

INDUSTRIAL SICKNESS

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Introduction

The problem of industrial sickness has acquired a new and added dimension in India, particularly in the wake of changed economic environment in the country. It is generally felt that industrial sickness is inevitable in a competitive and efficient market economy. Industrial sickness is of two types i.e. actual sickness and intended sickness. Actual sickness occurs when the industrial units become sick because these units are unable to cope with challenges posed by greater competition, modernisation, technological upgradation, market orientation, infrastructural bottlenecks, financial constraints and labour relations, or there are inherent weaknesses in the design, structure and policies of the industrial units starting from the initial launching to day-to-day running of the units. In other words, there is an overall technical, financial or marketing incompetency on the part of the entrepreneurs and/or managers, and these units become financially sick. Intended sickness occurs when the entrepreneur establishes the unit *ab initio*, to make it sick either to squeeze the funds so invested (borrowed from financial institutions) or later, to reap the fruits which are generally made available to sick units by the government or its other agencies.

Most developing countries suffer from the problem of industrial sickness which is of the former type i.e. actual sickness. But developing countries like India suffer from the problem of actual sickness as well as intended sickness. Let us briefly look at the dimensions and magnitude of this problem before analysing the issues involved and making suggestions.

Dimensions and Magnitude of Industrial Sickness

The recent growth and magnitude of industrial sickness in India has assumed dangerous dimensions both in terms of total number of sick units and amount involved as outstanding bank credit. There is a wide and deep intensity of in-

dustrial sickness in large, medium and small scale units based on both modern and traditional techniques of production.

The industrial sickness was first taken serious note of in mid 1970s. But there was a sharp increase in the number of sick units in 1983. The total number of sick units in 1983 stood at 60,172. The number of sick units has been continuously increasing. By the end of 1990 the total number of sick units stood at 221,097 units. While the total outstanding credit at the end of December 1990 was to the tune of Rs. 9353 crore which constituted about 9.2 percent of the total bank advances, 17.4 per cent of the outstanding bank credit to industries was locked in about 2.2 lakh sick industrial units. Data indicating yearwise breakup of sick industrial units, sectorwise distribution of sick units and amount outstanding in sick units is provided in Table 1, 2 and 3 respectively.

TABLE 1: Yearwise Break up of Sick Industrial Units

Year	Total Number of Sick Units
1980	24550
1985	103597
1988	242534*
1990	221097*

* Economic Survey 1991-92.

TABLE 2: Sector-wise Distribution of Sick Units

Year	Large	Medium	Small scale	Total
1980	409 (1.6)	992 (4.0)	23149 (94.2)	24550
1981	442 (1.6)	994 (3.4)	25342 (96.2)	26342
1982	637 (0.5)	1186 (0.99)	11783 (98.4)	119606
1986	689 (0.52)	1230 (0.94)	128687 (98.5)	130606
1987	1712 (1.)	N.A.	158226 (98.9)	159938

Sectorwise Distribution for 1988 and 1990 are not available.

TABLE 3: Amount Outstanding in Sick Units (Rs. crore)

Year	Large	Medium	Small	Total
1980	1342.47 (73.5)	178.42 (9.7)	305.97 (16.7)	1826.66
1985	2980.24 (69.7)	220.02 (5.15)	1070.67 (25.0)	4270.93
1986	3239.00 (69.4)	242.00 (5.18)	1184.00 (25.3)	4665.00
1987	4195.60 (73.1)	N.A.	1542.30 (26.8)	5735.90
1988	-	-	-	7705.30
End March 1990*	-	-	-	9352.53

* Economic Survey 1991-92 (sectorwise breakup not available).

Note: All the figures within brackets indicate the percent of total.

If we look at the state-wise position of industrial sickness it may be observed that (Table 4) the sickness was high in Maharashtra followed by West Bengal, Gujarat, Tamil Nadu, Karnataka, Uttar Pradesh and Andhra Pradesh. These seven industrially advanced states together account for 75 per cent of the total number of non-SSI sick units and 79.4 per cent of the total outstanding bank credit as at end June 1988.

TABLE 4: State-wise Classification of Non-SSI Sick Industrial Units and Outstanding Bank Credit as at the end of June 1988

State/Union Territory	Total Non-SSI Sick Units	Amount Outstanding
Gujarat	134	402.79
Maharashtra	255	866.69
Bihar	30	75.26
West Bengal	163	167.59
Orissa	12	36.52
Uttar Pradesh	70	155.33
Delhi	23	49.74
Punjab	22	14.14
Haryana	34	53.37
Chandigarh	24	41.84
Rajasthan	43	93.11
Kerala	33	112.49
Tamil Nadu	112	229.92
Karnataka	76	153.18
Andhra Pradesh	69	128.06
Others	72	155.85
Total	1172	3025.88

Analysis of industry-wise classification (non-SSI sick units), (Table 5) indicates that sickness was more pronounced in the case of engineering group with 259 sick units with outstanding bank credit of Rs. 710 crore, followed by textile and chemical groups with 227 units and 122 units respectively and outstanding bank credit of Rs. 997 crore and Rs. 166 crore as at the end of June 1988. These three industry groups accounted for 52 per cent of total number of non-SSI sick units and 61.9 percent of the total outstanding bank credit as at end June 1988.

It is very interesting to note from the above two tables that less than one percent of sick units is in the large category while about 70 per cent of the amount outstanding in sick units is due to them.

Causes of Sickness

The most common causes for industrial sickness are: inadequate project appraisal, weak management, technological backwardness, cost and time overruns, financial constraints and exigencies of finance, government policies and practices, lack of infrastructural facilities, technical incompetence and

deteriorating labour relations and the intention of the entrepreneur and his allies.

TABLE 5: Industry-wise Classification of Non-SSI Weak Industrial Units and Outstanding Amount in Rs. Crore as at the end of June, 1988

Industry	No. of Units	Amount Outstanding
Engineering	145	356.53
Electrical	14	66.19
Textiles	171	539.08
Jute	13	57.81
Paper	20	107.63
Rubber	8	39.30
Cement	7	63.73
Iron & Steel	26	108.53
Sugar	40	113.24
Chemical	65	93.24
Miscellaneous	234	376.19
Total	743	1921.52

Existing Policy for Combating Sickness

The Government and Reserve Bank of India have initiated a number of measures for the revival of sick industrial units as well as to prevent the incidence of sickness ever since 1976. Some of the important guidelines issued by the RBI to scheduled commercial banks are outlined below:

- i. Banks have been advised to adopt the single window concept for lending under consortium arrangements for both sick and weak units in respect of the disbursements under working capital as well as rehabilitation term loans.
- ii. Banks have been advised to gearup their organisational machinery for taking effective measures to detect sickness at the incipient stage and to take appropriate measures.
- iii. In respect of a unit in an industrial group becoming sick, banks have been advised to impress upon the group to come forward with concrete proposals including infusion of fresh funds from other healthy units.
- iv. Participation by banks in rehabilitation package is mandatory.
- v. A definite time frame for implementation of packages should form a part of the draft packages submitted to the Board for Industrial and Financial Reconstruction (BIFR).
- vi. A nodal monitoring agency for monitoring the implementation of the rehabilitation package would be designated.
- vii. RBI parameters on interest rates for various facilities under rehabilitation packages have been revised.
- viii. While drawing up rehabilitation packages of non-SSI sick/weak units, banks are required to ensure that promoters' contribution is maxi-

misled.

- ix. To ease the debt burden of sick units banks and institutions have been given the option to convert part/whole of the unpaid interest/term loans into equity/quasi equity under rehabilitation packages.
- x. Public sector enterprises have also been brought within the purview of BIFR — (constituted in January 1987 under SICA 1985) a quasi-judicial body vested with wide ranging powers with regard to sick industrial companies, which has largely become a parking plot for retired and influential government officials.

After considering the reports received from the operating agencies, the BIFR either sanctions revival scheme (including merger, change of management and leasing) or recommends the case to the concerned high court for winding up. BIFR provides an exit route for unviable private units, helps to revive potentially viable ones and eases the pressure on the Government for take over. The number of cases of sick units handled by BIFR is indicated in Table 6, and the time taken for final disposal year-wise in Table 7.

TABLE 6: Key Statistics (As On 31.12.91) of BIFR

1. Applications received	1547
2. Rejected as not (falling within ambit of Act Registered)	391
3. Registered	1117
4. References dismissed by Benches as not maintainable	191
5. Revival schemes drawn up by Cos. in consultation with FIs and approved with/without modifications by BIFR after due examination (section 17(2) of the Act.)	225
6. Revival schemes sanctioned by Board (section 18(4) of Act	225
7. Draft Schemes of Revival circulated	46
8. Winding up orders sent to High Courts for liquidation proceedings	155
9. Winding up Notices issued	62
10. Others	4
Out of sanctioned schemes	33
i) merger with healthy Cos. (in 25 cases, merger has already been effected)	29
ii) Change of Management	2
(iii) Workers Cooperatives	2
(iv) Leasing Assets	
11. Cases reported due to failure/remanded by BIFR before High Courts or BIFR	41
12. Number of Cos. in different stages of consideration	235
	127 to be allocated.

But there are certain problems due to which both rehabilitation and exit are not achieved by the BIFR. In fact, the prevalent opinion is that there is virtually no exit policy for sick companies. Now as BIFR enters period of enlarged jurisdiction relating to both public and private sector companies,

proper action could be taken to enhance its effectiveness.

TABLE 7: Time Taken for Final Disposal-Yearwise

Year	No. of Cases	Shortest (Days)	Longest (Days)	Average
1987	189	41	1543	768
1988	160	138	1368	756
1989	92	30	1041	520
1990	27	78	637	358

The definition of sickness that all industrial companies conforming to the definition of a sick industrial company vide section 3 of SICA would need to be referred to the BIFR, is faulty. These are companies registered for atleast 7 years which at the end of any financial year have accumulated losses equal to exceeding their entire net worth and have in addition suffered cash losses in the year as well as the preceding year.

The present policy for combating sickness and revival of units is tardy and time consuming. The criterion that a company should be in existence for not less than seven years before it approaches BIFR needs to be changed immediately. The sanctity of seven years is not clearly understood. It excludes from its ambit infant sick units where the sickness problem can easily be detected at an early state and remedied with little support. Secondly, to meet the definition of sickness, the accumulated losses have to be equal to or greater than the net worth. This makes the unit an irredeemable case before it approaches BIFR.

Though the BIFR is supposed to be at the apex level dealing with industrial sickness, ironically the recommendations of the BIFR are not mandatory in nature and not binding on financial institutions, banks, Central and State institutions. This anomaly should be removed at the earliest by empowering the Board to get its decisions implemented. This would also considerably reduce the time lag.

In view of the considerable time taken by BIFR in arriving at the final proposal, there is need for making it mandatory for approval of an interim arrangement at least for a period of 12 months on the basis of schemes prepared by the operating agency.

The delay in disposal of cases by BIFR is largely due to consequential delays by operating agencies in submitting techno-economic viability reports, very much beyond the period of 3 months from the date of order by BIFR allowed to them under the Act.

Need for a More Appropriate Policy

Despite the government's measures, the industrial sickness in the country is growing. There is a great need for having a more appropriate policy for sick units. A developing country like ours cannot afford such a large number of

units to continue to be sick, or closure of these units altogether. At the same time the country cannot afford to block the resources (crores of rupees) currently frozen in the sick units. Presently available provisions to deal with this type of practices are grossly inadequate.

The world economic order is changing rapidly. In India too, with a desire to increase efficiency and competition, significant policy changes have been effected by opening up the economy. The success of the New Industrial Policy, particularly, will be possible only by a greater management flexibility, improving the nature and speed of response, technological change and flexibility for adjustment to market conditions. In this process, the Government must ensure through appropriate policy apparatus that the redeployment of manpower and other resources is done with minimal shock and pain in the national system. This calls for more emphasis on the revival of sick units in the industry rather than taking other recourse.

Provisions existing in India currently do not ensure speedy revival of sick companies. There should be a revival package which a company must operate itself as it is the best agency aware of its weaknesses and strengths and with the greatest stake for recovery. Going to BIFR must be the last resort, not the first one.

A necessary prelude to any rehabilitation package is to give management an inalienable right to manage including the right to regulate workforce according to requirement. No legal bar should operate in the way of freedom to manage any aspect of business. The entry has almost been freed. However, no policy package has been framed governing revival or closure of firms. Competition also presupposes freedom to manage the enterprise. The right to ownership and freedom to start a business carries with it the rights to manage the business. Management must have an inalienable right to manage, retain and dismiss selectively employees involved in industrial action. Of course, there is a need to ensure social stability. A separate scheme has to be implemented to take care of socio-economic problems which result from market friendly policies. Indeed, workers constitute an important element in any package, and they must not only be taken into confidence, but they should be involved in the decision making and in any rehabilitation package.

There is a need for suitable amendment in the relevant sections of Industrial Disputes Act. The provisions should be such that they are neither pro workers nor pro employers. National interest must be paramount. There is nothing wrong if the employers are required to seek prior permission for lay-off in case of temporary stoppage of work for any reason under Section 25-M of Industrial Disputes Act. But why should there be unnecessary delays? And at times the obligation to seek prior permission for lay-off is impractical in many situations, which are beyond the control of an employer such as sudden breakdown of machinery. Similarly, the employer has to obtain prior permission for retrenchment under Section 25-N of the ID Act, which imposes on an employer the financial liability of continuing the surplus labour in employment during the pendency of his application for permission. For justified reasons, management should have power to retrench the surplus staff follow-

ing the procedure and compensation provided under the ID Act. Moreover, under section 25-D of the ID Act, prior permission of appropriate government is to be obtained if an employer wants to close down his business. The provision for prior permission to closure not only impedes the progress of absorbing new technology but also forces unviable units to carry on operation which only compounds industrial sickness and increases burden on the society.

Of course, there can be a possibility of misusing the policy of exit if accepted in some cases. For that an appropriate mechanism needs to be devised to minimise the misuse of exit policy.

Special Courts

It is necessary to establish special courts to deal exclusively with sick company's rehabilitation. A promoter who feels that his enterprise has become sick and incurred losses and all his personal efforts towards rehabilitation have failed, can go to these courts and submit his own rehabilitation package in the form of a reorganization plan, irrespective or independently of any operating agency as is the case with rehabilitation package of BIFR.

If the court has become convinced of the intentions of the promoter to revive his business, then the court should declare him a "trustee" of his own concern or a "debtor-in-possession" on lines of the Bankruptcy code. The Court would then give the promoter six months to a year to show some positive results.

Reorganisation of Business

Within that period the promoter can be free to reorganize his business totally including rescheduling of debts and renegotiating collective bargaining agreements. It should represent a bargaining process whereby the ownership rights to the firm are renegotiable among the stockholders, management and numerous classes of creditors. Not only the management but also the ownership could be changed. The aim is not to revive the owner/promoter but the concerned unit. At present the rehabilitation package of BIFR gives several concessions to the sick unit, allows easy money to flow to them from banks and financial institutions with the result that many a time the promoter prospers while the unit continues to be sick as his stake in it is low. In any scheme of rehabilitation, the promoter's contribution ought to be the largest. A promoter who does not have sufficient funds should sell off his business.

Exit Route

The unit which fails to show positive results in due time even after getting total freedom for reorganizing must be allowed to continue. The Court should appoint a trustee for disposing off the firm's assets in the way that maximizes their total value. The trustee then distributes the proceeds to the firm's

creditors according to legally specified priority rule. The expenses for labour retraining and reemployment as well as other labour dues are met out of the sale proceeds of the firm's assets and the rehabilitation fund along the lines of "National Renewal Fund" started by the Government currently.

Conclusion

Hence, it may be argued that the government needs to adopt more appropriate policy which is both fair and practical to minimise the industrial sickness expeditiously so that India may look forward to entering the 21st century with greater industrial strength. Units which are unable to become economically viable and show positive result in stipulated time may be allowed to exit through a simple liquidation procedure. For the success of the package it is extremely important that the courts set up to deal with the cases of sickness dispose off the cases quickly within a month or two and that there are no delays in following the legal procedure. There should be no political interference and the attitude of the promoters should be to avoid any intended sickness. For all cases of intended sickness there should be strict penalty. Nation's interest should be paramount in any package devised for removing or minimising industrial sickness in the country.