COMPANY LAW. SEVENTH EDITION. By AVTAR SINGH. [Lucknow: Eastern Book Company. 1982.]

Prof. Kahn Freund remarked that "the reality of (corporate) control can only be found in the action of public opinion and in the organised supervision exercised by government agencies". This is also, perhaps, the philosophical basis of Indian company law. An Indian parliament, that has for long harboured a socialist mistrust of private enterprise, has constructed an elaborate system of state regulation of private corporations.

Dr. Avatar Singh's commentary on Indian Company Law has been considered a leading student text on the subject in India. The book now enters its seventh edition, bringing the law up to date, including the 1977 amendments to the Companies Act, 1956.

Indian company law has vested wide discretionary power over companies in the government and reduced greatly the freedom of shareholders to govern the company by their mutual contract. The essential foundation of the Indian system is English and nearly all the major English doctrines continue to hold good. Indian courts have also displayed a keen interest in considering post-independence English decisions as being of persuasive value in contemporary Indian cases. However, India has, in the 36 years since independence, evolved some unique ideas in corporate regulation that should be of great interest to most developing countries. Most of these developments have taken place as a result of legislative initiative and as a consequence of the dominant political philosophy of modern India.

The regulatory hand of the state reaches to control companies through four separate institutions: the courts, the government, the Company Law Board (a body set up by the government to exercise most of the discretionary power granted by the law to the government, its power has been held to be of a judicial nature) and the Registrar of Companies (who is the repository of all the documents that have to be filed under the Act).

Some of the innovations in the Indian act deserve special mention.

The memorandum is to divide the objects of the company into two: main and "other" objects (objects incidental or ancilliary to the main objects). If a company wishes to start a business included in the "other objects" it shall have to obtain the authority of a special resolution of its shareholders. This will guard against the indiscriminate use of a clause as in *Bell Houses Ltd.* v. *City Wall Properties.*

It may be mentioned in this context that the doctrine of *ultra vires* is still effective in India and there is no equivalent of S. 20 of the Singapore Companies Act.

The company in general meeting and its board of directors are prohibited from making any political contributions by S. 293-A of the Act. This provision is, as may be imagined, of great importance in Indian politics.

Indian courts have also expressly recognised the social responsibility of corporations and have declared that they must not be regarded as "the concern primarily or only of those who invest money in it."[1]

The Indian Act envisages not only public and private companies, but a third hybrid category called "deemed public companies" which are, essentially, private companies that are deemed to be public companies for some limited purposes of the law. These entities come into operation when, for instance, a private company is a subsidiary of a public company or where the annual turnover of a private company exceeds about 2.5 million Singapore dollars, etc. These are essentially instances where the private company is a large and significant commercial entity and is not any more the comparatively less regulated small business entity that one would expect the paradigm private company to be.

The Act is strewn with discretion and appellate jurisdiction conferred on the courts, the Board and the government. Perhaps the most striking power of the government is its right to convert any loan owed to it by a company into shares in that company. The government will determine the terms of the conversion, though the company may appeal to the court against the decision. The power of the government is to be exercised only in the public interest. This power has been criticised severely in India, as "back door nationalisation".

The discretionary control conferred by the Act over the management of a company is also sweeping. The government has jurisdiction to hear appeals against decisions of directors of public companies if they refuse to register any transfer of shares (even if the directors are acting legitimately within the articles of association). The government may appoint directors of any company for the purpose of prevention of oppression and mismanagement if a petition has been preferred to it. In certain cases, government approval is needed for increasing the number of directors. Approval is invariably needed for remuneration paid to directors. A director may be removed at the initiative of the government, with the approval of the High Court, for fraud or mismanagement. Government approval is also is needed for the first appointment of a Managing Director and a Manager. The government may appoint an auditor if the general meeting fails to do so.

Generally speaking, Indian company directors are a carefully regulated lot. A director cannot hold office in more than 28 companies at the same time. The Act expressly limits the powers of directors in such matters as disposing of the assets of the company, etc. The

[1] Mukherjee L, in *Charanjit Lal* v. *Union of India,* A.I.R. 1951 SC 41.

sanction of the Board is required before any transaction can be entered into if the director or his relatives are interested in the transaction. Board meetings are required to be held every three months. A director cannot receive remuneration in excess of 11% of the net profits of a company in a financial year. In a year in which the company makes no profit, the government must approve the remuneration paid to the management. Remuneration includes perquisites. The Act provides for the option of cumulative voting as a method of electing directors.

The government enjoys wide powers of investigation into the affairs of a company, including the power to penetrate the veil of nominee shareholdings, etc.

Some of the other interesting variations are in the field of corporate finance. Thus there is a statutory right of preemption in favour of existing shareholders when fresh capital is issued. Unlike in Singapore, share warrants are permissible, though only with the consent of the Government. The Indian act makes it obligatory to provide for depreciation of assets as well as a compulsory reserve (a part of the profits, less than 10%, which has to be transferred to the reserves of the company).

There is an elaborate system designed to ensure an impartial audit. Other than the usual safeguards insisting on shareholder approval of appointment and removal of auditors there are some interesting innovations. Thus an auditor cannot function in that capacity for more than 28 companies with a share capital of over 2.5 million Rupees each. The duties of auditors are specifically enumerated. There are provisions for a special audit at the initiative of the government. Cost accounting is statutorily required in certain companies.

Before any loan can be made to any company under the same management as the lending company, a special resolution must approve the transaction. A register of loans of this description must be maintained by the company.

The picture of corporate regulation that emerges is a superstructure of overriding government control built upon the same English foundation that other commonwealth countries share. This fundamental contradiction is perhaps inadequately explored by Dr. Singh. One is left wondering, at the end of the day, whether the activities of private enterprise in India have justified the suspicion with which the law has treated it; or whether the pursuit of economic growth — for the facilitation of which company law evolved in England — has been unduly impeded by the regulatory structure Dr. Singh describes.

Dr. Singh's book is a well organised and well written book that is an adequate introduction to the Indian law of companies. The book is well researched and includes references to the leading Indian cases. Inherent in its strength as a very good introductory student text is its significant weakness — a lack of deep or critical analysis of the law. This is not a text that one would look to either as an Indian equivalent of a practitioner's book (like Palmer) or an academic's dream *(a la* Gower).

M. GOPAL