In the preceding chapter, the development of industries under the various five-year plans was examined. It was seen that the pattern of industrialisation was directly affected by the governmental policy framework. In the present chapter, an attempt must therefore be made to elaborate the need and process of industrial controls in general, and regulation and control of industries through the instrument of licensing in particular.

Control is an inherent implication of planning. The Oxford dictionary gives "to co ord" and "to hold in check" as the main renderings of "control", while "holding in check" mainly takes the form of putting certain limits upon various lines of production, the "coord" takes the form of setting goals and targets at which industry should aim and of planning devices and steps towards these goals.

The Constitution of India, in its preamble states that it aims at securing for all its citizens, "justice - social, economic, political, liberty of thought, expression, belief and worship; equality of status and of opportunity;"
and to promote among them all, fraternity, assuring the dignity
of the individual and the unity of the nation. . . ."³

In order to realise these objectives it is essential
to accelerate the rate of economic foundation for increasing
opportunities for gainful employment and improving living
standards and working conditions of the masses. It is equally
important to reduce disparities in income and wealth which
exist to-day, to prevent private monopolies and the concen-
tration of economic power in the hands of a small number of
individuals. In order to curb the malpractices taking place
in the country the State intervenes ⁴ and imposes controls
whatever and whenever necessary. The controls mainly aim to
achieve the goals of:

1) maintenance of high and stable employment;
2) economic viability for the nation as a whole;
3) provision for an average standard of living; and
4) economic equality and the provision of fair
to all.

Control of the Private Sector: In the mixed economy State and
the individual entrepreneurs co-exist in the field of production

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p. 165.
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The industries in the private sector with a dominance of huge capital have been a stronghold of vested interests. With immense financial resources, they have the capacity to exploit, grow richer, accumulate inequalities and warn about concentration of economic power. But because of its significant contribution to the economy, the private sector is an important task to achieve. In order to minimise some undesirable influences of private entrepreneurs, the State exercises control and regulates their activities. In the context of India, Nehru once clarified "there can be no unrestricted private enterprise and the State has to intervene on a big scale; with our limited resources we can not allow all people to go in all directions. There has to be planning, whether for the public or for the private sector. The private sector should be given a great deal of room, but broadly speaking, it must fit in with the Plan." This takes the need of exercising control on giving direction to industry and other economic activities by the State in clear terms. The State exercises control on investment to ensure the economic and rational utilisation of scarce productive resources, to avoid duplication and wasteful competition among industries, and also to ensure centralisation or decentralisation of industry. It implies control of banking.

5. Venkatasubaih: Indian Economy since Independence, p. 3.
and credit institutions and of production in capital goods industries. In order to stabilise or restrict output in certain industries in the interests of planned development or in order to maximise output in certain industries in the consumers interest, the state may impose controls on production. In this process, the authority may fix quota of output for different entrepreneurs, allocate for them raw materials and skilled labour, prescribe the machinery determine the stock to be held, fix prices and wages, regulate the sale of goods in different markets, ensure quality and standardisation, compulsory exchange of information and results of research etc. The government may expand or restrict consumption by imposing controls. Consumption is often restricted to step up savings. It is also meant to stabilise prices of certain goods by controlling their demand, and to ensure the adjustment of demand to the supply of scarce goods. It may be effected through variation in excise and import duties, and other fiscal and monetary measures. In case these measures prove sufficient, rationing is often resorted to. The exchange control methods are employed to protect the economy from fluctuations and disturbances originating outside the country, and to check the flight of domestic capital to other countries and to replenish the foreign currency assets of the Central banks.

7. Consumption control may be of two types viz., expansive and restrictive. The later plays a more significant role in a planned economy.
In India, the Government, regulates the economic system and acts for various controls. The I.D.A.R. of 1951, with its subsequent amendments, has been an important instrument to regulate industry. To prevent concentration of economic power and to restrict the growth of monopolies, the Monopolies and Restrictive Trade Practices Act 1969 came into force w.e.f. 1st Jan. 1970. Moreover, the state has also resorted to taxation measures (an effective instrument of indirect control).

In this way, profits are heavily taxed and additional taxes are levied on income, wealth and expenditure in order to reduce inequalities. Prices are also controlled to prevent consumers for being exploited. Other fiscal and monetary controls are being enforced to fix debt equity ratio, convertibility and lease finances. The Control of Capital Issues Act was passed to regulate the supply of capital and loans; The foreign trade is controlled by licensing of imports and exports. Thus a policy based on multi-point checks and balances covers profits, wages, prices etc. and the private sector is required to operate within a framework so that exploitation, profit-making, concentration of economic power and creation of vested interests and inequalities may be minimised.

3. "Control may be imposed in two ways: directly or indirectly by direct control is i.e. control by administrative acts such as prohibitions or commands. Under Indirect Control, the planning authority endeavour to influence the various economic choices through the adoption of indirect measures, e.g. taxation, subsidies etc."
It is argued that for the smooth and efficient functioning of the private sector it should be provided certain incentive as well as the case. Detailed administrative controls, however, put considerable strain on the administrative machinery, and lead to delayed implementation in a large number of cases. Further, the controls do not always serve the objectives for which they are designed. The system also results in private enterprises becoming increasingly dependent on government and ceasing to carry out its entrepreneurial functions, including market studies. Another serious shortcoming which characterises the activities of the private sector is inadequate cost consciousness and little appreciation of the essential need to reduce such costs.

4.2 Regulation and Industrialisation through Licensing:

Industrial control through licensing is exercised for the protection of social interest in the promotion of economic prosperity. Industrial licensing is not only the result of socio-economic forces but is also an administrative instrument of economic development and industrial planning. After independence the government has been trying to raise the living standards of Indian people through industrialisation and it has since been one of the major factors influencing the
economic policy of the Government. In the Industrial Policy Resolution 1948, government set the economic objectives which the entrepreneurs were proposed to pursue in the industrial field. The resolution emphasised the importance of securing a continuous increase in production and its equitable distribution. It was also emphasized that the State would play a progressively active role in the development of industries. All these deliberations to declare the First Industrial Policy in 1948 led to pass the Industries (Development and Regulation) Act 1951 to give it a legal backing for implementation. Subsequently the Industrial Policy Resolution 1956 was brought, which among other things, stipulated that industrial undertakings in private sector were to fit into the framework of the socio-economic policies of the state and will be subject to control and regulations through the instrument of licensing under I.D.R.A. 1951 and other relevant legislations.

Industrial licensing so devised aims to organise the efficient exploitation of the resources of the country, increase production and step up the tempo of economic activity in general and industrial development in particular to the maximum possible extent. The broad objectives of industrial licensing could, therefore, be defined as rapid economic development accompanied by continuous progress towards equality and social justice and the establishment of a social and economic democracy.
The industries (Development & Regulations) Act 1951 was originally designed as a purely controlling measure and therefore at the Bill stage in 1949 it was titled as Industries (Development & Control) Bill. Later on the model of United Kingdom's "Industrial Organisation and Development Act 1947", the provisions for Central Advisory Council of Industries and Development Councils were introduced in the Bill and its nomenclature was changed in the form of Industries (Development and Regulation) Act 1951. Since its inception in 1951, the I.D.R.A. has been an official instrument of industrial licensing for the achievement of planned industrialisation and channelising investment. Though the basic policy of the Act has been the promotion and development of industries, it has also led to take an increasing role in the regulation of the economic system. The Act's ample powers permit the government to register and licence industrial concerns, to investigate their operations and order changes, to assume management and control over them, and to control supply, distribution and price of their products.

10. Ibid, ss. 18A-18F.
11. Ibid, ss. 15-18
12. Ibid, ss. 18 G.
The Industries (Development and Regulation) Act is supposed to be a piece of legislation which is flexible and adaptable to policy considerations changing with India's economic development. It was, therefore, felt to have a flexible scheme of licensing, whereby it would be open for the government to start any new industrial undertaking, if it is so desired in the national interest and at the same time to provide full scope to private enterprise to come and develop industry in accordance with a centrally regulated policy.\(^\text{13}\) It was also envisaged that the Act would shape and promote industrial development by changing those industries it controls and by refusing licences to proposed projects within the industries placed under its control.

What is important under the Act is the deliberate organisation of a governmental unit whose concern is now the well being in a broad public sense of vital and national industries. However the scheme of licensing under the Act regulates not all but certain industries (the Scheduled Industries) by requiring the registration of existing industrial undertakings\(^\text{15}\) and by licensing of new industrial undertakings.\(^\text{16}\) The procedural aspect and conditions for obtaining an industrial licence are dealt with in chapter V. The following

\(^{13}\) Constituent Assembly of India (Legislature) Debates, 6th April 1949, Part II, Vol. 4, Col. 2390 (Remarks of S.P. Mukherjee).
\(^{14}\) Industries (Development & Regulation) Act 1951 (see Appendix III for Scheduled Industries) Section 3(1)
\(^{15}\) Ibid, Section 10(i);
\(^{16}\) Ibid, Section 11 (1);
paragraphs spell out the historical process of licensing in some leading countries like the U.K., U.S.A. and in India.

4.2. **Origin of Licensing**

The origin of licensing can be traced back to the early days of *monarchy* in *England*. Even from the early times the political organisations have always exercised some sort of control over the economic and social life of their subjects. In monarchical countries, the grant of license was an instrument of patronage conferred on favourites. But with the increase of knowledge of state craft, the instruments of regulation and associated techniques have been greatly perfected. Licensing is under the process of judicialisation and is to be regarded as judicial or quasi-judicial function. Dimensions of licensing have been changing, and today, it is no more an instrument of patronage, favouritism or discrimination. In a country where law is respected, no administrative action can escape judicial control and make mock respect of the law. It is the function of judiciary to see that the administrators keep themselves within the legislative bounds and that the exercise of their vested powers is bonafide.

Occasional denunciations have been pronounced against the use of licensing, nick-naming the system as "Sanctum Sanctorium". But today, we have come to have a socio-economic state which is interested in general welfare of its
people and takes recourse to licensing. Whatever is the pedigree, licensing to-day stands on its own feet in administrative law, and it has become "sui generis".

There is enough evidence to show that licensing can be successfully harmonised and reconciled with the accepted democratic tenets and values of social democracy of modern times. A proper consideration of the process of judicialisation of licensing procedures, the effect of judicial control, the procedural safeguards granted to the applicants and recipients of licences show that many unfounded criticisms have made their way in the literature. The foundation is not always connotative of the true picture of the super-structure that has been built upon it. In the areas of licensing, monarchical foundation stands lost in the democratic super-structure marked with judicialised and socialised processes developed thereupon. The social picture of licensing does not reflect the monarchical form. What licensing is doing today is the process of social engineering and balancing of social claims which are in conflict as social interest of individual economic life and security. The task of licensing process therefore, can not be anything but to weigh the conflicting "social claims in scales of social values with the end to strike a just and equitable balance which may minimise friction and be most conducive to the public. 17

17. Upadhyay, J.J. The Place and Function of Licensing in Indian Administrative Process, pp. 36-37.
In the following paragraphs an attempt has been made to trace the historical perspective of licensing controls in various countries and in India.

**Licensing Control in England:** Licensing as a measure of control over persons and property is not a modern administrative innovation. All that is new about licensing to-day is its proliferated use and as regards its name and scope, the phenomenon itself is very old. Its roots go deep in the antiquarian past. An early retrospect of English legal history would reveal that in England there were two types of businesses one was franchise or pre-rogative business and the other was common law business, and was controlled by the Crown and could be carried on only under the Royal grant made by the King in exercise of a Royal Prerogative. Even under feudal system licence was to be obtained from the Crown to set up a mill.\(^{18}\)

As early as in the days of *Magna Carta*\(^ {19}\) in 12 or 13th Century, the Crown in exercise of Royal Prerogative granted charters and patents conferring monopolies and trade guilds, corporations and in some cases on individual persons. Efforts were made since that time to chalk the Royal Prerogative of the Crown to grant monopolies.

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Common Law business was open to all, but in course of time, it also came under licensing control because under the doctrine of common law, it ceases to be a 'Juris privati' if it is affected by a public interest. This was said by Lord J. Hale more than two hundred years ago in his treatise "De mortibus Maris".

An important Act (Stat. 5 & 6 Edw. 6c 25) in the history of licensing in England, was passed in 1552. This act gave the licensing justices their first licensing duties and empowered two justices to grant licences in respect of liquor sale and common alcohols. The present licensing law in force in England is under Licensing Act 1953 which provides for licensing control over intoxicating liquor. The function of licensing was entrusted to the justices of peace and continues to be under their jurisdiction even today.

Licensing in general serves various purposes. It is used to control admission to professions, or the right to carry on particular businesses and trades, to protect public health, to maintain standards of morality, to regulate industry, to consume social resources, to marshal scarce materials and control currency and to supervise certain building operations.

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20. Munn, V. iod.
Licensing Power in America:

The English distinction between franchise and common law trades made for purposes of licensing are found in American legal system too. The growing use of licensing to regulate industry has led to enactments of a number of statutes. Schemes of licensing are designed in such enactments and are administered by relevant agencies.

A large number of industrial areas have been brought under licensing power. Industrial activities are required to move within the orbit of freedom granted by the licensing authorities which are vested with large discretionary powers. The channel of the stream of licensing is legislation, which though preventive, is regulatory in nature and contains minimum postulates of socio-economic justice in the U.S. administration.

Licensing in India: Licensing in Indian Administrative process is the most outstanding phenomenon popularly characterised as 'Licence Permit Raj' arising from confrontation with the complex problems of socio-economic justice. The fundamental norm of licensing power is the framework of socialistic - democratic legislation which provides for regulation of economy

and promotion of planned industrialisation. It owes to the failures of laissez faire State which gave way to welfare State to regulate various aspects of economic life. Licensing is a regulatory device which is used by the state to regulate and develop the economic conditions of social life in the interests of economic security and prosperity of society. Confronted with the complex problems of social justice the State has resorted to a large scale of socio-economic planning by exercising control of private business.

Licensing in India is used to cut a golden mean between two extremes provided by individualistic and communistic systems. Unrestrained economy is the slogan of liberalism and nationalisation is the manifesto of theoretical socialism. Licensing adopts a via media of the two by retaining absolute freedom of trade and business in the interests of public good. The history of licensing control in India is not very old and it may be traced to the days of economic transition of 18th and 19th centuries when licensing measures were employed to protect the interest in public safety. Through the Drug and Liquor Regulation XXXIV of 1793 licensing was employed to control manufacture and trade of all kind of spirituous liquors and intoxicating drugs with a view to prevent crimes being committed on account of and for want of proper restrictions on such liquors and drugs. Another important

22. Ibid., p. 2.
It is argued that the system of licensing with all its administrative paraphernalia under the control orders of war time could not work effectively, and failed to achieve the economic objectives for which it was designed. The failure was due to the fact that licensing policies were not well conceived, well planned, well thought of and well-timed. Another lacunae was that the licensing measures were adopted on ad hoc basis, as and when the need arose. It is in the fitness of things that in a complex society where numerous conflicting interests are in need of adjustment and where the public welfare needs to be preserved against anti-social and disruptive trends, there is an impelling need for regulation through the use of licensing. In a developing social order where protection of life, health and safety of individuals is involved, the judicial sanction remains inadequate or ineffective because it is remedial or punitive in nature and is taken when the crime has been committed and the society has suffered the loss. In such serious problems where protection of social interests is at stake, licensing is used as the most successful preventive device. Licensing is thus a pragmatic device, regulatory in nature and socialistic in effect because it implies restrictions upon the economic freedom of one individual for protecting the economic freedom of another who belongs to economically weaker part of the society.
It is an instrument of administration of economic justice as licences can be refused to capitalists and granted to other eligible entrepreneurs. Hence, in the present times, enjoyment of economic liberty is possible within the framework of socio-economic life of the community and the rights of the individuals have ceased to be of absolute value.

4.4 LICENSING UNDER IV. PLAN:

The review of various five year plans would show that policy objectives have been changing in the five year plan. The first five year plan laid considerable stress on the role of Industries (Development and Regulation) Act 1951 in planning of private industries. The provision of the Act regarding registration of existing industrial undertakings and licensing of new units were given emphasis.

In the Second Five Year Plan, there was a shift in the emphasis with special reference to "the socialistic pattern of society". It was laid down that "the public and semi-public character of the resources drawn upon had to be recognised. The private sector had to play its part within the framework."
of the comprehensive plan accepted by the community. The resources available for investment were thrown open through the social process. Private enterprise, free pricing, private management are all devices to give them way to serve for truly social results."  

The Plan further emphasised the "need for evolving a better definition of effective steps required to be taken by licensing within the periods prescribed in advance."

The Third Five Year Plan emphasised the need for realising the goals of socialism into socio-economic reality through the process of equitable distribution of economic power and in this connection it was mentioned that ".... In licensing new industrial units and sanctioning the expansion of existing units there must be considerable vigilance in permitting the growth of large existing businesses and in the great measure possible the entry of new firms should be facilitated and small and medium enterprises and cooperative organisations encouraged...."

When the draft outline of the Third Five Year Plan was placed before the Parliament for consideration on 22nd August 1959, the then Prime Minister Jawaharlal Nehru referred to the oft-repeated questions about

who had benefitted from additional income that was generated in the country as a result of development efforts. He reiterated that it was desirable to have the matter enquired into by an expert committee, and consequently the Planning Commission in October 1960 appointed a Committee under the Chairmanship of Professor P.C. Mahalanobis (known as the Committee on Distribution of Income and Levels of Living).

One of the terms of reference of this Committee was "to ascertain the extent to which the operation of the economic system has resulted in the concentration of wealth and means of production." The Committee's report was submitted in February 1964. One of the observations made by the Committee was that "the working of the planned economy has contributed to the growth of big companies in Indian Industry." The Committee further observed that "despite all the counterevailing measures taken ..... concentration of economic power in the private sector is more than what could be justified as necessary on functional grounds."

On the findings of this Committee, the Government appointed Monopolies Inquiry Commission in April 1964, 

27. Ibid.
29. Ibid.
...","it was of the view that "the planned control, which the government decided to accept for the country as a...[achieve industrialisation on the right lines has proved to be a potent factor for further concentration.""] with regard to licensing, the Commission further observes that "the system of controls in the shape of industrial licensing, however, necessary from other points of view, has restricted the freedom of entry into industry and so added to undue concentration."

In view of these studies and their observations on licensing, the Planning Commission appointed Professor K.R. Muzaffar as a consultant in the Planning Commission to conduct studies as to revising the operation of licensing over the last two plan periods, including the orderly phasing of licensing with reference to targets of capacity, suggesting where and in what direction modifications may be made in the

31. Ibid, p. 5.
33. Ibid, p. 3.
licensing policy. Prof. Hazari submitted the interim report of it in December 1966. One of the observations was that "... licensing ... has been one of the successful instruments of the policy during the second plan period to create the urge to industrialisation." Another conclusion of the Committee was that large industrial houses enjoyed a higher ratio in, licensing applications approved as compared to others and that their share in investment applied for and approved has tended to rise over the period.

The discussion on Prof. Hazari's report in Parliament, necessitated the appointment of Industrial Licensing Policy Inquiry Committee on 2nd July 1967 to inquire into the working of industrial licensing system. The Committee submitted its report in July 1969 in four volumes. The observations of the Committee may be summed up as follows:

"Our review of licensing has clearly revealed that one of the reasons why licensing is ineffective in most cases is that there is no properly worked out overall framework or plan of development on the basis of which individual decisions on licensing can be taken by the concerned authorities. If a

34. Hazari, R.K. Interim Report to Planning Commission, on Industrial Planning and Licensing Policy Dec. 1966,
35. Ibid, p. 17
licensing decision has to be a rational one, taking into account the overall requirements of the industry and the economy, it has necessarily to be based upon a previously worked out detailed plan of development of the particular industry. This has to be a plan which fits in with the overall scheme of economic development contemplated for the country and the expected inter-industry relationship in the projected period. It has also to take note of the available technologies and in view of these, decide what would be the optimum one in our conditions and for how many projects, what the total number of projects should be, and how they should be phased out, what the locational distribution of the projects should be and which of the locations should come earlier and which later ... Detailed planning would be necessary for all the industries where industrial licensing is to be used as a positive instrument for coordinated and planned development. Without detailed planning, decisions relating to applications for licences, whether in terms of size, technical process or location would continue to be ad hoc and purely discretionary in character."  

Another observation of the Committee was that licensing should continue to prevent economic concentration and a Monopolies Commission should be set up with sufficient powers and adequate organisation to deal with the problems of concentration of economic

power as well as product monopolies. The I.T.E. Commission was thus created in 1970. The picture of the five year plans also reveals that licensing in a changing economy cannot remain static and that it must be dynamic and change according to the changing economic conditions of the society. The following chapter will deal with the licensing administration in India and the functions of the concerned licensing authorities. It will also examine the legislative framework of licensing under I.D.L.A. and its performance through Industrial licensing approvals since 1970.