PREVENTING CONCENTRATION OF ECONOMIC POWER : SOME ISSUES

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Features

The Indian economy since independence has been characterised by several features of rapid transition. Introduction of the five-year plans and the establishment of a large number of industrial and business units in the public and private sectors have in the process created several problems. Purchasing power has been widely distributed through different development programmes undertaken by the Government. The amount of money in circulation has also had an impact in terms of the increase in the quantity of such money pumped in as also the higher velocity of circulation. Demand for different types of goods including food and other necessaries, industrial products and luxury goods has increased several fold. For quite some time, the Indian economy has remained under insulation. While the requirements of development necessitated pumping of more money into the economy and the corresponding creation of demand, the economies of production have not been geared as desirable towards meeting such demand arising from increasing income of the people, at least a certain section of it, as evidenced by All Indian Revenue Statistics. The market has been vast and ever-expansive. The essential features of selling have, however, been those of a sellers' market. Marketing is still an undeveloped activity. The market behaviour has also been of the type that would give the impression that the prices that the least efficient among the units can offer would be the ruling price.

Certain typical features of the manufacturing enterprises in this country do not appear to have received the attention they deserve, with respect to formulation of national policies for initiating rapid changes in the techno-managerial spheres of their operation. Even the Dutt Committee on Industrial Licensing (1969) does not seem to have given serious consideration to some of these features. For a long time these features have acted as a drag on operational efficiency. It is indeed curious that all socalled large-scale enterprises are not really large-scale from the point of

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Some Problems of Monopoly and Company Law

view of scale economy of production or marketing, nor are all small-scale enterprises all really small! The criteria for, and the determination of, scale are not on a uniform basis in all cases. The standards applied however, do not in many cases appear logical. In the context of the present conditions, it is argued by critics, and with some good reasons, that some of the concerned national economic policies suffer from lack of realism. The instances that strike one as relevant in this regard are efficiency and its relation to prices and profits; monopolistic practices; management practices presently in vogue, technological innovation in production, processing and distribution and marketing. Some of the features of Indian manufacturing units seem to be self-defeating and contradictory, to say the least. The practices that they generally adopt for management are interesting examples of what should not be done!

As such subsidization of inefficiency has been quite common particularly in the context of the economy having been insulated from foreign competition and tight import control. For some time past Government of India have been seized of the idea that in the present conditions the industrialists have developed a proclivity towards establishment of a coterie for themselves to perpetuate the conditions of scarcity in the economy either by restricting production or by cornering the supplies and hoarding. On the face of it, the picture gives the impression that efficiency is being penalized increasingly. Whether this is right or wrong, requires_ a much closer scrutiny of the conditions than so far made in our country.

The Monopolies Inquiry Commission as also several other inquiries probed the question of motivations of the industrialists, business groups and industrial houses in the context of expansion of activities. The findings generally support the suspicion that these are to prepetuate the conditions in which high profit was possible. The Monopolies and Restrictive trade Practices Act 1969, has been enacted as a direct consequence of the recommendations of several of these inquiries, particularly of the Monopolies Inquiry Commission.¹ The anxiety of the Government for the purpose of restricting the concentration of economic power has been based on several assumptions. Some of these assumptions are not real, however, quite a few of them are logical.

The Indian corporate sector, including the different types of companies under public control and those under government control, have given the impression that the diseconomies in production have been really widespread. Individual units have been generally small in size even when they have belonged to so-called large industrial groups. The first point to be noted is that generally the size of these enterprises is small. The Reserve Bank of India sample of the public limited companies numbering 1501 represents

1. See generally the Monopolies Inquiry Commission Report (1965).

74

more than 70 per cent of the total paid up capital of all non-financial, nongovernment public limited companies in India. Similarly, the sample of 701 medium and large private limited companies accounts for about 30 per cent of the estimated total paid-up capital of all non-government, nonfinancial private limited companies at work on March 31, 1966 and approximately 53 per cent of the estimated paid-up capital of all medium and large non-government and non-financial private limited companies as on March 31, 1966. The per unit capital of the companies of different categories can be easily imagined. This is not all! According to a study of large companies made annually by the Company Law Board, only about 700 out of a total of 28,000 public and private companies in this country have paid-up capital of Rs. 50 lakhs or more each. This characteristic feature points up the need for restricting formation of companies with meager capital. There may also be specified types of activities in which non-corporate bodies may not be allowed to function in the interest of economy.

The second point worth mentioning is that Indian companies with large paid-up capital are generally based on the premise that too many eggs in one basket is a risky proposition, so that the phenomenon most common is that these companies are generally diversified-vertically, horizontally and spatially but with distinct leanings on horizontal diversification-meaning thereby that the typical features of largeness of scale are not as noticeable in these cases as would be possible. This is mainly because of the fact that the scale of operations within each organisation comprising the conglomerate has not been large. In the cases of the managing agency houses for example, their total activities consisted of a number of companies that they managed which were not large individually. Even; within each company, the activities were spread over a variety of lines. Thus, the size of investment was not necessarily a determinant of economy of scale in production. In addition, the conglomerates among these companies have suffered from the fact that the stake behind innovation has not been very pronounced in them because of spreading managerial attention thinly over a large number of units or products or markets. The result has been that the individual units have not benefited to the extent otherwise possible from the largeness of scale of the conglomerates. This point was stressed by Dr. V.K.R.V. Rao some time back. For instance, the largest of Indian companies, Hindustan Steel Limited, does not enjoy all the operational economies that its size would warrant in view of the fact that the economies of the individual plants run by it do not add up to what would have been possible if it was a one-plant company. The apparent sign of the diseconomies of smallness is more in the cases of the multi-plant companies in which the size-economies of the individual plants have insignificant relationship with the scales of operations of the conglomerates. This aspect of the question requires a thorough study, covering

Some Problems of Monopoly and Company Law

different aspects of economies of scale as obtained in our country. It is strongly suspected from whatever details are available, that in major part, such economies do not accrue to Indian enterprises to the extent possible, considering the size of total investment therein. This is corroborated by the rate of profitability noticed in various industries from the Reserve Bank studies^w in Company Finances related to large and small public limited companies, private limited companies and other studies so far conducted in this country.

The other side of the coin is equally disconcerting if not more. For most part, the Indian companies have remained ownership-motivated which is a contradiction in terms. It is curious to note that the craze for acquiring control over the companies has been as widespread among the industrial-public as among the governments of the Centre and the States. In the context of the companies under the control of the public, ownership-motivation is corroborated by the fact that out of 28,000 companies, 22,000 or so are private limited companies. On the other hand, among the 80 or so government companies under the control of the Central Government, almost all are private limited companies excepting, of course, a few like the Nepa Mills and the Ashoka Hotel.

Concepts

The Monopolies Restrictive Trade Practices Act 1969⁸ has underlined several concepts with respect to monopolies and restrictive trade practices. The concept of dominant undertaking, monopolistic and restrictive trade practices as introduced in the Act can be traced to the Report of the Monopolies Inquiry Commission but its implementation would in effect be analogous to tight-rope walking in the sense that the Government of India in terms of their declared policy would like to encourage scale-economies, while at the same time, to discourage any kind of practices likely to curb competition.

Moreover, in a competitive economy, marketing and advertising appear to be the kingpins in communication about the existence of the products, their virtues and their prices to the consuming public. Since the status of marketing effort determines the type of economic development attained by a country, curbing of such effort would give the immediate impression that implementation of these provisions in the Monopolies and Restrictive Trade Practices Act would appear to be holding back the country's economic progress. That this impression is largely incorrect would require a good deal of elaboration and explanation. Unfortunately no effort has yet been made in this respect.

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2. Hereinafter referred to as the Act.

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76

Historically speaking, an industrial unit established at an earlier period not only has the advantage of accumulated profit, cheaper investment in terms of machinery, land, etc. (particularly in a period of rapid rise in prices for all such items), it will also have the disadvantage of technological backlog particularly in those industries where technical progress has been rapid and continued. However, the older units operating in a market may already have acquired a size and magnitude of operations and market share which a new comer may take time to acquire. This is apart from the lack of desire to expand in certain cases.

To conclude that such dominance by the older units or their trading practices are anti-social and so be curbed may indeed be a retrograde step. It is a good sign that irrespective of the provisions in the Act, the attitude of the Government in the Department of Company Affairs is dynamic and flexible. On the contrary, it is not at least theoretically impossible to suggest that even the non-dominant, nay small-scale, units may see to the growing concentration of economic power in their hands through various means such as their associations. The way to deal with the conflicting situations is anything but straight and the capacity to deal with covert signs of concentration of economic power in companies may be inadequate. Among the overt signs mention may be made of the following:

- (1) Installation of capacity and its expansion vis-a-vis the total capacity installed in the industry.
- (2) Investment and employment in the company as against the total investment and employment in the industry to which it belongs.
- (3) The market share of the company as against the total sales of individual products; the share in expansion in sales is also a criterion to be reckoned with.
- (4) The concentration of share holdings vis-a-vis the exercise of control over the company.

A few of the covert methods are mentioned here as illustrations:

- (1) Differential price cuts in particular markets or in the cases of particular products in which competitors are operating.
- (2) Short period price cuts or offer of bonus products as adopted by some of the suppliers.
- (3) Holding or otherwise restricting the supply of products with the sole purpose of raising the price in conditions of artificial scarcity.
- (4) Written or unwritten price of supply agreements among the manufacturers of different products. Such agreements may relate to supply of different items at the same price in different markets or even demarcation of areas of operation of individual suppliers and withholding competition in those areas by agreement or tacit understanding.

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Some Problems of Monopoly and Company Law

In a period of shortage of supply of different items, anything that is produced can also be sold. The problem is producing more. However, with the economy switching over to competition, the problem changes. Instead of the stress on production it comes on marketing. Thus, irrespective of the points mentioned above, scientific marketing requires the products to be widely advertised so that the consumers can discriminate among the products available in the market for similar purposes. That a bigger undertaking is in a position to spend a larger amount for advertising purposes should by itself be no reason for causing alarm. Also, it need not be always taken, with a pinch of salt, as a step towards driving away the other suppliers from the market. Nor should it be appropriate to ask such an undertaking to restrict expenditure for advertising without having a serious impact on its own long-term future.

Costs and Prices

In the context of the discussions on monopolies and restrictive trade practices in our country, 'not much has been said about the costs and greater efficiency as related to scale. Considerable hush hush still pervades the area of cost analysis in our country. However, it is generally believed that some of the larger and more established companies have distinct cost advantages over the so-called new comers or smaller undertakings. In the circumstances, whether business prudence should be substituted by human compassion favouring survival of the unfit is a matter that cannot beentirely settled by law. It is also corroborated by the Tariff Commission inquiries and other studies that irrespective of the size of undertakings, efficiency has been generally low in our country. Whether it is more appropriate to encourage efficiency as a matter of higher priority than merely maintaining the rules of the game is also a matter to be considered in all its aspects.

For the purpose of the Act, the type of cost analysis will have to be basically different from that adopted by the Tariff Commission or the Bureau of Industrial Costs and Prices. Accumulation of cost details on a continuous basis is a prerequisite for determining whether a unit has deviated from the lines of desirable action. Another basic difference is that instead of asking the undertakings to prepare their cost statements for examination, some mechanism will have to be developed for examining the vouchers supporting different transactions and then finding the product cost on the basis of cost allocation and apportionment practices with respect to each product or group of products. Moreover, there has to be organised inter-firm comparison to determine the position of individual firms vis-a-vis others in terms of profitability, prices of products, expenditure under different heads and their allocation to products or product groups, etc. As yet, practically nothing has been done by either the Government or the Monopolies Inquiry Commission to develop a cost data bank, only on the basis of which a knowledgeable decision in this respect can be taken. However, it is yet not too late. Caution is necessary here against any kind of *ad hocism*.

Socialisation

A more basic point in the context of control of concentration of economic power is that every company is a social institution by virtue of its being in the field of creation of utilities and its having the involvement of multitude of interests such as the consumers, employees and the public at large, apart from the shareholders. Unlike the extreme in the other direction, I should think that concentration of economic power in such social institutions will be a desirable feature under certain conditions. I venture to stress these conditions in view of the fact that they pose as prerequisites to socialisation of corporate behaviour without nationalisation.

- (1) The shareholders should be divested from exercise of control over corporate affairs by law.
- (2) There should be a ceiling on shareholding of individual companies by a single shareholder.
- (3) The corporate managers should have certain prescribed qualifications to be laid down under the Rules made under the Companies Act, as also under other enactments. We had such an exercise in the cases of banking companies under the scheme of social control. It should be more appropriate for the companies in general. Such qualifications should also be prescribed for the directors of the companies. Initially, such qualifications may be prescribed for public companies, ultimately to be extended to the corporate sector as a whole.
- (4) The Companies Act should give enough powers to the auditors to report to the community at large about the performance of the companies over the period in view, as an effective countervailing power.

The law should protect the tenure, remuneration and treatment of the auditors in case there is any repercussion arising out of unfavourable reports. The remuneration of auditors should be fixed in such a way that no bargaining, fear or favour is indicated. In the Minutes of Evidence to the Joint Select Committee in the context of the Monopolies and Restrictive Trade Practices Bill, the tenor of argument advanced by different reputed accountants and others has been that there are monopolistic tendencies even in the accountancy profession. As a matter of fact, the Directorate of Research and Statistics attached to the Company Law Board made a survey of the audit firms and the number of companies audited by them which generally subscribed to this view. To the extent that the clustering of clients under the banner of a single firm of auditors prevents other accountants from having the same clients they may appear to be monopolistic or restrictive. However, it is necessary to concede here that whether the client has a choice to get accounts audited by firms of sufficient standing and repute, such a choice should not be questioned merely on the ground that there are many other clients under the same firm.

The matter is by nature delicate and has got to be treated with the utmost sensitivity with respect to the requirements of the profession and the normal propensities of growth of a firm. In the long run, it may be possible for the Government to prescribe a certain ceiling on the number of companies to be audited by a single firm of chartered accountants. In addition, it may also be possible to issue guidelines to audit firms as to how they should conduct the audit and the manner of communication that they should adopt in case they find matters of significance demanding such communication. In any case, it is necessary that the powers of the auditors should be enlarged and protection should be afforded for the retention of their professional freedom and alacrity.

Interlocking Directorships

Interlocking of directorships has been widely discussed in this country in different contexts, specially in the Companies Act and the Monopolies and Restrictive Trade Practices Act. Interlocking directorships have flourished in the country on the basis of certain assumptions. Some of these are mentioned here as examples:

- (1) It presupposes that directors' experiences get more and more exchanged between companies when they are on the Boards of different companies either in the same industry or in different industries. The direction of efforts of individual companies supposedly becomes better when such directors handle the affairs of multiple companies.
- (2) It presupposes a degree of significance of the experience of these directors which may or may not be true in specific cases.
- (3) It is based on the premise that interlocking of directors is a means of protection of interests of the different investing groups in matter of policy decisions adopted by these companies.
- (4) It is believed that men capable of directing the affairs of companies are rather limited and as such experienced people from the Board of Directors of other companies may be beneficial. This assumption also is open to discussion on the basis of different and contrasting experience.

Here also, whether such interlocking of directorships is beneficial for the corporate sector or otherwise, and whether it affects public interest adversely or not, require to be studied in the light of facts. It is submitted that no such study has yet been made about the cost and benefit of interlocking of directorships and the conditions in which such interlocking takes place and is encouraged. To my mind, the issue is still open. It appears preferable to issue guidelines as to the conditions in which such interlocking may be permissible instead of physically restricting such interlocking. Such guidelines may take cognizance *inter alia* of: (i) Technological requirements of production, (ii) Expertise acquired through experience, (iii) Repute and status of individuals, and (iv) Trust and confidence behind individuals.

Public Undertakings and the Act

The context of the Monopolies and Restrictive., Trade Practices Act does not appear to have been underlined by many analysts who, in their enthusiasm, demand that public enterprises, or more specifically the Government companies, should be subject to the same process of scrutiny by the Monopolies Commission as applies to the private sector undertakings. They stress that when a public enterprise shows the same signs as evoke the provisions of the Act in the case of a private sector company, there is no reason why these provisions should not apply to them. Looking further back, one remembers what Professor V.V. Ramanadham cautioned about monopoly pricing and possibility of 'indirect taxation' by public enterprises. Similar views were expressed by several participants in the seminar. The Chairman and Members of the Monopolies Commission were present at the Session in which this question was mooted. They, however, did not offer their views on the question. One very much appreciates this gesture on their part.

It is contended here that the view that the public enterprises should be treated in the same manner as private sector enterprises in the matter of the Act is based on certain erroneous assumptions which require to be contested and misgivings arising therefrom removed. The present discussion, however, does not attempt a rehash of the background leading to the appointment of the Monopolies Inquiry Commission, the discussion that followed and the enactment of the Monopolies and Restrictive Trade Practices Act and the debate in the Parliament. Instead, it is argued here that section 3 of the Act suggesting that it shall not apply to Government undertakings is logical and there is not much point or purpose in extending the Act to the public undertakings.

The purposes of this Act are several and the following is not an exhaustive list:

- (a) To locate monopolies, dominant units and interconnected undertakings and to restrict further expansion thereof.
- (b) To identify monopolistic practices by way of exorbitant pricing, discouragement of newcomers and restricting production or dispersal of productive effort.
- (c) To help establish an acceptable relationship between cost and prices so that undue profiteering is held in check.

(d) To prevent restrictive trade practices by enterprises in various forms.

All these have become necessary because of the inadequacy of disclosure of information through annual accounts and the absence of a means of surveillance over these bodies in matters not required by any other law. In addition, some practices adopted by some of the large houses have come under sharp public focus as a result of details disclosed by Commissions of Inquiry appointed from time to time. These practices have been apparently detrimental to 'public interest', vague, though it is. In these conditions, the Monopolies Commission has been entrusted with the power to call for such details as are not available in the normal course. It may be mentioned here that while in the context of monopolies the role of the Commission is advisory, in that of restrictive trade practices, it is quasijudicial.

Do the public undertakings suffer from the same banes? The public undertakings, on the contrary, suffer from questions belonging to the other extreme, namely, over-exposure. It is common knowledge that a large number of Government Departments, Parlianfentary Committees and the Comptroller and Auditor General of India at present exercise their control and surveillance over these undertakings throwing up in the process a large mass of data every year which are available in an organised, publishedform, presently lying somewhat unutilised. These data are related to every aspect of their operation including organisation and personnel, capacity and production, pricing and profit, etc. Comparable details for private enterprises are not available at all. Some of these details will have to be collected and collated by the Monopolies Commission with respect to whether an undertaking is (i) a dominant one; (ii) interconnected with other undertakings; and (iii) adopting practices tending to restrict trade competition through various means.

A reference to the Industrial Policy Resolution of 1948 and 1956 suggests that the public undertakings have been operating generally in areas demarcated for them. There are exceptions but these are also as a result of specific policy decisions adopted by the Government. Mention may be made of the recent decision that public undertakings will function in consumer industries. The industrial units taken over by the Government under the Industries (Development and Regulation) Act 1951 are beside the issue. Whether an undertaking is dominant or inter-connected is irrelevant in the case of public undertakings but it has been a policy of the Government to have multiple undertakings in the same fields of activity such as steel manufacture, electrical machinery, drugs, machine tools, fertilizers, etc.

In the circumstances, inclusion of the public undertakings under the

Act would not be of much avail. In addition, the Commission cannot override the findings of the C.A.G. and the Parliamentary Committees. The status of the Commission is subordinate to the Government and not independent of it. Its decisions are also not binding on the Government. As such, subjecting the public undertakings to scrutiny by the Commission may stand the danger of making the whole process circuitous.

Tasks Before The Monopolies Commission

All these should be tasks before the Monopolies Commission, now that the enactment has been passed by the Parliament and the Commission has started functioning. It should elicit all information, not collected or processed elsewhere in any other Government Department, that would help consideration of determinable questions of size, its relation to efficiency and encouragement of efficient units in relation to those that are inefficient. Some of the inquiries by the British Monopolies Commission and the analyses thereon should provide good guidelines for us, for formulation of policy with respect to monopolies and licensing, in the context of development. Lack of adequate and organised information is a big handicap at the moment. VThis barrier should be broken. One of the major tasks before the Commission would be to help government adopt sensible composite policies covering various functions. A recent study by the Industrial Development Services has made the plea that large-scale units that export should be exempted from the purview of the law controlling monopolies. This would, in all probability, circumvent the law while aggravating the diseconomies from which Indian exports presently suffer. It is necessary for the government not to take an isolated view of any function, including exports. The Commission should be able to suggest a workable measure for dealing with the question, as it has already done in the context of 'inter-connected undertaking' in the recent case of M/s. Century Spinning and Manufacturing Co. Ltd. that came up for hearing before the Commission.