

Company Law Reform

Counting from the year the government constituted a Law Reform Committee in 1977, it has taken more than a decade and a half for the new Companies Act to get its final shape. The new law will replace the Companies Act of 1913. The text of the revised Act has already been approved by the Cabinet and now the draft is being scrutinised and vetted by the Ministry of Law for presentation before the Parliament, hopefully at its first session of the year 1994.

Company law anywhere is a major piece of legislation. It is even more so for a developing country moving towards open economy and trying to build up a capital market. For viable growth, market economy needs the support of an appropriate legislative framework and legal institutions suited to the needs of the time. It is reassuring to note that both the experts in company law and business interests have contributed to the formulation of the restructured Act.

In the case of a public limited company, savings of a diverse group of investors go into the formation of its capital base in the form of shares. A company is also a legal entity. Majority share holders emerge as the sponsors of the entity and would usually have a say in running its affairs. Small investors who buy shares of the company are really putting their trust in the sponsors to ensure the safety of their contributions and also provide a fair return on their stake in the form of dividends. However, trust alone does not always serve. Protecting the interests of the minority shareholders is thus one of the major objectives of a company law.

Shares and debentures of public limited companies provide the mainstay of a capital market as well. Investment in shares and debentures of a public limited company largely depends on the confidence factor. Before entrusting their funds to a company, the investors would like to make sure about its soundness, past performance, future prospects. The extent to which a company law provisions help the investors gain access to such vital information is of crucial importance to the building of confidence in the capital market.

It is said that the new company law would provide a greater leeway to the private companies in the management of their affairs. The government's regulatory powers in respect of private companies, it is said, would be scaled down. It is possible that these measures have been proposed to promote direct investment and encourage increased openness in business dealings. However, the law should also not relax accounting requirements for the companies. The law must not lower standards for transparency.

The government should also actively pursue a policy to encourage private companies to turn public in the interest of promoting the capital market. Usually, appropriate fiscal incentives provide a powerful motivation for conversion of private companies into public limited concerns. Likewise, the government should continue to encourage public limited companies to enlist their shares in the stock exchange. At present, the earnings of publicly traded companies enjoy a five per cent tax advantage. The fiscal incentive could be enhanced to accelerate the growth of capital market in the country.

The new company law is said to have taken special care to protect the interest of the minority shareholders by providing for elaborate disclosure requirements for public limited companies as also in other ways such as setting time limits for finalization of accounts and distribution of dividends. However, the efficacy of a law also depends on how effectively its provisions are implemented. The institutional framework for administering company laws needs to be urgently upgraded and strengthened. The existing facilities are widely believed to be archaic and totally inadequate.

The Bliss and Curse of New Year Dawn

The New Year's Day is increasingly becoming quite an orgy of drunkenness and violence. And all kinds of abandon and excess, describable and otherwise. The occasion is meaningful only when used to take stock of one's performance in a calendar year and to tell one's own self what one proposes to achieve in the year to follow. The abandon robs the day of its possible significance.

People all over the world, specially residents of cities and towns, need occasions to get out of the straitjacket of their everyday chores. The harder the pressure on them, the higher and sharper is their desire for things and activity out of the ordinary. In the western countries there are festivities galore round the year — but they are permeated with undertones, so very hackneyed and uninviting and uninspiring. The New Year violence occur even in Italy and France and the Philippines — although they are far from starved of beautiful ritual the year round. The New Year problem — alas, what could bring bliss has slid into such a state of nuisance — is a phenomenon in most western countries.

However, the pragmatic British have found a way out. There were close to a lakh people at New Year's dawn on the streets around Trafalgar Square, singing and dancing. But police had banned taking alcohol and crackers and firearms to the area. And the big turn-out ended with practically no casualties of any kind. This connection of the gunpowder to the New Year celebration — and not to Guy Fawkes Day — is very interesting and saddening too. A subcontinental would recall the fiery excesses of the Kalipuja or Diwali and the Shab-e-Barat. Pyrotechnics is one of man's more spectacular arts of making the mind go beside with wonderment and pure joy — but left to the individual's idea of pranks and enjoyment, it does push things beyond peace and security and in fact culture and civilisation.

The Western excesses on the occasion of New Year have their reasons, and those societies would find ways to cope with all that is uncongenial there. What is getting worrisome here is the midnight exuberance that visits our young people from the affluent classes whose one problem in life is that they have no problem and whose only programme is to ape the Western life-style. For a relief from this premonition one can look to how the celebration of the Bengali New Year is evolving. The difference can be accounted for very simply. The former is consumer society based development while the latter is, so far, based on culture and social struggle.

A Law for Fair Trade Practices Fizzles Out

G OVERNMENT'S initial foray into the area of legislation relating to monopolies, restrictive and unfair trade practices apparently ended in a fiasco. Not that the government at any stage spelled out its policy perspectives. All the same, there were enough of newspaper reports to tell us which way the wind was blowing.

The news media first reported that a new law to curb monopolies, restrictive and unfair trade practices has been drafted. Under the proposed new piece of legislation, any business house that produces, supplies or imports more than 30 per cent of any item would be treated as a monopolistic undertaking. If any group of enterprises would establish reciprocal links to capture 50 per cent of the market share of a product, the conglomerate could be labelled a monopolistic entity. Any business undertaking answering the legal description of a monopoly would be debarred from further expansion.

The new law, the press reported, seeks to impose restrictions on joint ventures between foreign and local partners. Limitations would be placed on procurement of raw materials and other products from the foreign partner's firm abroad or its nominees. Export and marketing of the products of joint venture also would come under certain restrictions. Besides, the law could intervene where the terms of the joint venture

agreement would be deemed as unreasonably disadvantageous to the domestic investor.

As for restrictive and unfair trade practices, media reports said that marketing strategies like pricing a product below its cost or fixing prices in a manner that would eliminate competitors, would be prohibited under the new law. Practices such as limiting, restricting or withholding output or supply of goods or making the supply of a product contingent on purchase of other items from the supplier, would attract the penal provisions of the law. Reduction sales would not be permissible for more than 21 days in a year or ten days at a stretch. In the area of procurement, an enterprise would be denied the right to accept or reject a tender without assigning any reason. Restrictions would also appear in certain other aspects of conducting business like terms of loan agreements.

Reports appearing in the newspapers said that a wide range of business undertakings, including assembling and manufacturing, would come within the purview of the law. These would include mining; exploration, generation, distribution, marketing in the energy and power sector; manufacture of machinery; formulation and sale of chemical products; banks and insurance companies. As for exemptions from the law, it was said that the legislation would not apply to the EPZs. Other exclusions would include undertakings owned

and controlled by the government barring the public sector entities which are engaged in similar activities as are open to the private sector as well. Also exempted would be undertakings producing goods exclusively for export and those whose products are wholly based on indigenous technology. Understandably, the list of exclusions or for that matter, inclusions of business activities in the law, as appearing in the media reports, is not complete.

Although the media reports

law concentrated on its restrictive measures only, some of them truly draconian. The mitigating aspects of the proposed law did not appear in print, not in as much details anyway. So, all that the government heard were shouts of protest. In the event, the government moved quickly to roll back its programme. As one newspaper put it, the proposed law has been consigned to the cold storage.

Till very recently, large segments of the manufacturing sector in the country had been

changing the scenario. The government is getting out of the business of running industries. It is also loosening its monopolistic hold on services and other income generating economic activities. Inevitably, it is also losing its potential for influencing prices and supplies of products through the operation of its own enterprises. The government might have felt impelled at this juncture to put up a regulatory framework so that the public monopoly is not replaced by a private one. Considered in this perspective, such a regulatory framework can well be seen as an integral part of the process of reforms.

Fair competition is the life-blood of an open economy. Adequate regulatory safeguards may become necessary to ensure fairness and competitiveness even after privatisation is complete. Besides, most of the state-owned enterprises did not really operate in an environment of effective competition. To replicate the situation would not be a desired outcome of privatisation. The smaller firms in the private sector should be enabled to operate freely and share the market. A regulatory framework to control monopolies and prevent unfair trade practices could thus be seen as a safeguard measure, designed to create an environment for effective competition and transparency.

It has been argued that a law on monopolies and unfair trade practices would discourage foreign investment. This may not be all that true. This country has formulated one of most liberal set of laws for attracting foreign direct investment. Yet, most other countries in the region who are courting and attracting more foreign investment, already have framed laws on monopolies and unfair trade practices. They also have institutional arrangements in place for enforcing the laws.

At the same time, a law on monopolies and unfair trade practices must not set unrealistic norms. Such a law, if it ever sees the light of the day, should take care not to stifle initiative and efficiency. Market shares should be defined in a way that leaves room for growth for the more efficient enterprise. The aim should be to promote fairness in competition, not block expansion *per se*.

A monopoly need not necessarily be predatory in nature. It could even promote the growth of smaller enterprises through subcontracting and other production sharing arrangements. Similarly, such an entity could promote research, open up new avenues for productive activity, not only in its own line of manufactured areas but in other allied areas as well. It would not be fair to define market share in terms of a pre-determined number in all cases. What is more important is to set up a rational code of conduct for business practices so that the benefits of reforms may reach all the strata of society, including the consumers.

ALONG MY WAY

S B Chaudhuri

did not give a full account of the provisions of the draft law, the little that appeared in print was enough to alarm some prominent business circles. To go by the newspaper reports, hardly anybody in trade and industry spoke kindly of the notion of framing a law which also aimed at safeguarding interests of small business and new entrepreneurs. Although details are not available, the proposed law presumably sought to protect the interests of the consumers as well. As it is, consumers in the country do not find an opportunity to raise their voice in such matters.

At the same time, there is no use glossing over the fact that the published account of the

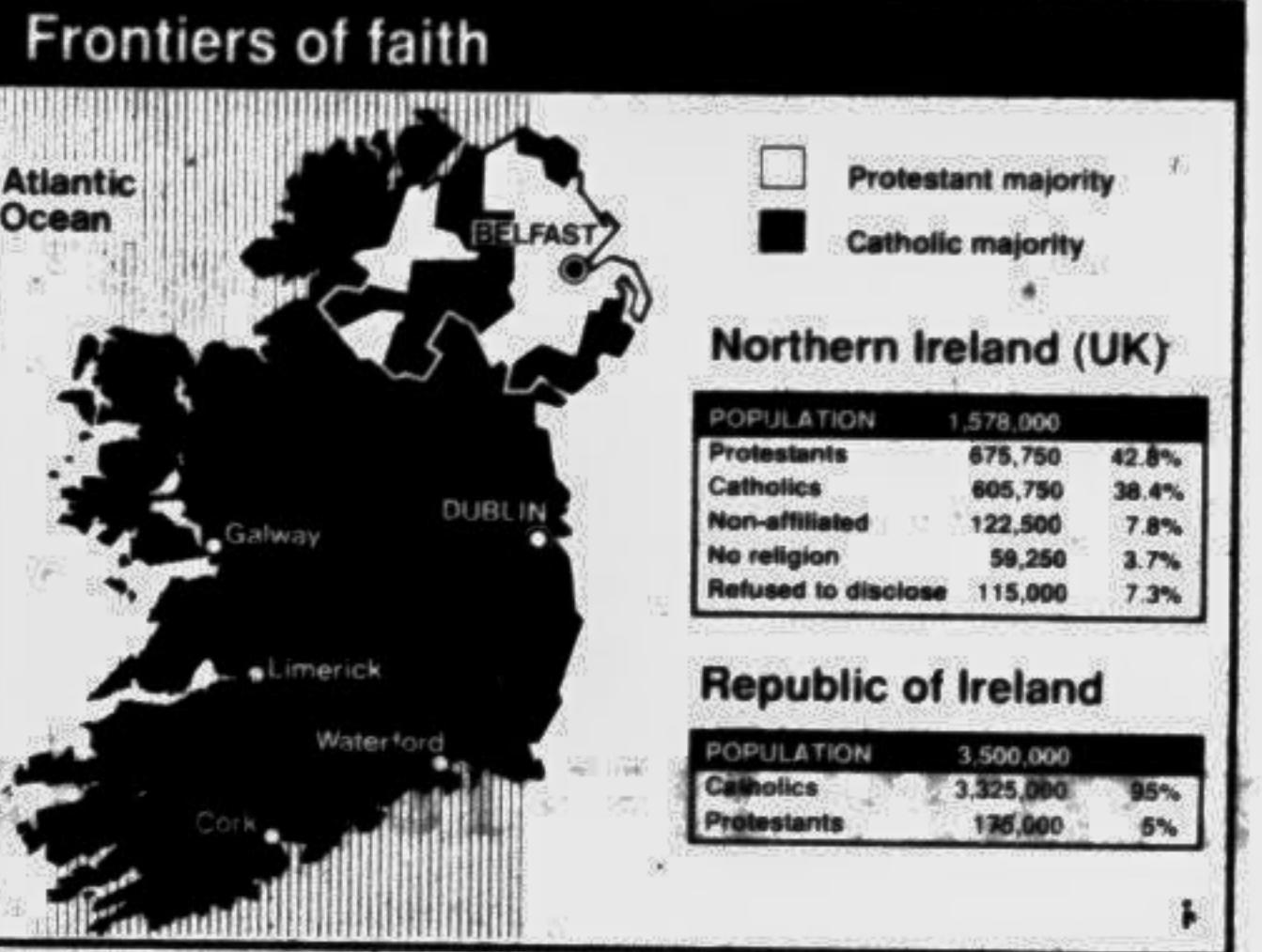
under state control. The government had been holding a monopoly in some of the sectors. It still does, at least in a few of the industries, energy and power, mineral resources, telecommunications to a large extent, as well as in certain other specified areas. If not for anything else, at least for political reasons, governments are not expected to indulge in unfair trade practices. The service rendered by the state monopolies are usually of a poor standard. However, governments do try to look after the interests of the consumers, especially in the matter of pricing — even going the inefficient way of subsidising the product.

Privatisation process is

A Slippery Slope to Peace in Northern Ireland?

Derek Ingram writes from London

After the loss of 3,000 lives in 20 years, the British government has been talking to the IRA — for many months — it is now revealed. To explain their repeated denials it says it has not been negotiating and will not do so until the IRA renounces violence. This may be slippery language but it could bring peace at last and prove justified.



Mugabe of Zimbabwe. The list is long.

In most cases the time span was fairly short before pragmatism took over and the British first clandestinely and then

quite openly began to talk to these "terrorists." In a few years, the language changed. History was rewritten and as events began to dissolve in the mist of time the terrorists be-

came "freedom fighters" who had achieved "the liberation".

Most, but not all, political terrorism occurs through frustration that all avenues to address a genuine grievance legitimately have been closed by the government of the day. The Irish problem has a much longer history than most. English repression in Ireland goes back centuries.

The English and the Irish had already been fighting each other on and off for two centuries when Richard II went over to restore the colony in 1394.

In modern times bitterness at the behaviour of the English goes back to the great famine of 1845-47. Failure of the potato crop left the peasantry without food. The country was decimated and in a great tide of emigration to the United States took place. In a few years the

population fell dramatically to 1.5 million.

With good reason the English are traditionally seen as the oppressors in a classic colonial situation, but, as always, the situation is not as simple as that. In Ireland, the religious component is now much more important than the colonial one and in any case most of Ireland is an independent republic.

In this post-colonial world there is no way the mainland British want to hold on to Northern Ireland, even though a few might not favour what they would see as a dismemberment of the United Kingdom. People would like to see an end there to British responsibility and would welcome the coming of a united Ireland. The solution has long been easy enough to see: attaining it quite a different matter.

The greater problem now lies with the so-called loyalists who are at least as big a danger to peace as the IRA have ever been. Some of their members hide behind supposed fervent patriotism for the Union Jack and the monarchy in much the same way as the far-right British National Party on the mainland.

As Protestants, they fear they will be swallowed up in a Roman Catholic state. They are

misguided, yet the reasons for their position also go back deep into history and many violent encounters with the Catholic majority.

The British have lived for so long with this problem on their doorstep that for long periods they tend to ignore it. Ireland is not much of a topic in political discussion in London clubs and drawing rooms until bombs sporadically stir it up again. Even then the reaction is usually a shrug of the shoulders and a dismissive remark that "the Irish are at it again."

Lately, however, the sheer horror of some of the outrages in Northern Ireland has had its impact and feeling is strong that somehow it must be ended. British troops have now been in Northern Ireland for 20 years at enormous cost to the British economy. In this long last phase of British rule 3,000 people have died. The British want out.

In any conflict, clandestine contact between enemies takes place. Ireland is no exception. If talking to the IRA, while vehemently denying he was doing so, is the only way to end centuries of bloodshed it is difficult to argue that John Major was wrong to take that course.

In British politics today, there is probably no greater prize for a prime minister than peace in Ireland. Even his more illustrious predecessors failed one by one. If he succeeds Major will have turned his poor record at Ten Downing Street into a glowing, even formidable one. — GEMINI NEWS

DEREK INGRAM is Editor of Gemini News Service.

OPINION

PROKRICH vs BCS (Admn)

No one has been denying the need for power sharing. The debate is about procedure. The government in power is an elected one. Why isn't democratic process being followed by PROKRICH-BCS? Why torment the public? Specially the patients of hospitals where BMA doctors serve? If the Opposition can be blamed for going overboard with too many hartals, etc, instead of 'cornering' the government during question hour in Parliament, or in similar programmes on TV, Radio and even newspapers, why can't the PROKRICH-BCS be taken to task for indulgences that violate the very Service Rules on which their job/status is based?

As for the stranglehold of BCS (Admn), even the government has desired to implement a few (four?) steps immediately that would have 'curbed' some of the so-called 'unlimited' powers of BCS (Admn). The ultimate goal of making BCS (Admn) a constructive force from a supposedly dictatorial power will occur eventually irrespective of what the PROKRICH-BCS does/does not do. It needs the support of everyone in running the country — from police, armed forces to civil service and students/parents.

And if PROKRICH-BCS were truly sincere, they would have highlighted one of the BCS (Admn)'s greatest instruments of torture, namely President Ershad's 'black law' of 13 Sept, 1989 cancelling such safety nets in the Govt Discipline and Conduct Rules like the 190 days (working) for proving a charge sheet against an employee, otherwise those bringing the charge are liable to face procedure against them by the

higher authorities! In other words, this was a deterrent. Any vindictive administrative official would think ten times (or 100!) before issuing any chargesheet against anyone. No, one can be even suspended (on half pay) till the end of one's service life. Why? Because the black law has terminated the earlier time bar when a suspension stood automatically cancelled if 30 working days passed without any charge being made. So now any non-sensical charge can be brought against a person since there is no 'need to prove' it and no penalty is involved for such a foul deed.

Is PROKRICH-BCS doing anything about it, anymore? Why should they? Being birds of the same feather they are simply using the black law to further their own aims. Why should they reveal any knowledge of such a secret weapon? Yes, M S Haq (Letter, The Daily Star, Dec 27) is right the 26 BCS cadre, being after power (?) should share it with BCS (Admn). At last the cat is out of the bag, and a spade is being called a spade. Thank you, Mr Haq.

Incidentally, perhaps Mr Haq would not have found it necessary to raise any question if The Daily Star had published my views without using the editor's scissors. But perhaps we, ordinary readers, have to be happy at whatever space we are allotted. Any newspaper has to adhere to its policy. And those of us who get a chance to express our views (not afforded to all the time) are genuinely grateful. Happy new year to one and all!

Azad Rahman
Lalmatta, Dhaka

Green Card Lottery

Sir, Following a recent advertisement in your (also other) newspaper, I sent, on 30 November, this fax message:

To the Editor,
The Daily Star,
Dhaka

Mr David L Amkrat, L.A. California, 90071
Tel: 213 368-4675. For the kind attention of:

Mr David L Amkrat,
Attorneys-at-Law

Proposed the advertisement

in The Daily Star newspapers of

Dhaka, Bangladesh on Nov 29, 1993 pertaining to the "Green Card Lottery" program for the year 1994 wherein the name,

address, tel and fax details of your esteemed organisation were mentioned. I am very keen to avail this opportunity; unfortunately finding no way to confirm the credentials of the aforesaid ad, I shall remain ever grateful if your benign self will very kindly re-confirm by fax the veracity of the same.

Secondly, the aforesaid lottery program stated to be known as DV-1 will be announced in 1994 May, by chance not be in conformity with the details as per your request form! To remedy such

agreement would be deemed as unreasonably disadvantageous to the domestic investor.

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