Chapter IV
REACTION IN WEST-BENGAL: EFFORTS TO RATIONALISE CENTRE — STATE RELATIONS

The Memorandum circulated by the West Bengal Chief Minister is more than just a propaganda pamphlet, because, if viewed from the proper perspective, it can set the ball rolling for the application of the theory of democracy in India. The document seizes upon the Janata Party's protestations for greater decentralisation to make Government effective at the grass roots (where it is non-existent). If the Centre suppresses the States, the latter will in turn ride roughshod over the Panchayats and Zilla Parishads —— the basic units of self-government. Therefore, as an initial step, the document moves the Centre for greater powers. The British imposed a politico-legal superstructure with evangelical zeal but stopped short of implementing it when a conservative polity met the measures with unconcealed hostility. Progressive Laws were enacted, but the socio-cultural legacy ensured the observance of the legalities more in the breach than in practice. Bitten by bitter experience, they decided to let well alone. The tradition has continued to this day to make a virtual mockery of democratic institutions. The emergence of a dictatorship at the highest level must have been a logical culmination of this process (even official probes did not always overlook the inclination for Central authoritarianism). How far changes
will be made remains in the realm of speculation but a national debate on the issue will certainly throw a lot of light.

Perhaps the most significant apprehension is that, with the present configuration of political forces in the country, the demands will not be met. For instance, the elaborate procedure for amendment will defeat any move by its sponsors to pass it as law in Parliament. The Committee headed by Justice Rajamannar of the Tamil Nadu High Court, which submitted a report to precede this one, also called for greater involvement by the States in the process. As a result, the Left Front has included the constitutional amendment procedure among the gamut of alterations suggested.

The document therefore, gives concrete shape to what the move for greater autonomy is all about. Earlier, there has been as mentioned, the Rajamannar report followed by the Maran-Seyzhian document. Kashmir's special status, particularly evident in the footnotes to most of the constitutional provisions in question, is some indicator of how concessions can be made within the constitutional structure. The State's special status was made possible by a political exigency at the time of signing the Instrument of Accession. Genuine considerations of West Bengal's development would necessitate almost similar concessions unless the Constitution itself is altered.

A move for further breaking up the country into smaller States was squashed, for the time being, mainly to forestall a
crop of irresponsible demands. A set of firm rules, whereby all demands could be judged on merit, had first to be devised. More will undoubtedly be heard later. A certain measure of accommodation has to be struck because even after ethnic demands are met, there remains the complicated question of caste.

UNCHANGED PATTERN

As noted earlier, the British imposed a particular pattern, partly for reasons of historical evolution and partly because it best served the interests of colonial administration. This pattern has remained unchanged in spite of what the States Reorganization Commission achieved. Mr Jayaprakash Narayan has gone on record with the remark that "the distance between the Government and the people" must be narrowed. It has also been pointed out that "this after all was one of the explicit reasons for Mr. Narayan's 1974 campaign which enjoyed the active endorsement of all the constituents of the Janata Party. Other more dramatic considerations may have over-shadowed it by the time of the March (1977) elections, but underlying the change in New Delhi was the public expectation of a more responsible leadership which would give a sympathetic hearing to local aspirations and not baulk at innovations that might be politically embarrassing or difficult of implementation."
The memorandum emphasized that the issue of Centre-State relations had assumed a new significance in the changed political context with different parties in power in the States and at the Centre. This was described as a "welcome departure from the one-party authoritarian rule of the Congress".

The West Bengal Cabinet felt that the devolution of power to the States might help ward off "fissiparous tendencies" which were encouraged if the democratic aspirations of the people of different States were treated with disdain. The Cabinet was of the view that the States' powers had been continuously eroded during the past two decades. The 42nd Amendment to the Constitution and the Emergency had further accelerated the process.

The memorandum pointed out: "We are definitely for strong States, but on no account do we want a weak Centre". The concept of strong States is not necessarily in contradiction to that of a strong Centre, once their respective spheres of authority are clearly marked out. The Preamble to the Constitution should be amended to include the word "federal". Consequently changes should also be made by replacing the word "Union" by the expression 'Federation' in all places, the memorandum added. As the Administrative Reforms Commission pointed out: "... But it is well to remember that, however strong a Centre the Constitution may have provided for, the polity is federal and not unitary in structure. It was open to the makers of the Constitution to give India a unitary arrangement. They did not, and subject to certain provisions..."
regarding Central intervention — unusual no doubt and therefore to be employed in unusual circumstances — left the States normally with full powers to act in the legislative or executive fields falling within their jurisdiction.

"Two conclusions follow: First, a functional arrangement of this kind cannot subserve the purposes underlying it unless it becomes an operational reality. Secondly, where the arrangement is a reality but is found to be deficient, it should be possible to consider alterations without being inhibited by any doctrinaire ideas. It is therefore important to see how far practice has conformed to constitutional provision, and purpose, what major deviations have occurred and with what justification, and which of the existing provisions and procedures have proved inadequate". 20

"THE MEMORANDUM"

The memorandum urges that the Preamble be amended to include the word "federal". 21 It points out that consequently changes should also be made by replacing the word "Union" by the expression "Federation" in places.

The memorandum also suggests that Article 248 be amended to ensure exclusive powers to the State legislatures to make any law in matters not included in the Union or Concurrent Lists. 22 Article 248, which deals with the residuary powers of State legislatures, states: (1) Parliament has exclusive power to make
any law with respect to any matter not enumerated in the Concurrent List or State List, (2) such power shall include the power of making any law imposing a tax not mentioned in either of these lists. 23

In all fairness to the Left Front it must be mentioned that the only reported occasion for the application of the residuary power under the Government of India Act, 1935, was regarding the power to provide for acquisition of a commercial or industrial undertaking (Rajamundry Electric Co. versus State of Andhra, 1944). 24

Another point of interest is the history of vesting the residuary power in the Union instead of the States (following the Canadian model). When the Constituent Assembly first met its members were inspired by the American model of leaving the residue to the States and making the States masters of their own house. 25 But by the time the Constituent Assembly reassembled as a sovereign body after August 14, 1947, partition had come into force and defence was posing a problem. 26 It was therefore necessary to build a strong Centre with residuary powers. Another departure the Assembly made from tradition was to vest the power not in the statutory head but in the Central legislature. 27 The memorandum therefore wants the Article amended to ensure exclusive powers to the State legislatures to make any law in matters not included in the Union or Concurrent Lists. It feels that to project the State's autonomy, residual powers should lie with the units and not with the Centre.
On Article 249 the ARC has pointed out: "(Art. 249) ... empowers Parliament to legislate on any matter in the State List provided the Council of States by a two-thirds majority, authorizes them to do so. The Council of States, does, in a way, represent the opinion of the States, but the important point to note is that the autonomy of individual States is subject, even in the State field, to the collective wishes of the other States. The character of this provision is thus utterly distinguishable from that of Article 252 under which Parliament may legislate for any two or more States with their agreement."

The memorandum makes a strong plea for outright deletion of Article 249. Article 249 states: ..(I) If the Council of States has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. II) A resolution passed under Clause (I) shall remain in force for such period, not exceeding one year as may be specified therein; provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in Clause (I), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have
ceased to be in force. III) A law made by Parliament which 
Parliament would not but for the passing of a resolution under 
clause (I) have been competent to make shall, to the extent of the 
incompetency, cease to have effect on the expiration of a period of 
six months after the resolution has ceased to be in force, except 
as respects things done or omitted to be done before the expiration 
of the said period.

NOTABLE EXCEPTIONS

Among the notable exceptions to this rule are the Constitu-
tions of the USA and Australia. In the USA one of the parties to 
the federation cannot by its unilateral action, alter the distri-
bution of powers made by the Constitution. In spite of revision of 
judicial interpretation from time to time, the power does not lie 
in the hands of the Federal Government acting alone to transfer to 
itself the powers reserved to the States by the Constitution. Congress 
cannot formally transfer to itself any of the powers belonging to 
the States. The only way to do so is the process of amendment. In 
Australia likewise, it is not possible to transfer such powers without 
amendment to the Constitution.

In Canada however, the Constitution assigns an exclusive 
sphere to the provincial legislature. The judiciary has enabled the 
Dominion Parliament to legislate on provincial or local subjects 
whenever they assume national importance, under the residuary 
power of the Dominion Parliament to legislate for "the peace, order 
and good government of Canada". Parliament has no power to
legislate on a matter which comes directly within the exclusive Provincial List given by Section 92 of the British North America Act and the Dominion Parliament has no power to upset the constitutional distribution of powers by unilateral action.

More significantly, even the Government of India Act, 1935, had no provision corresponding to the present article, 34

The Memorandum, however, indicates that the Centre's role should be one of coordination. 35 This is in accordance with the Administrative Reforms Commission's suggestions which called for the Centre's overseeing role. The Left Front document points out: "In such areas as planning, fixing of prices and wages, the Centre may not only coordinate but also issue general directions".

The document touches upon a sensitive issue when suggesting major modifications concerning industrial licensing. The Lists in the Seventh Schedule should be formulated in such a way that the States are given exclusive powers regarding certain categories of industries. 36 The Rajamannar Committee had also asked for the complete omission of the provisions relating to the grant of licences. It had called for the repeal of the Industries (Development and Regulation) Act, 1951, by an Act providing for the control by the Centre of such industries as only of national importance or of an all-India character or which have a capital of more than Rs. 100 crores. 37 It has been noted that all the States have complained that there are unnecessary and avoidable delays in the processing of applications for licences. The organised private sector expressed
similar views. At its annual meeting in April, 1971, the President of the Federation of India Chambers of Commerce and Industry advocated delicensing of industries or alternately the transfer of this function to the States. 38

The Left Front constituents have reason to fear Central interference constitutionally and administratively. Though here the instinct for survival is quite evidently uppermost in the minds of the framers, perhaps the incidents of 1967 can be recalled in brief to point out the ominous consequences of overbearing paternalism. For the United Front had quite unequivocally urged the withdrawal of the right of the Centre to raise the Central Reserve Police or other police forces in the country to operate in the States. 39 The subjects of law and order and the police should be fully in the State sphere and the Centre should not interfere, the memorandum has pointed out. 40

STATE'S EXPERIENCE

The State's experience with the CRP in 1967 ended rather curiously, to expose one more sphere of Centre-State discord. On March 24, 1967, CRP jawans fired at a crowd in the Durgapur Steel Plant's Administrative building. Sixty people were reportedly hurt. The then Home Minister, Mr. Jyoti Basu, immediately called for the withdrawal of CRP units from the State. His argument was that the maintenance of law and order, including the protection of property — whether Central, State or private — constitutionally within the State Government's sphere. Mr. Basu held that there could not
be parallel police forces in the State — a relevant point for maintaining authority. The Union Home Ministry however justified the CRP's action on the ground that the latter had to move into the scene after the local police had failed to react on complaints from the Steel Plant's management.

The Union Home Minister, Mr. V. C. Shukla, told the Rajya Sabha on March 26 that though the protection of Central property came with the State's jurisdiction, it was the Centre's duty to take action if the former did not take the necessary measures. It has been suggested that the statement did not clarify whether the steel management had asked the State Home Ministry for protection when the local police had "expressed their inability in this matter". On the same day the Union Home Minister Mr. Chavan told the Lok Sabha that the Centre had the right to deploy the CRP in all parts of India and no State Government could ask for their withdrawal. He also added that the CRP had in fact the responsibility to safeguard Central property. Another controversy occurred over the Coasipore firing in April, 1969. Both the Centre and the State subsequently watered down hard-line stands and in his meeting with the Home Minister in April 21, Mr. Basu seemed to be of the view that CRP units could be used only if the State Government wanted to do so. The matter ended there and the lesson seemed to be that discretion was necessary on both sides rather than legal stipulations.

Next, the memorandum refers to the financial provisions. To end the "mendicant status" of the States it points out that
there should be a provision in the Constitution for 75% of the total revenue raised by the Centre to be given to the States and the Finance Commisions should decide on the principles on which the allocable revenue is to be divided among the States. Art. 280(3)(a) should be amended clearly so that "it is the duty of the Commission to make recommendations to the President on the allocation of proceeds to the States. The States should have more powers to impose taxes and determine the limits of public borrowing. The Centre's right to tax property and income of the States in some cases, as provided in Article 280, should be removed. Article 302, providing for the Union Ministry's right to restrict trade and commerce in a State and intervene in its affairs should be deleted." Barring the suggestion to allocate revenue to the States, the financial history of the State will make it rather evident that there is some scope for revisions in this matter. Article 280 deals with the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this chapter and allocations between the States of the respective shares of such proceeds. In retrospect, the insistent demand for a redefinition of Union-State relations made by non-Congress States in 1967 centred around the financial provisions of the Constitution. In no federation has it been found possible to provide for allocation of resources to correspond to allocation of functions. But even the correct balance established at the inception
of the federation got disturbed by uneven taxing powers. No effort was made to adjust the States' taxing powers to their responsibilities. These powers were weighed heavily in favour of the Centre.

**TRADE AND COMMERCE**

Similarly Article 302 deals with the power of Parliament to impose restrictions on trade and commerce. Article 302 states that "Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest". This provision is not exceptionable, in so far as, like in any other federal system, the Indian Constitution vests in the Centre the power to regulate inter-State trade and Commerce. An analysis of food policy, for instance, indicates that decisions with regard to major ingredients of the policy, including production, procurement, imports, pricing, restrictions on movements and distribution, were the result of mutual consultations between the Centre and the States. However for implementation of the policy the Centre depended on the administrative machinery of the States. The evolution of the policy, however, indicated that Central intervention had created tension with the States. The suggestion has been made for creating an autonomous agency for regulating inter-State trade and commerce. Article 307 authorizes Parliament to create such an institution.
Next, the memorandum points out that Articles 356 and 357, enabling the President to dissolve a State Government of its Assembly or both should be deleted. In the case of a constitutional breakdown in a State, a provision must be made for holding an election and installing a new Government as in the case of the Centre. Article 360, which empowers the President to interfere in a State administration on the ground of a threat to financial stability, should also be deleted, it adds.

Article 356, which deals with provisions in case of a failure of constitutional machinery in the States, lays down that:

1) If the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the legislature of the State; b) declare that the power of the legislature of the State shall be exercisable by or under the authority of Parliament; c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the object of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or
authority in the State: provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts, 2) Any such Proclamation may be revoked or varied by a subsequent Proclamation. It is to be noted here that the Drafting Committee of the Constituent Assembly provided that if the Governor of a Province felt that the machinery set up by the Constitution for the administration of the affairs of the province broke down, he should have the power by Proclamation to take over the administration of the province for a fortnight and thereafter to communicate the matter to the President about the failure of the machinery and for the Proclamation of the Emergency. This draft, though it was in line with the Article of the Government of India Act of 1935, (Sec. 93), was later avoided by the Committee.

According to the present provision, Article 356 ensures that the President can serve a Proclamation of Emergency when he is satisfied that such conditions exist on a report from the Governor or otherwise. It has been pointed out that the use of the word "otherwise" probably refers to Articles 355 and 365. According to Article 355 the Union has the duty to ensure that the Government of a State is carried out in accordance with the provisions of the Constitution. Under Article 365 non-compliance with the directives issued by the Union shall be deemed to be a situation where Art.356
is applicable. The question of aid and advice of the Council of Ministers is nowhere there. Commenting on these Emergency powers, the Administrative Reforms Commission pointed out quite clearly: "... the Emergency powers of the Union extend beyond security situations and give an overseeing role to the Centre that is incompatible with traditional ideas of federalism." 51

\[\text{ARTICLES 200 AND 201}\]

The report also takes to task Articles 200 and 201 under which the Governor — a Presidential appointee — may reserve a Bill passed by the State legislature for the consideration of the President who may veto it without assigning any reason. 52 In the matter of Constitutional breakdown \[\text{Arts. 356, 365}\], the memorandum not unreasonably points out that a provision must be made for holding an election and installing a new Government as in the case of the Centre. Curiously enough, ARC had suggested that though sovereignty rested with the Union Parliament, it did not with the State legislatures. It appears curious because such thinking obviously does not tally with the emphasis on more legitimate powers for the States. In the real working of the Constitution there have been grounds for fearing that constitutional methods have often been by-passed. Another curiosity lies in that the position of the Governor, though watered down by the Drafting Committee, retains powers very
similar to those with which the experiment with provincial autonomy had once been reduced to a virtual mockery. Though only the provincial portion of the Government of India Act, 1935, was put into operation in 1937, autonomy was not full and comprehensive. Provincial autonomy implied that in all subjects over which the provinces exercised jurisdiction administration would be carried out by the Ministers only in responsibility to elected legislatures. But the Governor of a province appointed on the advice of the Secretary of State for India and working under his discipline was given such a position by the Act that Ministers were unable to exercise full control over administration. The Governor was expected to play a constitutional role but in reality he continued to be an instrument for the Governor-General's exercise of power over the provinces.

That this legacy has come down to us was displayed in the constitutional crisis in West Bengal between February 20, 1968, and February 25, 1969. The Congress, which was returned as the single largest party to the State legislature, did not lead a coalition Government in the State. Instead, a 14-member Coalition United Front was sworn in under the stewardship of Mr. Ajoy Mukherjee. When Dr. P. C. Ghosh, the Food Minister, along with 17 other MLAs, defected and formed the Progressive Front the Governor, Mr. Dharam Vira, called for a trial of strength in the Assembly. It might be mentioned here that there were charges of misuse of official
machinery at the time of polling and also of vested interests using agent provocateurs at the time of the constitutional crisis to enable the Centre to contemplate the use of special provisions for dealing with a law and order situation. Later such extra-constitutional measures assumed menacing proportions and have now been recounted vividly.

Even constitutionally, the ensuing crisis raised a few pertinent questions. While the depleted United Front Cabinet wanted to convene the Assembly on December 18, 1967, the Governor urged them to convene it not later than November 30, 1967. The Cabinet refused. The Governor dismissed the Ministry and a minority Government, headed by Dr. P. C. Ghosh, and supported by the Congress, was sworn in on November 21, 1967. However, when the Assembly met on November 29, 1967, the Speaker refused to recognize Dr. Ghosh's appointment and adjourned the House sine die.

Almost as soon as the West Bengal Assembly again met, the Speaker made a statement questioning the constitutional validity of the United Front Ministry's dismissal, the appointment of Dr. P. C. Ghosh as Chief Minister and the summoning of the House on Dr. Ghosh's advice. "Pending a full and proper examination of the matter", the Speaker then adjourned the Assembly sine die.

Later the Governor, Mr. Dharma Vira, prorogued the Assembly.
The Speaker, Mr. Bijoy Kumar Banerjee, said in his ruling: "This House meets under extraordinary circumstances. I am prima facie satisfied that the dissolution of the Ministry headed by Mr. Ajoy Mukherjee, the appointment of Dr. P.C. Ghosh as Chief Minister and the summoning of this House on his advice is unconstitutional and invalid since it had been effected behind the back of this House."

"The only authority competent to decide whether or not a Council of Ministers should continue in this office is this House", Mr. Banerjee said.

Quoting a precedent he added: "In March, 1943, the then Government of Bengal was defeated in a vote grant on the demand for a grant in respect of Agriculture. The question arose as to the constitutional consequences of such a defeat."

"At that time my predecessor in office, Mr. Naushar Ali put the essence of the matter in clear terms. To quote him: 'Mr. Nazimuddin (the then Chief Minister) said yesterday that he would treat this as a snap division and not a censure. I am afraid the constitutional position has not been properly conceived. The Ministry is the creation of the House; this House can make and unmake the Ministry and the Governor is but the registering authority"
of the House. Any other course, I am afraid, would strike at the very root of democracy.\textsuperscript{59} 

The former Speaker, when called upon to elaborate, said that after having failed to pass the budget, the Nazimuddin Ministry tried to claim the voting as a snap vote. But Mr. Ali rejected the claim and adjourned the House after having declared that he did not recognize the Ministry. Mr. Ali said he gave sufficient time to the Treasury Benches to table a motion of confidence. But they failed to do so.

Mr. Ali's action was later described by certain newspapers as an usurpation of the Governor's power. In fact the then Governor, Mr. Casey, expressed the same view to Mr. Ali later. Mr. Ali told him however that the Speaker was not constitutionally bound to explain his action in the Assembly to anyone.

The matter did not end there. After the Assembly was dissolved by the Governor, the Speaker's office was also held defunct. Mr. Ali challenged the Governor's decision and regularly attended office. His point was that the Speaker was elected by the Assembly and remained a Speaker till the reconvening of the new Assembly. He won his point and the Governor rescinded his decision.

Referring to Mr. Banerjee's ruling, Mr. Ali said that a Speaker's ruling could be challenged in court if it related to anything absolutely extraneous or irrelevant to the proceedings.
of the House. In his opinion, Mr. Bejoy Banerjee's ruling did not fall in that category. Mr. Ali criticized the manner in which the UP Ministry was dismissed and Dr. Ghosh's appointment as Chief Minister. He defended the Speaker's ruling.

The West Bengal Speaker pointed out that the circumstances facing Mr. Ali were different, but the supreme authority to make and unmake Ministers was the House's. Neither the text of the Articles of the Constitution, nor the precedent quoted, recognized any discretion on the part of the Governor in appointing the Council of Ministers. He was merely a registering authority. "To make State authority more meaningful and depart from the colonial import of the provisions, it is therefore necessary to alter the Governor's position. Under the present conditions it is quite clearly framed in terms which are against the mood of the times." Since constitutionally the Governor's action was not exceptionable — as was brought home by most constitutional experts — there should be some modification of the relevant provision.

Mr. M. C. Setalvad, former Advocate-General, said the Speaker had "acted beyond his powers." He held that the latter could not question the "constitutionality" of the new Ministry since the appointment of the Chief Minister was the prerogative of the Governor. The former Law Minister, Mr. Ashoke Sen, however, said that Dr. Ghosh's Ministry was legally appointed by the Governor.
The Ministers were members of the legislature and had taken the oath of office, thus satisfying the constitutional requirements. No resolution had been passed expressing no-confidence in the move.

CONSTITUTIONAL LEGACY

It is interesting to note how this particular feature has figured in Indian political movements. It has now almost come down as a constitutional legacy in the struggle for more powers from the Centre. Maulana Abul Kalam Azad points out that though the Government of India Act, 1935, provided for provincial autonomy, "there was a fly in the ointment". Special powers had been served to the Governor's to declare a state of emergency, suspend the Constitution and assume all powers to himself, as has already been pointed out. It therefore comes as some surprise that an erstwhile stalwart of the national movement, who had no small hand in the framing of the Constitution of Independent India, should point out that "democracy in the provinces could function only as long as the Governors permitted it". An even more interesting point is that the late Mr. C.R. Das, whom the Maulana describes as a politician with "a practical bent of mind" and who "looked at political questions from the point of view of what was desirable and practicable", predicted that the first step to independence would be "the achievement of provincial autonomy". He was satisfied that the exercise of even limited power would advance the cause of
India's freedom and prepare her for undertaking the larger responsibilities as and when they were won. "It is a measure of Mr. Das's foresight that it was on these lines that the GOI Act of 1935 was passed almost 10 years after his death", Mr. Azad points out.67

Rajya Sabha: Another suggestion of the memorandum relates to the composition of the Rajya Sabha whose members should be directly elected as those in the Lok Sabha and each State should have an equal representation, except those with a population of less than three million. Both Houses must have equal powers.68

The reason for the first demand appears to be fairly simple. The Rajya Sabha's composition obviously violates the federal principle because the President nominates 12 members to represent literature, science, art and social sciences. It has also been said that "this provision, borrowed from the Canadian Constitution, is not, by itself, objectionable as it provides for the admission of eminent people who would be, otherwise disinclined to face a contest, but the choice of representatives, so far made, indicates a political bias and not always a preference for cultural eminence."69

Secondly, though the maximum strength of the Rajya Sabha has been fixed at 250 (the Fourth Schedule lays down its distribution between the States), an analysis has shown that it is based on population but cannot be subsequently varied on the growth of the population as in the case of the Lok Sabha.70
The memorandum calls for modifications in the All-India Services, including the Indian Administrative Service and the Indian Police Service, whose officers are posted in the States but remain under the control of the Centre. The suggestion is that there should be only Union services and State services and "recruitment to them be made respectively by the Union Government and the State Governments. The Central Governments should have no jurisdiction over the State services".

The ARC pointed out: "The feature becomes all the more unusual because of the specific constitutional sanction for the Indian Administrative Service and the Indian Police Service. The provision cuts across the true federal principle and unless one believes it to have been made in a fit of absent-mindedness, it must have been inserted by the makers of the Constitution for considerations strong enough to override the classical federal set-up".

To appreciate the reasons behind these anomalies, it would be necessary, to go back to historical foundations. Though a federal Constitution implies the existence of dual Governments, division of powers and arrangements for their administration, and both the federal and State Governments create their own agencies for the administration of their laws and the subjects allotted to them under the Constitution, it is not wholly so in India. It has been validly pointed out that the reason is mainly historical:
considerations of continuity and economy are secondary. With the Indianization of the services and the introduction of dyarchy under the Government of India Act, 1919, it became obvious that the very name Imperial Services ran counter to the idea of provincial autonomy.

**GROWING DISCONTENT**

It would not be wholly far-fetched to suggest that the initial problems of dyarchy set forth a constitutional precedent which the Left Front memorandum confirms. There was growing discontent against the constraints on true provincial autonomy, with the result that, it might be conceded, even a certain amount of prejudice was built up. Thus in 1928 the Nehru Report pleaded for their discontinuance in the future Constitution of India and the Sub-committee of the First Indian Round Table Conference recommended the retention of only the Indian Civil Service and the Indian Police Service. When the Constitution of free India was framed, the Indian Administrative Service was statutorily recognized as a successor to the ICS and the IPS. Earlier, the Indian Forest Service and the Irrigation Branch of the Indian Service of Engineers had been discontinued as All-India Services.

In the provisions relating to administrative relations, once again, there is evidence of re-thinking. Vallabhai Patel, who
has been acknowledged as the father of the All-India Services, was known to have prepared the ground for the acceptance of the All-India Services by the Constituent Assembly though the Draft Constitution made no mention of it. As has been pointed out, the Constitution mentions only two services — but enabled Parliament to provide on a resolution of the Council of States for the creation of other All-India services under Article 312. 77

Like the Nehru Report and the Left Front memorandum, the Rajamannar Report devoted a Chapter to the Public Services. It voiced concern over Art.312 which does not provide for consultation with the State Governments in creating the All-India Services. It felt that Article 312 gave the Centre the authority to override suggestions made by the States.

The report also pointed out again what the study team of the ARC had said: "... in a federal set-up, to have an All-India Service that serves the needs of the States but is controlled by the Union is an unusual feature". 78 More importantly, it cited in defence of its position the report of the Joint Parliamentary Committee which had stated that the existence of All-India Services was incompatible with provincial autonomy. The report said: "There appears to be no justification for the Constitution of an All-India Service which relates to subjects within the exclusive fields of the States. It cannot be denied that there may be a
feeling among the non-Congress State Governments that the All-India Service Officers are the agents of the Centre and may not carry out the policies of these States".

Another significant point mentioned by the report is that the All-India Services imposed a heavy burden on the State Governments because when salaries and allowances were unilaterally raised by the Centre relations between the two were bound to suffer. As has been mentioned earlier, one notable feature is that these reservations are comparable with fears expressed by the nationalists in the British period.

CONSTITUTIONAL AMENDMENT

On the question of constitutional amendment the memorandum lays down that Article 368 should be amended so as to ensure that no amendment to the Constitution is possible without the concurrence of two-thirds of the members present and voting in each House of Parliament. The Rajamannar Report also pointed out that the Constitution should stipulate that every amendment should be "ratified by the legislatures of three-fourths or at least two-thirds of the States representing three-fourths or at least two-thirds of the total population of the States". This procedure could make the Constitution more sacrosanct and less accessible to change which might be required for meeting the social and political needs of the country. In this context the Left Front's argument sounds more convincing.
If tackled from a strictly legal point of view, the constitutional provision obviously stands on very firm ground, because the erstwhile Indian provinces did not have Constitutions of their own, and their roles in Indian administration had been determined by the statutes dealing with the Constitution of India as a whole. It was held natural, therefore, not to give them a right which they did not possess earlier of amending the provisions relating to their administration.84

Secondly, it has been pointed out that political and parochial stresses and strains in the States might otherwise, influence amendments in the States' section of the Constitution which would run counter to the concept of national unity.85

Firstly, economic growth and the people's power of political expression have marked a departure from precedent. Secondly, the 'unity' of India can also be interpreted in more than one way.

State boundaries: The memorandum wants Article 3 to be amended so that the name and area of a State cannot be changed by Parliament without the consent of the State legislature concerned.86

Indeed, Article 3 emphasizes the temporary nature of some Central powers which have subsequently come to stay.

The ARC laid down unequivocally that: "There is .... the extra-ordinary position that there is nothing permanent or sacrosanct about the identity of the States. Their boundaries can be altered
and, indeed, the existence of individual States can be brought to an end by Parliament at will. Units whose political identity can be obliterated by Parliament can hardly be considered sovereign in any sense of the term. It is true that all the powers of a State cannot be altered by this means but this only stresses the functional role of a unit, not its inherent autonomy.87 Since this provision raises the crucial question of States' sovereignty, it would be fruitful to revert to the ARC's stand: the Commission had pointed out that the absence of (a clear understanding of) the compact between independent and sovereign units to surrender partially their authority in their common interest and vest in a Union is of more than historical interest for it must dispel all notions of the autonomous sovereignty, of the States.88 If the report questioned the States' rights at all, it was on 'political sovereignty'. It pointed out: "The term, 'sovereignty' presents some difficulties of interpretation and tends to be used with different shades of meaning. Scholars have tried to distinguish between 'political sovereignty' and 'legal sovereignty'. The first is said to vest neither in the Centre nor in the States but in the people of the country. What is significant here is that it vests in the people of the country as a whole and not in any measure in the people of the individual units. The units had no sovereignty to part with and it would be incorrect to import any such concept now as an appendage to the term 'federation'".
Firstly, it has been pointed out in the 2nd Economic Census that only 11.50% of the population was enfranchised to elect candidates to the Constituent Assembly which gave the country the Constitution. And secondly, it might be recalled that the election pledge, on the basis of which the Congress was returned, had conceded a large amount of power to the States, even if "sovereignty" in the true sense it had not. One of the principal Congress leaders at the time, Jawaharlal Nehru, had made a particularly enlightened promise to the States. There is some ground therefore, for contesting the spirit of this stipulation, even if the interpretation of the relevant constitutional provision cannot really be disputed.

The Eighth Schedule: The memorandum suggests that the Eighth Schedule should include a few other languages, including Nepali, and any citizen of India should have the right to use his mother tongue in his dealings with any branch of the Government. "English should continue to be used for all the official purposes of the Union along with Hindi till as long as the people of the non-Hindi regions so desire", it adds. The Rajamannar report made a similar plea. The importance of the matter has been recently emphasized by the Madras Conference convened by Mr. M.G. Ramachandran, in which the Chief Ministers of five Southern States viz., Kerala, Karnataka, Tamil Nadu, Andhra and Pondicherry met to condemn the Centre's alleged policy of Hindi imposition. The resolution of this Conference may be quoted here: "This Conference of Chief
Ministers... the Official Languages Act 1963 as amended by the Official Language (Amendment) Act 1967."

CONCLUSION

The Rajamannar Report's publication was unfortunately timed. The Congress led by Mrs. Indira Gandhi won an unprecedented electoral victory and the necessity of any reliance on the political support of the Dravida Munnetra Kazhagam was thus wholly eliminated. The political movement in Bangladesh diverted attention and resources from domestic issues. The attempts of the DMK leaders to emphasize the similarity in regional disparities in India and Pakistan were tactlessly voiced. The Congress victory in the 1972 elections to the State legislatures also isolated the DMK and its demand for autonomy. As a perusal of the Left Front document will indicate, it has so far trod softly. Though there is considerable truth in the multi-nation State theory, its spokesmen have, by and large, not talked of secession. It has, further, even protested that the effort was not so much to weaken the Centre as it was to strengthen the States. On the external front, there has rarely been such calm with Pakistan, Bangladesh and China. In the domestic arena, the Congress has split in two, the Janata is clearly divided within itself and in Tripura the CPI-M has secured a majority in the Assembly polls. Governments headed by political parties not holding power at the Centre have been returned in several States. On certain

matters of policy they have held talks and even agreed upon 
common plans of action as in the case of the free movement of 
foodgrains or the language problem. As eminent a public figure as 
Mr. Jayaprakash Narayan has supported the move for devolution of 
greater powers. All these factors have obviously made the 
opposition to the memorandum less hostile than that to the Rajamannar 
Report.
References

1. Memorandum on Centre-State Relations, Government of West Bengal. The document was adopted by the West Bengal Cabinet at its meeting held on December 1, 1977.

2. The Statesman, February 11, 1977. The report said that Mr. Charan Singh, Vice-Chairman of the Janata Party, while releasing the party’s election manifesto in New Delhi, pointed out that the Janata would work for devolution and decentralization of power.

3. Mr. Charan Singh added (The Statesman, February 11, 1977) that the party would seek a national consensus in favour of small districts and development blocks "so as to encourage democratic participation and sound economic management and micro-planning".


5. Ibid.


7. Article 368 of The Constitution of India.


10. The Maran-Seyzehean document was virtually a simplification of the Rajamannar Report.

11. The special status for Kashmir is laid down in Article 370 of the Constitution of India.


13. Ibid.

14. Ibid.

15. Ibid.


17. Ibid, para 4.

18. Ibid.

19. Ibid.
22. Ibid, para 5.
23. The Constitution of India, Part XII.
27. Ibid.
29. The memorandum, para 5.
32. Ibid, p. 185.
33. The Constitution of Canada, Section 91.
35. The memorandum, para 6.
36. The memorandum, para 7.
40. The memorandum, para 8.
42. Ibid.
43. The memorandum, para 8.
44. Ibid.
45. The Constitution of India, part XIII
46. The memorandum, para 8.
48. The Constitution of India, part XVIII.
49. The memorandum, para 9.
50. The Draft Constitution, Article 183.
52. Ibid.
53. The memorandum, para 10.
55. West Bengal's Experience by Ray Amal in Centre-State Relations, edited by B.L. Maheshwari.
58. Ibid.
59. Ibid.
60. Ibid.
61. Ibid.
62. Ibid.
63. Ibid.
65. Ibid.
66. Ibid.
67. Ibid.
68. The memorandum, para 11.
70. Ibid, p. 55.
71. The memorandum, para 12.
74. Maheshwari, p. 197.
75. Ibid, p. 203.
76. Ibid.
77. Ibid, p. 194.
78. Ibid, p. 201.
80. Ibid.
81. Ibid.
82. The memorandum, para 13.
83. Maheshwari, p. 302.
84. Chanda, p. 106.
85. Ibid, p. 56-57.
86. The memorandum, para 14.

83. Ibid.


90. Ibid, p. 143.


92. The memorandum, para 15.


94. Mr. Jayaprakash Narayan said in Calcutta on July 17 that "in general, I have all along been in favour of devolving more power to the States and lower levels (The Statesman, July 18)."