Establishing the Institutional Framework for Industrial Policy, 1947-1951

The 1948 Industrial Policy Statement and the 1949 Statement on Foreign Investments provided an overview of the Government's industrial policy. However, the larger overall institutional framework, under which the industrial policy could be implemented, was established between 1947 and 1951. During this period, the debates in the Constituent Assembly culminated in the enactment of the Constitution of India. The Planning Commission which was to formulate the broad guidelines of the country's economic policy and whose formation was announced in the 1948 Statement was also established during the period, in 1950. Between 1949 and 1951, the Industries (Development and Regulation) Act, (1) was drafted after extensive discussions in the Constituent Assembly and Parliament.

The enactment of the Constitution and the Industries Act, as well as the establishment of the Planning Commission, were obviously of great concern to Indian big business. The events that transpired, are briefly analysed, so as to indicate the political or socio-economic orientation, both implicit and explicit, that marked the Constitution, the Industries Act, as well as the envisaged role of the Planning Commission. The analysis seeks to highlight the role of big business in influencing

1. For the sake of brevity, we shall refer to the Industries (Development and Regulation) Act, 1951, as the Industries Act. It is also referred to, in some citations, as the I(D&R)A or IDRA.
events germane to economic policies in general and industrial policy in particular.

The Constituent Assembly and Business Interests: Historical Background

The Constituent Assembly was set up in accordance with the recommendations of the Cabinet Mission made in its statement of May 16, 1946. While the Cabinet Mission admitted that "The most satisfactory method (for constituting the Constituent Assembly) obviously would be election based on adult franchise," it argued that,

"any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new constitution. The only practicable course is to utilize the recently elected Provincial Legislature Assemblies as the electing bodies." (2)

The plan also recommended that the indirect elections by the Provincial Legislature Assemblies be organised so as to provide proportionate representation for the three main religious communities in India, i.e. the Hindus, Muslims and Sikhs, especially for the last two. (3) Moreover, it was provided that the representatives allotted to each community in a province would be elected only by members of that community in the respective Assembly. (4)

The Cabinet Mission's recommendations were only a continuation of the provisions of the Government of India Act, 1935 under which the


3. The Hindus were implicitly equated with the "General group which was defined as "all persons who are not Muslims or Sikhs." Ibid.

4. Ibid.
elections to the Legislative Assemblies had been held in 1937. The Congress had consistently opposed the communal division of the electorate under the 1935 Act, and had insisted that any constitution for India, "must be based on the independence of India as a nation and it can only be framed by a Constituent Assembly elected on adult franchise or a franchise which approximates to it as nearly as possible." (5) Some months later in December 1936, at the Faizpur session, the Congress "Resolution on (the forthcoming Legislative Assembly) Elections and the Constituent Assembly," (6) reiterated the same sentiments and called upon its candidates to,

"take the earliest opportunity to put forward in the new Assemblies the demand for a Constituent Assembly, elected by adult suffrage, and (that) this demand should be supported by a mass agitation outside to enforce the right of the Indian people to self determination." (7)

Right upon its victory in seven out of eleven provinces, the A.I.C.C. in its meeting at Delhi on March 18, 1937, in a resolution, referred to its victories as indicative of popular approval for its policies regarding the formation of a Constituent Assembly elected by adult franchise, and it therefore demanded "that the new constitution (i.e. the Government of India Act, 1935) be withdrawn." (8)

By the time the Cabinet Mission Plan was announced, the Congress Party had changed its policies regarding its demands for a Constituent


6. Quoted in Ibid., pp.82-83.

7. Ibid., p.83.

8. Quoted in Ibid., p.84.
Assembly elected through adult suffrage. Not only was the earlier demand not "supported by a mass agitation outside" the Assemblies, (9) but in effect, the Congress reactions to the Cabinet Mission were generally favourable. Abul Kalam Azad, the Congress President, on behalf of the Congress Working Committee wrote on May 20, 1946 to Pethick-Lawrence, who headed the Cabinet Mission, stating that the Congress,

"look(ed) upon this (proposed) Constituent Assembly as a sovereign body which can decide as it chooses... The only limitation we recognise is that in regard to certain major communal issues the decision should be by a majority of each of two major communities." (10)

The Congress decision to accept the proposals regarding the indirect elections to the Constituent Assembly were based on political expediency. In view of the virtual non-cooperation by the Muslim League and the growing communal tensions, the pressure on the national leadership as represented by the Congress to complete all preparations for independence, was tremendous. (11) However, by this the Congress not only accepted the mode of election of the Constituent Assembly, and thereby the representative character of the Provincial Assemblies elected under the heavily criticised Government of India Act, 1935. It in effect, acquiesced in the indirect election to a Constituent Assembly by legislators, who themselves had been elected under the operation of

9. As promised at the Faizpur session. See above.
an Act, under which only some 13 per cent of Indians had a right to vote. It was therefore an acceptance of a restricted franchise, limited to the relatively propertied Indians. (12)

Apart from the restricted franchise, the actual process of the constitution of the advisory committees in the Constituent Assembly tended to favour the relatively propertied interests including big business. D.P. Khaitan, a founder-member of FICCI and an industrialist closely associated with G.D. Birla, (13) was one of the members of the original seven-man Drafting Committee of the proposed Constitution of India. This Committee which was later chaired by B.R. Ambedkar, was set up by a resolution of the Constituent Assembly on August 29, 1947, which empowered it to revise the draft Constitution as submitted by the Constitutional Adviser, B.N. Rau, and to submit the revised draft Constitution to the Assembly for its consideration. (14) When Khaitan died in 1948, his vacancy in the vital Drafting Committee was filled by another businessman, T.T. Krishnamachari, a future Finance Minister. (15) Thus Indian big business was intimately associated with the drafting of the Indian Constitution.

Similarly, Homi Mody, (a Director of various Tata companies) and


13. See Chapter III above.


Kasturbhai Lalbhai, (another founder-member of FICCI), who were not Members of the Assembly, were nominated to the membership of the Assembly's Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas. (16) Leading members of Indian big business therefore, were closely associated with the drafting of the Constitutional sections on fundamental rights, (including the right to property), despite the fact that they were not able to secure election to the Assembly despite the restricted franchise.

This intimate association of leading representatives of Indian big business in vital advisory committees of the Constituent Assembly could not but have influenced the formulation of the draft Constitution as a whole, as we shall see below. The very fact that this sectional interest was represented to the exclusion of other sectional interests, (for example, no trade unionist was a member of the Drafting Committee), may by itself be considered indicative of the influence that Indian big business had with the political leadership.

The positions taken by leading Congressmen, who were later to form the Government of independent India, during the constitutional debates, must also have reassured the relatively propertied interests in general, and Indian industrialists in particular.

Aims & Objects of Constitution

While moving the Resolution regarding Aims and Objects, of the proposed constitution, Nehru argued:

"others might take objection to this Resolution on the ground that we have not said that it should be a Socialist State... But the main thing is that in such a Resolution, if in accordance with my own desire, I had put in that we want a Socialist State, we would have put in something which may be agreeable to many and may not be agreeable to some, and we wanted this Resolution not to be controversial in regard to such matters." (17)

Dr. Ambedkar opposed any such formulation with greater vigour,

"If you state in the Constitution that the social organisation of the state shall take a particular form, you are, in my judgement, taking away the liberty of the people to decide what should be the social organisation in which they wish to live... I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide..." (18)

V.D. Tripathi on the other hand urged that,

"we should declare it beforehand that our Constitution shall not be framed, and the state created under that Constitution shall not be established on a capitalistic basis... we should declare it now, that our Constitution shall be framed on a socialistic and positively not on a capitalistic basis." (19)

Tripathi's proposal was not accepted and the Preamble as accepted did not contain any reference to a socialistic society.

Fundamental Rights and Directive Principles

Members in the Constituent Assembly were also sharply divided into two groups on the question of the Fundamental Rights and the Directive Principles. One group was represented by K.M. Munshi, A.K. Ayyer, Thakurdas Bhargava and others, with generally conservative views who emphasized the need to guarantee a variety of fundamental rights against

17. CAD, I, p.60. For this entire section see also S. Datta Gupta, Justice and the Political Order in India (Calcutta: K.P. Bagchi & Co., 1979), esp. Chapter 2.

18. CAD, VI, p.402.

19. CAD, II, pp.292-293; See also Datta Gupta, n.17, pp.31-32.
state intervention of any kind. The other group with more radical 'pro-socialist' views consisting of K.T. Shah, Seth Damodar Swarup and V.D. Tripathi, among others wanted some basic socio-economic rights for the common man to be guaranteed through state intervention. (20) The conflict between these two groups occurred first in the Sub-Committee on Fundamental Rights, then in the Advisory Committee, and finally on the floor of the Constituent Assembly itself.

The conflict centred around two issues: first, the question of justiciability of the Fundamental Rights and the Directive Principles; and the second, over the question of the incorporation of economic rights in the category of Fundamental rights. (21) In their letter of 13th April, 1947 to the Chairman of the Advisory Committee, the members of the Fundamental Rights Sub-Committee explained the division of the Rights into justiciable and non-justiciable, thus:

"Typical of the former is the right which requires that the State shall not deprive a citizen of his liberty without due process of law. It is obvious that if this right is infringed, the citizen can and should have redress in a court of law... Typical of the latter is the right which requires the State to endeavour to secure a decent standard of life for all workers. Obviously, it is as impossible for a worker to prove, as for the court to find, that a general right of this kind has been infringed in a given case. We have, accordingly, put justiciable rights and non-justiciable rights into separate chapters and have made it clear that the latter are intended to be directions for the general guidance of the State and are not cognizable by any court." (22)

The justiciable rights included the economic rights: the right to property and the right to carry on trade and commerce. The non-

justiciable rights included the substantive economic rights of the common man including the right to an adequate means of livelihood, the right to earn a living wage and provisions for healthy conditions of work, the right of the common man to work and education and, of the most importance for our study, provisions for steps against concentration of wealth in the hands of a privileged few. (23)

K.T. Shah, however, sharply criticised the Report. He observed,

"while appreciating the distinction between justiciable and non-justiciable rights, I feel that owing to the very fact of making the distinction, the latter are likely to be treated as so many pious wishes, which can have no very great binding effect in daily life." (24)

In his "Note of Dissent" to the Report on 15 April 1947, he described the non-justiciable rights as "mandates of the Community to its organised representative, the State, to be carried into effect at the earliest possible opportunity." (25) His "Note of Dissent", though it together with a number of his other comments proved prophetic later, had little impact. The Advisory Committee accepted this division of rights into two categories. (26)

However, some members of the Assembly continued to argue for the justiciability of the Fundamental Rights even on the floor of the Assembly. B. Das' during the discussion on the Supplementary Report on Fundamental Rights stated:

23. Datta Gupta, n.17, p.41.
25. Ibid., p.192.
26. Datta Gupta, n.17, p.43.
"I do not find anything that makes it obligatory on the Government, on the State, to discharge their obligatory duties to the people of India about common welfare and well-being of the people... and if I, a Gandhite, am not satisfied with this draft, how I can expect the Socialists and the Communists and the others to be satisfied with it?" (27)

V.D. Tripathi, during the debate on 30th August, 1947, noted that "except for the right to vote, the poor man has not yet got any other right under the Constitution." He urged his fellow members,

"you must make such regulations as may prevent the domination of vested interests, capitalists and those who desire to keep the poor under subjugation. I would request you at least to prevent the capitalists and vested interests from standing for the membership of the legislature or from holding high posts or those in the Ministry..." (28)

In a later debate, K.T. Shah, criticised the non-justiciability of the Directive Principles arguing that,

"it is a kind of provision which encourages the Court and also the executive not to worry about whatever is said in the Constitution, but to act only at their own convenience and on their practicability and go on with it." (29)

Despite these criticisms, the Constituent Assembly adopted the Supplementary Report of the Advisory Committee on the same day, and sent it to the Constitutional Adviser for its incorporation into the Draft Constitution. (30)

A sharp debate also took place in the Constituent Assembly over the incorporation of the right to property in the Constitution. This right is meaningful and of primary importance to those who possess large

27. CAD, V, pp.338-339.
28. Ibid., pp.345-346.
29. CAD, VII, 479.
amounts of property and wealth. For a vast majority of the Indian population, who possess little or no property the right has no relevance. The right to property as a fundamental right, could only ensure continuance of economic disparities and perpetuation of the privileges of the dominant economic elite or ruling class whose property holdings would be protected against nationalisation. Precisely because of these reasons, there were sharp differences on the right to property amongst the conservative and the more radical members.

The Report of the Sub-Committee on Fundamental Rights provided for the acquisition of private property for public purposes. The Sub-Committee however, on the basis of Section 299 of the Government of India Act, 1935 stated in clause 27 of the Report,

"No property, moveable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined." (31)

The inclusion of the term "just compensation" clearly implied compensation in terms of the prevailing market-value of the acquired property. In this case the very objective of acquisition for public purposes could be defeated by the payment of "just compensation" to the property owner. This term would also be open to judicial interpretation, as to whether the quantum of compensation fixed was 'just' or not. Thus all legislation involving acquisition and the payment of compensation could be subjected to judicial scrutiny. (32)

32. Datta Gupta, n.17, pp.49-50.
This line of thinking was evidently espoused by a number of conservative members including K.M. Munshi and A.K. Ayyar.

In the Draft Report on Fundamental Rights Munshi's amendment was included which stated: "No person shall be deprived of his life, liberty or property without due process of law". (33) Munshi argued that the,

"Right to property is one of the pillars on which democracy rests; remove it and the structure is sure to collapse... once it is denied under the name of any 'ism', however, glamorous, to secure social justice, individual freedom goes down with it; the citizen becomes helpless, impotent and without means to assert his individual rights against the State." (34)

At the Advisory Committee stage, Govind Ballabh Pant and K.M. Panikkar criticised parts of the right to property clause. Pant criticised the phrase "due process" arguing that its inclusion would "fetter the discretion of the legislature... It will lead to a great deal of trouble." (35) He felt that the inclusion of the above phrase would lead to "controversy, and will place the fate of the people on the whims and vagaries of the judges." (36) Pant and Panikkar also objected to the qualifying adjective "just" before compensation. Pant insisted that,

"if it is a question of acquisition of property for social purposes, then... payment of compensation should not even be compulsory and it should be left to the Government concerned to decide how they will achieve that purpose." (37)

33. Shiva Rao, n.22, p.75.
36. Ibid., pp.243-244.
37. Ibid., p.275.
Panikkar argued that the use of the term "just" made it open to question in a court of law whether the compensation is just or not. Therefore, I would urge taking away of the word 'just' from this clause." (38) Despite Ayyar and Munshi's insistence, (39) the term "just" was dropped. (40)

The Interim Report on Fundamental Rights was submitted by Vallabhbhai Patel, the Chairman of the Advisory Committee to the Constituent Assembly on 19th April, 1947. While the adjective "just" before the term "compensation", Clause 19, on the right to property was dropped, the provision for payment of compensation remained compulsory. The principles governing compensation were not specified and consequently the assessment remained open to judicial scrutiny. The cumulative effect of these aspects of the clause were commented upon by a number of members during the debate in the Assembly.

Ajit Prasad Jain, later a Cabinet Minister, criticised the revised clause:

"Fundamental Rights — are embodied in the Constitution with a view to protect the weak and the helpless. The present clause will have just the contrary effect. It will protect the microscopic minority of propertied classes and deny rights of social justice to the masses." (41)

Phool Singh brought up the question of advantages likely to be taken by the capitalist class;

38. Ibid., p.274.
40. Ibid., p.276.
41. CAD, III, p.509.
"many people have spoken on question of zamindari, but there is a much bigger problem than zamindari. It is industry. Who does not know that during the last five or six years of the war, many millowners have earned profits several times more than their invested capital?... During this (Second World War) capitalists of no other country have reaped as much profits as Indian capitalists. Therefore, ... by passing the clause in its present form we would be running the risk of permanently obstructing the possibility of reform in the country forever." (42)

Because of the extensive criticism of Clause 19, the Drafting Committee had a second look at the draft. The Committee, however, did not make any material alteration: Two new sub-clauses, to form Article 24 of the Draft Constitution were added. (43) The right to property remained the only economic right to be included in the Fundamental Rights. As such it was made immune from ordinary legislation. Furthermore, with the Directive Principles remaining non-justiciable, the socio-economic rights of the common man were left non-enforceable.

During discussion on the the Draft Constitution, a number of members sharply criticised Article 24. Mahavir Tyagi observed that,

"To say in the Draft Constitution that people shall not be deprived of their property without adequate compensation means that India will ever belong to vested interests... before we sign this Constitution we should see that we do not sow seeds of a bloody revolution in India... If we shut the door as we have done against future legislation... the youth of India will rise... and smash it and the result would be a bloody revolution. Therefore... I would plead that we should scrap this sub-clause (sub-clause (2) of the Article 24 which reproduced clause 19 of the earlier Interim Report) altogether and make it possible in future for the Parliament to socialise all property and all means of production without being compensated for." (44)

The concern expressed in Tyagi's speech was for certain 'radical' legislations to avoid a "bloody revolution".

42. Ibid., p.517.
43. Datta Gupta, n.17, p.53.
44. CAD, VII, p.361.
Thus, as we have seen earlier, (45) the Congress leadership and the industrialists, reacted in a manner, with what might be termed an exaggerated fear of communist revolution in India, and took postures which were apparently radical, even anti-capitalist, without concretely harming capitalist interests. The proposed Article 24 was also criticised by a number of other members including K.T. Shah (46) and A.C. Guha (47) Because of the extent of criticism of the Article, its consideration was deferred from 9 December 1944 to a later date. (48)

The discussion in the Constituent Assembly on Article 24 was initiated nine months later. On 10th September 1949, Nehru opened the debate in the Assembly by moving an amendment to Article 24. Nehru's amendment which became Article 31 contained nothing substantively new. The Clauses (1), (2) and (3) of Article 24 were left relatively unchanged in the Clauses (1), (2) and (5) of the revised Article. Clause (3) of the revised article actually restricted the authority of the State legislatures by stipulating that no law referred to in Clause (2) could have effect unless it had been reserved for the consideration of the President and had received his assent. (49) This, as Chaube notes, was "a very important amendment". (50) This amendment actually limited the powers of state legislatures as regards nationalization and

45. See Chapter IV above.
46. CAD, VII, p.245.
47. Ibid., p.255.
48. Datta Gupta, n.17, p.55; For the debate on this Article, see also Chaube, n.11, pp.194-196.
49. Datta Gupta, Ibid., pp.55-56; Chaube, Ibid., p.197.
50. Ibid. See also CAD, IX, pp.1191-1192.
takeovers, making such acts conditional on the assent of the President. Such provisos were present in various other Articles.

Nehru observed that his amendment was a "compromise formula" between the conservatives and the more radical democratic groups. He also clarified that there would be no expropriation without compensation.

Nehru in the concluding part of his speech added that,

"No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament representing the will of entire community... But we must respect the judiciary, the Supreme Court and other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the community in the larger sense of the term."(51)

In this classic equivocal statement by Nehru, what was stated initially about "the sovereign will of Parliament" is later ignored to accept the superiority of the "wise", "detached" judiciary in interpreting the Constitution and the common good. Despite the fact that the amended Article had the force of Nehru's prestige behind it, it was criticised by both sides. Some like Nazimuddin Ahmad(52) and Munshi continued to plead for the explicit recognition of the principle of "just"compensation.(53) Munshi however, was relieved that through the recognition of judicial review "a aspect of the 'due process' clause survived in the Constitution."(54) Others like Shibban Lal Saksena realised that,

51. CAD, IX, pp.1195-1196.
52. Ibid., p.1235.
53. Ibid., pp.1300-1301.
54. Munshi, n.34, p.303.
"the final decision lies with the Supreme Court in the amendment moved by Pandit Nehru and it can well declare that the principles specified by Parliament for determining compensation are 'fraudulent'. The Supreme Court and not the sovereign Parliament is thus the ultimate authority to decide what is 'fair and equitable compensation'... If the Article is passed in the form proposed by the Honourable Prime Minister, it will mean permitting the capitalistic system in the country to remain intact... this article, if it is passed... will be the darkest blot on our Constitution. I say this, firstly because. This amendment takes away the sovereignty of the Parliament and secondly because it will be a negation of all that the Congress has stood for all these so many years."(55)

Seth Damodar Swarup in his criticism claimed that,

"The Draft Constitution has... failed rather miserably to deal properly with the question of the economic rights of the people. This article 24... is soon going to be a Magna Carta in the hands of the capitalists of India."(56)

However, despite these and other criticisms of the Draft Constitution, the Draft and controversial Article 24 were passed under the pressure of the dominant Congress leadership and incorporated into the Constitution of India.

From the above discussion, it should be evident that the Constitution as it was framed protected the economic 'rights' of the Indian industrialists. Nehru's role seems to have fully justified the confidence that Gandhi, Birla and Thakurdas had placed in him.(57)

While resorting to radical phraseology, though by now considerably toned down, his efforts were to provide a constitutional basis for the capitalist order. In this attempt, despite some ideological divergence, the Congress leadership was more or less united. The Constitution of

55. CAD, IX, pp.1202-1203 emphasis added..
56. Ibid., p.1199.
57. See Chapter IV above.
India as enacted provided protection and sanction for the rights "of the capitalists of India". Indian big business, as represented pre-eminently by FICCI, had therefore, reasons to be satisfied with the net result of the deliberations of the Constituent Assembly.

The Industries Act

On 6 April 1949, the Statement on Foreign Investments was placed before the House and the Industries (Development and Control) Bill were introduced in the Assembly. Dr Syama Prasad Mookerjee, Minister for Industry and Supply, who introduced the Bill said that its "object" was "to create a suitable legislative framework by virtue of which the industrial policy can be implemented."(58) He claimed that the framing of the Bill had been preceded by discussion in the Industries Advisory Council, and also separately with "a small team of industrialists and labour representatives including Homi Mody, Mr. (G.D.) Birla, Lala Shri Ram, Mr. Khanduhai Desai and Mr. Ashok Mehta."(59) This claim was contested by FICCI, as we shall see below.

Mookerjee pointed out that the Bill marked "the beginning of a planning for the industrial development of this country"(60) He explained the background to the development of the concept of planning i.e. the National Planning Committee, the (colonial) Government of India's Industrial Policy of 1945, the Report of the Advisory Planning

58. CAD, IV, 6 April 1949, p.2388.
59. Ibid., p.2390.
60. Ibid., p.2388.
Board, and the Industries Conference. He thus claimed "planning is nothing new even so far as this country is concerned." He explained as was evident in the Bill,

"that the object is to select certain industries... consider(ed) to be of All-India importance, and to provide a machinery for... securing their regulation and development. Whether you look at it from the point of view of view of utilisation of the vast raw materials that this country possesses, or from the point of view of the development of other industries for which certain basic industries must develop, the list of industries... included in the schedule is... fully justified."

An exemption clause permitting the Government to exempt for a certain period was included as it was realised, "that it may not be feasible for Government to regulate immediately all the industries... mentioned."

The Bill did not include cottage, small and medium-size industries, though as Mookerjee put it "the prosperity of the country will be in...(their) development..."(61)

It was in this Bill that the system of industrial licensing was introduced. This was to ensure "that the industries do develop in a way that we like them to develop" without "at the same time Government...(interfering) in the day-to-day working and creat(ing) dislocation by such interference."(62) Licensing was to apply "to new undertakings and (to) substantial development of existing ones...

Before any new industrial undertaking comes into existence, a license will have to be taken out." State undertakings were not to require a license, but Mookerjee assured the Assembly that there would not be "two different standards of approach..." to privately controlled and

61. Ibid., p.2389.
62. Ibid., p.2390.
publicly controlled industries. The licensing scheme was to be in accordance with rules "which will have to be framed under the Act." The Government suggested that this be done after securing "the opinion of provincial governments, the opinion of industries and the opinion of the House..." The Advisory Council was also to be consulted. The composition of this Council was not indicated in the Bill. Mookerjee stressed the purely advisory nature of the proposed Council as the responsibilities "for giving effect to this Act must belong to Government..." However for "major questions falling within the purview of the Bill, consultation with the Advisory Council will be compulsory."(63) The reason for the Government taking "the widest possible powers..." as framed in the rules was because it was "necessary for the purpose of enabling Government to determine what the national industrial policy should be."(64)

Mookerjee referred to a particularly controversial clause: Clause 7, which permitted the Government "to direct the control and management of a particular industrial undertaking." Referring to the "misgiving in the minds of industrialists lest this power should be exercised arbitrarily," the Minister promised that powers under this clause would be exercised only after consultation with the Advisory Council "which will include industrialists themselves."(65) Clause 11 dealt with the Government's right to delegate its powers to the provincial government or to some other authorities as was felt fit. A third clause, Clause 12

63. Ibid., p.2391, emphasis added.
64. Ibid., p.2392.
65. Ibid.
dealt with the provisions for penalties for violation of the Act including imprisonment and fine. But under Clause 13, prosecution under Clause 12 could be launched only after previous sanction of the Central Government or some authority appointed by it. However Mookerjee clarified that the Government did not feel that industry could be controlled "through police methods." Clause 12 was included because "there must be some penal clauses if there are breaches of the provisions of the law."(66) Yet another clause dealt with the vicarious liability of the companies, and the particular executives nominated by the companies as responsible for carrying out the provisions of the Act.(67)

Premiers of some of the provincial governments had written letters expressing concern over some provisions of the Bill, which they felt led to the Central Government taking over "large powers" so that "the provinces may be placed in a more or less subordinate position."(68) Mookerjee argued in answer that the Bill laid "down that there are certain industries in this country which can develop only if there is a centrally regulated policy." He referred to the likelihood of disputes between provincial governments over the location of industrial undertakings, particularly if the number of the proposed projects was limited.(69)

66. Ibid.
67. Ibid.
68. Reported by Mookerjee, Ibid., p.2393.
69. Ibid.
At the outset of his speech Mookerjee moved a motion, "that the Bill to provide for the development, regulation and control of certain industries be referred to a Select Committee consisting of Shri Homi Mody, Shri M. Ananthasayanam Ayyangar, Dr. Bakshi Tek Chand, Shri Ramnath Goenka, Shri H.V. Kamath, Shri T. Ramalingam Chettiar, Pandit Lakshmi Kanta Maitra, Shri Khandhubhai K. Desai, Shri R.L. Malaviya, Shri V.C. Kesava Rao, Shrijeet Kuladhar Chaliha, Shri Prabhu Dayal Himatsingka, Shri Biswanath Das, Shri Padampat Singhania, Shri Jaspat Roy Kapoor and the Mover, with instructions to report not later than the last working day of the first week of the next session, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."(70)

The composition of the Select Committee as originally proposed is indicative of the extent of business influence on government. Although K.T. Shah had been prominent in the National Planning Committee, (he was Secretary), his name was not included. However, three leading businessmen: Homi Mody (of Tatas), Ramnath Goenka and Padampat Singhania (the last belonging to FICCI) were included in the original list. Of these, Ramnath Goenka was also an important functionary, in the ruling Congress Party. In 1949 he was a member of the Executive Committee of the Congress Legislature Party (CLP). He was also the Auditor of the CLP.(71)

K.T. Shah in his trenchant criticism of the Bill noted the representation granted to industrialists in the Select Committee.(72) He linked this to the fact that "the great importance seems to be attached...(in) this Bill, to the owning class to the proprietary class,

70. Ibid., p.2388.


72. CAD, n.58, pp.2400-2413.
and not so much to the consumer class, or... to the labour class."(73) He noted that the cinema industry and the printing press and printing machinery industries had been left out of the purview of the Bill. He was also critical of the leaving out of cottage industries which Mookerjee had admitted earlier.(74) Shah objected to the omission of "the distribution side of the industry..." as he felt that "to leave out either prices or wages from the scope of control makes the control very lopsided." This he attributed to the fact that this measure "most prominently considered" business interests.(75) Shah found fault with the "very general" wording of the Licensing Rules. He referred to the National Planning Committee which had passed a resolution in one of its earliest sittings, in which licensing was to be deliberately aimed against foreign capital taking advantage of the protected Indian market. He also warned that no precautions had been taken in the licensing clause against the development of monopolies. Shah stressed that unless the Bill laid down "very definite and stringent rules" against the development of monopolies "the measure will suffer the taint of being one-sided, of being partial to the big business and hard capitalists."(76) He criticised the drafting of the clause relating to the Advisory Council, as there was no evidence as to the nature, composition, working and jurisdiction of the body. He therefore

73. Ibid., p.2404.
74. Ibid., pp.2402-2403.
75. Ibid., p.2404.
76. Ibid., p.2406.
suspected that its effectiveness will be "rather limited."(77) Later in his speech he dealt with the Prime Minister's Statement on Foreign Investments in India which had been placed before the Assembly on the same day.(78)

Homi Mody who "missed the greater part of Shah's speech... on principle... oppose(d) everything he has said." While supporting the motion to refer the Bill to the Select Committee (of which he himself was a member) he stated that "industrialists... are in general agreement with the principle of the Bill."(79) He however repeated "certain reservations," that he had placed before the Government earlier during the consultations the latter had had with industrialists. He referred to the proposed Clause 10, in which Sub-Clause (b) referred to, "the regulation of the production of any industrial undertaking and the use of raw materials therein and the fixation of standards of production" and to Sub-Clause (c) which covered "the issue of directions for prohibiting any industrial undertaking from resorting to any act or practice which might reduce its production capacity or economic value." He claimed that these vested "very drastic powers" with the authorities which were "wholly unnecessary for the purpose in view..." and liable to misuse.(80) He repeated what he had

77. Ibid.
78. See Chapter V above.
79. CAD, n.58, p.2413.
80. Ibid., p.2413-2414.
"said on previous occasions... that we have the fullest confidence in the integrity and ability of the present Minister for Industry and Supply, and I think the country as a whole, has got a large measure of confidence in him and in the present Government."(81)

Mody however hoped, not without justification as later events showed, "that the Select Committee will modify it (the Bill) suitably and that my honourable Minister (Mookerjee) will agree to such suitable modifications."(82)

The FICCI reaction to the proposed Bill was similar to that of Homi Mody. In this matter industrialists, whether they were affiliated to ASSOCHAM or FICCI, had similar reactions. K.D. Jalan, the FICCI President, in a letter to Mookerjee dated 2nd April urged the postponement of the Bill because of the "great misgivings" of Indian industrialists over the envisaged regulations and controls in the Bill. It, according to Jalan, far exceeded the proposed regulations and controls as envisaged in the 1948 Industrial Policy Statement. Mookerjee in his reply of 5th April, stated that the Bill was going to be referred to a Select Committee and that there was "no need for being unduly apprehensive." He claimed that the outline of the Bill had been approved, (as he claimed the next day in the Assembly), and the provisions "discussed with some leading industrialists."(83) Jalan, in a letter to Mookerjee, on 24th May, rebutted the claim that the Industries Advisory Council had approved an outline Bill, as the

81. Ibid., p.2414 (emphasis added).
82. Ibid., p.2415.
proposed measure was "far more drastic" than what had actually been discussed. (84)

In a detailed note on the proposed Bill, dated 20th June, the FICCI E.C. argued that the measure included two separate proposals, the first being to bring certain important industries under Central Government purview from that of the Provincial Governments; and the second one vesting the Central Government with wide and discretionary powers to enable control and regulation of the specified industries. While the E.C. found the first proposal to be in consonance with the Industrial Policy Statement, it claimed that the second was not. The E.C. cited some clauses as hampering private enterprise. Clauses 4 and 5 which referred to registration and licensing were opposed as that rendered industrialists who based their entrepreneurial decisions on the technical advice of private experts, subject to the "whims" of Government officers. This it was claimed would "effectively deter" prospective investors. Clauses 7 and 10, were sharply criticised on the grounds that taken together they would lead to "nationalisation by backdoor methods..." without compensation. The E.C. wanted the present bill withdrawn and proposed that an industrial committee including officials and representatives of industries be constituted for the scheduled industries to regulate their development and planning. It was suggested that a Central Advisory Council for Industries (CACI) be appointed to lay down broad policies, and to periodically review the proposed industrial committee's working.(85)

84. Ibid.
85. Ibid.
The *Eastern Economist* at that time more or less echoed the FICCI's criticism of the Bill. It also urged the Government to "withdraw it."(86)

A delegation largely of FICCI-affiliated industrialists led by Tulsidas Kilachand including M.A. Master, B.M. Birla, Lalchand Hirachand, G.L. Bansal (FICCI Secretary), P.A. Narielwala and Naval Tata met the Select Committee on the 5th August, 1949. At the end of the hearing, Mookerjee reiterated that the Government was not going to withdraw the Bill.(87) He stated however, that the Select Committee "could modify it (the Bill) even beyond recognition." All that was necessary was that the title and preamble of the Bill "remained intact."(88) This statement by the Minister who was also Chairman of the Select Committee reflected the attitude that made industrialists like Mody praise him so highly (see above).

A sub-committee of the FICCI E.C. was appointed at the 14th August, 1949 E.C. meeting at New Delhi to suggest the detailed FICCI comments on the proposed Bill. The sub-committee which met on 30th August in Bombay was chaired by Kilachand and its members included Thakurdas, Shriram, Rahimtulla M. Chinoy, M.A. Master, D.N. Sen, B.M. Birla (special invitee) and G.L. Bansal.(89) On the basis of the deliberations of this sub-committee, the E.C. sent a letter to the government on the 26th

87. FICCI, Vol.I, 1949, p.65. See also n.83.
88. Ibid., pp.65-66 emphasis added).
89. Ibid., p.66.
September, giving FICCI's detailed suggestions on the modification of the Bill. (90) The letter inter alia suggested that in Sub-Clause 3(a) the term "controlled industry", should be substituted by the term "scheduled industry" throughout the Bill. The list of scheduled industries under the sub-clause should consist of only the following industries; (1) coal; (2) iron and steel; (3) aircraft manufacturing; (4) ship building; (5) manufacture of telephone, telegraph and wireless apparatus excluding radio receiving sets; and (6) mineral oils. By this the FICCI sought to reduce the ambit of the Bill quite drastically, by including in the list of scheduled industries only those industries in which under the 1948 Industrial Policy Statement all "new undertakings" were to be reserved for the state (see above).

As regards Clause 4 of the proposed Bill, it was suggested that if registration was considered "absolutely essential, existing factories should be registered automatically." For Clause 5 and 6, the FICCI E.C. suggested that the Government of India should have powers to prescribe the establishment of scheduled industries for a period not greater than 12 months at a time. It however opposed licensing, and claimed that the above suggestions would permit Government regulation of industry "without the evil effect" of licensing. The E.C. reiterated its earlier opposition to the provision for takeover of industrial units as incorporated in Clause 7. In the case of Clause 9, the earlier suggestions for the constitution of industrial committees and the CACI were reiterated. The E.C. suggested that the rules and regulations made

by the government under Clause 10, be published in Gazette of India and that the concerned industries and industrial associations be given the opportunity to express their views before the rules and regulations were finalised. As auditing and accounts already came under the Indian Companies Act, the E.C. argued that this should not be included in the present Bill and that the statistics industrial units were required to submit be simplified. Regarding Clause 12, the E.C. reiterated its earlier position that the provision for imprisonment for those guilty of violations of the proposed Act be removed, and that the proposed maximum amount of the fine be reduced. In reference to Clause 15, it was suggested that the powers of inspection vested in officers authorised by the Government of India "be substantially curtailed."(91)

On the 23rd November, 1949, the Secretary to the Department of the Legislative Assembly sent an immediate confidential communication to the FICCI. A note was enclosed,

"containing certain suggestions made in the Select Committee of the Legislature on the Bill... with the general object of removing the major criticism against the Bill, viz. that it confers great powers on Government under conditions in which they may be exercised arbitrarily."

The communication went on to state that "the Honourable Minister of Industry and Supply will be glad to have the FICCI views."(92) However, as the Select Committee note was "a privileged document"(93) it has not been reproduced in the FICCI volumes for the year. There is also no reference to it in the Select Committee Report. But the very fact that


93. Ibid.
such an attempt was made to remove apprehensions of industrialists, itself indicates the extent of business influence in the Select Committee. The FICCI itself was not satisfied with the concessions offered. In response to repeated offers that they meet the Select Committee again, the E.C. in its reply of 9th December, regretted "that there has been no real attempt to radically modify the main provisions of the Bill." The E.C. "emphasized that the present is not the opportune time for proceeding with the Bill even in the amended form as suggested by the Federation."(94) The E.C. felt that there was no point therefore in a delegation meeting the Select Committee. Despite this, the E.C. expressed the hope that Mookerjee "would find his way to accept the viewpoint of the Federation..."on the proposed Bill.(95)

The Select Committee which considered the Bill was, as we have already noted, by its composition a body in which a significant number of members had at least some sympathy for the viewpoints of big business. In its Report dated 10 February, 1950, the Select Committee made certain changes that effectively diluted the original provisions, as we shall see below. In the first place, the name of the original Bill itself was changed in the Report to "The Industries (Development and Regulation) Bill, 1949."(96) As the FICCI had suggested the expression "controlled industry" was replaced by the term "scheduled industry."


95. Ibid., p.499.

The Committee added Clauses 4, 5 and 6 which,

"provided for the establishment of an independent Central Industries Board, to which will be assigned the function of granting or refusing licences under this Act and also of ensuring that powers of control vested in the Central Government are exercised after investigation by this body."

This obviously was a major fundamental change, as Shah and Kamath pointed out in their "Minutes of Dissent," (see below). In Clauses 7, 8 and 9, "references to conditions like those relating to equipment and technique..." were omitted. In Clause 11, it was stipulated that those "aggrieved by any order of the (Central Industries) Board should have the right to appeal to the Central Government." This proposed clause however, also permitted "the Central Government to revoke any licence granted by the Board before effective steps are taken to establish the industrial undertaking."(97)

In Chapter IV of the Bill, the majority Report stated that,

"while we feel that the Central Government should have the power to issue directions to regulate production, distribution and prices, we think that the power should be exercisable only when it is necessary in the public interest and that the necessity for such control should be established after a proper inquiry by the Industries Board."

Thus, the industries which earlier were specified in one schedule, were split up into two parts, with provisions contained in Chapter IV not applying to the Part II industries.(98) The Clauses 15, 16 and 17, specified that the investigations that the Central Government could order into certain industries and undertakings could be exercised "only

97. Ibid.
98. Ibid.
after a full investigation by the Board." Furthermore it was stated that,

"the power of the Central Government to take over direct control of industrial undertakings is now restricted to cases where mismanagement is proved and the Industries Board has approved of the action to be taken. This procedure should serve to free industries from any fear which may be legitimately entertained by them with respect to the scope of Government control."(99)

The majority Report was signed by Mookerjee, Khandubhai Desai, Lakshmi Kanta Maitra, Tek Chand, Ram Narayan Singh, T.A. Ramalingam Chettiar, Jaspat Roy Kapoor, P.D. Himatsingka and B.L. Sondhi; who felt "that the Bill has not been so altered as to require circulation..." and therefore "recommended that it be passed as now amended."(100)

K.T. Shah and H.V. Kamath, who can be characterised as the two 'Leftists' on the Committee, wrote a joint "Minutes of Dissent."(101) They cited the sentence in the 1948 Industrial Policy Statement that,

"the State will also progressively participate in this field (left open for the private sector); nor will it hesitate to intervene whenever the progress of an industry under private enterprise is unsatisfactory."(102)

This aspect of increased state participation and the intention in the original Bill where licensing "was adopted to ensure proper planning and sound development...for a balanced and coordinated growth..." was, they alleged, "overlooked or under-rated" by the majority. They criticised the changes made in the Bill by the majority who they believed,

99. Ibid., p.2
100. Ibid.
101. Ibid., pp.3-5.
102. Ibid., p.3; See above.
"have been unduly influenced by 'certain strong criticisms levelled against this Bill' by obviously interested quarters (i.e. big business). They have, therefore, agreed to minimise control, and even to exclude it from the title of the Bill."

This, they believed "gravely militates against the very object the Bill was introduced to achieve."(103)

Shah and Kamath objected to the clauses establishing an "independent Industries Board" as "a needless addition" which would duplicate the work of the Tariff Board and the proposed Industrial Advisory Council. In fact, these clauses rendered the latter "almost superfluous." The various restrictions the majority proposed regarding the operation of the licensing system, (which we have enumerated above), were also criticised. The modification removing the references to efficient equipment and up-to-date techniques was considered "unfortunate". The restriction on the powers of revocation, amendment or modification of licenses only to the cases where "The Licensee has failed, without reasonable cause, to establish...the undertaking within the prescribed period..." was also objected to. Shah and Kamath argued that cases of "gross mismanagement" should be included as "more enterprises fail...through mismanagement than through all other factors combined."(104) They felt, as they had stated in their general remarks, that in Clauses 7 to 10, the majority had "been unduly swayed by the criticism... from interested quarters, and (had) made concessions..."

In particular, the restricting of the Central Government's power to "regulate production, distribution and prices" only in the public

103. Ibid.
104. Ibid., p.4.
interest as established by a prior enquiry by the Industries Board was criticised for "limiting state authority..."(105) Similarly, the majority's observations on Clauses 15 to 17 were also criticised, as the two felt that the Government's control in these matters "must be categoric(al) and unconditional."(106)

Shah and Kamath pointedly noted that,

"No mention is made in the Bill, either in its original, or in its amended form, of the claims and the role of labour in the development of industries. Nor is the treatment of labour made in any way a condition of licensing, or otherwise controlling and regulating an industry, or an undertaking..."

This was "consider(ed)... a fatal omission..." and it was "hope(d)" that it would be "duly rectified at the first opportunity." In view of the political background, of which the two were all too well aware, this was certainly a pious hope. Shah and Kamath also objected to the modification of the one schedule in the original Bill into two parts. This division, they alleged, "is brought about in the desire to minimise Governmental control over those industries (i.e. those in Part II)". In their note, they concluded by pleading for "A uniform policy for the control and regulation of all important industries of a national character (as that) would be much more effective than the kind of the differentiation suggested by the Committee."(107)

105. Ibid., pp.4-5.
106. Ibid., p.5. The reference in the text is to clauses 16 to 18, but from the statements it is clear that this is an error, (perhaps of printing), which remained uncorrected in the final printed record.
107. Ibid.
Ram Nath Goenka and Padampat Singhania submitted separate notes of dissent. The latter's note was much more comprehensive and more or less corresponded to the official FICCI position examined above. The former was perhaps constrained to soften his stance because of his position in the Congress Party. The important points made by Goenka dealt first with the various sub-sections of Clause 5 relating to the membership of the proposed Industries Board. He wanted that the membership qualifications be omitted and that "whole time" membership be optional. In Clause 8, he wanted the inclusion of a time limit of six months after receipt of an application, for the Board "to make a decision about... a licence..." He found the explanation in Clause 10 of "substantial expansion", which as amended equated it to that extent of expansion which "amounts virtually to a new undertaking, but does not include any such expansion as is normal to the undertaking..."(108) unhappily worded, permitting "judicial interference."(109) He wanted Clause 22, which governed the transfer of industries from Part II to Part I, omitted as transfer should be done through "a parliamentary amendment." He further wanted the "Bicycles" industry added to the Part II industries.(110)

Singhania in his separate note, wanted Clause 5 to be amended so that the Industries Board "include(d) at least half its members to represent industry." Like Goenka, he was against the stipulated whole time membership. This he opposed,

108. Ibid., p.3 of amended Bill.
109. Ibid., p.7 (of Report).
110. Ibid., p.8.
"because the number of applications coming before it for licensing even if it (licensing) is retained in the face of severe criticism against it, is not likely to be such as to warrant the appointment of a permanent whole-time board." (111)

In his remarks on Clause 8, Singhania categorically opposed licensing itself. He as a substitute, suggested that "Powers may... be vested in the Government of India to prohibit the establishment of any of the scheduled industries in the Union or any specific territories for a period not exceeding 12 months at a time." (112) He added that, "In case... licensing is retained, the Central Government should refer the applications of the Provincial Governments also for the establishment of a new undertaking to the Industries Board." He proposed a modification to Sub-Clause (2) of Clause 8, that the Board "should have no power to impose any other conditions excepting those of location and size in granting a license."

Further amendments proposed to dilute licensing powers included:
(a) an addition to Clause 9(2): "Provided that such variation or amendment would not prejudice the interests of the licensee...," and (b) deletion of Clause 11(2) which authorised the Central Government to revoke licenses granted by the Board. (113) Regarding Clause 20, Singhania proposed that "Apart from the Central Advisory Council, there should also be Advisory Councils for each of the industries in the Schedule... (which) should have their members nominated by the industry or the industries concerned." (114) In Clause 24, on penalties he

111. Ibid., p.8.
112. Ibid.
113. Ibid., p.9.
114. Ibid., p.10.
proposed that, "The provision relating to imprisonment should be deleted. The fine should not exceed Rs.2,000 and in the case of continuing contravention should not exceed Rs.50."(115) He also wanted the deletion of Clause 30 which guaranteed immunity for government servants seeking to enforce the Act "in good faith."(116) He argued that "Government servants always enjoy immunity. Special provision for the same is not necessary in the Act which may have the effect of leaving the aggrieved party without recourse to a court of law."(117) For Clause 31, entitled "power to make rules," he proposed that "the rules to be framed should not only be published, but views on the same should be specifically invited from the industries concerned." Further, with the exception of Sub-Clause 2(a) of Clause 31, he proposed that it be explicitly stated "that the Government shall consult the Advisory Council and Councils...in making the rules."(118)

In another note of dissent, K. Chaliha, who generally praised the Bill as amended by the majority as "conceived with the best of intentions...," objected only to the inclusion of the tea industry in Part II of the Scheduled industries. Chaliha, a leading Congressman from Assam and a tea planter himself,(119) argued that the tea industry

115. Ibid. In the text instead of clause 24, clause 23 is printed, evidently a printing error. Also see n.106.

116. In the text, clause 28 is printed which in the amended Bill refers to delegation of powers. See n.106 and n.115.

117. Ibid.

118. Ibid. In the text Clause 29 is printed which is Clause 31 in the amended Bill. See n.106, 115 and 118.

was already "controlled in everyway from cultivation to manufacture." Therefore "further" control would be "a misfortune." Though, as already noted, the application of Chapter IV was only to industries listed in Part I, Chaliha was "strongly against inclusion of tea..." even in Part II.(120)

The majority report of the Select Committee, as Biswanath Das, in his note of dissent pointed out, "Materially changed" the Bill. He therefore stressed the need for "republication" of the Bill.(121)

Dr. S.P. Mookerjee, placed the Report on the table of the Parliament on 10 February 1950.(122) As Capital later put it, the Report "was put on the shelf thereafter, but was revived by the Planning Commission, which insisted on its early enactment."(123) Evidently, the pressures exerted by industrialists through ASSOCHAM and FICCI, apart from more informal channels of influence, were effective in delaying the enactment of the Bill.

Only on 4th September 1951, did Harekrishna Mahatab, the Minister for Commerce and Industry, move that the Bill be recommitted to a new Select Committee.(124) Referring to the delay since the Select

120. Report, n.96, p.8.
121. Ibid., pp.5-6.
123. Capital, 18 October 1951.
Committee submitted its Report, Mahatab admitted that "this Bill happens to be perhaps the most ancient one in this House." He noted, that in the Select Committee recommendations "The whole structure of the Bill was completely changed." Further, the Bill as amended by the Committee did "not fit in with the scheme which has been put forth by the Planning Commission." Therefore, it was necessary to recommit the Bill to a reconstituted Select Committee including H.V. Kamath, Khandubhai Desai, A.C. Gupta, Thakur Das Bhargava, K.T. Shah, R.K. Sidhva, Panjabrao Deshmukh, T.A. Ramalingam Chettiar, Ram Nath Goenka, Jaspat Roy Kapoor, B.L. Sondhi, P.D. Himatsingka, T.N. Singh, R. Venkataraman, D.P. Karmarkar, C.D. Deshmukh and Mahatab himself. (125) This new Select Committee was to report back to Parliament by 17th September.

In the discussion over the motion to recommit the Bill, Goenka raised a point of order, stating that under the Rules of Procedures and Conduct of Business in Parliament, the Bill could not be sent back to the old Select Committee. This was not accepted by the Deputy-Speaker who cited an earlier ruling in February 1926. (126) In the discussion, Mahatab clarified that the Government objected to the changes in the original Bill including: (a) the introduction of the Central Industries Board; and (b) the various provisions laying down conditions before the Government could take over industries. The Planning Commission suggested the institution of Development Councils for each industry or group of allied industries which would "enable private industry... to

125. Ibid.
126. Ibid., cols.1902-03.
play its part..." in the planned development of the economy.(127) These Development Councils were to "consist of representatives of the industries, the representatives of labour and technicians..."(128) The existence of these Councils would obviate the need for the proposed Industries Board which would "have no purpose to serve in those circumstances."(129)

Mahatab in his reply stated that regarding "as to what part the public sector will play and what part the private sector will play..." in the economy "was not very clear when this Bill was introduced in 1949..."(130) "Subsequently, gradually as the Planning Commission developed its own plan, the situation became very clear."(131) Just before the end of the discussion, Renuka Ray's name was proposed for inclusion in the Select Committee, which Mahatab accepted, and the motion was adopted.(132)

From the published proceedings of the reconstituted Select Committee, it was evident that both the 'Leftists' nominated: H.V. Kamath and K.T. Shah refused to serve. Homi Mody had been appointed Governor of U.P. in May 1949(133) and thus was unable to serve on the

127. Ibid., cols.1899-1900.
128. Ibid., col.1901.
129. Ibid., col.1900.
130. Ibid., col.1920.
131. Ibid.
132. Ibid., col.1924.
earlier Select Committee. His appointment to the important Governorship, is in itself an indicator of the high regard in which leading businessmen were held by the Congress government. Of the other leading industrialists, Padampat Singhania was not re-appointed; and Ram Nath Goenka who continued as Auditor of the Congress Legislators in Parliament,(134) did not serve in the Committee. The majority Report of the Committee dated 24th September 1951, was approved by eight of the thirteen members: H.C. Mahatab, C.D. Deshmukh, B.R. Ambedkar, B.L. Sondhi, A.C. Guha, P.S. Deshmukh, D.P. Karmarkar and R.K. Sidhva.(135)

The majority Report which "carefully considered the provisions of the Bill in the light of the suggestions made by the Planning Commission... (accepted) that there is no need for a full-time statutory Central Industries Board." The Planning Commission's suggestion regarding the institution of Development Councils on the lines of the British Industrial Organisation and Development Act, 1947, was accepted.(136)

The important recommendations of the majority included: (a) A new Clause 4 which excluded small industrial undertakings (where 'invested' capital did not exceed Rupees one lakh) from the operation of the Act; (b) A reworded Clause 5 replacing the old Clause 21 which "expressly provided the Central Government shall consult the Advisory Council

134. Ibid., p.529.


136. Ibid., p.1.
before issuing any directions to an industrial undertaking or before exercising any power or control over it;"(137) (c) A new Clause 6 provided for the establishment of the Development Councils "for any scheduled industry or group of scheduled industries...;"(138) (d) A new Clause 8 provided for the summary dismissal of the Development Councils; (e) A new Clause 11 replaced the old Clause 8, and provided that industrial undertakings with invested capital less than rupees 5 lakhs would not require licenses. A time limit of four months for the issue of a licence was also proposed; (f) Clause 17(139) was redrafted and a new Sub-Clause (5) was added "to ensure that when control of an industrial undertaking by the Central Government is no longer necessary... (it) shall hand over the undertaking to the owner;" (g) A new Clause 25 replaced the old Clause 28 and "excluded from the power of delegation, the power to issue directions to, or to take over control of, an industrial undertaking;"(140) and (h) The amended Bill provided two Schedules, the first specifying the industries regulated by the Act and the second specifying the functions of the Development Councils.

The majority recommendation omitted the tea industry from the First Schedule because in their "opinion, whatever provisions may be necessary for regulating that industry should be made in the two Acts relating to

138. The Industries (Development and Regulation) Bill, 1949, (As amended by the Select Committee) appended to the Select Committee Report, n.135, p.2. See also Select Committee, n.135, p.1.
139. Ibid., p.2.
140. Ibid., emphasis added).
that industry...the Indian Tea Control Act, 1938 and the Central Tea Board Act, 1949." The majority did not consider that the Bill had been so altered so as to "require circulation...in Parliament..." and recommended "that it be passed as now amended."(141)

In their note of dissent, R. Venkataraman, Khandubhai Desai, Renuka Ray and T.N. Singh opposed the majority report on the sole ground that the tea, coffee and rubber industries had been excluded from the First Schedule.(142) They cited in their support the fact, that "The Government while recommitting the Bill to another Select Committee did not state that the schedule required any alterations..." Specifically, the Government never "propose(d) the exclusion of tea from the operation of the ...Bill..."(143) They argued, that "The Central Tea Board is mainly concerned with propaganda for Tea in India and abroad and naturally the powers and functions fall far short of...(what is) envisaged under the Bill." They referred to coffee and rubber as "also very important plantations..." and argued that as,

"The Industries (Development and Regulation) Bill has been conceived as a measure for the expansion, growth and orderly development of the industries... there is no reason for the exclusion of important national undertakings like Plantation Products from the scope of the Bill."(144)

Despite the major change in the Bill by the second Select Committee, which under pressure from the Central Government deleted the

141. Ibid., p.3.
142. Ibid., pp.4-5.
143. Ibid., p.4.
144. Ibid., p.5.
proposal for the creation of a Central Industries Board, it remained a piece of legislation which sought to accommodate business interests. Although the reconstituted Select Committee included leading Congress legislators i.e. Renuka Ray, (Executive Committee member of the Congress legislators),(145) C.D. Deshmukh, R. Venkataraman, apart from Mahatab himself; it made sustained efforts to reassure business interests. This, of course, was in consonance with the approach of the Congress leadership, as we have seen above. In particular the new Clause 5, the new Sub-Clause (5) of Clause 17, and the new Clause 25, were evident concessions to business interests (see above). Moreover, the amended Bill still incorporated the defects trenchantly criticised by Shah and Kamath in their minutes of dissent in the earlier Select Committee (see above).

Big business however, was not satisfied with the concessions made. Commenting on the Bill as it emerged from the first Select Committee, the Eastern Economist, disputed the charge that the amendments had made the original Bill "an altogether new bill." It claimed that despite the deletion of the term 'control' "the thing control is as firmly embodied as before." The Bill was sharply criticised as,

"a breach of the promise to industry which underlay the assurances to private enterprise conveyed in the Industrial Policy Statement... (which) defeats the objects of the concessions granted later in 1948... and the statement of last year (1949) intended to create the right climate for the entry of foreign capital."

It therefore urged that the Bill be scrapped.(146)

145. Times of India, n.133, p.529.

During August 1951, the FICCI E.C. had sent a detailed note to the Ministry of Commerce and Industry, indicating its objections to the Bill as amended by the first Select Committee. (147) The E.C. objected to the wide coverage of the Bill, claiming that under the proposed regulation private enterprise would be "crippled and the industries...regimented." Various amendments to clauses were suggested. For Clause 7 it was proposed that existing undertakings be registered automatically. The note proposed drastic revision of the powers under Clauses 15 and 16 enabling the Government to investigate undertakings and to take action consequently. Clause 17 was sharply criticised as it was alleged that it allowed for virtual nationalisation without compensation. (148) It reiterated earlier objections to Clause 24 proposing the deletion of the provision for imprisonment.

Under Part-I, it wanted only those six industries to be included, in which in accordance with the Industrial Policy Statement, new undertakings would be reserved for the state. It however, referred to representations made to the E.C., by constituents of FICCI, that even coal should be deleted from the Part-I list. The E.C. proposed that the other industries listed in the amended Bill under Part I be transferred to the Part II list (see above.) (149)

148. Ibid., p.478.
149. Ibid., pp.479-480.
After the second Select Committee report was published, the FICCI sent another letter to Mahatab on 11th October 1951. In this letter, the FICCI regretted that there had been no reply to its earlier letters. It expressed its unhappiness with the report of the second Select Committee as it claimed that most "contentious provisions" had been retained. The earlier objections were reiterated.

Mahatab, while placing the amended Bill before Parliament on 11th October 1951, pointed out that no "other legislative measure has been subjected to so much consideration and examination as this measure has been." He referred to the fact that, "Much criticism has been made of this Bill by industrial interests and those who speak on their behalf." He pointed out that under the Industrial Policy Statement the private sector "would have a large field..." But the private sector "would be required to adjust itself to the national plan." He referred to the final First Plan document and thought that "the self-created bogie of nationalisation of industries should have disappeared after the publication of the report of the Planning Commission."

Mahatab further argued that, "Regulation serves the best interest of the industry itself" citing in his support cases of closures of industrial units in the textile and other industries. In view of


151. Ibid., p.481.


153. Ibid.

154. Ibid., cols.4647-4648.
"the miserable plight of the large number of industrial units," he stressed that "leaders of private industries themselves should volunteer to set up Development Councils to save the uneconomic units from utter ruin and also save the country from loss of production." (155)

From these extended quotations, the conciliatory attitude that Mahatab, representing the central government, exhibited towards business interests should be clear. Gulzarilal Nanda, the Minister for Planning, displayed the same attitude, when in replying to the discussion on the Bill on 12th October, he asserted that "The best way to destroy private enterprise would be to leave it to shift for itself. Without the ministrations of the State, private enterprise cannot function." He went on to state that,

"private enterprise and the State have a mutually helpful role. The State cannot do without private enterprise today. That is absolutely clear. It cannot afford to abolish private enterprise." (156)

Nanda rejected a policy of nationalisation as being counter-productive in the present situation. The Government,

"approach to nationalisation is to have certain things (i.e. national goals) in view and if it is possible to achieve those very things without giving it a certain name (i.e. nationalisation), we should try and secure that process and that result." (157)

In the debate over the amendments moved to the Bill, the Government accepted a large number of amendments of a fairly minor nature. However Syamnandan Sahaya, himself an industrialist, moved an amendment to

155. Ibid., col.4648.
156. Ibid., col.4745.
157. Ibid., col.4747.
Clause 10 of the Bill relating to the registration of industries. This was to ensure automatic registration of existing undertakings without payment of a registration fee as FICCI had suggested. This was not acceptable to the Government spokesmen, and Sahaya did not press it. (158) But Khwaja Inait Ullah's amendment which permitted the registration "of any undertaking for the establishment of which effective steps have been taken..." was accepted without any objections. (159)

An important indication of business influence in the debate was an attempt by Mahatab to move an amendment to Clause 17, (relating to direct control of undertakings by the central Government), which would have effectively diluted the clause as amended by the second Select Committee. In Clause 17, on lines 17 to 19, the words "either to take charge of the whole or any part of the undertaking in supersession of any other person or body of persons in charge thereof or;" (160) (which allowed the Government to take over management without compensation), were according to Mahatab's proposal to be omitted. (161) The proposal included the deletion of Sub-Clause (2), (162) which permitted the taking over authority to "take all such steps as may be necessary to take...under his control all the property, effects and auctionable claims to which the industrial undertaking is or appears to be...

158. Ibid., cols.4825-4828.
159. Ibid.
162. Ibid.
entitled...

Further in Sub-Clause (5) the words "the industrial undertaking shall be released from any control under this section," was to be replaced by the original words: "the control of the industrial undertaking shall vest in the owner of the undertaking."(164)

The amendments passed would have effectively prohibited the takeover of management without compensation, and corresponded to the sentiments expressed earlier by FICCI.(165) Mahatab justified these changes as necessary in the light of "the recent judgements of the Supreme Court in the Bihar Estates Abolition Act and the Sholapur Mill Case." He further claimed that management take over without compensation "will conflict with the provisions of the Constitution..."(166) i.e. with Article 31(2).

This amendment was not acceptable to Venkataraman and T.N. Singh, who had themselves served on the Select Committee.(167) Singh pointed out the original provisions were not ultra vires of the Constitution, as these were in the public interest. Further the,

"Government does not expropriate them (the industrialists), does not deprive them of the industry... or the undertaking itself... (it) only takes over the management for the specific object of increasing the production for benefitting both the country and the industry."

163. Ibid.

164. Ibid.; See Parliamentary Debates, n.152.

165. See above; See FICCI, n.147.

166. Parliamentary Debates, n.152, col.4857. The conservative, even status-quoist nature of Supreme Court judgements on property matters is well known. For an analysis see Datta Gupta, n.17, Chapter IV.

167. Parliamentary Debates, n.152, cols.4856, 4857.
He was thus provoked to state that, "I am really getting...suspicious as to why this last minute opinion has been advanced on this point." (168) Singh, of course, like the other M.P.'s was well aware of the pressures exerted by industrialists, for effecting changes in this vital clause. After further discussion, D.P. Karmarkar's proposal that the term "charge" be substituted by the words "over the management" was accepted. (169)

However, Syamanand Sahaya's amendment that the takeover be "authorised for a period not exceeding five years" was accepted by Mahatab and passed in Parliament. (170) Therefore, although the government representatives were unable to dilute Clause 17 as they had earlier planned, they did accept an industrialist representative's amendment that sought to repair some of the damage.

An effort was made by Sahaya and Thakur Krishna Singh to remove the provision under Clause 24 stipulating "imprisonment which may extend to six months..." After considerable discussion, the amendment which was moved by Krishna Singh, (Sahaya withdrew his), was defeated. (171)

However, in defending this provision, Mahatab rhetorically asked: "How many prosecutions of that type have been launched? How many have been successfully prosecuted?" He admitted that "if we take statistics, I am sure the charge will be that of all those provisions have not been fully

168. Ibid., cols.4859-4860.
169. Ibid., cols.4865-4866.
170. Ibid., cols.4866-4867.
171. Ibid., cols.4879-4896.
given effect to. That charge will probably be correct."(172)

This statement must have reassured industrialists, as it was
doubtless intended to. It also indicated the governments' real attitude
towards the industrialists charged with violations of the Act in later
years, as the events following the Vivian Bose Commission Report were to
reveal.(173)

In winding up the discussion, Mahatab reacted to a telegram from
the All-India Manufacturers Organisation (AIMO) read out by C.D.
Deshmukh criticising the Bill, by calling upon it and "prominent
industrialists like Shri Syamanandan Sahaya and others to come forward
and help the Government in making this measure a success."(174) Here
again the governments' effort to placate business circles is indicated.

Despite all the above attempts to soften the Bill, which became the
Industries (Development and Regulation) Act, 1951, the reaction of
business circles was considerably hostile, even strident. In Capital,
the reaction was quite muted. It traced the ideological basis of the
measure to the Congress election manifesto, but noted Nanda's
reassurances about the necessity of private enterprise in his maiden
speech while supporting the Bill (see above).(175)

172. Ibid., col.4895.
173. See Chapter III above, and Chapter VIII below.
175. Capital, n.123. Capital at that time was largely controlled by
the British dominated managing agency houses in Calcutta cf. S.A.
Kochanek, Business and Politics in India (Berkeley: University of
California, 1974), p.211; & Registrar of Newspapers for India,
Press in India 1968, (Delhi: Manager of Publications, 1968),
pt.I.
The reaction in the Eastern Economist was much more critical. "Argus' writing in his column "A Delhi Diary" harshly criticised,

"The manner in which the Industries (Development and Control) Bill was rushed through the House last Friday...as) one of the most shocking displays of ideological dictatorship which I have ever seen."

In view of the fact that he "had thought the Planning Commission and the Minister of Industry and Supply were learning fast..." he suspended judgement "for the present." (176)

A more balanced and perceptive appreciation of the entire situation followed in the next issue a week later. In a "Leading article" (editorial) in the 26th October issue entitled "The State of the Revolution," the Eastern Economist noted that, "At least until the elections are over, the Right Wing in the Congress is content to play a subordinate role; this is no more than a concession to political realities." Because, "The widespread belief that the Prime Minister is far and away the largest factor in the elections is indubitably true..."

It considered the silence of the Right within the Congress over the Industries Bill as "curious and at first sight disturbing..." but noted that, "The process by which the Hindu Code Bill was checkmated showed...that the whole of the Right Wing of the Congress was by no means overruled." Therefore despite,

"Leftist legislation...yet no significant advance to the Left is noticeable...the picture as a whole is almost as conservative as before. The ascendency of the Prime Minister may be complete but, in terms of the change in the structure of society which it connotes, it is negligible."

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176. Eastern Economist, 19 October 1951.
While it warned that, "prejudices against the business community resulting in more regulation will mean less initiative and less production" it concluded, on the above lines that "in effect, the country is less Left than it is assumed and so, indeed, is the Government." (177)

In the Commerce also there was sharp criticism of the Bill. In a leading article in the 20th October issue, it stated that the Bill was passed,

"in the teeth of country-wide opposition to certain objectionable features of the Bill. Even the last-minute frantic appeal of the Federation of Indian Chambers of Commerce and Industry... was of no avail."

The article however appreciated the fact that both Nanda and Mahatab,

"As regards controls to be instituted over the industries included in the schedules...have admirably attempted to dispel unnecessary doubts in the minds of industrialists. Both of them have emphasized, in unequivocal terms, that the legislation is meant for regulation, and not nationalisation of industry, so that private industry may play its part within the framework of the Five Year Plans."

It noted approvingly that,

"The Minister for Commerce and Industry took particular care to emphasize the many safeguards provided in the laws to prevent hasty action in the matter of assuming control over recalcitrant industries... This assurance, along with the provision which lays down that only the management, and not the ownership, would be taken over by the Government, and that for a period not exceeding five years, should be viewed with some satisfaction by industry... because the Bill, as it first emerged, contained certain drastic measures of control." (178)

177. Eastern Economist, 26 October, 1951.

It is necessary to note here, that the FICCI attitude towards the Government's industrial policy, prior to the passing of the Bill, was essentially one of satisfaction. At the 24th Annual Session of FICCI held from 31st March to 2nd April 1951, Shri Ram while moving a resolution on "Industrial Development" stated that,

"I find that there are a number of good points in the situation today. For instance, not only the Congressmen but even the Socialists today say that only the basic industries should be nationalised. The bogey of nationalisation has more or less disappeared..."

He admitted that though FICCI had,

"protested against Government starting factories...I think this starting of factories by the Government has done us a lot of good and probably is to a great extent responsible for their taking a realistic view."(179)

He believed "It is a matter of satisfaction that the Government have realised the importance of financing industry..." and referred to the case of TISCO.(180) He stressed "that it is our Government... We must have confidence in our own Government and the Government must have confidence in at least some of us."(181)

Too much should not be made of the FICCI criticism of the Bill and later Act. In fact a couple of years later, R.G. Saraiya, the then FICCI President, in a letter to T.T. Krishnamachari (TTK), then Minister for Commerce and Industry, noted that the two Select Committees had "both improved on the original provisions, which were objectionable in

180. Ibid., pp.100-101.
181. Ibid., p.103.
the extreme."

Thus, taken with the earlier evidence adduced above, it is clear that industrialists in general, and FICCI in particular, had managed to considerably influence the formulation of the Industries (Development and Regulation) Act.

This was in a sense inevitable, in view of the existing political balance of forces, which as Syama Prasad Mookerjee had admitted, led to some industrialists being "extremely powerful in this land." As the Government spokesmen had emphasized time and again, during the debates and discussions prior to the passing of the Act, state regulation of the economy, and specifically of important industries, was necessary for the development of a viable capitalist system, and therefore the measures incorporated in the Industries Act were necessary for the survival of the existing politico-economic system as a whole. Moreover as Nanda and others had stressed, the measures to be taken under the Act, would guarantee the viability of private enterprise. In fact as we shall see below, industrial policy measures actually contributed to a disproportionate growth of the larger industrial groups and consequently of their influence on the political leadership.

Constituting the Planning Commission

As we have seen above, the recommendations of the newly constituted Planning Commission led to the Government action in taking the Industries Bill off the shelf, as it were, despite FICCI pressures. The

183. See Chapter III above.
establishment of the Planning Commission itself occurred only after Nehru was able to overcome resistance "from Sardar Patel and senior government officials."(184) Although the Report of the Advisory Planning Board and the deliberations of the National Planning Committee had led to an explicit statement in the 1948 Industrial Policy Statement to establish "a National Planning Commission to formulate programmes of development and to secure their execution..."(185) no action was taken until the Congress Working Committee (CWC) was forced to take action in January 1950.

The almost chaotic conditions prevailing in the economy forced Nehru to push for the establishment of the Commission at the end of 1949.(186) At the 15th January 1950 Congress Working Committee meeting, a note by Shankarrao Deo, (who had served in the National Planning Committee and in the Economic Programme Committee), was discussed which, "contained a severe indictment of government (economic) policy...(and) warned of the possibility of grave social disorders unless definite steps were taken to improve economic conditions. To avert this danger, the note called for a Gandhian program(me) based on austerity and a planned economy."(187)

On the basis of the discussion on the note, G.L. Nanda, who was later to become Planning Minister, was asked to prepare a draft


185.See H.K. Paranjape, The Planning Commission: A Descriptive Account, (New Delhi: Indian Institute of Public Administration, 1964), pp.5-12; See also Appendix A.


187.Ibid., p.140. This is a summary of Deo's "Note on Economic Policy", prepared for the CWC meeting, unpublished Rajendra Prasad papers.
resolution. The introductory paragraphs of his note were designed to appeal to the Gandhians, the Congress Socialists and the right wing. The operative part of the resolution called for the immediate creation of a Planning Commission. (188) Despite this conciliatory strategy, the draft resolution was subjected to considerable debate and criticism.

The two major points of dispute in the CWC meeting on January 19th, were firstly over the objectives of planning, and secondly over the proposed Planning Commission's role vis-a-vis Government. A passage supported by Nehru himself in the original draft prepared by Nanda which included in the principles of planning,

"the progressive elimination of social, political and economic exploitation and inequality, the motive of private gain in economic activity or organisation of society and the anti-social concentration of wealth and means of production...", (189)

was deleted under pressure from the right wing led by Patel and Rajendra Prasad. According to Kochanek,

"As was evident from a note later submitted by Nanda, there was pressure from the right-wing members of the Working Committee to drop the passage on the ground that such broad objectives could create enough anxiety within the business community to alienate it from the Congress." (190)

The second major debate in the CWC took place over the role of the Planning Commission. The majority wanted the proposed Commission to be


189. Ibid.

a purely advisory body making recommendations to the Cabinet. This was opposed by Nanda who argued,

"A Plan is not a body of recommendations of a reporting committee which may be accepted or rejected in part. The part which will be rejected may be found by the Planning Commission to dislocate the entire structure of its creation, rendering the Commission incapable of taking further responsibility."(191)

The CWC did not endorse Nanda's views and left the matter of the relationship between the Planning Commission and the Government to the Cabinet to resolve.(192) The entire discussion over the resolution highlights the determination of the dominant Congress leadership to curb any policy or to moderate any statement that might alienate business interests.

Conclusions

The composition of the Constituent Assembly, and the inclusion of business representatives on its important Committees, contributed to the Constitution being framed in a fairly conservative manner. The Directive Principles, which included the important socio-economic objectives, were not made justiciable. On the other hand, the Fundamental Rights, including the right to property, were made subject to judicial scrutiny. This resulted, as some critics noted in the Constituent Assembly, in the perpetuation of the privileges of the few who had substantial amounts of property. This evidently was also in business interest.

192. Ibid.
The prolonged process of formulation of the Industries Act, provides further indications of the measure of business influence on the political leadership. At virtually every stage of the proceedings, attempts were made to reassure Indian big business. The Act expressly provided for the return of units taken over to the original owners within a period of five years. At the final stage of the debate, H.K. Mahatab attempted to dilute the takeover clause resulting in angry protests from leading Congressmen. On its part, Indian big business, which was initially very hostile to the proposed Act, moderated its own stance later.

The debate over the constitution of the Planning Commission also reveals the anxiety on the part of the conservative sections of the Congress leadership not to displease big business.

From the above examination it is apparent that in the framing of the Constitution, the Industries Act, and the objectives of the Planning Commission, big business influence was able to play a substantial part. Despite some criticism of these measures, by FICCI as well as by individual businessmen, the institutional framework that was established during this period from 1947 to 1951, for the implementation of industrial policy, provided considerable latitude for the protection, and growth, of Indian big business.