



INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

CHANGING SCENARIO OF PUBLIC SECTOR UNDERTAKINGS IN INDIA WITH RELATION TO ADMINISTRATIVE LAW

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ABSTRACT

This paper is an attempt to evaluate the changing scenario of Indian Public Sector Undertakings after the change in policies of the Central Government in India. Therefore, the author will highlight the importance of Public Sector Undertakings as from being the backbone of development in India after Independence to how the sectors have performed throughout these years as an asset to now as a liability. The author will also try to find the answer whether divestment could be the solution to such undertakings which were once minting money and to bring back the glorious era of such units. We will also look how the Indian & English law deals with Public Sector Undertakings.

INTRODUCTION

Today the world is progressing at a rapid pace. The factors causing these may be various like the advancement in science and technology, the increasing literacy rates among the citizens etc. The generation is getting evolved and so does the mechanism governing the individual. Therefore, the role played by the institutions has also adopted the dynamic approach.

An enterprise owned by the state in India is called a **public sector undertaking (PSU)** or a **public sector enterprise**. These companies are owned either by the union Government of India or one of the many state or territorial governments or both. For a company to qualify as a PSU, its stock needs to be majority-owned by the government. On the basis of ownership, PSUs can be classified as central public sector enterprises (CPSEs) or state level public enterprises (SLPEs).

In this following paper, the author has tried to highlight the change in the approach of the Public Sector Undertakings and its functioning caused by the dynamic nature of the society throughout their journey till today. Also we will how these days the PSUs are surviving under financial loss and what could be the impact of such steps taken by the government upon the PSUs itself on the public at large.

HISTORICAL BACKGROUND OF PUBLIC SECTOR UNDERTAKINGS IN INDIA

When India achieved independence in 1947, it was primarily an agricultural country with a weak industrial base. There were only 18 Ordinance Factory in the country which the British had established for their own economic interest and for the purpose of ruling the subcontinent with brute force. The national consensus was in favour of rapid industrialisation of the economy which was seen as the key to economic development, improving living standards and economic sovereignty.

To give an idea about how there is a boom in PSUs is that after independence in 1951 there were just 5 enterprises in the public sector in India, but in March 1991 this had increased to 246.

CPSEs are companies in which the direct holding of the Central Government or other CPSEs is 51% or more. The Ministry of Heavy Industries and Public Enterprises administers over these companies.

The PSUs are further classified basis of the financial autonomy. These companies are "public sector companies that have comparative advantages", giving them greater autonomy to compete in the global market so as to "support them in their drive to become global giants". Therefore in the year 1997 nine companies were given the tag *Navaratna* inspired by talisman composed of nine precious gems as during reign of Akbar.

Keeping into mind the increasing net worth of the companies in 2010, the government established the higher *Maharatna* category, which raises a company's investment ceiling from Rs. 1,000 crore to Rs. 5,000 crore. The *Maharatna* firms can now decide on investments of up to 15 per cent of their net worth in a project while the *Navaratna* companies could invest up to Rs 1,000 crore without explicit government approval. Two categories of *Miniratnas* afford less extensive financial autonomy¹.

THE PERIOD OF CHANGE

The major consideration for the setting up of PSUs was following:-

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¹ <https://www.constructionplacements.com/psu-companies-list-public-sector-undertakings-in-india/>

- to accelerate the growth of core sectors of the economy
- to serve the equipment needs of strategically important sectors
- to generate employment and income.

To achieve the goals, the government took over a large number of "sick units" from the private sector. Additionally, in the year 1969, Indira Gandhi's government nationalised fourteen of India's largest private banks, followed by additional six banks in 1980. This government-led industrial policy, was the dominant pattern of Indian economic development until the 1991 Indian economic crisis, with corresponding restrictions on private enterprise. The year 1991 played a pivotal role in shaping the industry and even the entire Indian economy. After the crisis, the government started dis-investing its ownership of several PSUs to raise capital and privatise companies suffering from poor financial performance and low efficiency².

RELEVANCE WITH ADMINISTRATIVE LAW

Now, with the changing scenario of the setup around us, the State has given up the passive policy of "laissez faire". Today it has not only confined its scope to the traditional, minimum functions of defence and administration of justice. The old "police state" has now become a "welfare state". It seeks to ensure social security and social welfare for the common mass. It also participates in trade, commerce and business³. With a view to achieving the object of "socialist"⁴, democratic republic, constitutional protection is afforded to State monopoly⁵ and necessary provisions are incorporated in the Constitution itself by laying down the "Directive Principles of State Policy"

Under our Constitution, public sector plays key role in the economic development of the country. It has been said that certain functions are so vital to the nation that it is proper not to leave them to private enterprises. They should be run and managed by the State, either through its own departments or by government companies or by creating public sector undertakings. But it is better they should be kept outside politics. They are used as both a sword and a shield. It can be used as a sword by Ministers in exercising influence over its

² <https://www.psuconnect.in/psu-companies-in-india>

³ Art. 298, Constitution of India

⁴ Preamble to the Constitution of India, as amended by the Constitution (42nd Amendment) Act, 1976.

⁵ Art. 19 (6) (ii), Constitution of India

activities by issuing directives of a general nature, by making appointments of Chairman and Members by controlling its borrowing, etc. It can also be used as a shield to protect the government from embarrassing questions in Parliament by pleading its autonomy.

As observed by the Supreme Court in *Som Prakash Rekhi v. Union of India*⁶ (Som Prakash Rekhi), a commercial undertaking although run under the constitutional scheme of the government is better managed with professional skills and on business principles, guided by social goals, free from departmental rigidity, slow motion procedure and hierarchy of officers. "The trappings of personality, liberation from government stiffness and capacity for mammoth growth, together with administrative elasticity are attributes and advantages of corporations."⁷

PUBLIC CORPORATION: DISTINCTION BETWEEN ENGLISH LAW AND INDIAN LAW

There is some difference between English law and Indian law on the creation of corporations and their rights and liabilities.

Under the English law, corporations may be either statutory or non-statutory and there is fundamental distinction between the powers and liabilities of the two classes. Statutory corporations have such rights and can do such acts only as are authorised directly or indirectly by the statutes creating them while non-statutory corporations, speaking generally, can do everything that an ordinary individual can do unless restricted by statute, either directly or indirectly⁸.

Indian law, however, does not give undue importance to the fact as to how public corporation is created but emphasis as to why it has been brought into existence. There is no material difference between a corporation created by a statute or under a statute so far as its rights, liabilities and accountability to the community at large is concerned⁹.

Therefore the Indian law is much more liberal as compared to the English Law as far as construction and interpretation of the term "public corporation" is concerned.

⁶ AIR 1981 SC 212

⁷ Ramana Dayaram Shetty v. International Airport Authority of India

⁸ Halsbury's Laws of England (4th Edn.) para. 1326

⁹ Supra note 4

RESEARCH QUESTION

Does the concept of delegation applies on the Public corporations and upto what extent it is applicable?

This question is more relevant in present day scenario because nowadays the government is trying to give up or reduce its share from the public enterprises in order to make the institution profitable and delegate this duty upon the private parties.

For example- National Highway Authority of India (NHAI) is the autonomous agency of Government of India responsible for highways in India under Ministry of Road Transport and Highway. For the construction of new highways, NHAI either constructs it by its own or delegates it to private contractors, who wins the tender on PPP (Public Private Partnership) mode by the following models-

1. EPC (Engineering, Procurement & Construction)
2. BOT (Build, Operate, Transfer)
3. Hybrid Annuity Model- where government provides 40% fund and rest is to paid by the contractor.

On any of the above models, after the completion of the project it is maintained by NHAI.

On the other hand, a more recent example which raised a few questions on the action of government was operation of private train by Indian Railways Catering and Tourism Corporation (IRCTC). This was the first time in India that a train (Lucknow-New Delhi-Lucknow Tejas Express) was not operated by Indian railways itself. Railways in India are governed under the Railways Act, 1989. It can be understood that when this act was made, the legislature could not have foreseen that private player can also operate their railways in contractual business. But it should not be violative of the Act¹⁰. Here in this case, IRCTC is determining the price, which essentially be should in the hands of Central Government¹¹.

CONCLUSION

With the changing scenario of the State's approach, nowadays it no more a welfare task, but to extract profit from the business. No doubt, the government must think of the maintaining

¹⁰ <https://www.thehindu.com/news/national/first-private-train-violates-railway-tariff-law/article29674312.ece>

¹¹ Section 30 (1) of the Railways Act, 1989.

balance between available resources and increasing expenditure in this commercial world. As a result, it should bring out some creative ideas to generate revenue without hampering the rights of the employees working in such Public Corporation and keeping into mind the public at large which is going to be affected from such changes.

When an enterprise is backed by Government (by having major share in the enterprise) it provides a sense of security among the people, that even if the enterprise is not gaining profit or facing financial crisis, the state will act as the parent. This is what which differentiates public corporations from private enterprises.

Selling the shares and divesting from PSUs¹² may bring the institutions into profit financial but it may no more be accessible to large number of people which will defeat the purpose behind establishment of such institutions. As a result, these PSUs who have contributed so much in building of the nation will reduce merely to the institution similar to a private corporate enterprise

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