Amalgamations till 1970's had been effected in the same industry's firms through the institution of managing agency system. Centralisation of capital had become possible in India, on account of the emergence of institution of Joint Stock Companies. But to manage large units which could be floated with the amassed capital, special type of skills and innovations and techniques of management was needed. Whereas British Agency Houses were first to popularise the system through the firm called Carr, Tagore and Company is considered to be the first managing agency system in India. \(^1\) We watch over the years that managing agency system is turning out to be a very potential instrument of centralisation of capital and control. The picture of control of various Companies as depicted by N.K.Sen Gupta in his study on changing pattern of corporate management in India tells us, that by 1918, companies like Andrew Yule were the managers of 37 companies and there are very few Indian Business Houses which had mastered the art of managing the companies through the agency system. \(^2\)
1. Need For Study

It is interesting to observe that the managing agency system started in the banking industry and insurance business, but was not very popular in these financial institutions, later on. Similarly, the managing agency systems started in the West were also not very successful. It is the unique Indian situation which made this system as a potential instrument of increasing concentration of economic power in the hands of a few industrial houses.

In fact, N.K. Sen Gupta quotes from Times of India, (Bombay 27th March, 1885) an editorial comment which shows the popularity of managing agency system and its darker side in the Indian context. The editorial observed "no class of capitalist in the world ever invented such an extravagant system as the present plan."

The clever operators using this instrument charged very high commissions as their management fees while acting as management agents for the companies of others, mostly in the same product line. However, there are examples where conglomerate control of various corporations in different product lines by the same business house has also been observed in the late Nineteenth century and the earlier Twentieth Century. Commissions
charged for managing were normally tied to the turnover of the business managed rather than the profits of the business. Sometimes, these had no relation whatsoever with the performance indicators of managed companies' business. The absentee promoters of the companies were rarely able to exercise any control/scrutiny over the activity of the managing agents and the latter were able to exploit the assets of the promoters to create personal wealth for themselves. In this process, the funds from the managed companies got diverted from the promoters' companies to the agent's companies. Ultimately, many of the managed firms turned sick and were short of funds for rehabilitation and modernisation exercises, which the agents maintained were vital for the survival of the managed firm in business. Once that happened the same very agents came up with package of financial aid and through these packages they acquired financial interest largely in the risk capital of the company which they were managing earlier. By perpetuating these practices they were able to disclose the original promoters of the company and become the controllers of the company of which they were mere managers, initially. The management agency system was thus a potential instrument of acquisition of companies. We hear of jute barons, textile barons and barons of many other industries in the recent times also.
It may be noted here that in the initial phase of managing agency system and joint stock companies, the stock exchanges were not very vibrant and the general public subscribed very little to the equity capital of the companies that were floated by the traders. In fact most of the companies were floated by a few traders and hardly called for public subscription to the issue of share capital. The operation of acquiring control of larger and larger number of companies went on without a murmur and the world corporate raiders which had gained currency in the Western society was rarely heard in India where the activity of amalgamation under ages of managing agency was in fact faster than some Western companies also. However, the scene underwent change after the enactment of MRTPA, 1969 and abolition of managing agency system in 1970. Hence, amalgamations acquired the open market operations characteristics, only in the beginning of the Seventies. The amalgamations effected in 1970's and later need to be studied in detail to understand the present day wave of industrial combines in India.

2.2. Review of Literature

Opinion against managing system has started building up in its initial phase only, and it was the sheer economic and political clout of the British and Indian agency houses which was able to retain this
system of taking over companies through mal-practices in management. In fact, during the British regime we did not have any antitrust laws, though occasionally some legislations were enacted to put a check on the misdeeds of the corporate raiders. Even in the West, Clayton Act of 1914 had been enacted in USA which tried to put some checks on the business combinations if these were deemed to be, against the national interest of the US economy.

In the Twentieth Century mergers are treated to be a common fact of life and legitimate strategy of growth in business. Even the Monopolies Enquiry Commission of India observed that "merger and amalgamation which often have been the way to monopoly, have been comparatively few in this country, but there is every prospect of that becoming more frequent in future. Horizontal merger and some amalgamations may often be an essential mode to improve efficiency and to achieve economies of scale, while vertical mergers and amalgamations may also help to cut costs. It will, in our opinion, be wrong to look over merger and amalgamations as per se harmful to public interest." In fact, merger is sought to be perfected into a tool of scientific management of corporate growth.

We have the works of writers like Simon Richardson Reid who tried to devise empirical models based on econometrics to ensure better merger strategies. In
discussing the mosaic of motives Reid observed that there are some homogeneous facets of mergers, whereas there are others which are heterogeneous. With the operation of stock exchanges in a free capitalist market, it is very easy for some companies to acquire control of some companies by just buying out shares in the stock exchange. The acquisition of various types through stock exchange operations have been reported in the literature on economic growth in the West.

One of the classical examples of perfecting acquisition as strategy of growth has been discussed in the work of Salter and Weinhold. According to these authors, risk of entitrust attack is to be restricted in order to ensure diversification through acquisition. In fact, they are aware that acquisitions are just a means of building corporate empires and there are hardly any rationale other than bringing more and more corporate wealth in control of same management. Potential anti-competitive cross subsidisation of the various companies acquired by the same business house is viewed as the best way of amalgamation.

But even in America large diversified companies pursue acquisitions which represent the principle to make established productive use of acquired assets. Both operating efficiencies and risk of antitrust attack grow correspondingly. In this context, Salter and
Weinhold observed "on the other hand, as the operational, marketing and managerial linkages among the divisions the diversified companies become more apparent, it is predictable that both antitrust authorities and the courts will grow increasingly skeptical of arguments that the benefits of corporate diversification do not give rise to anti-competitive behaviour." 

The process of mergers, amalgamation and takeovers concern a large numbers of works, like, the one by Richard G. Young on planning mergers and acquisitions and another by Blank Winherg can be quoted as examples of perfecting this strategy of growth in the American corporate world.

There are numerous research articles on the theme which appeared in the American journals like Harvard Business Review and Quarterly Journal of Economics. In this context, we may refer to the studies of LSHA win Arthur S. Dewing, G.I. Weston and J. Kitching. All these articles weigh the criteria of success of acquisitions and mergers and measures performance of merged companies. Gains of mergers to the share-holders are discussed in Mendelkar's study, Frank's study and in the above quoted works of Simon Richardson Reid.
There are even differences of opinion on the fact whether merger, acquisition and takeovers should be treated as the amalgamations schemes alike. However, the opinion of various official reports in India around the fact that all of them should be treated as exercises of amalgamations by acquiring more financial stake by one corporate entity in the other. In this context, the Monopolies Enquiry Commission observed that attempts of taking over should be dealt within the same manner as mergers or amalgamations.

Coming to the Indian context, initially the managing agency system and various amalgamations were viewed favourably. Recently, it has been recognized that in industrially under-developed economies, like India, where concentration of economic power with a few business houses can be a barrier to the entry of new firms, can reduce the competition in the industry. Right since the planning exercise started in 1952, it was observed that big business families, Parsees, Marwaris, Gujaratis and Chhetiars, have acquired a vicious stanglehold over the Indian industry and this stanglehold should be broken. The credit of un-covering various inter-connected companies goes to R.K. Hazari who first expounded the concept of business house and empirically proved through his studies, especially on
the house of Birlas that what appeared to be independent corporate entities were in fact functioning under the umbrella of one business house. This created a concern among the planners who were guided by Fabian Socialism and viewed this nexus of a large companies as an unfavourable factor, hindering industrial growth in our country. Hazari Committee report identified 20 big business houses. Hazari's house was a complex consisting of inner-circle companies and outer circle companies. Most of these companies had been amalgamating into the complex through dubious methods adopted by the house and one of the potential means of attaining control over such large number of companies by the same business family was managing agency system. A committee was set up under the Chairmanship of I.G. Patel to consider the desirability of continuing with the practices of managing agency system. Meanwhile, as reported by R.N. Bansal the amalgamation move in India was not very strong till the Seventies. The highest number of amalgamations reported under section 394 of Companies Act of 1956, was 22, in 1959-60 till the fateful year of 1970 when on 3rd April of the year, managing agency system was abolished. It is in Seventies that the amalgamation of the Western type became popular on the Indian Corporate scene and a number of works on mergers, amalgamations and takeovers started appearing.12
H.K. Saharay came up with his pioneering work on mergers, amalgamations and takeovers. Rostow had coined the world corporate raider and Saharay visualised that time had come in India to develop a manageable "grammar of activities of the corporate world in India where mergers and amalgamations were becoming a matter of every day occurrence." So Saharay penned down his treaty largely on corporate law, the procedure and the valuation of shares in amalgamation bids. He examined the reasons, corporate framework advantages, disadvantages and the strategy to resist the activities of the corporate raiders. He also expanded his theory on the accounting for valuation of shares. In the same year, i.e., 1969, R.N. Bansal, the then Registrar of Companies came up with his work on amalgamations, mergers and schemes of arrangements under the Companies Act. He explained in detail the provisions of sections 391 to 396 of the Companies Act, 1956 and those of the Monopolies Restrictive Trade Practices Act contained in the section 23 read with the section 20. The relevant provisions of Income Tax Act applicable to amalgamation bids were also outlined. Bansal observed that "Income tax relief announced in 1967, and Nationalisation of Banks have brought about a number of proposals for amalgamations of big companies. The objects of amalgamation, usually, would be to secure economical working and to eliminate competition and control the
market in a particular trade. There are also inherent objections of amalgamations, viz., exploitation of the monopolies, and possibility of jeopardising the interests of investors and creditors by unscrupulous promoters."14

Later in the Seventies, R. Santhnam updated Sahara’s guide to amalgamation of companies with special reference to tax planning. He gives a detailed list of various laws governing the amalgamations till 1978. By this time the Sachar Committee Report has also come up. This report suggested that since amalgamations and reconstructions had become a reality of life and powers of regulating, these should be given even to the district courts in the case of small companies. In the case of the companies registered under MRTP Act, no change was being suggested in the existing procedure.

In his study on the growth of large business Rakesh Khurana has made a study on the impact of the MRTPA, 1969 till the year 1977. It may be mentioned here that Industrial Licensing Policy Enquiry Commission Report and the MCI report both had shown concern about the growing control of a few big business houses over large number of companies and it is in this context that MRTPA 1969 was enacted. But Khurana observes that MRTPA
and Monopolies Restrictive Trade Practices Commission set up under the Act has been unsuccessful in checking the tide of amalgamations in the Indian Industry. Under section 23(2) till August, 1977 "32 applications had been received, 6 were withdrawn, twenty one were approved, three were rejected, 2 cases were pending and 4 cases were referred to MRTPC. However, no case was referred to MRTPC after 1973. The three applications rejected by the Government were in 1970-71. None of the applications under this section was rejected by the Government after 1971."15 The cases referred to MRTPC were related to the houses of Karamchand Thapar and Bros, Larson and Toubro, Mac Neill and Berry Ltd., Madhya Pradesh Industries Limited and Bengal and Inventors Limited, and Sarabhai Chemical Pvt. Ltd. Out of these 4 were approved, one was rejected and in one case, the company concerned withdrew the application. All these cases were reported in detail in the Vol. No.5 of the Report of the MRTPC and Orders There Upon of the Central Government under Sections 21, 22 and 23 of MRTPA, 1969.

V.S. Kaveri in a recent contribution to the prospects of companies' merger in India has reported a few case studies of the Indian Companies. Kaveri feels that amalgamations are revival measures for industrial
sickness, ensure expansion and diversification of business, entry into new market, and acquisition of desired resources, patents and technology. He also makes some suggestions about cutting down on the time taken in granting approval to the mergers, by the state agencies. 16

The latest addition to the literature on Company amalgamation appeared when non-resident Indians started corporate raids on the established Indian companies. Brojendra Nath Banerjee has authored a book named "Company Take Over". The subject matter of the book takes into account the entire economic scene of the country and highlights the role of public financial institutions through which most investible funds are diverted into the industry. It had become common knowledge during the feud between Swraj Paul and Nandas, that public financial institutions, started mostly in 1960's have turned out to be the biggest shareholders on the Indian Private Sector Companies. Brojendra Nath Banerjee observes that in India the company take over scenerio is quite different on account of express or quasi control of the State.

"In the West, it happened all the time, as yet it has not become very popular in India because of India's inherent weakness in capitalism. This is in fact, feudalism and capitalism. In all practical purposes,
India's public limited companies are in most walks of life in the country. This is a feudal principle. There have been other exercises which had studied the role of public financial institutions in regulating the business behaviour. The Institute of Management Development has come up with a monograph on Convertibility clause and the Role of Nominee Directors. Stipulation and Exercise of Convertible Option by Financial Institutions, has also been reported by U.K. Srivastava and N.M. Oza, in a book of the same title. It is felt by the authors that any abuse of private companies powers and privileges by the promoters group in the exercises like amalgamations can be prevented by the nominee directors. That the nominee directors did intervene successfully in foiling the corporate raids of Swraj Paul and DCM and Escorts has profusely been discussed in the business periodicals like Business India, Update, India Today and Business Week. The need for code of conduct like City Code of Conduct for takeovers and mergers was felt by Indian Chambers of Commerce like FIOCI (Federation of Indian Chambers of Commerce and Industry) and ASSOCHAM (Associated Chamber of Commerce and Industry). In fact, most of private sector giants in India are joint sector companies with Government and Public financial institutions being largest shareholders and if the financial institutions
of India are seriously committed to the goal of checking the concentration of economic power through amalgamation of various types, it is not difficult for them to do so. In fact, during the recent tussle between Manu Chhabria/Vijay Malaya and S.P. Acharya over the control of Shaw Wallace of Calcutta, the nominee directors had temporarily taken over the control of the Company themselves.

The Income Tax concessions and the encouragement to takeovers/amalgamations to the Indian Private sector was given by the Government with the ostensible aim of helping the merger of sick companies in the private sector with the healthy ones. But our private business tycoons refused to oblige the Government and are only interested in taking over blue chip companies. More than 1 lac sick companies in the country are further proliferating and it is the Government which has come to the rescue of these companies to save the employees of these companies from unemployment. The recent example of taking over of textile companies proves the point that amalgamation in India is not an exercise which is being taken up for rehabilitating sick companies but for expanding business empires. The stranglehold of twenty big industrial houses on the Indian private sector is being strengthened with the passage of time and now they are also making inroads into the profit making
concerns of the State sector. In an Article in Economic Times Bombay, dated May 2, 1986 U.S. Navani has argued that even the Americans have realised that continuous merger wave in that country has also gone too far and "the time has come to apply a break." If this is true in America, it is truer for the developing countries where commanding heights of the economy were supposed to be occupied by the public sector and not by the private sector.\textsuperscript{19} Though Prof. Nath Banerjee has made an attempt at unveiling the criminal tendencies in the Indian Corporate Sector with regard to amalgamations, but a serious academic exercise has not been taken up by any of the official committees or individual researchers on this issue. It is in this context that the present study on amalgamations in Indian Private Sector is being undertaken.

2.3. Scope of the Study

The so-called "homogeneous" and "heterogeneous" factors affecting amalgamation are not static. They change with the social, political, economic and legal environment within which the business corporations function. In a country like India where the constitution explicitly makes it clear that the State will endeavour to check concentration of economic power, this strategy of growth of business is not always very desirable.
That is why, there have been plethora of legal enactments which govern the functioning of private corporations in India. The present endeavour is that of scanning the existing legal environments of amalgamations in private sector as the review of literature suggests. The study also aims at studying the impact of amalgamations on development of conglomerates in Indian private sector.

MRTPC has not been very effective in curbing the growth of large business in India. The concept of the joint sector on account of which there are deemed public sector companies in private sector with State being a major equity holder, has given the state a right to appoint nominee directors on the Boards of Private companies. Whenever the companies proposing amalgamations had made applications to the Company Law Board or MRTPC for approval under the relevant sections, the reasons given in the applications were not stated precisely. There has been a tendency to conceal the real motives of mergers/amalgamations.

Now that a system like managing agency system is not available in Indian business world the companies are trying to effect amalgamations of various sorts, sometimes, making short work of the legal restrictions imposed on them. The community feelings which kept many companies under the control of joint family systems of the big business houses are also weakening with the
passage of time. There is a danger of division taking place in the business empires with the disintegration of the joint family system. Mere social bonds are not reliable to keep the writ of the umbrella company or the flag company of a business house running over a large number of professedly independent corporate entities. Express financial ties have to be forged in order to retain control over a large number of corporations by the same group. The inter-locking of directorship among various group companies, inter-corporate investments of circular and chain type are being used to keep the business house together. When it is no longer possible, takeover bids have been reported over other house companies and the companies of the same house have been acquired by the flag company as a division or subsidiary company. In India, however, the pre-capitalist influences are not totally irrelevant in the business context. The institution of marriage between the members of two business families has also become the cause of amalgamation of various corporate entities.

The present study commences with a review of amalgamation scene world over and then tries to outline the framework of amalgamations in Indian economy. It may be stated here that in the present economic context of a mixed economy, with most of the banks and term
lending institutions being in the state sector, state is a direct party to the amalgamation moves whenever these take place. But the intending amalgamating parties have influenced political and economic powers to bypass the existing legislation. This was partially made possible on account of the latest trend of appointing private sector captains on the boards of management for public financial institutions. The institution of nominee directors which could result in direct state overseers of the motives of the amalgamations is also not being very effective because the nominees are appointed by none else but by the captains of the industry themselves when they are sitting on the Boards of public financial institutions. But given the will, the planners in our country could make the private sector sub-serve the economic goals started in our constitution. To what extent this is being done is the precise question to which we are addressing ourselves. In order to explore this in the context of those amalgamations which have certain undesirable effects, the present critical study is being taken up. This is necessitated by the fact that the instruments available with the state till date have not been able to promote only the positive aspects of the amalgamations in the national interest. Amalgamations detrimental to the national interest have also taken place.
Constraints of MRTPA 1969 and Companies Act 1956, the role of Convertible clause enforces by financial institutions and appointment of nominee directors on the board of private companies is studied in detail. Broadly speaking, the problem of the study can be stated as "to study the context, causes and consequences of company amalgamations in India with a view to check the undesirable consequences of these for the national economy."

This broad problem has been further broken down into number of pinpointed objectives which also reflect the phases of the analytical exercise.

2.4. Objectives of the Study

The objectives of the study can be spelled down as:

1. To scan the corporate legal environment in India with special reference to amalgamation of companies;

2. To report the reasons which have promoted amalgamation bids in the Indian Private Sector;

3. To analyse the consequences of amalgamation bids, especially with reference to the growth of concentration in economic power;

4. On the basis of above studies, to suggest ways and means to create a healthy corporate climate in India, in which un-called for amalgamations do not take place.
It may be stated at the very outset of this study that the focus of the present exercise is a concern for checking the concentration of economic power with a few big business houses. We shall focus our attention all through the study on the largest twenty big business houses and multinationals, in our country. Apart from being a micro-level study, the present study has macro-comnotations. We do not highlight the valuation of shares or the accounting for amalgamations so much as the impact of amalgamations on the industrial growth and the over all economic growth.

We have relied largely on the records of MRTPC in our study and it is obvious that the companies do not come under MRTPA 1969 have been left out from the purview of the present study.

The study is an exploratory bid to find out the prospects and problems associated with amalgamation exercise in Indian industry. It describes certain cases in which amalgamation has taken place and tries to enquire into apparent and real causes of such re-organisation by the big business. The study also describes in detail the cases pertaining to about 10 big business houses, the miscellaneous orders passed by the Central Government under section 23(2) have been studied separately but the minute details have not been reported in these cases as in the 10 cases mentioned above.
2.5. **Limitations of the Study**

1. Corporate raiders have a pirate like character. The exercises are taken up under the strict veil of secrecy. It is very difficult to find out the real motives of amalgamations. Primary probe based on interviews with actors in amalgamation dramas is not possible because no individual researcher is allowed an access to these busybees of Indian industry.

2. As far as the company reports and other published documents of the private companies are concerned, there is lot of window dressing. Every business activity is keen to expose only its benevolent face and hides its darker side from the common citizen and the researcher alike. The cases in the study have been built on the documents of the companies and their applications to MRTPC and the findings and orders of MRTPC as reported in company News and Notes.

3. Inferences have been drawn on this rather sketchy evidence, because primary investigations into these operations are merely impossible in the Indian Corporate World.

2.6. **Methodology of Research**

The methodology of research which we are going to follow can be characterised as case method of research.
The case method of research is an overgrowth of historical method of research which tries to construct the entire life of a social entity in entirety right since its birth. It studies the on-going processes and the entities' evolution as a system comprising of a number of components. The focus is on the interactions of various components and the aggregate behaviour which results from this interaction. In amalgamation bids, there are already existing sub-systems which have their own histories. They ostensibly are independent systems but are nevertheless open to influence of each other. Later they forge the connections with each other which sometimes subsume their independent entities and at other the units are maintained as seemingly self-contained sub-systems but the interaction between two sub-systems increases. If we want to treat inner and outer circles of a business house in India as a single complex system, most of the amalgamation parties considered here were in fact sub-systems of the same complex system.

Systems approach tells us that no social systems are close. They are interacting with the wider political, economical and social systems and are simultaneously a part of these. At the systems engineering stage, we define the boundaries of these
systems and in the present context we are defining two or more independent sub-systems prior to amalgamation in juridical sense as these are registered under the Companies Act, 1956. This is an unsatisfactory separation between two systems which actually may be the sub-systems of the same large business system. They may be firms in the same industry or companies of the same house. The reconstruction or amalgamation exercise is an exercise which redefines the already existing/missing relationship between or among these components. To illustrate our viewpoint, we may take the example of TATA house. The TATA house has a single holding company or trust which oversees operation of all the companies in TATA group. But when TISCO applies for merger with ITC, this in fact is an exercise in redefining the relationship between these two companies of the same group. It may bring them closer, ensure more coordination in economic management of these companies, than their earlier phases of existence as separate companies of the TATA complex.

It may be pointed out, however, that the evaluation of the interaction between two amalgamating companies is not devoid of its historical context. Normally, even in takeover bids, shares are acquired in the company sought to be taken over by an outside
party over a period of time. There are a number of methods employed at different points of time to acquire these shares. For example, the hold of the public financial institutions over the private sector corporate giants has been strengthened over a period of time. Initially, the state may invest in some private sector companies by buying out industrial securities in the public issues. Later, the institutions may be forced to have shares in this corporation, on account of default in repayment of the loans which the term lending institutions had extended to these companies. The exercise of convertibility option also has made State sponsored institutions into equity holders of private sector companies. At the time of fluctuations in the stock exchanges, the term lending institutions have entered the market to stabilise share prices and this way also they are burdened with some equity shares.

The point which we are trying to underscore in earlier paragraph is that the capital structure and the organisation structure of business corporations undergoes a continuous change. Without understanding this process of historical evolution, we will not be able to see through the relationship as they exist presently among various corporate entities or the relationship which are sought to be forged afresh through amalgamation bids. In such circumstances, we are left with limited option but to study the problem at hand using the case method of research which, of course, has its own limitations.
The present study is an in-depth analysis of four typical cases of amalgamations. The first case deals with the acquisition/merger moves launched by the largest company in the group of TATAs, the second largest business house of India. The second case pertains to the takeover and re-organisation moves of a subsidiary of a multinational. In fact, the study covers the realignment among the various subsidiaries of the same parent company Unilever - an Anglo-Dutch conglomerate. This case surveys how the subsidiaries of multinationals established their stranglehold on the large number of units producing consumer goods and later were able to claim exemptions from various restrictions imposed on the functioning of multinationals, by claiming that one of them was conducting business in exclusively hi-tech domain. The third case is a typical study of two takeovers accomplished by Non-Resident Indians. The case reports the takeover of two established companies like Shaw Wallace and Ashok Leyland by the Non-Resident groups of Chhabrias and Hindujas respectively. The fourth case study takes into account an aborted bid of takeover of two corporate giants by a Non-Resident Indian.

In keeping with the objectives of the study all these cases aim at probing into the role played by various state sector institutions in aiding the empire building exercises of big business both native and multinational. The cases have been analysed to bring out the institutional framework for amalgamations and the impact of the amalgamatic exercises on the concentration of economic power in the private sector.
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