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THE REGULATING ACT, 1773

Atharva Naukarkar

British East India Company was very important to the British Empire because it was a monopoly trading company in India and in the east as well, and many influential people were its shareholders, being a joint stock company. The company paid a lot of money to the government in order to maintain the monopoly, but since 1768 the company was unable to meet its commitments because of loss of tea sales in America¹. By 1773 the company was in horrible financial straits. As a result of this, the British Parliament found it necessary to regulate the activities of the British company in India and for this, the Regulating act of 1773 was passed. This was the first time when British government tried to interfere in matters of the Company. The Act set up a system by which the British government supervised (regulated) the work of the East India Company. This paper aims to answer some of the common layman's questions that may arise while going through the Legal history of Regulating Act, 1773. The questions are raised in the bold below.

**WHAT DOES THE TERM 'REGULATING' IN THIS LAW MEAN?
WHAT EXACTLY DID THE BRITISH PARLIAMENT INTEND TO
REGULATE?**

Lord North² decided to overtake the management of the India Company with the Regulating Act. The Company had control over large areas of India for trading purposes and had an army to protect its interests and benefits. Company men were not trained enough to govern, so North's government started transfers towards government control since India was of national importance. It was observed that the senior official of the company, before the act was implemented, were indulged into gross malpractices. This was also one of the reasons why the company had a misgovernment in the Bengal, apart from crisis by threat of bankruptcy and a demand for a government loan, and hence, had to be replaced in order to save British interest.

To know what exactly the Britishers intended to regulate and also what they meant by regulating, it is important to know why it was implemented in first place. Firstly, before the act there was a dual government or dyarchy form of government, this system not only created confusion but also left the people miserable against oppression by both company and nawabs. The British parliament was mere spectator of this and thus regulation of the trading company was necessitated so as to safeguard interest of people and increase trade as well. Secondly, the servants of the company had

¹ About 85% of all the tea in America was smuggled Dutch tea which eventually led to decrease in demand for tea sold by the company. This also led to huge losses as company had already stocks of tea in home country along with supplies from India.

² Frederick North, 2nd Earl of Guilford, KG, PC (13 April 1732 – 5 August 1792), better known by his courtesy title Lord North, which he used from 1752 to 1790, was Prime Minister of Great Britain from 1770 to 1782. He led Great Britain through most of the American War of Independence. He also held a number of other cabinet posts, including Home Secretary and Chancellor of the Exchequer.

become corrupt and many of them retired and took away heaps of wealth to England and lived like Indian Nawabs³. In 1772, a secret parliamentary committee reported that the servants of the company including Robert Clive had received large sums of money and etc. Lastly, the corruption was so much prevalent that the servants of the company led the company to financial bankruptcy in early 1770s. In addition to this, the famine of 1770 also reduced the revenue. In August 1772, the East India Company applied for a loan of 1 Million Pounds to the British government to support themselves. Ironically the company which was supposed to pay huge returns to the government is now asking for money.

Hence, the term 'regulating' in the 'Regulating Act, 1773' specifies nothing but to "supervise" the actions of the company. This supervision was not just for mere making reports but also to intervene in matters of the company and to perform activities which suited the British government. This led to removal of the political power which the company had and also provided specific measures to set up a new administrative framework. This led to transfer of all the powers to British government. Hence, basic objective of the Regulating act was to control the company which had transformed from a private-business entity to a semi-sovereign political entity.

Regulating Act, 1773 recognized the political functions of the company, because it emphasised for the first time right of the parliament to dictate the form of government. It led to centralize the administrative machinery in India. The act set up a written constitution for the British control in India in place of arbitrary rule of the company. A system was introduced to prevent the Governor-General from becoming autocratic⁴ or can say behave like a dictator. This act unequivocally established the supremacy of the Presidency of Bengal over the others. In matters of foreign policy, the Regulating Act, 1773 made the presidencies of Bombay and Madras, subordinate or subsidiary to the Governor-General and his council. Now, no other presidency had power to give orders for commencing hostilities with the Indian Princes, declare war or negotiate treaty. It also established a supreme court at Fort William where British judges were to be sent to India to administer the British legal system.

Hence, we can say that the basic intention of British to implement this was just to regulate and recognise the political and administrative power of the private-company and also to sort the chaos created by the dual- government. The company had earlier only charter for trading but this act led British to govern the region as well. this act also led to bringing up anti-corruption practices as the act prohibited the servants of the company from accepting bribes, gifts etc. from other people.

³ Such rich people were nicknamed "English Nawabs" in England.

⁴ As an executive council of four was created to assist governor-general. Decisions was to be taken by majority and Governor-General could only vote in case of tie.

The act led to establishment of three major pillars of the constitution i.e. executive, legislature and judiciary. Hence, the hidden intention was nothing but to regulate India via controlling the most powerful company in the world.

HOW IS THE ACT DIFFERENT FROM MODERN-DAY REGULATION OF THE CORPORATIONS?

The then Regulating Act was implemented by the British government was far different from the acts of such nature implemented now. They vary in their jurisdiction, sections and many more differences. These differences are bound to take place as due to the difference in the time period and also nature of the company, society and judicial mechanism as well. There are various laws in modern day India which regulates the business of large business corporations in order to see the proper functioning of the business and to prevent the monopolies created by different private agencies. The laws which regulates the corporation can be Competition Law, Company Law, Guidelines of SEBI and many more.

The Regulating act, 1773 was implemented by British parliament in order to supervise the functioning of the East India Company as well as control it. The jurisdiction of the Regulating act was limited to that of only one private company i.e. British East India Company. No other private as well as public company in England or in other parts of world was affected by this act. On the other hand, the present regulating act for companies which is nothing but the Companies Act 2013 has jurisdiction all over India⁵ i.e. all the companies either private or public incorporated within this act or any other previous companies act will be regulated by Companies Act 2013 and will have to follow rules and procedures of the said act. Hence, summarising the difference made is that the Regulating Act 1773 exercised jurisdiction and was limited to the British Company but the counter i.e. present Companies Act 2013 exercises its jurisdiction over multiple companies in all over the country.

Another difference which is visible is the then Regulating act was brought in to introduce the judicial system in the country whereas the present regulating act works within the boundaries of the judicial system. This is the difference which can be said to be vague one but still is a strong one as the act then led to establishment of a centralised administrative system whereas the present act works within this limit.

⁵ Section 1(2), Companies Act, 2013 and Section 1(4), Companies Act, 2013.

The present Companies Act as well as other acts or legislature have inspection, inquiry and investigation⁶ provisions within them in order to keep a check on the working and records of the company but this was something which was missing from the old Regulating Act 1773. The act contained no provision for punishment of any kind to the people who violate the rules and procedure of the companies or the act as such but the present companies act does contain provisions of fines and penalties for the defaulters. Another point to notice is the present companies' law even sets up a special provision in order to set up tribunals where appeals can be filed whereas the then act lacked to define so. This leads us to the conclusion that the present companies act or any other such regulation are quite well, defined containing all the provisions and definition as required, as compare to that of the earlier Regulating Act.

The major difference to notice is that the present competition laws and the then regulating laws. The then regulating act allowed East India Company to remain the monopoly i.e. even after assuming the power and enacting of the act the company still remained the monopoly in the east to trade. The act did not take care of the monopoly laws as such i.e. there were no rule if anyone breaks such monopoly or can say violates it. There were no laws to regulate the monopoly. However, in present time, various laws are there which identifies monopolistic competition and there are rules and procedures in order to regulate them. The very example of this is Competition Act, 2002⁷. This present-day law was intended to limit the rise of concentration of wealth in a few hands and of monopolistic practices. This present-day act ensures proper healthy competition between companies and also punishes or sanctions those who violates the rules and procedure as specified.

ONE SEBI REGULATION IN TODAY'S LEGAL SYSTEM WHICH IS RELATABLE TO PROVISION OF REGULATING ACT, 1773.

The Regulation Act, 1773 was an Act of the Parliament of Great Britain intended to overtake the management of the East India Company's rule in India. The act also established the Supreme Court of Judicature at Fort William, Calcutta. The court was formed to have one chief justice along with three puisne judges. Sir Elijah Impey⁸ was appointed as chief justice of this supreme court. The court was to have civil, criminal, ecclesiastical (clerical or religious) as well as admiralty jurisdiction. The court was given supreme judiciary over all British subjects including the provinces of Bengal, Bihar and Orissa. The Supreme Court was also made to consider and respect the

⁶ Chapter XIV: Inspection, Inquiry and Investigation of Companies Act, 2013.

⁷ It received the assent of the President of India on 27 December, 1969. It was earlier named as Monopolies and Restrictive Trade Practices Act. And later it was succeeded by Competition Act in 2002.

⁸ First chief justice ever.

religious and social customs of the Indian population. The appeals from the provincial courts, Court of Collector, the Quarter Sessions as well as the Court of Requests lay with the Supreme Court, and any appeal to its decision went to the King's court, where it may or may not be accepted. Similarly, before the SEBI Act, 1992 first established in 1988 as a non-statutory body for regulating the securities market. The Central Government establish an Appellate Tribunal known as Securities Appellate Tribunal to exercise the jurisdiction, powers and authority bestowed on such tribunal under the SEBI Act, 1992 or any other law for time being in force. The Central Government has set up or established a Tribunal at Mumbai. Securities Appellate Tribunal is a statutory body established⁹ to hear and to dispose appeals against orders passed by the Securities and Exchange board of India or by an adjudicating officer under the Act. The aggrieved can also go to supreme court¹⁰ for the same i.e. if he is not satisfied in the tribunal he can appeal in supreme court.

The main similarity between regulating act 1733 and SEBI Act, 1992 is that in order to provide proper and fair justice the regulating act at that time, and avoiding the arbitrariness of the East India company at that time, and the non-statutory board of SEBI this time there are provisions for appeals to higher authority. In both these provisions are two layered with the Act providing for establishment of Supreme Court of Judicature at Fort Williams and appeal provisions in it from lower courts at first layer and for further appeal to privy council at the next level. The SEBI regulations also provided establishment of the Appellate Tribunal where the appeals can be taken from the board's order and then even against the tribunal's order the appeals can be taken to Supreme Court of India. Hence, we can say that both the acts were similar in matters of judiciary or can say judicial process and steps.

One of the regulation of Securities and Exchange Board of India which is relatable to the Regulating Act, 1773 is according to section 63 of the "Securities and Exchange Board of India(Employees Service) Regulations, 2001 i.e. Conduct, Discipline And Appeals "No employee shall engage in any commercial business or pursue it either on his own account or as agent for others, nor act as an agent for an insurance company nor shall he be connected with the formation or management of a joint stock company".¹¹ This regulation of the SEBI will prevent its employees from engaging into private trade or to do any other business as also mentioned under section 54

⁹ Section 15(K), Securities and Exchange Board of India Act, 1992

¹⁰ Section 15(Z), SEBI act 1992.- Appeal to Supreme Court

¹¹ Section 63, SECURITIES AND EXCHANGE BOARD OF INDIA (EMPLOYEES' SERVICE) REGULATIONS, 2001, SECURITIES AND EXCHANGE BOARD OF INDIA (EMPLOYEES' SERVICE) REGULATIONS, 2001 (2001). Retrieved from: https://www.sebi.gov.in/sebi_data/attachdocs/jun2017/1498020514030.pdf

of the same guidelines which prevents employees from seeking any outside employment. Thus, these guidelines prevent private individuals to start their own business. Like the Regulating Act, 1773 it also prevented its employees and private individuals to start its own business in order to prevent corruption. Thus, this is one rule of SEBI which is relatable to the Regulating Act which also regulated private individuals to carry out private trade.

To conclude everything, this short article aimed to make the reader aware about the then regulating act during the British rule and what it meant and why it was implemented in a country like India. The paper also aimed to bring the recent or modern day laws to front and compare them with the old law. At the end the researcher compared the old Act with that of the SEBI regulation present in today's world.