GOVERNMENT DIRECTORS IN INDIAN COMPANIES

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During the last decade and a half, the institution of Government directorships has grown into a significant feature of corporate management in this country. Yet, very little study has so far been made of the role, functions and responsibilities of Government directors. This paper is intended primarily as a plea for an objective analytical study of this new insitution, with particular reference to its structure and working in the context of the developing concept of the social responsibilities of business.

The basic difficulty arises from the fact that the available library material on this subject is not only scarce, but what exists is largely scrappy and of a superficially informational nature. Any serious worth while study on this subject must, therefore, be based, necessarily, on such documents as are available in the Government departments and offices concerned, on the proceedings of the company meetings, and on replies to carefully designed questionnaires that may be addressed to selected Government directors and the top executives of the companies on the Board and/or in the management of the companies concerned, followed by interviews with them by competent researchers, not only familiar with the techniques of survey-research of this type but also blessed with the gift of perceptive insight into company affairs. These essential requirements have only to be mentioned to under score the hurdles in the way of any serious study of the subject. Nevertheless, an attempt has to be made, and in this attempt research institutions of standing and with the requisite faculty resources have an important part to play.

II

In order to place the issues relating to Government directorships in their proper perspective, it may be desirable to say a few preliminary words on the origin of this institution. Shortly after independence, two

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major issues of economic policy which, for several years earlier, had been in the central stream of thinking of our policy-makers in the economic field then claimed urgent attention, *viz.*, (*i*) the increasing role of the state in the promotion and development of key and basic industries, and (*ii*) the purposive regulation of companies in the private sector of our economy to ensure that their working fitted into the broad goals of the country's economic and social policies as embodied in authoritative pronouncements on the subject from time to time.

The first of these major concerns involved a fairly long debate on the form of ownership of public sector enterprises and the problems of their management. It is not necessary in this context to enter into the details of this debate; the beginnings of it will be found in the Report of the Fiscal Commission 1949-50[1]. and the subsequent course of the debate which continued intermittently till the Congress Parliamentary Committee under the chairmanship of Shri V K. Krishna Menon reported in 1960[2], has been documented in the reports of many Committees and Commissions, and in several *ad hoc* official and non-official studies on this subject. A working consensus which eventually emerged was that, in regard to businesses or industrial undertakings, other than public utilities or those which were intended to provide the essential infrastructure of trade and industry or other community services, the most suitable form of structure for them would be the company type of organisation—more so, in cases where collaboration with private componies or private management was considered desirable. Under this category fell the great majority of businesses or industrial undertakings, which were engaged in the production and sale of goods and services in the open market. The company form thus became the dominant form of organisation in the public sector. The operative core on the board of directors of these companies consisted, necessarily, of full-time paid directors, drawn in the earlier years generally from the existing service cadres, and later on, to some extent, from a management pool, which had been organised in the early sixties to which individuals from both the public and private sectors were recruited. The other members of the board were mostly part-time officials or non-officials. In the case of such officials, they were expected to look after the interests of the government departments or offices which they represented (whatever might have been involved in this so-called responsibility for general oversight); in the case of non-officials, drawn from different interest groups, they were supposed to bring to the management of the government undertakings concerned such special knowledge and experience of men and affairs as they were assumed to possess.

So far as companies in the private sector were concerned, one of the

1. Report of the Indian Fiscal Commission 1949-50,219-221.
2. Report of the Committee on Public Undertakings (1960).

many ways in which their working was sought to be regulated and influenced was the appointment of Government nominees on their Boards in circumstances falling generally under the following heads :

(*a*) Where Government considered it necessary in the national or public interest to provide financial or other forms of assistance not usually given to such companies, it was stipulated, in agreements with them, that in consideration of the assistance offered by the Government, they should be prepared to take on their Boards nominees of the Government, usually not exceeding two or three, if Government so desired. The number of cases in which such a stipulation was enforced was, however, relatively limited. In these cases, the Government directors were usually officials, although in some cases, former employees of the Government, and in still fewer cases, selected non-officials were also nominated as directors.

(*b*) Where financial or other investment bodies, wholly or predominently owned by Government, offered financial assistance to companies in the private sector, not only by way of share participation, but also in the form of loans, a stipulation was generally made, and still continues to be made, that such companies would be required to take on their Boards such directors as these financial or investment institutions might like to nominate from time to time. The directors appointed by these institutions were, strictly speaking, nominees of the institutions concerned and not of the Government as such, although in many cases they were either serving or superannuated employees of the Government. The officials or non-officials appointed by these financial/investment bodies on the Boards of the beneficiary companies were supposed to look after not only the safety or security of the loans and investments made but also, generally, the working of these undertakings, so that an overall watch could be kept on their continuing commercial viability and their capacity to honour their commitments.

(*c*) Finally, under the specific provisions of some statutes, as for example, the Companies Act and the Industries (Development and Regulation) Act etc., the Government acquired the power, to appoint on the Boards of companies in the private sector, to which the relevant provisions of these statutes applied, nominees drawn from the rank of non-officials as well as officials, if in such cases Government considered it necssary to do so, in the interest of the companies concerned or in the public interest, as specified in the provisions of the relevant statutes.[3]

3. There is, however, a difference in the nature of the powers conferred on the Government under the Companies Act on the one hand, and the Industries (Development

The foregoing resume attempts to summarise the broad policy regarding the appointment of directors on the Boards of companies, whether in the public or the private sector, by the Government or the financial/investment corporations since this policy was adopted some years ago. As far as the present writer is aware, no material change in this policy has so far been introduced.

III

Reasonably comprehensive classified statistical data relating to Government directors and similar directors, nominated to the Boards of companies by the financial or investment institutions owned or controlled by the Government, are not readily available. These statistics would presumably have to be compiled laboriously from their original souces, *i.e.*, from the company data available in the Government departments and offices concerned, of which the most important would be the records and returns filed by companies with the Registrars of Joint Stock Companies. This preliminarly task of compilation would, therefore, constitute the first essential step in any study-project on the subject of government directorships. These data will provide the researcher with information about the relevant particulars of Government directors, as for example, their background, training and experience, and if carefully studied and analysed, may throw a good deal of light on the structure of Government directorships in our country It would, however, be necessary to supplement this information with additional data, such as can be obtained only through questionnaires and interviews about the amount of effective time spent by these directors on the Boards of the companies concerned, and the part played by them in the deliberations of these companies. The contributions of these directors to the decision-making processes in the management of these companies could be assessed properly only in the light of such detailed study. Whether this contribution, thus assessed, was commensurate with the time and effort spent by these directors on the Boards, and in particular, would bear some reasonable relation to the direct and indirect cost of their services, could be determined only through some sort of cost-benefit analysis, for which appropriate tools of evaluation and criteria of judgment would need to be devised. By its very nature, this is

and Regulation) Act and other similar Acts on the other hand which attempt to clothe government with the requisite statutory authority to reconstitute or re-organise the Boards and the connected management set-ups of companies in the private sector. Under Section 408 of the companies Act, the power of the Central Government is limited only to the appointment of two directors for a period not exceeding three years, on the Board of a company in circumstances specified in this section. The powers conferred on the Central Goverment under the other Acts, like, say, the Industries (Development and Regulation) Act, are very much wider, and extend to the reconstitution of the entire Board, if necessary.

likely to be a complex and not easily tractable enquiry. For, apart from the laborious task of collecting and compiling the primary data from a variety of sources, their analysis and objective evaluation will need a type of judgment and insight, which cannot be provided by any simple rule of thumb, and is not susceptible of treatment by any sophisticated measuring rod. The choice of the right type of researcher in a relatively soft and unexplored terrain like this would, therefore, be all-important. Nevertheless, it is important to undertake this task, for the reason that there is a widespread impression both in governmental and business circles that except in the case of some categories of companies and in some very limited areas, the services rendered by Government directors are neither commensurate with the cost of these services such as they are, nor do they help materially to achieve the purposes for which such directors are appointed.

IV

The difficulties of government directors stem from several sources. One basic difficulty arises from the inability of the rank and file in the administration and not unoften even on the part of some members in the higher echelons of the Government to appreciate the nature of corporate personality.[4] The fact that a Government company is much more an instrumental device intended to give effect to a specific policy or programme of the Government, and that on its incorporation as a viable legal entity, it acquires a personality of its own with its own mechanics, different from those of government departments or offices, is not easily grasped. Added to this is the conceptual confusion sometimes created by the dual role of the Government in its relations *vis-a-vis* a Government company (*i.e.* a company in which the Government is a major holder of its equity). This duality arises from the fact that while the Government as the executive organ of the State has the right to regulate corporate behaviour in conformity with the broad aims and objects of the State's accepted economic and social policies, the Government as the major holder of the equity of a company has ordinarily no special right or powers, in corporate jurisprudence, beyond those that are enjoyed by majority shareholders in all companies.

The nature and limits of the authority exercisable by corporate

4. One need not go the whole hog with Gierke (vide Gierke's *Natural Law and the Theory of Society*) in his view of the organic nature of 'group personality'. But it is now a common place of corporate jurisprudence to recognise the fact that a duly incorporated company possesses a separate legal personality of its own as distinct from the totality of its shareholders. The concept of the "ownership" of a company by its shareholders is thus, in strict legal construction, an illegitimate extension of the concept of ownership of shares by them. A company, in strict law, is self-owned, and therefore cannot be owned by others. That is why the use of the phrase 'corporate owners' so common in current jargon, has been generally avoided in the text of this paper.

shareholders in relation to the management of companies are broadly laid down in Company Law. Subject to the provision of this law, fulltime working Government directors in a Government company constitute its principle executive organ, and in the excercise of their powers and responsibility in this capacity, they function freely within the broad limits of the company's charter documents, *i.e.*, Memorandum and Articles of Association. These directors cease to be mere employees of the Government and are not subject to the control or direction of the Government department or office concerned with the activities of the company in the day to day conduct of its business. Because of their constitutional and/or political power, Governments, whether in democracies or in dictatorships, however, like to retain an effective voice in the significant decisions taken by the Boards of government companies, going beyond the limits of the powers normally exercised by the majority-shareholders in non-government companies. It is in this fact that the seeds of inefficiency and conflict in the internal working of government companies sometimes lie hidden. During the last ten or more years, attempts have been made to resolve the source of this conflict by endowing the Government *qua* Government (*i.e.* as the Government and not in its capacity as a corporate owner) with substantial specific powers relating to some important aspects of the management of government companies, normally excercised by the Boards of non-government companies, and also with the general power to issue directives. The technical device adopted for this purpose has been to write these powers into the constitutional documents of government companies, while the general power to issue directives is usually circumscribed by the provision that it should confine itself mainly to policy issues. These provisions have had the effect of mitigating the chances of conflict, as between two sources of power, but the logical dichotomy implicit in this bi-focal exercise of power in respect of the internal management of companies cannot be entirely removed. This is the basic weakness underlying the institution of goverment directors. Much depends in practice on the restraint and wisdom of governmental authorities; and if any generalization can be hazarded, it may well be claimed that the successful working of Government companies in their day to day business would depend a great deal on the capacity of the Government to adjust its role as closely as it can to that of shareholders in non-Government companies.

The position of part-time directors in Government companies, whether official or non-official, is no different from that of whole-time Government directors. In Company Law, their primary duty and responsibility is to serve the interests of these companies in conformity with their aims and objects, and within the limits of the authority vested in the Boards under the terms of their charters. This is so, irrespective of whether a part-time director happens to be the Chairman of a Government company or is only an ordinary director. Following the traditional

British practice, the Boards of most of our government companies usually consist of a number of part-time directors. Whether in practice such directors are able to make any material contribution to the day-to-day management of these companies depends wholly on their stature, knowledge, experience and above all on the time they are in a position to devote to the work of such companies. If the right men are not chosen, whether they are officials or non-officials, there is a real risk of the offices of such directors being viewed by the full-time company official and the informed public alike as sinecures, intended for a favoured few for reasons which have little to do with their ability to promote or further the interests of the companies.

V

Government directors on Boards of companies in the private sector, who are generally part-time, have a less complex assignment and are intended to play a more precise, though necessarily limited, role. By and large, they are intended to be guardians of the interests of the Government departments or offices which appoint them, and, in the case of Government-owned financial or investment institutions, to look after the ultimate security of the financial accommodation offered or the investments made in the companies of which they are part-time directors. In practice, the effectiveness of the part played by these directors has been widely questioned, irrespective of whether such directors are officials or non-officials. The number of such Government directors (including the directors nominated on Boards of companies by the financial and investment institutions) would be only one, two or, at the outside, three, on a Board of many members, and by and large such minority directors could hardly be expected to influence the decisions of the Board. No special weightage or authority, in their capacity as directors, attaches to them. To the day-to-day management of the companies concerned, they could expect to make an effective contribution only by the quality of their character, personality and the specialized knowledge and experience, which their other colleagues on the Board of these companies could be expected to respect. As a rule, men with such qualifications are not likely to be easily available, and not many among them would like to serve on Boards that are not expected to value these qualities. Further, the association of a few minority Government directors with the Boards of such companies, it has been not infrequently complained, gives needless legitimacy to the dubious decisions sometimes taken by these Boards. It was in view of these considerations that, early in the fifties, when the issues relating to government directors were still the subject of much theoretical argument, the present writer had ventured to suggest, in the light of his study and

observation of the practice then obtaining in the United Kingdom, that much the better course, in the case of companies in the private sector where the Government wished to appoint directors for reasons mentioned above, might be to appoint Observers or Advisers instead of directors[5]. In such cases, the Government could stipulate that the Articles of the companies concerned should not only provide for the appointment of Advisers by the Government, as and when the Government thought it necessary to do so, but that such Advisers should have the right to attend the meetings of the Board when the Government required them to do so, and to express their views on specific matters, placed before the Board. They need not ordinarily participate in decision-making but would have the right to demand that certain specified matters, where the interests of the Government were directly involved, should not be disposed of except with the concurrence of the Government. This alternative scheme was not expected to be popular with the government departments or the offices concerned, because of the seemingly inferior status of Advisers, and the superior attractions of regular seats on the Boards of companies dispersed all over the country, which appeared to confer a nominal status on the occupiers of these seats, with some minor material advantages incidentally thrown in but without any real responsibility or power. Nor did this proposed alternative arrangement find favour with the full-time top management of these companies, who were suspicious of the aloofness and independence of these Advisers. In the result, the scheme was hardly given a trial. Nevertheless, a further close look into the uses of part-time Government directors on companies in the private sector is justified in view of the admitted weaknesses and the resultant ineffectiveness of the present institutional structure in this area of corporate management. If no major change of the nature suggested above in the existing practice is considered easy or practicable, renewed emphasis on the purposive education and training of government directors is urgently called for.

VI

In the early emergent phase of the institution of Government directorships, the then Department of Company Law Administration (now designated as the Department of Company Affairs) took some preliminary steps to instruct officials regarding the broad principles relating to the structure and functioning of joint-stock companies; some 'guides' and 'readers' in the form of pamphlets and brochures were published; and instructions

5. This suggestion was not very dissimilar to the provisions contained in our recent legislation relating to the regulation of commercial banking in this country conferring powers on the Reserve Bank of India to appoint 'Observers' to attend the meetings of the boards of some banking companies in certain specified circumstances. Banking Companies (Regulation) Act (as amended in 1968), sections 36(i)(d)(ii) and 36(i)(d)(iii).

and guide lines for management were issued from time to time. Stress was, however, laid in these exercises more on the mechanics and procedure of joint-stock companies rather on the basic juridical and economic logic underlying them. Presumably, it now falls within the scope of the Bureau of Public Enterprises to pursue this task, so far as the Government companies at any rate are concerned. Whichever may be authority entrusted at present with this work, the continuing education and purposive training of government directors both in the public and private sectors, have acquired a new importance and peremptoriness in view of the more activist role envisaged for them in recent authoritative pronouncements and the consequent additional obligations under which they are likely to be placed more and more, either expressly or by implication. If government directors are to prove equal to the new tasks proposed to be assigned to them, whether in Government or non-Government companies, it would be imperative to select them not only with due regard to their standing, experience and background in the relevant occupations, professions or vocations from which they may be drawn, but they should also be adequately trained for their duties and responsibilities not merely in general administrative terms, but more specifically in the theory and practice of company management. Routine knowledge of company procedures and the operational formalities prescribed under Company Law, such as constitutes the usual stock-in-trade of the average company secretary in this country, would hardly be enough. What would be preeminently needed would be meaningful and perceptive understanding and appreciation of the fundamental principles of corporate jurisprudence, corporate organisation and corporate finance and investment. It should not be difficult to plan a suitable course of education and training for the future government directors, if the need for it is duly appreciated and accepted. Vested interests in this area, as in other fields, may be expected to resist the change. But one can hopefully proceed on the assumption that, so far as government directorships at any rate are concerned, no one who is familiar with the growing importance of this institution in the present set-up of the corporate management in this country will seriously argue that they should continue to remain another profession, like politics, for which no special training is necessary.