

SUPREME COURT CASES

(Reprints)

CONSTITUTIONAL CHANGES : AN ANALYSIS OF THE
SWARAN SINGH COMMITTEE REPORT

by
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The Swaran Singh Committee on constitutional changes has performed its tasks with remarkable expedition and wisdom. It has unequivocally affirmed faith in the parliamentary form of government. Expectedly, the Committee has also affirmed the doctrine of parliamentary supremacy in the sphere of constitutional amendment. While the scope of judicial review is sought to be restricted, on the whole the principle of judicial review of legislation has not been infringed. The Committee's recommendations show high statesmanship ; they accommodate the need for change within the framework of constitutional stability. Its major recommendations deserve close and sustained analysis by all citizens committed to fundamental social change through peaceful, democratic and constitutional means.

Parliamentary Supremacy and Constitutional Change

The first major recommendation of the Committee is that Article 368, which confers upon Parliament the constituent power to amend by way of addition, variation or repeal of any provision of the Constitution, should be further clarified by the addition of a sub-clause in effect saying that no amendment shall be called into question in any court on any ground. The Committee reasons that any amendment to the Constitution, following the prescribed procedure, is a part of the Constitution, the supreme law, which of course cannot be challenged in any court. This view has an impressive judicial and juristic support. It simply restores the law as it prevailed from 1950 to 1967 ; and some would even say until and after *Kesavananda Bharati*¹ whose ratio is highly indeterminate. At any rate, all justices in that case gave Parliament very wide-ranging power to amend the Constitution, and at least six justices conceded parliamentary supremacy in unequivocal terms.

Even so, in the present inconclusive state of affairs the proposed addition to Article 368 is itself liable to challenge before the Supreme Court on the ground that it offends the basic structure doctrine. For such a challenge to be successful, the court will have to decide whether there was a clear majority in *Kesavananda* putting "basic structure" beyond the reach of the amending power ; and this of course is a moot point. Furthermore, even if the Court is persuaded to accept that there was a majority decision limiting Parliament's power thus, there will still arise a question

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1. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

whether judicial review of constitutional amendments is an aspect of that "basic structure".

It may be suggested that the Swaran Singh Committee's proposed addition may be recast as follows :

Notwithstanding anything contained in this Constitution, the term "constituent power" used herein shall mean and include the power to change the basic structure, and essential features, of this Constitution and no such amendment shall be called into question in any court.

Could this amendment of Article 368 be invalidated on any ground? By itself, it does not violate any part of the basic structure, it only creates a bar to judicial review for any other, and subsequent, amendment which may do so. One may say, following the opinions of Justice Shelat, Grover, and Jaganmohan Reddy in *Kesavananda* that Article 368 confers a *limited* power which cannot be converted into an *absolute* one; but can this be sustained in face of the fact that Article 368 empowers Parliament and State Legislatures to amend that article itself? The power in Article 368 is at present *limited* by its terms; but is it also potentially so limited? If it was potentially limited, our hypothetical amendment can be struck down. But the difficulty is how can we tell that a power is *potentially* limited except by striking down its actualization?

Assume now that one can impugn this amendment on the ground that judicial review of amending Acts is a part of basic structure and that the hypothetical amendment infringes that aspect of basic structure; therefore, the amendment must be declared invalid. This argument is seductively attractive but its acceptance would result into a paralyzing paradox. The paradox is that while the amending power will then be limited, both potentially and actually, *the judicial review power will become unlimited, and illimitable, both potentially and actually*. But is not the judicial review power itself a power under the Constitution? If the amending power is intra-constitutional and thus limited, is the power of judicial review not limited too?

The dilemma is a real one; if the Constitution is not *always* to be what Parliament says it is, how can it *always* be what judges say it is? When Mr. Justice Hidayatullah said in *Sajjan Singh*² that fundamental rights should not be the playthings of a special legislative majority, I had to ask reluctantly but equally forcefully in 1967, soon after *Golaknath*³, whether the rights can be playthings of a special judicial majority? The forebodings are borne out. Justice Mathew wonders in *Indira Gandhi case*⁴ whether *Kesavananda* did decide that Article 14 "does not pertain to the basic structure"; Justice Khanna in retrospectively explaining his *Kesavananda* opinion only mentions that the rights guaranteed by Article 15 and the rights embodying secular character of the State, cannot be abridged or repealed. All other articles in Part III are subject to the amending power.

It is unprofitable to multiply instances of this kind. The uncertainty over the nature and ambit of amending power may be perhaps, inevitable.

2. *Sajjan Singh v. State of Rajasthan*, (1965) 1 SCR 933; AIR 1965 SC 845.

3. *Golaknath v. State of Punjab*, (1967) 2

SCR 762; AIR 1967 SC 1643.

4. *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

given the way the Constitution has been drafted. The continuance of dialogue between Judiciary and Parliament over the scope and nature of amending power may well be a part of the constitutionally desired social order. I might now overstress the point and say that this uncertainty is itself a basic feature, a part of the basic structure of the Constitution.

Need for Wise Accommodation

But as a practical matter, I might venture to suggest, there is need for wise accommodation between Parliament and Supreme Court. The Court has amply, if not always clearly, indicated the lines on which this accommodation should be based, through meditations (agonized and agonizing as they are) on the basic structure. It has refused to admit that our Constitution created a sovereign Parliament like the English Parliament; but it has also conceded a whole range of powers to amend the Constitution through *Kesavananda*'s refusal to follow both *Golaknath* and *Sankari Prasad*⁵.

It is now for Parliament to consider whether its power to change the Constitution must be limitless; whether such a claim is in itself, without more, essential to perform the tasks of national regeneration and development. Does Parliament really want power, from this standpoint (as was argued in *Kesavananda*) to (for example) convert India from secular to a theocratic, from republican to non-republican, from federal to unitary, from democratic to non-democratic, from a rule-of-law to an arbitrary State? Utterances of the highest authorities of the Nation, ever since the inception of the Indian Republic till today, have reaffirmed that the Nation shall not turn its back on democracy, secularism, republicanism and the rule of law. The Swaran Singh Committee Report accentuates those very values.

There is thus broad agreement in the Nation on the basic constitutional vision — there has always been and one hopes there will always be.

What is needed is clarity and certainty. Instead of the hypothetical amendment, I suggested earlier, time is ripe for Parliament to consider an amendment to Article 368 which will limit the reach of the amending power by specifying some provisions of the Constitution as the basic structural features which it may, in its wisdom, decide *may not be open to amendment except through a very special procedure*, say, referendum. It is quite possible for eminent lawyers inside and outside Parliament to assist in the formulation of such features. The task may be difficult but it is far from impossible. An advisory opinion of the full court then may be obtained; the duly amended Article 368 will then provide the Nation with a new formulation of constitutional consensus.

As the Prime Minister recently observed there is no "inherent confrontation between the Legislature and the Judiciary". Mr. Chief Justice Ray, in the same vein, described the Supreme Court as the "country's national autobiography based on justice and fair society". Obviously then,

5. *Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar*, 1952 SCR 89; AIR 1951 SC 458.

neither the limitless assertion of the power of judicial review nor that of the sovereignty of Parliament appear to be wholly consistent with the existing national consensus.

Of course, it is always probable that the Court might be persuaded to accept the hypothetical amendment here discussed, and return to the *Sankari Prasad* doctrine. But history has shown that, for various reasons, the Court can be persuaded to change its views from time to time. The best way out of the *impasse* really seems to be the alternative amendment suggested here.

Power of Judicial Review of the Constitutionality of Laws

The Committee proposes that the constitutional validity of any law — State or Central — on the ground that it violates fundamental rights or is outside the legislative power should be adjudged only by the Supreme Court and not by the High Courts as is the case now. A law can be declared unconstitutional by the Supreme Court only through a minimum bench of seven judges; and in all cases the decision invalidating the law must be supported by a two-third majority of the special bench. The Committee further suggests that in order to avoid inconvenience to the litigants the Court may sit in circuit in three other zones besides Delhi.

The proposal may be controversial but in principle it is quite sound. The power to invalidate a law on constitutional ground is an august power. The High Courts have no doubt discharged their duties under the Constitution, by and large, ably and fairly. But the Supreme Court still remains the ultimate authority on these matters. It is just as well that the Supreme Court becomes primarily a constitutional court. The High Courts would still retain their wide powers to enforce fundamental rights under Article 226; only the power to declare a law invalid is proposed to be taken away from them.

The requirement of a minimum bench of seven judges, and a decision by two-third majority, are salutary. On many vital matters, laws have been struck down by a thin majority (3 : 2) decisions. Even on the issue of compensation, the court has made dramatic somersaults, for example, in the *Bank Nationalization case*⁶. *Golaknath* and *Kesavananda* tell us the same story. The task of adjudicating the wisdom of Parliament and legislatures, and their competence to make laws, requires some amount of judicial discipline, even in the highest court of the land. Over-individualization of judicial decision-making in constitutional matters is not necessarily a wise policy.

Indeed, it would be a worthwhile idea, should the Committee's proposals be accepted, for the Supreme Court to sit as a full court whenever a challenge to the constitutional validity of laws is involved.

The proposal that the Supreme Court should sit in circuit is also a very welcome one, even though this may not too substantially alleviate the inconvenience and expense for the litigants. The proposal is welcome

6. *R. C. Cooper v. Union of India*, (1970) 1 SCC 248.

because it is likely to foster a healthy growth of the Bar in each of the circuit zones. The localisation of the top professional talent at Delhi merely because it is the venue of the Court is certainly not in the best interests of the administration of justice in the prevailing conditions in India. Moreover, the Supreme Court's sitting in circuit in different zones may better facilitate the overall superintendence powers of the Court over the High Courts. The zonal problems of the Bench and Bar will be in fuller view for the Chief Justice of India under this arrangement. The symbolic value of such an arrangement is also far reaching. The highest court in Australia — the Australian High Court — also sits in circuit in capital cities of the Australian States, where some of the related advantages are socially visible.

Scope of the Writ Jurisdiction

The scope of the writ jurisdiction of the High Courts and the Supreme Court is to be limited, according to the Swaran Singh Committee. No writ under Article 32 or 226 is to lie in three specific matters:

- (a) any matter concerning revenue or concerning any act ordered or done in the collection thereof
- (b) any matter relating to land reforms, and procurement and distribution of foodgrains
- (c) election matters.

The withdrawal of land reform matters from the compass of writ jurisdiction is a much *better* way of dealing with the problem of incompatibilities (and there are quite a few) between legislatures and courts than the constant expansion of the Ninth Schedule. By and large, the courts have given the widest possible interpretation of "agrarian reform" measures: though courts have often stayed or struck down ceiling and related laws. The withdrawal of jurisdiction in land reform matters completes a process of constitutional amendments in this regard initiated almost upon the adoption of the Constitution.

It is proposed in respect of election matters that the autonomous body under Article 329A (to be by law established to decide election disputes concerning the President, Vice-President, Prime Minister and the Speaker) should also adjudicate all election disputes for the Central and State legislatures. It is to be expected that this autonomous body will be staffed by persons of integrity having a sound knowledge of the election laws. In principle, the lessening of the judicial workload is most welcome. Much the same may be said concerning the withdrawal of revenue matters, and matters relating to procurement and distribution of foodgrains. Indeed, the withdrawal of revenue matters from the original jurisdiction of High Courts initiated — by Warren Hastings — from the East India Company Act, 1780 continued till Article 225 of the Constitution. The inscrutable operations of history lead us back now to the wisdom of Warren Hastings!

A related suggestion is that the phrase "any other purpose" in Article 226 be deleted. The reason for this deletion, according to the Committee, is that unlike the Supreme Court's restricted jurisdiction, Article 226 empowers the High Courts to issue directions, orders, or writs not merely for enforcement of the fundamental rights but for "any other

purpose". The latter phrase has not been, to the best of my knowledge, construed literally but contextually. In other words, no court has read Article 226 as empowering it to issue directions, orders or writs for *all* purposes to *any* person. Relief has not been given (for example) by way of the writ of mandamus in matters of private contract or in matters involving the guardians of minors against other persons.

Even so, it seems to be now proposed that the writ jurisdiction of the High Court be confined only to the enforcement of fundamental rights, and not for the purpose of safeguarding the citizens' statutory rights or his rights to review or challenge the exercise of administrative action or adjudication. Except for the purpose of enforcing fundamental rights, the citizen, for example, cannot invoke the writs of mandamus, certiorari, (the most potent of all writs against administrative injustice), prohibition or quo warranto.

The Swaran Singh Committee also proposes deletion of the word "tribunals" from Article 227, which presently gives the High Courts powers of "superintendence over all courts and tribunals" throughout their jurisdiction. If Article 226 were not amended, the deletion of the word "tribunals" from Article 227 would have been, more or less, innocuous since the former article gave widest possible powers of superintendence over tribunals, mainly through the writ of certiorari. Now, under the proposed amendments the High Courts cannot even annul the decisions of the tribunals nor can it give any directions.

There is no doubt that the Swaran Singh Committee leans towards consideration of administrative efficiency as against the *marginally* expeditious redress now available against the non-use, abuse, misuse of administrative powers. Also, the High Courts' powers under the Constitution stand doubly diminished: they lose the power to declare a law unconstitutional, and they can exercise no power of any kind directly over administrative action or adjudication unless these involve violation of fundamental rights. But the power still left with the High Courts in the matter of enforcement of the fundamental rights is a very *potent* power; its retention shows the continuing regard by the All India Congress Committee towards the basic liberties of the citizen in the constitutional vision.

Other Remedies against Administrative Action still available to the Citizen

The citizen must not feel that he would have no remedy, under the proposed amendments, against executive action. Under the Specific Relief Act, 1963, the public authority may be commanded to do a thing the law requires it to do by *mandatory* injunction (which is more or less in the nature of the writ of mandamus); this may be issued both against administrative authorities and "quasi-judicial" bodies. The Act also provides for temporary and perpetual injunctions. Furthermore, the Act provides for "declaratory" actions or decrees. Under Section 34, "any person entitled to any legal character or to any right as to any property" may through a suit obtain a declaration. Such a person may institute a similar suit against any person denying or interested to deny, his title to such character or right. The words "legal character" mean the status of a legal person, including his rights when infringed by an illegal or

ultra vires action of the administrative authorities, e.g. denial of a right to vote or to stand as a candidate at any election, compulsory retirement, prevention of sale of municipal land in contravention of the statute, etc.

No doubt, these reliefs can only be sought through a civil suit and are discretionary reliefs. But an injunction has several specific advantages over mandamus. A suit for injunction may be filed in district courts; a less expensive remedy. Oral evidence may be taken in injunction proceedings, whereas under the writ jurisdiction the High Courts generally proceed through affidavits merely. Furthermore, suits may be accompanied (excepting declaratory relief) by claim for damages which the High Courts do not entertain.

People have, however, more frequently resorted to Article 226 mainly because it is thought that this relief is more expeditious (though comparative data on this score are meagre. In fact, the Delhi High Court, for example, is only now dealing with the petitions filed in 1968-1969, and the Supreme Court is similarly seized of petitions filed in 1970). However, Section 80 of the Civil Procedure Code, requiring two months' notice to be given in case of suits against the Central or State Government is a major obstacle for the citizen. The Law Commission has insisted that this section be repealed. *In view of proposed amendments to Article 226 an expeditious removal of Section 80 is now imperative to safeguard the citizens' rights.*

Need to Review Law on the Enforcement of Public Duties

Section 45 of the Specific Relief Act, 1877 (which has now been repealed) authorized the High Courts of Judicature at Calcutta, Madras and Bombay to make an order requiring any specific act to be done or foreborne "by any person holding a public office, whether of permanent or temporary nature, or by any corporation or inferior court of jurisdiction". Personal rights were protected from injury, when doing or forbearing of the act is "clearly incumbent" on holders of public office or corporation, and where the High Court felt that such doing or forbearing is "consonant with right and justice", as the applicant will get complete remedy in the absence of any other specific and adequate remedy.

This entire Chapter VIII (Sections 45-51) of the Act has been now repealed by the new Act of 1963. The reason for this repeal was the availability of Article 226 which at present gives in fact much wider powers than the repealed Chapter VIII of the old Act. The Law Commission in its Ninth Report recommended repeal of this chapter on the additional ground that under the section [provisio clauses (f) and (g)] the High Courts were not authorised to make any order binding on Central or State Governments or to make any order on any government servant as such "merely to enforce the satisfaction of a claim upon the Government". The Law Commission felt that this was inconsistent with the powers already granted to High Courts under Article 226, as it now stands.

In view of the Swaran Singh Committee proposals, it is highly desirable in the interest of justice to aggrieved persons, as *also* in those of the efficiency of administration, that the substance of the repealed provisions

of Chapter VIII of the 1877 Act be reinstated in the Specific Relief Act, now in force, and the exemptions from judicial power mentioned in clauses (f), (g) and (h) of Section 45 be altogether deleted. The power to enforce public duties may be given to civil courts with the prospects of appeal to the High Court.

It may be felt that my proposal may have the effect of virtually restoring the powers of the High Court to issue writs "for any other purpose" which the Swaran Singh Committee proposes to revoke. This indeed is not the case. The civil courts would be empowered, in principle, on the lines of the old law, to enforce public duties when (i) it is "consonant with right and justice"; (ii) the applicant has no other remedy, of a specific and adequate nature and (iii) that the remedy given by the order applied for is just and reasonable, and in accordance with the law. When the State feels that the order is just and reasonable there need not be an appeal to the High Courts. Aggrieved individuals may generally be expected to behave likewise; but there is a probability that they may have more frequent recourse to the High Courts in appeal. In order to obviate overrecourse to High Courts, the power of appeal may be made *discretionary*, in special situations in the interests of justice, and not as a matter of *right* as was the case under Section 48 of the repealed Specific Relief Act.

Ouster Clauses

There is however the problem that most statutes contain an "ouster" clause whereby the jurisdiction of the courts through civil suits is made unavailable. The legislature, in the interests of the efficiency of administration, is undoubtedly justified in increasing use of such clauses excluding civil suits in the matter covered by statutes. The courts, on the other hand, are also undoubtedly justified in ensuring that through such "ouster" clauses, the value of efficiency does not altogether deny fairness or justice to the citizens.

The courts also do not overemphasize the rights of the citizens against the values of efficiency in administration; therefore, so long as the statute provides "adequate" remedies for the aggrieved persons, the courts respect the legislation. Whether or not a remedy is "adequate" is of course determined by courts in the light of the scheme of the Act, the fact-situation, and also the nature of grievance. Moreover, the Supreme Court has held that excess of jurisdiction, non-compliance with the law (error of jurisdiction), denial of natural justice (including findings based on no evidence) or actions *ultra vires*: statutory provision or delegated legislation cannot be protected by such "ouster" clauses. Of course, leading administrative lawyers are not too clear or happy with the occasional uncertainties in judicial decisions on ouster clauses: but the broad legal principles are clear enough.

One must also note that Article 136 empowers the Supreme Court to grant, in its discretion, special leave from any judgment, determination or sentence or order in any cause or matter passed or made by any court or tribunal (except the armed forces tribunals) in the territory of India.

Hitherto, as must be the case, the power is somewhat sparingly exercised, and the law on the subject is still as unclear in major respects as it is restrictive. Nevertheless, the Swaran Singh Committee shows great regard for judicial review power in not proposing any changes to Article 136 and thereby provides a continuing assurance of justice by the court of the last resort against any kind of administrative despotism.

The remedies under the Specific Relief Act have been more or less eclipsed by the use of Article 226 as it now stands. In England, it has been noted the action for declaratory relief as a alternate means to challenging the administrative action through *certiorari* is more widespread of late. Despite some difficulties, there is no inherent reason why the same cannot happen in India. *To be sure the question of qualifications and emoluments of Subordinate Judiciary, as well as that of their overall image of integrity, need closest examination at a national level as an aspect of the new legal order.*

The withdrawal of writ jurisdiction from the High Courts further proposed by the Committee relates to public service and public service tribunals are envisaged at both Central and State levels with a provision for an all-India appellate tribunal; similarly, an all-India labour appellate tribunal is also proposed to whom appeals from labour and industrial courts would lie. The Swaran Singh Committee specially urges that the tribunals' personnel should be highly qualified "possessing special knowledge and experience in the respective fields". Fairness and expedition are the objectives pre-eminently to be served by these tribunals, which should thereby "inspire public confidence among all concerned".

While those proposals no doubt further affect the jurisdiction of the High Courts under Articles 226 and 227, there can be in principle no objection to the creation of these tribunals. Although no accurate breakdowns of the workload of various High Courts in different categories of cases is available to this writer, it is clear that the proposals will lighten to some extent the present work-load of the High Courts and may enhance efficiency and despatch of the remaining matters — civil and criminal — which must inevitably constitute a substantial workload for the High Courts. However, neither civil servants nor workers nor management should have any undue apprehensions as the proposals envisage functionally competent tribunals providing for expeditious justice. In any case, in extreme cases, appeal by special leave under Article 136 to the Supreme Court still remains. Indian administrative lawyers have also now the intellectual duty to make proposals, (based on deep comparative knowledge) which, like the American Administrative Procedure Act, 1946, would make for "moderate adjustments" in the *Indian context* "on the side of fairness to the citizens in the never-ending quest for the balance between governmental efficiency and individual freedom".

Habeas Corpus

Section 491 of the old Criminal Procedure Code empowered the High Courts to issue directions which corresponded to the writ of habeas corpus. The Law Commission, in its Forty-first Report, felt that in view

of Article 226 which confers "wide and comprehensive powers" on the High Courts, the provisions of Section 491 have been "practically rendered superfluous and can be safely omitted". The Criminal Procedure Code, 1973, has adopted this recommendation.

As envisaged in the A.I.C.C. proposals, the writ of habeas corpus will be available only for the enforcement of the fundamental rights, and not (as now) "for any other purpose". Excepting in a state of constitutionally authorised emergency, when fundamental rights may be duly suspended, habeas corpus will still be available for the enforcement of the right to personal liberty. However, the statutory right for habeas corpus, under the old Code, was available against illegal detention by a public authority or a private person. The Supreme Court has held that habeas corpus does not lie in case of detention by a private person under Article 32; but no difficulties in this regard were posed because of the availability of the old Section 491 and wide powers conferred by the phrase "any other purpose" in Article 226 (now proposed to be deleted). However, if Article 226 is to be amended as proposed, it is imperative to restore provisions of Section 491 into the Criminal Procedure Code. Otherwise, a person (for example) wrongfully confined in a mental hospital, or otherwise privately detained may have no legal recourse. This aspect deserves closest attention.

The Right to Property

As is well known, the Twenty-fifth Amendment provided that the State may acquire on requisition private property for public purpose through a law which may fix an "amount" (not "compensation" as earlier provided) or which may lay down principles for determining or fixing the amount. The courts are debarred from examining the adequacy or manner of payment of the amount so fixed. In addition Article 31C provides that no law giving effect to the directive principle in Article 39(b) or (c) shall be void for infringement of Article 14, 19 or 31; and "no law which contains a declaration to that effect shall be called into question before any court on the ground that it does not give effect to such a policy".

The Swaran Singh Committee now proposes that the scope of Article 31C should be now widened to include all directive principles of State policy. This means in effect that the legislature, in fulfilment of the directive principles, can virtually pay any amount for acquisition of private property. The suggestion of the A.I.C.C. is consistent with the general trend of thinking on the right to property in the Supreme Court. Mr. Justice Hidayatullah in *Golak Nath* said that it was a mistake to guarantee this right among the fundamental rights. In *State of Gujarat v. Shantilal* the court held that compensation is "whatever the legislature thinks fit". Despite the judicial somersault in *Bank Nationalization case*, all justices in *Kesavananda* accepted the demise of market value yardstick of compensation. But eight justices in *Kesavananda* still held that Article 31(2) guaranteed a fundamental right; and a law yielding illusory compensation (peanuts for palaces, cashews for castles) would be subject to judicial invalidation

7. (1969) 1 SCC 509.

being a "fraud" on the Constitution. Seven justices also held that the principles for fixing the amount must not be wholly irrelevant to the property under acquisition. I have maintained for sufficient reasons elsewhere (see *"The Constitutional Quicksands of Kesavananda Bharati"*) that nine justices held invalid the second part of Article 31C which made a legislative certificate that the acquisition of property in pursuance of Directives 39(b) and (c) was conclusive upon the Court.

On this basis, the Court will still have jurisdiction, at least in some cases, to question the amount paid. But now all the fundamental rights are to run, according to the Swaran Singh Committee, *subservient* to all directive principles as far as Article 31 is concerned. This is as it should be in a poor society, with massive maldistribution of property, income and wealth which perpetuates social and economic inequalities.

But the Swaran Singh Committee also appreciates the crucial social significance of the institution of private property, since it does not altogether propose the deletion of Article 31. A person can be deprived of his property only through law, only for public purpose and only upon payment of amount. Confiscation is not proposed to be constitutionalized. For, private property acquired through one's own efforts and labour and used for socially productive purposes is essential to planned development of the nation.

If fact, security of private property is essential for the success of the relief programmes for the downtrodden, exploited, and destitute people. The Twenty-point Programme envisages freedom and economic rehabilitation of bonded labour, distribution of surplus land to landless labour, cancellation of rural indebtedness, help for low-income groups. These measures will lack all significance if whatever proprietary interests that arise for the weaker sections were at the mercy of any legislative or executive caprice. The Swaran Singh Committee Report shows utmost sensitivity when it reaffirms that no law acquiring property, and immune from judicial review, shall affect the "special safeguards" or rights conferred on the minorities, the scheduled castes, scheduled tribes or other backward classes under the Constitution. If poverty is to be removed, respect for the emerging proprietary interests of the poor through determined State action is indeed essential.

Thus, the right to property remains a fundamental right and an important fundamental right. *Kesavananda* rulings still protect the property-owner against outright confiscation, and the Swaran Singh Committee Report seeks to achieve the very same result.

Centre-State Coordination

The A.I.C.C. also proposes some changes in the Union-State relations. It suggests that education and agriculture are "subjects of prime importance towards achieving desired socio-economic changes", demanding "rapid progress" and as such be made concurrent subjects. There is clearly a pressing need to evolve "all-India policies" on the subject. These changes,

8. (1974) 1 SCC Journal pp. 45-47.

even if they offend votaries of pure federalism, are indeed overdue. The States have by and large, been indifferent in implementation of land reforms and have also made, generally speaking, very little effort to enhance revenue or raise agricultural income-tax, creating a very substantial inter-sectoral inequality in the tax structure of the country. No doubt sound reasons of political prudence have prevailed over the considerations of social justice in these matters at State levels; but it is time, particularly when the emergency is lifted, for the Centre to have power to formulate legislative policies on these vital matters, thus removing the constraints of local politics at the State level. Some States have no doubt an impressive record of land reforms; but overall the progress has been rather slow and cumbersome.

As regards education, the Centre has already powers of "coordination and determination of standards in institutions of higher education or research and scientific and technical education". There are too many difficulties, however, in the full implementation of these powers, partly posed by the exclusive powers given to States to legislate regarding education. This latter power is limited by the power given to Parliament. But the entire infrastructure of education is more or less decentralized among the States. The only concurrent power shared by the Union concerns "vocational and technical training of labour". Education is a prime vehicle for inculcation of the values of constitutionalism and social justice; it is also a vehicle for socio-economic development. Parochialism, regionalism, and a lack of purposive concern for educational policies characterize many Indian States today. This trend calls for reversal.

The proposed amendments do not oust State jurisdiction in this field altogether; nor is it to be expected that the Centre will, without close consultation and coordination, pass overriding laws which the States may not be able to implement. The Committee rightly, therefore, emphasises "Centre-State" *coordination* in these matters; it does not speak of central *hegemony*.

Conclusion

Justice Chandrachud observed in *Kesavananda* :

Trust in the elected representatives is the cornerstone of democracy. When that trust fails, everything else fails.

The Swaran Singh Committee's report on constitutional changes shows that political leadership — is capable and determined to maintain that trust. The committee is also conscious with Justice Chandrachud that "our confidence in the man of our choice cannot completely silence our fears for the safety of our rights" as is manifest in its overall solicitude for judicial review, fundamental rights, and for the Supreme Court. The founding fathers of the Constitution have been honoured by the reticence and wisdom of the changes proposed by the Committee. The prophets of doom who talked about the demise of constitutional democracy in India must now become partners in the sustenance of the new constitutional enterprise or face a self-imposed spiritual exile from the doorstep of a new India.