CONCLUSIONS AND SUGGESTIONS

In the introduction of this thesis we have explained the reasons for selecting this topic for the Ph.D thesis. After a detailed study of the role of Directors, we have come to the following conclusions.

A CONCLUSIONS ARRIVED AT:

1. The Companies Act makes no effort to define a Director's position. Sub-Section (13) of Section 2 only provides that "Director" includes any person occupying the position of a director, by whatever name called.

2. The definition of Director in the Companies Act must clearly be defined and the role of Director as a Trustee, Agency and Employee should be explained.

3. The role of unincorporated companies must be appropriately defined and liability for illegality committed by such companies must be elaborated.

4. The law pertaining to Agency is spread over the Contract Act and other legislations. Since the Director acts an agent of the company his role as an agent and the relationship with the Principal requires to be properly defined and incorporated in the Companies Act.

5. The general duties of a director to take care and use necessary skills has been much discussed in the courts and is required is to incorporated as duties in company law.
6. The separate personality of the company is well accepted. However the duties of Director vis-à-vis the company requires to be clearly laid down.

7. The most important aspect of the functioning of a Director is the liability both Civil and Criminal for acts committed as a Directors. This again is discussed in case law and should be incorporated by way of legislation, which has to be rectified.

8. While comparing Indian and English Law, the English Law laid down that directors have a duty towards the employees of the company, this is not so in India. The Indian law requires to be changed by incorporating this duty to protect the interest of company employees in general as well as the general public.

9. Under English Law a Director who fails to obey certain special rules is liable to pay fine or undergo imprisonment. This also requires to be done under Indian law.

10. The age limit available under English law for appointment as a Director also requires to be adopted under Indian Law so that more and more younger persons become Directors and the older members are phased out in the larger interest of the company.

B SUGGESTIONS MADE.
The Companies Act of 1956, deals with the appointment of Directors and also explains when a director is disqualified from holding office. The minimum number of directors required in a company shall be at least 3 and all others cases at least 2 directors. But where the paid up capital is 5 crores and above and there are 1000 or more share holders, the small share holders can elect their own directors. Further only an individual can be appointed as a director and not any body corporate association or firm. Also a company in a general meeting may by ordinary resolution either increase or decrease the number of its directors within the limits fixed by the Articles of Association. In certain circumstances the increased number of directors require government sanction. The above provision clearly shows that the Government can exercise control over the appointment of directors, so that, the company does not misuse the position of the director to appoint persons who will not enhance the reputation of the company. It is suggested that it would be better if atleast 5 directors are there, so that there is a scope for a larger discussion and democratic functioning of the Company. According to the Companies Act, certain persons cannot be appointed as a Managing Director if the person is at any time adjudged as
an insolvent or is suspected of non-payment to his creditors or has been convicted by a court of an offence involving moral turpitude.

Though the above Section is quite strong, it is suggested that even those who involve themselves in bogus share transactions should be kept away from management of companies. Similarly, Section 274 deals with the disqualification of Directors and it is worth reproducing the whole section here below.

Disqualification's of directors: (1) A person shall not be capable of being appointed director of a company, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court (*** ) of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less
than six months, and a period of five years has not elapsed from the date of expiry of the sentence;

(e) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or

(f) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section:

(g) such person is already a director of a public company which:

(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:

provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the
date on which such public company in which he is a director failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B).

(2) The Central Government may by notification in the Official Gazette, remove –

(a) the disqualifications incurred by any person in virtue of clause (d) of sub-section (1), either generally or in relation to any company or companies specified in the notification; or

(b) the disqualification incurred by any person in virtue of clause (e) of sub-section (1).

(3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).
In this disqualification must be added the person who have involved themselves in trafficking of shares so as to manipulate the market. A person should not be a Director of more than 15 companies.

The choice of being a director of any number of companies, should not be left to the concerned director. It appears that the number fifteen also requires to be reduced so that the Directors can pay more attention to the welfare of the Companies under his control. An office of the director may be vacated in the following circumstances.

Vacation of office by directors (1) The office of a director shall become vacant if –

(a) he fails to obtain within the time specified in sub-section (1) of section 270, or at any time thereafter ceases to hold, the share qualifications, if any, required of him by the articles of the company;

(b) he is found to be of unsound mind by a Court of competent jurisdiction;

(c) he applies to be adjudicated an insolvent;

(d) he is adjudged an insolvent;
(e) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(f) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call (unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure);

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

(h) [he (whether by himself or by any person for his benefit or on his account), or any firm in which] he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295;

(i) he acts in contravention of section 299;

(j) he becomes disqualified by an order of Court under section 203; [* * *]

(k) he is removed in pursuance of section 284; [or]
(1) having been appointed a director by virtue of his holding any officer or
other employment in the company [* * ] he ceases to hold such office
or other employment in the company [* * *]

(2) Notwithstanding anything in clauses (d), (e) and (j) of sub-section (1),
the disqualification referred to in those clauses shall not take effect –
(a) for thirty days from the date of the adjudication, sentence or order;
(b) where any appeal or petition is preferred within the thirty days
aforesaid against the adjudication, sentence or conviction resulting in
the sentence, or order until the expiry of seven days from the date on
which such appeal or petition is disposed of; or
(c) where within the seven days aforesaid, any further appeal or petition is
preferred in respect of the adjudication, sentence, conviction, or order
and the appeal or petition, if allowed, would result in the removal of
the disqualification, until such further appeal or petition is disposed of.

[(2A) Subject to the provisions of sub-sections (1) and (2), if a person
functions as a director when he knows that the office of director held by
him has become vacant on account of any of the disqualifications, specified}
in the several clauses of sub-section (1), he shall be punishable with fine which may extend to [five thousand rupees] for each day on which he so functions as a director].

(3) A private company which is not a subsidiary of a public company may, by its articles, provide, that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

A director may be removed in the following circumstances.

1. By an ordinary resolution.
2. By special notice.

Though this provision, the Companies Act has tried to ensure that the directors functions within their limits and with discipline.

Further, a director is required to discuss the nature of his interest in a contract if he does not do so he may be fined Rs.50,000/-.

A director who is interested in a contract, shall not participate or vote in the Boards proceedings.
This section of companies act deals with the Fiduciary responsibility of a director and his dealings should be with utmost good faith. He should not do any thing that is hidden and thereby causes loss to the company. It would be appropriate if these provisions are further strengthened with provision for imprisonment so as to ensure that a director does not misuse his position.

These are some of the suggestions that are made in addition to the suggestions already made and incorporated while discussing such issues in the various Chapters of this Thesis.

1. The Companies Act of 1956 does not defined the definition of the director. In view of the difficulty faced regarding the concept of the director is necessary that in an appropriate definition of director in section 2 of the Act.

2. Disqualification's of directors: (1) A person shall not be capable of being appointed director of a company, if –
(h) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(i) he is an undischarged insolvent;

(j) he has applied to be adjudicated as an insolvent and his application is pending;

(k) he has been convicted by a Court (*** of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;

(l) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or

(m) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section;

(n) such person is already a director of a public company which,
(C) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or

(D) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more: provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company in which he is a director failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B).

(2) The Central Government may by notification in the Official Gazette, remove –

(c) the disqualifications incurred by any person in virtue of clause (d) of sub-section (1), either generally or in relation to any company or companies specified in the notification; or

(d) the disqualification incurred by any person in virtue of clause (e) of sub-section (1).
(3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).

In this disqualification must be added the person who have involved themselves in trafficking of shares so as to manipulate the market. A person should not be a Director of more than 15 companies.

3. The role of director as an agent of the Company needs to be properly defined. In the Companies Act of 1956 does not clearly explain the parameters with in which a person can function as a director within the ambit of an a agent.

4. A director is require to exercises care and skill but the Act no where laysdown the extent of care and skill require of a director, it is not appropriate to leave everything for the courts to decide it is essential
for the legislation to lay down the rules for the purpose of functioning of the director.

5. The Corporate criminal liability is much discussed. That the Act should lay down the nature, liability of a director so that the matter is very clear and does not lead to litigation.

6. The liability of the director to the Company is the serious matter and requires that such crimes committed by directors should be identified and appropriately defined.

Under English law much of these questions are settled by the courts, since Indian law is largely based on statute law it would be appropriate and necessary to have provisions in the Act in all such matters so that litigation is avoided and it is cleared to the directors what there liability is.
Foot Notes:

1. Sec 252 to 323 of the Companies Act 1956
2. Sec 252 of the Companies Act 1956
3. Sec 258 of the Companies Act 1956
4. Sec 267 of the Companies Act 1956
5. Sec 275 of the Companies Act 1956
6. Sec 284 of the Companies Act 1956
7. Sec 299 of the Companies Act 1956
8. Sec 299 to 323 of the Companies Act 1956