COMPANY LAW AND THE PRESS

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WITH the rapid growth of the corporate sector the problem of the free press and the Company Law is assuming greater importance. Two factors have contributed to emphasize the role of free press in promoting and preserving a healthy atmosphere in the private sector. They are: (1) the separation of management and control from the ownership of companies, and (2) the growth of the concept of public interest in companies.

Theoretically, since the shareholders have the voting power and the power to hire and fire directors and other officers, the control of the company and its management is in the hands of shareholders. In public companies, however, several factors tend to divorce ownership from control and management. The existence of shares with varying voting rights, the wide dispersal of shares, the practice of proxy system which is weighted heavily in favour of the management and the general apathy and the low level of education of the shareholders, rob shareholders' democracy of all meaning. The system of managing agency has further accentuated this process.

This situation that cries for the watchful eye of a critical press, must be free and independent of company managements and managing agency houses, of the private sector generally, and of big business in particular.

The separation of ownership from control and the ineffectiveness of shareholders' democracy leaves the directors and the management without any incentives or pressures for efficient management and breeds irresponsibility on their part.

These tendencies are further strengthened by the following factors:

(1) the prevailing sheltered market;

(2) uneducated and uninformed shareholders;

(3) the fact that the annual accounts require some technical skill to understand them;

(4) the intricacies of the modern business organisation;

(5) the complexity of the modern large public companies; and

(6) the control of a number of public companies by a managing agency house or a group of businessmen.

Profit is the yardstick of efficiency only in a competitive market. The shareholders being what they are, a considerable portion of the very large profit which can be earned in a sheltered market can be appropriated by the management to themselves without rousing the suspicion of shareholders.

Opportunities are greater where public companies are controlled by a managing agency house, or a group of businessmen. The Report of the Commission of Enquiry on Administration of the Dalmia-Jain Companies gives a clear picture of the various devices employed by those in control of public companies, to divert to their own pockets not only the profits which should really go to the large body of shareholders, but a large part of the capital also.

It is difficult to believe that these malpractices are resorted to only by this one group, or only a few business houses. These developments throw greater responsibility on the press and emphasize its role as an instrument of control of the management of companies.

Press publicity is a powerful factor, capable of creating a climate unfavourable to an inefficient and irresponsible management and favourable to the growth of an efficient and honest management.

The journalists have their own channels of information and the various sharp practices which those in control of companies are now able to hide from exposure would be difficult to hide against the watchful eye of a vigorous press.

The financial press, if it is to perform its function properly can exert influence in at least the following ways:

1. Educating the shareholders and keeping them well-

informed. Explaining the annual accounts in all their implications. Directors in their Reports usually try to disclose as little as possible of the company's affairs. Financial columnists provide weapons to shareholders' armoury.

2. Publishing informations which may be of use to creditors, consumers, investing public, policy-makers, administrators and so forth. Here too, the field is very large.

3. Building up inhibitions in those who control the company against wasteful or irregular conduct, or activities harmful to the nation or to its industrial progress or the welfare of the people. The mere existence of a vigorous financial press not amenable to the influence of business houses, would help reduce the malpractices of the management.

The last two of those functions are further emphasized by the increasing involvement, during the present century, of public interest in the functioning of companies. Companies now are a device whereby a few individuals collect and handle a large sum of money belonging to others—the public. That alone is sufficient to sustain the claim of public interest. That apart, the activities of public companies and even of many private companies have impact on the public in very many ways, such as creating employment or unemployment affecting the cost of living or the pace of industrial growth.

In both private or public sector companies the managers are separate from the investors. The risk is borne by the public in both the cases.

While the managers of public enterprises are subject to control and ultimately by the Parliament, the managers of private sector companies are only subject to control by statute as embodied in the Companies Act. But the need for control over both management is equal.

Most of the papers in India do not appear to be operating as is essential to the proper functioning of the Corporate sector. The neglect by leading papers to carry out their functions is because they are owned or controlled by the very persons whose omissions and commissions the papers are expected to expose. Papers which are neither owned nor controlled by business houses, have not been negligent. As revealed by the Report of the Monopolies Inquiry Commission (p. 186-7) a very large section of the press is either owned or controlled by persons or corporations who are themselves big business or closely connected with big business.

As the large number of small newspapers rely upon the bigger newspapers for news as well as features the extent of big business monopoly over the Indian press is much greater than the Report reveals. Thus, except for one or two leading dailies or weeklies, the entire press in India is so placed as not to be able to perform its functions in relation to the private sector.

The situation has to be improved in the interests of journalists, because it prevents them from carrying out their public duty; and in the interests of Company Law, because the principle of disclosure which is basic to Company Law is rendered ineffective.

There is inadequate appreciation even at the highest judicial level of the true nature of the press in modern times. Through centuries the press has been transformed from a private instrument to a public institution.

Thus, the press being a mass media and not a private medium conveying the views of the person who sets it in motion it is wrong to say, that, in regulating the press, as for example, was done by the Newspaper (Price and Page) Act, 1956, the Government was infringing the freedom of the person who sets it in motion.

It is unfortunate that the Supreme Court failed to take a realistic view of the modern press as it really is—a social institution—and confused it for its predecessor of several centuries back and thus included the issue in the *Sakal* Case. Broadly speaking, the press is an instrument for promoting human welfare; and the problem of freedom of the press consists in maintaining conditions in which the press is free to carry out its functions. The solution to the problem, lies in freeing the press from the hold of businessmen.

The solution suggested by the Monopolies Commission is to help the small newspapers to establish themselves as economically viable units. The Enquiry Committee on Small Newspapers has been at work for some time and even if suggestions, when implemented, achieve a desired objective, the problem would remain unresolved.

The small newspapers would still have to depend upon advertisements from the private sector for their sustenance. Advertisers can influence the policy of a paper to a great extent. So whether small newspapers are taken over by the businessmen or not, they will not necessarily be free to carry out their duty in regard to the companies.

A take-over of the newspaper industry by the Government would make the press subserve, to some extent, the Government and the ruling party instead of the big business.

It might make the press free to discharge its functions in respect of companies, but would probably cripple papers from discharging duties to the citizens.

It is suggested that a lesson can be drawn from the device generally adopted by the Unit Trusts where management is a board of trustees of investment experts. If the management of newspapers is separated from those who own it and vested in a board of trustees drawn from experienced journalists and other interests it might go a long way in establishing the conditions necessary for the press to carry out its functions freely.

The public sector could also make some contribution to a solution of the problem by entering the newspaper industry and providing a counter-vailing force.

If the press is married to big business, the concentration of power in a few hands will be of such magnitude as to pose the greatest threat to all values of a democratic society. The danger re-inforces the argument for divorcing the mass media from the control of businessmen.