

March 29, 1969

A brief report of the IV and V sessions of the seminar on Government Regulation of Private Enterprise held at the Indian Law Institute today (Saturday, March 29, 1969.)

IV session

The topic for the IV session was "Fiscal, monetary and foreign exchange regulations" which included the following:

- (a) Fiscal and monetary controls including control over banking
- (b) Import and Export control
- (c) Foreign exchange regulations

The Hon'ble Mr. Justice J.C.Shah, Judge, Supreme Court of India presided. The following papers were discussed:

- 1) Fiscal and Monetary Controls in India - by Shri T.Mathew
- 2) Foreign Exchange Regulations by Shri N.V. Sundaram
- 3) Import Trade Control in India by Dr. S.N.Jain
- 4) Government Regulation of Commercial Banks - by Shri P.S.Sangal
- 5) Standards of administrative proces under the foreign exchange regulation Act by V.M. Shukla

It was pointed out that banks were not the proper instruments for removing regional imbalances as they had to depend on demand for funds, and, therefore, to achieve that result some other ways will have to be found out, e.g., tax incentive. Social control of banking was now an accomplished fact, but to achieve the results, in addition to the statutory framework for social control of banking,

it was also necessary and important to evolve concrete policies to fulfil the objectives of social control.

As regards the import trade control, it was stated that the control would have to be continued as there was a scarcity of foreign exchange in the country. The question of legal nature of the Hand Book and Red Book was discussed. It was noted that for the issue of actual users' licences, the authorities enjoyed a great deal of discretion and the criteria for decision was neither clearly defined nor uniformly applied.

V session - Monopolies and Restrictive Trade Practices

The session was presided over by Shri T.V.Raghunatha Reddy, Minister of State, Ministry of Industrial Development and Company Affairs. The following papers were discussed:

- 1) Control of Companies under the Companies Act, 1956 by Shri P.B. Menon
- 2) Control of Companies under the Indian Companies Act, 1956 by Shri P. Chatterjee
- 3) Can Companies Act be simplified? by Dr. G. Balakrishnan
- 4) Government Regulation of Companies by Shri D.P. Mehta
- 5) Control of Companies under the companies Act, 1956 by Shri N. Krishnamurthy
- 6) Monopolies and Restrictive Trade Practices by Shri Manmohan Singh
- 7) Some Aspects of Government Control over appointment of Company Directors by Shri N.K. Sen Gupta
- 8) Monopoly and Restrictive Trade Practices by Shri T.K. Tope

- 9) Control of Companies under Companies Act, 1956 by Shri C.C. Sutaria
- 10) Judicial Control over Company Administration by Shri Tahir Mahmood
- 11) Government Control and Companies by Shri M.C. Bhandari

Some of the points which the different participants made were that auditors should be appointed by the companies in consultation with the government, some guidelines for administrators for abolishing of managing agencies should be provided, and that private limited companies should be exempted from some of the provisions of the statute. It was emphasized that the company law board was part of executive. Instead, there should be an independent board constituted of experts in different fields to examine the various problems arising out of the government control over companies in their proper perspective. A few participants suggested that a tribunal to adjudicate in matters of company law should be established. Within the department there did not exist at present any hierarchy of administrative appeals. This, it was felt was necessary in view of the lack of adequate judicial and other controls against improper exercise of powers by the executive.

A point was made that instead of appointing government directors on the boards of companies, a better method would be to exercise greater control by the government

over the appointment of the company executives, and also to introduce the principle of proportional representation in the election of directors.

Conflicting views were expressed on the desirability of of the legislation concerning monopolies and restrictive trade practices. A point was made that if it was necessary to control monopolies in private sector, it was also necessary to evolve some control over monopolies in public sector, particularly in respect of their pricing policies. It was necessary to have some independent forums where allegations of monopolistic practices by the public enterprise could be looked into. Some participants pointed out that monopolies arose because of defects in the industrial licensing policy of the government and therefore it was necessary to modify the licensing policies. Other view was that whether monopolies have arisen in spite of other regulatory measures, it became necessary to have further legislation to curb the same. It was also pointed out that the monopolies legislation would fail to achieve its purpose if the recommendations of the monopolies commission were not given due backing at the higher administrative level.

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A brief report on the VI and VII sessions of the seminar on Government Regulation of Private Enterprise for the press.

VI Session

The subject of foreign investment and collaboration was considered in this session. Dr. I.G. Patel, Special Secretary, Ministry of Finance, Government of India presided over the session. The following papers were discussed:

- 1) Taxation and Foreign investment - Dr. M.C. Bijawat
- 2) Foreign Investment and Collaboration - Shri P.L. Jaitly
- 3) Taxation and Foreign Investment - Shri R.D. Shah
- 4) The Performance of Foreign Private Investment in India - A Backdrop for regulation - Dr. P.K. Ghosh
- 5) Taxation and Foreign Investment - Shri S.K. Verma

Conflicting views were expressed whether tax incentives were attractive for foreign investment though the overwhelming opinion was that the present tax incentives were quite sufficient to attract foreign investment. It was, however, mentioned that taxation was only one of the factors for attracting private investment and it did not appreciably affect the decision by the private foreign investor to invest money in India or not. The Indian tax laws were primarily meant for private investors in India. It was not possible to

have separate tax laws for foreign investors. Both types of investments had to be governed by the same laws. It was emphasized that except in case of Treaty with Japan, no tax sparing provision existed in any other treaty. It was essential to have such a provision in treaties with other countries, particularly the United States. The need for educating tax authorities with regard to the provision for double taxation and avoidance of double taxation treaties was emphasized. It was noted that greater effort was now being made by the tax department to publish its decisions, interpretations and instructions.

VII Session

The last session of the seminar was devoted to a discussion on informal techniques of control of private enterprise. The following papers were discussed:

- 1) A Study of Formal and Informal Techniques of Control of Business - Shri Justice P.B. Mukharji
- 2) Control over Business - Forms and Techniques of Control - Shri D.L. Mazumdar
- 3) Techniques of Control of Private Enterprise - Shri S.B. Wad
- 4) Regulation v. Nationalization - V. Ramakistayya
- 5) Informal Techniques of Control of Business - Dr. M.B. Athreya

It was pointed out that informal techniques mean non-statutory techniques and that there was no

Conflict between the formal and informal techniques, in fact both go together and help each other. There are many types of informal control exercised by the government. To give one or two examples, from time to time the government institutes non-statutory enquiries like the Hazari Enquiry into the licensing policy; a number of statutes confer discretionary powers on administrative officers, but government issues circulars enjoining on them as to how they should exercise their discretionary powers. In a number of cases the courts have objected to this practice and have quashed the exercise of discretion based on such directives. Another example of the informal control is to be found in the implementation of some of the canons of social control of banking much before the legislation for the purpose was enacted. It was pointed out that consumer councils which may keep a kind of watch on the pricing policies of the various commodities could be an effective method of controlling private enterprise. Auditing, it was mentioned, could also play a significant role in this respect. Advisory committees consisting of various interests affected by the regulatory measures have also been working in certain areas on an informal basis. The consensus at the seminar was that the area of informal techniques needs to be probed into deeply, as it was no less important in the totality of the picture of government control than statutory, formal, controls.