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COMPANIES AND SOCIAL RESPONSIBILITIES.

By

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A company is the most effective vehicle to manage and control modern business enterprise. A company pervades the economic and social life of the nation. The company is popularly known as corporation in U.S.A. A company is a voluntary association of persons formed for some common purpose, with capital divisible into parts, known as shares and with limited liability. It is a creation of law and is known as an artificial person with perpetual succession and a common seal. To-day the corporation embraces by and large the most important aspect of our economic life. Shumpeter has said "Company is not only a convenient business organisation but an engine of an economic progress." To-day the Corporation is no longer only a device for doing business, but it is a vast sprawling immeasurable force. The predominant position of the companies in the modern society is due to the following reasons:-

- (a) The emergence of the company as the Centre of economic life of the country.
- (b) The increasing influence of the companies in the social, political and cultural spheres of society.

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Bearle and Means, in the *Modern Corporation and Private Property* (1932) 1, states that, "Corporations have ceased to be merely legal devices through which the private business transactions of individuals may be carried out. Though still much used for this purpose, the corporate form has acquired a larger significance. The corporation has in fact become both a method of property tenure and a means of organising economic life. Grown to tremendous proportions, there may be said to have evolved a "Corporate System" as there was once a feudal system which has attributed to itself a combination of basic attributes and powers, and has attained a degree of prominence entitling it to be dealt with as a major social institution."

D.L. Mazumdar in the *Modern Corporation and the Rule of Law* (1964) 1 Company L.J. 63, states that "The growth in the size and complexity of the modern joint stock companies and progressive extension of their sphere of activity lifted them out of their original, historical economic setting as mere legal institutions for the production and marketing of goods and services, and placed them almost at the centre of the economic life of the modern community."

Adolf A. Barle describes modern corporation as "a commercial instrument of formidable effectiveness, feared because of its power, hated because of the excesses with which that power was used, suspect because of the extent of its political state, admired because of its capacity to get things done." From these observations, it is evident that corporations dominate the country's economic life. Before we discuss the social aspects of company legislation it is necessary for us to mention in brief historical development of company law in India and its sociological basis.

Company Law in India had a very long history. It was in the year 1850 that an act for 'registration of joint-stock companies' was enacted. Every unincorporated company of partners associated under a deed containing a provision that the shares in the stock or business of the said company were transferable without the consent of all the partners and also every company established for some literal, scientific or charitable purpose, which did not carry on any business for the pecuniary benefit of any of the proprietors or shareholders was entitled

to registration under this Act. The Supreme Courts of Calcutta, Madras and Bombay were authorised to order such registration. Thus the courts came to have great interest in the company legislation from the very beginning. The main feature of the 1850 Act is that it did not introduce the concept of limited liability which is one of the most salient features of joint-stock companies of today. The Act of 1850 was followed by the Act of 1857, for the incorporation and regulation of joint-stock companies and other associations either with or without limited liability of its members. Under this Act of 1857, the privilege of limited liability was not extended to banking and insurance companies. The limited liability principle became applicable to banking and insurance companies by Act of 1860. Again in the year 1866 an Act was passed to amend and consolidate the previous companies Act. It was recast in the year 1882 and there were a number of amendments; until in 1913 was passed the Companies Act VII of 1913 which was based on the English Companies Act of 1908. The present Act I of 1956 is based largely on the recommendations of the Company Law Committee. Even this has been amended from time to time. Important amendments have been made in the year 1960 and 1965. The present Companies Act, 1956 (as amended in 1960) in India introduces many new principles of company management. It also illustrates the advent of a new company law theory.

Now we shall acquaint ourselves with the objectives of company law, which will in turn help us in understanding socio-economic impact of company law. The main object of company legislation is to enable a large number of persons to get together in carrying on trade, business or industry most effectively and to their best benefit. The objects of Companies Act, 1956, in brief are as under:-

- (a) to increase the efficiency of the corporate form of business management;
- (b) to increase the managerial efficiency;
- (c) to protect the interests of creditors, investors, labourers and other partners in production and distribution and to achieve the ultimate ends of social policy.

The objectives of company law are not merely facilitating the working of companies, but it has more socio-economic objectives. In India, we are trying to create a new democratic society wherein

justice, social, economic and political, shall be the aim of all the institutions of the country. The Fundamental Rights and Directive Principles of State policy as declared in Part III and Part IV of our Constitution embody our new values which will provide a framework within which the companies will have to work. Company law is not merely a piece of commercial legislation but it is a social legislation. Its aim is to regulate and control commerce and industry of the country and therefore it vitally affects the public interest at large including small interests. Dougals J. of the American Supreme Court has said, "To-day it is generally recognised that all corporations possess an element of public interest. A corporation director must think not only of the stock-holders but also of the labourers, suppliers, the producer and the ultimate consumers. Our economy is but a chain which can be no stronger than any of its links; we all stand together or fall together in our highly industrialised society of to-day." In a developing country like India, the impact of corporate activity on the functioning of the society is very great. Due to tremendous influence of corporate activity in nation's economic life, it must be said that the study of company law is incomplete unless its social aspects are kept in the forefront. Dias has said, "The law is a social institution and its study should not be divorced from its social milieu." He further states at page 179, "Just as one's knowledge of a fish, for example, is not complete until one sees it in its natural surroundings so too knowledge of the law cannot be complete until account has been taken of its role in the society."

To-day the concept of a company as a purely economic and commercial venture which is concerned only with shareholders' interest, has been done away with and now a new image of a company emerges as a social organism which has a vital role to play in the country's economic life and which also influences the social life of the community. To-day the ultimate object of a company is not only to make huge profits, but to serve the nation and the community by supplying quality goods at reasonable prices, maintaining supply of goods, giving opportunities for employment to citizens. Thus the companies can help achieve the objectives laid down in the directive / Prof. Berle in his "Modern Corporations" stated that "the control of great corporations would develop into a purely natural technocracy, balancing a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy, rather than private cupidity." Now, it is very well recognised that companies have to fulfil their obligations

∟ principles of State policy laid down in our Constitution.

towards shareholders, creditors, workers, consumers and society at large. This concept has increasingly gained support from the progressive thinkers on management. In U.S.A., the concept has also secured judicial approval. In *A.P. Smith Mfg. Co. V. Barlow* (39 A.L.R. 1179), the Court observed- "Modern conditions require that corporations acknowledge and discharge social as well as private responsibility as members of the communities within which they operate." To-day the working of a company has become a matter of more than private and domestic affair of a company. The community outside the company is also interested in the activities of the company and keeps a sharp eye on the overall activities of the company. In India, our industrialists have accepted in theory the concept of social responsibility of business. It is the need of the hour that companies must understand their social obligations.

So far as company law is concerned, it is silent as to the need for management to realise and discharge their social obligations. No specific provisions are there to promote the welfare of the shareholders, creditors, consumers and society. There are a few prohibitive measures. There are a few provisions in the Companies Act, 1956 contained in §. 233-A, 347, 248, 396, 397, 372, 342, 409 etc. which try to protect the interest of different groups in a company. In India, the concept of social responsibility of a company is of very recent origin. Peter Drucker in his book 'The practice of Management' has pointed out that in America they have a State legislation determining the policies of corporations regarding marketing, pricing, labour and patent administration.

Now we shall deal with the relationship of a company with shareholders, employees; consumers, creditors, government, community and society at large.

Companies and Investors:-

Shareholders are the real owners of the company. They invest money in the company. Formerly only rich and experienced persons used to invest in the companies, but now many middle class persons also invest in the companies. Equity shareholders provide risk capital to the company on which the superstructure of the company rests. The Companies Act enumerates rights of the shareholders which includes the following:-

- (a) The right to receive notice of the annual general meeting of a company and of the statutory meeting in case of a new company and to receive a statutory report.
- (b) The right to elect directors, to appoint auditors and to pass annual financial accounts of the company.
- (c) The right to call an extra-ordinary meeting.
- (d) To demand poll.
- (e) Right of the dissentient shareholder to approach the Court.
- (f) To approach the Central Government for an investigation into the affairs of the company.
- (g) To seek relief in a court in case of oppression or mismanagement.

Over and above these rights, the act contains a number of provisions in the nature of safeguards for the protection of the interest of the shareholders. The provisions governing the proper 'disclosure' of the interests of managerial personnel in other companies and provisions those setting limits on managerial remuneration are essentially of this nature. Other such provisions are as under:-

(a) Special Audit:- S.233 A confers upon the Central Government the power to order a special audit of the accounts of a company if in its opinion-the affairs of the company are mismanaged, the financial position of the company is not sound or the affairs of the company are being managed in such a manner as it is likely to cause serious injury or damage to the interests of the trade. This special audit is of a fact-finding nature. Expenses of such audit are to be payable by the company.

(b) Inspection and Investigation:- S.235 to 251 deal with the investigation of affairs of a company on an application by members or report by the Registrar. These provisions try to safeguard the interest of shareholders.

(c) Prevention of mismanagement and oppression: Sections 397, 398, 402, 408 and 409. These provisions try to protect interests of shareholders in case of oppression and mismanagement of a company!

(d) Provisions regarding removal of managerial personnel also protects interests of investors. Thus Companies Act contains various provisions for the shareholders. Even then much requires to be done to promote the welfare of the shareholders in this country. In this country the rights of the shareholders are not fully enjoyed by the shareholders. Shareholders are merely passive investors. They are not enjoying their rights to the fullest extent and they satisfy themselves only with the amount of dividend which they may get. There are many reasons for this attitude—Shareholders are unorganised, share-allotment is spread over by the company. They are not conscious about their rights. In case, when they are not satisfied with the management of the company or profit-making capacity of the company, they would like to sell the share in the market, rather than to remedy the evil. General all the powers given under the Companies Act regarding special audit, investigation etc. are exercised by the Government and not by the shareholders. Shareholders must get fair return on their capital. It is the duty of the management to make shareholders conscious about their rights.

My suggestions to promote the welfare of shareholders:

1. Shareholders' Associations must be established in each state and such associations must get legal recognition. The existence of such association will compel management to become more careful in safeguarding the interest of investors. Such associations will be more useful in ventilating the grievances of shareholders vis-a-vis the company. Such associations may safeguard the interest of investors in case of mergers, amalgamations etc.
2. Shareholders' Associations may be given financial assistance and or other facilities by the Government for expenses incurred for developing opinion of shareholders for illegalities and mis-management of any company.

3. Each company, the shareholders of which are members of the association, may be asked to contribute something to create a fund for the association. Company law may make it obligatory that a company is required to pay some amount towards the contribution for the association. Progressive management will not object to such proposal, as they know the utility of such associations. Sometimes shareholders may suggest good points so as to increase the efficiency of the enterprise. Company management may get support from the association in case of controversies with Government or other authorities.
4. Stock Exchanges which have started coming up since ~~some time is really a death-noting feature~~ but still it does not require free hand by some special assistance by the Government which would eventually protect the interest of every minority shareholder.
5. Associations may be empowered to ask for detailed information regarding accounts of any particular company etc.
6. Association may be permitted to exercise all rights given to the shareholders in connection with special audit, inspection and investigation, oppression of minority and mismanagement, with the consent of its members.
7. The management may be asked to provide more detailed information regarding the affairs of the companies and accounts of the shareholders. published accounts must be more simple and easily understandable by a layman.
8. Many companies publish House Journals for their employees to inform them about the activities of the company. These 'House Journals' may contain topics which may interest the shareholders, and general public. A copy of such journal may be given to the shareholders.
9. Regional meetings of the shareholders may be held so that shareholders may not have to travel a long distance.
10. Shareholders' meeting may be organised at Hill Stations, or site-seeing places so that a large number of shareholders may be tempted to attend the meeting. The expenses of the shareholders should be reimbursed by the company. In U.S.A. there are many companies which call their meeting in Christmas Vacation and at site-seeing places.

11. In case of winding up due to mismanagement, those who are party to the mismanagement should not get anything by way of return of capital, until all others are fully returned their capital.
12. Stamp fee on proxy should be reimbursed to the shareholders by the company.
13. Power of the directors to refuse to transfer shares must be restricted. When a director refuses to register a transfer of shares, he may be asked to give reasons in writing.

These are a few measures which may help achieve the welfare of shareholders. Only sound legislation will not be sufficient to protect the interest of shareholders, but it will depend upon the energy, initiative and the practical wisdom of the shareholders.

Companies and their employees:-

There are several provisions in the Labour and Industrial Laws to safeguard the interests of workers in a company. Labour law is a branch of social legislation. In welfare legislation the discharge of the management's responsibility has become a statutory necessity. The present provisions contained in the Factories Act, Industrial Disputes Act, Workmen's Compensation Act, Employees' State Insurance Act, Minimum Wages Act, Payment of Wages Act and the Trade Unions Act, are quite sufficient to protect the interests of workers. Even then there is a scope for enlightened and progressive management to be a step ahead of what the law demands. The companies which undertake social security measures that are not contemplated by act generally go up in public estimation. The workers are partners in production. It is the duty of the management to create a feeling amongst workers that they are closely associated with the company.

My suggestions for safe-guarding interests of workers and for promoting their welfare:-

1. To provide more employment opportunity to workers, the establishment of industries must be spread out in rural areas.

2. A representative of the recognised labour union may be nominated on the Board of Directors of a Company so that he may represent labour's viewpoint. Labour Union may be consulted in deciding policy regarding labour.
3. All employees of an organisation may be informed regarding the activities of a Company.
4. Financial assistance may be given by a Company to its workers for the purchase of its shares. With this incentive a few workers may purchase shares of a company. This will create a feeling that they are not only workers, but also owners of the Company.
5. Employees must be protected so far as their jobs are concerned, in case of investigation and winding up proceedings.
6. In case of winding up of a Company, the wages or salary of an employee in respect of services rendered to the Company and due for a period not exceeding four months within 12 months next before the commencement of the winding up and and compensation payable to any workman under the Industrial Disputes Act, 1947, is a preferential payment. There is a limit that such amount should not exceed one thousand rupees in case of any one claimant. This limit should be increased.
7. The companies may be directed to organise Training Programmes for their employees. This will help in personal development of the worker. Trained workers will increase efficiency of the organisation. The cost of production will be decreased, goods will be sold at a reasonable rate and society will get benefit.
8. Employers may be asked to delegate more responsibilities to employees. This will help in creating team spirit between management and workers.

These are a few suggestions which may be put into practice by progressive managements. To-day it is believed that law should overstep its normal boundaries and invade the territory of business morality.

Companies and consumers:-

The Companies Act is silent as to how consumers' interest should be protected by the Company. Consumers need protection not only against big Companies but also against sole proprietorships and partnership firms. The ultimate aim of every production is the consumption. By and large in India, there is a seller's market. The consumers are exploited by the producers and they are not in a position to protect themselves because of the following reasons. They are scattered over the whole country, majority of them are poor, illiterate and unaware of products. In U.S.A. laws like Sherman Act, Clayton Act, Robinson Patman Act and the various fair trade laws have been passed with a view to protect consumers. In U.K. also they have passed some laws prohibiting unfair trade practices and for strengthening trade mark and Patent laws. It is the duty of the Government to protect consumers. Government can indirectly protect consumers by keeping control over Companies. Government can see that Companies may not enter into antisocial activities. A company has a social responsibility towards consumers as the Company grows in the community and receives protection from it.

My suggestions to promote welfare of consumers:

1. Consumers' associations may be established.
2. Consumers' co-operative societies and consumers' consultative committees may be formed.
3. Big Companies may be obliged to consider views and opinions of consumers' associations and committees.
4. It should be made compulsory for every Company's product to conform to the standards laid down by Indian Standards Institute.
5. Government can compel the producers to label the prices on goods. Effective measures in the form of price-control may be employed by the Government.

6. Government should punish the persons who create artificial scarcity of goods.
7. Consumers may boycott the traders who are notorious for hoarding and profiteering practices. Consumers may resort to price-resistance movement.
8. Import policy of the Government can help reduction in prices in the Home Market.

The Company legislation cannot do anything effectively to secure welfare of the consumers but progressive managements can ensure the consumers regarding regular supply, reasonable price and sufficient quantity and quality of goods.

Companies and Creditors:-

Creditors are the persons who have advanced credit for raw materials and stores to the Company or persons who have given loan in any form to the Company for its functioning. These creditors must be assured regarding repayment. It is business prudence, not to enter into litigation with creditors. Repayment of debt and interest must be made as early as possible. Companies Act enumerates some rights which are given to the creditors in case of winding up of a Company.

Companies and Government:-

All modern Companies have special obligations to the Government. It is the duty of the management to strictly adhere to laws. It is the duty of the Company to pay taxes honestly to the Government. All Government rules and regulations must be strictly complied with by Companies. This is a very important legal and social responsibility.

Companies and Society:-

Companies operate in society and flourish in Society. People in the vicinity of the Company get some benefits like appreciation in the value of their immovable property, employment opportunity is created, public utility services are established. At the same time there are certain drawbacks of the industrialisation. The air and water in the surrounding area becomes polluted. It adversely

affect the health of the residents. Industrial diseases and rate of crimes increase in the Society. It is the duty of the management to provide public parks, hospitals, children's playgrounds etc. in the vicinity of the plant. The Company must contribute for charitable purposes and educational purposes.

Measure:-

1. Companies may be compelled to allocate 5% of the net profits contribution towards donations to charitable institutions, scholls, colleges and universities. These donations must be given to various recognised public bodies. There is such provision in the co-operative Societies Act.

Conclusion:-

Thus it is the need of the hour that corporations must have dignified outlook of social responsibility and thus promote social justice and welfare of the public at large.

