

## FOREWORD

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With the publication of this monograph, the Indian Law Institute remedies, belatedly though hopefully not too insubstantially, a glaring lack on its research agendum in law and economic development. The extraordinary endeavour to initiate, promote and regulate industrial development through policy, law and administration is here highlighted with reference to merely one vital area : namely, the regulation of corporate financial management. The various issues involved in such endeavour are complex, often to the point of being intractable. The merit of Professor Kulshreshtha's work lies in a lucid elucidation of vexing intersections between public control and private initiative.

To the specialist, what is offered here may appear too simple and obvious. But the special appeal of the study seems to me to lie in an education that Justice Oliver Wendell Holmes never tired of extolling : namely, the education in the obvious.

At so many points, this study illustrates how, what should be obvious is indeed not so. Take, for example, the entire problem of the sick industries. The pathology of corporate finance (discussed on pages 26-33) emerges as a kind of malingering. No wonder, therapeutic attempts to deal with sickness in industry seems only to have increased the severity of the disease (pp. 31-32). How does it happen that despite a vast network of regulation, the epidemic of sick industries grows unabated ? To what extent governmental takeover and nationalisation provide an economically efficient and socially just answer to the fundamental causes of sickness ? What messages the epidemic contains for further purposeful law and policy action ?

Similarly, how does one understand, in this day and age, so much wayward questioning, and confusing judicial interpretation, on the rather simple questions of managerial remuneration (pp. 263-284) ? The rather dramatic defence against governmental regulation over managerial remuneration (p. 281) raises acutely the issues of *justice*, not for the

impoverished, but rather for the most well-endowed sections of the Indian society. It seems that many professional managers perceive themselves as *victims of injustice*. They point to the fact that incomes of movie stars, lawyers, and other self-employed professions remain unregulated. This fact is given conclusive significance in seeking liberation from governmental regulation of managerial remuneration. But it is equally obvious that such regulation can also point the other way and justify a growing demand for a socialist ceiling on incomes of the top elite groups in an impoverishing society. One may even suggest, and not at all facetiously, that managerial personnel in India is uniquely equipped to argue for a national policy of ceiling on incomes on all similarly placed groups. By so doing, they will assist the government in a more vigorous fulfilment of the directive principles of socialist state policy; they would thereby also add to the legitimacy of the managerial class in India.

On less conspicuous, but for that reason no less important, matters one is not at all able to comprehend the reasons for policy-making inertia in many areas. For example, the simple suggestions of Sacher Committee's Report for disclosure of greater information in the Board and Auditor's Reports (pp. 92-93, 98) do not seem to have found favour with the policymakers, who otherwise display no marked aversion to overlegislation. The same puzzle confronts us with in relation to the other recommendations on dividends (p. 99) and cost auditing (p. 101).

Dr. Kulshreshtha has dealt with care with issues of policy concerning capital formation (pp. 195-232) and the extraordinary role of the public financial institutions (pp. 113-194). On the latter, a comparative and close reading of arguments which succeeded with the Bombay High Court and with the Supreme Court in the *Escorts Case*<sup>1</sup> should at last bring home the message that a new legal regime has to be evolved for the public financial institutions. At the present moment, they straddle uncomfortably both the realms of state and market, of 'public' and 'private' law, the corporation law and Constitution of India. The accountability of public financial institutions and their autonomy in making sound investment decisions are, of course, closely related issues. The *Escorts* decisions are worth a close look, outside the context of the facts and holdings in that case itself. Should the discipline of the fundamental rights under Part III of the Constitution be as severe as their Lordships of the Supreme Court and High Courts may decide from time to time on concepts and criteria which remain, when coherent, deeply problematic? Should these institutions be allowed to behave

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1. *Escorts Ltd. v Union of India*, 1985 Com. Cas. 241 (Bombay High Court); *Life Insurance Corporation of India v. Escorts Ltd.*, 1986 (1) S.C.C. 264.