

16.08 hrs.

Title: Further consideration of the Constitution (Amendment) Bill, 2000 (Amendment of article 248 etc.) moved by Shri Suresh Kurup on 10th April, 2003 (Continued – Concluded). (Bill withdrawn).

MR. DEPUTY-SPEAKER: The House shall now take up further consideration of the Bill. Shri Varkala Radhakrishnan was on his legs. He is not present here now. Therefore, I call Shri Anadi Sahu to speak.

SHRI ANADI SAHU (BERHAMPUR, ORISSA): Mr. Deputy-Speaker, Sir, it was an emotional outburst by the Opposition. In the *Nyaya Shastra* of the Indian Philosophy it is called *vithanda*, where, if the adversary is on a weak point, he resorts to *vithanda*. That is what has happened now and that is why I was slightly dislodged from my thoughts.

16.09 hrs. (Dr. Laxminarayan Pandeya *in the Chair*)

SHRI PRAVIN RASHTRAPAL (PATAN): We were not on a weak point. The matter was of procedure.

SHRI ANADI SAHU : I am not arguing on this point. Whatever I felt, I have told you.

SHRI SURESH KURUP (KOTTAYAM): Sir, already one hour has been lost before the Private Members' Business is taken up. What is the remedy? This should have started at 3 o'clock and continued up to 5.30 p.m. What about the loss of time?

MR. CHAIRMAN : The point is noted. We are working on it.

SHRI ANADI SAHU : I stand here to oppose the Constitution (Amendment) Bill tabled by Shri Suresh Kurup, a good friend of mine.

I would have been very happy had he initially thought of amending only Article 249 instead of going in for amending Article 248.

I would start with Article 249. You would kindly appreciate that Article 249 indicates about the powers of the Parliament itself particularly the Council of States relating to certain legislative powers of the State. I would like to say that the profligacy of expenditure by the State at present has been the matter of concern and it would have been better to amend Article 249 to give more power to the Central Government itself to rein the State Governments who have been recklessly spending without getting any fund from whatever source possible.

You will kindly appreciate that the State Governments get funds from the Central Government from three sources. One is the allocation by the Finance Commission, the Central allocation to the States. Sixty per cent of the funds granted to the State Governments are as per the recommendation of the Finance Commission and of the rest 40 per cent which goes to the States, 20 per cent comes from the Planning Commission. When the Planning Commission gives money, a portion of it is by way of a soft loan or subsidy or something like that and the other 20 per cent is the discretionary grant of different Departments of the Government of India. In addition, the States borrow from different sources.

Now, you would kindly appreciate that, over the years, there has been staggering borrowing by the States. Something like Rs. 244,000 crore have been borrowed from the Central Government and have not been paid by the State Governments. This has to be kept in mind, when we think of devolution of powers under Article 248 relating to certain taxes, etc., that the State List should be added to another item at 67 to give more powers to the States to get taxes.

This will create a problem, Sir. First of all, when we think of taxes, taxes have to be uniform throughout the country. That is why, the VAT was thought of. The main intention of the Value Added Tax is to see that there is uniform taxation everywhere. I think it has been decided to have 12.5 per cent at a later stage and the Central Sales Tax was introduced to see that the collected tax is apportioned between the Centre and the States. It was two per cent earlier and now, it is four per cent. Now, it will go back to 2 per cent after the VAT has been completely taken into account.

The most important point is this. How do we go about in giving money to the States? You will kindly appreciate and there is no doubt that India is a federal structure as per its Constitution, but it is unitary in character. If we do not ensure its unitary character, there will be a lot of problems. In a country which has diverse needs, diverse aspirations and all those matters, it is necessary that a unified appreciation and policy decision has to be taken. Keeping that in view, the Twelfth Finance Commission has been given a mandate by the Central Government. What are the mandates given to the Twelfth Finance Commission?

The mandate is, the Finance Commission is to make recommendations on the following points. Firstly, it is distribution of divisible pool of net proceeds of taxes between the Union and the States. Secondly, it is the principles governing grants-in-aid to States which come under article 275. It has been provided in what manner it will be given. It has been mandated. Thirdly, it is the measures needed to augment the Consolidated Fund of the State, measures necessary to augment the Consolidated Fund of a State to supplement the resources of the *panchayats* and the municipalities.

In the earlier discussion, some hon. Members have raised matters regarding funding of the municipalities, that is, the *Panchayati Raj*. That is the mandate which has been given to the Finance Commission as to how the *Panchayats* and the municipalities will get funds.

Last but not least is the restructuring public finances, restoring Budgetary balances and debt restructuring. We had discussed debt structuring in the Budget and in the Finance Bill. We had discussed debt swapping. The Government of India thought it proper to see that the States do not suffer because of large amount of debt. It is an astronomical figure. The States owe something like Rs. 24,000 crore to the Centre. How do they pay it back to the Centre? There are State borrowings also. The receipt side of the States is dwindling because of the faulty policy of different States. That is why, debt swapping has been introduced in this Budget itself to make it into a soft loan type of a thing.

The Government of India has thought of it. Now, to ask for all powers to be given to the States would create lots of problems. Keeping that in view, an amendment is being brought to the Constitution of India. That is the 95th Amendment which is being brought in. There, article 268(a) will be introduced where another item will be added to the Union List, that is, the service matter. Why is it being introduced? It is being introduced to see that uniform service tax is levied all over the country and it is apportioned as per the provisions of the Finance Commission's recommendations. That is a well laid-out principle under article 280 of the Constitution of India.

The Constitution has been framed in a beautiful manner so that the States do not suffer. But at the same time, we have uniform tax policy all over the country.

Now, I give instances to explain as to how these matters have been taken into consideration. You will kindly see that there are State List, Union List and Concurrent List. There are certain matters which have been kept in the Union List and the State List; in the State List and in the Concurrent List.

I will come to serial no. 33 to explain as to how this has been taken into consideration. Kindly pardon me going in for the Constitution itself. I come to serial no. 26 of the State List now. I will go to serial no. 33 later on. Serial 26 of the State List has a reference to the Concurrent List. It says:

"Trade and commerce within the State subject to the provisions of entry 33 of List III. "

There are a number of such provisions. I am not going to read out all the provisions as it will take time. I would like to refer to serial no. 54 of the State List. It says;

"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I. " – that is, the Union List.

There are many such entries in the State List, in the Union List and in the Concurrent List so that there is some sort of homogeneity. Homogeneity is required to ensure, as I said earlier, uniform procedure or policy on tax and the apportioning of the taxes. But there is a rider. That rider is that the Government of India has brought about Minimum Term Fiscal Reforms Programme for States, popularly called MTFRP. It says that the Government of India provides funds to the States to overcome the fiscal constraints, subject to the States' adherence to the fiscal commitments consistent with Minimum Term Fiscal Reforms Programme, that is MTFRP. That is what is most important. Instead of going in for Constitutional amendment, I would suggest to the hon. Member that he should suggest to the States to go in for MTFRP to ensure that there is fiscal consolidation. For solving the difficulties that have come up, you are asking for changing article 268 and to give more powers to the States. Adding another item to the State List would be neither feasible, nor possible, nor practicable.

So, I oppose this Bill.

SHRI T.M. SELVAGANPATHI (SALEM): Shri Sahu, you will lose almost all your share for your own State....(*Interruptions*) If this argument is adopted, Orissa will lose a lot.

SHRI RAMESH CHENNITHALA (MAVELIKARA): Mr. Chairman, Sir, at the outset, I would like to congratulate my hon. colleague and friend Shri Suresh Kurup for bringing forward this piece of legislation for the active consideration of this august House.

This matter has been discussed in various fora and various judgements were also delivered by the Supreme Court of India and other courts in our country in various cases. The Constitution is an organic, living institution. It is not a static one. Also, the Constitution of India is designed to meet the problems and challenges of a changing State. The socio-political and economic character of the country is reflected in the Constitution. When time changes, naturally the people's aspirations will also change. According to the changing aspirations of the people, the law-makers should contemplate for changes in the existing laws, whenever changes are quite essential.

Definitely, the Indian Constitution is one of the best Constitutions available in the world. India is a vast country. Its geo-political and historical characteristics have few parallels. We always considered almost all the aspects before adopting the Constitution. India's unity and integrity and the diverse character of the nation were taken into account by the framers of the Constitution. When such a big country or a vast country cannot be governed by one authority, all the powers cannot be vested in one authority or one centre. The Indian history reveals the existence of local Governments during periods of the various Empires of the country like the Mauryan Empire, the Mughal Empire and others. They enjoyed considerable autonomy. The Britishers tried to centralise all powers but they realised that a vast and diverse country like India could not be administered without progressive devolution of powers to the Provinces and local bodies. So, these powers were given to the local administration, local bodies and other Provinces. So, during the time of the Britishers, even though they initially tried to concentrate all the powers in their own hands, subsequently they devolved almost

all the powers to the Provinces and the local Governments. The framers of the Constitution also kept all these aspects in their mind and opted for a Constitution which blended the imperatives of strong national control and the need for adequate local initiatives.

Our Constitution is a federal Constitution. Shri Kurup also agreed to that point. Our federal Constitution is definitely ideal for a country like India. The federalism is not a static paradigm. It is a changing notion. So, mutual cooperation and inter-dependence of the States and the Union Government is absolutely necessary for a country like India.

The mutual cooperation of the States and the Centre and for better understanding and interdependence. This will give a boost to our parliamentary democracy. Sir, without the cooperation of the States and the Centre and without the sense of inter-dependence, a country like India cannot move forward. So, it is highly necessary for a country like India to have proper understanding between the Centre and the States. The coordination and sense of inter-dependence are the important aspects. Article 263 explains the better coordination between the States. Article 263 says:

"If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of-

- a. Inquiring into and advising upon disputes which may have arisen between States;
- b. Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- c. Making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,"

Sir, recently we are experiencing disputes between various States, Karnataka, Tamil Nadu, Kerala and Pondicherry. The Cauvery river dispute. It is a dispute between more than one State. So, this dispute cannot be settled by the States. There will be an Inter-State Water Dispute Council. This kind of a Council will help to resolve the issues by mutual dialogue and discussion. There are other Inter-State Councils also. So, these issues which are concerning more than one State, can be resolved only through such kind of Co-ordination Committees and Inter-State Councils

In the present context, strong Centre and equally strong States are necessary because we are following the path of federalism. It is not as per the exact definition of the Constitution. The exact definition may not suit it. We always advocate a strong Centre and strong States. Strong Centre and equally strong States are necessary for better performance in a democratic set-up. Fortunately, in our country we are experiencing a strong Centre and equally strong States. But because of changing conditions, changing political thinking and changing aspirations of the people, there are many complaints coming up. There are complaints about over-centralisation of legislative, administrative and financial powers by the Centre. Even many political parties and States as mentioned by Shri Suresh Kurup have given representations before the Sarkaria Commission. The Sarkaria Commission Report is

one of the very important Reports regarding Centre-State relationship. Before the Sarkaria Commission many political parties and State Governments have filed their complaints regarding the over-centralisation of legislative, administrative and financial powers.

Actually, when the Constitution was framed the institution of Governor was conceived as an effective link between the Centre and the States. There are complaints that the Governors are acting as the agents of the Centre to destabilise the State Governments. There are complaints that the Governors and *Raj Bhavans* are being utilised for petty political tricks.

There are complaints that political activities are taking place inside *Raj Bhavans*.

The point is, more resources should be given to the States. This is the most important demand which is coming up. Every State Government is asking for more resources because the concept of Welfare State is coming up everywhere now. More and more welfare measures are being taken up by the State Governments and they are not in a position to levy more taxes. For example, in the State of Kerala which is considered to be a progressive State, more welfare measures have been taken up by successive State Governments. Now, we have reached a stage that there is no scope for further taxing the people. We have reached the saturation point, but welfare measures are increasing day by day. This is the position in almost all the States. They are asking for more and more Central assistance and more and more resources to meet their monthly expenses and also for implementing various welfare measures. After the implementation of the recommendations of the Fifth Pay Commission, every State Government is facing financial crunch. They do not have financial stability and so, every State Government is introducing deficit budget. So, more resources should be given to the States. The gulf between the resources and the responsibility should not widen. There are some State Governments which are starving for funds even to give salary to their employees. If such is the situation, how can they take up welfare measures?

Sir, every State Government wants to implement more and more populist measures because every five years there is election. So, the aspirations of the people are more. Taking all these aspects into consideration, I think, a reasonable approach should be undertaken by the Centre towards the States in sharing the revenue.

Sir, the Bill moved by Shri Suresh Kurup is limited to a particular aspect relating to article 248 of the Constitution. Article 248 of the Constitution deals with residuary powers. The proposal for residuary powers came from the Constitutions of the United States of America and Australia. The framers of our Constitution have got inspiration from the Constitution of these two countries. A lot of debate has already taken place on article 248 of our Constitution.

When Dr. Kalaignar Karunanidhi was the Chief Minister of Tamil Nadu, he appointed a Committee under the able chairmanship of Dr. Rajamannar and that Committee was asked to study Centre-State relations. One of the recommendations of Dr. Rajamannar Committee says:

"The residuary powers of legislation and taxation may be vested with the State Legislature."

This is one of the important recommendations of this Committee which had gone into details of Centre-State relations. They have come up with very valuable suggestions regarding Centre-State relations.

MR. CHAIRMAN : The time allotted for this Bill is going to be over at 4.35 p.m. Shri Ramesh Chennithala has to complete his speech, the hon. Minister will reply and then the mover of the Bill Shri Suresh Kurup will also speak. So, if the House agrees, we can extend the time for this Bill by half-an-hour more.

Now, we are extending the time for this Bill by half an hour. If necessary, we can request the House for extension of some more time.

Shri Ramesh Chennithala, you can continue your speech now.

SHRI RAMESH CHENNITHALA : Sir, Dr. Rajamannar Committee had given a lot of valuable suggestions. This Inquiry Committee had gone into the details and had given very valuable suggestions. I think, Shri Suresh Kurup had brought forward this piece of legislation in tune with the recommendation of Dr. Rajamannar Committee.

Our Constitution talks about the three legislative Lists. The framers of the Constitution were conscious of the fact that human knowledge being limited and perception imperfect, if in future a contingency arises, then it becomes necessary to legislate in regard to the matter not found in any of the three Lists. To meet this unforeseen situation, they made the residuary powers under Article 248 and Entry 97 of List I. Sir, the conferment of residuary powers, particularly in the matters of taxation, on Parliament is a part of our constitutional scheme designed by them to secure a strong Centre. Today, the power to legislate on residuary powers is vested with Parliament. The framers

of the Constitution thought that it would give a strong Centre to the country, and a strong Centre would be needed. And because of that, they had given this power to Parliament.

Pandit Jawaharlal Nehru had said: "We think that the residuary powers should remain with the Centre. In view, however, of the exhaustive nature of the three Lists drawn up by us, the residuary subjects should only relate to the matters which they may claim recognition in the future but are not at present identifiable and cannot, therefore, be included now in the List." This was the opinion of the former Prime Minister, Pandit Jawaharlal Nehru.

Sir, when the Sarkaria Commission elicited opinion from different State Governments and political parties, only four State Governments had suggested that residuary powers should be vested with the State; two State Governments had proposed that the Entry 97 of List I be transferred to the Concurrent List; and all other States had agreed that residuary powers should be vested with Parliament, with the Centre.

Sir, some framers of the Constitution predicted that residuary powers largely remain as a matter of academic significance. That may have been the thinking at that time when the Constitution was framed. But now that is not the case when things changed, when the thinking changed, and when the political aspirations changed. The Constitution makers did not place any entry relating to tax in the Concurrent List to avoid conflict. The main argument which came forward was that there should not be any conflict between the State and the Centre. If it is in the Concurrent List, conflict will be there, and between the State Governments and the Central Government there will be a lot of confusion. If you put residuary powers of taxation in the Concurrent List, there will be unnecessary friction between the State and the Centre, double taxation, and frustrating legislation will be there.

This will be counter-productive and it will go against the scheme of the Constitution. If we allow both the State and the Centre to frame or to legislate in regard to taxation matters, there will be a lot of confusions. Also, we know how some of the State Governments are functioning. In Uttar Pradesh, we know how the Chief Minister and the State Government are behaving and in Tamil Nadu, how the Chief Minister is behaving. There are allegations. Even though there may be differences of opinion, the State Governments are behaving in a peculiar way in certain States and there is no control. The POTA has been blatantly misused by some of the State Governments. Even if this is the case with POTA and other matters what will happen if the power to make legislation regarding taxation is given to the States? How the States will be behaving? So, I cannot agree with my friend, Shri Suresh Kurup. Actually I am not opposing it. Why I am against his view is that today, at the present political situation, it is highly necessary that this kind of a residuary power should be vested with the Parliament. It should be with the Centre. We cannot give it to the States, especially the power to make legislation in regard to taxes.

MR. CHAIRMAN : Shri Ramesh Chennithala, please conclude.

SHRI RAMESH CHENNITHALA : I will conclude. The Sarkaria Commission says that the residuary powers, other than that of taxation, may be transferred to the Concurrent List. The Government can examine this aspect. A strong Centre is for the unity and integrity of the country. I would like to conclude by saying one more thing that I agree in principle with the spirit of the Bill of my learned friend, Shri Suresh Kurup. The spirit of the Bill is to give more and more resources to the States and they should get more and more powers for the proper conduct of the State Governments. Now the responsibilities are more, but the resources are less. So, because of this, the State Governments are starving. The State Governments have no means to address these challenges and issues confronting them. So, I agree with the spirit of the legislation, but at the same time, I cannot agree with him when he says that we have to completely entrust the residuary powers to the State Governments because it will unnecessarily lead to conflicts and confusions. It will not be in the best interest of the country, Therefore, we need a strong Centre. We need a strong and a united country. We need that the unity and integrity of the country should be preserved and it is the paramount duty of every citizen in our country.

MR. CHAIRMAN: Dr. V. Saroja, I am allowing you for five minutes.

DR. V. SAROJA (RASIPURAM): This is a very important Bill which needs not only a critical evaluation but also every aspect of the Bill has got its relevance. The Centre-State relationship is the sheet anchor for the development of the country as a whole. The Centre-State relationship is very much important. It is the backbone for the developing country to become a developed country.

Though the Constitution empowers the Centre-State relationship, it is my observation that from 1990, the fiscal position of the States has been under pressure. I would like to draw the attention of this august House that the fiscal consolidation measures proposed by the State Budget always explore the ways and moderation of expenditure and revenue augmentation. I stand here before you to go on record how injustice has been done by the Eleventh Finance Commission to the State Government of Tamil Nadu.

So far as devolution of revenues is concerned, if you take the case of Tamil Nadu, as compared to other States, it is one among the better performing States but it is being penalised. According to the recommendations of the

Eleventh Finance Commission, Tamil Nadu has got 62 per cent whereas Andhra Pradesh has got 71 per cent, Bihar has got 130 per cent, Madhya Pradesh has got 118 per cent, Orissa has got 114 per cent, Rajasthan has got 106 per cent, Uttar Pradesh has got 117 per cent and West Bengal has got 135 per cent. These are the figures as per the RBI study. So, Tamil Nadu has got very less.

My prayer on behalf of my able leader, the Chief Minister of Tamil Nadu is that the same thing should not be repeated. Let the Government of India not do injustice at least in future.

The tax to GDP ratio has remained stagnant around eight per cent during 1990s. The State Government's revenue receipts are expected to finance 50 per cent of revenue expenditure and 45 per cent of aggregate expenditure. Kindly take note of this. There has been injustice done to all the well performing southern States, more so to Tamil Nadu. Therefore, I would urge the Government that there should be a piece of legislation to be passed forthwith to pave the way to ensure that States get a share from the service tax.

With these words, I conclude.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI I.D. SWAMI): Mr. Chairman, Sir, the Bill which has been brought forth by Shri Suresh Kurup really shows the concern for the development and progress and for the self-sufficiency of the States. There is no doubt about it. I am grateful to all hon. Members who have participated and made a number of suggestions pertaining to their own States and also in general but I am afraid if the practicality, the feasibility and the historical context are taken into consideration Shri Suresh Kurup himself might later on agree with me that it would not be possible to make such radical amendments to the Constitution because that would basically disturb the basic features of the Constitution.

The Constitution-makers had kept in view that while they were giving a quasi-federal or federal Constitution, a unique constitution to India, at the same time their bias was towards the Centre, that the Centre must be strong and unless the Centre was strong, the unity, integrity and sovereignty of the country could not be and would not be safeguarded. That is why their emphasis was to give residuary powers to the Centre. The Constitution of India is basically federal in form. There is no doubt about it.

One of the basic characteristics of a federal system is division of powers between the Union and the States. It is also a significant feature of any federal Constitution. The Constitution establishes a federal polity with clearly defined spheres of activity between the Union and the States to exercise their powers in the fields assigned to them respectively. However, having said all this, I should say that there are distinct differences between the classic federal structure and the model of federation enshrined in our Constitution. Several historical socio-economic factors were weighing in the minds of the framers of the Constitution who resolved in favour of a strong Centre.

That is why, I say that while giving the Federal Constitution or a Quasi-federal Constitution, they kept in mind that the Centre must be kept strong. They took due notice of a lesson of Indian history that in this vast country – multi religious, multi-racial, multi-lingual and multi-regional – only that polity can endure and protect the country's unity, integrity and sovereignty against external aggression and internal disturbances, which ensures a strong Centre. The founding fathers were aware that notwithstanding the common cultural heritage, the country would disintegrate under the pressure of fissiparous forces unless political cohesion was guaranteed by the Constitution.

Equitable economic development of the country was another factor, which prompted the Constitution-framers to opt for a strong Centre. They realised that a strong Central Government would be necessary to achieve economic and fiscal integration so that the economic policies affecting the interests of the country, including all the States, as a whole, could be carried out without putting strain on the national unity and integrity.

The Indian Constitution thus blends the imperatives of a strong central control with the need for adequate local initiative. In a country too large and diverse for a unitary form of government, the founding fathers had introduced a system, which would be most suited to Indian conditions as it would have the advantages of a strong unified central power, as also the essential values of federalism. That is the basic thing. But even if we take into consideration the whole scheme of the Constitution, we find that this is also unique for our Constitution that the Constitution makers made three Lists – the State List (Exhaustive List), the Central List and the Concurrent List. It is only very small field of the residual powers. In fact, while discussing in the Constituent Assembly, it was mentioned by the Constitution makers that much less is being kept as a residual power. In fact, most of the things have been amply clear in List I, List II and List III. But residual powers are there only to meet the unforeseen contingencies and unforeseen circumstances. For these only, the residual powers were given. These schemes of things and these powers which have been equitably distributed--the residual powers remaining with the Centre--have succeeded and they have stood the test of time. Not only that the Sarkaria Commission while making recommendations on the Central-State relations, the total emphasis was on that. Even the Sarkaria Commission made a recommendation that so far as taxation is concerned, that should be kept with the Centre, other powers can be given not to the States, but they may be brought on the Concurrent List. Even then the Sarkaria Commission was also of the view. I go a step

further. It is not only the Sarkaria Commission, but 50 years of experience was there and there have been certain demands as 11th Finance Commission was mentioned and there have been some difficulties for the States. There have been different sentiments from different States.

Keeping all these things in view, the working of the Constitution for 50 years, this Government appointed a Review Commission to review the whole thing of the Constitution. Even the Review Commission on the Constitution, they recommended that the Commission examined the constitutional provisions regarding concurrent powers of legislation, analysing the constitutional amendments that had been enacted from time to time and the judicial pronouncements on major issues arising from concurrency. The view that emerged was that there was no ground for change in the existing constitutional provisions.

The Commission believes that on the whole the framework of legislative relations between the Union and the States, contained in articles 245 to 254, has stood the test of time, in particular, the Concurrent List. List III in the Seventh Schedule under article 246 (2), has to be regarded as a valuable instrument for consolidating and furthering the principle of cooperative and creative federalism that has made a major contribution to nation building. So, the Review Commission has not mentioned anything about it. They had to confine themselves by observing that the whole scheme of the Constitution has stood the test of time and there is no necessity of any change in the scheme of things of the Constitution.

That is why, in the beginning, I said that the basic feature of the Constitution in this matter still remains the same – that unity, integrity and sovereignty of the Constitution should be there.

The amendments proposed in the Constitution (Amendment) Bill do not seem to be acceptable on other grounds also. Vesting of residuary powers to State Legislatures would come into direct conflict with article 245(2) of the Constitution, according to which, while the Parliament has powers to make laws for the whole or any part of territory of India, a State Legislature can make laws only for the State or any part thereof. The legislative power of a State Legislature is thus confined to the territory of that State. The amendment to article 248(1) as proposed in the Bill may give rise to a situation where two or three State Legislatures may enact divergent laws, different laws on a common subject and such a situation would be very paradoxical. Such a paradoxical situation would be difficult to meet with if any such amendment is made. In that situation, a piece of legislation of a State will clash with law of another State on the same matter. Such varying situations, such varying laws will definitely affect the uniformity in administrative and judicial systems of the country. That is another reason why the present scheme of things in the Constitution should be kept which has stood the test of time, as observed by the Constitution Review Commission and as also mentioned by the Sarkaria Commission in its report.

Under the residuary powers of the Parliament provided in article 248(1) quite a few important Acts such as Himachal Pradesh Assembly (Constitution and Proceedings) Validation Act, Gift Tax Act, Commissions of Inquiry Act and Wealth Tax Act having uniform application throughout the country have been enacted. If you see the whole history on use of the powers to make legislations on residuary powers and the sphere of residuary area even then you will find that in this area also hardly three to four legislations have been passed in the history of 55 years. That proves what I began with in the beginning that these residuary powers, after having a very detailed lists, List 1, List 2 and List 3, are only to ensure any contingency which could not be foreseen at the time of the making of the Constitution by the framers of the Constitution. So, the residuary powers should remain with the Centre because there are hardly, as I mentioned, only four or five laws that have been passed in this period of more than half a century.

Even the eminent jurist and Constitution expert Shri D.D. Basu has identified 20 features of the Indian Constitution as basic and 'unity and integrity of the nation' has been included among those basic features. The power of the Parliament to amend the Constitution is provided under article 368. However, there have been a number of landmark judgements of the Supreme Court of India stating that the basic features of the Constitution cannot be amended by exercising the power of amendment under article 368. So many judgements are there on this.

Under article 249, the Union Government is empowered to make temporary laws overriding the normally exclusive powers of a State Legislature relating to matters enumerated in the State List. The Constitution makers have gone to the extent that they empowered the Parliament to make temporary laws overriding the normally exclusive powers already given for the State Legislatures relating to matters enumerated in State Legislatures if, by a special majority, the Council of States declares that this is expedient in national interest. Even to that extent the framers of the Constitution were cognizant of this fact.

The deletion of article 249 will deny the country of a constitutional remedy in a situation when it becomes expedient, in national interest, for the Parliament to make laws with respect to any matter including the State List. Adequate safeguards have, of course, been provided.

Resting the residuary powers in the State Legislature will come into conflict with the principle of supremacy of the

Parliament which is accepted and it is laid down that Parliament is supreme, which is there in several articles of the Constitution. If we give a cursory reading of a few of the articles of the Constitution it will prove that the supremacy of the Parliament has been stated and reiterated in many articles of the Constitution.

17.00 hrs.

Vesting residuary powers in State Legislature will also come into conflict with this basic principle. Thus, the amendments proposed in the Bill will clash with not only article 249 but also with articles 246(3), 250, 251, 252 and 254.

Ultimately, I will also like to draw the attention of my hon. colleague, Shri Suresh Kurup to how he feels that just by making these amendments and giving residuary powers to the States, the States are going to be more autonomous, the States are going to progress better, the States are going to gain in any sphere of their working. It is now clear how the States would become more autonomous just by providing them with residuary powers. Topics of legislation enumerated in Lists I, II and III of VII Schedule are so exhaustive that some of the framers of the Constitution thought that they were leaving little for the residuary field and it has been proved by 50 years of experience that only in very rare cases, only in four or five cases, the legislations have been made by Parliament for the residuary sphere. There are not many instances. This is what has been proved by the history of practical working of the Constitution.

Sir, Sarkaria Commission Report is there. Then, the Review Commission on the Constitution has also made certain observations. When we have seen that the scheme of our Constitution has stood the test of time, when we know that the enumeration of subjects in Lists I, II and III is fully exhaustive, leaving nothing for residuary field for Parliament to make laws, as has been proved by the experience of past 50 years, I think that the amending Bill which has been brought forth is impractical.

I would request that the integrity, sovereignty and unity of the country is supreme and is one of the basic features of this Constitution and we should preserve it. I think, the scheme of Constitution has stood the test of time and even the Review Commission has applauded that. I think, it will not be a very healthy practice for us or a healthy step on our part to tinker with any such legislative scheme of things which has been provided by the Constitution-makers and which has stood the test of time.

In view of these submissions, I will very humbly request my hon. friend, Shri Suresh Kurup to withdraw this Bill in the interest of unity, integrity and sovereignty of this country.

SHRI SURESH KURUP (KOTTAYAM): Respected Chairman, Sir, I am thankful to the hon. Members and also to the hon. Minister for taking part in the discussion on this Bill. My only intention was to draw the attention of this august House and this country to the financial difficulties faced by the State Governments. Severe financial difficulties are faced by the respective State Governments in our country.

17.04 hrs. (Shri Devendra Prasad Yadav *in the Chair*)

Sir, the number of amendments to the Constitution we have brought is nearing one hundred. I am sorry to say that not a single amendment to the Constitution was brought in this House giving more powers to the States. All these years, the Centre consistently has been asserting powers from the State Governments, especially in financial matters.

Sir, what was the scene of our country when the Constitution was formulated? There was partition. There were riots. So many quarters were saying that this country would disintegrate. There were so many princely States.

Our Constitution was framed in that background. Naturally, the framers of the Constitution wanted a strong Centre. Even then we could visualize a federal structure and our Constitution provided for that.

During the initial years, when there was single-party rule at the Centre and in the States, the States were quite reticent in protesting against the usurpation of the power by the Centre. Now, different parties are ruling at the Centre and in the States. So, the State Governments are getting more and more assertive regarding their rights, especially in matters relating to finance. The responsibilities of the State Governments are heavy. At the same time, their resource base is quite narrow. The three major and expanding resource bases – excise, income tax and customs – are with the Centre. What is there with the State Governments? Ultimately, every State Government has to come before the Union Government for more and more finances in different matters. The Centre, obviously, enjoys this position. This situation should change. The State Governments should get more powers in financial matters. That was my intention in bringing this Bill.

I would like to also say that the BJP as a party has always advocated strong powers to the Centre. Some of the speakers, especially from the other side, said that giving more powers to the States is dangerous. They said this as if State Governments are not elected by the people, as if they are not responsible, as if they are not answerable to

the people of the country, and as if it is only the Central Government which is intelligent enough to decide what is right and what is wrong for the country and for the people! It is totally a wrong notion. This country can strengthen only when our State Governments are strong enough. Then only there can be a strong Union Government also.

What is the attitude of this Government towards giving more autonomy to Jammu and Kashmir? The BJP party in the Government is consistently opposing it in spite of other political parties supporting the Resolution passed by the Jammu and Kashmir Assembly. This is the attitude of the Central Government and also of the BJP with regard to giving more autonomy to the State.

My point is, in the 21st century, considering the changed scenario all over the world and in the country, we should give more powers to the States. This is the need of the hour. If my Amendment Bill has made the Members to think over this matter, I am satisfied about it. That was my intention. I, therefore, am prepared to withdraw the Bill.

I beg to move for leave to withdraw the Bill further to amend the Constitution of India.

MR. CHAIRMAN : The question is:

"That leave be granted to withdraw the Bill further to amend the Constitution of India."

The motion was adopted.

SHRI SURESH KURUP : I withdraw the Bill.