

THE PROBLEM OF
COMMERCIAL
SAFEGUARDS

BY

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MR. CHAIRMAN AND GENTLEMEN,

I am taking this opportunity of presenting before you a commercial problem of great national importance, which has emerged out of the deliberations of the Round Table Conference. It refers to the safeguarding of British vested rights in India which has provoked a good deal of controversy in both England and India. The decision of the Round Table Conference does not seem to have allayed the bitterness of the controversy and it seems that it would be really helpful to explain some of the implications of its decision for a better appreciation of the present situation. Of late the controversy centering round the safeguarding of British rights has been further complicated by a fresh movement for the safeguarding of provincial interests, which demands a careful examination at the moment, lest it should inflict a great injury on the national cause by creating a misunderstanding and fostering provincial antipathy. I would first invite your attention to certain special features of the wider problem regarding British trading rights and then try to examine the implications of the provincial question which is being stressed as one of great constitutional importance.

*Speech delivered by Dr. Narendra Nath Law at a meeting of the Bengal National Chamber of Commerce, May, 1931.

The opinion of the Conference on the problem of trading safeguards, the discussion of which at one time threatened the Conference with disruption, is contained in Paragraph 14 of the Report of the Minorities Sub-Committee in its finally amended form. The clause contained in it is of such an importance that it calls for no apology for repetition. I, therefore, call your attention to the text of the clause, which reads as follows :

"At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian-born subjects, and that an appropriate convention based on reciprocity should be entered into for the purpose of regulating these rights."

I have read out the text to show that the clause is very carefully worded though there is some vagueness incidental to its being expressed in such a succinct form. Paradoxical though it may seem to you, it was this vagueness which brought the opposite camps to a common ground helping them to come to an agreement on the point. The controversy on this subject reached almost the breaking point, and a disagreement on this issue would have led to unfortunate results. The eventuality would have frustrated altogether the labours of the Conference, and the preliminary success achieved by it through the creation of circumstances favourable for the truce would have remained unthinkable.

I am perfectly aware that the agreed view of

the Conference as embodied in the clause quoted just now has brought little satisfaction to certain sections of our countrymen. They have emphatically disowned the conditions implied in the clause as being antagonistic to the principles of national economy. Opinions have been expressed that there can be no equality of trading rights between the Britishers and the nationals, as that would mean the perpetuation of existing inequalities, that the advantage that, it is thought, would accrue from the reciprocity clause is a myth and that the constitutional limitations contained in the text are inconsistent with the dominion status.

I do not presume to challenge the weight of these views, but nevertheless I feel called upon to clarify one fundamental issue which will explain the attitude of an influential section of Indian members who lent their support to the incorporation of the clause. Its first part which may be misconstrued as guaranteeing in perpetuity the existing status of Britishers is overridden by its concluding part which says in no uncertain terms that "an *appropriate* convention based on reciprocity should be entered into for the purpose of *regulating* these rights." I invite your pointed attention to the terms 'appropriate' and 'regulating' in the quoted extract. The clause refers to an 'appropriate' convention to be entered into by the Indian and British Governments for the purpose of 'regulating' the rights of British traders. What I want to point out is that these

words 'regulating' and 'appropriate' are amenable to an interpretation commodious enough to admit of the restrictions essential to the economic development of the country. The convention, as I have said, will be drawn up for *regulating* i.e. for *restricting* the rights and not merely for describing or defining them as they stand at present. I claim no originality nor any ingenuity to impress on you that the regulation of rights referred to in the clause is to be admittedly in consonance with the imposition of certain desirable and essential restrictions, without which a country that is to be raised to the dominion status cannot grow. To show that this is not an interpretation suggested by an after-thought, I may refer to Clause 3 of Section 8 of the Constitution of the United States of America, where the power has been conferred on the Congress in the following words, viz. "*to regulate commerce with foreign nations and among the several states and with Indian tribes.*" You would not perhaps realize before it is pointed out to you how *widely restrictive* the words 'regulation of commerce' have proved themselves to be in the American Constitution. This is emphasised by W. B. Munro in his comments on the clause as contained in his recently published book, "The Constitution of the United States" (p. 34), from which I am quoting at some length. Mr. Munro says,

"This clause of the Constitution is of great importance. No one in the Constitutional Convention of 1787 could have had the remotest idea of the vast amount of authority

which lay concealed within these three words 'to regulate commerce.' Here, again, one encounters an impressive example of Constitutional flexibility. For these words were placed in the constitution at a time when commerce meant (only) the carrying of goods by stage coaches, pack wagons, and sailing vessels; when there were no steamships, railroads, motor trucks and buses, telegraphs, telephones, pipe lines, power lines, airplanes or radio broadcasting stations. Nevertheless the word 'commerce' has been gradually stretched to cover all these agencies of transportation and communication. The supreme Court has ruled, in one decision after another that commerce embraces navigation, communication, traffic, the carrying of passengers, the transmission of messages by telegraph, by telephone, or radio likewise; the transmission of electric power by high tension lines, and the transportation of oil through pipe lines. *All these things are instrumentalities of commerce and hence come under the regulating power of Congress whenever they cross the boundaries of a state.*"

If such an interpretation of the term 'regulation' in regard to commerce has been admitted in the American Constitution, I do not see how the same word in the clause in the Report of the Minorities Sub-Committee debars the imposition of any desirable and reasonable restrictions in regard to commercial rights, consistent with the principle of national economic development by a convention between the Governments of Great Britain and India. A Conference between the representatives of two conflicting interests must necessarily imply an attitude of compromise. Such attitude of compromise alone can interpret the willingness of the British people to confer a dominion status on India.

But to be real and substantial in any sense, the status must carry with it an inherent right of the country to work out its economic destiny. In the circumstances prevailing in India, an economic self-realisation of the country will remain well-nigh impossible, unless some assistance is rendered, at least in the preliminary stages, exclusively to the nationals in particular fields of trade and industry. Discrimination is rather an unhappy word for such a special treatment of the nationals, as it savours of injustice. The British would not be making any unjust demand if they maintain that no discrimination should be made against them of an expropriatory character, but they can hardly condemn any efforts on the part of an autonomous India to take active steps to promote her own national economic interests.

I think, I should explain here the difference between what is really discriminatory, and what is not so, by giving some illustrations. The discrimination might be contended to be repugnant to the sense of justice and equity if it were proposed to levy a higher rate of excise duty on British concerns in India in order to extend an advantage to their Indian competitors, but surely it would not be inequitable for the Government of India to render some direct assistance in the form of a bounty or subsidy to the concerns of the nationals to ensure their steady development in the face of foreign competition. It is a fact of common knowledge that in the various fields of economic enterprise such as

exchange-banking, inland or coastal navigation, and the key industries, the national concerns cannot come into being or thrive without Government assistance, when necessary. No objection should be raised against such Government help on the ground of discrimination, if similar assistance were not to be rendered to British concerns doing business in India. If such acts of state intervention designed to promote the economic development of the country were to be precluded on the ground of discrimination, the conclusion of the Conference would be looked upon as devoid of any real value from the Indian standpoint. Bereft of such powers of self-realisation, a dominion status for India would be nothing more than a myth.

It is my belief that this view of the connotation of the clause would not be unacceptable to those British people who are of a reasonable frame of mind and are sympathetic to Indian aspirations; those of them who are reluctant to accept this view should bear in mind that there are certain sections of people in this country who contend that in the autonomous India, Britishers should occupy the position of aliens. It is no fighting over any word or clause in the text of the Report that will find the real solution of the problem, which can only be reached by a radical change in the outlook of the British people and a full comprehension of the significance of the dominion status to which they are pledged. It may be mentioned that in pressing for the restrictions mentioned already, the Indian people

would not be claiming to have any rights which are not at present enjoyed by the various Dominions. Should the British concede the rightful claims of India, I believe the future Government of this country would not fail to reciprocate. Unless the feeling of distrust which actuates some British politicians be replaced by one of trustful sympathy, the right solution of the problem cannot be reached.

I now invite your attention to the other problem in regard to the safeguarding of Provincial interests.

The problem of inter-provincial safeguards in India has been the subject-matter of recent discussions. It has come to be associated in certain quarters with the predominance of non-Bengalis in the various fields of industry, trade, and finance in Bengal, and the idea is gaining ground that the increased participation of the Bengalis in commercial activities cannot be brought about unless some effective check is put upon the influx of enterprising businessmen from other provinces. Anybody who ponders over the problem can realize that the question of inter-provincial safeguards cannot and should not have any reference to the right of a person belonging to one province to carry on business in another. A challenge to this right, if carried to its logical consequences, would be detrimental to the unity and progress of the future Indian Federation. For this reason it will not be proper to take a narrow view of the situation. The idea should, therefore, be discouraged that in advancing the principle of inter-provincial safeguards, anything of the nature of

discrimination against persons or firms belonging to a different province is to be contemplated. On the eve of the attainment of the political status which is expected to stimulate the industrial development of the country, it is apprehended that a simultaneous development of industries in all the provinces may not take place. The development of the weaker provinces may be retarded by the lesser capacity of those provinces to fully utilize the provisions meant for the economic uplift of the country. This may lead to such a disparity in the economic positions of the different provinces that such disparity will not be desirable in the best interest of the Federation and the national well-being.

That there is a good deal of weight in the foregoing contention cannot be denied. The debates which took place in the Assembly, this year and the last, over the impositions of duties on salt as also on wheat and cotton reveal how it may be possible to initiate a measure calculated to protect and advance the interest of one province to the detriment of another. If no means be adopted to check this danger, it is not unthinkable that in no distant future, the industrial advance of a province may prove so formidable that it may seriously hamper the development of the industrial enterprises of other provinces in various lines.

The question which very naturally presents itself in this connection is : What can be the constitutional measures that might be adopted for the

purpose of safeguarding such provincial interests ? It is not possible to lay down with certainty any specific measures on such a complicated issue which from the very nature of the case calls for a detailed examination by an expert body. I am sure it would be no easy task to find a solution for the problem. I, however, feel that if the principle of safeguarding the provincial interests be regarded as sound economy, the Constitution ought to provide for the existence of a permanent inter-state body corresponding to the Inter-State Commission of Australia but adapted to the Indian conditions and exercising impartially its allotted functions in order to remove the conflicts of interests that may take place between the provinces in matters relating to commerce, industry and finance.

I need hardly point out that the industrialisation of a country cannot be brought about by legislative and constitutional measures alone, where the necessary initiative of the individual is lacking. We Bengalis can hardly absolve ourselves from the blame that is laid on us that we have not been mindful of our commercial and industrial interests which have passed to a large extent into the hands of more enterprising non-Bengalis. If our intention be to secure to the children of the province a larger share in the commerce and industry of the country, we shall have to kindle in them an industrial idealism. Our educational system will have to be so modified as to provide the necessary equipments for a commercial career. It is also necessary that the

landed aristocracy of this province as well as the wealthy members of the learned professions and other capitalists should relinquish their old methods of investment and increasingly employ their funds in the development of the trade and industry of this province. It is these people who have the necessary resources to take a lead in this matter, and unless they recognise and discharge the responsibility they owe to the country, no amount of safeguards will be able to promote the economic interests of the Bengalis and save them from economic downfall.