INTRODUCTION

The entire scheme of the Companies Act, 1956 is to ensure appropriate conduct of the affairs of the company in the PUBLIC INTEREST and the preservation of the image of the company in the eyes of the public, and in the interest of the members of the company as also the creditors, and other persons dealing with the company, to ensure that the affairs of the company are conducted in a proper manner, and that it transactions are above suspicious. Various provisions of the companies Act, 1956 have been devised to provide scope for a close watch on the affairs of the company. It is in light of these objectives that one has to understand the full implications and importance of the various provisions of the Act, particularly those which have been devised for the protection of public interest.

A company can not function by itself. Majority dealings of the companies are with the public in one form of another, it may be either with shareholders, creditors or general public. It is therefore, quite necessary that the persons dealing with the company has full knowledge of all material facts, which is likely to influence his opinion. It is fundamental that a market economy functions properly o only in an atmosphere of extensive knowledge concerning financial and other aspects of corporate behaviour. Contrary to the assertions of many corporate spokesmen, corporate secrecy not corporate disclosure - is the great enemy of a market economy in a free society. It was a point recognised

as early as Theodore Roosevelt's first message to Congress in 1901, when he eloquently articulated the rational for requiring extensive disclosure of the financial and other affairs of large corporations. "Great Corporations exist only because they are created and safeguarded by our institutions; and it is our right and duty to see that they work in harmony with these institutions[1]." This duty to disclose do not rest merely on the needs of the investors or the proper functioning of a competitive market but on the needs for knowledge in a democratic society by public at large; by consumers, by public regulatory agencies, by the press, and by social scientists and others involved in the essential task of probing and interpreting the changing nature of corporate organization and behaviour. Social scientists today have high powered tools of analysis but little meaningfull data to analyze. Too often our theories remains untested. The situation is akin to giving the scientists an electron miscro-scope, but refusing him specimens to examine. This is an intolerable situation. In a free society, no institution vital to the public interest can maintain a claim to legitimacy if the affairs are shrouded in secrecy.

The purpose of this thesis is to, to study and analyse the provisions of the companies Act, 1956 affording protection to investors, creditors and other persons dealing with the company through disclosures.

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1. Corporate Secrecy V. Corporate disclosure, By Willard F. Mueller (Corporate Powers in America P.111).

One of the safeguards is the publicity or disclosures. On the basis that "Forearmed is forearmed", the fundamental principle underlying the Companies Act has been that of disclosure. Disclosure is regarded as a principal safeguard on which the Companies Acts both in India and England has added to the extent of the publicity required although it has varied it according to the types of company concerned.

The historical roots of present day Indian thinking about the corporate sector of economy lie in the socio-economic ideology of the Congress party evolved during the struggle for independence. The basis of this ideology was the essentially egalitarian concept of economic order, then held by the dominant leaders of the liberation movement, which was latter to be formalised as the 'Socialist pattern of society ! The famous resolution adopted at the Annual Session of the Indian National Congress at Avadi in January, 1955, declared that planning should take place with a view to the establishment of a socialistic pattern of society, where the principla means of production are under social ownership and control.[2] This resolution followed a series of policy declarations by the All India Congress Committee, the National Development Council and Government in Parliament during the second half of 1954. The Avadi resolution laid down that 'Private sector and voluntary enterprises will continue to have importance, and in the course of his report

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2. Indian National Congress Resolution 1955-56 P.1

as the outgoing President of the Indian National Congress, Prime Minister Nehru stated that ... the main purpose of a socialistic pattern of society is to remove the fetters to production and distribution.... It becomes, therefore, necessary to have a private sector and to give it full play within its field. The beliefs of the congress were subsequently backed up by considerable practical evidence that, in the circumstances then prevailing, the resources of organised trade and industry could best serve the fuller and more balanced development of the national economy by large scale State initiative and the active participation of the State in economic enterprises.

The every Company Law reformers grew up with those ideas. They were not, however, concerned with making any basic changes in the classical concept of the Joint Stock Company or the tradition of Company Law which they inherited from the Anglo-Saxon World. The primary anxity at that time was how to deal with the growing malpractices of company management, which had become serious during the inter war period. (Many Inquiries and Committees which reported between 1947 and 1952 deplored the weakening of business morality since the end of the War. For example, the report of the Fiscal Corporation (Second report), the Income Tax Investigation Com-mitee etc. The sought to do this by providing structure and procedural checks and balances in the organisation and working of joint stock companies without impairing the classical fram work of

Anglo-Saxon Company Law. Most of the reformers were keen adherants of the traditional liberal faith in Disclosure as an effective restraint on reprehensible and anti-social conduct, but apart from aiming at increased publicity for major company decisions they also provided measures to ensure greater powers for the general body of shareholders and closer supervision by the shareholders over decision making by the manngement..

The Company Law has a long history. The present Act is the successor to the Indian Companies Act, 1913, and is a consolidation of many A successive Amendments Act. There were several Acts passed from 1850 onwards. The first Act passed in 1850 was known as the Joint Stock Companies Act. This was followed by two Acts of 1857 and 1860, but the Act of 1866 which followed soon after repeating all the previous enactments and this Act was repealed by the Act of 1882. The Act of 1882 remained in force upto 1913. The India Companies Act, 1913 was passed with the object of consolidating and amending the law relating to trading companies and other associations and was mainly based upon the English Companies Act of 1908 with certain additional provisions to meet the peculiar business conditions prevailing in India. This Act of 1913 as found to be highly unsatisfactory in several respect in the course of its working. Eventually drastic amendments were made in the Act, by the Indian Companies Act, 1935.

The first glimmering of the 'new thinking' on Joint [illegible] Companies and company Law were discernible in the report of the Company Law Committee which the Government of India set up under the Chairmanship of Mr. C.H. Bhabha - a distinguish [illegible]. The following passage illustrate the Committee's approach : -

This passage refers to the evidence of some well known [illegible] and professional associations, of which following are typical :

(a) 'Company Law partakes of the character of both public law and private law of substantive law and adjective law. It regulates the commerce and industry of the country and therefore vitally affects the public interest. It imports rights and imposes responsibilities on private individuals and their associations and control the economic system. It contents will, however, differ with the character of society, past and present or one to be shaped in the future.[3]

(b) We are of opinion that labour is a partner in any business or industry in which it is employed. Though it does not contribute capital, it perform its functions by contributing labour which is as essential an ingredients as capital in the production of goods and service.[4]

[illegible] Mazdoor Sabha

[illegible] National Trade Union Congress.

The Committee's recommendations, though far reaching and in many ways much in advance of the classical attitude, scarcely deviated from the basic work of traditional thinking on companies and company law. The distinguishing feature of this 'new thinking' were the statutory recognition given in the new Companies Act to the concept of public interest in company management and the concern felt for the twin goals of a reduction of inequility in incomes and the concentration of economic power, in so far as they were affected by company management and practice.

Dr. C. D. Deshmukh, the then Finance Minister, while piloting the Bill, summarised the objectives of the 1956 Act as follows : -

(i) To fix minimum standards of business integrity and conduct in the promotion and management of the companies affairs.

(ii) To require full and fair disclosure of all reasonable information relating to the affairs of the company.

(iii) To ensure effective participation and control by shareholders and protection of their legitimate interests.

(iv) To enforce proper performance of duties by persons responsible for the management of companies.

(v) To empower the Government to intervene and investigate into the affairs of the company where the business of the company is being carried on in a manner prejudicial to the interests of the shareholders, the company or the general public.

The Companies Act, 1956 which is pattern on the lines of the English Companies Act, 1948 is a comprehensive piece of legislation covering the entire field of company organisation and management. All the provisions of the Act are intended :

(a) to protect the interest of investors (e.g. the rules concerning the prospectus and the accounts, holding of statutory and other general meetings, prevention of malpractices of directors and managers, prevention of oppression and mismanagement and investigation) and to equip the Government with necessary power to intervene in the affairs of a company in the interest of the shareholders and the public;

(b) to protect the interest of creditors in view of the limited liability of the members of a company (e.g. rules preventing reduction of capital without proper safeguards appointment of liquidators where the company is insolvent.

It was observed by the Calcutta High Court[5] that "The Act has been enacted to prevent, amongst others, the snowballing of finance as also the formation of bubbles and consequent effect thereof upon the economy of the Welfare State. The provisions of the Act are indeed like sentinels on duty at the thrashold of greater offences under the Acts and continued defaults and non-disclosures under the Act are, in many cases, but attempt to draw a red herring accross tail for preventing defection of more serious offences."

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5. Gopal Khaitan V. State A.I.R.(1953) Cal. 181 P138

AMENDMENTS TO THE COMPANIES ACT, 1956

Since the coming into force of the present Act rapid and successive changes were brought about in national economic policy. Adoption of full scale planning under authority, vigorous pursuit of mixed economy with increasing role being assigned to public sector, surfacing of the abuse of managing agency system coupled with evidence of pre-emption of industrial licensing by certain industrial houses had not only led to the appointment of several committees,[6] but also to a series of amendments which followed in the wake of the recommendations of these committees and commissions. Out of the 14 amendments which have so far been made to the present Act, atleast four are important major amendments, the first in 1960, the Second in 1965, the third in 1969 and fourth and the last major amendments in 1974. All these amendments have been made to protect investors, to ensure efficient and honest management of the affairs of companies, to prevent concentration of economic power and wealth and to help in achieving the objectives of a Socialistic pattern of society.

1. THE COMPANIES (AMENDMENT) ACT, 1960

Even before the provisions of the new Act had been in operation for over an year, criticisms were voiced in many quarters about its inordinate length, the complexity of its

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6. Committees like the Shastri Committee, the Vivian Bose Inquiry Commission, the Industrial Licensing Policy Inquiry Committee, Mahalanobis Committee, the Managing Agency Inquiry Committee, the Committee on Large Industrial Houses, and Monopolies Inquiry Commission.

deficiencies, the vagueness and obscurities of many of its material provisions, the plethora of returns and forms required to be furnished by management without any commensurate utility and many other features which made the enactment cumbersome or ineffective and difficult of application. Accordingly Shastri Committee was appointed in May, 1957, and on the basis of its recommendations the Companies (Amendment) Act, 1960 comprising as many as 213 sections was passed. This Act not only considerably amended the then existing provisions of the principal Act but also introduced therein several new provisions concerning a number of aspects of company management which were either overlooked or not seriously considered while enacting the principal Act.

2. THE COMPANIES (AMENDMENT) ACT, 1962

The next amendment came in 1962 and was effected initially through a Presidential Ordinance promulgated on the 3rd November, 1962, after Chinese aggression. The objective of this amendment was to empower the Board of Directors to contribute as much as it thinks fit to the National Defence Fund or any other fund approved by the Central Government for the purpose of National Defence by insertion of Section 293 B. It also provided for disclosure in the profit and loss account of the company of the total amount or amounts contributed by it to the said fund. Here it may be mentioned that though the section was enacted in the wake of Chinese aggression, it has continued to khe on the Statute book and was subsequently replaced by a new section through Act LXX of 1971, which enlarged the scope of the

section by authorising persons or authorities (other than the Board of Directors of a Company) exercising the powers of the Board or of the Company in general meeting, to make contributions to the National Defence Fund and other funds approved by the Central Government for the purpose of national defence.

3. THE COMPANIES (AMENDMENT) ACT, 1963

This was passed with the object of :

(a) improving the efficiency of administration of the company law and

(b) preventing abuses of powers of management.

This Act provided for the appointment of a Companies Tribunal and for the Constitution of the Board (called the Company Law Board) for the administration of Company Law. According to the scheme of this amendment, the Tribunal was to inquire into and submit its finding to the Central Government in respect of persons involved in cases of fraud, misfeasance and other such malpractices and irregularities in the management of a company so that the Central Government could take action for removing such persons from the position of managemial authority. These provisions, however, subsequently repealed by the Companies (Tribunal Abolition) Act, 1967 but the provisions relating to the Company Law Board have remained on the Statute book and were subsequently strengthened by the Amendments Act of 1974.

4. THE COMPANIES (AMENDMENT) ACT, 1964

This amendment was made in substitution of an ordinance promulgated by the President on the 5th March, 1964 adding a new Section Viz. Section 635 B, providing temporary protection to employees of companies whose affairs were being investigated under the Act.

5. THE COMPANIES (AMENDMENT) ACT, 1965

As a result of the observation of the Vivian Bose Commission instituted for an inquiry into the administration of the Dalmia Jain companies and subsequent recommendations made by the Daphtary Shastri Committee, certain far reaching changes were made by the Companies (Amendment) Act, 1965. The changes were made inter alia to : -

(1) to strengthen the provisions relating to investigation into the affairs of the companies;

(2) to simplify some of the procedural requirements which were burdensome to the companies without being of corresponding advantage to the Government.

It also introduced the following changes :

(i) The Advisory Commission was replaced by an Advisory Committee (Sec. 410).

(ii) No new business could be started by a company without the approval of the shareholders by special resolution (Sec. 149 (2))

(iii) Restrictions on the currency of blank transfers were imposed (Sec. 108(1.)).

(iv) The objects clause was to be devided into two parts (a) main objects and objects incidental or ancilliary to main objects; (b) other objects. (Sec.13).

(v) Companies engaged in mining, manufacturing, processing or production were to have accounts relating to utilisation of materials, labour and other items of costs as may be prescribed. Sec. 209(4).

(vi) A cost audit of companies engaged in mining or manufacturing on the directions of the Central Government (Sec. 233(B)).

3. THE COMPANIES (AMENDMENT) ACT, 1966

In a less than year, another amendment was effected replacing an ordinance issued on the 21st September, 1966 to meet the situation created by the Supreme Court judgement in Barium Chemical Ltd V. The Company Law Board[7] in regard to the competence of the Chairman of the Company Law Board or any of its members individually to exercise and discharge the powers and functions delegated to the Board by the central Government. The Amendment Act (34 of 1966) was also enacted by Parliament in the same year to removed certain lacunna in Section 370 of the act relating to loans by one company to one or more other companies under the same management or otherwise.

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7. A.I.I., 1967 S.C. 295

7. THE COMPANIES TRIBUNAL (ABOLITION) ACT, 1967

It abolished the Companies Tribunal constituted under section 10-A. It powers and functions were transferred to Central Government or the Court as the case may be, according to the old scheme of jurisdiction.

8. THE COMPANIES (AMENDMENT) ACT, 1969

This amendment made two important changes. One was to prohibit companies from contributing any money to any political party or for any political purpose to any individual or body by Sec. 293 A. The second change was the abolition of the institution of managing agents and secretaries and treasurers with effect from 3rd April, 1970.

In 1936, this section has been reinstated. The ban on contribution for political purposes has been removed.

9. THE COMPANIES (AMENDMENT) ACT, 1974[3]

This amendment was passed in August, 1974. Its basic objective has been to protect public interest and help the Government in achieving the objectives of a socialistic pattern of society. There are in all 43 clauses in the amendment act, 1974. Of these 25 clauses amend the existing Sections, 13 clauses introduce new Sections, for clauses 10 substitutes new Section for Section 90, while 2 clauses cover consequential changes in the Securities Contracts (Regulation) Act, 1956 and M.R.T.P. Act, 2969. Clause 41 introduces a new Schedule XIII. The various amendments are of far reaching consequences.

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3. See Appendix -

The Act seeks to check abuses and distorations that had crept in the corporate sector. It also contains remedial measures to prevent malpractices that had come to light in the course of the administration of the Companies Act, 1956. It also, to some extent, deals with the problems of the growing concentration of economic power in the hands of private monopoly achieved through take over bids and other means.

10. THE COMPANIES (AMENDMENT) ACT, 1977

The main provisions of this Amendment Act are :

(a) A new sub-section (8) has been added to Sec. 58-A to empower the Central Governmet to exempt any company from repayment of deposits received from the public, for any specified period or generally under exemptional circumstances. Further, no such exemption shall be given in relation to a class of companies except after consultation with the Reserve Bank of India.

(b) It also amends section 220 of the Act under which it would be obligatory for the management to file the balance sheet and profit and loss account with the Registrar of Companies whether the Annual General Meeting of the Company is held or not.

The need for this provision arose because of the Supreme Court judgement in the case of Andhra Pradesh V. Andhra Provisional Potteries Ltd.[9] In this case it was held by the full Bench of Andhra Pradesh High Court and subsequently affirmed by the Supreme Court that if the annual general meeting is not held, the obligation to

9. (1973) 43 Comp. cases 514.

file accounts with the Registrar does not arise and consequently no penalty is incurred under sec.220(3).

(3) Section 293 of the Act has been amended to raise the ceiling for donation for charitable purposes from Rs.25,000 to 50,000 since the earlier limit set in the original section is regarded as unrealistic.

(4) Section 320 of the Act has been amended so that the Central Government could lay before Parliament any draft notification relating to amendment of the provisions in regard to a Government Company within thirty days of two or more successive sessions of Parliament.

(5) This amendment made two important changes. One was to prohibit companies from contributing any money to any political party or for any political purpose to any individual or body by Sect.293-A. The second change was the abolition of the institution of managing agents and secretaries and treasurers with effect from 3rd April, 1970.

In 1936, this section has been reinsted. The ban on contribution for political purposes has been removed.

From the above, it may be said that the Indian Companies Act, 1956 and subsequent amendments therein have introduced extensive and far reaching changes in the administration, regulation and working of the companies in India. The objectives of the Act, and its subsequent amendments have been to

prevent misconduct and malpractices on the part of the company managements and the abuse of powers vested in them by the Act or by the general body of shareholders, to adjust the rights of the management vis-a-vis the shareholders and other concerned, to protect the Joint Stock Companies from the inroads of undesirable persons and to ensure that the activities of companies are carries on not in the interests of those directly concerned with them but also is furtherence of the ultimate ends of our economic and social policy which the country has accepted.

CORPORATION DISTINCTIONS

The major classes of companies recognised in India as in the English Companies Act are (a) Private and (b) Public Companies. It also provides for a class of non-profit companies (Sec.25). But there is no distinction between exempt and non-exempt provite companies. On the other hand, the Indian Act recognises a new type of private company, known as 'Deemed Public Company' Sec.43-A. The Act also recognises a class f Government Company (Sec. 617) and it lays down special provisions dealing with the Government Companies. It also recognises Holding Company and Subsidiary Company.

The general theory underlying the differentiation in the Act between private and public companies is that the Public Interest in the organisation and working of the latter justifies the exercise of a much wider and

and tighter supervision and control than is needed in the case of private companies, in whose operation it is assumed, the public are not normally so interested or concerned. This theory inherited from the classical Anglo-Saxon tradition of Company Law has become difficult to support. During the discussion on the Amendment of the Companies Act in 1960, several prominent member of the Joint Select Committee of Parliament argued that the distinction between the two classes of companies as laid down in the Act of 1956 was unrelated to actual contemporary developments in company method and practice, served no useful purpose and should be abolished. They maintained that, if there was to be any distinction between different categories, it should be between relatively small and larger companies. The Minister in charge (Late Shri Lalbahadur Shastri) favoured a classification based on size but eventually no action was taken because it was felt that to amend the law in this way would involve too drastic a departure from long established legislation and practice. At present many experts believes that it may now be time, in the public interest, to take a further look at this question.

OBJECTIVES OF THE COMPANY

It has been increasingly recognised in recent years that, irrespective of legal provisions, the responsiblities of a company are not merely to its shareholders and creditors but extent to employees, consumers and suppliers, and embraces within their scope also the interest of the local community

and national economy.[1] The Companies Act, 1956 was the most important single factor in developing this attitude. Other factors have been the gradual development of professionalism in Company's management. Indian management has never been forced to accept the usual social obligation to customers or partners in production, not to strive for the high standard of performance which would help to transform the strictly economic process of marketing and distributation into socially responsible business.

THE CONSUMERS

The desirability of reducing the cost of goods and services, while improving their quality and providing marketing facility normally available to consumers ~~of~~ in industrially advanced countries, it widely recognised and accepted by far sighted businessmen. Recently Government has taken several steps for providing protection to the consumers e.g. under the M.R.T.P Act, provisions relating to unfair trade practice etc. have been incorporated.

SERVICE TO THE COMMUNITY

In some cases certain obligations on pricing policy have been imposed but only on the advice of a competent statutory body like the Tariff Commission and always with resources to administrative arbitration. Business donation for education, reasearch and charity are usually granted to

institutions directly or indirectly controlled by the doner. Few business houses have so far set up non-family trusts or foundations, whose policy and management is not directly or indirectly influenced by their leading members, and it is only in rare cases that such organisations are run by competent independent trustees. In recent years, few business houses have adopted villages for bringing improvement in the viling standard of the people staying in such villages.

THE REPRESENTATION AND PROTECTION OF INTEREST WITHIN THE COMPANY : DISCLOSURE

Even before 1956 the attitude of Indian Company Law towards disclosure went far beyond the traditional limits of its English prototype. Indeed, several provisions of the Indian Company Law, particularly those relating to company accounts were much in advance of English Company Law untill the period of 'new thinking' the law of disclosures was intended primarily to benefit shareholders and creditors. At first shareholders associations, the legal, accountancy and other professions continued in their demands for greater disclosure, on the ground that it was in the interest of their clinets. The concept of disclosure in the interest of employees and other emerged later as a by product of economic planning in 1950's. The Companies Act, 1956, greatly enlarged the scope and limits of disclosure, particularly with regard to company accounts and increased supervision of decision making by the shareholders. Many important areas of management and company practice, previously left entirely to the judgement of the Board of Directors, were brought by

the 1956 Act, under the surveillance of the general body of shareholders i.e. shareholder's meetings, either through ordinary or special resolutions further copies of all special resolution and or certain categories of ordinary resolution, now required to be sent to the Registrar of joint stock companies. These new provisions have paved the way for democratisation of management. In this way most detailed information about the working of joint stock coampnaies are now readily available not only to the shareholders but also in the office of public record i.e. Registrar office. Advantage of these provisions has also becomes available to outsiders dealing with the company because, Registrar office is a public office and anybody can inspect and any document or information lying in Registrar's Office. Business community has demanded relaxation from these provisions on the grounds.

Firstly they are costly and time consuming,

Secondly the most shareholders makes little use of t the resolutions they asked for,

Thirdly, neither the employees nor Government make much use of the informations contained in the public records, and

Lastly, the publicity may sometimes needlessly expose companies to malicious attacks by hostile individual or groups.

THE SHAREHOLDERS AND COMPANY LAW :

The Companies Act, 1956 greatly extended the scope and range of shareholder's meetings and created condition by which active shareholders could play a useful and effective part and also exercise and indirect influence on company management by taking full advantage of the disclosure rules embodied in the Act. Experience has shown however, that the company's reformers faith in shareholders democracy has largly failed, because like any other form of democracy, it needs to be backed up by the continuous vigilance of a few trained exprienced and devoted men to build up the organisation necessary for shareholder's meetings to have any effective impact. This is so, because majority shareholders are found to be passive investors, without any kind of experience for taking active participation in shareholder's democracy, i.e. in company's management. While making certain recommendations the Sacher Committee has made following observation :

"It is notorious that a large number of small shareholders are apathetic, they have neither the time, money or experience to make use of their rights and are too numerous and widely dispersed to be effective in exercising control over management." This observation exposes the deficiency of shareholders's democracy. In order to remove this deficiency, the committee has recommended for recognition of shareholder's association. (Paras 7-3 and 7-5).[10]

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10. Sacher Committee Report.

Indian Company Law do not contained any special provision for representation in company board of any class of capital investors. But now institutional investors i.e. financial institutions, such as LI.C., Industrial Finance Corporation of India etc. protect their interest by entering into specific contract, which apart from the normal contractual safeguards, permits it to be represented kon the board of the company to which a loan has been made through director called nominee director. These institutional investors, have on the whole refrained from taking any active interest in the management and control of any company, except when gross mismanagement may have threatened their investment. The nominee directors takes very limited views of their duties and responsibilities. They are required to be activised.

The Act of 1956 hardly recognised a distinction between committee and uncommitted investors. Under the old Act Special classes of investors (such as holders of founder shares or differed shares) could influence or control companies by holding disproportionate voting rights. At present, according to Sections 85 and 86 of the 1956 Act, only two kinds of shares can be issued by the company i.e. Equity and Preference share. Ordinarily only equity shareholders having voting rights, in proportion to their shareholdings. Preference shareholders normally have no such right, exeept when their dividends fall in areas for two financial years (Sections 87 & 89). Further Section 88 prohibits issue of shares with disproportionate

rights and section 89 provides that existing disproportionate voting rights should be terminated within one year of the Act coming into force.

The Act does not contain any special provisions for minority rights except in cases of oppression and mismanagement Sections 397 to 409 and Section 265 which gives to a company the option of adopting proportional representation for the appointment of directors.

Section 233 A enables the Central Government to order a special audit of a company, when the comapny is not manage in accordance with sound business principles or is run in a manner likely to cause serious injury or damage to the interest of the trade, or when its financial position is such as to endanger its solvency. Section 388 B empowers the Central Government to bring to the notice of High Court the conduct of management of a company and ask for inquiry into the fitness of the management to carry on the business, in the event of fraud, malfeasance, persistant neglect or default in carrying out the obligations of the company or is being run in a manner which is likely to cause serious injury or damage to the interest of trade or being manage in a manner prejudicial to public interest.

Sections 397 and 398 deal with the powers of the court and the Central Government to intervene in the event of oppression or members to intervene in the event of oppression or members or mismanagement which is likely to be prejudicial to itsx interest or prejudicial to public interest.

Section 408 empowers the Central Government to appoint any number of persons to the board in order to prevent the affairs of company being conducted in a manner oppressive to any member or is prejudicial to its investors or public interest. Section 409 empowers the Central Government to present change in board of directors likely to affect company prejudicially.

CONSUMERS PROTECTION AND COMPANY LAW

Although under Indian Law there is no representation of consumers interest, several provisions of the Act were intended to afford indirect protection to their interest within the limits of statutory provisions. The provision concern such matters as the appointment of sole selling agents by directors etc. In order to provide protection to consumers, provisions are in other laws for disclosing particulars abour products, raw materials used, date of production etc. Now more and more support has been given to consumer's association both by the State Government and also by the Central Government.

THE PUBLIC INTEREST

A special feature of 'new thinking' on company management, practice and law has been the formal recognition given to the concept of the public interest, not only in several provisions of the Companies Act, 1956 but also the official formulation of policy relating to company affairs. The provisions of 1956 Act which specifically incorporates the concept of public interest are generally those area of company

law where even conventional legal wisdom was disturbed at the likely consequences of the unhindered exercise of private rights by management or stock-holders. Under the new provisions, the Indian Company Law has formally recognised the fact that there are circumstances when the joint will of management and the shareholders may have to give way to the requirement of public interest. These recognition may be found in numerous provisions of the 1956 Act, For example :

Those provisions dealing with the forms and content of prospectus, or of the balance sheet and profit and loss accounts and those concerning presentation of these documents, and those dealing with the compulsory amalgamation or merger of companies in public interest. It may be mentioned here that the concept of public interest has spelled in such a way as not only to provide in certain circumstances for special procedure and action but also to give exemption from the general rules laid down in the Act. (e.g. Sec. 89).

An institutional step was taken by the Companies (Amendment) Act, 1963 which set up the office of Public Trusts in order to afford protection to the interest of shareholders as well as debenture holders. The object of Sec. 153 wA was to ensure that voting powers attached to funds held in trust for the community or the public were exercised to promote the public interest and not to further those of private individuals who had formed tax-free trust, ostensibly for public motives.

PUBLIC CONTROL

The conviction that all companies dealing with the public in some form or another and especially public companies are institutions in which the public are, both directly and indirectly interested is central to the 'new thinking' on company affairs. Hence the decisions of such companies should not merely conform to the technical requirements, of law but also take cognisance of public requirements. It follows that all their major decisions should be based on value implicit in the ultimate goals of national economic and social policy. Thus in the Indian context, 'public interest' means not merely that of the national economy, as defined by state policy or legislation, but embraces all the other interests, (quite apart from those of managers, shareholders and financiers or creditors) which are directly or indirectly affected by the operation of companies. It has never been suggested that this concept of 'public interest implies that the 'external interests are as relevant or as close to the day-to-day running of a company as are the more direct interests. It has merely been held that management should integrate all these diverse interests in a systematic and coherent manner, and take decisions founded on an integral and not a partial concept of the managerial function. How this is to be done is not a matter of law but of empirical judgement on the part of management.

In practice, of course, it is not always easy to define the area of 'public interest' in individual decisions. Ordinarily, therefore, both the law and practice leave it to the management of companies to act in the spirit of the law. But when a particular decision is clearly against the public interest, the administration has pointed out to the company management how they have failed to measure upto legal requirement.

All these provisions has resulted into much more supervision of company management that is usual in the administration of similar measures in England or U.S.A. It has often been aksed why India has chosen to follow this detailed regulation. The underlyijg theory of the Indian approach could be found in the observations made by Late Shri Lal Bahadur Shastri (then minister of Commerce and Industries), during the debate in the Parliament at the time of the enactment of the Companies (Amendment) Act, 1960;

(a) Principles of social responsibility have won no more than linited acceptance and that only in a comparatively small section of the Indian Business Community.

(b) The average company management has been rather a slow in acquiring a sense of fiduciary responsibility.

(c) There is a lack of strong and well organised financial institutions with long tradition of public service and reputation to lose, for overseeing company clotation and management and to some extent, thereby making a statutory regulation of company practice less urgent.

(d) The financial and economic press is weak and not wholly independent.

(e) A vigorous and well developed public opinion, such as would not tolerate unwarranted deviation from the accepted form of company behaviour and practice, is also lacking.

(f) Comparatively slow progress has so far been made towards the professionalisation of management.