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UNDER THE CONSTITUTION
AND THE SUPREME COURT

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Dr. Cooper, apart from being Director of a number of Indian Joint Stock companies, is active in public life. Dr. Cooper was the President of the Institute of Chartered Accountants in 1963-64; Chairman of Bennett Coleman & Co., Ltd., in 1964-66; President of the Indian Merchants' Chamber in 1967-68. He is Vice-Chairman of the Indian Red Cross Society, Bombay, Vice-President, Forum of Free Enterprise, and a Trustee of the Masina Hospital. In December 1969, he was elected General Secretary of the Swatantra Party.

He is a Trustee of the Adult Education Institute.

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R. C. COOPER

As early as 1895 the Swaraj Bill, inspired by Lokamanya Tilak, provided for a constitution guaranteeing to every citizen freedom of expression, the right to property, equality before the law, and such other fundamental rights. Mrs Annie Besant's Commonwealth of India Bill also provided for fundamental rights almost identical in scope and nature. As early as 1927, the Indian National Congress declared that the basis of the future constitution of India must be a declaration of fundamental rights. The Motilal Nehru Committee in 1928 stated that the first concern of the people of India is to secure fundamental rights hitherto denied to them.

Motilal Nehru observed: "It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and

communal rights to all communities than by including them among the basic principles of the constitution." It is an irony of fate that his granddaughter, Mrs Indira Gandhi, is prepared to provide machinery for withdrawal of the Fundamental Rights guaranteed under our sacred Constitution.

Throughout the years 1895 to 1935 the demand for fundamental rights rested on a conviction that a citizen should have guarantees of a kind which would not permit their withdrawal under any circumstances. Even at that time, the fear of the executive making arbitrary inroads on individual liberties was visibly present throughout the struggle for national freedom. The implications of the absence of fundamental rights became evident during the war years when civil liberties lost all their meaning in India and the courts, including the Federal Court, found it impossible to safeguard them. Hence the demand for the inclusion of fundamental rights in the constitution of India.

Thus, when the Constitution was being framed, Indian leaders, with their political thinking long conditioned by the concept of fundamental rights, had no difficulty in accepting them and incorporating them as pillars of the Constitution. When the Constituent Assembly met for the first time in 1946, no member opposed the idea of a chapter on fundamental rights as an integral part of the constitution of independent India. In fact, it was unreservedly supported by all sections of opinion in the Assembly.

In the first draft, a constitutional amendment could be passed only with a majority of not less than two-thirds of the total membership of each House and subsequent ratification by the legislatures of not less than two-thirds of the units of the Union. A joint meeting of the Union Constitution Committee and the Union Powers Committee introduced an important change, namely, that for a constitutional amendment the majority should be two-thirds of the members present and voting, followed by ratification by not less than half of the constituent unit legislatures. Later still, the reference to the State Legislatures was omitted and replaced by the further condition of a majority of the total number of members of each of the two Houses of the Federal Legislature.

Whatever might have been the justification for thus simplifying the procedure for an amendment of the Constitution in the early years of its operation, the present moment seems inappropriate for a fresh look at the provision. Mr Setalvad told the Joint Select Committee on Mr Nath Pai's Bill that he favoured a three-fourths majority at both stages in each House at the Centre. A relevant question is whether the State Legislatures too should not be given a voice in such a vitally important matter as a change in the Constitution.

The constitutional guarantee of Fundamental Rights has a definite purpose and is a matter of great importance to every citizen of the country.

The object of Fundamental Rights is to safeguard certain matters from the changing pattern of politics and to place them beyond the reach of a majority of the legislature or the bureaucracy. In recent years, legislative interference has considerably increased on account of the high-handed manner in which brute majorities manage affairs in Parliament and the legislatures.

A dominant group in a legislature may pass a measure which is highly discriminatory or unjust. It might prejudice a large section of the people. It is most desirable that an individual's right to life and liberty, to freedom of speech and expression, freedom of worship and assembly, and such other matters should neither be subject to a majority vote nor depend on the outcome of periodic elections. Such Fundamental Rights must be protected against the arbitrary conduct of both the executive and the legislature. For this purpose, it is equally essential that an independent judiciary should be made the guardian of these rights by the Constitution itself.

The picture of our political life as it has emerged during the last few years is highly distressing. During the first two decades after independence, we did experience a considerable amount of political stability. The situation which has arisen after the General Elections of 1967 is one of utter confusion and chaos. It is this very political stability during the first two decades, based on the

monolithic majority of the Congress, that was responsible for the scant respect shown to our Constitution by the Congress Party under Mr Nehru's unchallenged leadership. Quite unnecessarily, during this period, far too many amendments to the Constitution were passed, hastily and without adequate thought. By and large the country tolerated this process, partly through indifference and ignorance, but also due to its faith in Mr Nehru's leadership, his essentially democratic approach to problems, his faith in secularism, and his belief in peaceful and orderly change. With the ruling party now having no mind of its own, with its divisions, with its leaders speaking in divided voices, with absence of abiding loyalty, floor crossing, defections, complete loss of any sense of discipline, the hasty amendments to the Constitution during the last two decades present very serious problems indeed.

A highly misleading statement: According to Mr C. K. Daphtary, the former Attorney-General of India: "The right to property has been recognized as a vital and essential right of man in every country and every age". It is distressing to find that, motivated by purely political considerations, some people and political parties are now demanding a right to amend the Constitution to withdraw the Fundamental Rights, barely 20 years after the Constitution was framed. In the course of her inaugural address at a conference of some important members of her party held in New Delhi on February 20, 1970, the Prime Minister is said to

have stated: "As far as fundamental rights are concerned . . . even in America, which is considered to be a fortress of capitalism, the right to property is not a fundamental right". In a matter of such great importance, it is hardly fair to misguide the people. Since the Prime Minister's statement has not been contradicted so far, as is normally done, one assumes that she did make such a pronouncement. According to Professor D. N. Banerjee, a constitutional expert, the Prime Minister's statement is not merely factually wrong, but also highly misleading in the present context of Indian politics so far as the right to property is concerned. The U.S. Constitution categorically provides: "No person shall be . . . deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation". This provision applies not merely to the National or Federal Government. There is a parallel provision against any encroachment on the right to private property by the Government of any constituent State of the American Federal Union in Section 1 of the Fourteenth Amendment to the U.S. Constitution, adopted in 1868. The exact words are: ". . . nor shall any State deprive any person of life, liberty or property without due process of law . . ."

The "due process" clause of the U.S. Constitution is very important. It has been the subject-matter of a large number of judicial pronouncements. The guarantee of "due process of law" is

so inclusive and all-pervasive that every other constitutional guarantee could be abolished and there still would be sufficient protection of personal liberty. The due process of law applies to personal liberty, to social control, to procedure, to jurisdiction and to substantive law. It applies to the police power, to eminent domain, and to taxation. It applies to the three great branches of the government, the legislature, the executive and the judiciary. According to Professor Willis's *Constitutional Law of the United States*, "No better scheme could have been evolved to permit the Supreme Court to strike the proper balance between personal liberty and social control. Legislatures may have reasons for the enactment of laws, but the United States Supreme Court measures the legislatures' reasons by its own intellectual yardstick. The most important use to which the United States Supreme Court has put the 'due process' clause is to declare unconstitutional any acts of legislature which it thinks unreasonable".

Thus the sanctity of private property is fully guaranteed by the Constitution of the United States. The Prime Minister's statement is false.

What are the Fundamental Rights? The Fundamental Rights enumerated in the Indian Constitution include not only various individual freedoms of expression, association, religion, etc., but also the right to property.

Part III of the Constitution embodies seven different categories of Fundamental Rights. Briefly,

they are: (1) Right to Equality, (2) Right to Freedom, (3) Right against Exploitation, (4) Right to Freedom of Religion, (5) Cultural and Educational Rights, (6) Right to Property, and (7) Right to Constitutional Remedies. As Mr Frank Anthony recently reminded the Lok Sabha in the debate on Mr Nath Pai's Bill, "The minorities in this country depend on the Fundamental Rights for their security. It was not an accident that the Sub-Committee on Minorities created by the Constituent Assembly, before expressing its own views, gave careful consideration to the findings of the Fundamental Rights Sub-Committee. The Indian National Congress, the Liberals, moderates of all shades and the religious minorities like the Muslims, Christians and Sikhs, all considered the Fundamental Rights to be not only desirable but essential, both for the protection of the rights of the minorities and for infusing confidence in the majority community. A pledge to the minorities implicit in the Fundamental Rights cannot be withdrawn in the name of the supremacy of Parliament."

Why was the right to property recognized as a Fundamental Right? A man works not merely to secure what is immediately necessary for him for his daily living but to accumulate and save sufficient to protect himself against old age.

The Prime Minister, Mrs Indira Gandhi, in her new role as the harbinger of progressive reforms, stated at the Bombay Plenary Session of the Ruling

Congress Party that she would not permit any law or the Constitution to obstruct the progress she desired. In short, she is not even prepared to recognize the Fundamental Right to property. This contention appears to have neither moral, legal nor constitutional validity.

The Party in power seem to be in a desperate hurry to achieve certain objectives. In the process they seem to be in a mood to challenge the highest judiciary in the country, whether it is on the bank nationalization issue or the right to property. The issue is whether the legislature is supreme or the Constitution embodying the Fundamental Rights as a bulwark against legislative or executive irresponsibility. The issue was presented by the former Attorney-General, Sri C. K. Daphtary, as follows :

“Have we that confidence in the legislatures as they are today that we can leave them wholly and absolutely at liberty without restraint of any kind ?”

The Founding Fathers of the Constitution were fully conscious of such contingencies. To quote from the Constituent Assembly Debates, the following is very significant :

“I do not know what kind of people will come in the future Parliament of India. In the heat of extremism or at the altar of some radical ideology, they may like to do away with the provisions which we have made in the Articles

of the Constitution. Our leaders have made certain commitments. We stand by them. We are sovereign, and not the future executive, judiciary or the parliament. It is for this purpose that we are drawing up the Constitution."

These are very wise and significant words.

Mr Nath Pai's Bill, which is at present before Parliament, seeks to give power to the majority in Parliament to remove all Fundamental Rights from our Constitution. The clamour for the removal of the right to property from the chapter on Fundamental Rights in the Constitution originated, as might be expected, from Communist quarters.

The Ruling Congress has announced its intention to support Mr Nath Pai's Bill. The present controversy over Mr Nath Pai's Bill is not something new. It was anticipated even at the time the Fundamental Rights were being debated in the Constituent Assembly. Many eminent members entertained a fear that it was not possible to trust the Legislature since it might be led away by passion, party prejudices and other extraneous considerations. This is precisely what has happened within a brief period of only 20 years. The late Dr Ambedkar observed at that time: "For myself, I cannot altogether omit the possibility of a legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual". Speaking about the importance of

Article 32, Dr Ambedkar said: "If I was asked to name any particular article in this Constitution as the most important, without which this Constitution would be a nullity, I could not refer to any other article except this one. It is the very heart of it; and I am glad that the House has realized its importance. Hereafter it is not possible for any legislature to take away the writs which are mentioned in this article". The Supreme Court has thus become the protector and the guarantor of the Fundamental Rights.

If Mr Nath Pai's Bill is passed, the immediate effect will be on the citizen's Fundamental Right to his property. India, more than any other country, needs adequate fundamental rights due to diverse ideologies and doctrines which are being pursued in our country. It is the duty of Parliament to enforce the Directive Principles; it is equally its duty to enforce them without infringing the Fundamental Rights. It is the bounden duty of the President of India to warn the Prime Minister that whatever the Supreme Court does, he will not give his assent to an Act amending the Constitution in such a major manner unless the people have had a chance of declaring their wishes in a general election. An argument is often advanced that if the Fundamental Rights are not amended, it would lead to violence and revolution. A proper understanding of Part III and Part IV of the Constitution as a whole will show the stupidity of this argument. For Part III, Fundamental Rights, and Part IV, Directive

Principles of State Policy, form an integrated scheme which is elastic enough to respond to the changing needs of society in India.

As Chief Justice Subba Rao pointed out: "History shows that revolutions are brought about not by the majorities but by the minorities, and sometimes by military coups. The existence of an all-comprehensive amending power cannot prevent revolutions, if there is chaos in the country brought about by misrule or abuse of power. On the other hand, such a restrictive power gives stability to the country and prevents it from passing under a totalitarian or dictatorial regime. We cannot obviously base our decision on such hypothetical or extraordinary situation, which may be brought about with or without amendments. Indeed a Constitution is only permanent and not eternal. There is nothing to choose between destruction by amendment or by revolution; the former is brought about by totalitarian rule, which cannot brook constitutional checks, and the other by the discontentment brought about by misrule. If either happens, the Constitution will be a scrap of paper". We should prevent such a development.

What is property? Property does not merely mean the wealth of the rich or the Privy Purses of the Princes. Property includes the small farm of a poor cultivator, the tenancy right of the ryot, the small village shop, the provident fund of the factory worker and the office peon, the life insurance policy,

however small in value, small savings, bank deposits, government securities, and the personal utensils of the poorest family.

It is therefore, much more important for the common man to defend and protect his Fundamental Right to Property than for the big industrialist or the rich.

In many Communist countries, in the absence of the fundamental right to property, small men, individual taxi-cab owners have been deprived of their taxis, shopkeepers of their shops, and farmers of their farms. Bank deposits have been repudiated. Thereafter people have merely become slaves of the totalitarian regime.

It is not difficult to realize that Mr Nath Pai's Bill, if enacted into law, will have serious implications for every citizen in this country. The considerable indifference with which the average man in this country has reacted to the controversy over Mr Nath Pai's Bill must be viewed with great concern, since its consequences could be far-reaching and would be felt only after the Bill is passed.

It is claimed that Mr Nath Pai's Bill seeks to establish the supremacy of Parliament under the Constitution and that it aims at undoing the mischief of the decision of the Supreme Court in the famous Golaknath case. In this judgment, the majority of the Supreme Court held that Parliament has no power to amend the Fundamental Rights

embodied in Part III of the Constitution. The most important question which arises is whether, in the peculiar circumstances in which we are placed today, when the standards of ethics and behaviour of every political party in the country have reached the lowest level, it is safe to grant unlimited power to Parliament to amend the Fundamental Rights.

Here, again, another very important constitutional consideration arises. It cannot be said that the last general election was fought by any party on the issue of amendment of the Constitution. It is a cardinal principle of parliamentary democracy that no bill causing major constitutional change should be allowed to be brought in the life of a parliament unless this was placed before the electorate at the election time by the party concerned.

The rationale of the Golaknath case can be briefly stated as follows:

(1) The Fundamental Rights are outside the normal process of amendment prescribed by the Constitution where the amendment seeks to abridge or take away any of the rights.

(2) Parliament will have no power to amend any provisions of Part III of the Constitution so as to take away or abridge the Fundamental Rights enshrined therein.

(3) For abridging or taking away Fundamental Rights, a Constituent Assembly will have to be evolved, and not the Parliament consti-

tuted as it is today, whatever may be the special majority that is prescribed.

The Supreme Court announced its decision in the Golaknath case on February 27, 1967. As a result, Parliament has, from that day, lost the right that it had been exercising since 1950 to amend the Fundamental Rights embodied in the Constitution. Mr Nath Pai's Bill is an attempt to restore that right and re-establish the supremacy of Parliament. According to Mr Pai, "The supremacy of Parliament implies the right and authority of Parliament to amend even the Fundamental Rights that are at stake". He further contends, "The power to amend the Constitution is an inalienable part of the sovereignty of the people. It is this sovereignty that is being challenged by the Supreme Court. My Bill merely seeks to assert that the sovereignty of the people cannot be abridged by a group of judges. The Supreme Court should not sit as a super-legislature".

With the passing of Mr Nath Pai's Bill, Parliament will have established its supremacy over the Supreme Court. From then on, Parliament and not the Supreme Court will be the custodian of a citizen's Fundamental Rights, since it will then have the power to abridge any of the Fundamental Rights if it so chooses. Any government—Congress, Socialist, Communist or Capitalist—commanding a two-thirds majority in the House will be able to do so. The support which Mr Nath Pai's Bill received

almost spontaneously in the beginning has been steadily going down during the past few months.

What is the truth about the supremacy of Parliament? Members of Parliament often speak of a sovereign Parliament or the supremacy of Parliament. Is Parliament really supreme, or the people of India? Mr Pai's Bill is based on the assumption that Parliament is supreme.

In fact, our Constitution does not recognize either (a) the sovereignty of Parliament or (b) the concept of parliamentary supremacy. The sovereign power is vested in the people of India and not in Parliament. It is true that Parliament is composed of members elected by the people. It would, however, be wrong to presume that the people of India have transferred all their rights to Parliament, including the sovereign power. This is clear from the manner in which the different agencies of government, viz., the executive, the legislature and the judiciary, are created, and the powers conferred on each of them.

The Indian Constitution, unlike that of Great Britain, is a written document. The written Constitution prescribes the limits of power of various agencies created by it. If unlimited power is conferred upon any agency, there is no guarantee that that agency will not encroach upon the powers conferred on the others by the Constitution.

According to Mr B. Shiva Rao, "Those who swear by parliamentary supremacy conveniently

forget the fact that Parliament is only one of the agencies created by the Constitution for specific purposes. Its powers are defined. For example, the Parliament of India cannot pass laws on any and every subject. The division of legislative powers between the Union and the States clearly shows the limitations of Parliament in the law-making field. If a Parliamentary law encroaches upon the legislative field assigned to the States, the Supreme Court is given the power to resolve the conflict. In the process, the Court may declare the parliamentary law invalid. The moment the Court declares the law invalid, it loses all its authority and it has no binding force thereafter. Where is parliamentary supremacy under such circumstances? Under the type of federal system that is established by our Constitution, Parliament can never be supreme”.

As pointed out by an eminent writer, “Members of Parliament take their seats in Parliament with the solemn pledge of loyalty to the Constitution”. This by itself is clear proof that the Constitution is supreme and that the sovereignty of Parliament is derived from that Constitution.

According to Mr Ashok Sen, former Union Law Minister, “Any bid to make the Parliament supreme and not the Constitution would be dangerous. An irresponsible Parliament with an irresponsible majority may sweep away the very basis of our Constitution, as did happen in Germany when the Third Reich was established and the dictatorship of

Hitler was built up on the ashes of the Weimar Constitution, which was destroyed by the majority of the Fascist Party in the German Parliament by employing the amending process to destroy the very structure on which the Constitution was erected". Sri Ashok Sen, who is a leading legal luminary and an important member of the Prime Minister's camp, further added: "The fundamental rights and freedoms guaranteed under the Constitution are not mere gifts to be doled out by our Parliament or legislatures; they are inherent rights derived by every citizen by his very birth as a citizen of our country, and they constitute not merely rights in the legal sense but a way of life for the citizens of a free democracy".

It is distressing to read the reports about the unwarranted onslaughts on the Supreme Court and the judiciary from certain quarters both inside and outside Parliament. It is a matter of fundamental importance to every Indian that we should cultivate respect for the Supreme Court of India and the judiciary, which alone can safeguard our freedom. The Supreme Court has a glorious record of impartiality and competence in dealing with various complicated matters. On occasions when the Government of India sought its advice on difficult constitutional problems, the Supreme Court was able to give helpful advice. The decisions of the Supreme Court have always been supported by sound reasoning. The real strength of the Supreme Court lies in its sincerity and objectivity.

If in spite of persistent protests Parliament insists on passing Mr Nath Pai's Bill, since it will give power to Parliament to amend Part III of the Constitution dealing with Fundamental Rights, the Supreme Court will naturally have to declare the amendment invalid. This will create a serious, but avoidable, conflict between Parliament and the Supreme Court.

The Supreme Court has not objected to Parliament extending the scope of the Fundamental Rights. It has only objected to the abrogation of the rights which the people have enjoyed in the past and which the Constitution-makers thought were of a fundamental character. It is equally important to realize that the Fundamental Rights, as embodied in our Constitution, are not absolute. Every Fundamental Right has its limitations, and in various matters the legislature is empowered to impose reasonable restrictions on the enjoyment of the Fundamental Rights in the larger interests of the country as a whole. In certain quarters an erroneous impression is sought to be created that the Supreme Court by its decision in the Golaknath case has prohibited any future amendment of the Constitution. This is a wrong impression. In fact what the Supreme Court stated is this:

(a) The Fundamental Rights can no longer be amended by Parliament.

(b) The rest of the Constitution can be amended in accordance with Article 368 of the Constitution.

(c) If the country as a whole feels that an amendment of the Fundamental Rights is essential, the residuary power of Parliament may be used to convene a Constituent Assembly for making the necessary changes.

What should we do to protect our Fundamental Rights under the Constitution? It is a sacred duty of every citizen of India to:

(a) Strongly resist all attempts at frequent amendment of our Constitution. Through a large number of amendments, our Fundamental Rights have already been watered down. Some interested persons and political parties now want to scrap them altogether. An attack on the Fundamental Rights is an attack on democracy and mainly on millions of small people.

(b) Educate your countrymen against the danger ahead.

(c) Demand that the process of amending the Constitution be made more difficult than hitherto.

(d) Cultivate respect for the Supreme Court of India. The judiciary alone can safeguard your freedom.

(e) Direct your local Legislator and Member of Parliament to strongly oppose and vote against any such attempt.



States need more powers for rapid growth

By Dr. Rustom C. Cooper

INDIAN economic experience of last 25 years has clearly shown that, on account of the enormous size of the country, economic progress has been inadequate under the centralised planning.

The symptoms of the slow economic growth are rising unemployment, slow rate of industrial growth, idle capacity in many existing units, rising prices, inadequate availability of consumer goods and services and chronic shortages of industrial raw materials, power, housing, drinking water and other infra-structural facilities.

The slow pace of economic progress in the country could be attributed to a number of reasons directly traceable to centralised planning. Bureaucracy, with its vested interest in excessive controls and regulations, leads to inherent delays, corruption and nepotism at all levels. This has caused frustration among the entrepreneurs, big and small, Indian and foreign.

Excessive concentration of economic power in a few hands at the Centre also leads to lack of talent. The few men at the top, having monopoly of determining the economic destiny of the entire country, neither have proper appreciation of the problems and their solutions nor practical experience of business, industry and finance.

They have never participated in the process of production or distribution of goods or services. Ideology in regard to economic matters leads to ambiguity.

We have now had experience with centralised socialist planning for over 26 years, which has revealed that it is neither very much better nor very much worse than capitalist societies.

Our type of planning has often led to political interference in the process of industrial development which does not give scope for economic factors to operate. It also gives inadequate scope for competitive forces to function.

Intelligent and experienced persons from different States are not able to fully associate themselves with the process of economic planning for their States.

Industrial projects, in the past, have not been always based on natural advantages available in particular States. As was obvious from the recent meeting of the National Development Council which considered the draft Fifth Five Plan, the Chief Ministers merely act as rubber-stamp in endorsing the draft prepared by the Planning Commission, without much application of thought or study in depth.

They have been singularly defenceless against personal whims of a small group of politicians with a set ideology.

Members of the Planning Commission sit in their ivory tower and are too detached and too remote to appreciate the particular problems of the people of the States.

This makes it difficult to fix the best priorities for implementing the projects at the State level. In the past, this often led to the neglect of various infra-structural facilities.

In short, economic planning and management of the entire country have proved to be too big a task, and would be so, even if the best brains of the country were to embark upon it.

The State Governments are not able to fully mobilise monetary resources for the development of their States through

either borrowing or taxation as they would like to do.

Operating under a rigid discipline, the States are not able to use the taxation measures to give appropriate and adequate incentives for faster economic growth.

To illustrate, the insistence by the Centre in imposing compulsory rates of income tax and wealth tax does not provide any scope for individual or corporate savings.

The financial provisions of our Constitution place the States at a serious disadvantage inasmuch as the sources of revenue retained for the Centre are resilient and can be expanded while those left for the States are inelastic and often of eroding nature.

Even the Constituent Assembly had foreseen the danger of vesting absolute authority in the Centre for the distribution of income tax and excise duty.

At an earlier stage, land revenue was the backbone of Indian finance. Its importance, however, has greatly dwindled over the years to the disadvantage of the States.

Even in the matter of sales tax, which has become the mainstay of State finances, the States are at a grave disadvantage. Rates of sales tax on consumer goods cannot be increased beyond the limit of endurance.

Moreover, most of the commodities on which sales tax can be levied have already borne the incidence of Central excise duty. The inter-action of the Central rates thus adversely affects the flexibility of State taxation.

For the above reasons, while the resources of the States have not maintained a steady growth rate, their administrative expenses have increased manifold. The incidence of committed revenue expenditure on completed Plan projects and the additional cost of equating the dearth allowances of the State employees with the Central level have made the States more and more dependent on the Centre for financial assistance.

A major reason for the present financial difficulties of the State Governments is the emergence of the Planning Commission (a body not contemplated under our Constitution) whose ever increasing sweep has eroded the economic and financial authority of the State Governments.

The most important items of State subjects, viz. industrialisation, education, health, agriculture, co-operation and social welfare, are all brought within the ambit of Central planning. This naturally erodes the authority of the States which feel frustrated by Central planning.

There are even complaints that the Planning Commission often disregards, for political reasons, regional dissimilarities and needs and imposes priorities which have no relevance whatsoever to prevailing conditions.

Further the dichotomy of the two Central Commissions, viz. Planning and Finance, has created a great deal of misunderstanding and dissatisfaction among the States. Practically each successive Finance Commission has made more pronounced inroads on the State subjects.

The inter-mingling of the functions and resources of the Centre and the States has the great disadvantage that it is not possible to bring home to the States their own administrative and financial responsibilities. This needs to be quickly rectified.

As rightly pointed out by late Mr. A. K. Chanda, in his "Federal

Finance in India," "the industrialised States which made the largest contribution to the income tax and excise duty pools feel dissatisfied as population has hitherto been accepted as the main factor in the distribution of both income-tax and excise duties. The claim, with justification, that industrialisation imposes on them onerous responsibilities of housing, sanitation, education and other social responsibilities."

In this connection the Chief Minister of Tamil Nadu, Mr. Karunanidhi remarked that if population is going to be the main criterion for determining the amount of financial assistance to a State, he would much rather give up the purposeful family planning scheme his State has introduced with success.

The inter-mingling of the resources and functions of the Centre and the States which is the main cause of discord and disharmony and which invariably slows down industrial and economic progress can be cured only by a clear-cut division and decentralisation.

This will give the States freedom to shape their own destinies on an assured quantum of resources which they themselves are prepared to mobilise. Moreover, the States through this process of decentralisation will be fully accountable to their people for their performance, good, bad or indifferent.

With this background of the causes leading to slow economic growth, it would be worth examining whether a system of decentralised economic planning at the State level would be more advantageous in the peculiar circumstances in which the country is placed today.

Among the more obvious advantages of decentralised planning is the great flexibility which such a system would afford. The bulk of monetary and other resources of the State would be made available for the State's own development with much greater flexibility and for more intensive exploitation.

It would be possible to exploit the State's own natural resources at a much faster rate for the benefits of its people. Such a system would have the primary advantage of removing unnecessary Central interference.

There will be greater association and identification by the people of the State with the work of economic planning and development. Each State would be able to specialise in the particular economic activity for which it is most ideally suited. This would give far greater scope for national division of labour and natural resources. Obviously, for instance, it is neither worthwhile nor practicable for each State to have its own steel plant.

With more effective control over fiscal weapons, the States will be in a position to make the maximum use of taxation and other incentives for achieving a faster rate of economic development.

Smaller geographical units will be economically much more viable. There will be healthy competition among different States in certain matters, whereas, in other cases, the role of the States in economic development will be more complementary than competitive.

In the system of decentralised regional planning, it will no longer be possible for the Centre to foist on the States its own rigid ideology. The States will be free to operate according to practical considerations best suited for their own needs.

In matters like foreign collaboration, technical know-how, etc., the Centre will no longer be in

a position to impose its own choice of countries from which the States must receive assistance.

Financial discipline and cost control over the projects will be more effective. Closer watch will be possible at the State level than through remote control under the centralised planning.

This would mean greater economy in Plan expenditure. It will be possible to have a much closer, more frequent and effective dialogue between the Government, on the one hand, and business and industry on the other, to the advantage of all.

There will be more effective utilisation of foreign exchange resources earned by the States. Unnecessary delays inherent in the clearance of projects under centralised planning system will be eliminated.

For instance, the clearance of the fertiliser project of the Tata Chemicals Limited which took several years under the present system, could have been possibly secured much earlier and the project could have been implemented much faster under the proposed system and would have saved millions of rupees in terms of foreign exchange.

Similarly, the implementation of the small car project which was delayed for more than five years, on account of vacillation on the part of the planners, could have been expedited.

Experience of Singapore, Japan, Malaysia, Hong Kong, Taiwan, etc., goes to show that economic progress tends to be rapid where the unit is small and, therefore, administratively more viable.

Although, each State will not have all the resources like ports, steelworks, etc., it will be able to attain maximum benefit of national and international division of labour, and, therefore, obtain resources it lacks at most economic and competitive prices.

In spite of almost complete absence of any raw materials and natural resources, Japan is today one of the fastest growing economies.

The obvious conclusion, therefore, is that the economic progress of most regions of the country will be much faster if the present system is substituted by decentralised planning and administration. Autonomy will make the Indian States more viable economic units.

Decentralisation should not, in any way, affect national or social integrity, as is apparent from the examples of many other Federal Constitutions in the world. It will also give free scope to different States to practise the system of its own choice.

Let us, therefore, consider the question as to what economic autonomy for the States would imply? To put it brief-

(a) The first requirement appears to be to set up a new Planning Boards in the place of the present Central Planning Commission. The States must be able to decide for themselves which industries, if any, shall be reserved for the public, private and joint sector, respectively.

(b) Fiscal autonomy for the States would involve the right to retain the entire revenue from various types of taxation, except conceding a small percentage to the Central Government for its expenditure on Defence, posts and Telegraphs and other centralised services.

There should be free scope for competition between the States through tax incentives and favourable rates of taxation, particularly for the backward States.

(c) Each State will have right to retain, and use as it pleases,

the entire foreign exchange earnings.

(d) Subject to a possible Customs Union for eliminating inter-State imposts, each State will have a right to retain its entire earnings from import duties.

(e) The States will have a right to enter into foreign collaborations of their own choice with any country of the world, wedded to any political system and belonging to either Eastern or Western bloc.

(f) There will be an autonomous Life Insurance Corporation and a General Insurance Corporation for each State. It is pertinent to note that the total premium income of the Life Insurance Corporation for the period ended March 31, 1972 derived from the State of Maharashtra was Rs. 73.32 crores which constituted as much as 21.66 per cent of the total premium income of the LIC.

(g) Similarly, each State will have its separate regional banking as has been successfully done in some other countries. The total deposits of Maharashtra as on December 31, 1971 were Rs. 238 crores for the State Bank and its subsidiaries and Rs. 865 crores for the fourteen nationalised banks.

(h) The States will have a right to constitute free trade zones within their territories without any outside interference. In this connection, it is worthwhile noting that a decision to constitute a free trade zone for the electronics industry, at the Santa Cruz airport, Bombay, is hanging fire for more than two years on account of bureaucratic inefficiency, bungling at the Centre and the power conflict between the two authorities of the Government, viz. the Trade Development Authority and the Electronics Commission.

(i) Full responsibility will have to be taken by the State Government for employment, transport, road development, food, water, medical and other infra-structural facilities.

(j) Each State will have its own autonomous Industrial Finance Corporation for assisting large, small and medium-scale industrial units.

This kind of decentralisation could completely change the economic history of the country. It would bring about rapid economic progress, provided the States follow dynamic and pragmatic policies. The greatest advantages will be (i) healthy competition among States and (ii) much faster decision-making, which would cut out delays inherent in the present excessive centralisation.

The time has come when the intelligentsia of the country, and not merely politicians, should seriously consider the various aspects of this distinct possibility and prepare a blueprint for action. It is, by no means, a simple matter and requires a great deal of thought. It would most certainly involve an amendment to the Constitution. This, however, should not matter because we have already amended our Constitution nearly 30 times in 25 years.

To many people, these suggestions may appear both radical and controversial. However, a serious debate on this vital issue will clear doubts and uncertainties. It should pave the way for rapid implementation of such a scheme. Already, Tamil Nadu has made some progress in this direction.

A patient study should convince people of most States that they have much to gain, and little to lose, by the substitution of the present monolith of Central planning by more flexible and viable State autonomy in the economic sphere.