

POLICY ISSUES IN GOVERNMENTAL REGULATION*

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The nature and form of government regulation of private enterprise is an extremely topical and live issue, particularly at present, when we are on the anvil of the Fourth Plan. There must be frank exchange of views and clear understanding not only between Government and the business community but also amongst all interested persons, as decisions in this regard inevitably have far-reaching repercussions, extending into the life of the entire community.

The alternative before our country today, as before most other developing nations, is not really between complete control on the one hand and complete freedom on the other. The classical theory of free enterprise is not practised in its true form in any part the world of today and even the economics which claimed to be based on a system of free enterprise have various built in measures of regulation and control. The anti-trust and other regulatory legislation in the United States and similar regulatory control over monopolies and mergers in the U.K. illustrate that a certain measure of regulation is inevitable in order to secure and promote larger interests. On the other hand, the greater entrepreneurial freedom being allowed to industrial enterprises in socialist countries, particularly in Yugoslavia, is a pointer in the other direction and reflects recognition of the need for greater flexibility and for permitting fuller play of the market mechanism, even in countries which are primarily based on a system of detailed planning and comprehensive controls. The choice which faces all developing nations is really the degree of control and regulation that is necessary during various stages of economic growth. The regulatory and control mechanism cannot be conceived of in static terms; it is essentially a dynamic process and has to be viewed against the environmental situation existing at a point of time.

The system of control and regulation of trade and industry in this country has had quite a long history and really goes back to the Second World War period when the entire economy was functioning under a fairly rigid system of controls. Regulation of foreign exchange, control on imports

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and exports and regulation of the entire range of production, prices, distribution of commodities had been comprehensively developed during the period prior to independence. Even today, the legal basis of most commodity controls flow from the regulations and measures enacted during this period.

During the post-independence years, regulation of private enterprise was sought to be given a different approach and direction, consistent with the new objectives of state policy. While certain controls continued such as capital issues, and the like in a form modified from time to time, a fairly comprehensive system of industrial licensing developed over the years, primarily with a view to channellise scarce investible resources in particular directions. The regulation of industry through the licensing system was essentially on pragmatic approach and was a recognition of the essential need for channellisation of limited resources, particularly foreign exchange into industrial sectors which yielded the maximum advantage from the national view point. The Industrial Policy Resolution laid down the principles governing the mixed economy to be established, and over the years, the role of the public and the private sectors have remained relatively well defined, with both being dovetailed into a fairly consistent whole through the system of regulation and control. Certain broader considerations such as that of bringing about greater degree of regional dispersal of industries were also sought to be achieved. The licensing system would not, however, be considered as being purely negative in nature. Detailed targets of production and required capacities in various industrial sectors were laid down which served as a very useful guide to entrepreneurs during a difficult and transitional stage of industrial expansion and growth. Since the creation of indigenous capacity in various fields was also linked with import restrictions in respect of such items, indigenous industrial units had the advantage of both relatively assured markets as well as a degree of protection from outside competition.

At an early stage of industrial growth when a vast range of basic and consumer industries had to be set up, pragmatism necessitated that production in various industrial sectors developed on planned lines. This was all the more essential because heavy capital imports together with foreign engineering and technical know-how was essential for a number of these industries and very undesirable consequences could well have followed, had the industrial expansion been left completely free and unfettered at that stage. This is not to suggest that licensing of industries had been an entirely unmixed blessing. Various practical difficulties have been experienced over the years. In a number of industries, the capacity licensed remained far from being achieved, procedures for revocation of licenses which were not speedily implemented were slow and cumbrous and the insulation from competition has tended to aggravate the tendencies towards

a high-cost economy. Nevertheless, even with the shortcomings in the system, it needs to be emphasised that a system of licensing and control was essential during the Second and Third Plan periods, because of the circumstances existing at the time.

The picture facing the economy today is very different. With a vast range of capital goods, including sophisticated machine tools and complex equipment and machinery being indigenously produced and supported by growth of indigenous technical know-how in many fields, including that of consultancy engineering, a reasonably strong industrial base has now been created, on the foundations of which a superstructure of rapid industrial growth based on indigenous equipment and materials could be built up. With growing indigenous technology and with rapid increase in engineering personnel and talent, our dependence on foreign technology should be gradually reduced. The tendency for foreign collaboration and the preference for foreign machinery and equipment must give way to increased emphasis on indigenous technology and insistence on indigenous equipment both of which would form the cornerstones of rapid industrial growth in the future. With the wide industrial base that has now been established, together with the infra structure facilities such as power and transport which have also been substantially developed in most States, the time has come, and it has only now come, when we can consider establishment of industries not having foreign exchange implications on a more flexible and less restricted basis than in the past when most industrial projects were based on heavy imports of capital equipment, foreign technology and foreign personnel. In fact, with the substantial production capacity of plants manufacturing sophisticated capital and engineering equipment over a wide range, there is need for rapid multiplication of industrial units to utilise such production capacity. Not only does the country possess a vast indigenous market for an enormous range of goods and services but the possibilities of exports are also very bright and the rapid increase in non-traditional exports in the last few years is clearly indicative of the fact that the entire balance of trade could undergo radical transformation in the next few years, to the country's advantage.

The regulation of private enterprise has, therefore, to be directly linked with each stage in industrial growth. It is this change that has to be reflected from time to time, in the regulatory and control policies of the country. With the stage of economic and industrial development that has now been reached, the situation has to be viewed in different terms for the future. Now that the next Five Year Plan is in a stage of finalisation, this is an appropriate time to take stock of the regulatory measures whether in the field of licensing, capital issues, import control and the like, that would govern private enterprise in the coming years with a view to achieving a relatively fast rate of industrial growth of 8 to 10% and even more. Just

as the regulatory measures followed in the past would stand the test of pragmatism at the time, so also must the new regulatory policies that are framed in the course of the next few months face such assessment, the ultimate test being the achievement of the required rate of industrial growth.

The second group of regulatory measures relate to the day to day functioning of the corporate sector and are embodied in the provisions of the Companies Act of 1956, with its amendments enacted in 1960. This legislation is used as a check on the setting up of new companies and also to regulate the functioning of the corporate sector along certain lines in the general interest. This legislative measure was primarily designed to bring about healthy functioning of public limited companies at a time when the channellisation of savings and resources in industrial investments necessitated the utilisation of such investments in a manner designed to give confidence both to the individual investors and to the public at large. While the provisions of this legislation have been criticised on the ground that it gives the Government very extensive powers of inspection and investigations into the affairs of companies, it is seen that in a number of cases that even these powers are sometimes inadequate. There are certain social obligations of the corporate sector which have to be observed as the operations of this sector covers a large part of the economic life of a community. It is against these obligations that the provisions of company law have to be viewed. Comprehensive and detailed as it may appear at first glance, existing legislation in relation to company management still leaves some gaps which could bear further consideration. It would also have to undergo change if certain basic concepts relating to corporate management are differently viewed in future. Present company law is largely based on traditional concepts as they have developed in the Western countries and though certain powers of disclosure, investigation and control are exercisable by Government, these are essentially policing functions and mostly follow the event. It is possible to conceive of, for example, a different role for share-holders or company audit may be given a different form or the question of workers' representation on Management Boards may have to be given greater emphasis. The role of the Government in respect of the Companies which are not satisfactorily managed can also be greatly enlarged. The responsibility of financial institutions in the management of companies where they have considerable financial stake could also be differently viewed. As corporate management moves to an era of greater professionalism, the role and responsibilities of the professional managers may require greater elaboration. All these ideas emphasise the need for viewing the problem of company jurisprudence in dynamic terms so that controls in respect of the corporate sector in future reflect the concern of the entire community in respect of operations in this vital sector of the economy.

Apart from the details of company law which provides for regulation

in the social interest, three major legislative measures are under consideration at present; the first relating to the abolition of the managing agency system and prohibiting donations for political purposes, the second to bring about a degree of regulation and control in respect of monopolistic undertakings and the third, to bring about certain essential changes in the patent law. The managing agency system has without doubt outlived its purpose and the corporate sector must necessarily adjust itself to professionalisation of management and to the patterns prevailing in industrially developed countries. Adequate time has been provided to bring about such an adjustment and I am sure that not only will the abolition of this outmoded system not lead to any dislocation but that it would greatly accelerate the creation of a much healthier system of corporate management which is much more in tune with the challenge that our industrial units will have to meet in international markets. In respect of the legislation relating to monopolies, the Joint Committee's Report is pending before Parliament. The intention is certainly not to prevent economies of scale, as is sometimes argued, but mainly to avoid particular units being placed in positions of such dominance as would not be in the larger interest. It is important to remember that one of the Directive Principles in the Constitution aims at prevention of concentration of economic power and prescribes not only that ownership and control of material resources shall be distributed for the common good, but prescribes that the State should secure avoidance of concentration of wealth and means of production to the common detriment. It is this basic constitutional provision which is sought to be given form and substance in the pending legislation on monopolies. It would not be appropriate for me to anticipate the final form in which this legislation would emerge, but I must emphasise the imperative necessity of moving, through process of legislation, in the direction of reduced concentration of wealth and economic power as this cannot be ensured by administrative means alone. This move towards socialism is to have both positive and preventive aspect. While the positive aspect is reflected in the growth and expansion of the public sector in various vital and essential fields, the preventive aspect must be in the form of greater control over business organisations where concentration of wealth and economic power is not conducive to the public good and such control must necessarily stem from legislative measures. As for the legislation regarding patents, which is pending before the Joint Select Committee, it is essential to bring our patent law, which is outdated, in tune with latest developments in the country and to both encourage and utilise indigenous research.

Following as we do the basic principle of a mixed economy, it is not the intention through the regulatory measures to inhibit industrial growth. In fact, the purpose of regulatory measures both in the field of licensing and controls over capital issue, imports and the like, and in respect of company legislation is primarily to assist private enterprise in development on desired

lines and in a healthy manner. While no system can be claimed to be fool-proof, the regulatory measures so far followed by Government, can by and large, be said to have achieved their objectives. In the future, new considerations may arise and a somewhat different approach may have to be evolved on some of these issues. Ultimately, however, these also must effectively stand the test of achieving the basic purpose for which they are designed, that of ensuring a rapid rate of industrial growth on the one hand, and fostering and developing healthy corporate management on the other.