THE TASKS BEFORE THE MONOPOLIES COMMISSION

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"People must come to accept private enterprise not as a necessary evil, but as an affirmative good."

—Eugene Black

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By

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Since the Finance Minister indicated the Government's intention to appoint a Monopolies Commission as a first step towards combating the evil effects of monopoly and concentration of economic power, the country's attention has been focussed on the existence and the vagaries of monopolies in India and their status in the body economic.

It is pertinent to recall in this connection that only four years ago the then Union Minister of Industries had given expression to the Government's view that "there are practically no monopolies in the country." "Among consumer industries," the Minister had specifically pointed out, "there is not a single group which owns more than three or four per cent of the national production". There is no ground whatsoever to believe that since he made this statement anything has happened materially to alter the situation.

On the contrary, a few changes have, in fact, taken place helping diffusion of economic power in the industrial sector. At any rate, the licensing policy of the Government has been used effectively to check further concentration. In 1962, for example, of the total of 4,211 industrial licences issued, barely 182 went to 10 leading industrial houses. Even in the case of manufacture of containers, cement, safety matches and oxygen, in which the Minister had not ruled out the monopoly element, it is found that the domination of the leading units has been progressively reduced by fostering entry of new entrepreneurs, big and small. It is evidently in this context that the present Minister of Industries, Mr. Nityanand Kanungo, assured the Lok Sabha, just a day before the Finance Minister announced his intention to appoint the Monopolies Commission, that "the existing procedures and laws are sufficient to see that no monopolies are possible in the field of production."

What prompted the Finance Minister, then, to include the proposal in his budget speech? That political considerations played an important part is patent. Since the beginning of the era of planning, the problems of economic concentration

TABLE

Concentration of productive capacity in old Industries

Industries	Units of Capacity	1950-51 Capacity of Industry	1950-51 Number of Leading Producers	1950-51 Capacity of Leading Producers	Percentage of 5 to 3	1960-61 Capacity of Industry	1960-61 Number of Leading Producers	1960-61 Capacity of Leading Producers	Percentage of 9 to 7
1	2	3	4	5	6	7	8	9	10
1. Pig Iron	Lakh tons	18.6	3	18.5	100.0	26.1	3	25.0	85.5
2. Finished Steel	Lakh tons	10.5	3	10.5	100.0	47.0	3	30.0	67.3
3. Aluminium	'000 tons	4.0	2	4.0	100.0	30.0	2	25.0	83.3
4. Centrifugal Pumps	'000 Nos.	33.5	1	12.0	36.0	74.7	2	24.3	32.5
5. Sugar	Lakh tons	15.4	6	2.8	18.5	15.4	6	72.8	18.5
6. Jute	'000 looms	72.0	10	19.4	27.0	72	6	39.2	54.4
7. Cotton Textile Mills	Lakh spindles	91.0	10	13.9	15.4	91.0	10	13.9	15.4
	'000 looms	194.0	10	29.5	15.2	194.0	10	29.5	15.2
8. Paper	'000 tons	136.6	5	90.0	66.2	510.6	5	210.0	43.0
9. Footwear	Million pair6	4.7	2	3.6	74.8	5.9	1	3.4	56.6
10. Electric Lamps	Million Nos.	23.0		15.0	65.2	31.0	7	23.0	74.2
11. Soaps	'000 tons	266.0	2	89.4	37.5	357.0	15	127.0	35.6
12. Electric Fans	'000 Nos.	285.0	1	40.0	16.7	466.8	1	120.0	25.5

and monopolistic tendencies have been widely discussed. The Constitution enjoins upon the State to direct its policies towards ensuring that "the operation of the economic system does not result in concentration of wealth and means of production to the common detriment." This stipulation was given a more precise direction when Parliament adcptcd in 1954 a socialistic pattern of society as the objective of social and economic policy. The Industrial Policy Resolution 1956, which embodied

this objective, aimed inter **alia** at prevention of private monopolies.

The Prime Minister himself took the first preliminary step towards the fulfilment of this objective by appointing in 1960 the Mahalanobis Commitee, which was asked to study

TABLE II

Concentration of productive capacity in new industries

Industries	Units of Capacity	1950-51 Capacity of Industry	1950-51 Number of Leading Producers	1950-51 Capacity of Leading Producers	Percentage of 5 to 3	196-61 Capacity of Industry	196-61 Number of Leading Producers	196-61 Capacity of Leading Producers	Percentage of 9 to 7
1	2	3	4	5	6	7	8	9	10
1. Ship building	'000 DWT	20.0	1	20.0	100.0	80·0	1	80.0	100.0
2. Locomotives	Nos.	90.0	1	90.0	100.0	400.0	2	400.0	100.0
3. Petrolium Products	Lakh tons	2.5	1	2.5	100.0	43.0	1	20.0	46.6
4. Phosphate Fertilisers	Lakh tons	1.2	4	0.5	41.4	4.8	6	2.7	57.0
5. Ball Bearings	Lakh Nos.	6.0	1	6.0	100.0	9.0	1	9.0	100.0
6. Died engines	'000 Nos.	6.3	5	6.3	100.0	22.2	2	7.0	31.4
7. Automobiles	'000 Nos.	29.0	2	29·0	100.0	29.0	2	29.0	100.0
8. Bicycles	Lakh Nos.	1.2	2	1.2	100·0	9.0	2	3.5	38.9
9. Sewing Machines	'000 Nos.	37.5	1	36.0	96.0	85.2	1	40.0	47.0

trends in the distribution of income and wealth and to ascertain the extent to which the operation of the economic system had resulted in the concentration of wealth and means of production. One should have thought that the right time for the setting up of a Commission to examine the problem of concentration in individual industries was after a thorough consideration of the Mahalanobis Committee's report.

This, in fact, was what Mr. Kanungo had implied when he told the Lok Sabha that the question of curbing the growth of monopolies could be considered only after the Mahalanobis report was available. Yet, the Finance Minister was constrained to demonstrate his compliance with the Bhubaneshwar resolution on democratic socialism under vociferous ultra-leftist pressures. Surprisingly enough, the proposal was originally mooted by Mr. Kamaraj, the Congress President, and Mr. Krishnamachari had no choice but to accept it in tune with the Bhubaneshwar spirit.

While announcing the Government's decision regarding the Monopolies Commission, therefore, the Finance Minister assured industry that there was no intention to interfere with the detailed running of any enterprise. He rightly refused to "put the horse before the cart" and decided to set up a body under the Commission of Inquiries Act and not a statutory body to deal with monopolistic practices. As the Finance Minister stated, the Commission will "make an impartial and objective inquiry into the monopolies and concentration of economic power in the Indian economy". This has, however, created some confusion, for the problem of concentration of economic power has already been investigated by the Mahalanobis Committee.

Concentration of economic power can be viewed both from the angle of the economy as a whole and of an industry. Accordingly it implies a high degree of control either in the formulation of vital economic decision or over the production capacity in a particular industry which is termed as industrial concentration.

In order to appreciate the proper sphere of the Commission's inquiry, it is necessary to distinguish between concentration of economic power and industrial concentration. Concentration of economic power is a larger concept involving the structure and behaviour of economic organisation. It manifests itself through controls over productive activity, relative shares of incomes generated and market and exchange. The content of concentration of economic power is the control over the economic life of the people while that of industrial concentration is the control over the productive capacity in a particular industry. Industrial concentration in its acute form may give sizeable control over the market for an industry's product. Thus monopoly is essentially a manifestation of the structure and behaviour of the market. It implies control over either supply or price.

Concentration of control in an individual industry is not necessarily coincidental with concentration of economic power in the economy as a whole. The essence of monopoly is control over production or price. Monopoly is at best one aspect of the phenomenon of concentration of economic power in the economy and indicates a very high degree of industrial concentration. It is quite conceivable that monopoly may exist without concentration of economic power, and *vice versa*. It cannot, however, exist without a very high degree of industrial concentration although industrial concentration does not necessarily imply the existence of moncpoly in that industry. Monopoly is only a special case of industrial concentration.

As the name suggests, the Monopolies Commission should confine its inquiry primarily to the various aspects of monopoly power in individual industries and industrial concentration of control insofar as it tends to create monopolistic conditions. In any case, it is the degree of concentration of production capacity and control over the market in individual industries which is more important for the Commission than the degree of concentration in the manufacturing industry or in the economy as a whole. The Commission, therefore, should investigate in the main the problem of horizontal integration although it may also study the problem of vertical integration to find out whether and how far such integration contributes to the monopoly element in the industries concerned.

It is the popular confusion of monopoly and industrial concentration with accumulation of economic power in the economy as a whole that has prompted some economists to wrongly suggest that the Commission should ascertain the nature and activities of well-known industrial houses having under their control a multiplicity of enterprises of a diverse nature but which may not conform to the definition of monopoly.

It is to the problem of industrial concentration in individual industries which leads to the growth of monopolies that the Commission should address itself. The Commission's inquiry can yield fruitful results only if it confines its attention to the limited sphere of monopoly and industrial concentration instead of indulging in a wild goose chase by investigating the extent of concentration of economic power in the economy as a whole.

The Monopolies Commission, therefore, should try to answer the following questions :

1. Are there monopolies in our industries?
2. Is the degree of industrial concentration potentially dangerous ?
3. How far have the combination movement and managerial integration affected the degree of industrial concentration by vesting control in a few hands?
4. Is the power over the market so far as it exists being abused ?

On the basis of the information collected and investigations carried out, the Commission will have to suggest legislative and other measures to curb monopolistic practices in India.

At this stage it is difficult to guess with a reasonable degree of accuracy the answer to these questions. So far no attempt has been made to study the problem from industry's end. A few attempts to study the general problem of concentration of economic power, however, throw some light indirectly on the extent of industrial concentration. But the evidence, both direct and indirect, that is available is too meagre to make any worthwhile forecast.

Various criteria can be used to measure the degree of industrial concentration for the purpose of assessing whether it is sufficiently high to create a suspicion of monopoly in a particular industry. From this point of view the share of large firms in the total sales of that industry's product provides a fairly good measure. In the absence of sales statistics, however, control over productive capacity may be used for ascertaining the degree of industrial concentration. A recent study attempts to determine the degree of concentration in individual industries as at the end of the Second Five-Year Plan by applying the index of rated capacity. It, does not, however, take into account the degree of management concentration.

The findings of the study are summarised in tables I and II (See pages **2** and **3**). For studying the concentration of capacity, industries have been divided into two groups, old and new. All those industries which were established before the Second World War are considered as well-established and old while those thar were established after the war are included In the group of new industries. The concentration of productive capacity in well-established and old industries is summed up in Table I and the position in respect of comparatively new industries is given in Table II.

On the basis of information contained in these tables certain inferences can be drawn. First, broadly speaking there is no evidence to suggest the existence of monopolies in our industries, though the degree of industrial concentration in a few cases is quite high.

Thus, among the old industries there is a high degree of industrial concentration in the case of iron and steel, aluminium and centrifugal pumps, while in the case of new industries shipbuilding, automobiles, locomotives and ball bearings provide instances of a very high degree of industrial concentration. It should be noted, however, that in the case of iron and steel control in the hands of the State has increased substantially. Although there are only two companies which produce locomotives, one of them is a Union Government undertaking. Even in the Jamshedpur factory the Government has a financial interest. Similarly in the case of shipbuilding, Government shipyards are playing an increasingly important role, while in the case of the automobile industry the duopoly has been created by the Government itself. Ball bearings is a highly technical industry and is bound to be concentrated. As far as aluminium is concerned, there are only two important producers but a third unit has recently started production. Apart from the emergence of the Government as a countervailing power, the policy of controlling the prices of essential products has made the exercise of monopoly power extremely difficult.

Secondly, the degree of industrial concentration, generally speaking, is higher in the case of new industries than in the case of old and established industries. This is as it should be. As most of the industries showing a high degree of concentration are infant industries, concentration would diminish after steps are taken to create additional capacity.

Thirdly, a high degree of concentration prevails in heavy industries. These industries are capital intensive and at the present stage of industrialisation they are bound to be concentrated.

Fourthly, as between the consumer goods and producer goods industries, the degree of industrial concentration is greater in the case of the latter in comparison with the former. This is also natural.

Finally, in almost all industries there is definitely a downward trend in concentration over the First and Second Plan periods. This indicates that the policies of the Government which aim at diffusion have strergthened the trend towards curtailing the degree of concentration.

Of course, these are broad generalisations and we will have to wait for the Monopolies Commission's report to get the exact idea of the level of concentration in individual industries. Moreover, it is likely that the growth cf the combination movement and managerial integration might have concealed the real state of affairs. The conclusion that there are no monopolies and that there is a definite trend towards diffusion is, therefore, not unqualified.

The degree of concentration in a particular industry calculated on the basis of the index of the rated capacity of leading units cannot always be relied upon to show the actual level of industrial concentration.

This is because the growth of combines of various types may result in a very much higher degree of industrial concentration than is discernible from the share of the few large units in the total productive capacity of the industry. Industrial combination provides a method of economic organisation by which control is exercised over a number of units. It is, therefore, the degree of control the combines have over production and distribution in a particular industry that really determines the degree of industrial concentration.

Industrial association, cartel, community of interest resulting from multiple or interlocutory directorships and managerial integration, integration of firms and holding company are the forms through which the combination movement expresses itself. Firms in an industry may combine by means of merger absorption and amalgamation into one single firm. But even without losirg their identity independent firms in a single industry may agree to regulate their porduction and prices or may accept common control. The Monopolies Commission, therefore, will have to investigate the extent to which

the combination movement in our industries has resulted in a higher degree of industrial concentration than is apparent from the share of leading firms in the total productive capacity.

The actual integration of firms, which implies the coming together of independent firms, is a rare phenomenon in Indian industries. There are very few instances of mergers, absorptions and amalgamations of companies. The formation of ACC and the absorption of SCOB by IISCO are two major examples of actual integration. On the whole the number of consolidations is very small. Between 1956-57 and 1960-61 the number of amalgamations and mergers has varied from four in 1956-57 to 22 in 1959-60. But on an average there were not more than 14 such cases every year during this period. A good many of them were encouraged by the State to weed out uneconomic units. Consolidation, therefore, cannot be said to be a characteristic feature of our corporate sector which consists of over 25,000 companies.

As far as other forms of combinations are concerned industrial associations are mainly representative in character while there is very little growth of the cartel form of organisation. Prior to the enactment of the Companies Act, 1956, community of interest was ensured between different industrial concerns by means of multiple and interlocutory directorships. Multiple directorships imply pluralism in directorships and the holding of directorships of many companies is a method that is widely used to exercise common control over firms in our industries. Interlocking of different firms of managing agencies by having a director in the companies under their management provides yet another method of bringing together a number of firms under common control. The implementation of the Companies Act, however, has resulted in a wider distribution of directorships.

Our industrial economy is in fact characterised by a high degree of managerial integration through the system of managing agents. The managing agency system which is peculiar to this country has made it possible to bring together a number of companies under one single control and the combination movement in our industries has expressed itself through it. This mainly explains why our industries have never experienced any merger movement as in other countries. As the degree of managerial integration affects the degree of industrial concentration, the Monopolies Commission will have to assess the extent to which the former has vested control in a few hands in individual industries.

It should be noted, however, that it is not always that there is a direct functional relationship between the degree of managerial integration and industrial concentration. It is, therefore, necessary to measure the share and control of each of the leading companies or the managing agents in the total industrial assets, paid-up capital and operations. It is just possible that while the number of companies managed by any single house of managing agents may be large, its share may not be significant. What matters is the degree of concentration of control over the disposition of means of production and ownership. A recent study, therefore, groups together all the companies under the management of a common managing agency house and treats them as one single unit for working out the level of concentration on the basis of percentage share of total sales. The level of concentration by first and by first four leading units on this basis is calculated for the cotton textile, jute, sugar, cement and paper industries. The results are summarised in the following table.

CONCENTRATION RATIO IN ESTABLISHED INDUSTRIES

(Sales)

Industry	Year 1939	1950	1959
Cotton Textile			
First	3.9	4.2	6.1
First Four	15.0	15.8	19.6
Jute			
First	14.5	11.6	9.9
First Four	42.6	41.2	32.6
Sugar			
First	8.7	6.6	8.3
First Four	26.7	21.0	19.4
Paper			
First	42.2	32.2	26.0
First Four	81.1	71.6	72.0
Cement			
First	78.5	65.8	53.8

All these are well established industries, and the degree of concentration calculated on the basis of the share of large units in total sales in these industries gives a fair idea of the level of concentration in the industrial sector. In the cotton textile industry, the unit with the largest sales accounts for less than 6.1 per cent of the total sales and the first four units account for less than 20 per cent, which indicates that the degree of concentration is not very high. On the other hand, the concentration in the jute industry seems to be comparatively high. But even here the sales of the largest unit do not exceed 9.9 per cent of the total sales of the industrv although the first four units among themselves share 32.6 per cent of the total. In the case of sugar also the degree of concentration is not high. In the paper industry, however, 72 per cent of the total saies are concentrated in the hands of four units while the unit with the largest sales accounts for as much as 26 per cent of the total. In the cement industry there are only two powerful units and the larger of the two accounts for more than 50 per cent of the total sales.

A pertinent point, however, is that the degree of concentration has shown a tendency to decline progressively, and in recent years there has been a marked downward trend in industrial concentration of sales. Thus in jute, paper and cement, where concentration is relatively high, the share or the largest units has declined from 14.5 per cent to 9.9 per cent in the case of jute, from 8.7 per cent to 8.3 per cent in sugar and from 42.2 per cent to 26 per cent in respect of paper. Similarly, the share of the first four units in these industries shows a marked decline.

Thus, even after taking into account the degree of managerial integration and the effect of the combination movement it can be safely assumed that there are no monopolies in the country and that the degree of concentration, though high in the case of a few individual industries, industrial concentration has a tendency to decline. The Government's policies are partially responsible for this trend towards diffusion. This is evident from the fact that since the beginning of the planning era, the downward trend in industrial concentration has gathered momentum.

Although at present there is no law specifically preventing monopolies, the Government enjoys enormous powers for regulating prices, profits, production movement and distribution of goods in the private sector industries as well as for reducing the share of monopoly in an industry. One of the objectives specifically laia down in the Industrial Policy Resolution 1956 is to prevent monopolies in different fields.

The Industries (Development and Regulation) Act 1951 is the chief instrument in the hands of the Government to implement industrial policy and to promote development of industries on desired lines. The principal object of this Act is to enable the Government to regulate about 80 industries which have been included in the first schedule. The Act provides that no industrial unit shall be established or no substantial expansion to the existing plant shall be made without a licence from the Union Government. Moreover, the Government is empowered under the Act to order investigation in respect of any scheduled industry or undertaking if in its view there has been or is likely to be an unjustifiable fall in the volume of production or if there is marked deterioration in the quality or an increase in price for which there is no justification.

A similar investigation can also be ordered in respect of any other industrial undertaking being managed in a manner likely to cause damage or injury to the consumer. In the event of an industry or undertaking not carrying out the directions issued after such an investigation, the Government can take over its management. The Central Advisory Council has been established to administer the Act; it functions through its Standing Committee. A Licensing Committee has also been set up to issue licences to new units.

The Indian Companies Act 1956 also empowers the Government to regulate managerial, administrative and financial integration of companies. Under Section 234 of the Act, the Union Government has the power to notify that the companies engaged in specified classes of industrial business shall not have managing agents. The Act also debars managing agency companies to have managing agents. Section 332 of the Act lays down that no person can hold office as managing agent in more than 10 companies. The Act imposes many restrictions on inter-company investment to prevent financial integration.

As regards administrative integration the Act lays down that no person can hold office as a director in more than 20 companies at the same time. Section 247 of the Act empowers the

Union Government to appoint inspectors to investigate and report on the membership of any company and other matters relating to the company for the purpose of finding out the true persons who are financially interested in the company or who are controlling or materially controlling the policy of the company.

Apart from these enactments the Government is acting as a countervailing authority against the power of so-called monopolies. The demarcation of the respective spheres of influence of the private and the public sectors and the rapid expansion of the public sector have also reduced the possibility of a high degree of industrial concentration in the private sector. In recent years, the Government has emerged as the largest single entrepreneur. This may not have helped diffusion but has certainly undermined the monopolistic tendencies in the private sector.

The Government's policy to encourage small-scale industries and the cooperative sector has also facilitated growth of small and medium-size units. The recent amendments to the Companies Act and the provision for converting loans into equity capital also aim at reducing concentration of control. Various financial institutions in the public sector providing assistance to industries also wield considerable influence on the private sector industries. The price policy of the Government is designed to control pricing of the products of basic industries and the prescription of retention prices has made it impossible for large units to influence prices by restricting supplies. The fiscal policy is also directed to discourage the managing agency system. The discriminatory use of tax weapons aims at reducing managerial integration.

On the basis of available evidence it can be said that the Government's policies have effectively checked industrial concentration and the trend is definitely towards diffusion. This is not to say that there has been no effort to circumvent the law. The creation of dummy managirg agencies, selling agencies on a monopolistic basis or the establishment of technical services remunerated on the basis of profits on top of royalties etc., paid to foreign collaborators or similar services are some of the devices currently resorted to with the blessings of the Company Law Administration. It is, however, difficult to say whether the devices are tolerated on account of the paucity of entrepreneurs in this country or through sheer negligence and ignorance of those administering the law.

From a purely economic standpoint integration of industrial undertakings may afford considerable opportunities for reduction in overhead costs and to supply cheaper and better goods to the consumer. The State's intervention becomes necessary only when discriminatory price policies and monopoly practices result from industrial concentation. No doubt, the State has to act as a protector of consumers and the community in general, but it should also be noted that the suppression of concentrative but legitimate tendencies evolved out of modern technology may mean nothing else but bolstering up of the weak and the inefficient against the progressive. The State, therefore, should follow a constructive policy in regard to so-called monopolies in the industrial sector.

Rapid industrialisation requires huge capital, enterprise and resourcefulness for building up complex organisation backed by research which cannot be procured by small entrepreneurs. Industrial concentation per re is not an evil provided there are checks on its possible abuse by anti-social elements. The Monopolies Commission, therefore, should avoid the popular confusion of industrial bigness with monopoly. If a particular industrial house has grown into a big unit, it does not mean that it has a monopoly in the manufacture of a particular product. The scare of huge industrial monopolies and industrial concentration can reasonably be faced if the Commission is inclined to identify the nature and magnitude of the evils from the standpoint of consumer interest, instead of allowing itself to be swept away by politically exploitable considerations.

There is at present no law on the statute book covering monopolies. The present laws including the Companies Act do not provide any direct method to control monopolies.

The question, therefore, arises how far it is possible to draw up on the experience of foreign countries in this regard in case the Government wishes to arm itself with wider powers to meet any contingency in future. This is of course a theoretical issue since the existing defects in the corporate sector can easily be overcome by efficiently wielding the powers at the disposal of the Government which is incidentally a 60 per cent partner as a tax gatherer in the operations of enterprises.

Monopoly is essentially a question of whether there will be suitable accessability to economic resources. It is almost as old as organised society and appears through history in various forms depending on the economic factors operating at a given stage. The struggle to counteract monopolistic practices which increasingly tend to dominate industry constitutes a phase of the crucial problem of the age. Experience has amply demonstrated that competition itself without Government protection tends in time to become monopolistic. The Government must, therefore, be constantly present to prevent monopolistic aggregations from dominating the market. Governments in many countries have laid down rules to prevent monopolistic practices. The success or failure of the different methods of control employed in these countries can serve as a guide for future action.

In the course of the last 75 years as many as 60 laws found their place on the statute book in the United States where monopolies have assumed a more virulent form and have posed more difficult problems of control than in any other country. The legal defence against the inroads of monopolies came first in the individual states. Apart from restraints from common law, there were constitutional provisions which declared monopolies or combinations in restraint of trade unlawful. In 1889 four states introduced legislation against monopolies, followed by two more a year later. This legislation, however, was directed primarily against the formation of trusts. In the early 1880s a trust movement swept through the country, which almost immediately created resentment both among small producers threatened by the encroachment of combines as well as the general consuming public. Consequently in 1890, Congress passed the Sherman Anti-trust Act for controlling industrial combinations.

The Act made illegal "every contract or combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations." It also declared that every person, including any corporation or association, "who shall monopolise or attempt to monopolise or combine or conspire with any other person to monopolise any part of the trade or commerce shall be deemed guilty of a misdemeanour." It also provided for penalties for such actions. From the beginning, difficulties in the enforcement of the Act arose and until 1901, prosecution under the Sherman Act was almost rare. As a result of the muckraking campaign which made knowledge of the actions of the trusts far more widespread, the Sherman Act became, if not always an effective weapon for the dissolution of the existing monopolies, at least an effective deterrent to the creation of new ones.

As the Sherman Act by itself was found insufficient to meet the situation the Wilson Administration strengthened in 1914 the control exercised by the Federal Government by creating the Federal Trade Commission and enacting the Clayton Anti-trust law. The Act tried to supplement existing laws against unlawful restraints and moncpolies by forbidding certain unfair practices such as price discrimination or time clauses making it a condition of sale that competitor's goods should not be handled. It also prohibited a company from acquiring the stock of other companies and from having common directors. The Federal Trade Commission Act was designed to strengthen the powers of inquiry into the actions of trusts. The Clayton Act and the Federal Trade Commission did much to fill the lacunae in the original Sherman Act. What is more, they changed the popular attitude to monopolies.

Before the outbreak of the second world war the precedents in the courts and before the Federal Trade Commission had gradually established the precise legal position of monopoly. A system of a trade practice conference had developed which assisted in defining precisely the fair and unfair practices to be permitted or forbidden for different trades. Under the administration of Franklin Roosevelt the National Industry Recovery Act was passed giving the President wide powers to approve codes of fair competition submitted by individual associations. The Act stipulated that these codes should not permit monopolistic practices and should give effect to the broad policy of inducing united action under governmental supervision and fullest possible utilisation of prcductive capacity.

In 1938 President Roosevelt appointed a committee to consider the improvement of anti-trust procedure and to examine such problems as merger, consolidation and acquisition, financial control, investment trust, holding companies, trade associations and the patent clause, together with possible means of encouraging competitive enterprise by fiscal measures. The committee recommended modifications in the legal framework. At

present the Anti-trust Division and the Federal Trade Commission at Washington, which administer the Clayton and Sherman Acts, are on all grounds opposed to monopoly. The late President Kennedy's victory in his dispute with the steel industry demonstrates the powers that the U.S. Government can wield to control monopolies.

In the United Kingdom monopolies were strictly controlled in the earlier stages. Consumers were safeguarded against monopoly by the common law and by a series of statutes. There were laws against cornering of some product, buying of produce before it reached the market, and buying in order to resale within a short time at enhanced prices. The series of laws defining these offences appeared as early as in the 10th century. These laws were continued and further amended in the Tudor and Stuart periods down to the middle of the 18th century. A committee was appointed in 1767 to reconsider these legislative enactments and the statutes were repealed in 1772. But the general widening of possible fields of competition proved an insufficient safeguard against monopolies.

The inadequacy of the law relating to monopoly and the repeal of laws against restrictive practices imposed on the Law of Contracts and Torts a task which they were in no way fitted to bear. It was, therefore, that in 1948 the law to inquire into monopolies and restrictive trade practices was passed by the Labour Government. The Board of Trade as an arm of the Government is antagonistic to monopolies in principle. Between 1948 and 1956 many positive steps were taken to encourage competition. Finally in 1957 the Restrictive Trade Practices Court was set up to hear complex and disparate cases of collective price fixing. A Monopolies Commission was also created with powers to investigate and report on suspicious monopolies but with no powers to implement its recommendations. The weaknesses in the existing legislation has prompted the Government recently to introduce a Bill in the House of Commons to make the Restrictive Trade Practices Act an effective instrument against monopolies. It is also proposed to put some teeth in the Monopolies Commission.

Among the Common Market countries Belgian legislation is notably tender towards cartels, which it regards often as convenient for a country so heavily dependent on export. But as far as abuses are concerned, it formally resembles British legislation. In Holland the law provides for the regulation of monopolies and restrictive practices if the "general interest" is adversely affected. France prohibits resale price maintenance and price discrimination as uell as a wide range of cartel practices though the law ignores single-firm monopoly. In Ger-, many, which is regarded as the home of cartels, the cartel law of 1957, at least on the face of it, is one of the firmest legislative. measures in the world against monopoly agreements and other forms of restraint of trade.

Thus, Britain, America and the Six have evolved three different attitudes towards monopoly and restrictive trade practices. The differences in their fundamental attitude on social and economic problems are mainly responsible for the differencesin their approach. In the U.S. it is almost axiomatic that competition and small business are virtuous while big business or combinations of businessmen probably villainous. America's basic procedure is *per se* legislation. Fy laying down that certain kinds of busii ess behaviour are illegal, their occurrence is punished and discouraged.

The British approach is more pragmatic. Traditional social values in Britain are not deeply committed to the concept of competition. This is uhy steps to combat monopolistic practices have not been as forceful as the actions of the Restrictive Practices Court. In the case of the Common Narket countries, their neo-liberalism is neither identical with American competitive ethics nor has a resemblance to British economic philosophy. That business behaviour departs at many points from perfect competition is accepted as a fact of life. The essential and sufficient role of the State has, therefore, been restricted to controlling such areas of the economy as would hinder the economic process from conducting itself in a manner approximating perfect competition.

India is committed to the ideal of establishing a socialistic pattern of society. The economic philosophy and egalitarianism are, therefore, likely to colour our attitude towards the problem of monopoly and industrial concentration. Cbsession aith Utopian ideals may, however, be detrimental to rapid industrialisation and economic prosperity. The question, therefore, is whether large size is to be sacrificed merely because of its association with concentration of economic power. To avoid

a doctrinaire approach in dealing with so-called monopolies, it is necessary to restrict the sccpe of the ptcposed inquiry to the problems of monopoly and industrial concentration uhile leaving the larger issue of concentration of economic power in the economy as a a hole to the care of the Government and the Flanning Commission.

There are two alternative ways: one of preventing monopoly and the other of accepting moncpoly but regulating it. The former suppresses not only disadvantages but also the advantages of moncpoly where such exist. The latter seeks to retain the advantages while mitigating the disadvantages. The growth of moncpolies may be prevented by rendering illegal devices which may be employed to drive competitors out of the market or to keep them out once a monopoly has been established.

Monopolies of certain types may be rendered more vulnerable to actual or threatened competition by curtailing their monopoly powers. While eliminating unfair methods of competition, the combinations of firms a hen they are in the public interest may be permitted. Curbs on unfair competition are, of course, desirable, but experience has shown that this method of control alone does not suffice.

It may become necessary to restore competitive conditions by declaring illegal various forms of moncpolistic combination. This methcd has the merit that it can easily break up temporary forms of moncpoly which raise prices without promoting efficiency. But this method can be seldom effective in dealing with the more permanent forms of moncpoly since it would not be possible to restore automatic ccmpetition easily. It is possible, however, that while accepting the existence of moncpolies an attempt may be made to regulate and prevent any excessive use of moncpoly powers. This may be achieved by publicity and through regulation of prices and profits.

Paucity of data relating to monopolies and industrial concentration in Indian industries makes it extremely difficult to suggest any measures to counter undesirable concentrative tendencies. So far no systematic attempt has been made to study specifically the problem of monopolies in the country. Two recent studies to which a refrcnce was made in the first two articles in this series have been prepared by Dr. Mahnot and Dr. Joshi. Dr. Mahnot's study which is much more comprehensive deals with the " problems of concentration of economic power in India " but it does not take into consideration the effects of managerial integration on industrial concentration. Dr. Joshi's " A study of combination movement in Indian industries " inspite of its title is in fact restricted to a few well established industries the data relating to which are more readily available. Moreover it does not give any idea about the total impact of the combination movement on industrial concentration though it furnishes some information about the share of companies controlled by managing agents in the limited number of industries it covers. As a matter of fact these two studies are not primarily concerned with the monopoly problem but, taken together, they provide sufficient information to draw certain broad and general conclusions.

The impartial and objective inquiry that the Monopolies Commission is expected to conduct so as to bring relevant data out in the open for the first time is therefore welcome because it will help the Government in formulating its policies and attitudes towards so-called monopolies and industrial concentration. Even if the Commission comes to the conclusion—on the basis of the available data it should—that there are no monopolies in the country, the draft law that it would give the country would prevent monopolies from being created in future and in curbing abuses connected with industrial concentration. Broadly speaking, monopolistic practices result in restricting supplies to an extent larger than what is necessary in the general interest and in reducing the satisfaction from a given income produced with a given efficiency. The practical question is whether it is possible to secure the advantages of technical efficiency which the so-called monopolies sometimes provide without incurring corresponding loss in terms of inequitable distribution and waste of productive resources.

While drafting the law for combating the ill-effects of monopoly and industrial concentration the Commission will have to see that genuine and desirable development is not stifled. Industrial concentration and monopoly are undesirable only if they limit production, waste resources, charge higher prices than would be warranted by cost, pay less to labour and farmers and deprive the society of its legitimate share of economic progress and prosperity. Competition in the classical sense is

incompatible with modern technology and means and methods af production. There are certain sectors of the economy in which duplication involves avoidable heavy cost. The Commission, therefore, should adopt a strictly economic approach while dealing with the problem of concentration and monopoly. (*Reproduced, with Wind permission of the editor, from "Financial Express" of April 9, 11 and 13, 1964.*)

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"Free Enterprise was born with man and shall survive as long as man survives."

—A. D. Shroff

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