

Seminar on Government Regulation of Private Enterprise

The first session for discussing papers was held in the afternoon today (Thursday, March 27, 1969). The subject for discussion was "Constitutional framework: limits over the Centre and State Power." The following five papers were taken up for discussion:

- 1) Constitutional framework: Limits over the Union and State Power - Dr. M.P. Jain
- 2) Demarcation of Power Between the Centre and the States - Dr. P. Chatterjee
- 3) The extent of the power and the limits of the Union and the State Power to regulate the economy - Professor T.S.Rama Rao
- 4) Some thoughts on Government Regulation of Private Industry in India - Mr. H.G. Paranjpe
- 5) The extent and the limits of the Union and State power to regulate the economy - Dr. R.B.Tewari

Out of the above papers, two major issues emerged for discussion:

- 1) The power given to the government for controlling industrial enterprise and the question of fundamental rights acting as restraints thereon.
- 2) The relation of the Centre and the States generally and in the area of industrial regulation particularly.

As to the first, it was pointed out that, as the judicial interpretation of article 19(i)(g) has progressed over the time, the court has conceded quite enormous powers to the government to control private enterprise, so much so that the article has ceased

to act in any formal sense as a restraint on government power.

On the question of federalism, the major theme developed was that in the area of industrial regulation there exists a variety of centre-state relations under the various control laws enacted for the purpose; that this area has not yet been fully mapped and that it was important to do so in order that a full idea of the federalism in working may be had. Out of this arose the general question of re-structuring the relationship between the Centre and the States. Some speakers put forth the point that in the present set-up, the States did not enjoy much power, that they have many responsibilities to discharge, that their financial resources were not adequate to enable them to meet their responsibilities. As against this, the other point of view put forth was that in India the framers of the Constitution consciously devised a scheme of things in which the centre was to play a dominant role. Further, it was pointed out that the main question was not only that of allocation of powers but of the welfare of the people and where power should lie should be decided only on the basis as to whether it will promote the welfare of the people in the long run. It was pointed out that it was not a simple matter to think of re-allocation of taxing and other powers between the

Centre and the States as there are many problems involved therein. In the U.S.A., Canada and Australia to take one example, income tax was a concurrent matter, but in Australia and Canada, under the impact of the Second World War, it had to be centralized and the states debarred from imposing the income tax. In United States, because of the concurrent powers to levy income tax many problems of overlapping and multiple taxation have come into being. A person may have to pay a number of income taxes on one income. This confusion must be avoided in India at any cost, and, therefore, while thinking of re-allocation of taxing power the convenience of collection and of the people must be kept in view. Another question which was also important in this connection was whether any reallocation of powers can meet the needs of all the states in the country. The economy of the states was not uniform and may be that income tax, for example, may give adequate revenue to one or two states but may not be sufficient for the other states. This will mean that these states will still have to ask for assistance from the Centre. But the Centre would not be in a position to give much help as its capacity would have been impaired by taking away taxing power from it. In this connection it was also pointed out that in other federal countries the system of federal-grants-in-aid has come into vogue and that in Australia, the Commonwealth Grants Commission has been specifically set-up to look into the financial position of the so-called deficit states. Thus the flow

of funds from the centre to the states has become an accepted norm of federalism in all countries. The consensus, therefore, was that re-structuring of Centre-State relationship was a very delicate matter and that it needs a lot of careful study before any readjustment in the Centre-State relationship can be thought of.

...

March 28, 1969

Seminar on Government Regulation of
Private Enterprise

A brief report on the second and third sessions of today (Friday, March 28, 1969) for the press:

Second session

Sub: Determining the pattern of industrialization: restrictions on establishment and expansion of industries.

(a) Industries (Development and Regulation) Act, 1951.

(b) Capital Issues Control Act, 1947

Shri D.L. Mazumdar presided over the session. The following three papers were discussed:

- 1) The Capital Issues Control Act, 1947
by Shri M.K. Venkatachalam
- 2) Determining the patterns of Industrial Development through licensing: Procedure and Policy by Dr. S.P. Sathe
- 3) Capital Issues Control in India- by Dr. G. Balakrishnan

Some shortcomings in the Capital Issues Control were pointed out. It was stated that at the moment the scope of the Capital Issue Control Act was very much limited and it was operating at certain strategic points. Some participants suggested that the Act in question had outlived its utility and should now be scrapped. The present control on issue of bonus shares,

it was pointed out, was mainly to regulate the issue of bonus shares by hundred per cent foreign owned companies in order to persuade them to take in Indian participation. And as Government did not want to discriminate between the foreign and Indian companies, the control has to be carried on for all companies.

There was no concurrence on the point whether Government should have a right to ask companies not to keep shares partly paid after a certain length of time.

It was pointed out that the Controller of Capital Issues was not very rigid about the maximum rates of interest on debentures and preference shares. In a few cases higher rates have been allowed. A suggestion was made that to streamline the present machinery, the work of the Controller of Capital Issue should be transferred to the Company Law Department.

As regards industrial licensing a number of participants pointed out the lacuna in the law insofar as no norms have been laid down for regulating discretion of the licensing authorities and there is no provision for giving hearing to a party who is refused a licence. A view was also expressed that since licensing is restrictive and does not promote industrialisation, it might be considered whether it should be continued any longer. It was common knowledge that the licensing technique has failed to fulfil

the objectives which it was supposed to achieve. There was, as the Hazari Report has shown, concentration of economic powers in few commercial houses, and that the regional imbalances has also not been done away with. Therefore, licensing procedure should be abolished and a step taken in the direction of relaxing some of the hindrances which stand in the way of industrialisation. The case for abolition of licensing becomes stronger in view of the impending legislation regarding monopolies and restrictive trade practices which could now take care of the concentration of economic power, the question of priorities of industrialisation and channelisation of private investment could be taken care of through the mechanism of control of capital issues and the Foreign Exchange Regulation Act and social control of banks. Regional disparities could better be removed by introducing a system of incentives to those industrialists who would agree to start industries in the backward areas. A number of participants were of the view that perhaps for some time to come licensing of industries might be kept in operation but that the lacunae existing therein should certainly be removed. One of the chief defects of the present-day technique was the delay it caused in the licensing of the undertaking with the result that many applicants lost interest in establishing industries, and such deficiencies should be removed if industrialisation in India has to be promoted.

Third Session - Commodity Control

The session was presided over by Shri K.B. Lall, Secretary, Ministry of Foreign Trade and Supply, Government of India.

The following three papers were discussed:

- 1) Control of the Cement Industry by Shri S.C. Aggarwal
- 2) Control over Fertilizer Prices and Distribution by Shri Laxmi Narain
- 3) Commodity Control in India by Dr. M.P. Jain

It was pointed out that in the area of commodity control there was too much power with the government. No standards or policies were laid down in the law to guide administrative action. The procedural safeguards were more or less absent. Hearing to an individual was provided only in case of confiscation of stocks. It was stated that there was special need for safeguards to an individual in the area of fixation of prices for commodities. Of course, there was no difficulty where the tariff commission was involved, as the commission fixed the prices after hearing and taking into account the representations made by the persons concerned. It was pointed out that in the area where this was not so informal procedures for fixation of prices existed. The need for having some kind of formal arrangement for seeking redress against the price fixation orders of the government was emphasized, as at present the producer was completely at the mercy of the government. It was mentioned that the provisions

of the Industries (Development and Regulation) Act and the Essential Commodities Act overlapped for controlling the commodities. At times contradictory orders were issued under these separate enactments. In the area of specific commodities, commodity boards functioned. It was stated that they were not very effective in fulfilling the objective for which they were created. Their composition was too much diffused.

It was noted that since 1966 the government has been following the policy of gradual relaxation of control. As at present the administrative machinery was not geared to implement the various controls which were complex in nature and had innumerable actions and reactions between the controller and the controlled. Controls can only work effectively in case of a few commodities and not as a general instrument to control a very large number of commodities. The least successful area of the commodity control was in the distributive mechanism.

...

