

CHAPTER-V

DISCLOSURE IN RESPECT OF ACCOUNTS AND FINANCIAL POSITION AND OTHER RELATED MATTERS :

1. ACCOUNT AND FINANCIAL POSITION

1-A BOOKS OF ACCOUNT :

At one time, the keeping of account by a company was considered merely as the domestic affairs of the company and its members, but the tendency of modern legislation has been to secure more and more publicity of the financial affairs of companies. Publication of accounts is now insisted upon primarily to provide members with all necessary information of the financial position of the company in a form that they can understand and secondarily to put such information, which is, at any rate in large companies a matter of public importance, at the disposal of the creditors, employees and public at large.¹

In England it was not untill 1929 that companies were made to circulate to their members the profit and loss account. And it was only by the 1948 Act that a serious attempt was made to lay down in detail how these accounts

were to be prepared and by the 1967 Act they were made available to the public in the case of all limited companies.

In India, the Companies Act, 1956 contains number of Provisions relating to accounts and audit design, to ensure that the members of a company are furnished with all informations relating to its affairs without giving away informations which would be detrimental to the interest of the company.

So, it may be said that compulsory disclosure through accounts is a method of providing very valuable information about company's affairs which the legislature adopted at a comparatively late stage.

Section 209 makes it compulsory for every registered company to keep proper books of accounts to record :

(a) All moneys received and paid by the company and the matters in respect of which the receipt and expenditure takes place.

(b) All sales and purchases of goods made by the company;

(c) All the assets and liabilities of the company; and

(d) in the case of a company engaged in production, processing, manufacturing or mining activities, particulars relating to utilisation of materials or labour or other

items of costs as may be prescribed by the Central Government to include such particulars in the Books of Account. The object of this clause is to make statutory provision for the maintenance of cost accounts in certain classes of industry, to make the 'efficient audit' possible.

It may be stated that 'efficient audit' is possible only when a system of cost accounting is adopted and costing records maintained for the purposes.

So far as Cost Accounting is concerned it was observed that² "Cost Accounting is a function entirely different from general or financial accounting. Cost Accounting covers a wide range of subjects, with special emphasis on cost accounting, factory organisation and management, engineering techniques, and knowledge of the working of the factories. The Cost Accountant performs services involving pricing of goods, preparation, verification, certification of cost facts or data. In a manufacturing concern, he works out the economical cost of production and evaluate its progress at each stage of production. In mass production enterprises, he points out wastage of man power due to overstaffing or inefficient organisation and indicates the output, the capacity of machines and layout, the stock position, the movement of stores and

weaknesses in the production process. The systematic determination of cost of every single and distinct process of manufacture provides a continuous check on the margin of waste in the processing of raw and semi-finished materials on the utilisation of machinery installed, on man-power expended and the percentage of rejection of finished products. This pin-points also the particulars process in which defects and deficiency exist, thereby enabling immediate remedial measures being taken. Costing, in short aims at making the organisation efficient and economical by providing the minimum of labour and material and getting the full capacity of the machine output. The cost accountant, thereafter is concerned solely and mainly with the internal economy of the industry, and renders services essential to the day-to-day management of the undertaking".

Thus the new statutory provision for maintaining cost accounts in certain important classes of industries may, by making people cost conscious, pave the way for its general introduction in all industrial enterprises, as in U.S.A. and help to improve industrial efficiency all round and maximise production.

The act does not mention the names of books of account which a company must maintain. It simply lays down that a company must maintain all such books as are necessary to give a true and fair view of the state of affairs and the financial position of the company. Sub Section (3) explain the term proper books of account. Account books should neither give false information nor should they conceal any type of information which they are expected to convey. There should be neither suppression of any information nor the entering of a fictitious transaction... neither suppressio veri nor suggestio falsi. There should be neither active concealment of facts by a person having knowledge of the fact nor suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true.

Here attention may be drawn to sub-section (2) of Section 541 which provides that it shall be deemed that proper books of account have not been kept in the case of any company, if they have not been kept:

(a) Such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid: and

(b) where the business of the company has involved dealing in goods, statement of annual stock-takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable these goods and those buyers and sellers to be identified.

As per this provision the register of stock taking is also considered as books to be maintained by the company.

So far as sub-section (3) is concerned it may be mentioned that it is based on sub-section (2) of section 147 of the English Companies Act. While making recommendation of the Company Law Committee observed that "Sub-section (1) of Section 130 (of the Companies Act 1913) requires companies to keep proper books of account in respect of matters enumerated in it. There, is, however, nothing in the section to indicate which books should be kept or how they should be kept. In the absence of specific provision on this point, books of account may well be kept in a manner which may fail to give a true and fair view of the state of the company's affairs and to explain its

transaction. We have attempted to fill up this lacuna in the present Act by adopting the provisions of Sub-Section (2) of Section 147 of the English Act".³

So far as provisions of English Act are concerned it may be mentioned that they have been described as most perfunctory provisions regarding account books. Grower observed⁴ that "all the Act says is that the company shall keep proper books with respect to receipts and expenditure, sales and purchases and assets and liabilities, but what form of accounting is 'proper' is left to the company, so that it may range from the simplest cash book and ledger to the most complicated mechanised type. The only further requirement is that it must give 'a true and fair view of the company's affairs and 'explain' its transactions. It may be thought indicative of the artificial atmosphere in which we are moving that is apparently recognised that something can be 'true' without being 'fair' and 'fair' without being 'true', but what is intended is that the books must show not merely a true story but the full story. Upto this point the Act probably adds little or nothing to the common law and equitable obligation to account, which would in any case bind the directors in their capacity of fiduciary agents, or to the sanction of criminal proceedings against the directors if, on liquidation, inadequate accounts prove to have been maintained".

Sub-section (3) of Section 209 is based on line of Sub-section (2) of section 147 of the English Act and therefore, it can be said that provisions of Companies Act, regarding maintenance of proper books are far from satisfactory.

The Sacher Committee has also commented about the unsatisfactory conditions of present provisions. It has observed that "some companies maintain all or certain accounts on cash basis. In such cases, a true and fair picture of the state of affairs of the company may not always be reflected".

It has recommended that "Section 209 be suitably amended so as to make it obligatory on all companies to maintain accounts on mercantile system of accounting only".⁵

Right of Inspection

Sub-section (4) confers very important right on the directors, particulars in the interest of the minority directors. It provides that the books of account and papers shall be open to inspection by any director during business hours.

What is the nature of this right? Is it a personal right or a right which can be exercised through an agent?

The Bombay High Court⁶ held that "directors are entitled to make inspection of accounts not only personally but also through agents. However, in the recent case it was held by the Bombay High Court that "a director of a company is entitled to exercise his right to take inspection of accounts and other books and papers of the company through an agent, provided the agent gives an undertaking that he will disclose the information so obtained only to his principal. In the second case the Court has recognised only a qualified right of inspection through an agent.

It may be submitted that both decisions requires careful consideration. It may be submitted with due respect that "the right of inspection of accounts is a personal right given to the director, as a corollary to the personal discharge of his function as a director. He cannot delegate the right of inspection to any agent or other person., even as he cannot depute an agent to attend a meeting of the Board. He is entitled to consult an expert in matters where he may have doubts.

As the right of inspection is a statutory right, a director who is prevented from or refused inspection, may enforce his right through Court. The view expressed by Slade J. in Conway v. Petronius Clothing Co. Ltd⁸. to the

effect that the right is only a Common Law right and continue to be so eventhough expressly conferred by a provision in the Companies Act itself and the enforceability of the right depends on the discretion of the Court as an equitable relief, does not seem to be correct, at any rate so far as the law of India is concerned. The Law in India never recognised any distinction between legal and equitable interests. As early as in 1872, in the case of *Tagor v. Tagor*;⁹ the Privy Council said "The Law in India, speaking broadly knows nothing of the distinction between legal and equitable property in the sense in which it was understood when equity was administered by the Court of Chancery in England".

In *Seedee Ali. V. Raja Ajoodhya*¹⁰ it was observed that in India, there is "but one kind of proprietary right, call it legal or equitable you choose, which is recognised by the Court, it is an equity, not divisible into parts or aspects".

The right of inspection of accounts is not an absolute right, Where on the facts and circumstances it is clear in any case that there is a reason to believe that the inspection is sought for supplying information to rival in business or for any purpose which is prejudicial or

injurious to the interest of the company, the inspection may properly be refused.¹¹

Where a company has a branch office, books of account relating to the transactions effected at the branch office must be kept at the branch and at intervals of not more than three months summarised accounts should be sent to the company at its registered office. The provisions of Sub-section (2) is liable to be abused with a view to escape or avoid proper checking of the accounts describing an office as a branch office when really it is only an important manufacturing or producing centre. In order to prevent this abuse, section (8) was enacted which empowers the Central Government to declare an office not to be branch office in the case of any particular company.

(I) Preservation of Books of Account :

Sub-section (4-A) provides that the books of account of every company together with the vouchers relevant to any entry in such books must be preserved for a period of not less than eight years immediately preceeding the current year. Here it may be mentioned that simply because provision is made for a statutory minimum period of eight years for preservation of books of account, it cannot be

relied upon as an excuse for not preserving beyond eight years, where questions relating to escapement of income arise under the provisions of Tax Laws for the time being in force.

Intentional non-compliance with the provisions of this section is made punishable. The company itself is not punishable but only the persons specified in Sub-section (6) & (7), i.e. managing director, every other director, manager, officers and other agent but excluding bankers, auditors and legal advisers. Here attention may be drawn to section 541 which imposes severe penalties for failing to keep proper accounts and section 539 which provides punishment for falsification of books.

(II) INSPECTION OF BOOKS OF ACCOUNT (SECTION 209A):

Power and procedure to inspect books of account of companies by the Registrar of companies or Officers of Government, authorised by the Central Government in that behalf is incorporated in section 209A of the Act. This Section was added in the Act by the Companies (Amendment) Act, 1974. Prior to the incorporation of this section, power to inspect the books of account by the Registrar of companies and other authorised officers of the Government, was as provided for in Sub-section (4) of Section 209 of the Act, as enacted originally. The scope of inspection under that section was limited to some extent and as it was not found to be very effective in

taking proper steps to prevent mismanagement of the financial affairs of companies, the Act was amended by introducing a new Section 209A in the place of sub-Section (4), Clauses (b), (c) and (d) of Section 209 by the Companies (Amendment) Act, 1974. The reason for this elaborate provision was explicitly set out in the Notes on Clauses annexed to the Companies (Amendment) Bill, 1972 which became the amendment Act of 1974. In the said notes on Clauses it was stated, inter alia, that " A check on the performance of companies is generally exercised by scrutiny of balance sheet and profit and loss account filed by them with the Registrar who is empowered under Section 234 of the Act to call for information and explanation with respect to any matter to which such documents purport to relate. The companies Act as originally enacted, did not empower the Registrar or any other officer to inspect the Books of Account of companies. This lacuna was filled up by the amending section 209(4) in 1960. However, in terms of section 209(4), as it stands, it is not obligatory for a company to furnish information or explanation which the Registrar or the inspecting officer may require in the course of the inspection of the books of account and other papers required by him for inspection. The object of inspection

is not only to keep a watch on the performance of companies but also to evaluate precisely the level of efficiency in the conduct of the affairs of the company concerned. The inspection of the books of account will also enable the Government to ascertain the quantum of profits which have accrued but not adequately accounted for taxation purposes, concealment of income by falsification of accounts, misuse of fiduciary responsibilities by management for personal aggrandisement, misapplication of funds while the industries itself is in a state of perpetual crises. Such knowledge about the management of the business of the company with intent to defraud the creditors, shareholders and the revenue, or otherwise for fraudulent or unlawful purposes would enable the Government to take effective emergent remedial measures before the company goes into liquidation and thus not only save the industry or trade, as such, but also prevent distress to the employees and the workers. The role of inspection has to be much wider and have the object of ensuring that transactions have been validly entered into in accordance with the rules and procedures of the company and also ascertaining how far the statutory auditors have discharged their functions and duties in certifying the true and fair view of the company's accounts and their

proper maintenance. Therefore, inspection under this section cannot be effective unless the inspector is given power to compel production of books, and to examine on oath, etc. as an income-tax officer has under section 131 of the Income-Tax Act. It is now proposed to strengthen the law suitably."

In order to assess the importance and implication of the provisions of Section 209A, it has to be viewed in the light of similar provisions which find place in the statute books and which were there, even before the incorporation of the present provisions namely section 234 & 237.

Where the Companies Act, 1956 was brought on the Statute book, Section 209A was nowhere on the scene. However, part of its present provisions were there in the then Section 209 which cast an obligation on the company to maintain the books of account, not all books but only proper books of accounts, so as to disclose a true and fair view of the company's state of affairs. The genesis of the present section viz. the section 209 did not contain as drastic a provision or provisions of such far reaching consequences, as now exist in the present Section.

The salient features of these sections could be classified into the following :

- (a) the types and nature of the books and documents to be maintained.
- (b) the inspection of these books, papers and documents;
- (c) the extent and powers of the persons and limitations subject to which such inspection may be taken by any of the persons as are permitted by law; and
- (d) the consequences nor non-compliance with these provisions.

Section 234 dealing with the powers of Registrar to call for information or explanation, provides that where, on perusing any document which a company is required to submit to him under the Act, the Registrar is of the opinion that any information or explanation is necessary with regard to any matter to which such documents purports to relate, he may, by a written order call on the company to furnish in writing such information or explanation. If the Registrar is not satisfied with regard to the query raised and information supplied he may make a report in writing to the Central Government. There is also

provision in Sub-section (7) that if it is represented to the Registrar, materials placed before him by any contributory or creditors or any person interested, the business of the company is carried to defraud its creditors or persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may after giving the company an opportunity of being heard, by a written order, call upon the company to furnish in writing any information or explanation on matter specified in the order within such time as he specify therein.

Section 237 provides for investigation of the affairs of the company by the inspector. Here it may be noted that inspection under section 209A is not an investigation, though it may lead to one in case there is anything wrong or objectionable or fraudulent. It is to ensure that there is nothing objectionable in the conduct of the business or affairs of the company.

Further, it may be mentioned that the provisions of section 234 is not against the principle of natural justice. As per the provisions, an opportunity is required to be given by the Registrar to the company concerned to submit the information and explanation, so that the company can know where it stands, what it has been doing or not doing, what demanded of it and what explanation it has to offer.

(a) Position prior to the Amendment Act of 1960 :

Inspite of the elaborate provisions under sections 234 & 237, the legislature made amendments in the then existing provisions of section 209, for first time in 1960, for the second time in 1965 and for the third time in 1974, culminating in a substantive new section 209A, giving the right to examine person on oath and right to demand production of books etc.

Section 209A is an off-shoot of the provisions of Section 209, under which, all the company has to do was to maintain proper books of account as are necessary to give true and fair view of the state of affairs of a company. These books of account were not for inspection of any one who was an outsider, not even a shareholder or a creditor of the company, who was concerned with the company and associated with the company. If there was a breach of the provision of the section, the only punishment was a fine extending to Rs.1000/- and the persons responsible were the then managing agent and its various officers and partners. There is a constant tussle going on between the Government and litigating public. The Government found that the then existing provisions of law were not good enough to achieve the objectives of

the Companies Act. Accordingly, these provisions relating to maintenance of the books of account were made more stringent by introduction of certain amendments in 1960.

(b) Changes Brought about by the Amendment Act 1960:

The legislature gave the right of inspection to the Registrar of companies or any officer authorised by the Central Government in this behalf, but with sufficient safeguards to comply with the principle of natural justice, namely, if and only if, in the opinion of the Registrar or such officer, sufficient cause existed for the inspection of books of account. Another important change was, that over and above the fine of Rs.1000/- the person in default would be punishable with imprisonment for a term which may extend to six months, with a provision that no person shall be sentenced to imprisonment for any such offence, unless the offence was committed willfully. The third change brought about, was to pinpoint responsibility for non-compliance with the provisions of the section. It was every director of the company who were responsible, where the company had no managing agent, secretary and treasurer, but if there was a managing director, then managing director and not every director was responsible.

(c) Changes brought about by the Amendment Act of 1965 :

The safeguards laid down by the section about the opinion of the Registrar or the officer of the Central Government or the existence of sufficient cause were done away with by the Companies (Amendment) Act, 1965. An extra stringent provisions was inserted that while carrying out such inspection, the Registrar or an officer will not be bound to give prior notice.

Here it may be mentioned that the Joint Select Committee did gave green signal to the aspect of no notice but at the same time it had not dispensed with the requirement of sufficient cause. The Committees Report also mentioned that the inspection by the Registrar or the officer of the Company Law Board should be a routine feature and should not be of an adhoc or a special nature. However, it is doubtful whether all inspections presently carried out by the Department are of routine nature. The new provision was intended to enable medical treatment or surgical operation before it became necessary to do a post mortem examination of the Company's affairs. But surprisingly the similar safeguards or guidelines are still allowed to remain in section 234 and 237.

It may be submitted that this provision of the Act seems to be strange in one respect. It provides that no report

of inspection is required to be submitted to the company concerned. If the object of this provision is to see that the company's affairs are properly conducted, then the short-coming brought about by inspection of books of account must be brought to the notice of the company concerned. In order to do so, a copy of the report must be given to the company concerned, or instead of supplying whole report, defects must be communicated to the company, to enable company concerned to improve its functioning.

(III) MEANING OF BOOKS OF ACCOUNT :

A crucial question that would arise in the context of section 209A is what documents would the officer of the Central Government or the Registrar be entitled to inspect. Under the original provisions as enacted in 1956, the only expression used was 'proper books of account'. This provision was, however, amended in 1965 and for the purpose of inspection, the expression books of accounts was enlarged to 'books of account and other books and papers'. The phrase other books and papers became a subject matter of judicial interpretation in the following two cases :

In *K. Kanakasabapathy v. T.M. Shanmughan*¹², the officer insisted upon inspecting the nomination papers for the office of director, the company and its officers refused

to comply with this demand. Mahajan J. of the Madras High Court has expressed the view that expression "other books and papers" in Sub-Section (4) do not include 'the nomination papers' received by the company, containing the names of candidates to be proposed for election as directors in the place of those retiring by rotation at the next annual general meeting, and that such papers are not open for inspection.

A Division Bench of the Kerala High Court, in the matter of Sudarsan Trading Co. Ltd., and others v. The Joint Director, Inspection, Company Law Board¹³, has held that the principle of ejusdem generis has to be applied in deciding as to the types of books and documents, the inspecting officers were entitled to inspect. The High Court was of the view that books and papers referred to in Section 209A(1) must be those which had the character of books of account. The scope of inspection of books of account and other books and papers under section 209A(1) has its limits and ought to be distinguished from the investigation of company's affairs under section 237 of the Act. The High Court also laid down some guidelines regarding the procedure to exercise the power of inspection of which the most important was that the inspecting officer

should give prior notice of not less than four weeks to the company, listing the ledgers, documents and vouchers to be inspected, it would be open to the inspecting officers to inspect at the office of the company where books of accounts etc. are kept only after such notice.

The object of the provisions of Section 209A as conceived by Parliament is to give exhaustive powers to the Registrar of companies and other inspecting officers, as they could conduct inspection to ascertain, that all transactions have been validly entered into and recorded in appropriate books and papers, and that law, rules and procedures have been observed, and further that company directors have discharged their fiduciary responsibilities adequately. That being the sine qua non of section 209A of the Act, it is apparent that the view expressed by their lordship of the Kerala High Court is fallacious. Further it may be stated that while expressing the view, the learned judges had not taken into consideration all the relevant provisions of the Act, applicable to subject matter of inspection of books of account and other books and papers, a company is statutorily required to maintain. The High Court failed to take note that the maintenance of the books of account by companies is governed by Section 209 of the Act, and Sub-section (1) of that

section details the types of books of account of every company enjoined to keep. The High Court's acceptance of the argument based on the principle of ejusdem generis, to hold that the words 'books and papers' following the words 'books of accounts' in section 209A(1) is also fallacious. As these crucial words in the section having been defined in section (2) of the Act. It gives wide definition of the words 'books of accounts, deeds, vouchers, writings, documents and registers maintain under the Act or otherwise. There is therefore, no scope for the application of the said rule of interpretation.

The High Court also appears to be wrong in laying down the guideline of giving prior notice of four weeks, listing the documents to be inspected under section 209A(1). The learned Judges, appear to have lost sight of the proviso to section 209A(1), "that such inspection may be made without giving any previous notice to the company or any officers thereof. On the face of this express statutory provision it is beyond comprehension as to how the Company Law Board, the respondent in the case, did not even bring the law contained in this proviso to the notice of the Court. Here it may be submitted that the inspection of books of account as originally contained in section 209(4), there was no power to inspect without notice. This power

to inspect without prior notice was added to Section 209 (4) by the Companies (Amendment) Act, 1960. By the Companies (Amendment) Act, 1974, the present provisions of Section 209A were added by deleting the power of inspection from the original Section 209(4).

Thus, inspection without notice was contemplated by the legislature consciously to achieve the objective of preventing mutilation, destruction or secreting of the records by company directors in order to avoid detection of fraudulent financial management. The Madras High Court had considered the power to inspect books of account without prior notice in the case of Indian Express (Madurai) Pvt. Ltd.¹⁴ The Division Bench of the Court held that, "the Registrar of companies and any authorised officer of Government may inspect the books of account and other books and papers, at any time during business hours and for this no previous notice to the company is necessary. The main respondent in the case before the Madras High Court was the Company Law Board and a decision was obtained in its favour upholding the right of inspection without notice and without any limitation and surprisingly this decision was not cited before the Kerala High Court.

(IV) CONSEQUENCES FOR NON COMPLIANCE :

Prior to 1974, when the then existing Section was bifurcated in Section 209 and Section 209A, in the case of Board management companies, a director was held liable for technical contravention of the Act, even if he had not committed the offence willfully. However, subsequently to the bifurcation of the provision the position has improved slightly in as much as only the officer in default is punished with fine, which shall not be less than Rs.5000/- and also with the imprisonment for a term not exceeding one year. The previous requirement as to offence being committed willfully has been omitted and substituted by the expression 'officer in default' which under Sub-Section (5) would make the person liable only if he is knowingly guilty of the contravention.

Further, punishment by way of fine has been increased from maximum Rs.1000/- to a minimum of Rs.5000/- and the period of imprisonment has been increased from a maximum of six months to that of a year. One should realise the grave implication of such a provision. It is also pertinent to note that the penalty prescribed for the violation of Section 211 dealing with Balancesheet is lesser than the penalty prescribed for the violation of Section 209A.

The penalty provided under Section 209A is on par with the penalty for a grave offence like not keeping proper accounts by a company in liquidation as provided under Section 541.

Further, the director or the officer as the case may be who has been convicted under this section shall be deemed to have vacated his office as such, and on such vacation of office, shall be disqualified for holding such office in any company for a period of five years from such date. The consequences of this provision is very severe. Such a person not only losses his office in the company concerned, but also disentitled himself from being appointed in any other company. A director would also cease to be a director of all other companies in which he is a director.

Here attention may be drawn to Section 274 of the Act which lays down disqualifications of directors, whereas Section 283 enumerates the grounds for vacating directorship by a director. Sub-section (9) of Section 209A lays down additional ground for vacating directorship by a director and once it happens, that director earns disqualification for being appointed as a director in any other company for a period of five years. In order to be more specific, a clause is required to be added in

Sections 274 and 283, incorporating the contents of Sub-section (9) of Section 209A with necessary modifications.

1-B DISCLOSURE THROUGH BALANCESHEET AND PROFIT AND LOSS ACCOUNT :

Compulsory disclosure of accounts through balancesheet and profit and loss account is a method of providing information about financial position of the company. In England it was not until 1908 that companies were compelled to publish their balancesheet and not until 1929 that they were made to circulate to their members the profit and loss account. It was only by the 1948 Act that a serious attempt was made to lay down in detail how these documents were to be prepared and by the 1967 Act that they were made available to the public in cases of all public companies. The notable feature of 1967 Act is that it had made it necessary for the published accounts and the annexed reports to be much more informative than hitherto regarding the company's relationship to other companies in the same group. These provisions enable any member or person dealing with the company to know if it is part of a large group, and if so, what the group is. There are also stringent provisions regarding disclosure of the remuneration of directors and the high paid employees.

In India, the position is not satisfactory. The Companies Act, 1956 which is mainly drafted on the line of English Companies Act, 1948, does contain several provisions, but they are far from satisfactory.

In this part of the Chapter, my endeavour would be to study existing provisions dealing with disclosure in respect of financial position of the companies.

The annual accounts of a company consist of a balance-sheet as at the end of a financial year and a profit and loss account for the financial year, and in the case of non-trading company an income and expenditure account, for the financial year. The account must give true and fair view of the state of affairs of the company. A balancesheet must not be a mere inventory. It is supposed to be potential representation of the trading position of the company, easily appreciated not by ignorant people but by persons who are reasonably able to understand commercial expressions and commercial conditions.

Section 210 of the Companies Act, 1956 which is modelled on the line of section 148 of the English Act, provides that at every Annual General Meeting of the company, the Board of Directors shall lay a balancesheet and profit and loss account together with their report. It further

provides that in the case of a company not carrying on business for profit, an income and expenditure account shall be laid.

So far as period is concerned, it provides that :

(a) in the case of first annual general meeting from the date of incorporation to a date not more than nine months before the meeting ; and

(b) in the case of subsequent annual general meeting from the date immediately after the period for which account was last submitted to, not more than six months before the meeting.

By the Companies (Amendment) Act, 1960 Clause (b) was added to Sub-Section (3) which provides that where an annual general meeting is held after the lapse of six months and any extension granted by the Registrar under Section 166 (1), the profit and loss account must relate to the entire period ending with a day which should not precede the day of the meeting by more than six months and the period of extension granted.

Further, it may be noted that the period to which the accounts aforesaid relates is referred to as a financial year. The Financial year may be less or more than a calendar year, but it must not exceed fifteen months. No doubt it may be extended to eighteen months with the permission of the Registrar.¹⁵

A question arise... Has the Registrar power to condone the failure to lay balancesheet before the Annual General Meeting?

In the case of Bhagirath Chandradas v. Emperor¹⁶, it was answered in negative. It was held that Section 210 does not authorise the Registrar to condone the failure to lay before the annual general meeting a balance sheet and profit and loss account made upto a date mentioned in Section 210.

Consequences for non-compliance :

Sub-section 5 of Section 210 lays down that if any person, being a director of a company fails to take all reasonable steps to comply with the provisions of Section 210, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or fine or with both. But a person cannot be sentenced to imprisonment for any such offence unless it was committed wilfully. This condition suggest that if the failure is by omission or otherwise than only fine can be imposed and cannot be punished with imprisonment. However, in the Registrar of Companies, Orissa v. Radhika Prasad Nanda and others,¹⁷ it was held that in the case of default under this section no question as to whether

such default is wilfull or not, will not arise. It may be submitted with due respect that the Court has not taken into account the proviso to the Section 210 which expressly provides that "no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully."

The failure to hold a annual general meeting cannot be pleaded as a defence for default committed in laying the balance-sheet and profit and loss account before the company. One cannot plead one's own default in defence. The directors of the company are primarily responsible for calling a general meeting, and having failed to call such a meeting and thereby contravening section 166, they cannot be permitted to take advantage of their failure and neglect and then plead that they could not lay the balance sheet or the profit and loss account because no meeting was held.

However, in *RE Bank of Deccan Ltd.*,¹⁹ it was held that where the default was due to reasons beyond the control of the persons concerned, it is hard to fasten criminal liability on them. Where as in the case of *Mundhra M.D. v. Assistant Registrar of Companies*²⁰ it was held that where the accounts were not placed before the company in a annual general meeting pending the

disposal of a petition for amalgamation, but relying upon a circular of the Company Law Board, the directors could not be prosecuted under Section 210(5).

Under the Income Tax Act, there is a provision pursuant to which the Income-Tax Officer can permit extension of the Financial Year. In order to simplify the law and to reduce the paper work, the Sacher Committee has recommended²¹ that "where the appropriate Income-Tax Officer has so permitted, the financial year for the purpose of Section 210 of the Act may include any period upto eighteen months. At present the power of extension rest with the Registrar of companies under the provision of Section 210.

(I) FORMS AND CONTENTS OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT (SECTION 211) :

Section 211 of the Act which is analogous to Section 149 of the English Act, 1948 lays down the rules regarding forms and contents of balancesheet and profit and loss account. This section is based on the principle that true and fair view of the state of affairs of the company is disclosed in the profit and loss account and in the balance sheet of the company. It may be stated that it imposes duty on the company's management, particularly on the directors to disclose true facts in the balance sheet and

profit and loss account. In order to have proper disclosure of material facts, they are required to be presented in the prescribed form as given in Part I and Part II respectively of Schedule VI. However, Insurance Companies, Banking Companies or any company engaged in the generation or supply of electricity or to any other class of company are exempted from the purview of this section by the respective Act governing them or by virtue of the provision of Schedule VI or the Central Government under Sub-section (3) & (4) of Section 211. Here it may be mentioned that Sub-section (3) empowers the Central Government to exempt any class of companies from compliance with any of the requirements of Schedule VI, if in its opinion, it is necessary to grant such an exemption in public interest, by notification in the Official Gazette. In England also Section 149(4) empowers the Board of Trade to exempt any class of companies from compliance with any requirement of Schedule of 8 in the public interest.

It will not be out of place to mention that Section 211 adopts the redraft of section 132 of the previous Companies Act, as suggested by the Company Law Committee at pages 401 and 402 of the Report, which itself is modelled in part on line of Section 149 of the English

Companies Act, 1948. Not only this, the forms of balance sheet and profit and loss account are largely based on similar forms contained in Schedule VIII of the English Act, with such changes in particulars as the circumstances of business organisation in the country required.

(a) Balance Sheet :

It may be defined as a formal agreement of facts and figures in an intelligible manner, showing the total values of assets owned by a business on a particular period, so that the net worth of the business may be ascertained, but it is not an account in the strict sense. It is merely a statement of the company's assets and liabilities at the end of the financial year. Unlike the profit and loss account which deals with a course of events during a period of time, the balance sheet describes a state of affairs as at a particular point of time. However, in practice it is its interpretation that the layman finds particularly difficult. This is mainly due to two factors: Firstly, to the fact that balance sheets are traditionally presented in a two sided form resembling a 'trial balance' prepared to test the accuracy of double-entry book-keeping and secondly, to the complications, peculiar to companies, caused by share capital. A question arise as to what sort of information a member or creditor can deduce from it.

It would be tempting to say that he could ascertain the company's net worth, i.e. what is left after true liabilities have been subtracted from the assets. But this is misleading. As our balance sheet indicates, the fixed assets have been valued at cost less depreciation. We do not know what their true present market value is, it may be very much greater or very much less, for some fixed assets may be valueless except to the business as a going concern. Nor do we know whether in fact the rate of depreciation is adequate or whether replacement costs would exceed the original cost.

It is rightly observed²² that "a balance sheet is a historical document and does not show the present realisable value of such items as goodwill, land, buildings, plants and machinery nor except in cases where the realisable value is less than cost, does it normally show the realisable value of stock in trade".

What it should disclose, with greater accuracy, is the total and types of the company's liabilities, and how it funds are spread between various types of assets. The only disturbing feature is that much of it is represented by debtors and little by cash.

The object of the statutory provisions is to ensure, so far as possible that the balance sheet reveals accurately and in some detail sufficient information to enable these deductions to be made. This is supplemented by Schedule VI. One of the principal objects of this Schedule is to prevent the establishment of secret reserves, which previously was not uncommon, since the view is widely held that the purpose of published accounts was to show that the financial position was at least as good as that stated, and not to guarantee that it was not better. The Schedule seeks to prevent by making it compulsory to classify separately provisions and reserves, and to disclose the source of any increase in reserves or provisions and the application of any amount derived from any decrease, and by providing that any provision in excess of what is reasonably necessary shall be treated instead as reserve.

In England the exemption of Banking Companies and Discount Companies led to a disagreement among the members of the Jenkins Committee, and Section 12 of the 1967 Act, empowers the Board of Trade to repeal or amend it. The Committee unanimously thought that the case for exemption by shipping companies had not been made out on commercial grounds, but in fact it has been preserved.²³

So far as form of balance sheet is concerned, the Sacher Committee has rightly recommended for the inclusion of the vertical form of balance sheet in part I of Schedule VI of the Act, so as to enable a company to use either of them.²⁴

Other matters required to be disclosed in the Balance Sheet are :

(i) Section 78 empowers the company to issue shares at premium. The balance sheet must disclose the amount of share premium as a separate item and if it is, partly or wholly disposed of, must indicate how it is disposed of or exhausted.

(ii) As per Schedule VI the details about redeemable preference shares must be shown in the balance sheet.

(iii) Section 293 empowers the Board of Directors of every company to contribute such amount as it think fit to the national defence fund, or any other fund approved by the Central Government for the purpose of national defence. It further provides that company shall disclose in its profit and loss account the total amount or amounts contributed by it to the fund during the financial year to which the accounts relate.

(II) DISCLOSURE OF PARTICULARS ABOUT SUBSIDIARIES
IN THE BALANCE SHEET OF HOLDING COMPANY
(SECTION 212) :

So far as Holding Company and Subsidiary Company are concerned, Act provided for greater disclosure, particularly about the Holding Company's interest in the subsidiary company.

As per Section 212, the balance sheet of a holding company must accompany the following documents in respect of each of its subsidiary :

- (a) a copy of balance sheet of the subsidiary;
- (b) a copy of its profit and loss account;
- (c) a copy of the report of its auditors;
- (d) a copy of the report of its board of directors;
- (e) a statement of holding company's interest in the subsidiary. It must comply with the provisions of Sub-section (3) of Section 212.

It may be noted that Section 212 does not deal with cases, such as a company entering into partnership/joint venture etc, in other words under the existing provisions a company is not required to disclose particulars about such partnership/joint venture in its balance sheet or alongwith its balance sheet. It is essential for the members of the company to know how the funds of the company are utilised by such partnership/joint venture.

In order to plug this loophole, some provision is required to be made. In this connection the Sacher Committee²⁵ has rightly recommended that "the provisions of section 212 be made applicable to the accounts of such partnership/joint venture to the extent that the company should attach to its balance sheet and profit and loss account of these partnership/joint venture and a statement be made in regard to any material changes in the affairs of such partnership/joint venture which have occurred between the end of the financial year. This provision is necessary since the company incurs unlimited liabilities²⁶ by reason of its acquiring an interest in a partnership/joint venture.

(III) Profit and Loss Account :

It may be stated that the profit and loss account is an account in the true sense, as it presents the figures for a period of activity, designed to show the resulting profit or loss. By itself profit and loss account is not necessarily very informative, but the study of a series of accounts over a number of years can be most revealing since the trends of profits is the best indication of the prospects of the company and on the continuance of the business as a going concern, the true valuation of its assets depends.

Sub-Section (2) of section 211 provides that every profit and loss account shall comply with the requirements of Part II of Schedule VI.

(IV) DISCLOSURE TO WHOM :

- (a) to the members;
- (b) to the Registrar;
- (c) to the other agencies.

(a) DISCLOSURE OF CONTENTS OF BALANCE SHEET ETC.
TO THE MEMBERS ETC. (Section 219) :

Section 219 confers a very important right on the following persons to have a copy of balance sheet, profit and loss account, auditor's report and director's report. They are :

- (a) Every member of the company.
- (b) Every debenture holders.
- (c) Every trustee for the debenture holders, and
- (d) Every person entitled to receive the notice of Annual General Meeting of the company.

Here it may be mentioned that this section is based on section 158 of the English Act of 1948 and sections 131 (1) and 135 of the Previous Companies Act. However, new provisions differs from the then provisions in two respect. Firstly, the categories of persons entitled to

copies of the accounts and reports have been enlarged, so as to include debentures holders, trustees for debenture holders and all other persons entitled to receive notice of general meeting, e.g. auditor etc, and

Secondly the copies are now required to be sent not less than 21 days before the date of the annual general meeting. It was fourteen days under the Previous Act.

(b) DISCLOSURE TO THE REGISTRAR OF COMPANIES
(Section 220) :

After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting, the company is required to be filed with the Registrar of companies, three copies of the balance sheet and profit and loss account together with three copies of all documents required to be attached to the balance sheet and profit and loss account were so laid. Whereas in the case of a private company, copies of the profit and loss account and the balance sheet are required to be filed with Registrar separately.

Section 610 of the Act confers a right of inspection of any document filed with the Registrar of the companies. However, proviso to Clause (b) of sub-section (1) of section 220 creates an important exception. It provides that in the

following cases only a member shall be entitled to inspect or obtain copies of the profit and loss account:

- (i) in the case of a private company which is not a subsidiary of a public company i.e. independent private company,
- (ii) in the case of a private company of which the entire paid share capital is held by one or more bodies corporate incorporated outside India, and
- (iii) in the case of a private company which becomes a public company by virtue of section 43-A, i.e. deemed public company.

If the Central Government directs that it is not in the public interest that any person other than a member of the company shall be entitled to inspect or obtain copies of the profit and loss account of the company. This Sub-Section suggest that a company may be compelled to make disclosure in the public interest and in the same way disclosure may be prohibited in the public interest.

In England, according to section 426, all informations filed at the company's registry is available for public inspection and copies of all documents may be obtained on payment of the prescribed fees. However, this rule has following exceptions :

- (i) Firstly, without the consent of the Board of Trade, certain documents delivered with a prospectus are not available for inspection except within fifteen days after the date of the prospectus, and
- (ii) Secondly, only members and existing creditors or their agents are entitled to have access to the full statement of affairs filed by a receiver or manager, others have to be content with the summary of it.²⁸

It may be mentioned that this section was amended ~~twice~~ i.e. in 1960, 1965 and in 1977.

By the Companies (Amendment) Act, 1960, the words in the case of a public company and 'public and private' were omitted. This amendment was made on the recommendation of the Company Law Committee that "the public company should be required to file their profit and loss account with the Registrar, the necessary safeguards against disclosure of material information to non-members provided under the existing section, being continued".²⁹

By the Companies (Amendment) Act, 1965 the words 'at the same time as the copy of the annual return' referred to in the section 161, were substituted by the words 'within thirty days from the date on which the balance sheet and the profit and loss account were so laid'.

So far as this amended provisions are concerned it may be submitted that it seems that if no annual general meeting had been held, the obligation to file copies with the Registrar would not arise, for the words used imply that the balance sheet and profit and loss account should have been previously laid at the annual general meeting and if where no annual general meeting was held, no question of default under this section would arise, as the condition precedent laid down by the section is absent.

The question as to whether the company and its officers were liable to be prosecuted for not complying with the provisions of section 220 has arisen in number of cases.

In *Ambalavana Chettiar V. Registrar of Companies*³⁰ it was held that non-holding of the general meeting is no excuse for failure to lay those documents and file their copies with the Registrar.

It was observed by the Supreme Court³¹ that a person charged with an offence could not rely on his own fault as a defence to a charge. If he was responsible for not calling the annual general meeting, he could not be heard to say in defence that as the annual general meeting was not held, the balance sheet and the profit and loss account could not be laid before the meeting of the company.

A different view was, however, taken by the Full Bench of

Andhra Pradesh High Court in the case of Andhra Provincial Potteries Ltd. V. Registrar of Companies,³² It was held that "the holding of the annual general meeting and the laying before it of balance sheet and profit and loss account is a *since qua non* for filing the copies with the Registrar, and there can be no prosecution of the directors under section 220, when no such meeting was held. This decision was affirmed by the Supreme Court on appeal. After the review of the entire case law on the subject, the Supreme Court held that "the condition precedent or the essential pre-requisite of the balance sheet and the profit and loss account being laid before the general meeting of the company, not being fulfilled, the requirement of section 134 (of the Previous Act, corresponding to section 220) cannot be complied with 'the obligation to send a copy of the balance sheet and profit and loss account is dependent completely on its being laid before the company in general meeting".³³

In the case of Narasus Private Ltd. V. Assistant Registrar of Companies³⁴, it was held that as a company is responsible for holding the annual general meeting it cannot be heard to say that because such meeting was not held, the balance sheet and profit and loss account could not be laid before the meeting, and, therefore, the company was

not in a position to file the documents with the Registrar, without laying them before the meeting. Here it may be stated that the learned judge has apparently ignored the fact that not calling the annual general meeting is itself a punishable default under section 168, and proper course for the Registrar was to prosecute the defaulter under section 168.

Now the position has been reversed and what established in State of Bombay V. Bhandan Ram Bhandari revived by an amendment of Section 220 by the Companies (Amendment) Act, 1977.

By 1977 amendment the following words were added in Sub-Section (1) of section 220, "or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before, which that meeting should have been held in accordance with the provisions of the Act".

The object of this new provision, as stated in the Statement of objects to the Companies (Amendment) Bill, 1977 is :

person in charge of the management of some companies sometimes omitted to convene the annual general meeting and as a result the shareholders and creditors were in the dark about the

affairs of the company. Further, by such omission they also evaded the necessity of filing the balance sheet and profit and loss account with the Registrar of the companies. When a document is filed with the Registrar, it is open to any shareholder or creditor to inspect such document and obtained copies. The amendment seems to ensure that even where the annual general meeting is not been held its balance sheet and profit and loss account must be filed with the Registrar to enable the shareholders and others to find out from the inspection of these documents the state of affairs of the company and its financial conditions".

As per Sub-Section (2), if the annual general meeting does not adopt the balance sheet, a statement of fact has to be annexed to the copies of the balance sheet to be filed with the Registrar. A question arise as to what will be the effect of the non-acceptance of the accounts by the majority of the members. The Act does not provide for it except that the Registrar may, if he think fit, call for information or explanation under section 234.

Another question which arise is as to will the company and its officers be held liable for non-compliance with the provisions of section 220 due to reasons beyond their control?

There is no provision in the Act, to answer this question. However, in the case of Inre Bank of Deccan Ltd.,³⁵ it was held that where the default was due to reasons beyond the control of the company and its officers concerned it is hard to fasten criminal liability on them. But whether the circumstances in any case were beyond control or not will be a question of fact.³⁶

(c) DISCLOSURE TO OTHER AGENCIES :

- (a) A copy of balance sheet and the profit and loss account etc. to be delivered to the Reserve Bank of India :

As per the Reserve Bank's directions³⁷ issued to all non-banking companies receiving deposits (which includes borrowing) 'an audited balance sheet as on the last date of each financial year and audited profit and loss account in respect of that year as passed by the company in general meeting within fifteen days of such meeting' should be furnished by such companies to the department of non-banking companies of the Reserve Bank of India.

As per notification only audited balance sheet and the profit and loss account as passed by the company in the general meeting are required to be delivered.

- (ii) To the Monopolies Research Unit in cases of

Companies registered under section 26(2) of M.R.T.P. Act.

As per notification,³⁸ issued under section 43 of the M.R.T.P. Act, any company, any of whose undertakings is registered under sub-section (2) of section 26 of the Act, shall send two copies of its annual report (i.e. Director's report), including balance sheet and profit and loss account within 30 days of the last date on or before which the annual general meeting should have been held. Failure to comply^{with} this circular will be punishable under section 43 of the M.R.T.P. Act.

It may be mentioned that every company which has registered any of its undertaking or undertakings under section 26 (2) of the M.R.T.P. Act is required to comply with this requirement whether it comes within the M.R.T.P. Act or not, so long as the registration has not been cancelled and its name remains on the register.

The Sacher Committee has recommended for the amendment of section 220 to provide for five copies of balance sheet to be filed by the companies, out of which one copy may be sent to the Reserve Bank of India. While making this recommendation the Committee observed that "the present section 220 requires the companies to file three copies of balance sheet with the Registrar. The Department of Company Affairs has a Research and Statistics Division

which maintains a library of balance sheets for the purpose of carrying out research on corporate sector.. The Registrar retains one copy and sends another copy to the Department while third copies is given to the Reserve Bank of India to enable it to conduct their studies on corporate spectrums. The Reserve Bank of India has been writing to the Department, that it would facilitate their work if the law provides for balance sheet to be sent directly by the companies to the Reserve Bank of India. The Department of Company Affairs at its headquarter in Delhi also give research facilities to different institutions which are interested in conducting research on corporate sector, also to individual interested in corporate research.

So far as this recommendation is concerned, it may be submitted that instead of asking for five copies the present practice of three copies may be continued. The Companies may be directed to send one copy each to the Registrar of companies Department of Company Affairs and to Reserve Bank of India directly.

(V) DISCLOSURE REQUIRES TO BE MADE BY THE OFFICERS OF THE COMPANY (Section 221) :

Section 221 may be described as an unique provision, which imposes duty on the officers of the company to make

disclosure of payment etc. to the company and also to the company's auditor. This section was incorporated on the recommendation of the Company Law Committee.³⁷

On the basis of the recommendation, section 221 provides that it shall be the duty of the concerned officer of the company to furnish, without delay, to the company and also to the company's auditor whenever he is so requires, any particulars or information required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto.⁴⁰

The important matters requires to be disclosed is about payments made to any director or other person by any other company, body corporate, firm or person. So far as this provision is concerned it may be submitted that the term used 'other person' is not happy, one, particularly in the absence of any explanatory provision. In order to avoid any confusion, it is necessary to add a proviso to Sub-Section (3) of the section, clarifying, who are these persons. Looking to the punishment, prescribed for non-compliance with the provisions of section 221, it become more urgent for such clarification.

Further attention may be drawn to section 2(30) of the Act, according to which directors are officers of the company. As such, they may be held liable, for non-compliance

with the provisions of section 221. Accordingly, under section 221, directors are required to make disclosure to themselves to comply with the provisions of the section.

(vi) Disclosure Requires to be Made by Certain Specific Types of Companies (Section 223) :

As per the provisions of section 223 the following types of companies are required to make statement in the prescribed form (i.e. form in Table F in Schedule I), before it commences business and also on the first monday of February and the first Monday in August every year during which it carries on business :

- (a) Limited banking companies,
- (b) an insurance company (except Life Insurance Company or Provident Insurance Society);
- (c) a deposit, provident or benefit society.

Matters Requires to be Disclosed :

These companies are required to make disclosure about, shares and share capital (if any) called up and uncalled capital, liabilities both secured and unsecured and also the particulars relating to their assets.

Further a copy of statement alongwith the copy of audited balance sheet laid before the members of the company is also required to be displayed and kept displayed, untill

the display of the next statement, in a conspicuous place, in the registered office, and in every branch office or place where the business of the company is carried on.

This section also confers a right on the members and creditors of the company to have a copy of statement on payment of prescribed fees. The non-compliance with the provisions of this section is made punishable with fine. This section is analogous to section 433 of the English Act and section 136 of the previous Companies Act.

Section 433 of the English Act provides that Banking Companies must prepare half yearly statements of assets and liabilities which must be conspicuously exhibited in every place where they carry on business.

So far as this provision is concerned, it may be submitted that the right to have a copy of the statement should also be extended to any person, as the banking company and insurance company deals with the general public.

The extent to which these additional requirements benefits members and creditors depends, of course, on the extent to which they provide information which is available for general inspection.

(VII) POSITION IN OTHER COUNTRIES :

(a) Position in Belegium :

Under the Belgium Law, the annual balance sheet and profit and loss account, as approved by the shareholders are required to be published in supplements of the official Gazette, together with the list of directors and auditor in the office and the allocation of the annual profit,⁴¹ as well as any transfer of the location of the company's head office.⁴²

(b) Position in France :

In France, companies whose stock are quoted on the stock exchange, and their subsidiaries are, however, obliged to disclose certain information to the shareholders and the public. The decree of 29th November 1965 brought in a number of information which remain valid in the framework of the Company Law of 1966.

Accordingly, quoted companies whose capital exceeds Fr. 10 Million must publish the following documents in the bulletin of obligation legal announcement :

(i) Within the month following the Annual General Meeting, balance sheet, information relating to extra balance sheet liabilities, distribution and allocation of profits, informations on sub-sidiaries and holding in other companies, general accounts, profit and loss account, inventory of moveable securities.

(ii) Within the month following each financial quarter-day, the amount of turnover, with the corresponding quarter of the previous year for comparison. In the case of companies which are involved in different sectors of industry, the turnover must be broken sector by sector.

(iii) Within three months following each of the quarter of the financial year, the provisional balance sheet taken at the end of the previous quarter.

However, quoted companies whose capital does not exceed Fr. 10 million are exempted from the above obligation, but they are required to send certain items of information to any shareholder who ask for them, within fifteen days of the request.

(c) Position in Germany :

In Germany, the disclosure of the affairs of the company for the protection of present and future shareholders, in place of State supervision, make it possible for individual shareholder to protect themselves from deception and fraud.

Sections 177 and 178 of the 1965 Act lays down the requirements of disclosure. The section 177 is intended to make certain that the annual statement of accounts (i.e. the balance sheet and profit and lose account) as entered in

the Handels register corresponds truly with the certified account. Further under the new provision, the Court of register (Registergericht) has a formal and material duty of verification with regard to the annual statement. Such a duty was not included in the Old Act. (i.e. Act of 1937).

Another important feature of a new German Law is the type of disclosure. Disclosures which a company is required to make divided into two parts known as Obligatory Disclosure and Optional Disclosure.

According to new provision a company which publish its statement of accounts in abbreviated form accompanies by the auditor's certification is now required to explicitly declared that account is not produced in full in a heading, and the number of the official Gazettee (Bundesanzeiger) in which the full statement is published must be given.

Further para 1 of section 178 prescribed that the resolution of the annual general meeting concerning the application of the profit is to be disclosed.

New Act has also laid down strict provision for valuation of the assets of the company to prevent the companies from bringing down the profit by undervaluating the assets, and by building up hidden reserve to conceal the true yield i.e. prevention of undisclosed reserves.

(d) Position in Italy :

Under the Italian Law the Balance sheet prepared by the Board, must be certified by the Sindaci and approved by the annual shareholder's meeting and thereafter filed in the registry of companies. Its contents and the valuation criteria for individual item are strictly laid down in Arts. 2424 ff of the Civil Code, but as the law seems mainly concerned with the danger of over valuation directors are given much room for manoeuvre.

Further detailed specification of individual items in the balance sheet or in the director's report, a separate director's report for any proposal for a merger, the issue of bonds or shares of changes in the articles etc, are required to be made disclosed.

(e) Position in Netherlands :

The traditional view, in Netherlands was that only shareholders had a right to be informed of the contents of company's annual accounts. In 1928, however, a provision was incorporated in the Dutch Commercial Code (Art.42 C) which made it obligatory for the management of the companies to publish the contents of the annual accounts by depositing them at the Registry of Commerce (Handelsregister). Only close limited companies are exempted from this provision.

Art. 42 of the Commercial Code contains a number of provisions specifying what the annual account had to contain.

It may be noted that in Netherlands public opinion has played very important role in respect of contents of annual accounts. The annual accounts of most companies therefore contain more information than is required by law.⁴³

It may be submitted that, in the Continental Countries also due importance has been given to the doctrine of disclosure particularly in respect of balance sheet and profit and loss account.

1-C. AUDITOR'S REPORT :

Finally there is the Auditor's report which must invariably be attached to any circular or published copies of the accounts.

In India as per section 227 (2) an auditor is required to make a report to the members of the company on the account examined by him, and on every balance sheet and profit and loss account and on every document annexed to the balance sheet or profit and loss account which are laid before the company in general meeting. Further it lays down that auditor is required to state in the report, whether

in his opinion and to the best of his information and according to the explanation given to him, the said account give the information required by the Act. The auditor is thus required to report not merely on the balance sheet but on the accounts which he is required to state whether in his opinion proper books of accounts as required under section 209(3) have been kept by the company.

In view of the above it is probably not enough for the auditor to repeat the language of the section and merely state that in his opinion and to the best of his information and according to the explanation given to him the accounts of the company give the information required by the Act in the prescribed manner. He is required to do more than that.

As per the working of the section 227, it requires from the auditor a more exacting duty as regards verification than the previous Act.

In this connection, the passage in the ninth annual report submitted to the Parliament in pursuance of section 638 is worth noting :⁴⁴

"The Company Law Board has been of the view that it is necessary to ensure a high standard of audit of companies because it is only by doing so that a high standard of

integrity in company's affairs could be maintained. In order to obtain this required standard it is necessary for auditors to be fully alert and to satisfy themselves by examining such basic materials and documents as they consider necessary, that the accounts which they certify really reflects a true and fair view of the state of affairs of the company concerned."

In England section 14 (1) of the 1967 Act provides that the auditor are required to report to the members on accounts examined by them and on all balance sheets, profit and loss account, and group accounts laid before the company. The form of the report has also been improved and simplified by the Act. To emphasise the importance of the report, section lays down that it shall read at the general meeting and be open to inspection by any member.

The language of the section is that "the auditor shall make a report : : to the members...". As pointed out by the learned Editor of Palmer's Company Precedent, 16th Edn. "this does not mean that the auditors should send their report to all the members. As a rule the auditor send his report to the secretary with a view to its being laid before the company in general meeting. But it may be doubted whether the auditor can safely rely on this course". Now

that section 162 (2) (corresponding to section 230 of the Companies Act, 1956) requires the report to be read before the company in general meeting and by Sub-section (4) (corresponding to section 231 of the Indian Act) he has the right to attend the meeting; this may be held to throw on him a duty to see that this is done. According to these provisions, the auditor is required to bring to the notice of the members the contents of the Report. It cannot be treated as a deemed to have been read.

It was held that⁴⁵ "reporting to member does not imply that the auditor must send a copy of his report to each member. He performs his duty, if, after having affixed his signature to the report annexed to a balance sheet, he forwards that report to the secretary or the directors to convene a general meeting to consider the report. Looking to the above change, it seems that this decision is no longer a good law.

In India, section 227 (1-A) imposes an obligation on an auditor to inquire into certain matters as prescribed in the sub-section. As per sub-section (1-A) the auditor is bound to inquire :

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not

prejudicial to the interests of the company or its members :

(b) whether transactions of the company which are represented merely to book entries are not prejudicial to the interests of the company;

(c) where the company is not an investment company within the meaning of section 372 of a banking company, whether so much of the assets of the company consist of shares, debentures, and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether loans and advances have been charged to revenue account;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received, whether the position stated in the account books and the balance sheet is correct, regular and not misleading.

This duty has been cast to safeguard the public money from being indirectly drawn off for the personal benefit of the persons, directly or indirectly in control of the

affairs of the company. If the auditor give a clean certificate, this is not so much an independent source of information as some guarantee of the accuracy of the other sources. If, however, it is qualified, it should be treated as a red light. In England, it may lead to a Board of Trade inspection and perhaps to criminal proceedings.

(I) INDEPENDENCE OF AUDITOR

As in the prospectus, the disclosure philosophy as the fundamental principle of investor protection, only works if the information disclosed can be safely taken as accurate. Unless checked by some independent authority this cannot be relied on; and so far as the accounts are concerned the auditor is the independent authority. In India as well as England various provisions are made for safeguarding auditor's independent.

(a) Legislative Approach :

In the first place there is a provision which provides that auditors must not be incorporated companies and must be members of one of the registered professional bodies of accountants. Further, they must not be employees of the company or of any company of the same group or partners of an employee.

In India as per section 226 the categories of persons to be disqualified for appointment as auditors are now enlarged. The object is to make the position of auditor as little dependent as possible on the companies whose affairs they audit. Further, if under the Chartered Accountants Act, 1949 any additional qualifications are added, they will also apply e.g. relatives of a director. This should ensure professional competence and integrity but would not itself guarantee independence, for they are professional men whose livelihood is largely dependent on audit work, and they must be protected from the temptation to relax their vigilance rather than risk offending the management and losing their jobs. In order to secure their job security, section 225 of the Companies Act, 1956 and section 159 of the English Act, provides for 'special notice' procedures, which is necessary before they can be removed from their posts, and which gives them ample opportunities to lay their case before the members. Moreover, as per section 224 in India and section 199 in England, the appointment and remuneration of auditors rest with the members in general meeting and not with the Board of directors. Hence, auditors need no longer fear the consequences of offending the management, indeed, it is possible that no public company could dare to sack its auditors against

their will except for manifest incompetence or impropriety. Eventhough the management normally have de facto control over the annual general meeting they would be rash to try to weild it in the face of the press publicity which their action would be likely to arouse, in other words, press can also act as a guarnator of auditor's independence.

A new sub-section (1-B) was inserted by the Companies (Amendment) Act, 1974 which provides for rotation of audit work amongst the auditors. This was done with a view to bringing a)bout a dissociation of auditors from group of companies, so that they may not have any temptation to shield the shortcomings of the management from the shareholders, the indirect object of this sub-section seems to rotate an auditor before he develops vested interest in that company. It was also done with a view to achieving a more equitable distribution of audit work amongst the different auditors, so that the younger section of the audit profession may have a better chances of advancement in the profession.

Here I may suggest that, in order to have real independence of the auditor, relatives and a chartered accountant who has done articleship, should be prohibited from being appointed as auditor in place of retiring auditor.

The independence of auditor is considered as most important matter under the company law. In order to emphasise this point, a paragraph from Guide to the Companies Act, by Ramaiya will not be out of place:

"The need for independent audit cannot be over emphasised. As pointed out by Carey in his Professional Ethics of Public Accounting's independence is the key-stone in the structure of the accounting profession.. clearly there would be no great store by the Certified Account's opinion or certificate if they (users of his published report) were not confident of his independence of judgement as well as his technical competence... The basic difference between privately employed accountants and professional practioners is in their responsibilities, moral or legal, to the corporation or the public, and in the extent to which their relationship may tend to influence their judgement. In the last analysis, therefore, it is his independence which is the certified public accountants economic excuse for existence". As the American Institute of Accountants in their code of Auditing Standards put it; 'Independence in the last analysis bespeaks an honest disintrestedness on the part of the auditor in the formulation and expression of his opinion, which means unbiased judgement and objective consideration of facts as the

determinants of that opinion. If the auditor is to maintain independence, he should have no financial interest whatever direct or indirect, with the company or its management during the period of his audit work'.

Cf. The U.S. Securities and Exchange Commission's Regulations, S.X.) As the Commission expressed in the case of A. Hellander & Sons Inc.,⁴⁶ Independence tends to assure the objective and impartial consideration which is needed for the fair solution of the complex and often controversial matters that arise in the ordinary course of audit work. On the other hand, bias due to the pressure of an entangling affiliation or interest, inconsistent with the professional relations of accountant and client, may cause loss of objectivity and impartiality and tends to cast doubt upon the reliability and fairness of the accountant's opinion."

In actual practice, an auditor will be considered independent only if he avoids any relationship which might arouse the suspicion that such relationship had prevented an impartial attitude of mind. An auditor should not only be free from impropriety but also from the appearance of it.⁴⁷

(b) Judicial Approach :

The principles governing the Auditor's report and

his duty in respect thereof have been laid down in number of cases.

In Deputy Secretary to the Government of India, Ministry of Finance V. S.N. Das Gupta⁴⁸, Chakravarti C.J. observed "vis-s-vis a shareholder, the auditor holds a position of trust and it is his burden duty to honor that trust by being candid with shareholders and telling them frankly and fully everything with regard to the affairs of the company which has come to his knowledge and which is material for the shareholders to know... his duty is to make a full, careful report in default of which he must be held to have failed in the discharge of his obligation... If an auditor does not do what it is his duty to do (such as failure to verify cash of a banking company) it is no defence for him to say in a disciplinary proceeding started under the Chartered Accountant Act, that he had told the shareholders that he had not done it. The lapse is constituted by his failure to perform a duty without which an audit is meaningless and it is not excused by giving information of the omission to the shareholders.

In London, & General Bank, Re. (No.2)⁴⁹ Lindley L.J. observed that "a person whose duty it is to convey information to others does not discharge that duty by simply giving information as is calculated to induce them, or some

Of them to ask for more... an auditor who gives shareholders means of information instead of information, in respect of a company's financial position, does so at his peril and runs the serious risk of being held judicially to have failed to discharge his duty.

In the words of Lord Denning "an auditor is not to be confined to the mechanics of checking Vouchers and making arithmetical calculations. He is not to be written off as a professional 'adder-upper and subtractor'. His vital task is to take care to see that errors are not made, be that errors of commission, downright untruths. To perform this task properly he must come to it with an enquiring mind-not suspicious of dishonesty, but suspecting that someone may have made mistake somewhere and that a check must be made to ensure that there has been none".⁵⁰

Accordingly, in *Re Thomas Gerrard & Sons Ltd.*,⁵¹ where the managing director had falsified the accounts by three methods, one of which involved including non-existent stock and another altering invoices, Pennycuik J. held that once they had come across the altered invoices they were under duty to make an exhaustive inquiry. Having failed to do so they were liable to the company for the cost of recovering excess tax paid and for dividends and

tax not recovered, since this loss was the natural and probable result of their breach of duty.

As regards the standard of duty of additors, it has been held that "the standards of reasonable care and skill are on the expert evidence more exating today than those which prevailed in 1896, when the Kingston Cotton Mill Co. case was decided. In this case Lopes L.J. held that 'it is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion, or with a foregone conclusion that there is something wrong. He is Watchdog, but not bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest and to rely upon their presentations, provided he takes reasonable care. If there is anything to calculate to excite suspicion, he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful... it is not the duty of an auditor to take stock; he is not a stock expert, there are many

matters on which he must rely on the honesty and accuracy of others".

However, Lord Justice Holmes observed that it has become a common practice to quote that the auditor is only a watchdog and not a bloodhound, which, casting the metaphor aside, means that his duty is verification and not detection. But does not verification extend to bring vigilant? Is not the watchdog bound to bark and chase too where necessary? If when sniffing round, you hit upon a trail of something wrong, surely you must follow it up and there is just as much obligation on the auditor, who is bound to keep his eyes open, and his nose too. It may be that by vigilantly following this trail upto the end, he may 'root up' something from which fraud is exposed".⁵²

In somewhat similar way Donovan J. observed in a Canadian case⁵³ that 'though the auditor may be only a watch-dog he will not have performed the function of his office, if after one howl, he retreats under the barn, or if he confines his protest to a fellow watch-dog".

It may be submitted that the central theme of all the decisions is that an auditor must maintain his independence and must exercise his powers judiciously.

As regards the duties of auditors, the position with reference to previous decisions is thus summarised in Lord Simond's Edition of Halsbury's Laws of England : "It is the duty of an auditor to verify not merely, the arithmetical accuracy, to see that it includes the particulars required by the articles and by statute, and contains a correct representation of the state of the company's affairs. While, therefore, it is not his duty to consider whether the business is prudently conducted, he is bound to consider and report to the shareholders whether the balance sheet shows the true financial position of the company. To do this, he must examine the books and take reasonable care to see that their contents are substantially accurate. Except in special cases, he should place before the shareholders the necessary information as to the true financial position of the company, and not merely indicate the means of acquiring it. Apart from this statutory duty, which cannot be removed by the articles, an agreement, the exact duties of an auditor are regulated by the contract under which he is employed. The statutory duty is not absolute but depends upon the explanations furnished and information given, but an auditor must ask for information on matters which call for further explanation. An auditor must take steps to learn his statutory duties and his duties under the articles. It

is his duty to consider whether payment made by the company before the audit were authorised by the articles, and he will be liable for improper payments made by the director and naturally, resulting from his breach of duty. So an auditor who reports confidentially to the directors the insufficiency of the securities on which the capital is invested and the difficulty of realisation, but who only reports to the shareholders that the value depends on realisation, with the result that the shareholders ignorantly approve an improper dividend is liable to make the good the amount paid. An auditor would not be content with a certificate that securities are in the possession of any person or body of persons, however, trustworthy, unless the certificate is given by a bank or other person who in the ordinary course of business would usually be entrusted with securities".⁵⁴

In India the scope and true purpose of an audit and the duties of the auditor are discussed in the following cases :

In Registrar of Companies V. Arunajatai⁵⁵ it was pointed out that 'where there was material before the auditor to arouse suspicion, he should have at least apprised of it in his report to the shareholders.'

In an earlier case it was held that 'an auditor should not merely rely upon the statements of persons who constitute the management in matters capable of direct verification by him from books, accounts and vouchers.' It was observed in this case that 'an auditor who construes his duties to the shareholders or policy holders too narrowly and who passes and approves of whatever is stated to him by the management of the company, does not serve the shareholders with the loyalty or efficiency expected of him and constitutes, instead of a source of security to shareholders, a positive danger to them.

In the case of *Institute of Chartered Accountants v. P.K.Mukherjee*,⁵⁷ the Supreme Court, thus described the position of the auditor under the Companies Act, "The audit is intended for the protection of the shareholders and the auditor is expected to examine the accounts maintained by the directors with a view to inform the shareholders of the true financial position of the company. The directors occupy a fiduciary position in relation to the shareholders and in auditing the account maintained by the directors, the auditor acts in the interests of the shareholders who are in the position of beneficiaries".

(c) Executive Approach-Company law Department's
View :

In its report the Company Law Department observed:⁵⁸

"The requirements of the Act are that of the auditors should specifically certify whether the published accounts give a 'true and fair' view of the company's state of affairs and of the profit and loss for the financial year (as compared with the requirements of certification as true and correct under the 1913 Act). Prima facie this requirement has imposed an obligation on the auditors to make observations in respect of matters which were not previously commented upon in the auditors certificate under the Companies Act, 1913. An examination of the company accounts only audited by the auditors, and filed by the companies discloses that there is as yet no adequate realisation of this obligation by a majority of the auditors. In a large number of cases, it has been observed that the auditors have given clean certificate on the company accounts audited by them without looking into matters which were clearly relevant to true and fair view of the affairs of the companies concerned. In this connection, some of the auditors have contended legalistically and on the basis of an unduly narrow interpretation of the letter of section 227 of the Act, that the certificate is required

to be based only on the result of the scrutiny of the books of accounts maintained by a company under the provision of section 209 of the Act and that the auditors are not required to report to the shareholders of the company, the infringements of the provisions of the Companies Act or those of the other important laws, much less to ~~the~~ draw their attention to inadequate provision of depreciation, to under or over valuation of current assets like stock-in-trade, to improper allocation of reserves, to improper classification of debts and loans etc., although these defences may come to their notice in course of their carrying out the audit of the Companies concerned. Such omissions are not, however, in accordance with the best traditions of audit practice and in the view of the Department of Company Law Administration it would not be proper discharge of their responsibilities if auditors were not to disclose the above irregularities in their reports. For, it would be difficult to hold that an audit report which ignores such important matters as must necessarily have a close bearing on the fortunes of a company could give a true and fair view of its affairs. On the contrary, the clear certificates issued by auditors in such cases would tend to mislead the shareholders as well as the general public who might have to deal with the companies concerned."

June 1962, the Department issued a press
 ... expressing upon the Chartered Accountant,
 acting as statutory auditors of companies, that it was
 their duty to comment on all such material violations
 of the law or sound accounting practice as might reasonably
 be expected to affect directly or indirectly the fortunes
 of the company's accounts.

In England, the Hand Books issued by the Council of
 Institute of Chartered Accountants of England and Wales
 contains the following general proposition in respect of
 auditor's duty.

"It is the duty of the auditor of a company to arrive
 at an independent professional opinion on whether the
 directors have properly carried out their own duties in
 the preparation of accounts and their presentation to share-
 holders", and according to the expert evidence, in cases
 where there is no sound system of internal auditing, it is
 the duty of the auditor to make deeper and more extensive
 tests.

(II) IS AUDITOR LIABLE TO THIRD PARTY?

In Colley on Torts it has been observed "that ...
 "so far as the company which has appointed him as as auditor
 is concerned he will be liable if he does not perform his
 duty properly or is guilty of gross negligence or fraud.

But he also owes a legal responsibility to third parties who might have been misled by his audit certificate and acted in reliance thereon".

In U.S.A. under the Securities Exchange Act, an auditor is made liable to third parties not only for fraud but also for negligent misrepresentation, even if it be innocent.

In England it has been held by House of Lords in Hedley Byrne & Co. Ltd. V. Heller & Parnters Ltd.,⁵⁹ that a person exercising any profession or calling will be liable for negligence resulting in failure to exercise due care and skill, to any person relying upon his careless advice or information, despite the absence of contractual relationship with him, unless when giving such advice or information, he expressly ⁵declaims any personal responsibility thereof. And recently in the case of Arnson V. Cassona Backman Rutley and Co.,⁶⁰ the House of Lords held that there is no immunity in the case of an accountant or any other person except where he acts judicially.

It may be submitted that in India also auditor may be held responsible to third party. However, under section 2(30) an auditor is an officer and in cases where the auditor has acted honestly and reasonably he may apply to the Court for relief under section 633 of the Act.

General Observations :

As a result of the provision of Companies Act, it is generally agreed that published accounts are mines of valuable informations, supplying knowledge of informations of the company's financial position in greater detail than is likely to be available from any other sources. The statutory provisions are not the last word, but in general they ensure that vital information is there for those qualified to extract it. Unfortunately, the traditional layout of a balance sheet makes its contents inaccessible to the bulk of its readers. The financial advisers, the accountants and financial institutions can extract valuable informations from it, but average investors, particularly in India, lacks the technical skill to decipher the informations. Published accounts, however, have become the linch-pin of the system of protection through disclosure. Unless., in a welfare state, particularly in India, this system is to be rejected in favour of some more drastic method, the outstanding needs seems to ensure that accounts are presented in a form which is more readily intelligible to the average investors. The balance sheets and accounts must be in narrative form and incorporated as an integral part of the Director's report. There is, of course, nothing in the Companies Act to prevent companies from presenting there accounts in narrative form.

Recognising the importance of disclosure in respect of accounts the Sacher Committee's has rightly recommended⁶¹ for the inclusion of a provision in the Companies Act, to the effect that all public limited companies, whose shares are listed in Stock Exchange should publish an abstract in a summarised form of half-yearly unaudited accounts of the company and a brief report thereon. Such a report should be published within sixty days of the close of the half year and it should high light the important developments of the company during the half year under report.

While making the above recommendation the Committee observed that "the recent developments in corporate laws both in this country and elsewhere, have been characterised by a strong emphasis on increasing disclosures by management. Openness in company's affairs is the best way to secure responsible behaviour. Most of the disclosure requirements are primarily in the matter of preparation and presentation of balance sheet and profit and loss accounts. The present practice is to publish the financial affairs of the company once in a year. From the point of view of increased disclosures, this practice is not quite satisfactory.

It may be submitted that though the Committee has laid down time limit for the implementation of this recommendation i.e. two years after 1st Sep. 1978, no action has been taken so far in this regard by the Government.

1-D. SOCIAL AUDIT-POWER OF THE CENTRAL GOVERNMENT IN
RESPECT OF AUDIT AND ACCOUNTS :

Sub-Section (4-A) of section 227 inserted by Companies (Amendment) Act, 1965 empowers the Central Government to order by a special or general order that the auditor's report in respect of a certain class or description of companies as may be specified in the order, shall include a statement on such matters as may be specified therein.

In exercise of the powers, the Company Law Board, issued the Manufacturing and other Companies (Auditor's Report) Order, 1975, popularly known as "SOCIAL AUDIT". It came into effect from 1st Jan, 1976. It applies to every company which is engaged in one or more of the following activities :

- (a) Manufacturing, mining or processing,
- (b) Supplying and rendering services;
- (c) Trading; and
- (d) The business of financing, investment, Chit fund, nidhi or mutual benefit societies.⁶²

Thus order applies to all classes of companies including Government Companies, which are engaged in the above activities. However, it does not apply to bodies corporate which are not companies within the meaning of the Act. The Banking companies are also excluded from the purview of this order.

So far as the Manufacturing and other Companies (Auditor's Report) Order, 1975 is concerned, the following points are worth noted :

- (1) Besides banking companies, which are expressly excluded by the Order, plantation companies, producing tea, coffee, rubber etc., agricultural products and also engaged in processing their products and real estate and other companies not coming under any of the three groups A, B, C. specified in section 4 of the Order, are not affected by the Order.
- (2) As the matters required to be included in the auditor report as to the existence or non-existence, truth or non-truth of the matters contained in the several items specified in the Order, what the auditor is required to do is not merely to express his opinion but to make a positive statement of fact of the 'yes' or 'no' type, so that if he makes any statement which is not true as a fact, he will be committing an offence under section 628 of the Companies Act, 1956.

- (3) Auditor's duty as regards verification of stock :

The Order has made it clear that neither verification nor valuation of stock is a duty of the auditor but it

requires him to state in his report whether, as a fact, physical verification has been conducted by the management is fair and proper according to normally accepted accounting principles... for doing this auditor is required to see physical evidence of verification. He cannot merely rely ~~upon~~ mere statement of the managing director or other officers that the stock have been verified and figures shown are correct. Further he will have to come to his own independent conclusion as to the valuation being fair and proper.

1-E. POWER OF THE CENTRAL GOVERNMENT TO HAVE SPECIAL AUDIT-
- SPECIAL AUDIT :

Section 233 A inserted by the Companies (Amendment) Act, 1960 provides very important weapon in the armoury of the Central Government. This section empowers the Central Government to have a special audit for the accounts of the company either by the auditor of the company itself or by any other qualified Chartered Accountant, whenever it is of the opinion :

(a) that the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices, or

(b) that the company is being managed in a manner likely to cause serious injury or damage to the interest of trade, industry or business to which it pertains, or

(c) that the financial position of the company is

such as to endanger its solvency.

The Report of special auditor under this section shall include all matters required to be included as per section 227. In addition to that, it shall also include a statement of any other matter which might have been referred to him by the Central Government. The auditor is required to make his report to the Central Government and to the members of the company. Here it may be mentioned that as per section 227(2) auditor is required to submit his report to the members of the company.

The Special Report and the Power of the Central Government :

On receipt of the report the Central Government may take such action as it consider necessary in accordance with the provisions of Companies Act, 1956 or any other law for the time being in force. It may be submitted that under this provision the Central Government may appoint inspector for investigating the affairs of the company under section 237 of the Act or it can appoint any number of persons as directors in the Board of Directors of such company under section 408 of the Act.

The proviso to this section imposes obligation on the Central Government, according to ^{which} ~~it~~, if the Central Government

does not take any action on the report of the special auditor for a period of four months from the date of its receipt, it shall send ~~it~~ to the company either a copy or relevant extracts from the report with its comments thereon and require them to circulate that copy or those extracts to the members or have such copy or extract read before the company at its annual general meeting.

The reason given for inserting this section was to have critical appreciation of the company's working and state of its affairs before the Central Government under certain circumstances.⁶³

It may be submitted that the power conferred by this section is very wide and it requires to be used justiciably. Looking to the provisions of the section, this becomes more important, because there is nothing in section to indicate that the Central Government should, before the issue of order for special audit, give the company or its management any opportunity of being heard. Some necessary safeguards are required to be provided in the section.

The Concept of Sound Business Principles :

The concept of 'sound business principle' and 'prudent commercial practice' used under section 233 A requires some clarification.

It may be submitted that these concepts are of wide connotation and have been adopted in the wake of the Government resolution moved in the Parliament in connection with the setting up of the Parliamentary Committee on Public Undertakings, which was required to examine and report whether the Public Undertakings were being managed in accordance with 'sound business principle' and 'prudent commercial practice'.

The concept of sound business principle include not only the keeping of proper accounts presenting clear balance sheets distinguishing between expenditure on capital account and on current account, the making of adequate allowance for depreciation etc. but also the adherence to a business code of conduct like integrity, fair dealings, efficient service and absence of bad faith and malpractices in the management of the business of a company. Whereas the expression 'prudent commercial practice' indicates the making of effort to carry on the business in a manner conducive to efficiency and good harmonious relations with the workers and other employees, shareholders, Government officers etc., and being good and serviceable to members of the surrounding society. It also implies that the business is being carried on with cost consciousness and without waste and in a manner conducive to the benefit of all those interested in enterprise.

It may be submitted that though the power of the Central Government under section 233 A is made conditional i.e. only under certain circumstances the power can be exercised, but it will not be difficult to exercise the power, as the interpretation to the concepts of 'sound /given business principle' and 'prudence commercial practice' is very wide.

1-F. AUDIT OF COST ACCOUNTS :

Section 233-B inserted by the Companies (Amendment) Act, 1965 empowers the Central Government to order the conducting of cost audit of any class of companies engaged in production, processing, manufacturing or mining activities. In case of such companies the Central Government may, by order, direct that an audit of cost accounts shall be conducted in such manner as may be specified in the order by an auditor, who shall be a cost accountant within the meaning of the Cost Accounts ^{ant} Act, 1959.

The object of insertion of this section thus stated in Notes on clauses "The purpose of the section was to enable government to issue necessary direction for conducting cost audit of companies engaged in manufacturing or mining activities". (Clause 24).

In order to prevent the disclosure of certain information, the Joint Select Committee noted that "since cost audit is

likely to reveal certain information which is regarded as confidential by the companies the cost audit report should be filled with the Company Law Board and not with the Registrar and a copy of the report should be sent to the company".⁶⁴

By the Companies (Amendment) Act, 1974 certain change were affected in the original section. One of them was deletion of the words 'Company Law Board'. Now report is to be submitted to the Central Government instead of Company Law Board.

Disclosure to the member

Sub-Section (10) lays down provision for disclosure of the contents of the cost audit report to the members of the company. It provides that the Central Government may direct the company whose cost accounts have been audited to circulate to its members, alongwith the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

It may be stated that though section 233 A prescribes elaborate provisions for audit of cost accounts, the management may by pass or delay such audit of cost accounts. Following lacunas are found in the section :

(a) it does not prescribe any time limit for the appointment of cost auditor by the Board of Directors. This lacuna may provide Board of Directors an opportunity for adopting dilatory tactics in any case where the cost audit is against the wishes of the management. In order to plug this loophole, specific time, say thirty days may be prescribed for appointing the cost auditor.

(b) The power of appointment of cost auditor is at present restw with the Board of directors. Looking to the duties to be performed by the Cost Auditor, it is not desirable, as it is likely to affect the independence of the cost auditor. Further, no provisions have been made for filling vacancies in case of resignation, disqualification or death of the cost auditor. There is also no provision for removal of cost auditor for misconduct or other like causes. All these lacunas are required to be plugged.

It may be submitted that the real object of the present section, which enables the Central Government to direct an external audit of cost accounts of any particular company is not clear. In most advanced countries, cost accounting is primarily and basically a service tool to management. Though its chief function is the determination and allocation of costs to products, it is today serving as a positive aid to management in cost control and cost analysis.

It helps the management to improve efficiency in the use of materials, labour and plant, maximum production and realise greater profit. Cost accounting has thus been an internal affair of each company intended to serve as guide to management to improve efficiency all round.

The spokesman on behalf of the institute of Cost and Works Accountants, in his evidence before the Joint Committee on the Bill, stated that such audit would comprise matters like inventory audit, stock audit, stores issue, procedure audit, work in progress, audit, capacity utilisation, overheads and indirect expenditure etc. Unless the function of the audit is confined to reporting on the regularity of the maintenance etc, of cost records as may be prescribed under section 209 which is a simple matter of not much consequence except assuming the cost accounts are regularly maintained, a proper audit of cost accounts on the lines required by section 227 will be next to impossible as verification of regularity will have to spread itself over the entire field of a company's activity and deal with tens of thousands, if not lakhs of day-to-day items of the productive processes, beginning from the first purchase of raw materials and ending with the last sale of finished product, for the period covered by the audit. Cost accounting being itself a continuous process

the kind of audit contemplated may takes months and years and report or reports made in respect of it will be out of dated and mere history when it comes up for consideration.

It may be submitted that in order to have proper audit of cost accounts, appointment of cost accountants should be made obligatory in cases of companies required to maintain cost accounts under the Act.

The Sacher Committee has recommended⁶⁵ that "when cost audit is ordered in respect of any particular industry under the provisions of section 233 B, such audit should be continued every year unless the Central Government for reasons to be specified, order to discontinue such audit in any particular industry.

While making above recommendation, the Committee observed that "maintenance of Cost Accounting Records in certain types of industries and their continuous audit by an appropriate Cost Auditor will not only be a step in the direction of consumer protection but also will be an advantage to the company itself... the present practice of conducting cost audits intermittently is not of any particular assistance to the companies or to the consumers at large".⁶⁶

1-G. ANNUAL RETURN :

(I) REQUIREMENTS AS PER SECTION 159

Section 159 provides that every company having a share capital must prepare and file every year, with the Registrar its annual return within sixty days of the date of the annual general meeting. The purpose of this return is to enable Registrar to record the changes that have taken place in the constitution of the Company during the year. The ultimate object of this provision is to see that the person dealing with the company gets latest information about the company, with which he intends to deal with.

The return of the company with share capital has to contain the particulars specified in Part I of the Schedule V of the Act as they stood on that date regarding :

- (a) its registered office.
- (b) its register of members,
- (c) its register of debenture-holders.
- (d) its indebtedness,
- (e) its members and debenture holders, past and present and,
- (f) its shares and debentures,
- (g) its directors, managers and managing directors past and present.

As per the present provision, the company is required to file Annual Return, and it is immaterial whether Annual

General Meeting is held or not. This provisions are improved on the lines of the English Act. It covers the register of debenture holders also.

It may be mentioned that the detail provisions contained in section 32 of the previous Companies Act have been taken over and incorporated in Schedule V of the New Act. The Schedule as recommended by the Company Law Committee embodies all the provisions contained in the corresponding schedule of the English Companies Act, viz. Schedule VI. The present section 159 and the Schedule V are based on the following recommendation of the Company Law Committee :

"the section 32 of the act should be revised on the lines of section 124, read with section 126 of the English Companies Act, 1948 subject to the following modifications. The annual return ~~from~~ Form-B should also contain a list of registered debenture holders and informations about their occupations and the occupations of their directors".⁵⁷

An amendment was made in 1960. The purpose of this amendment was to plug loophole found in the existing provision. Under which a company could contend that if it makes default in holding the annual general meeting, it could not be penalised for not filling the annual returns and accounts, which is only consequential. To deal with

such defaults conveniently, it is proposed to make provision in the section requiring every company:

(a) Where the annual general meeting for any year has not been held, to file the annual returns within forty two days from the latest date on which the annual general meeting should have been held in accordance with the provisions of the act; and (b) to state reason for not holding the annual general meeting.⁶⁸

Now according to amended provision, in case the Annual General Meeting has not been held on or before the last day by which it should have been held, the annual return must, however, be filed in time. If no Annual General Meeting has been held, the company shall alongwith the annual return, file a statement giving the reasons for not holding the Annual General Meeting.

In the case of State of Bombay V. Bhandhan Rao Bhandari⁶⁹ it was held that fact that no annual general meeting was held is no justification for not complying with the requirements of this. A person who could have called the meeting cannot, by not calling meeting take shelters of his own default, and say that because no meeting was held, he could not file the annual return.

Whereas in the case of Madan Gopal Dey V. State of West Bengal,⁷⁰ it was held that the fact that the company did not function is also no excuse. It was, however, in the case of Calculating Business Machines (Pvt.) Ltd. V. State of Bihar,⁷¹ held that as the company admittedly was not carrying on any business since its incorporation and had requested the Registrar to strike off its name from register as defunct company, there would be no mens rea on the part of the company and its directors in not submitting the annual returns under section 159 and conviction of the company or its directors under section 162 would not be warranted.

It may be submitted that the decision of the Patna High Court is quite in order with the provision of Companies Act, 1956. Section 560 empowers the Registrar to strike off the name of a defunct company from the register of companies after following the procedure laid down under section 560. In this particular case the Registrar should have struck off the name of the company instead of prosecuting the company for non-compliance with the provisions of section 159.

Other Provisions dealing with the Annual Return are :

Section 160 deals with the annual return of a company without share capital. An important amendment was made in 1960. A new Clause (aa) was added in Sub-Section (1)

requiring disclosure about names of members and the respective dates on which they become members and the names of persons who ceased to be member since the date of annual general meeting of the immediately preceding year, and the dates on which they so ceased.

Under section 161, the copy of the Annual Return filed with the Registrar must be signed both by a director and by the manager or secretary of the company. Further the annual return must be accompanied by a certificate signed by signatories of the return stating that information given in the return was correct on the day of the Annual General Meeting, and that further entries regarding transfer of shares and debentures have been correctly recorded in the proper books. Section 162 provides for penalty for non-compliance with the provisions of sections 159 to 161.

How far Complied with?

From the Statistical data reported in the Twenty-Ninth Annual Report of the Department of Company Affairs on the working and administration of the Companies Act, 1956 for the year ended March 1985, it ^{is} apparent that provisions of sections 159 and 160 are mostly honoured by breach then compliance. As per Report during the year 1984-85 out of 13,787 prosecutions, 4587 prosecutions were for non-filling of Annual Return with Registrar.⁷²

(II) CONSEQUENCES OF NON COMPLIANCE :

Recently, in the case of National Cotton Mills & Others V. Asstt. Registrar of Companies, West Bengal⁷³ it was held that the failure to file the return did not constitute a continuing offence and, since the offence was not a continuing one, cognizance of such an offence could not be taken by the Magistrate after the expiry of the period of limitation provided in section 468 of the Cr.P.C. 1973.

It was further held that in order to constitute a continuing offence, the offence must arise 'out of failure to obey or comply with a rule or its requirements and which involves penalty, the liability for which continues until the rule or its requirement is obeyed or complied with". Section 159 which requires every company to file with the Registrar the particulars specified in the section in the form of return within sixty days from the date on which the Annual General Meeting is held, does not impose any liability which so continues. The offence on the breach thereof is complete with the failure to furnish the return in the manner or within the time stipulated. Such an offence is committed once and for all as and when one commits the default. The provision does not contemplate that the obligation to submit the returns is continuous from day to day until the return is actually submitted nor does it

provide that continuance of business without filling of such return is prohibited so that non-fulfilment of a continuing obligation or continuing of business without filling of such returns becomes a continuing offence. When section 162 of the Act prescribed the penalty of fine which may extend to fifty rupees for every day during which the default continues, it merely prescribed the measure of penalty-such a prescription being made with the object of enforcing strict compliance with the requirement of section 159 under the threat of enhanced penalty and getting relief from penalty on enhancing scale by early submission of returns even after the default. That does not render the initial default a continuous one. It cannot be said that offence is repeated or committed from day to day after the initial default. It is only when the offence is committed from day to day or repeated from day to day that it can be called a continuous offence. There being no express provision in section 162 in that behalf as there are in section 234, 598 etc. of the Act, it cannot be held that offence under section 162 is a continuing offence.

Enforcement of Registration Requirements :

With the enormous number of companies on the register, one serious problem is to secure compliance with the registration requirement, and many companies especially

small private ones, are in arrears, with their annual return. The penalties provided by the various sections have not proved an effective sanction. The Registrar of Companies have been provided with powers to strike a defunct company off register.

Section 560 of the Act empowers the Register to strike off the names of those companies which are no more active or are not in operation or where the company is being wound up and no returns have been filed by the liquidator as required by the Act for a period of six consecutive months after notice demanding the returns have been sent by post to the company or the liquidator at his last known place of business. The Registrar is required to follow the procedure laid down under section 560 of the Act.

In England, section 353 of the English Companies Act, 1948 provides that if the Registrar has reasonable cause to believe that the company has ceased to operate, he may inquire from the company and if no reply to two letters or a reply to the effect that the company is not in a fact carrying on business he may publish in the Gazette, and send a notice that unless cause is shown the company will, at the expiration of three months be struck off the register and dissolved.

The wording of these sections show that it is envisaged that the Registrar will set the process in motion as a result of the company's failure to file its annual returns. Often, however, the company itself invites the registrar to exercise the powers since, the procedure is a cheap and simple method of dissolving a private company which has fulfilled its purpose. In England, in the year 1967, 16 companies were dissolved by Court Orders, 6444 after voluntary liquidation and 11,289 were struck off under section 353.⁷⁴ This suggests that in England, this method of dissolution is now the most common of all.

It may be stated that it is a method which deprives the members and creditors of all the protections afforded to them by the winding up. In India, however, it is specifically provided under the proviso (a) of sub-section (5) that the liability of every director, manager or other officers of the company shall continue as if the company had not been dissolved, and the Court can wind up the company, notwithstanding that it has been struck off. Further, as per sub-section (6), the Court can, on the application of the company or any member or creditor, may within twenty years, order the company to be restored to the register, whereupon it shall be deemed to have continued in existence.

The effect of pending litigation on the operation of
Section 560 :

In the case of Bhogilal Chimanlal V. Registrar, joint Stock Companies M.P. (Gwalior),⁷⁵ it ^{was} held that where a litigation by a third party against the company is pending, the name of the company should not be struck off, and if struck off, it will be restored.

In Surjan Das V. Chobla Cotton Co.,⁷⁶ it was held that there is no provision for appeal against an order restoring a company to the Register. But where an order is erroneous, it is open to revision.

Secondly, if the company is in fact in operation but is, deliberately or through inefficiency, failing to afford the public information which the law required, the registrar, may proceed under section 614 and obtain Court order requiring the company and its officers to make good the default, within a specified time. If the order is not complied with the officers will be in contempt of Court and liable to imprisonment untill they purged their contempt.

With a view to simplify the annual return, the Sacher Committee has recommended that "it would suffice if a simple provision is incorporated to the effect that the annual returns as regards certain categories of companies, including foreign companies, shall be respectively in

forms set out in part to be designated in schedule V to the Act, and shall set out the certificates or declaration as may be specified in those parts. As regards the provision with respect to penalty, it is recommended that this may be provided in separate schedule alongwith other penalties under the Act.⁷⁷

So far as these provisions are concerned it may be submitted that the object of all these provisions dealing with the annual return is to provide an annual consolidation of the prescribed informations so that a person will not generally have to go back beyond the last annual return. At the sametime, however, the opportunity is taken of obtaining certain additional information which would otherwise be available only at the company's office, if at all.

1-H. POWER OF THE REGISTRAR TO CALL FOR INFORMATION OR EXPLANATION (Section 234) :

A company is required to file several documents with the Registrar under the various provisions of the Act. In case the Registrar is of the opinion that any information or explanation is necessary with respect to any matters to which such document purports to relate, he may, by a written order, ask the company submitting the document to

the required information or explanation in writing, within a fixed time, specified in the Order.⁷⁸ On receipt of the Order it is the duty of the company as well as of its officers to furnish the required information or explanation.⁷⁹ In case of default, the registrar is empowered to ask for the production of such books and papers for his inspection. In case of non-compliance with this provision, the company and every officer in default is liable to be punished with fine. In case of continuous default an additional fine upto Rs. 50 may be imposed.

The registrar is also provided with an additional remedy. The Registrar may apply to the Court and Court may require the company to produce before the registrar such books and papers as, in the opinion of the Court, may reasonably be required by the registrar for his purposes.

So far as this provision is concerned it may be mentioned that previously the duty to furnish the information was confined only to the officers of the company. Now extended to the company also.

In case of Coimbatore Spinning & Weaving Mills Ltd. V. M.S. Srinivasan,⁸⁰ the Madras High Court has discussed the scope and the powers of the Registrar under the unamended section.

Changes Brought about by the Companies (Amendment)
Act, 1960

The following is the notes on this clause of the
Bill.⁸¹

The report on the affairs of a company which the Registrar is required to make to the Central Government under sub-section (6) & (7) of section 234 would be of value only if it is based on a factual appreciation of the position, disclosed in the books of accounts, etc., of the company concerned. It is, therefore, proposed to empower the Registrar to call for and inspect such books of accounts etc. as he might requires not only in relation to statutory documents filed with him, as recommended by the Committee but also in connection with complained lodged with him under sub-section (1) of that section.

Power of the Registrar.

The registrar has power to call for information only in respect of documents which a company is required to submit to him and not in respect to any other documents or matter, though it is likely that every matter about a company may be brought under some document or other filed with the Registrar. This is clear from the new section (3A) which empowers the Registrar to call for all books and papers

which he considers necessary. Though ordinarily the information or explanation should have some bearing on the items mentioned in the balance sheet and profit and loss account, annual return etc., filed with the Registrar, it need not be confined to matters specified in those documents. Where the Registrar receives complaint or information from creditors, contributories or other sources having a bearing on the documents filed with him, he may call for further information or explanation on the allegations made in respect of them. From the wording of the section, it seems that there is no limit for calling for the information or explanation.

Under clause (b) of Sub-Section (4) the refusal or neglect is punishable eventhough the order of the Registrar may be unreasonable. But the Court in making an order may take into account and consider what is reasonably required by the Registrar.

Further it may be mentioned that the expression 'unsatisfactory state of affairs' used under Sub-Section (6) is very elastic, and may include any thing illegal, irregular or improper in respect of the affairs of the company prejudicially affecting the company, its shareholders or any of them or any creditor or the public interest.

Who Can make Representation?

It may be submitted that only a person interested can make representation to the Registrar and not any stranger, for instance a rival company or its directors or members as such cannot be said to have any interest.

Further, as the sub-section refers to 'business being carried on the fraud alleged must be a present of continuing fraud. It does not apply to a case of past fraud. As per sub-section (7) if upon inquiry the Registrar is satisfied that any representation on which he took action was frivolous or vexatious, he shall disclose the identity of his information to the Company. The object of this provision may be to enable company to take appropriate action against persons responsible for such vexatious information.

Power of Seizure of Documents (Section 234A):

Section 234 A provides that, where upon information in his possession or otherwise, the Registrar has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of the First Class or as the case may be, Presidency Magistrate having jurisdiction for an order for the seizure

of documents. Further this right of Registrar is made conditional. The condition laid down in the section is that 'he has reasonable ground to believe...'. This expression shows that the reasonableness of the ground to believe is justifiable. As it is a condition precedent for the exercise of the power under the section, an aggrieved party may resort to the Court for a decision whether the reason or ground which weighed in the mind of Registrar was reasonable. If it did not appear to the Court to be reasonable, it will be struck down, even though the Registrar might have believed or acted honestly.

The magistrate may by order authorise the Registrar

(a) to enter with such assistance as may be required, the place or places where such books or papers are kept.

(b) to search the place or those places in the manner specified in the order; and (c) to seize such books and papers as he considers necessary.⁸²

Sub-section (3) lays down the time limit for retaining the seized documents. According to it, the Registrar shall return the books and papers seized as soon as possible but in no case later than the thirteenth day after such seizure. Of course, he may before returning them take copies or extract from them or any part thereof.

Here it may be mentioned that this section was inserted by the Companies (Amendment) Act, 1960 on the recommendation of the Companies Amendment Committee. This Committee while making recommendations observed that 'under section 234, as it stands, the Registrar has no power to compel production of accounts books or documents by the company. He can only call for information or explanation in writing. The report of the Registrar required to make to the Central Government under section 234 (6) or (7), on the basis of which an order of appointment of an inspector is contemplated by section 235 (c), would be of real value only if it is based on available evidence or materials, particularly the books of account and vouchers. It is, therefore desirable that section 234 should be amended by giving the Registrar power to call for and inspect such books of account or documents of the company as he might requires.'⁸³

Section 234 A was amended in 1965 by the Companies (Amendment) Act, 1965. By this amendment concurrent power given to the 'tribunal or magistrate' in respect of search and seizure, entrusted to the Registrar only.

2. COMPANY'S MEETINGS AND DISCLOSURE :

A company is an artificial person created by law, The business of a company is carried on by the elected

representatives of the shareholders, called directors. They look after the general administration of the company. But they cannot decide about all matters. As per the provisions of the Companies Act, 1956, the powers of the company are divided between the Board of Directors and General Meeting. Certain matters are required to be decided by the whole body of the members of the company and, therefore, the meetings of the members are held from time to time. In these meetings the management is required to make disclosure to the members in respect of company's affairs, particularly in regard to the financial and other matters.

2-A. TYPES OF MEETINGS :

The meetings of the company may be classified as follows :

- (a) Meetings of the members/shareholders :
 - (i) Statutory meeting
 - (ii) Annual General Meeting
 - (iii) Extra Ordinary General Meeting.
 - (iv) Meetings conveyed by the Company Law Board,
 - (v) Class Meetings.
- (b) Other meetings :
 - (i) Meetings of the Creditors,
 - (ii) Meetings of the Debenture holders
 - (iii) Meetings of Directors.

(I) STATUTORY MEETING :

A statutory meeting is general meeting of the company. This is the first meeting of the members of a public company and is held only once in the life time of a company. The object of holding this meeting is to provide an earlier opportunity to the members of discussing all matter relating to formation of the company, including statutory report. A private limited company, an unlimited company and a Guarantee company having no share capital are not required to hold any statutory meeting. The exemption granted to private company does not extend to any private company which a Banking Company.⁸⁴

Position of a Deemed Public Company :

As per the provisions of section 43A, a private company, which subsequently becomes a public company by reason of section 43A will have to comply with the provisions of the Act which apply to public companies so far as applicable to it from the date of its becoming a public company.

As per section 149 (7) a private company is entitled to commence business, immediately on its incorporation. It is, therefore, already entitled to commence business on the date when it becomes a public company. If the date

of its becoming public company is within six months of the date of its incorporation, it must comply with the provisions of section 165. Thus, if it becomes a public company after six months of its incorporation, it will not be required to comply with the provisions of section 165. In case of failure, the consequences laid down under sub-section (9) of section 165 and Clause (b) of section 433 of the Act will follow.

According to section 165, a public company limited by shares and every company limited by guarantee and having share capital are under a legal obligation to hold a statutory meeting within a period of not less than one month and not more than six months from the date at which it was allowed to commence business.

Further, it provides that the Board of Directors shall, at least 21 days before the day on which the meeting is to be held, forward 'statutory report' to every member of the company. Delay in sending the statutory report to the members can, however, be condoned by unanimous vote of members, present at the meeting.

The statutory report of a company contains all the necessary information relating to the formational aspect of the company for the information of the members so that they can make use of it in the meeting.

Matters require to be Disclosed :

According to section 165 the statutory report must state the following facts :

- (a) Total shares allotted : The total number of shares allotted, distinguishing those allotted as fully paid up other wise than in cash, and the consideration for allotment.
- (b) Cash received : The total amount ^{of} cash received by the company in respect of all the shares allotted.
- (c) Abstract of receipts and payments : An abstract of the receipts and payments upto date within seven days of the date of report. The abstract must exhibit under distinctive headings the receipts of the company from the shares and debentures and other sources, the payment made thereout, and balance of cash in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid or to be paid on the issue or sale of shares or debenture
- (d) Information relating to managerial personnel :
The report must state the names, addresses and occupations of directors, auditors, manager ~~and~~

and secretary and changes occurred in such names, address, occupations since the date of incorporation of the company.

- (e) Contracts : The particulars of any contract which or the modification or the proposed modification of which is, to be submitted to the meeting for its approval, together in the latter case, with the particulars of the modification or proposed modification.
- (f) Underwriting contract : The extent to which any underwriting contract has not been carried out and reasons thereof.
- (g) Areas : The areas, if any, due on calls from every director and from the manager.
- (h) Commission and brokerage : The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director.

As per Sub-section (5) the board of directors is required to deliver a certified copy of the statutory report to the Registrar for registration, and on registration it becomes public document, accessible to anybody on payment of prescribed fees.

The object of calling and providing members with the statutory report is to enable the members to know the actions taken by the promoters and management and also to become aware about the financial position of the company at the beginning of the venture. But in fact, the statutory meeting has become mere formality.⁸⁵ The Sacher Committee has recommended for the abolition of statutory meeting. However, it has suggested that every company limited by shares should forward all particulars, which are now required to be incorporated in the statutory report to the shareholders within the period provided in the section. Such report should also come up for consideration at the first annual general meeting and copy thereof, should be filed with the Registrar.

It may be submitted that this recommendation if implemented would save a new company from initial expenses,

(II) ANNUAL GENERAL MEETING (SECTION 166) :

The provisions relating to annual general meeting affords an important protection to the members of the company. Annual general meeting is the one occasion when they can be sure of having an opportunity of meeting the directors and of questioning them on the accounts, on

their report and on the company's position and prospects. In order to provide protection to the investors, section 166 lays down provisions for calling a meeting of members called annual general meeting. Recognising the importance of the meeting to the members, section 167 lays down provisions empowering the Central Government to call or direct the calling of a general meeting of the company.

As per the provisions of section 166, annual general meeting is a statutory requirement, it must be called, whether or not the annual accounts are ready for consideration at the meeting.⁸⁶

In *Brahmanbaria Loan Co.*⁸⁷ it held that the facts that the account books were in the Court on account of criminal case against the secretary of the company and balance sheet could not be prepared, is no excuse for not holding the meeting. Whereas in the case of *Madan Gopal Dey V. State of West Bengal*,⁸⁸ it was held that the meeting is to be called even where the company did not function during the year.

(a) Importance of Annual General Meeting :

The importance of the Annual General Meeting lies in the fact that it is only at the Annual General Meeting that the shareholders can exercise any control over the

affairs of a company. They can confront the directors, their elected representatives, at least once a year. They also get an opportunity to discuss the affairs and review the working of the company. They can also take the necessary steps for the protection of their interests. They may refuse to re-elect a director whose action and policy they disapprove.⁸⁹

The other importance of Annual General Meeting is consideration of annual accounts and appointment of auditor of the company.

(b) Notice of meeting and Business to be Transacted :

One of the requirements of a valid meeting is that a proper notice of the meeting should be given to the members. It must contain a statement of business to be transacted at the meeting. The business which can be transacted at the meeting of the company may be either general business or special business.

The following business are declared to be ordinary business :

- (a) the consideration of the accounts, balancesheet and the reports of the Board of directors and auditors;
- (b) the declaration of dividend;

(c) the appointment of directors in place of those retiring; and

(d) the appointment of and the fixing of the remuneration of the auditors. Any other business, i.e. other than above mentioned business are deemed to be special business.⁹⁰

As per the provisions of the Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business including the nature and extent of the interest, if any, of directors, the manager etc.

The object of Section 173 is to secure that all facts which have a bearing on the question on which the members have to form their judgement, are brought to their notice, well in advance, so that they can exercise an intelligent judgement. This section was enacted in the interest of the members. The material facts concerning the item of business to be transacted at the meeting are before them and they also know that the interest of the management in any item of business is, the idea^a being that they may not be duped by the management unless they have formed their own judgement on the question after being placed in full possession of all the material facts and apprised of the interest of the management in any particular action being taken.⁹¹

It may be mentioned that this section was incorporated on the recommendation of the Company Law Committee. The recommendations of the Committee was "make it obligatory for the directors to set out in the notice of meeting, where special business is to be transacted all material facts concerning such business. It is not enough, in our view, merely to state the nature of the business, it is, also necessary that all material facts concerning it should be circulated in advance..."⁹² "the nature of the interest, if any, of any director etc, should also be indicated in the circular."⁹³

(c) Consequences of non-disclosure :

It may be submitted that non-disclosure may prove fatal to the meeting and also to any resolution passed there at-

In the case of Kalinga Tubes Ltd. v. Shantiprasad Jain,⁹⁴ it was observed that where neither the notice nor the explanatory note disclosed material facts pertaining to a resolution, the resolution was invalid and ineffective.

A tricky notice, merely offering inspection of the documents to be discussed or altered at the meeting at the registered office of the company is not enough. In this connection observation made in the case of Shaligram

Jhajharia v. National Co. Ltd.⁹⁵ needs a special reference. In this case it was observed "where a special resolution is sought to be passed adopting a new set of articles in lieu of the existing articles, a question arises as to whether a copy of the entire set of new articles proposed to be adopted should be sent to every member or whether it would be sufficient, if the notice explains the terms of the resolution. It would appear that though a copy of the entire set of new articles need not be sent alongwith the notice, sufficient particulars must be furnished of any alteration of rights, duties and powers, substantial changes in the remuneration of director, or other managerial personnel and other matters which ought properly to be brought to the notice of the shareholders or are likely to affect the financial position of the company. It is not sufficient if the new set of articles are merely made available for inspection at the registered office of the company. It will be a tricky device, if there is mere offer of inspection at the registered office of the company, for few shareholders have either the time or inclination to go to the registered office and further the offer of inspection is illusory in the case of the shareholders living in far away places as they will have to incur heavy expenses, if they want to avail of the opportunity."

Sometime non disclosure proves fatal to the meeting. In *Kaye v. Croydon Tramways Co.*⁹⁶ a notice convening a meeting stated that the object of the meeting was to adopt an agreement for the sale of the company's undertaking to another company. The notice did not disclose that the directors were interested in the agreement as a substantial part of the sale proceeds were to be paid to the directors as a compensation for loss of office. It was held that the notice was bad as it did not fairly disclose for which the meeting was called.

Yet in another case,⁹⁷ it was observed that "when there is a large body of shareholders who reside at great distance from the registered office of the company, it is not enough on the part of the company to keep available for inspection a copy of the proposed regulations at the registered office and merely give the shareholders notice of that fact; copies of the proposed changes in the articles or regulations should be sent with the notice". If this is not done, notice is not sufficient and it was held that the "notice did not disclose fully and frankly the facts upon which the shareholders were asked to vote and as such the resolutions passed were invalid.

Consequences of notice not specifying the nature of Business :

As already seen, business to be transacted are divided into two categories viz. ordinary business and special business. It is obligatory for the company to give notice to the members about the business to be transacted, particularly in respect of special business. In the case of *Asansol Electric Supply Co., v. Chunilal*⁹⁸ it was held that 'if the notice does not specify the nature of the business to be special, it is bad in law. A meeting is held in pursuance of such notice is not said to be duly convened and the resolutions passed thereat are void and ultra vires.

In *Tiessen v. Henderson*,⁹⁹ a notice convening an extraordinary general meeting to consider two alternative schemes of reconstruction of a company did not disclose that the directors were strongly interested as underwriters in one of the scheme. It was held that the notice was bad.

Further, matter which is not disclosed in the notice cannot be considered at the meeting. In *Pacific Coast Coal Mines Ltd., v. Arbuthnot*,¹⁰⁰ it was held that 'where a notice convening a meeting does not specify a particulars of business to be transacted therein,

the meeting cannot deal with that mater.

Other consequences for non-compliance with Section 173 :

The non-compliance with the provisions of section 173 have very wide repercussion. This can be seen from the following cases :

In *Narayan Bansilal v. The Manekji Petit Manufacturing Co. Ltd.*,¹⁰¹ it was held that failure to give all the relevant facts in the aforesaid manner in the case of special business will invalid the resolution passed on the basis of such notice. But in the case of *Sitaram Jaipuria v. Banwarilal Jaipuria*,¹⁰² it was held that 'non-inclusion of facts, not having a direct bearing on the matters to be considered at the meeting shall not affect the validity or sufficiency of notice'.

It may be submitted that decision requires to be reconsideration. A notice which is bad from begining cannot be validated on the grounds that the facts were not material. The basic point is not the nature of default but default itself.

Application of Doctrine of Severability - How far proper?

In one of the English case¹⁰³ the Court applied the doctrine of severability and held that if the notice is misleading or the explanatory note is insufficient in

respect of those items then resolution in respect of those items are invalid but not in respect of those items which due notice and explanatory note have been given. Here it may be submitted that in a notice calling the general meeting, all matters and whole matter is required to be disclosed. It is not proper to apply the doctrine of severability. A notice containing several facts, some of them are true and others untrue cannot be treated as a valid notice.

Doctrine of Constructive notice and notice calling the General Meeting of the Company :

In the case of *Parsuram v. Tata Industrial Bank Ltd.*,¹⁰⁴ it was held that 'a shareholder, who by his own conduct, shows that he knew the real effect of the business to be transacted cannot complain of the notice on ground of insufficiency.'

So far as application of doctrine of constructive notice to the notice calling the general meeting is concerned, I would like to submit that knowledge of facts to one member cannot be considered as knowledge to all members. Further, to the question of validity of notice, knowledge of facts cannot be put up as a defence for non-compliance with the express provisions of the Act.

Here attention may be drawn to position in U.S.A. In U.S.A. also great importance is given to disclosure. In this connection the view of the Supreme Court of U.S.A. in the case of T.S.C. Industries v. Nothway,¹⁰⁵ quoted in Hamilton's Corporation 1979 supplement page 24 may be worth noted :

"an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote".

According to the Court, while all facts which a reasonable shareholder might consider appropriate need not necessarily be material facts, the standard that it was adopting was that 'under all circumstances the omitted fact would have assumed significance in the deliberations as regard his voting'.

Here it may be stated that where in respect of any item of business relating to an agreement or other transaction a copy of the agreement or document disclosing the transaction is also sent alongwith the notice of the meeting, it cannot be contented that the explanatory statement has not set out the material facts relating to that item of business.¹⁰⁶

The view of a learned Judge of the Calcutta High Court, as the subject matters dealt with by the notice relate essentially to internal management, the provisions of the section cannot be considered to be mandatory in the sense that a breach thereof will necessarily have the effect of invalidating the meeting or the proceedings of the meeting. In considering the consequences of failure to comply with the requirements of the section, the Court will have to consider the facts and circumstances of each case and be guided by the principles of justice.

Disclosure of Shareholding Interest :

The proviso to Sub-section(2) of section 173, inserted by the Companies(Amendment) Act, 1960, provides for the disclosure of shareholding interest of the directors and manager. It provides that where any item of special business as aforesaid to be transacted at a meeting of the company, the extent of shareholding interest in that other company of every director and the manager, if any, of the first mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty percent of the paid up share capital of that other company.

So far as Sub-section (2) and its proviso are concern, a question arise, as to whether the shareholding interest to be set out in the statement is the aggregate shareholding interest of each of the director or manager etc. Looking to wording of sub-section (2) 'concern or interest, if any, therein... of every director and the manager if any; the shareholding interest to be set out in the statement is not the aggregate shareholding interest of all the directors etc, but the individual director or manager etc.

Company Law Department's Clarification of Scope of Sub-section (2) and its Proviso :

...the department has recently come across several cases where the letter and spirit of law in this regard have not been substantially complied with by the several company managements. In some cases, the Department found that important material facts relating to the appointment of Sole Selling Agents under Section 294 of the act, such as nature of services to be rendered by the sole selling agents to the company, the rate of commission or other remuneration to be paid to the sole selling agents etc., were not set out in the respective explanatory statements attached to the notice of the meetings. It was also noticed in certain other cases

that the management did not include in the explanatory note a summary of the important material fact, but instead, had indicated in the explanatory note that the material documents in question were available for inspection at the registered office of the companies concerned.

The Department is of the view that apart from the practices vitiating in certain circumstances, the validity of the resolutions passed, the sending of a notice which does not give sufficiently full disclosure of the important facts relating to resolutions to be voted upon by shareholders cannot be said to conform to good company practice.

It is hardly necessary to emphasize that notice for general meeting, which are not accompanied by proper explanatory statements defeat the very purpose for which such statement were prescribed by law; nor can it be said that such purpose is served by the opportunity afforded to shareholders for inspection of the material documents at the registered office of the company especially where a large body of shareholders may reside at great distance from the registered office.¹⁰⁷

(III) Extra Ordinary General Meeting :

All general meetings of a company other than annual general meeting and statutory meeting are called extra ordinary general meetings. These meetings are called in emergencies or on special occasions. They are convened when it is found necessary to transact certain business which cannot conveniently be postponed untill the next annual general meeting. All business transacted at an extra ordinary general meeting are deemed special business, of which notice has been duly given beforehand. An extraordinary meeting is usually called for such purpose as alteration of the Memorandum and Articles of the company, increase or decrease of share capital or reorganisation of capital etc.

Extraordinary meeting may be convened :

- (a) By Directors : Regulation 48 of Table 4 provides that the directors may, whenever they deem fit, convene an extraordinary meeting.
- (b) By directors on the requisition of shareholders :

The members may also ask the directors to call an extraordinary meeting. In such a case, the Board of directors must proceed duly to call an extraordinary meeting of the company.¹⁰⁸ The requisition must be signed by given number of members.¹¹

The requisition^{ists} must set out the matter for the consideration of which the meeting is to be called. It should be noted that no other business can be transacted at the requisitioned meeting.¹¹⁰

(c) By the requisitioning ~~of~~ Members :

If the directors fail to call a meeting as required by the requisition, the requisitionists may themselves proceed to call the meeting and claim the necessary expenses for the company. But the meeting must be called before the expiration ~~of~~ three months from the date of deposit of requisition.¹¹¹

(d) By the Company Law Board :

If for any reason it is impracticable to call a meeting of the company other than an annual general meeting in any manner in which meetings of the company may be called, or hold or conduct the meeting of the company in the manner prescribed by this Act or articles, the company Law Board may, either of its own motion, or on the application of any director or any member who would be entitled to vote at the meeting of the company,

order a meeting of the company to be called, held and conducted in such a manner as the Board think fit and give such directions as it think expedient. The directions may include a direction that one member present in person or by proxy shall be deemed to constitute a meeting. The power given to the Board is a discretion power and should be very sparingly used. The word 'impracticable' used in Section 186 means impracticable for a reasonable point of view.¹¹² It should be interpreted in a reasonable manner and from the commonsense point of view of an ordinary businessman taking into account the circumstances of each case.¹¹³

So far as extraordinary meeting is concerned, every business is a special business and due notice of it must be given of the business to be transacted at the meeting. Recently, in the case of Escort Ltd., and others v. Union of India & Others,¹¹⁴ the Court upheld the importance of the disclosure of reasons for calling of an extraordinary meeting. In this case question was about the right of the director to make representation under section 284, in case of removal.

In this case it was held that Section 284 (3) of the Act gives director who is proposed to be removed, the right to make a written representation even before the meeting is convened and such before the members are given notice of the meeting. That written representation of the director is required to be sent to the shareholders. Obviously, therefore, the reasons must be given by the requisitionists before the notice of the extraordinary general meeting is given. If the requisitionists do not state the reasons in their notice of requisition, the company cannot, of its own, divine those reasons and communicate them to the members. Removal cuts short the term of office of elected director. It is precisely for this reason that Section 284 enjoins notice to the director concerned and vests him with the right to make representations. Though giving reasons for proposing removal of the director is not an express statutory mandate, it must be implied as a necessary corollary to the right of representation expressly conferred on him. The representation of director proposed to be removed to be effective must be in respect of something put against him for removal. The right of representation is not an empty formality for removal. Failure to give reasons for removal would wholly disable the director from making an effective representation. In such a case, wider concept

of natural justice requiring reasons to be given must be implied and held to be obligatory. Even in the absence of such a statutory requirement, because the director has been given the statutory right to make representation, the obligation to observe the principle of natural justice must be imported as the necessary intendment of the statute itself. The stating of reasons in a requisition notice for removal of a director must follow as a necessary corollary and must be enjoined on principles of natural justice.

Further, the notice of the extraordinary general meeting given to members of the company must be accompanied by a copy of the resolution and an explanatory statement. If no reasons for the removal are given in the requisition notice, obviously the explanatory statement cannot enlighten the members as to why certain directors are sought to be removed. The directors concerned and much more so the members would be groping in the dark as to the reasons for proposing their removal. If the extraordinary general meeting is required to consider the representation, the meeting also must know why a particular director is sought to be removed.

If no reasons are given in a notice for a requisition by a statutory authority which is a 'State' within the meaning of Art 12 of the Constitution, or if the reasons given by it are found on the face of it to be not true, it would amount to acting without any reason whatsoever. It would be an arbitrary act. Any such act of a statutory body would be violative of Art 14 of the Constitution.

It may be mentioned that non-disclosure of reasons and also the business to be transacted at the extraordinary general meeting may prove fatal to the resolution passed at such meeting.

(IV) Class Meeting :

Where the share capital of a company is divided into different classes of shares, meetings of different classes of shareholders may have to be called whenever the company wants to make any variation in the rights attached to shares of any particular class.¹¹⁵

The object of this section is to take into confidence the holders of particular class of shares, by disclosing to them the proposed variation in their rights.

It may be stated that variation referred to in the section is variation to the prejudice of any class of shareholders, and not any variation adding to or enhancing rights of any class. It is only variation which involves the curtailment of the rights of any class or classes of shareholder, the consent or sanction of such class or classes will be necessary.

In re Hindustan General Electric Corporation,¹¹⁶ it was held that 'a variation which merely affects the enjoyment of a right without modifying the rights itself does not come within the section'. I would like to submit that a right by itself is nothing. What is material is its enjoyment. Any act which deprives a person of enjoyment of such right, is nothing but an indirect way to make the right inoperative. It does ~~not~~ amount to variation and it falls within the purview of section 106.

In an English case it was held that "strengthening the position of the ordinary shareholders as compared with the preference shareholders by issuing further shares to them and increasing their voting rights is not a transaction affecting the rights of the preference shareholders, though in effect it lessens their total voting power". In this case also the voting rights of

the preference shareholders had been as a fact, prejudicially affected, though the rights attached to their own shares were held not to be 'varied' or 'disⁿished'.

2-B MINUTES OF MEETINGS : (SECTIONS 193 TO 196) :

Now a days members are spread over through out the country and also abroad, far away from the registered office of the company, i.e. the place of Annual General Meetings. Further most of the Annual General Meeting are sparcelly attended. In order to have authenticate record of the proceeding of the Annual General Meeting and other meetings, the Companies Act have made provisions for maintaining a book called minute book for recording the matters of business transacted at the said meeting.

Section 193(1) provides that every company must keep a record of all proceedings of ~~every~~ general meetings and of all proceedings of every meetings of its Board of directors and of every committee of the Board. This is done by making within thirty days of the conclusion of every such meeting concerned, entries of the proceedings in the books kept for that purpose, the book is called Minute Book. The minutes of each meeting must contain a fair and correct summary of the proceedings at the meeting, so that the absentee shareholders may

be in a position to form some reliable idea of what transpired at these meetings.

The provision of Section 193 were incorporated on the suggestion of the company Law Committee. The Committee while making recommendation observed that ¹¹⁷ "attention was drawn to the failure on the part of the management of some companies to record in the minutes a fair summary of the proceedings of general meetings, inclusive of material questions asked and replies given and comments made. This, in our view, is not a healthy practice and should be discouraged by positive provisions inserted in the Section. In view of the fact that general meetings are usually very sparsely attended, a practice has grown up of circulating the minutes of such meetings to all shareholders. It is, therefore, essential that these minutes should contain a brief but authentic record of all that happens, at the general meetings, so that the absentee shareholders may be in a position to form some reliable idea of what transpired at these meetings". The recommendations of the Committee were :

(a) to provide explicitly that the minutes of the general meetings should contain a fair summary of the proceedings of such meeting and, in particular of all material questioned asked or comments made.

(b) that such minutes should not be circulated or advertised at the expense of a company, unless they contain the matters mentioned above. It will be necessary for the Chairman of the meetings to decide what fair summary of the proceedings or what questions asked or comments made would be deemed to be material for the purposes of the meeting, but a statutory obligation to cast the minutes in a particular manner will be useful safeguard against the manipulation by dishonest and unscrupulous persons.

In case of directors meeting, it recommended that they should record the names of those directors, if any, who dissent from any decisions arrived at this meeting.

The Committee while disagreeing with the arguments that the decision taken by a Board of directors partook of the nature of a collective decision, and if it was made obligatory to record the view of dissentient directors, differences on the Board might be encouraged, observed that "on the contrary, suggestion will promote rather than hinder the sense of responsibility among directors and will provide a useful check on the current elements among them, who now find it easy to hide the undue influence which they exercise over the affairs of companies under the cloak of unanimity".

The importance of minutes, can be judged from its use. The chief use of the minutes are :

(a) They contain a record of the business transacted with the decisions of the shareholders and directors at their respective meetings.

(b) They are available for inspection by interested parties, e.g. shareholders, directors, auditors etc.

(c) They can be produced as evidence of the proceedings in a Court of Law.¹¹⁸

In the case of *Kerr v. John Mottram Ltd.*,¹¹⁹ it was held that the minutes are in absence of fraud conclusive evidence of the facts stated therein, and if the articles of association provide that the minutes shall be conclusive evidence of what business transacted at a meeting, a member cannot challenge their accuracy and completeness, at least in connection with a transaction between the company and himself in his capacity as a member. However, the evidence of fraud may be let in to displace the conclusive nature of the facts stated in the minutes.

The importance of the provisions of section 193 lies, firstly, now Chairman of the meeting is required to record a fair summary of the proceedings and he is to use

own discretion to decide what is fair proceedings, or what questions asked or comments made would be material for the purpose of the meeting; and secondly, the disclosure of the name of dissenting director in the director's meeting.

It may be submitted that under the existing provision, minutes of the committees of directors are not circulated to the members of the Board. Here it may be mentioned that under Section 292 of the Act, the Board of directors can delegate the powers to a committee. Many a time important decisions are taken by the committee. In order to have a proper disclosure of the business transacted at those committee's meetings, the Sacher Committee¹²⁰ has rightly recommended for the redrafting of Sub-section (4) of Section 193, making it obligatory for disclosing the names of directors present at the meeting and the names of directors dissenting from, or not concurring in any resolution passed thereat, and for the circulation of the minutes of the committees of the Board to all the members of the Board within a specified time.

Another important recommendation made by the Sacher Committee¹²¹ was in respect of giving exclusive jurisdiction to the High Court to entertain applications for injunction in respect of holding of meeting of the shareholders of the company.

The Committee observed that "there have been instances where injunctions have been applied for and granted under the provisions of Civil Procedure Code just prior to the holding of the Statutory and other meetings of the companies rendering the holding of such meetings by company management difficult. Once an injunction is obtained, multic^{pli}_Lity of proceedings ensue with grave consequences to a large body of shareholders in matters concerning the declaration of dividends, passing of accounts, appointment of directors appointment of auditors etc.... Such suits are often filed by disgruntled shareholders in various courts spread over the country. While it would not like to take away the jurisdiction ordinarily conferred on Civil Courts to determine and deal with cases of this nature,... the power to grant injunction or interlocutory relief, restraining the holding of any meetings of the shareholders including annual general meeting, should be vested exclusively in the High Court having jurisdiction over the place where the registered office of a company is located".

So far as this recommendation is concerned it may be submitted that the object of company's meetings, particularly annual general meeting is to provide an opportunity to members of the company to meet and discuss the affairs of the company and also to decide the

management of the company for the subsequent year etc.

The members of the company may be deprived of this opportunity by any disgruntled member or group of members without any reasonable cause, with the help of the Court. In order to put an end to this misuse of Court and judicial system, this recommendation of the Committee should be accepted, and if implemented, it would save company and members of the company and others from unnecessary expenses and inconvenience, and it would help in maintaining good corporate relationship.

Extra-Legal Means :

So far I have dealt with the provisions of the Act, in respect of disclosure. I would also like to draw attention towards some extra legal means in respect of doctrine of disclosure.

A public company with quoted shares, is in practice subjected to a degree of publicity which far transcends those legal obligations. As a condition of obtaining a quotation, it will have to enter into an undertaking with the stock exchange concerned to make information available to it. Thus, the general undertaking of the stock exchanges imposes an obligation on such a company to notify the exchange of, inter alia, substantial realisation or acquisition of assets, any changes in the directorate

or in the general character of the business of the company or any subsidiary, of all dividends and bonuses which the Board decide to recommend of net profit figures with a comparison with the previous year, and of any other information necessary to enable the shareholders to appraise the position of the company and to avoid the establishment of a false market in the shares. The stock exchanges take the compliance of these obligations very seriously, and try to ensure that the management takes investors into their confidence as regards any developments which may affect quotations. If necessary the sanction of suspension of dealing may be imposed.

Press Publicity :-

Press publicity is another powerful media of disclosure. The financial columnist having their own channels of information explore these channels with sleuth like pertinacity. The result may be that what the Board of directors had looked upon as a confidential decisions or a internal problem is suddenly brought out into the harsh light of day. This may be embarrassing, and even, in some cases, detrimental to the interest of the investors, but if the power of the press publicity by columnist is exercised with wisdom and fairness, newspaper comment is perhaps the most potent protection afforded to investors and to the creditors.

R e f e r e n c e s :

1. Charleworth & Caim's Company Law, 11th Edn. p. 419.
2. Loksabha Debates, Vo. XXIV, dated 20th December, 1958. pp. 6608-9.
3. Para 154 of the Report
4. Principles of Modern Company Law 2nd Edn. pp.455-456.
5. Para 8-6 of the Report
6. Vakharria V. Supreme G.P. Exchange Co. A.I.R. 1948 Bom. 301.
7. Sugrabai Alibhai & Others V. Amttee Properties Pvt. Ltd.(1948) 55 Comp. Cases P. 734 (bom.).
8. (1978) 1 All E.R. 185(Ch.D.)
9. 1872 IA Supp 47;71
10. (1867) 8 WR 399
11. Conway & Others v. Petronius Clothing Co. Ltd.(1978) 1 All. E.R. 185 (Ch.D.)
12. (1972) 42 Com.Cases 596, 196(Mad)
13. (1984) 1 Comp.L.J. 411
14. (1974) 44 Comp. cas.106(Mad)
15. Section 210(4) of the Act.
16. (1947) 17 Comp. case 93
17. (1978) 48 Comp. cas. 243

18. Registrar of Companies v. Utkal Distributors
(1978) 48 Comp.cas.196
19. (1960), 30 Comp. cas.284
20. (1980) 50 Com.cases 346(D.B.) (CAL)
21. Para 8.7 of the Report
22. Para 98 of Cohen Committee Report, quoting the
evidence of the Institute of Chartered Accountant.
23. Comnd. 1749 pages 399-407 and 413-416 of the
Report.
24. Para 8-8 of the Report
25. Para 8-10 of the Report.
26. Sections 13(b) and 25 of Partnership Act, 1932
27. Comnd.6659-Para 96 of the Cohen Committee's
Report.
28. Provisos (i) & (ii) of Section 426 (1) (b) of
the English Act, 1948.
29. Notes on Clauses - Clause 71.
30. (1966) 1 Comp. L.J.17
31. State of Bombay v. Bhandar Ram Bhandari,
AIR(1961) S.C.186.
32. (1964) 39 Comp. cas.1000
33. State of Andhra Pradesh v. Andhra Provincial
Potteries Ltd., (1973) 43 Comp. cas.514.
34. (1977) 42 Comp. cases 435(Mad) (See also Registrar
of Companies v. R.P. Nanda(1977) Tax.L.R.1810.

35. (1959) M.L.J.(Cal.)812
36. Great Indian Steam Navigation Co. Ltd.,
v. State (1967) 37 Comp. cas.135 (Cal.)
37. Notification No.DNBC 1 & 2/ED(s)-66 dated
29th Oct.1966 and DNBC 21/DG/(s)-73 dtd
23rd Aug.1973.
38. S.O.518(E) dtd 24th Aug.1978.
39. Para 159 of the Report
40. Sub-section (3) of Section 221 of the Act.
41. Art.80
42. Art.81, Para 3.
43. Page 173, The Company by Houghton.
44. Ninth Annual Report, dtd 5th Aug.1965, on
the working and administration of Companies Act
1956 P.23.
45. Allen Craig & Co.(London) Ltd, Re(1934) 4 Comp.
case 319 Ch.D. - a good law.
46. Relewe 2777 (1941)
47. Reading in Auditing Ed. by Jhonson and Brasseaut
(1960)P.136.
48. AIR(1955) Cal.414
49. (1895) 2Ch.673.
50. Formento(Sterling Area) Ltd., v. Selsdon Fountain
Pen Co. Ltd.(1958) 1 W.L.R. at p.61.
51. (1968) Ch.455

52. Irish Woolen Co. v. Tyson, reported in (1900)
26 The Accountant Law Reports p.13.
53. International Labouraties Ltd. v. Dewar, (1933)1
D.L.R.34
54. Halsbury's Laws of England, 3rd, Edn, Vol.IV,p.387.
55. (1962) 32 Comp.cas.1053; (1963) 1 Comp.L.J.323 (Mad)
56. Controller of Insurance v. H.C. Das AIR 1957 Cal.
387
57. (1968) 2 Comp. L.J. 211; (1968) 38 Comp. cas.
628(S.C.)
58. Para 164 of the Third Annual Report to Parliament.
59. 1964, A.C. 465; (1963) 2 A.L. E.R. 575 (H.L.)
60. (1975) 3 All E.R. 901(H.L.).
61. Para 8-30 of the Report
62. Appendix. V
63. Para 58 of the Joint Committee's Report.
64. Para 23 of the Report.
65. Para 8-21 of the Report.
66. Para 8-21 of the Report.
67. Para 41 of the Company Law Committee Report.
68. Para 65 of the Report of the Companies Act,
Amendment Committee.

69. AIR 1961 S.C.186: (1961) 31 Comp. cases 1 (S.C.)
70. (1968) 2 Comp. L.J. 22 (Cal.)
71. (1963) 54 Comp. Cases 100 (Pat.)
72. Chartered Secretary, June 1986 P. 471
73. (1984) 56 Comp. cases (Cal.) P.222
74. Board of Trade General Annual Report-1967
quoted in footnote 61 on Page 653, Gower's
Principles of Modern Company Law.
75. AIR 1954 M.B. 70
76. AIR 1952 Lah.443.
77. Para 17-34 of the Report.
78. Section 234(1) of the Act.
79. Section 234(1) & (3) of the Act.
80. (1959) 29 comp. cases 98 : AIR 1959 Mad.229
81. Clause-76 of the Bill.
82. Section 234A(2) of the Act.
83. Para 99 of the Committee's Report.
84. Section 49 of Banking Companies Act, 1949.
85. Para 17-35 of the Sacher's Committee's Report
86. In Re El Sombrero (1958) 3 All E.R.1(Ch.D.)
87. (1934) 4 comp. cas.282

88. (1968) 2 Comp. L.J.22
89. Shaw(John) & Sons(Salford)Ltd. v. Shaw(1935)
2 K.B. 113.
90. Section 173(2) if the Act.
91. Sheth Mohan Lal Ganapatram v. Sayaji Jubilee C&J
Mills Co.(1964) 1 Comp.L.J.326(Guj.); Laljibhai
Kapadia v. Lalji Desai(1973) 43 Comp. cases 17.
92. Para 76 of the Committee's Report.
93. Para 75(ii) of the Committee's Report.
94. (1964) 1 Comp. L.J. 193.
95. (1965)1 Comp. L.J.112: (1965)35 Comp. case 706
(D.B.) (Cal.)
96. (1899)1 Ch.D.358.
97. Bimal Singh Kothari v. Muir Mills Co. Ltd.(1952)
22 Comp. cases 248.
98. AIR (1972) Cal.19
99. (1899)1 Ch.861
100. (1917) A.C.607.
101. ~~22~~(1931)1 Comp. cas.377
102. (1977) 76 CWN 181
103. Curruth v. Imperial chemical Industries (1937)
A.C.707.

104. (1928)
105. (1976) 426, U.S. 438
106. National Co. v. Shaligrame Jhajharia (1979) (N.R.C/441).
107. Circular No.F.12(59)-CL-VI/63 dtd 17.10.63.
108. Section 169(1) of the Act.
109. Section 169(4) of the Act.
110. Ball v. Metal Industries Ltd.(1957) S.C.315
111. Section 169(6) & (7) of the Act.
112. Ruttonjee & Co. Ltd., Re. A.I.R.(1969) Cal.550
113. Indian Spinning Mills Ltd., v. M.S.J. Bahadur Rana (1952) 22 Comp. case 102.
114. (1985) 57 Comp. case 124.
115. Section 106 of the Act.
116. (1959) 29 Comp. cases 144:1959 Cal.672
117. Para 79 of the Committee's Report.
118. Section 194 of Act.
119. (1940) Ch.657
120. Para 17-38 of the Report.
121. Para 17-39 of the Report.