Chapter II

Historical background and Industrial polices of India

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In this chapter, the researcher attempts to make brief study about the constitutional and institutional background for the competition law and policy in India. The researcher discusses the obligations under the constitution of India to the states to direct its policy towards securing and promoting the welfare of the people of India through the Directive principle of state policy and also discuss the concept of Social Justice being addressed in the changing economic scenario. The researcher further attempts to discuss about industrial policies in India, the command and control rule prevailed and its consequence on the economy. The researcher also discusses how far industrial polices facilitating the introduction of Competition Law of India. The researcher tries to give an economic situation of India till date and their role in shaping the competition policy.

Introduction

After years of following a strategy of state planned economic development, involving myriad controls and licenses, India embarked upon the road to a market driven economy. Amongst wide ranging reforms undertaken since then, was the enactment of the Competition Act, 2002 which represented a landmark in the reforms process. The Act, modern competition legislation, seeks to prohibit anticompetitive activities by enterprises in the market place. The decades of government controls have resulted in a very weak competition culture in the economy. Besides, there are several areas of the economy which are still subject to a variety of government controls; in these sectors a truly competitive market is still to evolve. Thus, while competition law seeks to prevent the market from being undermined by enterprises, competition policy seeks to remove the anticompetitive effects of the government and regulatory policies. For a long time, the national planning process has focused on the allocation of government resources and on the implementation of government projects. However, in a market driven economy, the bulk of economic activity would arise from private entrepreneurship. It is, therefore, gratifying that the Planning Commission has sought to recognize the role of market forces in the planning process and has therefore set up a Working Group on Competition Policy for the Eleventh
Five Year Plan. This represents a welcome development in the planning process. This Working Group has been broadly constituted and represents a wide range of expertise and experience. It has benefited greatly from the concerted efforts put in by its members. The present Competition Law as it exists today has developed over a period of time. It is of prime importance to study the relevant background setting which led to the enforcement of the Act. The Indian Economy over five decades post independence was subject to several regulations and controls. It was an era of License Raj with no free trade model of economy present. The pre – independence period was a period of economic stagnation for the Indian economy. The establishment of British Rule in India left the Indian economy crippled. At the time of independence in 1947, India was a backward economy. Owing to poor technological and scientific capabilities, industrialization was limited and lopsided. In short, poverty was rampant and unemployment was widespread, both making for low general standard of living. India enacted its first anti-competitive legislation in 1969, known as the Monopolies and Restrictive Trade Practices Act (MRTP Act). The Monopolies and Restrictive Trade Practices Act came into existence during the 1970’s era and was designed to serve the needs of the prevailing socio economic objectives of that time. Chapter IV of the Indian Constitution which came into existence on January 26th 1950 lists the Directive Principles of State Policy. It is noteworthy to mention that Article 38 and Article 39 of the constitution have been the steering factors towards the enactment of the MRTP Act. Article 38 and Article 39 lay down that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice –

Social, economic and political, shall inform all the institutions of national life, and the state shall in particular, direct its policy towards securing

- that the ownership and control of the material resources of the community are so distributed as to best subserve the common good; and
- that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

However with the passage of time the Government realized that the MRTP Act was not an effective mechanism to deal with issues and matters relating to protection of Competition in the new business environment. The Liberalization era in India began in the
year 1991 with the government opening its doors towards an age of planned industrialized growth.

**Economic scene on the eve of the independence**

The dismal economy inherited from the British rulers in 1947 was characterized by the poor technological and scientific capabilities, limited and lopsided industrialization. Agricultural sector exhibited features of feudal and semifedual institutions, resulting in low productivity. Means of transport and communications were underdeveloped, educational and health facilities inadequate and social security measures virtually non-existent. In brief poverty was rampant and unemployment widespread both making for low general standard of living. In short, the country was backward in every respect. Independence was gained at the cost of partition of the country which cut across its economic and cultural unity and the growth of centuries of common life to which all the communities had contributed. Whatever might have been the political justification of partition; its economic consequences were disastrous. Regions which had functioned for centuries on a complementary basis were suddenly cut asunder. Economically, India and Pakistan had each point of advantages and disadvantages. In general, it may be said that while India was much stronger at that time in industrial production and mineral resources, Pakistan had some advantages in agricultural resources, especially foodstuffs. In fact, the complementary, character of their economies was much deeper than is indicated by this generalization. There was market deterioration in the economic situation following the partition of the country. The situation was aggravated by the large scale disturbances which burst out suddenly, more especially in the Punjab and the North-West Frontier Province. Apart from the serious economic consequences arising out of these disturbances, the human misery that it had caused could not be measured in the terms of the money. The immediate effect of this tragic development was to divert the attention of the government almost completely from normal activities. The food situation caused anxiety and conditions became particularly worse in respect of prices which showed an unchecked upward tendency. These were the socio-economic setting under which the founding fathers had to chart out a programme of nation-building. In their collective wisdom, they adopted the
middle course of a mixed economy, assigning a pivotal role to public sector and economic planning. This new approach to economic and social development was set within a framework of parliamentary democracy guaranteeing universal franchise. The economic history of post-independence India is a mixed experience of achievements and failures.

**Development of Economic strategy in India**

The Indian National Congress, under the inspiration of Jawaharlal Nehru, set-up the National Planning Committee (NCP) towards the end of 1938. The Committee produced a series of studies on different subjects concerned with economic development. The Committee laid down that the state should own or control all key industries and services, mineral resources and railways, waterways, shipping and other public utilities, in fact, all those large-scale industries which were likely to become Monopolistic in character. Just after the attainment of the Independence the then the Prime Minister Jawarlal Nehru set up the planning Commission in 1950 to assess the country’s needs of material capital and human resources and to formulate economic plans for their more balanced and effective utilization. The Directive Principles of the Indian Constitution are an expression of the will of the people of India for rapid economic growth. Accordingly, the Government of India adopted planning as a means of fostering economic development. The planning Commission set out the following four long term objectives of planning:

i. To increase production to the maximum possible extent so as to achieve higher level of national and per capita income;

ii. To achieve full employment;

iii. To reduce inequalities of income and wealth; and

iv. To set up a socialist society based on equality and justice and absence of exploitation.

**Development of Idea of Socialism in India**

The theoretical basis of socialism was provided by Karl Marx and Fredericks Engles who believed that to end exploitation from the world, it was necessary to abolish private ownership of the means of production. Marx and Engles considered private property to be

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23 The First Five year plan commenced in 1950-51 and it was followed by series of Five-Year Plans.
the cause of all social and economic evils. Following the ideas of Marx and Engles economic planning based on total nationalization was adopted as the means to foster economic growth in Soviet Russia. Karl Marx believed that the capitalist economy allowed a few powerful industrialist and traders to exploit the vast majority of workers. Marx advocated socialization of all means of production and wanted the state to direct the economy. For the first time in the history of mankind, the Soviet Government made a concerted effort to end poverty, hunger and underemployment according to a carefully prepared economic plan. The success of the plan s in the initial years and the rate at which Soviet Russia industrialized itself rapidly since 1928 was a great inspiration to many underdeveloped countries. The tremendous progress achieved by the Soviet Union had an impact on the capitalist countries of the world also. The Great Depression of 1929-34 destroyed people's faith in the operation of price-mechanism as an automatic self-adjusting mechanism. Although the capitalists government s did not lose faith in private property and individual freedom, yet they were convinced that the government could play an effective role in reducing and eventually removing poverty, misery, unemployment and ignorance.

When India became independent, the Indian people were steeped in mass poverty, unemployment and underemployment. India had an illiterate and untrained labour force, static agriculture with semi feudal relations and a comparatively less developed industrial sector, and woefully inadequate infrastructure in the form of poor transportation and communication, energy and power, banking and finance etc. thus, India s problems required a big national effort and therefore India adopted “planning as a lever of social and economic change”. Jawaharlal Nehru, the architect of Indian Planning, greatly admired the achievements of Soviet Planning and so borrowed the concept of socialism from the Russians but, he also regarded the democratic values of the capitalist society as indispensable for the full growth of a just society. Thus, in this endeavour to take advantage of the virtues of the two extreme societies which were themselves also undergoing a transformation, Nehru s vision of the new India was described as ‘democratic socialism’. Socialism and democracy are the means for the creation of society in India in which all have equal opportunities to education, health care, employment etc; and exploitation of
one class by another is abolished. To foster free and full growth of human personality is the supreme goal of democratic socialism. However the India adopted the middle approach of Mixed Economy. In a mixed economy, the government has a positive role to play in the field of economic activity. Some industries may be completely state–owned, and some may be jointly owned and managed by the state and private enterprise. The concept of mixed economy accepts the possibility of the co-existence of private enterprise side by side with public enterprise. But then, private enterprise should reconcile the element of self–interest with the element of social interest and in certain cases, the survival of private enterprise may be made conditioned to its serving the community at large. Further, private enterprise may not be allowed to figure prominently in every sector of the economy. There may even be certain sectors which may be regarded as of strategic and national importance to which private enterprise may not be allowed at all.

Pre–Industrial policies of India;

The Pre–independence Industrialization in India on modern lines was chiefly the result of private enterprise, particularly by British Nationals. The period 1850-55 witnessed the establishment of the first cotton mill, first jute mill, and the first railway line in India. By the end of the 19th century, mining activities had picked up and the foundation of iron and steel industry was laid. In the beginning, the British nationals pioneered industrial enterprise in India. They had resource and experience of running industrial at home. In due course the Indians also joined the ranks of industrialists. The growing dominance of indigenous businessmen led to the decline in the share of foreign capital and enterprise. After achieving Independence in 1947, India pursued a policy of restricting imports, promoting exports and adopting import substitution along with pegged exchange rate regime. Foreign investment was discouraged, because the prevailing mood in independent India was one of preserving and consolidating freedom and not promoting once again any sort of foreign domination, political or economic.
Indian economy since Independence

India was a typical backward economy at the time of the independence in 1947. The arrested economic development of India during the 19th century and the first half of the 20th century was more a consequence of her political dependency to Britain rather than of her own cultural heritage. The Britain rule resulted into colonization and systematic exploitation of the Indian economy. In their efforts to convert India into a market for their manufactures, the British systematically destroyed India’s own manufacturing industry. Before the Industrial Revolution, India accounted for a quarter of world’s industrial output. Liberal imports of machine-made goods led to the decline of domestic handicrafts, causing unemployment and misery for the native craftsmen. India was gradually transformed into an agrarian society with emphasis on cash crops and plantations. The results of this colonial policy were suicidal for the native Indians. Economy remained stagnant, masses suffered appalling poverty, and famines occurred frequently. It was for sure that during British period, no effort was made to foster the development of capital goods industries.

Legal Framework for Industrialization

The post-independence economic development of India is unique in several ways. In an innovative effort, the founding fathers adopted the middle course of a mixed economy, assigning a pivotal role to public sector in the Industrialization of India. This new approach to socio-economic growth of the country, which had suffered centuries of subjugation, was set within a framework of federal polity based on parliamentary democracy guaranteeing universal franchise. The constitution of India24 contains provisions under which necessary legislation have been enacted to provide legislative framework for implementation of the industrial policy of the Government.

From Regulations and Controls to Economic Liberalization

India’s development pattern during 1950-80 was characterized by strong centralized planning. Government ownership of basic and the key industries, excessive regulation and

24 See Article 38 and art 39(b) and (c), and also Article 301 to art 307.
control of private enterprise, trade protectionism through tariff and non-tariff barriers and a cautious and selective approach towards foreign capital. It was a quota, permit and license regime guided and controlled by the bureaucracy trained in colonial style. This so called inward-looking, import substitution strategy of colonial development began to be widely questioned with the beginning of 1980s. Policy makers started realizing the drawbacks of this strategy which inhibited competitiveness and efficiency and produced a much lower rate of growth than expected. The last decade of the 20th century was momentous in the economic history of India as it witnessed a successful transition of India from a controlled, inward-looking and slow–growing economy to a liberalized and open economy that has now found a place amongst the fastest growing economies in the world. Responding to the macroeconomic crisis of late 1980s25, a programme of liberalization26, privatization, and globalization was initiated in July 1991. This programme encompassed wide –ranging reforms measures in the areas of industry, public finances, banking and insurance, foreign trade and exchange rate management. The purpose of these economic reforms was twofold; (a) to restore macroeconomic stability on both domestic and external fronts and (b) to place the economy on a higher growth path through enhanced levels of investment, and improvements in productivity, efficiency and competitiveness. Indian economy took a new direction when the government announced its new industrial policy in the parliament in July 199127. Since then, the economic reforms process has encompassed all areas of economy. The wide – ranging reforms, initiated and implemented since 1991 have induced greater efficiency and competitiveness in all spheres of economic activity. It can safely be said that India is no longer the country of scarcities and shortages. Food grain stocks are plentiful, foreign exchange reserves are overflowing, Inflation rate is moderate and under control, exports are buoyant, exchange rate is flexible and the country is well integrated with the world economy. All these features of new India are amply reflected in a relatively high rate of economic growth and a significant reduction in poverty ratio over the last decade and a half. India’s gradual and cautious approach to economic reforms has proved 25 India used the decade of the 1980s for the hesitant experimentation in domestic deregulation, retaining its highly protectionist trade policy regime and keeping its loss making public sector intact. 26 Liberalization means deregulation and delicensing of industry, relaxing entry barriers and removing restrictions on capacity expansion 27 See Indian Economy by Ruddar Datt and KPM Sundaram, 59th edition, p 198
well-founded and the country is placed on a firm footing for future forays into domestic and global economic activities. India is now Asia’s third largest economy and has the world’s fourth largest foreign exchange reserves. When the Indian economy was opened to external competition in the early 1990s, many feared a setback for domestic companies which had enjoyed protection through tariff and non-tariff walls for about half a century since independence. These fears were true but short lived. After facing global competition for about a decade and a half, Indian industry is emerging much stronger to find its rightful place not only in the domestic market but also in the foreign lands. The approach paper on the eleventh Five Year plan (2007-12) released by the Government in November 2006 has indicated 7.2 percent growth rate during the Tenth Five Year Plan (2002-07). Though this is below the target of 8 percent, it is the highest growth rate achieved in any plan. The growth rate for the Eleventh Plan has been fixed at 9 percent. In short, the Indian economy is in a much stronger position than it was few years ago.

**Constitutional framework in India**

Liberty, equality and fraternity the watch words of the French revolution. The concept of social justice permeated the Bolshevik upsurge which overwhelmed the old order in Russia. In Indian Constitution a successful attempt has been made to bring about a synthesis between the concepts of individual freedom and social justice. It is for this reason that the attainment of social, economic and political justice, along with the liberty and equality of its citizen is enshrined in the preamble as the objectives of the constitution. The Preamble, the Fundamental Rights and the Directive Principles can be characterized as the trinity of the constitution. The Directive Principles contained in the part IV of the constitution set out the aims and the objectives to be taken up by the states in the governance of the country. This Novel feature of the constitution is borrowed from the Constitution of Ireland which had copied it from the Spanish Constitution. The idea of welfare state envisaged by our Constitution can be achieved if the state endeavors to implement them with a high sense of moral duty. The makers of the constitution had realized that in a poor

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28 The Preamble to the Constitution lays down the goals of politico-socio-economic democracy for the citizens of India
country like India, political democracy would be useless without economic democracy. Accordingly, they incorporate a few provisions in the constitution with a view to achieve amelioration of socio-economic condition to the masses. In a number of pronouncements, the Supreme Court has insisted that these Directive Principles seek to introduce the concept of welfare state in the country\textsuperscript{29}. The directive principles are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. Originally, the directive principles were more akin to moral, rather than to legal percepts as they do not have much value from a legal point of view. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power\textsuperscript{30}. The Directive Principles inter alia envisaged an end to economic exploitation and staggering inequalities and inequities and cast upon the state the duty to secure a just social order. Article 36 to 51 constitute an operative part of the constitution and important part at that, for through them the Constitution seeks to achieve the ideas of a democratic Welfare State set out in the preamble and bring about the social and economic revolution of which the founding fathers of our republic dreamt. The Directive Principles are the spiritual essence of the constitution and must receive sweeping significance. Part IV of the Constitution is our socio-economic Magna Carta\textsuperscript{31}. The Directive Principles are specifically made non-enforceable by any court of law. Article 37 of the Constitution of India states: “the provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws\textsuperscript{32}.” The preamble to the constitution lays down the goals of politico-socio-economic democracy for the citizens of India. The 42\textsuperscript{nd} constitution Amendment made two changes in the preamble. First, the characterization of

\textsuperscript{29} In Paschim Banga Khet Mazdoor Samity vs. State of West Bengal. (1996)4SCC 37, AIR 1996 SC 2426

\textsuperscript{30} While introducing the Draft Constitution in the constituent Assembly, Dr. Ambedkar said, that a party which failed to implement these principles would stand to lose in the next elections. Thus accountability to enforce these principles will be left to the political process. (FEBRUARY, 1948). C.A. Deb, vol.7, p.476.


\textsuperscript{32} The reasoning in the minds of the founding fathers behind the judicial non-enforceability provision, in the words of Dr. Ambedkar was that a “state just awakened from freedom with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them”.

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India as ‘Sovereign democratic republic’ has been changed to ‘sovereign socialistic secular democratic republic’. Thus, the concepts of socialism and secularism which were implicit in the constitution were now made explicit and India’s commitment to these ideals was further underlined and strengthened. Secondly, the words “unity of the nation” in the clause in the preamble explaining “Fraternity” were changed to “unity and integrity of the nation” this change was made to lay emphasis on the Indivisibility of the country along with the unity of the nation. The Indian approach to Socialism derived from Indian spiritual traditions. Buddhism, Jainism, Vedantic and Bhakti, Hinduism, Sikkism, Islam and Christianity have all contributed to this heritage rooted in respect for human dignity and human equality. Indian Socialism therefore is different from Marxist or Scientific socialism. The ambit of the word ‘Socialistic’ or ‘Socialism’ was considered by Supreme Court in several of its pronouncements\(^3\). The Indian Socialist society wants the development of each individual but it also requires this development to be such that it leads to the upliftment to the society as whole. The public as well as private sectors should work together harmoniously.

The preamble further states that the people of India have given the constitution to themselves to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; Equality of status and opportunity, and Fraternity assuring the dignity of the individual. The three concepts, liberty, equality, and fraternity constitute a trinity, and one cannot be divorced from the other. The Preamble emphasizes that India should be a socialist secular democratic republic. The constitution-makers rightly perceived that mere political democracy would be meaningless in a country of the poor millions without economic justice. The ideals stated in the preamble are enforced through the Directive principles of state policy which spell out in greater detail the goal of economic democracy, the socio-economic content of political freedom, the concept of welfare state. The Directive principles of state thus supplement the preamble to the constitution. These principles have been characterized as the ‘basic to our social order’ as

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they seek to build a social justice society\textsuperscript{34}. These principles have been drafted in flexible and general language and leave enough leeway to the various governments in the country to frame their policies from time to time in accordance with the contemporary needs and circumstances of the society to achieve the goals set out therein. These principles do not impose any particular socio-economic philosophy on the country. These principles have played a crucial role in the legislative and administrative policy making in the country. They have inspired the idea of a socialistic pattern of society; the process of planning has been oriented towards achieving the goals contained in them, agrarian economy has been restructured; right to property has been very much diluted; public industrial and economic sector has been extended and a pervasive system of government regulation of private economic enterprise has been created. Constant efforts are being made to improve the position of the backward and economically weaker sections of the society\textsuperscript{35}.

\section*{The concept of Social Justice}

The concept of justice is not easy to define. The word “Justice” envisioned in the Preamble is used in a broad spectrum to harmonize individual interest with the general welfare of the society. The constitution is the Supreme Law. The purpose of the law is realization of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic changes causes change in the law. In a democracy governed by the rule of law, it is not possible to change the legal basis of socio-economic life of the community without bringing about any corresponding change in the existing law. In the interpretation of the constitution and the law, endeavour needs to be made to harmonies the individual interests with the paramount interest of the community keeping pace with the realities of ever –changing social and economic life of the community envisaged in the constitution. Justice aims to promote the general well-being of the community as well as individuals excellence. The constitution of India has given a place of pride to objective of a

\textsuperscript{34} The preamble of the constitution read with Directive Principles in Article. 38, 42, 46 and 48A promote the concept of social justice. The aim of social justice is to maintain a substantial degree of social, economic and political equality.

\textsuperscript{35} See Article 46 of the constitution of India, “the State to promote with special care the education and economic interest of the weaker section of the people, and in particular of the Schedule Caste and Schedule Tribes, and to protect them from social injustice and of all forms of exploitation”.

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The Constitution and Social Justice

The concept of social justice is very vague and indeterminate expression and no clear –cut definition can be laid down which will cover all situations. Social justice implies that all citizens are treated equally irrespective of their status in society. The crux and essence of social justice may be expressed through the Biblical maxim ‘love thy neighbor as thyself’ if we concede to all our fellow citizens the same rights, facilities and values that we claim for ourselves, conflictual situation would hardly arise. The provision of the constitution provide a plan for orderly progress towards the social order contemplated by the preamble to the constitution. The mandate of the constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the constitution will be belied if the minimum needs of lowest of our citizens are not met. The scheme of the constitution generally discloses that the principles of social justice are placed above individual rights and when ever or whereas it is considered necessary, individual rights have been subordinated or cut down to give effect to the principles of social justice. Social justice means various concepts which are evolved in the Directive Principles of the State. The preamble and article 38 of the constitution of India--- the supreme law ---envision social justice as its arch to ensure life to be meaningful and livable with human dignity. Justice, according to law, comprehends social urge and commitment. Social justice is thus, an integral part of "justice" in the generic sense. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps and penury, to ward off distress and to make their life livable for greater good of the society at large in other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is legitimate expectation. But in a developing society like ours steeped with unbridgeable and ever widening gaps of inequality in status and of opportunity, law is catalyst, Rubicon to the poor etc. to reach the ladder of social justice. Article 38 speaks
more about social justice whereas article 39 speaks about Economic Justice. Article 38 of the Constitution says that; State to secure a Social order for the promotion of welfare of the people; --- (1) the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) the State shall, in particular strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The ideal which was set out in Art 38 is to evolve a state which must constantly strive to promote welfare of the people by securing and making as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. In other words, India has to establish an egalitarian social order under the rule of law. The welfare measures partake the character of sovereign functions. The traditional duties of the state to maintain law and order is no more enough. A law made in pursuance of socio-economic justice would be prime facie reasonable and in public interest. Under cl (2) of Art 38 , it is an obligation on the state to bring about , through the machinery of law a more equal society envisaged by the preamble and part IV of our Constitution for equality before law can be predicated meaningfully only in an equal society i.e., in a society contemplated by article 38 of the Constitution. The instrument of Taxation is not merely a means to raise revenue to India; it is, and ought to be, a means to reduce inequalities. Therefore proportionately greater burden is put on the rich. The state has to use all its powers, including the power of taxation, to achieve the goals adumbrated in Art.38. The clause (2) of the article echoes the equality and non- discrimination clauses (article 14 and 15) and seeks to operationalise the preambular principle of ‘equality of status and of opportunity’. The preamble and article 38 envision social justice as its arch to ensure life to be meaningful and livable with human dignity. The Constitution commands

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36 Art.38 renumbered as cl.(1) thereof by the constitution (Forty Fourth Amendment) Act, 1978.s.9(w.e.f.20-6-1979).
37 Ins . by the Constitution (Forty fourth Amendment)Act, 1978, s.9 (w.e.f.20-06-1979).
justice, liberty, equality and fraternity as supreme values to usher in the egalitarian, social, economic and political democracy.

Article 39 (b) and (c);

Article 38 is supplemented by article 39 which lays stress upon certain aspects of economic justice. Article 39 requires state, in particular to direct its policy towards securing;

a) That all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;
b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
c) That the operation of the economic system does not result in the concentration of the wealth and the means of the production to the common detriment;
d) That there is equal work for both men and women;
e) That the health and the strength of the workers, men and women, and tender age of the children are not abused that the citizen are not forced by economic necessity to enter avocations unsuited to their age and strength;
f) That the children are given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity and that the childhood and the youth are protected against exploitation and against the moral and material abandonment.

The clauses of Article 39 contain directive principles which are vital to the well-being of the community and the welfare of its people. Article 39 (b) and (c) are very significant constitutional provisions as they affect the entire economic system in India. Directive Principles contained in Arts. 39 (b) and (c) have assumed great importance and have figured in a number of judicial pronouncements after the enactment of article 31C.

Article 39 (b) and (c) relates to distribution of ownership and control of material resources of the

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41 Article 31C gave primacy on Arts. 39(b) and (c) over Arts. 14, 19 and 31. In 1976 Arts 31C was amended, the 42nd Amendment expanded its scope by giving article 31C primacy to all Directive Principles, not only to Arts, 39(b) and (c), over Arts. 14 and 19.
community. An Act falling under Clause (b) and (c) of Art 39 must have operation in the economic system and concentration of wealth. They cast a duty on the state to build a welfare state. The Art 39(b) contemplates measures to secure equitable distribution of community resources. The object is that the basic need of a common man must be fulfilled and the state should endeavour to change the structure of the society. The key word is ‘distribution’ and the genus of the article cannot but be given full play as it fulfills the basic purpose of reconstructing the economic order. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good. It reorganizes by such distribution the ownership and control. Distribution includes nationalization of private enterprises. It will not be correct to construe the word ‘distribution’ in a purely literal sense so as to mean only a division of particular kind or to particular persons. The apportionment, allotment, allocation and classification clearly fall within the broad sweep of the word ‘distribution’. So, construed, the word distribution in Art 39(b) will include various facets, aspects, methods and terminology of a broad –based concept of distribution. In other word the word ‘distribution’ does not merely mean that property of one should be taken over and distributed to others like land reforms where the lands from the big land lords are taken away and given to the landless laboures or for that matter the various urban and rural ceiling Acts. That is one of the mode of distribution but the only mode. By nationalization, where the transport vehicles are able to go the farther corner of the State, this would undoubtedly be a distribution for the common good of the people and would be clearly covered under Art 39(b) which refers to material resources of the community; the term has been given a very broad connotation by the Supreme Court. The term is wide enough to cover not only natural or physical resources but also movable or immovable properties. In Sanjeev, the constitutional validity of the coking coal mines (Nationalization) Act of 1972 was challenged. The court said that when Art.39 (b) refers to the material resources of the community, it does not refer only to resources owned by the community as a whole but it

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44 Ibid 24
45 Ibid 15
refers also to resources owned by individual members of the community. The expression is not confined to resources owned by the public; it means and includes all resources natural and manmade, public and private owned. Therefore, “all things which are capable producing wealth for the community would be material resources”.

**Concentration of wealth and means of production; Article 39(c)**

The Article 39(c) contemplates the concentration of wealth and means of production in a few private hands. The part IV especially Art39 (b) and (c), are futuristic mandate to the state with a message of transformation of economic and social order. Article 39(b) and (c) read with the other provision of the constitution contain its aim of building welfare society and equalitarian social order. The expression ‘economic system” in art 39 (c) may well included professional and other services. A law made for implementing Art 39(b) and (c), instead of being contrary to the preamble, would be in conformity with it because while it may cut down individual liberty of a few, it widens its horizon for the many. Whenever a question is raised that the parliament or the state legislatures have abused their power and inserted a declaration in a law not for giving effect to the state policy towards securing the directive principles specified in article 39(b) and (c), the court will have to examine the pith and substance, the true nature and the charter of the law as also its design and the subject – matter dealt with by it together with its object and scope. Concentration of large block of land s in hand of few individuals is contrary to Art 39 (b) and (c), therefore, legislation for agrarian reform and abolition of Zamindari to fulfill the objectives laid down in Art.39 (b) and (c). Imposing ceiling on land holdings fulfills Art 38 and 39. Article 39 also clarifies that carrying on of a trade and business is a legitimate function of the state.

**Analyzing the Post-Independence Industrial Policies**

Soon after Independence, the Government of India launched the process of Industrialisation as conscious and deliberate policy of economic growth in early fifties. The

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46 Kesavananda Bharathi vs Union of India, AIR1973 SC 1461;(1973)SCC 225
48 People’s Bus Service vs State, AIR 1956
Government recognized the significant contribution Industrialisation could make to the
development process, ‘as a base for the growth of the primary sector, as a catalytic agent for
the development of infra-structure, as a stimulant to generation of technologies as a growth
multiplier’. These were the following.

1. **Policy of the government towards foreign participation in industrial initiatives.**
2. **Determination of the relative roles of public and private sectors.**
3. **Relative emphasis’s on consumer goods and capital goods industries.**
4. **Role of Large Vis-a-Vis Small –scale industries.**
5. **Location of industries: economic versus social criteria**\(^{49}\).
6. **Concentration versus broad-based entrepreneurship.**
7. **Licensing policy, procedures, rules and regulations to control industrial activities.**

**The Industrial development of India may be traced by the following Industrial policies:**

**Industrial Policy Resolution, 1948**

The government of India’s industrial policy after independence was shaped broadly in
terms of the Industrial Policy Resolution of 1948. That Resolution emphasized clearly the
responsibility of Government in the manner of promoting, assisting and regulating the
development of industry in the national interest. It envisaged for the public sector an
increasingly active role. While it reiterated the inherent right of the state to acquire any
industrial undertaking whenever the public interest requires it, it laid down, in view of the
circumstances then existing, a certain demarcation of fields for the public and private
sectors. Certain crucial sectors for industrial development were reserved for Government
initiative. The Industrial Policy Resolution of April 1948 envisaged a mixed economy for
India. It declared that public sector would play an effective and dominant role in the future
economic development of India. This role was to be particularly significant in the
establishment and development of heavy and basic industries. Certain crucial sectors for
industrial development were reserved for government initiative. Thus, manufacture of arms

\(^{49}\) Economic criteria include availability of raw materials, nearness to market and infrastructural facilities. These
may be available in already developed areas. Social criteria include employment opportunities and laying of social
and economic overheads in backward areas.
and ammunition, production and control of atomic energy, ownership and management of railways became Government Monopolies. Furthermore, six basic industries, namely iron and steel, coal, aircraft manufacture, ship building, mineral oils, manufacture of telephone, telegraph and wireless apparatus were to be developed by the Government. In India, in the industrial sphere, the respective roles of the state and of private enterprise were enunciated in Industrial Policy Statement of 1948. In terms of this Resolution, the principle of Government ownership and control was accepted in regard to a segment of the economy comprising arms and ammunition, atomic energy and railways. It was also stated that in regard to certain key industries like coal, iron and steel, aircraft manufacture, shipbuilding, manufacture of telephone, telegraph and wireless apparatus, etc., the State was to be responsible for the further expansion except to the extent that it considers the cooperation of private enterprise necessary for the purpose. In the rest of the industrial field the initiative for the development and responsibility for the management would rest on the private enterprise. Government had, however, the right to acquire any undertaking in the public interest and to intervene in cases where the conduct of industry under private enterprise was not satisfactory.

The essentials of government policy in sphere of industrial development were stated in Industrial Policy Resolution of April 1948. The Resolution listed certain industries like the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railways transport as being reserved exclusive for the Central Government. In the cases of certain other industries also such as coal, iron, steel, aircraft manufacture, shipbuilding, manufacture of telephone, telegraph, wireless apparatus and mineral oils, the State, including Central and State Government and other public authorities, would be resolution for further development except to the extent that it regards the co-operation of private enterprise necessary for the purpose. The rest of the industrial field was to be open to private enterprise, individual as well cooperative, but the state would intervene whenever the progress of any industry under private enterprise was found unsatisfactory. Central regulation and control was envisaged for 18 specified industries of special importance from the points of view of the investment and technical skill involved.
**Industrial Policy Resolution, 1956:**

The 1948 resolution was reviewed in the light of experience gained, and the new Industrial Policy Resolution was placed before parliament by the Prime minister on the 30th April, 1956. As the Resolution put it, “The adoption of the socialistic pattern of society as the national objective, as well as the need for planned and rapid development, requires that all industries of basic and strategic importance, or in the nature of public utility services, should be in the public sector. Other industries which are essential and require investment on a scale which only the state, in present circumstances, could provide have also to be in the public sector. The state has, therefore assume direct responsibility for the future development of industries over a wider area.”

Special measures were taken during the year for the promotion and development of small industries. A National Small Industries Corporation was set-up and four regional Small Industries Services Institute opened. A number of schemes for the development of various small industries in co-operation with the State Government were approved. Technical assistance to help small industries in improving output was extended and experts were being brought in from abroad to help in this task. The development of Khadi and village industries and handicrafts continued to receive systematic assistance from the Government through grants and loans to the respective Boards and State Governments. The most important feature of the 1956 industrial policy was the classification of the industries. The resolution classified industries into three categories, having regard to the part which the state would play in each of them; *The first category in schedule A* consisted of industries the future development of which would be the exclusive responsibility of the State. These classifications were not intended to be rigid or watertight in the industries listed in Schedule A, for instance, the expansion of existing privately owned units was not precluded and the State was free to secure the co-operation of the private enterprise in the establishment of new units when national interest so required, subject to the proviso that while securing such cooperation, it would ensure, through majority participation in the capital of the undertaking or otherwise, that it had the requisite powers to guide the policy and control the operations of the undertaking.
**Schedule A Industries:** This Schedule listed 17 industries which included, inter alia, arms and ammunition, atomic energy, iron and steel, heavy electrical, coal, mineral oils, air transport, railways and generation and distribution of electricity. These industries were reserved for exclusive development in the public sector.

In the Second category, in Schedule B, were industries which would be progressively state-owned and in which, therefore, the State would generally take the initiative in establishing new undertakings, but in which private enterprises would also be expected to supplement the efforts of the state. Schedule B related to what may be called the mixed sector, a sector in which the State would enter progressively and enlarge its operations, but private enterprise would, at the same time, have the opportunity to develop, either on its own or with the State participation.

**Schedule B Industries:** these included industries which were to be progressively owned by the Government and in which Government would generally set up new enterprises. However, private sector was expected to supplement the efforts of the Government. This list included 12 industries, the leading ones being aluminum, mineral tools, fertilizers, road transport and sea transport.

In the rest of the field, development would ordinarily be undertaken through the initiative and enterprise of the private sector, but it would be open to the State to start any industry even in this field. The prime consideration determining State policy over the whole industrial field was promotion of rapid development in keeping with the overall objectives defined. The public sector had to grow and the private sector had to conform to the requirement of the national priorities. The Industrial Policy Resolution, 1956, launched on the eve of the Second Five year Plan and called by some as the Economic Constitution of India, observed “The adoption of the Socialistic pattern of society as well as the need for the planned and rapid development require that all industries of basic and strategic importance or in the nature of public utility services should be in the public sector”\(^{50}\)

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\(^{50}\) See Indian Economy, by KPM Sundaram and Ruddar Datt, fifty-ninth edition, S Chand and Company Ltd, chapter 11 p 192
Absence of Internal Competition:

The Industrial Policy Resolution of 1948 and 1956 restricted domestic competition through the following measures;

1. Reservation of basic and strategic industries for exclusive production in the public sector. These industries were 17 in number in the 1956 industrial policy, mostly in the area of infrastructure.
2. Reserving a large number of goods for production by small –scale firms. The number of reserved commodities for small –scale production stood at 800 in 1980.
3. Licensing Schemes to curb the capacity expansion of existing firms.
4. Creating entry barriers for new firms in most industries. The Industrial Development and Regulation Act, 1951, required a firm to acquire a license to expand capacity or to produce new goods unless (a) it was a small –scale industry, (b) it had total assets below certain value, (c) it did not exceed a certain foreign exchange limit for the import of raw material and capital goods.
5. Technology up gradation suffered due to virtual banning of foreign direct investment and restrictions on royalty payments for purchase of technology from abroad.

All the above factors resulted in high –cost/ poor quality production, lack of competitiveness, sluggish exports and low foreign exchange reserves.

Disillusionment and Rethinking

The so-called inward –looking, import substitution strategy of industrial development began to be widely questioned with the beginning of the 1980s. Policy makers started realizing the drawbacks of this strategy which inhibited competitiveness and efficiency, producing much lower rate of growth than expected. Considering the size, population and natural resources of the country, the strategy failed to lay a strong foundation for the future development of the economy. By mid-1980s, it was clear that drastic shift in policy was
needed to speed up the rate of growth. Pressure was mounting for industrial liberalization owing to a host of internal and external factors\textsuperscript{51}.

**The Industrial policy of 1991**

In India, the tilt towards liberalization started in 1985 when the government announced series of measures aimed at deregulation and liberalization of industry. These measures described as New Economic Policy, coincide with the policy framework of the Seventh Five Year Plan (1985-90). These were followed by drastic changes introduced in the 1991 industrial policy of the government. Economic reforms were set in motion, though on a modest scale, in 1985, at least for the industrial sector. After assuming power at the center, the Government of Prime Minister Rajiv Gandhi introduced a series of measures, through its 1985 industrial policy, to reduce control on industries, particularly large industries. Further most, a number of policy and procedural changes were introduced in 1985 and 1986 aimed at increasing productivity, reducing costs and improving quality. The emphasis was on opening the domestic market to increased competition and preparing the Indian Industry to stand on its own in the face of international competition. The technological and managerial modernization of industry was stressed as the key instrument for increasing productivity and improving our competitiveness in the world. The process of economic reforms initiated in 1985 got a big boost when the prime minister of then the Congress Government Mr. P.V. Narsimha Rao announced a new Industrial policy in the Indian Parliament\textsuperscript{52}. The new policy introduced radical changes “to unshackle the Indian industrial economy from the cobwebs of unnecessary bureaucratic controls”. The industrial policy announced in 1991 was generally welcomed for ensuring competitive and market economy in place of the outmoded command and controlled economy. Economists saw it as a reversal of 1956 Industrial Policy Resolution. The industrial policy statement issued by the Government of India in 1991, stated:

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\textsuperscript{51} One of the reasons was the Gulf crisis. Thousands of Indians working in Gulf countries were sent back owing to the war, and gave a terrible blow to the Indian Foreign Exchange.

\textsuperscript{52} Dated 24\textsuperscript{th}, July 1991.
“The attainment of technological dynamism and international competitiveness requires that enterprises must be enabled to swiftly respond to fast changing external conditions that have become characteristics of today's industrial world. Government policies and procedures must be geared to assisting entrepreneurs in their efforts. This can be done only if the role played by the Government were to be changed from that of only exercising control to one of providing help and guidance by making essential procedures fully transparent and by eliminating delays”\textsuperscript{53}

This resulted in the introduction of changes in polices relating to industrial licensing, foreign investment, technological imports, Government ownership of industries and special controls on very large private enterprises. As a part of the structural reform process the industrial policy of 1991 abolished licensing in all but 18 industries, many of which were subsequent delicensed. Changes in foreign trade policy focused on reducing the tariff rate and dismantling quantitative controls over imports. The policy towards foreign investment underwent significant changes with foreign investors given the freedom to own majority shareholding over a wide spectrum of industries. The thrust of the New Economic Policy has been towards creating a more competitive environment in the economy as a means to improving the productivity and efficiency of the system and this was achieved by removing the barriers to entry and the restrictions on the growth of firms. While the industrial policy of 1992 sought to bring about a greater competitive environment domestically, the counterpart of the Trade policy set out in the same year, sought to improve international competitiveness subject to the degree of protection offered by the tariff. The private sector was to be given a larger space to operate in as much as some of the areas, reserved exclusively earlier for the public sector were now to be opened to the private sector. In these areas, the public sector would have to compete with the private sector, even though the public sector might continue to play dominant role in the foreseeable future.

\textsuperscript{53} See page 442 -443 of “India's Economic Development Since 1947, by Uma Kapila, 3\textsuperscript{rd} edition, 2008-09, published by Academic Foundation, Darya Ganj, New-Delhi -110 002 (India)
Some of the provisions of the new policy, which has already proved a watershed in the post-independence history of India, were the following:

1. It abolished industrial licenses for all projects, except for a short list of 18 specified industries related to (a) security and strategic areas, (b) hazardous chemicals, (c) items of elitist consumption (d) environmental concerns and (e) social reasons. After delicensing, there are presently, only six industries under compulsory industrial licensing. These are; Distillation and brewing of alcoholic drinks, Cigars and cigarettes of tobacco and manufactured tobacco substitute. Electronic aerospace and defense equipment, all type. Industrial explosives including detonating fuses, safety fuses gunpowder, nitrocellulose and matches. Hazardous chemicals. Drugs and pharmaceuticals (bulk drugs industry has been delinked).

2. It removed the assets limits for MRTP totally\(^54\). The MRTP Act is now used for controlling and regulating monopolistic, restrictive and unfair trade practices. The MRTP Commission was given powers to initiate investigations suo moto or on complaints received from individual's consumers or classes of consumers about monopolistic, restrictive and unfair trade practices.

3. It raised the limit for foreign equity holding from 40 percent to 51 percent. The automatic clearance for direct foreign investment up to 51 percent in high priority areas was a clear signal that the foreign investment was welcome. The new policy also announced automatic permission for foreign technology agreements in high priority industries. Moreover, the policy made liberal provisions for hiring foreign technicians, and foreign testing of indigenously developed technology\(^55\).

4. With a view to raise resources and to ensure wider participation, the new policy announced disinvestment in public sector undertakings in favor of mutual funds, financial

\(^{54}\) The threshold (minimum) asset limit for companies under MRTP Act was raised from Rs.20 crore to Rs 100 crore.

\(^{55}\) In relation to foreign investment, the industrial policy statement, 1991 observed, “in order to invite foreign investment in high priority industries, requiring large investments and advance technology, it has been decided to provide approval for direct foreign investment up to 51% foreign equity in such industries. There shall be no bottlenecks of any kind in this process. This group of industries has generally been known as the “Appendix I Industries” and are areas in which FERA companies have already been allowed to invest on a discretionary basis. This change will go a long way in making Indian policy on foreign investment transparent. Such a framework will make it attractive for companies abroad to invest in India”.  

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5. The new policy promised social security mechanism to protect workers' interest in affected public sector institutions, workers and the general public. While reservation of industries for the public sector was to be selectively removed. The July 1991 policy statement reduced the list of industries reserved for public sector from 17 included in the Industrial policy Resolution of 1956 to only 8. Subsequently, 4 more items were dereserved. Thus, at present there are only four industries reserved for the public sector.

6. According to the new policy, chronically sick public sector units were to be referred to the Board for Industrial and Financial Reconstruction.

7. Industries reserved for the small scale sectors would continue to be so reserved.

8. It also promised to promote workers' participation in management and proposed workers 'co-operatives to make sick units healthy.

Since then, successive Government have carried forward the reforms in industrial sector, financial sector, fiscal sector and external sector. It is liberalization, privatization and globalization all the way. The process of Industrial liberalization is continuing in the Indian economy. Private sectors have been invited to invest in oil exploration and refining which are otherwise reversed for public sector. Similarly, power sector is now opened to both domestic and foreign private investment. Government has also allowed private sector activity in the mining industry. Apart from the central Government, many State Governments have initiated significant procedural and policy reforms to promote foreign investment and encourage domestic private participation in the development of their respective States. While the incentives package varies from state to state depending upon their investment priorities, some common features are discernible. These include development of industrial estates, removing artificial barriers within the states; decentralization of decision making, time bound clearance of projects, investment subsidy, exemption/ deferment of sales tax and power tariff concessions.

**Role of Small scale industries;**

A significant feature of the Indian economy since Independence is the rapid growth of the small industry sector. Ever since the announcement of the Industrial Policy Resolution of 1948 and 1956, Small scale Industry has occupied a prominent place in the overall structure of industrial sector in India. Successive Five Year Plans have allocated increasing resources
for the development of small industries. In view of the abundance of labour, scarcity of capital and rural nature of economy, the preference for small industries is natural. In fact small scale industries provide maximum employment next only to the agricultural sector, which being the major source of employment. Small industries are generally labour-intensive and therefore promise wider employment possibilities for the ever increasing population of India. They are also suitable as a supplementary source of employment for the Indian farmers who remain out of work during lean period of agricultural season. Small industries offer promising opportunities to educate unemployed in the urban areas to become self-employed gainfully. During the last decade alone, the small-scale sector has progressed from the production of simple consumer goods to the manufacturer of many sophisticated and precision products like electronics control system, micro-wave components, electro-medical equipment, TV, etc. In view of the importance of the small scale industries, Government continues to lay emphasis on their growth and various measures have been taken to enable them to stand in competition with large and medium scale industries. Small scale industries have been helped by the government in the following manner;

*Reservation of items for exclusive production by Small scale industries (SSI)*; under the policy of reservation, started in 1967, certain techno-economically suitable items are reserved for exclusive manufactured in the small scale sector. The objective of this policy is to grant protection to small scale units by preventing fresh capacities being created in the large scale sector in areas considered suitable for small scale sector. The large/medium scale units which may be in existence at the time when an item is reserved are allowed to continue their manufacturing activities but their capacities are frozen with reference to a specified date. Reservation / dereservation of items for manufacture in the small scale sector is a continuing process. The total number of items reserved for small scale sector was 836 as at the end of March 1994\(^{56}\). Later in 1997 another 15 items were deserved\(^{57}\), subsequently, the readymade garment sector was also taken out from the purview of SSI reservation. In 2001-02 budget speech, the Finance Minister announced the reservation of another 14

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\(^{56}\) Government of India, Ministry of Industry, List of items Reserved for Exclusive Manufactured in Small Scale Sector, 1994,p34.

items related to leather goods, shoes and toys. The Finance Minister in his 2004-05 Budget speech observed, “Small Scale Industry is, and must be regarded as, an engine of growth. At the same time SSI units must also be given the pace to grow into medium enterprises. World over, policies are devised to meet the requirements of small and medium enterprises (SME). Keeping in mind the twin objectives, the Ministry of Small –Scale Industry has identified 85 items that can be safely taken out of the reserved list58”. It is believed that dereservation will enable large/medium scale units to move out of capital –intensive manufacturing to enter labour intensive production. This shift will create new employment opportunities at a rapid rate.

**Excise Duty Concessions:** In line with Government s policy of encouraging small-scale industries, a wide range of concession and exemptions from excise duty is available to small producers to enable them to stand in competition with large –scale manufactures. Also, relatively simple and concessional procedures are followed for the assessment and collection of exercise from the small –scale sector. As a part of the comprehensive Policy package on SSI and Tiny Sector announced by the Prime Minister59. The excise exemption limit for SSI was raised from Rs.50 lakh to Rs. 1 Crore. Though preferential treatment to small units and labour –intensive methods of productions is desirable, the misuse of these concessions has created doubts as regards the ultimate beneficiaries of such facilities. Concerned about the misuse of excise concessions, the Finance Minister in his 2001-02 budget speech announced the withdrawals of exemptions on certain items and observed, ‘Products of SSI are exempt from excise duty up to Rs. One Crore. This exemption is intended to provide fiscal support to the genuinely small producers60.

**Priority in the Disbursement of Loans by the Financial Institutions:** The composite loan scheme of SIDBI and commercial banks is designed to ease operational difficulties of the small borrowers by providing term loan and working capital through a single window. As a part of the Comprehensive Package on SSI, the limit for composite loan was raised from Rs.10 lakh to 25 lakh. Other Concessions include (a) import of raw materials and machinery and

58 Government of India, Ministry of Finance, Budget Speech of the Finance Minister, 2004-05, p15
59 On August 30, 2002
60 Government of India, Ministry of Finance, Budget Speech of the Finance Minister, 2001-02, part B, p 27
the supply of these materials through small industries cooperation and other agencies (b) direct assistance like consultancy, training through a wide network of promotional bodies such as Small Industries Service Institutes (SISI) (c) price and purchase preference to products manufactured in small scale sector in Government purchase programme. In another significant move towards the promotion of small scale industries and in increasing their compatibility and competitiveness in the global market, the Government enacted the Micro, Small and Medium Enterprises Development (MSMED) Act in 2006. This legislation became operational from October 2, 2006, was enacted for facilitating promotion and development of and as well as for enhancing the competitiveness of micro, small and medium enterprises. The Act further provides for a statutory National Board for Micro, Small and Medium Enterprises to advise the Central Government on matters under the Act.

Assessing India’s Economic Planning till date

India began the process of planned economic development with the start of the First Five year plan in April 1951. The main objective of the planning was identified as that of initiating a process of development which would raise living standards and open out to the people new opportunities for a richer and more varied life. The manner in which this objective has been translated into specific objectives has varied from plan to plan. However, in a broader sense, these objectives of planning in India can be grouped under four heads, (a) growth, (b) modernization, (c) self-reliance, and (d) social justice. In one form or another, these objectives, albeit with varying emphasis, reflect the views of all sections of the population and represent a national consensus on the aims of planning. Since 1951, India has completed ten Five year plans and the implementation of the eleventh Five year plan is underway. Each plan takes into account the experience of the previous plan and attempts to make the necessary directional changes and emphasis. In fact, the beginning and the end of the plan are important dates in the economic history of the India. Each plan is both an assessment of the past and a call for the future. At the time of launching of First five year plan, India

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61 2007-12  
62 1951-1956
was faced with three formidable problems viz. severe food shortage, mounting inflation and the influx of refugees in the wake of partition of the country in 1947. The first plan had to address these problems on an urgent basis. The Second Five year Plan \(^{63}\) was formulated and implemented in an atmosphere of economic stability. Agricultural targets fixed in the first plan had been achieved and inflation had registered a fall. The time was ripe to shift focus from agriculture to industry to give a big boost to the economy on modern lines. Hence, the second plan concentrated on the development of heavy and basic industries to lay the foundations for future industrialization of the Indian economy. The following industries received special emphasis; iron and steel, chemicals, fertilizers, heavy engineering and machine building industry. It is also noteworthy that in 1956, Government announced its industrial policy (called by some as the economic constitution of India) which accepted the establishment of a socialistic pattern of society as the goal of the economic policy.

The experience of the first two plans had shown that agriculture was the backbone of the economy. Accordingly, the third Five year plan \(^{64}\) gave top priority to agriculture but it also laid adequate emphasis on the development of basic industries which were vital for rapid development of the economy. In fact, the Third Plan set as its goal the establishment of a self-reliance and self-generating economy. Planned development efforts were disrupted when the country came under severe shocks such as hostilities with Pakistan \(^{65}\), droughts for two successive years, devaluation of the rupee and inflationary pressure. On account of these adverse circumstances, the draft outline of the fourth plan prepared in 1966 had to be abandoned. Instead, three Annual Plans \(^{66}\) were prepared and implemented. The planning process was resumed when the Fourth Five year Plan became operational in 1969. It set before itself two main objectives ; (a) growth with stability and (b) progressive achievement of self reliance. The Fifth Five year Plan \(^{67}\) was introduced when the country was reeling under severe economic strains such as run-away inflation caused by unprecedented

\(^{63}\) 1956-1961  
\(^{64}\) 1961-1966  
\(^{65}\) 1965  
\(^{67}\) 1974-79
increase in international oil prices in the wake of 1973 Gulf Crisis and the failure of the government to take over the wholesale trade in wheat. The plan could not complete its five years because it was terminated at the end of the fourth year by the new Janata Party Government at the Centre. The Sixth Five year Plan introduced by the new Government led by Mrs. Indira Gandhi, and where it focused on direct attack on poverty. The Seventh Five year Plan \textsuperscript{68} sought to emphasis policies and programmes to increase food grains production, employment opportunities and productivity. The Eighth Five year Plan which was to begin in April 1990 covering the period 1990-95 could not be finalized on time and hence there was a plan gap of two years. It took off in April 1992 covering the period 1992-97. This was followed by the Ninth Five Year Plan\textsuperscript{69}. The Tenth Five year Plan \textsuperscript{70} was completed on March 31, 2007. In June 2005, the government released the Mid-Term Appraisal of the Tenth Plan. The Eleventh Five Year Plan 2007-12 started on April 1, 2007.

Outlining its vision, the Eleventh plan noted that ‘the economy accelerated in the Tenth Plan period (2002-to 2007) to a record average of growth of 7.6 percent --- the highest in any plan period so far’. It emphasized the fact that during the last 4 years of the Tenth Plan, average GDP growth was 8.6% making India one of the fastest growing economies in the world. The saving and investment rates have also increased. The industrial sector has responded well to face competition in the global economy. Foreign investors are keen to invest in the Indian economy\textsuperscript{71}.

**Competition Law and WTO;**

As a General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO), have progressively removed or lowered government barriers to trade, the focus of policymakers has shifted to private barriers to market access that could undermine the progress of the GATT-WTO system\textsuperscript{72}.

\textsuperscript{68} 1985-990
\textsuperscript{69} 1997-2002
\textsuperscript{70} 2002-07
\textsuperscript{72} See Para 1 , p 1 of Competition Law and the World Trade Organization: The limits of Multilateralism, by Kevin C.Kennedy, published by sweet and Maxwell limited , London
The History of Competition policy in the GATT/WTO system

The General Agreement on Tariff and Trade (GATT) traces its origin to 1944. In that year, a comprehensive economic and financial plan for post-World War II reconstruction and development was proposed by representatives from the United States and the United Kingdom at Bretton Woods, New Hampshire\textsuperscript{73}. A triad of international economic and financial institutions was envisioned. Two of them, the World Bank and the International Monetary Fund, were created to address development and monetary issues. Rounding out the institutional triad was the International Trade Organization (ITO). The General Agreement on Tariff and Trade was to serve as an interim agreement until the ITO and its founding document, the Havana Charter\textsuperscript{74}, could be approved by national legislatures. Though Havana charter\textsuperscript{75} was a far more complete document than GATT, GATT was approved provisionally by national representatives, effective January 1, 1948. As a result Havana Charter never entered into force. In fact no acceptance of the charter was ever received from the United Nations. Once it became clear that the Havana Charter had no chance of being approved by the neo-isolationist U.S. Senate- in part because of objections to its competition law provisions- the State Department issued a statement that the Charter would not be submitted again to Congress. As a consequence, GATT was pressed into service by default to fill the institutional and legal vacuum. The chapter 5 of the post-war Havana Chapter for an International Trade Organization, however that was not included into the GATT of 1947, the organization from which WTO developed. The WTO was established on 1\textsuperscript{st} January 1995 as a successor to GATT was predominantly concerned with the issues related to trade. WTO as a paramount inter-governmental body, governing and regulating international trade in goods and services aims at providing a framework for furthering multi-lateral agreements which may be either purely trade related or affecting trade in some manner. India being a member country, the obligation under the agreements of the WTO made it necessary for the Government to provide a legal means that would assure reciprocal rights to the other members of the WTO.

\textsuperscript{73} Ibid. p.122

\textsuperscript{74} See Havana Charter for an International Trade Organization, mar.24, 1948 Arts 46-54 UN Doc.

\textsuperscript{75} The Havana Charter contained provisions relating to employment, economic development, restrictive business practices, foreign investment, and dispute resolution under ITO auspices.
The WTO inherited many of the GATT’s guiding principles. These fundamental principles are incorporated in the numerous agreements that comprise the Agreement Establishing the World Trade Organization. The World Trade Organizations identified five core principles. The first principles is ‘trade without discrimination”, which involves Most-favoured –nation (MFN) status and National Treatment. MFN states that a trade concession granted to one WTO member automatically applies to all members. National treatment guarantees equal treatment of imported goods with domestically produced output in nations’ markets. The second principles are freer trade through the progressive liberalization of trade regimes. The third principle is the predictability of trade rules. Predictability in this context prevents governments from arbitrarily raising existing tariffs or non-tariff trade barriers. The fourth principles are fair competition. Fair competition attempts to level the playing field in international trade and minimize the market distortions caused by export subsidy, dumping and other disruptive trade practices. The fifth principle is economic development through trade. Economic development for the world’s poorer countries should be enhanced by trade assistance and increased market access through preferential trade arrangements.

**India and the WTO**

India was one of the 23 founding contracting Parties to the General Agreement on Tariff and Trade (GATT) that was concluded in October 1947. India has often led groups of less developed countries in subsequent rounds of multilateral trade negotiations (MTNs) under the auspices of the GATT. The World Trade Organization was created to subsume the GATT in 1995. Even after the inception of WTO in 1995, till the Doha Ministerial (2001), developing countries were not very active at the negotiating table. It is indeed ironic, as free trade is much more favorable for the developing country than its developed counterparts. However, a new trend emerged from Cancun (2003) onwards, and since then the former group has become much more vocal at the multilateral trade forums on the protectionist polices of the latter. Despite being a founder member of the GATT, India was never very active in various negotiating rounds until late eighties. Since the Indian economy followed
the import-substitution led growth strategy during sixties and seventies, gaining from the import liberalization at principal export markets (The US and EU) was never a prime objective. In addition, a considerable proportion of India’s trade was directed to the soviet bloc countries and the presence of this assured market weakened the incentive to search for newer outlets. On the other hand, opening the domestic market to foreign competition through progressive tariff cuts was perceived harmful for the local industries. Instead, the country was more willing to discuss trade and development related issues at Brazil. Despite adoption of a proactive approach at WTO, India still feels comfortable to discuss trade-related issues at UNCTAD forums for coalition building among developing countries on areas pertaining to mutual interest.

The first two ministerial meetings were held at Singapore and Geneva respectively, where various provisions of the agreement were discussed and the state of their implementation was reviewed. In addition, two new agreement s, namely Information Technology agreement and Global E-Commerce agreement were signed in these meetings. This was at a time when India’s IT exports started to take off. Fortunately the agreement s inked on these issues have actually helped E-Commerce and not gone contrary to India’s interests. the Singapore ministerial was particularly important as it agreed to discuss in future on four issues, (1) Government Procurement, (2) trade and investment, (3) Trade and competition policy, and (4) Trade Facilitation – collectively known as Singapore issues. The road between Singapore and Seattle was not a rosy one for India owing to a number of reasons. First of all, the export growth rate decelerated in the second part of the nineties. The disadvantages faced by the export sector were intensified after the East Asian Crises, when the exchange rates of a number of countries in that region were devalued. Non-realization of proposed level of market access in developed countries emerged as a major source of dissatisfaction. In addition, the developed countries wanted to incorporate labour and environmental issues under the wings of WTO, much to the annoyance of their developing counterparts. However, the most important factor responsible for enhancing India’s participation in WTO negotiations was the outcome of the dispute settlement cases

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involving her. In general, the period between 1995 and 1998 witnessed a substantial rise in the number of cases in WTO’s dispute settlement mechanism. India was among one of the victims of this provision as a number of developed countries moved to the dispute settlement body complaining about the WTO–compatibility of the Indian policies. In the Seattle Ministerial 79, India was vocal at the multilateral forum for the first time, protesting against a developed country initiative to incorporate labour and environmental standards under the aegis (auspices) of the WTO. Due to the protests of the developing countries, the developed countries were not successful in incorporating this element in the agenda. The Ministerial meeting ultimately ended in failure as the members could not arrive at a mutually agreeable solution. The then commerce minister Mr. Munusori Maran viewed the Seattle outcome as a success for India as for the first time, developing and poorer countries were united in mutual interest. During the Seattle–Doha period, India, for the first time, started communicating its dissatisfaction over several issues and sharing its position with other countries at various appropriate forums of WTO and other international bodies. Broadly speaking, a clearly distinguishable and proactive stand emerged before the Doha ministerial, and India became particularly concerned with (i) non-realization of anticipated benefits (e.g., Agreement on Textiles and clothing and Agreement on Agriculture), (ii) inequalities and imbalances in WTO (Trips Subsides, Anti dumping, etc) and (iii) non-binding nature of special and differential provisions (market access, DSB, etc.) In short, India strongly objected to the inclusion of any new issue in the negotiating agenda before realization of Uruguay round promises, the non-implementation of which was costly to developing countries. Buoyed by the success achieved at Doha, India tried to utilize the two-year period before Cancun in a much productive manner and coalition formation experience with other developing countries were fruitful not only for general agreements that affected merchandise and service trade, but also in case of institutional arrangements like dispute settlement. The movement towards a productive strategy at the WTO was accompanied towards implementation an increasingly WTO compatible regime at home and frustration mounted at not obtaining the desired level of market access in principal export destinations. In Cancun, India principally negotiated over liberalization of
agricultural trade and trade in services. In addition, the intensity of proactive approach was further noticed in the sharp increase in the number of joint submission at WTO, ranging from agriculture to services. Interestingly, the Indian submission to WTO, both joint and individual, stressed both export promotion (enhancement of market access) and domestic protection (e.g. provision of special products, special mechanism in agriculture) much vigorously. On the other hand, domestic reforms have been regularly undertaken in order to enhance compliance with WTO. The adoption of the 2005 Patents Ordinance and its subsequent tabling in the parliament, in spite of the domestic opposition, is the best example of it.

**Conclusion**
The Directive principle of the Indian Constitution is an expression of the will of the people of India for rapid economic growth. Accordingly the Government of India adopted planning as a means of fostering economic development. India’s economic plans made conscious effort to remove all the retrogressive forces and foster social as well as individual development. Further the basic objectives of the Five year Plans were development along socialist lines to secure rapid economic growth and expansion of employment, reduction of disparities in income and wealth, prevention of concentration of economic power and creations of values and attitude of a free and equal society. Moreover, The Industrial Policy announced by the Government of India in July 1991 by the Congress led Government by PV Narasimha Rao, fulfilled a long–felt demand of the corporate sector for declaring in very clear terms that licensing was abolished expect few sectors. Thus Government thought of reducing the role of public sector and started the process of encouraging and opening more and more areas for the private sectors. More players in the market mean always to tend more problems. Market economies are not self regulating. They cannot simply be left on autopilot, especially if one wants to ensure that benefits are shared widely. Managing in a market economy is no easy task. It is a balancing act that must constantly respond to the economic changes.