

THE PROBLEMS OF REGULATION*

S. N. JAIN**

In the context of the planned economic development and the establishment of democratic socialism in the country, the need for government regulation of private enterprise on proper lines cannot be overemphasized. The post-independent era has seen the emergence of a vast regulatory mechanism in the field of trade and industry. Though the two industrial policy resolutions leave a large area of operation for the private enterprise, yet it cannot be gainsaid that in a society where the government is committed to improving the welfare of the people, the private enterprise cannot be left entirely to the ordinary forces of demand and supply even within the area of its permissible operation. Its regulation is essential both in the interest of increasing its productive forces and lessening inequalities in the society aspiring to establish an egalitarian order. The primary objective of a regulation has to be that it does not lead to exploitation of people, waste and exhaustion of natural resources, lop-sided development and concentration of wealth. At the same time, the regulation has to be such that it does not hamper the development of the private enterprise but enables it to flourish, since the objective of the socialist pattern of society is not only to attain equality but also to increase the national wealth. The two objectives, however, do not meet on the same plane. Often the attempt to achieve one may disrupt the other. It requires drawing up nice lines, balancing of complex factors, so that both can co-exist.

Furthermore, the growth of the vast regulatory process has led to the conferment of wide discretionary powers on the executive. There is a danger that this discretion either may not be exercised in a way that subserves the society in the best possible manner, or may even be abused or used for private and not for public benefit. This poses a great threat to the existence of the rule of law in the society. It is necessary to evolve proper procedural safeguards to control discretion, particularly in a fast developing society where past experience is not available and most of the legislation is experimental, and which is struggling to establish norms of administrative action and conduct in the various fields of human activity.

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**Acting. Director, The Indian Law Institute, New Delhi.

The seminar aims at discussing the various problems of government regulation of private enterprise within the broad framework just outlined by me. The purpose of the seminar is not to discuss any ideologies or to advocate any brand of socialism. The institute is an academic body devoted to legal research and it does not desire to involve itself into the vague and difficult, and what may be regarded as an emotional subject of socialism. When the subject of the government regulation of private enterprise was selected for the seminar, the organizers were quite conscious of this factor. The seminar starts with the basic premise that whatever socialism may mean to anyone, it at least assumes that no individual in society should be permitted to exploit another individual, and there should be as less a gulf between the rich and the poor as possible consistent with the maximization of national production. This is the minimum which any society believing in socialist principles must have as its objective. We start with this basic minimum. We would attempt to examine the various problems of government regulation of private enterprise within the existing norms laid down by the two industrial policy resolutions of the government and the socialistic philosophy of the present government. Even here the emphasis would be on finding the means to control administrative discretion without at the same time nullifying the effectiveness of the regulation—a matter of primary concern for the legal profession. The seminar may not examine the economics of the regulation as such except insofar as to see whether the discretion involved therein can be justifiably minimized or eliminated altogether. Let me emphasise here that the ideal of democratic socialism will be hard to achieve, if the executive continues to possess wide and uncontrolled discretion. We may have socialism but it may not be *democratic*. It is one thing to hinder the national economic policies by putting restraints and another to insist on procedural fairness, or in other words, it is one thing to completely prohibit a private activity but another to permit it but leave it at the mercy of the bureaucracy. For example, the State may not grant licences to any one but if it does so it must do so fairly without unfair treatment, racial or religious discrimination, and unfair procedure.

It may be stated that the judiciary has hardly stood in the way of government to follow the economic policies it has deemed fit. Cases run into legion where the government's power to control trade and commerce have been upheld by the judiciary against challenge under Art. 19(1) (g) of the Constitution. To give a few illustrations, the Supreme Court has upheld the power of the executive to freeze stocks of foodgrains, restrict transport of commodities without a permit; requisition sugar from the mills at such a price as it would fetch abroad; fix prices of commodities; eliminate middlemen in the import of non-ferrous metals; canalize imports through the S.T.C. to the exclusion of private enterprise; regulate foodgrain markets and to eliminate middlemen; order investigations into the affairs of a company

and make necessary changes. Recently the court has removed another hurdle in the implementation of its economic policies by the government by holding that adequacy of compensation for acquisition of property is not justiciable. However the cases will also run into legion on the other side where the court has insisted on procedural safeguards against the exercise of regulatory power by the officials by either declaring the statutory provisions unconstitutional or striking down the administrative order because the fair procedure was not observed. Whether an activity should be regulated or not, whether it should be prohibited or not, and whether there should be State ownership or not, may be a matter of philosophy or State policy, but insistence on procedural safeguards can hardly be regarded so.

