. Special reference can be made regarding Articles 38 and 39 - the former declares that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all the institutions of national life. The later directs that the State shall in particular direct its policy towards securing:

a) the citizens, men and women equally, have the right to an adequate means of livelihood;

b) the ownership and control of the natural resources of the community which are so distributed as best to subserve the common good;

c) the operation of the economic system which does not result in the concentration of wealth and means of production to the common detriment;

d) equal pay for equal work for both men and women;

e) the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

f) the protection of childhood and youth against exploitation and against moral and material abandonment.

Of these provisions, particularly the provisions (b) and (c) are relevant on the basis of which a number of specific laws or policy measures have been adopted affecting business. Such provisions are driving force which led the Government to nationalise many existing business concerns or vesting the business of the private ownership in statutory public Corporations set up under public sector. In December, 1954, Government adopted the principle to lead our economy on the path of Socialist Pattern of Society - which itself exerted great influence on economic activities in our country. As for example, special reference can be made of the Article 43A which states : "The State shall take steps, by suitable legislations or in any other way, to secure the participation of workers in the management of undertakings, establishment or other organisations engaged in any industry." Any objection against the workers' participation in the management of companies is unconstitutional and in our suggested format of new management structure, we have given due regard to this issue.

Lists I and III in Schedule VII of the Indian Constitution contain a number of provisions for control and regulations of economy which are worth mentioning.

Item numbers 43 to 52 of list I are more relevant for the Company Management. Under item 52 of list I Government is empowered to control industry, under item 42 and 43 of list II Government can regulate inter State Commerce, under item 33 of list III Government can control products of controlled industry, imported goods, and important raw materials like cotton and jute and under item 34 in list III, it can control prices. In other words today Government enjoys wide powers to regulate not only trade, industry and commerce but also the structure of business firms.

The fundamental rights enumerated in Articles 14 and 19 are subject to several restrictions empowering the Government the right to make laws for the public interest. The restriction has also been made on the rights of the citizens to acquire, hold and dispose of property or to carry on any occupation, trade or business. Our Constitution strives to strike a balance between individual liberty and social control. Prior to the award of the Supreme Court on nationalisation of bank in 1969 the legal view was that by enacting statutes, Government used to take away the rights given by Constitution. Soon after the Constitution came into being in the year 1950, it was realised that Article 19 is in contravention of the Directive Principles of State Policy, resulting Constitution (First Amendment) Act, 1951 by introducing Article 19 (1) sub clause G (ii) which authorises "the carrying on by the State or by a Corporation owned and controlled by the State, of any trade, business, industry or services, whether to the exclusion, complete or partial, of citizens or otherwise."[1] In order to materialise the principles enunciated in the 'Directive Principles of State Policy' Government has nationalised many enterprises and created public institutions in a number of fields like insurance or other commercial organisations operating side by side with privately owned organisations. By virtue of this amendment it is possible for the Government to introduce socialism by abolishing the private sector altogether. In this context, some important judicial references are worth mentioning here. In Balsara -VS- State of Bombay, 1951, S.C.R. 682, the Court held that if a law seeks to carry out an object in pursuance of the Directive Principles, it can not be called unconstitutional even if it offends a fundamental right, for what the State is required by the Constitution itself to do, cannot be said to be unreasonable e.g., Article 43 (Minimum wages), Article 47 (restriction on sale of liquor etc.). In the famous case of Subodh Gopal -VS- Government of West Bengal, 1954, the Supreme Court held that "under our Constitution the legislature possessed a larger measure of police power than what had earlier been supposed. Nevertheless, the Courts have intervended in innumerable cases and invalidated State regulatory measures on the ground that these violated the Constitutional Guarantee of fundamental rights. But once the legislature has proceeded to plug the loopholes and enact a new law the attitude of Courts had

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1. Dasgupta A and Sengupta N.K., Government and Business in India, Allied Book Agency, Calcutta, Ist. Edn., 1978, P-45.

not generally been one of confrontation, but of defence of the wisdom of the legislature."[2]

Several amendments made on Article 31 (Ist., 4th, 7th and 25th) with the object of the fulfilment of Article 39 for making effective control of the material resources and means of production and for transfer of ownership to the State. But making 4th amendment (1955) by reenacting Article 31A, provisions have been made, among other things, for :

1) taking over of the management of any property by the State for a limited period in the public interest or for proper management;

2) amalgamation of two or more Corporations in the public interest or for proper management;

3) the extinguishment or modification of any rights of managing agents, managing directors, directors etc. or of any voting rights of shareholders, or

4) the extinguishment or modification of any rights arising out of any agreement, lease or licence in respect of any mineral or mineral oil, and no law regarding the above shall be void on the ground of inconsistency with the rights stated in Articles 14, or 31. For taking away the private ownership by the Government adequate compensation is required to be paid which is equivalent to the value

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2. Subodh Gopal - VS - State of West Bengal, A.I.R. (1954) Supreme Court 170.

of the property or its market value.[3] By making 25th amendment in the year 1971 and by introducing new Article 31-C which substitutes the word 'Compensation' by the word 'Amount' and provides that any law which seeks to implement the directive principles in Articles 39(b) or (c) shall be void on ground of being inconsistent with Articles 14, 19 or 31, and no law which declares that it is for giving effect to these principles shall be challenged in any Court on the ground that it does not give effect to this policy. This change over of the Constitution has been made on the background of Supreme Courts' judgement striking down the banks nationalisation. 42nd amendment (1976) confers to the Parliament sovereign power to amend the Constitution and declares this power as beyond the judicial review.

Apart from the above Constitutional provisions Part XIII (Articles 301 - 307) of the Constitution contains some vital rules regarding trade, commerce and intercourse within the territory of India. Of these Articles, Article 306 had been repealed. Article 301 states that subject to the other provisions of the Part, trade, commerce and intercourse throughout the territory of India shall be free. Article 302 states that Parliament may by enacting law impose such restrictions on the freedom of trade, commerce or intercourse between one state and another or within any part of the territory of India as

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3. Cooper VS Union of India A.I.R. 1970 S.C. 564 (608,614).

may be required in the public interest. Article 303(1) imposes restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. Article 303 (2) states that nothing in clause (1) of Article 303 shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so in the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. According to the provisions Cl. (a) of Article 304 "the principle of freedom of inter-state trade and commerce declared in Article 301 is subordinate to the State power of taxing goods imported from the sister states provided only no discrimination is made in favour of similar goods of local origin."[4] Articles 304(b) allows the legislature of States to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

"A law imposing a 'Sales Tax' is, in its pith and substance a legislation under Entry 54 of List II and not under the Entry relating to trade or commerce and does not therefore, require the previous assent of the President."[5] Articles 305 states that nothing in Article 301-303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide. "Thus in view of Art 305, it is

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4. State of Bombay VS United Motors, A.I.R. 1953 S.C. 252.
5. Bengal Immunity VS State of Bihar, (1953) B.D.L.R. 17(22) Pat; A.I.R. 1953 Pat 87.

not possible to contend that the Motor Vehicles Act, 1939, is invalidated by Art. 301."[6] "Rules made under the Defence of India Act and continued by the Miscellaneous Provisions Act (XX of 1947) form the existing law and hence, orders made thereunder are not valid".[7] Articles 307 empowers parliament to appoint authority for carrying out the purpose of Articles 301 to 304.

In reality Indian Consitution has established a mixed economy where private undertakings are allowed to maintain their existance but with serious restrictions and limitations under Articles 19, 31, 302, 303 and 304. Article 19 (15) confers wide powers to the Government in the name of public interest and State enjoys wide authority on the ground of the general, social and economic policies of the State. In the famous case Dwark Prasad VS State of U.P., 1954, the Supreme Court declared that a restriction is reasonable only when there is a proper balance between the rights of the individual and those of the society between his fundamental rights to freedom and the over riding need for social control and public interest. This principle is followed since then.

4.2 Government's regulations of private industry under constitutional framework :

Under the constitutional framework it is interesting to discuss how the Government regulates private industry. Dr. N.K. Sengupta in his article - Government Regulation on private industry - an international comparisom, states - "For nearly

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6. Motilal VS Uttar Pradesh, A.I.R. 1951 AU 257 (270) 314 F.B.; C.S.S. Motor Service VS State of Madras (1952) 2 M.L.J. 894 (1914).

7. Government of Mysore VS Mahanta (1951)8 D.L.R. 44 (Mys.)

a quarter of a century now India has experimented with the regulation of private industrial development through a multitude of administrative controls operated by different Central agencies under different laws and policies with an insistence on scrutiny of almost every single prospect of significance. Apart from the direct control exercised by industrial licencing, there are also the controls through capital goods import clearance, foreign investment or collaboration clearance, control over the matter which conforms to the principles laid down by the Government priorities and the Monopolies and Restricted Trade Practices Act. The declared objectives are to curb the evils of private enterprises and to make it conform to the Governmentally laid down priorities and the overall goals of social and economic justice."[8]

Dr. Sengupta has attacked the procedural complexities of licensing etc. and given illustration of Mandarin type of administrative guidance and supervision followed by Japanese and South Korean Government in order to eliminate all duplication of work as evidenced in India for streamlining the administrative process and the creation of a unified system for dealing with industry as a whole.

However, many persons hold the view in favour of introducing more severe regulations to exercise control over business. On the contrary, there are many who think that there is no need for such controls. As a matter of fact many policies and

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8. Sengupta, Dr. N.K., Article - 'Government Regulation of Private Industry - An international comparison,' published in Government and Business in India, Dasgupta A and Sengupta N.K., Allied Book Agency, Calcutta, Edn., 1970, P-84.

controls have brought a heavy sense of disappointment in business. Government also is aware of the need for some liberalisation of control and relaxation of regulations in certain areas as well as for streamlining the procedures.

The policies for the intervention are formulated within the framework of the Constitution of India, the Five Year Plans and the Industrial Policy Resolution of 1948 and 1956. "There is hardly any area of business activity effecting social interest which is not regulated by the Government, and it is well - nigh impossible for an executive to make any decision in such area without being familiar with types of controls and their implications."[9] This control has become necessary in a country, like India where there is presence of a strong business class in the country, the domination of private industry for long with acquisitive interest. The Government's concern about shortage of resources and its determination to develop a pattern of economic development with clear objectives are sufficient reasons for the Government to exercise close control through various measures.

We generally do not support the large variety of administrative control measures some of which have further gone on multiplying themselves, and caused detrimental effect for the growth and development of the country. Business has definite role to play for the benefit of the country. "The Government has certain definite expectations from business. One expectation

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9. Op.cit. Dasgupta A and Sengupta N.K., Government of Business in India, P-378.

of the Government is that businessmen will not resort to restraint of trade, hoarding, cornering, adulteration of products, unreasonable price and other unfair practices. The other expectation is that business will co-operate with the Government in respect of all policies for the economic and social welfare of the country. Similarly, the business expectation is that nothing in the policies of the Government should disturb the growth and continuity of business in a major form. All these are mutual expectations. But the relationship between the Govt. and business which is becoming more and more direct on account of several policies and measures of the Government is not one of mutual understanding."[10]

This misunderstanding and mistrust caused serious effects on business houses vis-a-vis company. Both Government and business houses should come forward and take the task of joint venture for the upliftment of the country. Such gap between the Government and business houses is not to be bridged over but removed. But it is certain that those who criticise Government regulation and controls forget the aspiration of the people of India which is clearly indicated in the Constitution of India.

In conclusion it can be safely argued that the Government has got constitutional rights and responsibilities to send their representatives to the industries for the cause of public interest.

Mr. S.L.N. Simha, Director of the Institute for Financial Management and Research while forwarding the book "Corporate

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10. Op.cit. Dasgupta Dr. A. and Sengupta, Dr. N.K. Government and Business in India, P-380.

Management and Accountability Towards a Joint Sector' states, "As regards the regulation of the private sector, the trouble in the country is not lack of legislative authority but unwillingness and incapacity to administer the laws. But the private sector must reform itself in a spirit of enlightened self-interest. A sense of trusteeship should prevail in private sector management, which must also make profits on the basis of efficiency, rather than monopolistic and unfair practices. From the modest contracts which I have had with private sector management, I should say that while the initial reaction of management of any proposal for reform is not quite favourable, there is a gradual willingness to improve. There is ample evidence to prove that private benefit and public good can be harmonised. This process can be speeded up by independent directors with academic and professional background."[11]

4.3 Control and regulation of Indian economy :

The importance and role of Board of Directors in Company-Management in the overall economic development of any country particularly for safeguarding the interests of different constituents of Company is beyond criticism. Under the present socio-economic conditions when Government is trying to fulfil the aspirations of people to give social justice in order to establish socialistic pattern of society, Government's involvement in business activities has become inevitable. To find out the means of achieving social justice, control and constraint have

11. Sinha S.L.N., while forwarding, the Book 'Corporate Management and Accountability.' The Macmillan Company of India Ltd. Ist published 1974, P-VIII.

been instituted through Companies Act, 1956 and making amendments thereafter and formulating other enactments relating to the Companies Act. Too much control may generate many evils like tax-evasion, diversion of fund, accumulation of black money, etc. Practically in competition with the official money in circulation, black money is circulated more. But it can not be invested in the trade, industry and commerce openly. It may be used in various ways to operate transactions fulfilling reciprocal interests of black money holders. This unaccounted money is mainly responsible for uncontrolled inflation by creating tremendous strain upon common people of average income. As a result, proverty, malnutrition, unemployment, illiteracy and other sins of human life are reigning in full swing. The industrial growth has been retarded.

But the Government headed by Prime Minister Smt. Indira Gandhi was of the opinion that controls have promoted industrial growth.

In a statement on July 8th, 1984 Mr. N.D. Tiwari, Union Minister for Industries asserted that "Regulations and controls have promoted rather than hindered Indian Industrial development during the last three decades of planning. Speaking at the annual general meeting of the Hindustan Chamber of Commerce at Madras, Mr. Tiwari rejected the contention that regulations and controls had stiffed industrial development. Referring to the current economic crisis being faced by some of the Latin American countries, he pointed out that Governments in these countries were now seriously contemplating controls and regulations to pull them out of their mess. Mr. Tiwari said that the choice was clear - whether to have controls and regulations after the mess or whether one resorted to controls in order to avoid a mess. India had chosen the latter path and had been proved right. This had been recognised by even the International Monetary Fund. It is matter of satisfaction that India achieved a large measure of self sufficiency to provide the capability to sustain the future growth of vital sectors of the economy.[11]

The above is not a biased opinion. Aid-India Consortium meeting in Paris in 1984, where 14 countries of the world assembed, awarded India's economic performance with high marks and optimistic forecast. The first three years of the adjustment programme witnessed a historic break through. India overcame from its traditional constraint of a 3.5 per cent growth rate and reached a new level of 5 per cent. And growth rate during the last quarter reached as high as 7 per cent. During this short period India recorded dramatic increase in crude oil production which almost doubted from 10.5 million tonnes in 1980-81 to 26.2 million tonnes in 1983-84. The share of oil import in total oil consumption declined from 66 per cent in 1980-81 to only 27 per cent in 1983-84. Finance Secretary P.L. Kaul called the increase in domestic oil production the single most important factor in bringing a turn round in the balance of payment situation. But there was an equally important

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11. The Economic Times, Calcutta on July 9, 1984.

windfall that helped remittances from non-resident Indians to Indian banks that had averaged about Rs.200 crores, jumped to a whopping Rs.800 crores in 1983-84. Real investment in energy and basic infrastructure sectors, although lower than initial plan targets, increased at substantially higher levels than in previous years. Hopper also noted that thanks to external debt management, India succeeded in raising its growth rate without endangering its high credit worthiness.[12]

Mr. Pranab Mukherjee, the then Finance Minister of India also unfolded the rosy picture of growth of the Indian economy in his article published in The Economic Times, Calcutta.[13]

The National Council of Applied Economic Research, in its review of the Indian economy, estimates that economic growth rate for 1983-84 may go up to 8%, against the 6.7% estimated in the pre-budget Economic survey.

In this connection it is worthmentioning the fact that a mere increase in the GNP is not necessarily an indication of happiness and welfare of the nation.

According to Justice Sachar, in 1977-78, 309 million people had been below starvation level (means Rs.2.16 to spend per capita per day in rural areas and Rs.2.50 in urban areas)

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12. Letter from Washington, (Aid India Consortium) Pat on the back, by Inderjit Badhwar, Page 50 INDIA TODAY August 15, 1984 (Magazine).

13. Article 'scope for better growth rate' by Mr. Pranab Kumar Mukherjee, former Union Finance Minister, published in the 'Economic Times, Calcutta, August 15, 1984.

in the prices of 1977-78. The disparity between the poor and rich is increasing day-by-day. Millions of people are unemployed and create a colosal problem. Under such conditions, the corporate sector has got the responsibilities to solve such problems.[14]

In this context it is necessary to discuss the policy of the present Government which is supposed to be the policy of 'liberalisation' and 'privatisation.'

4.4 Attitude of the Government for Industrialisation :

It is reported that Prime Minister directed the Cabinet Secretary to work out a system by which 'single window clearance' could be effected in all matters where the Government had to deal with the public including industrialists. The directive came during a meeting that the Prime Minister had with 42 Secretaries of the Union Government. It was pointed out that in the working of the Government there was lack of co-ordination between various ministries and within the ministries. The people had to go from one place to another and from one place to another and from one person to another several times to get clearance.[15]

Another hopeful direction given by the then Finance and Commerce Minister, Vishvanath Pratap Singh on 26th February, 1985 assured industrialists of stability in fiscal and trade

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14. Sachar Justice Rajinder - Article, Corporate Laws; effect on the growth of Corporate Sector - published in Chartered Secretary, Vol.XI No.1 January 1981, P 36-37.

15. A Report appearing in the Financial Express, Bombay, June 23rd, 1985.

policies. Moreover he agreed to review the clearance policy so as to make it meaningful. The budget for 1985-86 placed by the the Finance Minister Mr. Vishwanath P. Singh on the 16th March 1985 gave basket of concessions to the private corporate sector, mainly designed to reduce rigidities and improve the environment of industrial growth. To mention a few, twenty five industries have been delicensed and the values of assets of large industrial houses for purpose of MRTP Act raised from Rs.20 crores to an incredible amount of Rs.100 crores, thereby reflecting the Government's political will. He also raised the investment ceiling for the small-scale and ancillary industries and also granted excise duty concessions to the small scale sector. Rate of Corporate tax in the case of widely held companies was reduced from 55 per cent to 50 per cent. Companies engaged in growing and manufacturing tea in the Country to be entitled to a deduction of upto 20 per cent of their profits deposited in a special account with the National Bank for Agricultural and Rural Development. Exporters will be entitled to a deduction of amount not exceeding 50 per cent of export profits to be carried to a Reserve account to be utilised for business promotion. It is said that the budget expresses the Government's overall commitment to development, though economic engineering remains to be spelt out in several areas. Apart from the said concessions the proposal for raising the interest payable on convertible debentures of non MRTP and non FERA Companies from 13.5 per cent to 15 per cent would naturally attract a broader section of investors to smaller companies for investment.[16]

16. The Economic Times, Calcutta February 26, 1985.

Indicating that India would further liberalize foreign investment rules, Mr. Rajiv Gandhi the Prime Minister of India, on April 15, 1985 invited foreign investors to participate in the high technology sections of the country's economy. Mr. Arif Mohammad Khan, Union Minister of State for Industry and Company affairs has urged industrialists in the eastern regions to break new grounds and enter high technologies of the future be it electronics, bio-technology or new materials.[17]

4.5 A little say about the Government's economic policy :

Different Chambers of Commerce in India welcome the budget for 1985-86 for several concessions made and liberalisation shown towards the private sectors. "A silent revolutions," says Palkhivala, an eminent jurist in India.

Famous economist Dr. Bhabatosh Datta, while reviewing the budget (1985-86), stated that "after years of ineffective talk about the desirability of 'planning from below,' the Central Budget has reversed the angle of vision and has adopted the hypothesis that the economy will attain an all round gain if the planning efforts start at the top. This is not the thing as the Mahalanobis' model of developing the infrastructure and the commanding growth - stimulants. The idea now seems to be that if the private industrial sector is given a large measure of stimulus - through reliefs in personal and corporate taxation and in customs and excise duties on producers' goods

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17. The Statesman, Calcutta - April 28, 1985.

and through the elimination of restrictions (like the MRTP ceiling on assets), output and employment will grow. The non-official spokesmen from the industrial sector have gone so far to say that it is "true socialism" to encourage entrepreneurship among the upper middle class. They seem to believe that the benefits from such stimulation of private enterprise at fairly high levels will filter down to the lower levels in the form of higher incomes and employment. There has been a deliberate choice in favour of the private sector and against the public sector. If the tax receipts sacrificed were added to the allocation of rural employment, the total efforts would have been much larger than what would be achieved by releasing the funds to the private sector, particularly when it is known that the whole of the released funds may not be available for investment. There is of course the fact that the public industrial sector has weakened its case by inefficiency and losses. But no one has cared till now to estimate the sacrifice which the whole economy has ultimately to undergo resulting from inefficient and corrupt management of large number of private units. The public sector at least operates under public scrutiny and is accountable to the legislature. The private sector does not abide the question of accountability. Industrial units have been made sick by mismanagement, sometimes unintended, but sometimes planned also. Investments by private equity holders have been completely eroded. Internal funds have not been generated and the heaven of the private control with public funds (liberally provided by the financial institutions) has been created for money. The individual owners gain from both sides, when any profit they claim as theirs and when there is loss that can be transferred to the tax payers who finance the sick units. The cases of frauds and tax evasion that have been exposed are perhaps only a small part of the picture.[18]

Several leading economists are of the view that the Union Budget for 1985-86 marks shift in policy of increasing reliance on public sector and that the important role assigned to it in the economy was being curtailed.

But the then Finance Minister, Mr. V.P. Singh and senior officials of his Ministry have asserted that there was no question of giving up the public sector, which has provided the much needed push to the economy.

However the Congress party declared in 1985 at its session in Delhi that 'there is no other convincing way to develop our economy than the way of socialism.'

4.6 <u>Problem of accountability and economic power</u> :

As has been discussed earlier that the public sector has the burden of responsibility for establishing super structure for all business whether for private or public sectors, remaining under strict control of accountability to the parliament and public at large. Therefore, they could not able to make as

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18. Dutta, Dr. Bhabatosh Article "The Union Budget' planning for the top - published in the Economic Times, Calcutta on April 8, 1985.

gainful economic results as expected from them. The problem could be easily solved if all the business enterprises are nationalised and are managed directly by the Government agencies. But under present context, it is neither possible nor feasible. Constitution of India guarantees the existence of private sector and thus a system of mixed economy with a view to creating welfare state is the aim and objective of our national attitude. Corporation to-day is viewed as a social institution. According to this modern concept, "the business enterprise is viewed as a complex organisation of pressure group, including workers and managers, consumers of products and suppliers of materials, shareholders and creditors, as also the general public. Therefore, the Corporation does not belong to the shareholders only but represents a 'Community of interests'. 'The shareholder' is some one who simply provides capital in a particular form to an enterprise which is a distinct collection of interests in its own right, he is only a special type of creditor."[19]

From this view emerges a distinctive corporate personality to which Prof. Galbraith has given the name of 'The Techno-structure'. The technostructure may have goals of its own which may, and often will, conflict with the achievement of the maximum value for the equity holders. The Corporation, therefore should be accountable to all the ingredients which constitute a Corporation.

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19. Cunnigham, N.J. Capital Investment and the cost of Capital, A.M. Bourn (ed) Studies in Accounting for Management Decision, London, 1969, P-190.

"In India, over the last two decades about 50-60 per cent of gross corporate investment has been internally financed. Another about 25-30 per cent is supplied by Commercial Banks, development banks and saving institutions. The individual saver directly provides only 10-20 per cent of the funds for financing corporate expansion".[20] With this small investment private sector enjoys tremendous economic power. The growing dominance of the corporate form, the increasing decision making power of corporate management and increasing by passive position of shareholders which have together contributed to an increasing concentration of economic power of the Corporations. "In India, undoubtedly managerial discretion in important areas, such as size, location, product-mix, price, process, foreign collabora-tion, etc. etc., is severely restricted by direct Government controls which have been found to be generally inefficient and can be regarded as the principle cause of corruption, both poli-tical and individual. The problem of political corruption is much more intricate than it appears at first sight. The comple plexity of the problem arises from the fact that, in a democratic system, the political parties attempt to collect huge election funds and an important, albeit disguised, source of such funds is the big business."[21] Companies (Amendment) Act, 1969 prohi-bited completely the making of any contribution by companies to any political parties for any political purpose. The object was to eliminate power. The present budget 1985-86 has made the

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20. Gupta, Dr. L.C. Corporate Management And Accountability : Towards a joint sector, Macmillan, published on behalf of the Institute for Financial Management and Research, Madras, Ist. Edn. 1974, P-11.

21. Ibid. Gupta Dr. L.C. Corporate Management and Account-ability PP 21-22.

contribution as much as legalised and thus receivable amount of money due to the Government indirectly will go to political party. The object is said to curb black money. Much debate has been made as to how to regulate the business by the Government, specially remedies of the problems arise due to donation of the businessmen to political parties. Neither strict regulation nor liberalisation gives forth satisfactory results.

If control and regulation by the Government are not properly adhered to these may generate corruption and do more harm to the economy. On the contrary "the impact of the corporate sector on the economy of the country is too great and too involved for it to be allowed to be left alone. The existence of Corporate Sector must rest on regulations framed in public interest and meant to sub-serve public benefit."[22]

What type of control is necessary in India? Has the system of control so long adopted, solved the colossal unemployment problems, the problem of poverty and inequality of income?

In our view the change in the very 'structure' and 'ownership view' of the present management should be totally reviewed. The management needs to be vested to a body composed of representatives of share holders, workers employees, consumers, financial institutions including banks and Government. The two tier body - policy board and executive board, the former concentrating on the determination of policy and supervisions and latter constituted with professional employees having independent authority

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22. Sachar J. Rajinder, Article "Corporate Laws: Effect on the growth of corporate sector" published in Chartered Secretary Vol.XI No.1 January 1981, P-33.

to work, really expert, sincere and experienced - would solve our present problem. The 'multiple two-tier from of board' would probably lead the country towards progress and development in accordance with the principles laid down in our constitution. The system of the form has become visible through the process of evolution in India where huge amount of public fund has been invested in corporate business and as a natural consequence, financial institutions have become interested to nominate proportionate representation to the board. Not only that, this system embraces all the good systems experimented and tried successfully in different countries of the world. On one hand it will reduce the so much complications of regulations and control on the other hand it will reduce corruption and encourage liberalisation. We support the liberalisation movement of the Government with precondition of restructuring the top management of companies under the system of multiple system of two-tier board but not privatisation. The system of multiple-two-tier Board might be applicable both in public and private sector undertakings with profit.

4.7 <u>Corporate Sector-Post-Budget realities and applicability of proposed format of management in corporate bodies</u> :

The adoption of proposed structure of Corporate Management i.e. the system of 'multiple-two-tier board' would gain importance even if we suppose the present policy of shifting importance from public sector to private sector proves result oriented. The responsibility of the corporate sector has become very much important to give concrete shape of the policy of the Government's post budget realities. The aggregate Seventh Plan investment was visualised at Rs.3,20,000 crores, of which the public sector investment is to be Rs.1,50,000 crores and the private sector investment Rs,1,70,000 crores. To translate this change of philosophy into action the Government is in hurry and wants the private sector to waste no more time in taking the new role assigned to them. This hurryness shows the sincerity of Government Policy.

The fulfilment of those heavy tasks endowed on private sector depend on several external factors also which are beyond the control of the private sector itself.

Every one knows that private sector industry is efficient and it knows best how to make profit. But there are other aspects or areas in respect of which its performance and ability is relatively unknown. The ignorance arises partly from the fact that the one single statement which is generally published by every company in its annual report which is addressed to its shareholders only and not to other ingredients of the company. This report naturally explains the company's financial performance and the efficiency with which its operations were conducted, and is all tailored to communicate with the shareholders. Perhaps, they have never considered themselves to be responsible to any one except their shareholders. Few companies have made an attempt to communicate with other sectors of society.[23]

Mr. D.R. Pendse has suggested the submission of half yearly statement to the shareholders; providing opportunities for employment for the millions of the unemployed people in the country notably the unskilled rural people; supplying goods to match the increasing needs of the people due to industrialisation; checking of inflation; taking responsibility of generating at least 78% of the total tax revenue of the Government (Corporation tax, the relative excise duties and the customs duty and excluding income tax paid by the employees of the Companies) and finally assisting the country from the severe foreign exchange crisis by way of promoting exports and also by way of reducing imports - the problems likely to be faced by the private sector to be solved. Some key personnel in the public sector should be taken from the private sector organisations for its efficient management. As most of the infrastructure activities in the country are now under public monopolies e.g. steel, coal, electricity, rail, transport, air transport, post and telegraphs and telecommunications, the prices of these items should not be allowed to be raised as that will exert spiralling effect of increasing prices of all goods and services and generate a high cost economy.

Mr. D.R. Pendse concludes his articles to which we share our opinion that "in the meanwhile, industry has no time to

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23. Pendse D.R. Article - Corporate Sector - Post - budget realities published in the Economic Times, Calcutta, May 30, 1985.

less nor any justification for sitting on the fence. If it gives results, as it seen to be giving results, a grateful nation would certainly offer further concessions without hesitation. On the other hand, if industry fails even now, it may forfeit any claim for sympathy and it should not be surprised to see an intense wave in the opposite-direction which will be difficult to stop.[24]

We are of the opinion that all these problems could be minimised only if 'Multiple Two-Tier Board system' is adopted both in private and public sector enterprises. As, this type of board is an assembly of the representatives of different segments of the society any type of danger as stated above could be avoided and any type of aspiration expected from private sector could be fulfilled.

In the next chapter we shall try to highlight the management pattern of Companies in different countries - their features and techniques and lessons from them which can be gainfully employed in the Company Management of India.

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24. Pandse S.R. Article : Corporate Sector - Post - Budget realities, published in the Economic Times, Calcutta, May 30, 1985.