

Parliament's Privilege

maximum that is possible is an exhibition of rigidity rather strange because it comes from those who pride themselves on their pragmatism. We have enough experience with planning by now to know that the question of the size of a Plan cannot be determined at the outset by approaching the problem from the side of financial resources. For instance,—to take the factor which recent experience has impressed upon us so forcefully—, a satisfactory increase in agricultural production could enable investment to be stepped up well beyond what may be considered realistic on present estimates; on the other hand, should agricultural production stagnate, even modest investment targets are no insurance against strains and stresses.

It would have been surprising indeed if the recent economic experience had not created an awareness of the pivotal role of agriculture in development. This it has done, but the consequences have been perverse. The emphasis in the Fourth Plan, it has been suggested, should be shifted to agriculture at the expense of industry, heavy industry in particular. Since agricultural output will for years continue to be one of the principal constraints on development, it goes without saying that agriculture must receive the highest priority in the Fourth Plan, as perhaps in the Plans after that. It does not follow, however, that if agricultural production has stagnated in the Third Plan, it has been for want of investment. The vast unutilised irrigation facilities, the unsold stocks of fertilisers and the other facilities created at great cost but ill-used by the farmer, have repeatedly underscored the fact that along with the creation of these facilities attention must be paid to uncovering and overcoming the factors which stand in the way of their utilisation. Yet, when sometime back a foreign expert laid bare the dismal progress of land reform practically all over the country, the Planning Commission's instinctive reaction was to suppress the report!

Faced with an incipient disenchantment with planning, what one expects of the Government is to act with understanding of the real factors at work—in the stagnation of agriculture, in the delays in completing major industrial programmes—, realising that the obverse of reduced investment is reduced incomes and employment. In the debate on the Fourth Plan so far there has been little to indicate that this expectation is being fulfilled. But it is not too late yet

WHAT is at issue in the constitutional wrangle between the Allahabad High Court and the U P Legislative Assembly is not the supremacy of the Constitution which is fundamental to the existence of a federal state. Legislators, ministers and judges all take the oath of allegiance to the Constitution, for it is from its relevant provisions that they derive authority and jurisdiction. Nor is it questioned that it is the judiciary which has the ultimate power of interpreting the Constitution. This is upheld by the very fact that it was to the Supreme Court's advice that the President of India turned to resolve the tussle between the U P Assembly and the Allahabad High Court.

What is really at issue is whether the powers, privileges and immunities granted to legislatures by Article 194 of the Constitution are subject to the Fundamental Rights guaranteed to the citizens in Part III of the Constitution, specifically, in this instance, the right guaranteed by Article 21 against deprivation of personal liberty except according to the procedure established by law. The crux of the matter, therefore, is the interpretation of Article 194, particularly clause 3 of the Article which states that "the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution".

The Supreme Court has held that irrespective of the powers and privileges of the House of Commons, legislatures in India cannot claim powers which are inconsistent with the material provisions of the Indian Constitution and that the right to decide whether any powers sought to be exercised are so inconsistent vested with the judiciary. The Court has given its clear verdict that the citizen's right to move the judiciary for the enforcement of Fundamental Rights is absolute and that no exception is intended to be made by the Constitution by reference to any power or privilege vesting in the legislatures.

This is indeed the only interpretation of the provisions of the Constitution possible, consistent with the judiciary's

responsibility as the protector of the Fundamental Rights of the citizen from encroachment by any agency, including the legislature. It has been argued that if Parliament and the State legislatures become subjects of frequent litigation and have to plead their case in courts, their prestige will suffer. This is a false argument. Judicial review of laws passed by the legislature is the very basis of the Indian Constitution and, as the Supreme Court pointed out, it would be strange if the judiciary were empowered to consider the validity of the legislative Acts of our legislatures but at the same time were prevented from scrutinising the validity of the actions of the legislatures which trespass on the Fundamental Rights of the citizens. If judicial review of laws enacted by them does not lower the prestige of the legislatures, how can the judiciary's power to review the exercise of their powers and privileges for consistency with the provisions of the Constitution do so?

Considering that the issue has become *one* of prestige between the judiciary and the legislature, the immediate reaction in Parliament to the Supreme Court's opinion was heartening. Sentiment in the Rajya Sabha was manifestly against the impetuous Congress Member who took exception to certain remarks of the Chief Justice made in Chandigarh as being a reflection on the dignity of Parliament and accused him of trying to mobilise public opinion in favour of the Supreme Court's opinion on the U P Assembly-High Court issue. The Law Minister, while agreeing that the Supreme Court's advice had resulted in "some erosion" of the privileges of the legislature, pleaded that no hasty decision should be taken on such an important matter and that it was necessary to study the full implications of the Court's opinion. He did hint that one of the objectives of such study would be to decide the extent to which the law needed to be amended. It is, of course, open to the legislature to amend the Constitution and exempt its own powers and privileges from the operation of the Fundamental Rights and thereby put them beyond the pale of judicial review. It is to be hoped, however, that whatever action the Government decides to take, the sanctity of the citizen's Fundamental Rights will be recognised and deemed more important than the legislature's prestige. The spirit of our democratic Constitution requires nothing less than that.