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MONOPOLIES AND THEIR RAMIFICATIONS (THE NEW LEGAL PERSPECTIVE)

FOR centuries, men have talked and written about monopoly, usually with condemnation, often with anger. Monopolistic situations have indeed meant many things, each with its own shade of meaning. Prof. Chamberlain referred to the condition of pure monopoly where there is complete control of the supply of all commodities and services by a single seller. This is too extreme a condition as, in fact, pure monopoly never exists, not even in the Russian economy. Comparing with competitive conditions of the market, he believed that "Monopoly and competition are very generally regarded not simply as entithetical, but as mutually exclusive. To demonstrate competition is to prove the absence of monopoly and *vice-versa.*"[1] Strictly, the term monopoly has no place in a capitalistic society. The existence of a monopolist signifies that one organisation has total command over the entire income of the community irrespective of the price that it may charge for its products. In Economics a monopoly situation is mirrored by a demand curve in the shape of a rectangular hyperbola. However, to Prof. E.A.G. Robinson a monopolist possesses the power to convert the present demand into a future one by means of output stabilisation and in so doing he often reduces the price that he receives. Another analysis of a monopolist is that "he can maintain his own advantages at a level higher than the prevailing level only because he can prevent the movement of those resources which would like to move into his occupation. He can be said to exploit these resources. He can also be said to exploit consumers, who now have to pay a higher price than before." [2] Whatever the different shades of meanings attributed to the term, an overwhelming opinion is that monopoly situations result in a general distortion of the distribution of resources; a larger amount than is desirable going to the monopolist and a small amount than is desirable is applied for other uses. The practical impact is found

to be on sales and price policies of monopolies giving themselves greater profits than would result from the uncoordinated action of competitive firms. Where competitive conditions are visible and the product is fairly homogeneous, there develops a tendency towards "cut-throat competition." As a result, the weaker are ousted out from the arena and a few monopolistic organisations get themselves well established. Practices like product-differentiation, conscious parallelism or price-leadership are then adopted. The consequence is the creation of an oligopoly (in which power is assumed by collusion) which becomes a dilemma not only for the economist but also for the governments in dealing with it effectively.

Experience has shown that oligopolistic competition has caused many a government, including the American and the British, a great deal of embarrasment in bringing them completely under legalistic control and therefore the authorities have, more often than not, refrained from taking action except against blatantly harmful forms of price-leadership adopted by oligopolistic organisations. Clearly, it is not the phenomenon of monopoly as defined in economic theory but the oligopolistic behaviour of firms, that ought to be controlled by legislation. The Monopolies and Restrictive Trade Practices Commission of Great Britain generally concerns itself with conditions where (*i*) one concern or group of concerns, is responsible for atleast one-third of the supply, processing or production of the goods in question in the U.K., (*ii*) two or more concerns, together responsible for atleast one third of the supply or processing or exports of goods defined, so conduct their affairs other than by means of a restrictive agreement, as to prevent or restrict competition, and (*iii*) there are such agreements preventing or restricting the export or competition in relation to export of goods from the U.K. and they are operative as respects one third of all the goods of such description. A number of firms examined by the said Monopolies Commission were found to be operating under oligopolistic market conditions.[3] The American anti-trust laws also, in effect, try to put a curb on oligopolistic power of combines. One significant conclusion that emerges is that it is not the monopoly situation only that needs to be curbed but the market dominance and collusion by firms which appear to be competitive but they are combined in some way.

While accepting that pure monopoly is almost non-existent, the

Monopolies Inquiry Commission of India observed that monopolistic trade practices are definitely prejudicial to public interest and they tend to increase unreasonably the cost of goods and services and give higher profits to the big business firms owned by a few. There is no doubt that monopolistic firms put unreasonable restrictions on competition or supply of goods to consumers and as a result, it is the consumer who is worst affected. Commenting on the effects of monopolies it has been remarked that "on purely economic reckoning by the strength of its power, big business can influence both the market and the Government to secure large resources for ends which are either of low priority in terms of planning or earn lower returns than would have been earned by other business, or both."[4] The observations of the Monopolies Inquiry Commission are pertinent in this context. Says the Report.... "it is no use turning a blind eye to the fact that big business has the power to corrupt and that the danger that the power may be extensively used is not imaginary."[5]

The power of the big business to corrupt was brought to light by the Mahalanobis Committee when it said that "The growth of the private sector in industry and especially of the big companies has been facilitated by the financial assistance rendered by public institutions like the IFC.,NIDC., etc."[6] It has been found that in the use of bank credit also, the main beneficiaries have been the big and medium enterprises of the private sector in this country. One important form of assuming control over production function of the economy has been by way of monopolising the instrument of industrial licensing either for starting new industries or for expanding the existing capacity. [7] In fact, the whole system of licensing prevailing in the country so far is supposed to have restricted the freedom of entry into industry and thus helped in strengthening of economic concentration. Prof. R.K. Hazari also came to the conclusion that the large and medium sized business groups enjoyed a higher ratio of approval in licensing applications as compared to others.[8] However, the findings of the Industrial Licensing Policy Inquiry Committee were somewhat at a variance when it remarked that " . . . the large industrial sector as a whole, did not obtain a disproportionate share of the overall licenses in any significant sense of the term." [9] The Committee did find that the twenty large industrial houses obtained a share which was slightly higher in some respects than others in the private corporate

sector. About 31.8 per cent of the total licenses issued in the period 1956-66 were not implemented and this did result in pre-emption in as much as the large industrial sector installed higher than authorised capacities and the obtainment of a large number of licenses by them prevented entry of other firms from the activity of production and sale. An interesting analysis of the consequences of monopolistic practices reveals that "the advantages of industrial concentration from the point of view of productivity can be so great that, an enterprise which resolutely commits itself to this course of action will eventually eliminate all its competitors and be left alone in the market, and its optimum volume of production will enable it to meet any existing demand, at price levels related to its own costs. When it realises that competition has been eliminated it may of course be tempted to take advantage of its monopolistic position and follow a different policy."[10]

In the background of various definitional attempts the Indian law has conceptually taken a monopoly firm as one which either singly or with not more than two other firms, produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof (this includes rendering of services also). In practice, however, it would be an enormous task, if not impossible, to find out which firms can be regarded as dominant on the basis of the criteria laid down. For one thing, paucity of reliable data regarding sale and the time involved in the collection and compilation of such data will come in the way.[11] Secondly, a firm or firms coming within the mischief of the above provisions at one point of time may legitimately claim to be excluded from such label with the changed pattern and quantum of the variables of output or sale. Further, this legislation intends to control and regulate monopolistic and restrictive trade practices with a view to curb the tendency of concentration of economic power in the hands of a few rich persons or groups of persons in the country. This is intended to be achieved in a negative fashion by denying the large-sized firms from becoming still larger. Any undertaking (either singly or together with inter-connected undertakings) owning assets of the value of not less than Rs. twenty crores shall be subject to such control. In case an undertaking (together with inter-connected ones) produces or supplies goods or renders services to the extent of not less than one-third of the total goods or services, and if it owns a total of

assets of a value of Rs. one crore or more, it would come under the rigours of this law as being a 'dominant undertaking'. That being so, it now remains to be examined whether the criterion of the value of assets is a sound determinant of the extent of concentration of economic power in private hands. The total number of companies (both public and private) in India declined from 27,403 in 1958 to 27,047 in 1966. The paid-up capital of these companies increased from Rs. 1,515.6 crores to Rs. 3 154.4 crores during the same period. More than half of this increase (it comes to Rs. 1,638.8 crores) took place in respect of government companies.[12] Naturally, the relative importance of private corporate sector has declined on the basis of asset accumulation and it can reasonably be inferred that concentration of economic power in private hands also diminished. Besides, asset valuation as a measure of concentration must take a number of factors into consideration. For example, the changes in the structure of assets, depreciation and reserves, sources of finance, etc., are the variables to determine whether the size of a firm is socially desirable or not.

Perhaps it will ever remain a moot point as to whether a private sector firm of a large size is essentially anti-social. In the context of huge structures of public sector undertakings, such a controversy assumes special significance. If it is the size of a firm that becomes questionable, the same could apply to the government sector firms also. Granted that governmental activities reflect more in the imparting of social good and social justice, yet monolithic organisations do have adverse economic repercussions. Diseconomies may set in, administrative inefficiency due to unmanageable size may become evident, overproduction or under-utilisation of installed capacities may become important phenomena. These features are already much in evidence in our country so far as the public sector enterprises are concerned. These enterprises may also assume the character of economic monopolies with the concomitant harms to the community. Perhaps, realising this aspect of the problem, while commenting on the representation made by certain industrialists to bring public enterprises also within the jurisdiction of the Monopolies and Restrictive Trade Practices Commission, the Monopolies Inquiry Commission observed that "It was rightly pointed out that such public sector enterprises are no less capable of indulging in restrictive practices that may be harmful to the general public than their private sector competitors; and if the latter

require, in the public interest, the controlling supervision of the Commission, such controlling supervision is equally needed for the public sector enterprises."[13] It is therefore, necessary that such fears not only on the part of private sector but also of the general public, are removed *by devising a suitable machinery in order to see that no enterprise in* the government sector assumes a size that may not be defensible. In order to determine which would be the best size to be termed as defensible, both for the public and private sector firms, it would be quite rational to take the concept of optimum size as the most reasonable. Indeed, at the national level an independent body should be set up so that the sizes of all firms beyond a particular limit be reviewed by it in order to find out whether scales of economies or diseconomies are obtaining. A large size is not essentially harmful provided the limits of optimum size (as calculated by different forces) are not exceeded. In recent times it has been felt that the Life Insurance Corporation should be splitted into five autonomous units for greater efficiency as this monolithic organisation is incapable of sustaining its burden in one structure.[14]

The Indian law of monopolies has made it necessary for big undertakings (as defined under the Act) to seek approval of the Central Government if they expand their activities by the issue of fresh capital or by installation of machines or other equipment or in any other way. This would apply if the expansion of such undertakings is by not less than twenty five per cent of the value of their production, supply of goods or rendering of services. In case of 'dominant undertakings' the approval is required if their assets are to exceed by not less than twenty five percent of their present value. In according such approval the consideration of public interest will prevail. Further, a duty has been cast on such undertakings to prove that the expansion will not lead to concentration of economic power. It in important to note that an omnibus term like 'public interest' has not been spelt out and more than this, whether concentration of economic power would be accelerated by an expansion of a firm or not is a matter of value judgment. The seriousness and magnitude of this notional concept might vary in different stuations. For the establishment of a new undertaking also, with assets not less than Rs. twenty crores, permission of the Government has become mandatory. Similarly, any scheme of merger or amalgamation of such undertakings has to meet the approval of the

Government.

The foregoing analysis of the legal requirements in respect of big firms of business in the private sector underlines the anxiety of the government to check their growth in size. It seems that large sizes of firms have been considered as bad *per se*. It must, however, be remembered that the concept of 'optimum size' is one which can advantageously be made use of in determining whether a particular size is economically viable or not. Studies are not wanting which have focussed light to the fact that a number of public sector enterprises do not conform to the requirements of an economic or optimum size. Any conclusion, therefore, about the size of a firm would be irrational if it is not based on a scientific analysis. One may argue that if big firms are allowed to become bigger, it will further augment concentration of economic power. There is an element of force in this argument but the logic is somewhat misconceived. We should not become afraid of big companies becoming bigger, rather our concern should be in respect of rich persons becoming richer. After all, corporate bodies are not private kingdoms. They are social institutions in which a number of people have a stake and interest. If the rich are in a position to get a large share of the income, measures like rigorous taxes, ceilings on income etc., can be adopted so that additional gains may be siphoned off. But to deny the growth of a firm on the plea of concentration of economic power is to restrict the economic development of the country.

The American economy has advanced notwithstanding the anti-trust laws and giant corporations existing side by side. It must be remembered that the U.S.A. giants are fifty times and the U.K. giants twenty times as large as Indian giants. A number of other developed countries have sizes three to seven times larger than the sizes of big Indian firms. "It can easily be established that the U.S.A. companies by all criteria, excepting that of labour employed, are the largest in the world. If we take the net assets and sales as our criteria the biggest U.S.A. companies are larger than the biggest companies in Europe, while those in Europe are larger than those in India."[15] These countries also have a set of economic system and laws by which they prevent big firms from distorting the economic structure and exploiting the community. Nevertheless, their bigness is not a scare for their governments. On the economic plane, firms there are allowed to grow, subject to the regulatory measures in force.

Is it not incongruous that on the one hand, only last year the rigours of sanction under the Control of Capital Issues were done away with and now a more serious blockade is being created in the path of expansion of companies ? The thesis proposed in the present paper is that the Monopolies Commission of India should keep the principles of determination of optimum size of a firm in view while sanctioning or rejecting an expansion proposal received by it from any firm. The only test of asset valuation is too preposterous. Commenting on the size of public sector undertakings, Prof. Ramanadham has this to say, "The production and supply of output ought to take place under conditions of the lowest possible costs, in relation to the given structure of demand. This implies that the size of the business unit is optimum in nature, no larger, in particular, in the case of public enterprise."[16] It need not be emphasized that an optimum size is the least cost size. No doubt, firms which expand unduly without diversifying their additional gains to the society should be brought under measures by which their expansion does not result in becoming a cause of further concentration. If this becomes the basic policy of the Government, then the social objectives of the monopoly legislation shall be better fulfilled. In that case, expansion of even big undertakings (which are not necessarily monopolistic) may be justified and found appropriate on economic grounds, *e.g.*, for reaping advantages of economies of scale. Needless to say that it is the evil social consequence emanating from any monopoly or big firms (irrespective of who owns them) that needs to be checked rather than the growth itself.

REFERENCES

[1] Chamberlain, Edward, "The Theory of Monopolistic Competition", Harvard University Press, Combridge, 1938 p. 57

[2] Boulding, Kenneth E., "Economic Analysis", Harper & Row, Publishers, New York, 1966, p. 495.

[3] Cf. "The British Monopolies Commission" by Charles K. Roley, Published by George Allen & Unwin Ltd., London, 1966.

[4] Hazari, R.K., Rapporteur, "Monopolies and Their Regulation in India", Papers read at the Indian Economic Conference, Calcutta, 1966, Popular Prakashan, Bombay, p. viii.

[5] MIC Report, p. 136.

[6] *vide* Report of the Committee on Distribution of Income and Levels of Living, 1964, Govt. of India Press.

[7] MIC Report p. 55.

[8] *vide* The Interim Report on Industrial Planning and Licensing Policy, December, 1966. Prof. Hazari was requested by the Planning Commission to review the operation of the industrial licensing system over the previous two plan periods.

[9] *vide* ILPIC Main Report, July, 1969, p. 74.

[10] GATT, Restrictive Business Practices, Geneva, May 1959, p. 10.

[11] Even the Monopolies Inquiry Commission did not calculate the concentration of ratio of sale due to lack of statistical data.

[12] Adapted from article by Dr. S.K. Goyal in "Company News & Notes", Deptt. of Company Affairs, GOI. Feb. 1 & 16, 1970 vol. VIII.

[13] MIC Report, 1965, vol. I & II., p. 186.

[14] The Committee on Public Undertakings of the Parliament has advocated such a proposal but the Administrative Reforms Commission and the Morarka Committee on LIC Expenses did not favour restructuring of the Corporation.

[15] Namjoshi, M.V., "Monopolies in India", Lalvani Publishing House, Bombay, 1966, p. 34.

[16] Ramanadham, V.V., "The Control of Public Enterprises in India," Asia Publishing House, Bombay, 1964, p. 38.