Some Aspects of Indian Federalism

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I. Introductory

The present Constitution of India was brought into force on January 26, 1950. It is a prolix and detailed document containing 395 articles and 9 schedules. It ushers into the country a polity based fundamentally on two ingredients – a British type democratic system of government and federalism. India, says the Constitution, is to be a Union of States[1]). India has a Central Government and 17 State Governments[2]). At both levels, parliamentary form of government based on adult suffrage operates. The Constitution makes elaborate provisions covering many aspects of Centre-State and interstate relationship, and in this respect it differs from the constitu-

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Abbreviations: AICC = All India Congress Committee; Can.B.R. = The Canadian Bar Review; Can. Jl. of Eco. & Pol. Sc. = The Canadian Journal of Economics and Political Science; Cornell L.Q. = Cornell Law Quarterly; CWC = Congress Working Committee; Harv. L.R. = Harvard Law Review; Jl. of ILI = Journal of the Indian Law Institute; Minn. L.R. = Minnesota Law Review; N.Y.U.L.Q.R. = New York University Law Quarterly Review; Yale L.J. = Yale Law Journal.

tions of the U.S.A., Canada and Australia which contain only skeletal provisions to regulate intergovernmental relationship.

Since its inception, the Indian Federalism has been called upon to meet many challenges. To improve the material well-being of the people, the country has embarked on comprehensive socio-economic planning pervading all aspects of national life, such as industry, agriculture, land reforms, population control, exploitation of natural resources and provision of such social services as education, health, housing, etc., and this has necessitated a complete mobilisation of the country's resources[3]). Then, India has faced complications on its borders because of the bellicose attitude of some of its neighbours[4]), and there have been strains within the body politic itself resulting from internal developments, mainly because of the language problem[5]). These various forces and compulsions have shaped and moulded Indian Federalism. Further, India has witnessed the significant political phenomenon of one political party – the Indian National Congress – completely dominating the scene since 1947 when it controlled the Central and all State Governments. This smoothed and facilitated the working of federalism in its formative period. It stabilized the political and administrative structure of the country, minimised tensions between various governments as all owed allegiance to one party, and helped in resolving many questions informally at party forums. But this situation has undergone a change recently. The fourth general elections held in early 1967 have broken the one party dominance, or the Congress monolith, and various political parties have assumed control of various governments[6]). With this development, an era may be said to have ended in the career of Indian Federalism, and a

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[1]) Art. 1 (1). Besides the States, there are several Union Territories which are under much closer surveillance of the Central Government.

[2]) The States are: Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal, Nagaland.

[3]) See sec. IX *infra*, for planning and federalism.

[4]) See sec. X *infra*, for emergency and federalism.

[5]) See sec. XI *infra*, for the language problem.

[6]) These parties range from the extreme left to extreme right. In Kerala and West Bengal there are coalition governments with predominant leftist orientation. In Uttar Pradesh, Madhya Pradesh, Bihar and Haryana, non-Congress parties have formed coalition governments. In Punjab, the coalition government is formed by two parties with a communal tinge with no articulate economic programme. At the Centre and in the States of Rajasthan, Andhra Pradesh, Mysore, Maharashtra and Gujarat, the Congress, economically a centrist party, has its governments. In Orissa, a rightist coalition government is in office. In Madras, a local party based on language chauvinism is in office. Some of the State Governments are based on uneasy and opportunistic alliances with not much in common except their desire to keep the Congress out of power. The communists are divided into several groups from Marxists to rightists. The socialists are divided into two parties.

new, perhaps a more challenging one, initiated. The new political situation is bound to release new forces which may have a profound impact on it. As one can easily foresee, disputes among the various governments of various political complexion are bound to arise, and much that has come to be accepted till now in the area of federalism would perhaps be challenged and some new trends initiated. This paper makes an attempt to survey some of the facets of the growth of Indian Federalism and to identify some of the problem areas which may call for new reasoned solutions in the new context.

II. Contemporary Federations

The founding fathers built the fabric of Indian Federalism on three pillars, viz., a strong Centre, flexibility, and co-operative federalism. These concepts are not in any way novel as in varying degrees they have come to be accepted, and translated into practice, in the federations of the U.S.A., Canada and Australia. The framers of the Indian Constitution learned a good deal from the experiences – the problems faced and solutions found – of these federations, and their approach to the structuring of Indian Federalism was conditioned in good measure by that knowledge. It might therefore be worthwhile to have a brief survey of the trends in these federations as a background to the Indian Federalism.

The American Constitution, drafted in 1787, is the oldest of the contemporary federal constitutions. The motivating forces which promoted federalism amongst the several colonies were defence and the felt-need to keep down economic barriers among them. The U.S. Constitution follows a simple method of dividing powers between the Centre and the States. It has only one list enumerating eighteen heads of powers for the Centre, whose powers are thus specific and include such items as taxation and spending, payment of debts, regulation of foreign and interstate trade and commerce, coinage and currency, war and defence, post office and post roads, promotion of science, etc. The Congress is authorised to make a law which may be "necessary and proper" to carry into execution any of the enumerated powers. Whatever does not belong to the Centre belongs to the States. From an agricultural community of the 18th century, the U.S.A. has emerged into an industrial giant of the 20th century. In the meantime, the political philosophy has changed from *laissez faire* to social welfare. The country has met the challenges of wars and depression. This has been possible because the Centre, a very small affair to begin with, has grown into a colossus and dwarfed the States. This transformation has taken place not

through formal amendments of the Constitution – because of the rigidity of the amending process not many amendments have culminated so far – but through the process of judicial interpretation. The judiciary helped the Centre first by protecting it from hostile State action[7]) and then conceded greater latitude to it by interpreting broadly its enumerated powers in response to the demands of the times. The commerce power has given to the Centre control over the economic life of the nation; it can regulate not only interstate commerce, but to some extent even the intrastate commerce insofar as the two are intermixed. At the same time, States have been restricted from interfering with the flow of trade and traffic over State boundaries[8]). Without this, America could not have industrialised itself in such a phenomenal manner. Big corporations having their operations throughout the country would not have grown had the States' power to interfere with them not been kept in check. The Centre has full control over foreign affairs and can implement a treaty, ratified by the Senate, irrespective of the fact whether its subject-matter falls within its enumerated powers or not. Without this, the U.S.A. would not have gained a primacy in the international sphere[9]). The defence and war power enables the Centre to take any step which may appear to promote defence effort[10]). Taxing powers have been found to be broad-based and the Centre is thus in a position to raise vast amounts of revenue[11]). A broad interpretation of its spending power has enabled it to finance even the State activities and thus the vast programme of Central grants to the States has been built up[12]). The mechanism of grants has helped the States in providing better services to the people than what their own resources would permit, and it has enabled the Centre to

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[7]) *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819); note 123 *infra*.

[8]) *N.L.R.B.* v. *Jones Laughlin Co.*, 310 U.S. 1; *U.S.* v. *Darby*, 312 U.S. 100; *Wickard* v. *Filburn*, 317 U.S. 11; *Oklahoma* v. *Atkinson*, 313 U.S. 508; *N.L.R.B.* v. *Denver Building & Construction Trade Council*, 341 U.S. 675; *American Power and Light Co.* v. *S.E.C.*, 67 S.Ct. 133 (1946).

[9]) *Missouri* v. *Holland*, 252 U.S. 416 (1920); *Hauenstein* v. *Lynham*, 100 U.S. 483; the *Curtiss Wright* Case, 299 U.S. 304.

[10]) The *Minnesota Moratorium* Case, 290 U.S. 398; *Yakus* v. *U.S.*, 321 U.S. 414; *Bowles* v. *Willingham*, 321 U.S. 503; *Steuart & Bro Inc.* v. *Bowles*, 322 U.S. 598.

[11]) *Pacific Ins. Co.* v. *Soule*, 7 Wall. 433; *Scholey* v. *Rew*, 23 Wall. 331; *Flint* v. *Stone Tracy Co.*, 220 U.S. 107. The taxing power has been used for regulatory purposes as well, cf. Cushman, Social and Economic Control through Federal Taxation, 23 Cornell L.Q. 1 (1937); *Carter* v. *Carter Coal Co.*, 298 U.S. 238; *U.S.* v. *Butler*, 297 U.S. 1.

[12]) Patterson, The General Welfare Clause, 30 Minn.L.R. 43; Corwin, The Spending Power of Congress, 36 Harv. L.R. 548; *U.S.* v. *Butler*, 297 U.S. 1; *Helvering* v. *Davis*, 301 U.S. 619; *Cleveland* v. *U.S.*, 323 U.S. 329; Jain, Federal Grants-in-aid in the U.S.A., 5 Vyavahara Nirnaya (1956), 245–301. In 1960, the Centre gave to the States nearly $ 6.4 billion as grants, Compendium of the State Government Finances in 1960, Table I. The amount has been increasing since then.

influence an area of governmental operations much larger than its own enumerated powers. A kind of Centre-State partnership to promote people's welfare has thus come into existence which has transformed the whole concept and character of federalism. In the beginning, the Centre-State relationship was that of competition, each trying to claim more powers for itself, but this has now given place to co-operative federalism[13]). The States, though by no means unimportant in the country's constitutional and administrative processes, have however come to occupy a position somewhat inferior to the Central Government whose primacy is now an established fact.

In Canada, the growth of federalism has been too-much influenced by the existence of bi-racialism and bi-linguism, English and French. The English-speaking people, a majority in the country, want a strong centre, but the French-speaking people, who are a minority of the entire country but a majority in Quebec, desire the Centre to be weak and the Provinces strong, so that their language and culture are preserved[14]). The scheme of distribution of powers between the Centre and Provinces has given rise to a bulky case-law. The framers of the Constitution (The British North America Act, 1867) wanted to give a primacy to the Centre so that it could deal with all matters of national importance leaving to the Provinces merely matters of local interest. But the judicial interpretation has not followed this historical approach. The Privy Council, influenced by the aspirations of the French, so interpreted the British North America Act as to shift the balance of power in favour of the Provinces. In peace time, the Centre's general power to legislate for the "peace, order and good government" of Canada becomes more or less functionless[15]). The Centre is cabined within the area of its enumerated heads in sec. 91 of the Act; the Provinces' power over "property and civil rights" is given a broad connotation so as to include not only the ground left out of the Centre's enumerated heads, but even to affect some of these heads themselves resulting in their being interpreted narrowly so as

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[13]) Corwin, National-State Co-operation, 46 Yale L.J. (1946), 599; L. A. Warsoff, Federalism Re-examined, 18 N.Y.U.L.Q.R. 533; Corwin, A Constitution of Powers in a Secular State, 23; Schwartz, American Constitutional Law, 163–178; Report of the Commission on Intergovernmental Relations (1955), 28; Ed. McWhinney, Comparative Federalism; Jain, Federalism in India, 6 Jl. of ILI (1965), 355.

[14]) Dehem & Wolfe, The Principles of Federal Finance and the Canadian Case, 21 Can. Jl. of Eco. & Pol. Sc. 64, 69; Scott, Centralisation and Decentralisation, 29 Can. B.R., 1095, 1100; Scott, French Canada and Canadian Federalism, in: Evolving Canadian Federalism, pp. 54–91; Trembay Report (1956).

[15]) Bora Laskin, Peace, Order and Good Government Re-examined, 25 Can. B.R. 1054; Scott, *op. cit.*, note 14.

to give a wide meaning to the "property and civil rights" [16]). The Provinces have thus come to have extensive powers in such fields as business, labour, social services, roads, conservation and development [17]). It is only in the times of an emergency of war that the Centre's general power becomes omnipotent [18]) and, to this extent, the designs of the founding fathers may be said to have been respected, but during peace-time the Centre finds itself handicapped in several ways. It cannot implement through legislation any treaty with a foreign country if its subject-matter falls outside the enumerated heads [19]). The Centre's limited capacity to meet the socio-economic problems of an industrial society was very demonstrably brought home during the depression of the 30's when a good deal of Bennet's new deal was judicially held to be unconstitutional [20]). The development of Canadian Federalism has been in striking contrast with that of the American Federalism. In the latter, the Centre designed to have limited powers has grown into a colossus, while in the former, the Centre designed to be strong has turned out to have only restrictive capacity to deal with the problems of a fast developing economy. On the other hand, some of the Provinces, at any rate, find it difficult to discharge their functions with their limited financial capacity. This imbalance is sought to be rectified through various expedients, viz. delegation of legislative power by Parliament or a Provincial Legislature to a subordinate agency of the other [21]); referential legislation [22]) and a limited growth of co-operative federalism [23]); Central grants-in-aid to the Provinces. These techniques have inducted some flexibility into an otherwise rigid constitution, whose amendment is extremely difficult owing to

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[16]) *Snider's* case, 1925 A.C. 396; *The Weekly Rest* case, 1937 A.C. 326; *Att. Gen. for Br. Col.* v. *Att. Gen. for Canada,* 1937 A.C. 377.

[17]) Dehem & Wolfe, *op. cit. supra* note 14.

[18]) *Supra* note 14.

[19]) *Labour Conventions* case, 1937 A.C. 326.

[20]) *Labour Conventions* case, *supra; the Weekly Rest* case, *supra; Att. Gen. for Canada* v. *Att. Gen. for Ontario,* 1937 A.C. 355, in which a scheme of compulsory unemployment insurance was declared unconstitutional. Also see, Smiley, The Two Themes of Canadian Federalism, 31 Can. Jl. of Eco. & Pol. Sc., 80; Smiley, The Rowell-Sirois Rep., Provincial Autonomy and Post War Canadian Federalism, 27 *ibid.*, 54; Perry, What Price Provincial Autonomy? *ibid.*, 432.

[21]) Inter-delegation of legislative powers between Parliament and provincial legislature has been held to be unconstitutional, but that on subordinate agencies has been upheld: *A.G.N.S.* v. *A.G., Canada,* 1951 SCR 31; *P.E.I. Potato Marketing Board* v. *Willis,* 1952 (2) SCR 392 and 30 Can.B.R. 1050.

[22]) *Lord's Day Alliance of Canada* v. *A.G.B.C.,* 1959 SCR 497.

[23]) Many Dominion-Provincial Conferences are held. A Commission on Bilinguism and Bi-culturism has been appointed; larger funds are made available to the provinces for economic development, Alexander, A Constitutional Strait Jacket for Canada, 43 Can. B.R. 262, 306.

the opposition to any shift of balance of power in favour of the Centre by the French-speaking Quebec[24]).

In Australia, the Centre has specified functions[25]) but, on the whole, the judiciary has given them an expansive interpretation. Under its defence power, the Centre assumes a very dominating position during a war[26]). It has full control over external affairs and can implement any treaty, it may choose to enter, with a foreign country[27]). Its powers over commerce and arbitration of industrial disputes give it power to deal with problems of interstate trade and commerce[28]). There is, however, a feeling that in peacetime, the Centre lacks adequate power to deal with socio-economic problems facing the country and efforts to amend the Constitution to correct the lacuna have not succeeded because of an extremely rigid process of constitutional amendment[29]). The country has however made notable contribution to the concept of co-operative federalism by evolving a system of fiscal grants to those States which are in need of help through the agency of the Commonwealth Grants Commission[30]) and also by creating a Loan Council for coordinating borrowing by the various governments[31]).

A careful study of the trends in the above-mentioned federal systems enabled the framers of the Indian Constitution to draw a number of les-

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[24]) It has been agreed that amendments to the B.N.A.Act would now be made by a unanimous consent of Parliament and all provincial legislatures. For a criticism of this formula, Alexander, *op. cit. supra* note 23. This formula of unanimity will make the Act practically unamendable because of Quebec's uncompromising attitude.

[25]) These include *inter alia* trade and commerce, taxation and finance, defence, external affairs, marriage and divorce, some aspects of criminal law, communications and social services, etc.

[26]) *Farey* v. *Burvett*, 21 C.L.R. 433; *Dawson* v. *Commonwealth*, 73 C.L.R. 157; *Marcus Clarke* v. *The Commonwealth*, 87 C.L.R. 177.

[27]) *The King* v. *Burgess, ex. p. Henry*, 55 C.L.R. 608.

[28]) Else-Mitchell, Essays on the Australian Constitution (1961), 129–155, 221–246.

[29]) The scope of the Centre's spending power remains a matter of doubt, *The Pharmaceutical* Case, 71 C.L.R. 237. Also, Evatt, Post-War Reconstruction and the Constitution in: Post War Reconstruction in Australia, 238–262. In 1959, a Jt. Parliamentary Committee reported on the adjustments which should be made in the Constitution to bring it more in line with the present-day needs, but nothing came out of it.

[30]) It was created by the Commonwealth Parliament in 1933 as the States of Tasmania, Western Australia and South Australia needed annual grants and it was thought necessary to have an autonomous body to study the issue and make recommendations free from political influence. The commission submits an annual report on the grants payable by the Centre to the deficit States, now two.

[31]) The Loan Council was created in 1927. It consists of the Prime Ministers of the Centre and the States. Each State has one vote while the Centre has two and a casting votes. Its purpose is to co-ordinate loan programmes of all governments, and all borrowings are arranged by the Centre and distributed among the various governments according to an agreed formula.

sons. First of all, in each federation need has been felt to have a strong Centre to deal with war-emergency or the socio-economic problems of an industrial society, and this need has been fulfilled in varying degrees in various countries. Secondly, the prevailing federal systems are extremely rigid, and formal amendments to the respective constitutions have been difficult, creating a need to introduce flexibility through various expedients to meet contemporary needs. In the U.S.A. and Australia, the judiciary has helped in giving an interpretation to the Centre's powers so as to enable it to meet the problems of the day, but this has not obviated the need to amend the Constitution which has proved to be extremely difficult. Lastly, the growth of the concept of co-operative federalism in varying degrees in each country is a phenomenon of the day, which helps a federal system, with its divided jurisdiction, to solve many problems which have arisen as a result of the philosophy of a social welfare State. It is therefore not surprising that the founding fathers should have designed the Indian federal structure on the three concepts of a strong Centre, flexible federation, and co-operative federalism. However, in fashioning the system, they not only adopted some of the expedients prevalent in other countries but also showed originality by devising some new techniques of their own which can be characterised as a distinct Indian contribution to the practices of federalism in general.

Apart from the experiences of other countries suggesting a strong Centre, there were some very good indigenous reasons in India for the same[32]). The past history of India conclusively establishes that the absence of a strong Centre leads to a disintegration of the country. Memories of one partition on the eve of independence were very fresh, and this warranted the taking of adequate precautions to ensure unity and prevent any fissiparous tendencies. There was also the problem of defence looming large on the horizon due to the not so friendly attitude of Pakistan. Above all, India is an underdeveloped country whose socio-economic progress has been retarded for centuries. The framers of the Constitution foresaw that the country would have to force the pace of economic development so as to compress into decades the progress of centuries, and this could be done effectively by mobilising national resources and using them properly under Central leadership. A unitary constitution could not have been adopted because of the vastness of the country and the variety of its people and, therefore, the next best course was to have a federal structure with a strong Centre. The approach of the fathers was thus pragmatic, keeping in view the unity and welfare of the country as the objectives to be promoted. The accent on the Centre was

[32]) Jain, Indian Constitutional Law, 329–333; Granville Austin, The Indian Constitution – Cornerstone of a Nation, 186–194.

facilitated by two factors – the historical background of the country and the existence of one unified all India political party. For a long period before independence, British India had been governed as a unitary entity, and although in 1937 federalism was sought to be introduced under the Government of India Act, 1935, it never worked in practice as, under the impact of the Second World War, India was administered more as a unitary, rather than a federal, country under the emergency powers of the Centre. In fact, as regards British India, the movement may be said to be from unity to union, from unitarism to federalism. But, at the same time, a reverse process was also undertaken, namely that of integration of the princely India[33]) with the rest of the country. The present-day Indian federalism is thus the product of two processes, that of disintegration of British India from a unitary to a federal system and that of assimilating the hitherto autonomous princely India with the rest of the country. As to the political party, because of the national struggle for independence against the British, Congress had built up a broad mass organisation spreading throughout the country, and all the governments at the time of the making of the Constitution owed allegiance to it and it was the predominant party in the Constituent Assembly.

The strength of the Centre lies in its large legislative and financial powers, in its emergency powers and in its control over State Legislation in certain situations. The flexibility of federalism lies in certain expedients which can be used to mitigate the proverbial rigidity of a federal system and to increase the Centre's powers as a temporary adjustment if a situation so demands. As noted above, in other federations, the Centre has felt handicapped at times to take effective action to meet the socio-economic needs; this is sought to be avoided in India by having built-in mechanism to enable the Centre to get more powers without resorting to a formal amendment of the Constitution. Even the method of amending the Constitution is rather flexible[34]). In its federal features, it can be amended by each house of Parliament passing a bill by a special majority[35]) and on the same being ratified by one-half of the State Legislatures and receiving the President's assent. Although it may be that, in the changed political complexion of the country,

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[33]) The Princely India consisted of nearly 580 units. The process of their integration has been retold by M e n o n in his The Story of the Integration of the Indian States (1956).

[34]) This refers only to amending of the Constitution in its federal aspects and not to the Fundamental Rights. Recently, the Supreme Court has declared by a majority that the Fundamental Rights are unamendable, *I. Golaknath* v. *Union of India* (1967).

[35]) Art. 368. The amending bill needs to be passed in each house of Parliament by a majority of the total membership of the house and by a majority of not less than two-thirds of the members of the house present and voting.

the needed State concurrence may be difficult to obtain to a proposed amendment; yet, on the whole, this procedure would not prove as intractable as the amending procedures in Australia and the U.S.A. The concept of co-operative federalism has been worked out in a number of ways as discussed later. There is also the judiciary with powers to interpret the Constitution and thus to draw the necessary balance in accordance with the needs of the times. But, it needs to be stated that this should not lead to the impression that States are completely subservient to the Centre. They have their own powers; they do not exist at the sufferance of the Centre but claim their status from the Constitution, and many conventions have been evolved making them more autonomous in practice than what they look to be in theory. Then, the political forces, recently released, have also cabined the Central initiative to some extent because it is more expedient for the Centre to carry the States along rather than always threaten to use its reserve powers. It might therefore be misleading if one were to take his ideas about the Indian Federalism merely from the constitutional text. For drawing a balanced picture, one has to search for practices and operating forces underneath the surface of the formal constitutional provisions.

III. Legislative Relations

The pivotal point in a federation is the allocation of law-making powers between the Centre and the constituent units. As compared to the schemes adopted for the purpose in the Constitutions of the U.S.A., Canada and Australia, the Indian scheme is a very elaborate affair[36]). There are three lists: List I contains matters with respect to which the Centre has exclusive right to make laws; List II enumerates matters for exclusive legislation by the States; and List III contains matters for concurrent law-making of both the Centre and the States. Matters in List I are such which need a uniform law for the whole country; those in List II admit of local variations, while in List III fall matters where local treatment may be found wanting and uniformity may have to be secured. Each of the three Lists is elaborate and contains a number of entries. There are 97 entries in List I, 66 in List II and 47 in List III.

The Centre has been given extensive powers of legislation over such matters as defence, foreign affairs, many forms of communications, currency, taxation, foreign and interstate trade and commerce, incorporation of trading companies, banking and insurance, industries, mines, some educa-

[36]) Art. 246, sch. VII. For details, Jain, Indian Constitutional Law, 228–269.

tional institutions, some aspects of education and health. The Concurrent List contains *inter alia*, general laws[37]), public welfare, labour matters, trade monopolies, regulation of essential commodities, economic and social planning. As a matter of abundant precaution, List I contains 7 entries relating to defence and 12 entries relating to foreign affairs. In other countries, only one entry is found about each of these matters but in India it has been ensured beyond doubt that the Centre has complete jurisdiction on all aspects of these matters. Centre's power over foreign affairs has been further strengthened by laying down in a separate provision[38]) that it can make any law to implement any treaty, agreement or convention with any other country, or any decision made at an international conference, association or body. This has been done to avoid any difficulty as has arisen for the Central Government in Canada[39]) in this area.

In the economic area, the Centre's primacy has been ensured. Thus in such fields as companies, banking and insurance there are uniform Central laws. It has complete control over foreign trade which is exercised through the Imports and Exports (Control) Act, 1947. It can take under its control any industry – the relevant entry is very flexible[40]) – and it has exercised this power by bringing under its regulation a number of industries through the Industries (Development and Regulation) Act, 1951. Similarly, the Centre can regulate mines and minerals to any extent it wants[41]) and it has exercised this power by enacting the Mines and Minerals (Development and Regulation) Act, 1957, under which the authority to grant mining leases rests with the States subject to an appeal to the Centre and also the rates of royalties for minerals payable to the States are to be fixed by the Centre. Under the Oilfields (Regulation and Development) Act, 1948, the Centre has taken under its control the regulation of oilfields and development of mineral oil resources. The granting of mining leases in respect of any mineral oil is to be regulated under the rules made by the Centre[42]). In exercise of

[37]) Such laws are criminal law and procedure, laws relating to marriage, divorce, property, contracts, torts, evidence, civil procedure, etc. There is thus a uniformity in the country in respect of these laws.

[38]) Art. 253.

[39]) Note 19, *supra*.

[40]) Entry 52, List I runs as "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

[41]) The relevant entries are 53 and 54 in List I which run as: "Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable", and "Regulation of Mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

[42]) In 1962, the Central Government modified the Petroleum Rules framed by it

its power in the Concurrent List[43]), the Centre has enacted the Essential Commodities Act, 1955, to regulate trade and commerce in many essential commodities. This is only illustrative of the amount of economic legislation which the Centre has enacted in India.

The Centre also has the residuary field, *i.e.* the unspecified area left over after all the entries have been accounted for[44]). This, though of not much practical significance immediately in view of exhaustive enumerations in the Lists, may yet assume importance in future with new technological developments taking place. Further, the entries in List I have a primacy over the entries in the other two Lists, and those in the Concurrent List over the entries in the State List. Then, in case of repugnancy between a Central law and a State law, the former prevails over the latter [45]). All this ensures Centre's strength as against the States.

The States' powers of legislation, on the other hand, though not so broad as that of the Centre, are nevertheless significant and touch the people perhaps more intimately. They have to maintain law and order. Agriculture and irrigation, on which depends the whole future prosperity of the country, fall within their domain. They can regulate industry and mines after what has been left over by the Centre. Education is their preserve and the Centre's powers in the area are limited[46]). Health falls in their jurisdiction as well as roads, water ways, trade and commerce. They can legislate in the concurrent field to the extent left unoccupied by the Centre, and even when the Centre has made a law on any matter, a State law can be kept alive, although inconsistent with the Central law, by the expedient of presidential assent[47]).

Usually, the distribution of powers in a federation between the Centre and the States is rigid. The balance drawn between the two governments cannot be disturbed unilaterally by one of them. The process of constitu-

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under the Act to bar a State Government from taking any step to interfere with oil exploration in its areas. The State of Assam and the Oil India Ltd. have agreed at certain rates of royalty which were later reduced by the Centre in view of developments relating to international oil prices. The Assam Government insisted on the old rates. Under the old rules, it could cancel exploration rights of Oil India. The modification of the rules curtailed this power of the State. The matter of royalty was discussed later between the Centre and the State.

[43]) Entry 33, List III. Some of the essential commodities are: coal, food, cotton, textiles, jute, iron and steel, petrol, etc., see M. P. Jain, Administrative Process Under the Essential Commodities Act (1955), an ILI publication.

[44]) Entry 97, List I read with art. 248.

[45]) Art. 254.

[46]) *Infra.*

[47]) Art. 254 (2).

tional amendment is also rigid and not capable of being effectuated easily. Gradual adjustments in the balance of powers are effected by the process of judicial interpretation, but there are times when it fails to rise to the occasion and make the needed adjustments to meet given situations. To some extent, rigidity of the federal systems has been mitigated by techniques of co-operative federalism, but these techniques are of limited efficacy and are resorted to because better and more effective methods are not available. There have been times in the federations of the U.S.A., Canada and Australia, when lack of necessary powers in the Centre has been keenly felt as pressing problems have demanded solutions[48]). India in this respect breaks new ground as the Constitution contains a few unique provisions, not to be found in other constitutions, for making temporary adjustments in the Centre-State distribution of powers which introduce an element of flexibility in an inherently rigid federal structure.

First of all, the long concurrent List, on the model of Australia, reduces to some extent the barriers which otherwise would arise if the two levels of government were to have only exclusive powers. In this area again, a further measure of flexibility has been introduced by providing for a method of keeping a State law alive in the face of a Central law[49]).

Secondly, two or more States can delegate power to Parliament to legislate on a specified State matter[50]). This provision has been borrowed from Australia[51]), but the interesting fact remains that while it has not been used at all in Australia, it has been used in India quite a few times. As for example, States of Bihar and Bengal authorised Parliament to legislate for setting up the Damodar Valley Corporation[52]). Again, a number of States delegated to the Centre power to enact a law to regulate prize competitions, a State subject, but for which a uniform all-India law was needed because usually these competitions were run by out-of-state journals which a State law could not touch. The expedient was used again for enabling the Centre to enact a comprehensive law levying estate duty on agricultural as well as non-agricultural property. Jurisdiction in this respect is fragmented under the Constitution; while agricultural property falls within the State sphere, the non-agricultural property is under Central ambit. It was felt that it would be inequitable to tax only non-agricultural property and not

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[48]) Sec. II *supra.*

[49]) Note 47 *supra.*

[50]) Art. 252. This is done by the State Legislatures passing resolutions for the purpose.

[51]) Sec. 51 (XXXVII) of the Commonwealth of Australia Constitution Act, 1900.

[52]) See XII *supra.*

the other. There were problems of aggregation of the assessee's entire property for tax purposes, and so a Central law was thought to be a desideratum.

Thirdly, under an emergency, the Centre gets powers to legislate in the State sphere[53]).

Fourthly, by a resolution passed by the Council of States[54]) supported by two-thirds of the members present and voting, the Centre can take power to legislate on a State matter for a year, and each time the Council passes the resolution, the power can be extended by a year. This unparalleled provision has been used a few times but not too often[55]). The theory underlying the provision is that the Council represents the States as such as it is elected by the State Legislatures on the basis of proportional representation, more or less on a population basis[56]). The House thus reflects the political forces in the country, and if too many States are opposed, then it may be difficult to mobilise necessary support in the House for passing the resolution for making temporary adjustment. But then, it is also a fact that the House is divided on party basis and voting has never taken place on a State basis, and, therefore, if the ruling party can muster the needed strength, it can have the resolution carried through. The procedure is of strictly temporary efficacy as the resolution's effect is limited to one year. If past experience is any guide, this method will be resorted to only when national interest demonstrably so demands and to tide over a situation of a temporary nature. Lastly, certain entries in the Union List have been so worded as to make the ambit of the Central power flexible, enabling Parliament to legislate to the extent necessary in a given situation leaving the rest of the area to the States[57]).

Then, even in the field open to the States, the Centre can control State Legislation in certain areas. Thus a State law compulsorily acquiring or

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[53]) Sec. X *infra.*

[54]) It is the upper chamber of the Parliament at the Centre and is composed of members elected by the State Legislatures.

[55]) In 1950, the Council passed the necessary resolution to enable Parliament to make laws with respect to entries 26 and 27 of List II which refer to trade and commerce within the State and production, supply and distribution of goods subject to entry 33 in List III. As a result, Parliament enacted the Supply and Prices of Goods Act, 1950.

[56]) For details, Jain, *op. cit. supra* note 32, 16–21.

[57]) Notes 40 and 41, *supra.* Other entries of this kind are: 7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war; 23. Highways declared by Parliament to be national highways; 27. Ports declared by Parliament to be major ports; 56. Regulation of development of interstate rivers and river valleys to the extent the same is declared by Parliament to be expedient in public interest; 62. and 63. Institutions declared by Parliament to be of national importance; 67. Ancient monuments declared by Parliament to be of national importance.

requisitioning property needs the President's assent to be valid. This provision enables the Centre to keep under control State power to acquire property and ensures payment of compensation for the same[58]). Again, certain types of land-legislation have been freed from the restriction of fundamental rights, but a State law can claim this immunity only if the President assents to it[59]). This ensures that only a justifiable use is made of the legislative power by the States. Central assent is also needed when a State law endangers the constitutional position of the High Court or imposes a tax in respect of water or electricity stored, generated, consumed or sold by an interstate river authority constituted by Parliament[60]) or imposes reasonable restrictions on freedom of trade, commerce and intercourse within the State[61]). These are specific situations where Central assent to State Legislation is necessary for its validity. But, then a general provision authorises the State Governor to reserve a bill passed by the State Legislature for presidential consideration and assent[62]).

No norms have been laid down in the Constitution as to when the Governor can exercise this power, or when the President can refuse to give his assent to a State bill, and, on its face, it appears to be a blanket power. The Governor is a nominee of the Centre. It has not been made clear whether the Governor is to act in this matter on the advice of the State Ministers or on his own responsibility. Obviously, it is difficult to think that the State Ministers will give him such advice, and, therefore, he will act either on his own initiative or on the d i c t a t e of the Centre.

A few illustrations as to how these provisions have operated in practice so far may be interesting. The State of Punjab passed the Temporary Tax Bill which levied 1 % surcharge on sales tax and also increased passenger and freight tax. The Centre raised objections and refused assent because the effect of the measure was to levy 8 % tax on luxury goods as against the ceiling of 7 % fixed by the Chief Ministers' Conference; because it levied a tax of 3 % on goods declared essential on which only a 2 % sales tax was permissible under the Central law[63]), and because the Punjab Government should give necessary assurances to the Centre that it would share the enhanced revenue from the passenger tax with the Union Territory of Himachal Pradesh. The Centre signified its assent to the measure when Punjab agreed to remove the lacunae pointed out. In

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[58]) Art. 31 (3).
[59]) First Proviso to art. 31 A.
[60]) Proviso to art. 200, and art. 288 (2).
[61]) Art. 304 (b).
[62]) Art. 200 and art. 201. J a i n, *op. cit. supra* note 32, 261–263.
[63]) The Central Sales Tax Act, 1956.

1961, the Centre refused assent to the Madhya Pradesh Panchayat Raj Bill, 1960, which provided for nominated village panchayats to be set up for a year. The Centre took the view that the system of nomination was a negation of the concept of the panchayats. Perhaps the most debatable case so far has been that of the Kerala Education Bill. In 1957, the Communist Government of Kerala[64]) sponsored through the legislature the bill to provide for the better organisation and development of educational institutions in the State. The measure raised a storm of protest in the State, and the Governor reserved the same for presidential assent. The Centre, in order to keep the matter above partisan politics, sought the advice of the Supreme Court which reported that some provisions of the bill infringed the fundamental right guaranteed by art. 30 (1)[65]). The bill was returned to the State for necessary modifications in the light of the Supreme Court's opinion. Recently, the Bengal Legislature enacted a bill to take over the management of the Calcutta Tramway Company, an English Concern, for three years[66]) to which the Centre has accorded its assent.

There is no doubt that these provisions in the Constitution requiring Central assent to State Legislation do detract, to some extent, from the autonomy of the States. In the present-day political situation, there is also inherent in these provisions a seed of Centre-State conflict, for with various political parties in office, there is bound to be a difference of policies amongst the various governments. The Centre has therefore to be careful in exercising its powers and should veto a State Legislation only in very clear cases, like inconsistency with a Central law, or infringement of the Constitution, or infringement of the established national policies like the industrial policy, etc.[67]). The Centre cannot act as if in a vacuum, or with

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[64]) Also see, sec. X *infra.*

[65]) *In re Kerala Education Bill,* AIR 1958 SC 956. Another piece of legislation of the same period was the Kerala Agrarian Relations Bill, enacted by the Legislature on December 21, 1957, and reserved by the governor for presidential assent. It was returned by the Centre suggesting some modifications therein which were made in October 1960, and the bill then received presidential assent in early 1961. The bill had been reserved under arts. 31 (3) and 31 A, notes 58 and 59. The Act raised two Supreme Court cases: *Purushothaman* v. *State of Kerala,* AIR 1962 SC 694 and *K. Kunhikoman* v. *State of Kerala, ibid.,* 723. In the latter case, the Act was held invalid under arts. 14 and 31 A.

[66]) The Bengal Government had earlier asked the company not to raise tramway fares without consulting it as this often led to public hostility. The company declared that it was unable to pay its employees salaries for July, 1967, in the absence of an immediate interim increase in fares. The Government then moved to take over the management of the company. After three years, it would revert to the old management. The bill needed presidential assent under art. 31 A. See notes 58 and 59 *supra.*

[67]) The Industrial Policy Resolution of the Government of India, 1956, reserves certain industrial area for government, some area for private enterprise, and some for both.

impunity; there is a strong opposition in Parliament which will keep under check the exercise of its powers by the Central Government. But there may arise a situation, as for instance, a State Government embarking on a large scale nationalisation, which the Centre may feel, goes against the economic interests of the country, and then it may have to set its foot down. Much depends on the political reality of the situation. If past practice is any guide, especially the *Kerala* case, then it can be assumed that the Centre will be wary in exercising its controlling powers over State Legislation unless there is no way out[68]). On an average, the Centre assents to nearly 100 State bills every year[69]).

There was an apprehension that having three elaborate Lists enumerating over 200 entries might generate large-scale litigation and raise formidable problems of interpretation[70]). On the whole, however, these apprehensions have been found to be without substance, and there has not been very significant litigation in this area. The leading cases in this area are still those which arose under the Government of India Act, 1935, and the interpretative norms laid down therein are still followed by and large by the courts because the structure of distribution of powers under the Constitution remains basically the same as under the Act of 1935. Speaking generally, the courts have been able to uphold by and large the legislation impugned; the challenges to the Central laws have been much fewer than those to the State Legislation and, on the whole, the courts have been liberal towards the Centre's powers[71]).

Three types of controversies may be identified in the area of Centre-State distribution of powers. First of all, there may arise a question of interpreting an entry to spell out its proper ambit in order to determine whether a piece of legislation falls within the entry or outside it. To illustrate,

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[68]) In the U.S.A. and Australia, the Centre has no control over State Legislation. In Canada, the Lt. Governor of a Province may reserve a provincial bill for the consent of the Centre, a provision analogous to art. 200, or the Centre can disallow a provincial legislation within a year of its enactment. This power has now fallen into disuse. There is no power in the Central Government in India to disallow a State Act after it has come into force. At times, Central Legislation may confer rule-making power on the States subject to the stipulation that the rules receive the previous sanction of the Centre, *e.g.*, sec. 115 (7) of the States' Reorganisation Act, 1956. *C. K. Appanna* v. *State of Mysore,* AIR 1965 Mys. 19 and *N. Raghavendra Rao* v. *Dy. Commr., South Kanara,* AIR 1965 SC 136.

[69]) Figures are: 1957 –116; 1958 –117 and 1960 –146; 1966 –67, 115 bills and 35 governors' ordinances.

[70]) Jennings, Some Characteristics of the Indian Constitution (1960), see note 36 *supra.*

[71]) See cases cited in note 75 *infra.* Also, *West Bengal* v. *Union of India,* discussed in sec. VII *infra.*

a State can levy a tax on entry of goods into a "local area" for consumption, use or sale therein[72]). A State imposes a tax on entry of sugar-cane into a sugar factory for consumption. The question is whether a sugar factory is a "local area" envisaged by the entry in question. The Supreme Court has held that the term "local area" signifies "an area administered by a local body like a municipality, etc." and the factory could not be treated as a "local area" with the result that the tax falls outside the entry. The general norm of interpretation, however, is to interpret an entry broadly bringing within its scope all incidental and ancillary matters as well, the reason for this approach being that the legislative entries set up a "machinery of government" and are "heads of legislation"[73]).

Secondly, various entries in different Lists may appear to overlap, and there arises the question of finding an interrelation among them. To take an example, "Duties of excise" in the Central List, if interpreted broadly, would comprise "sales tax" in the State List. Does it mean that the States cannot levy sales tax? The courts have held that in case of such conflict, a harmony should be established among the various entries, if possible, by restricting the ambit of the broader entry in favour of the narrower one so that the latter is not eaten away by the former. Thus the phrase "duties of excise" should be interpreted so as to exclude "sales tax"[74]). Here the State power is preserved, but the same principle is also applied to curtail a State general power in favour of a Central specific power[75]). A University prescribed Hindi and Gujarati as the sole media of instruction in place of English. "Education" is a State matter, but "maintenance and coordination of standards in university education" is a Central matter. The court held that the State power could not be so broadly interpreted as to negative the Central restricted power; the States cannot, therefore, enact any legislation so as to affect the Central power, and, since prescribing Hindi and Gujarati as the sole media was bound to affect the standard of university education adversely, it fell outside the State as well as the university's sphere.

Thirdly, a law may appear to relate to an entry in one List and also to an entry in another List, and this raises the question whether the law has been validly enacted by the legislature having the power. For example, a

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[72]) *Diamond Sugar Mills* v. *State of U.P.*, AIR 1961 SC 651. The relevant entry is 52 in List II.

[73]) *United Provinces* v. *Atiqua Begum*, AIR 1941 FC 16, 25; *Shri Ram Ram Narain* v. *State of Bombay*, AIR 1959 SC 459.

[74]) *In re the Central Provinces and Berar Act* No. XIV of 1938, 1939 FCR 18, 49.

[75]) *University of Gujarat* v. *Shri Krishna R. Madholkar*, AIR 1963 SC 703; *Chitralekha* v. *State of Mysore*, AIR 1964 SC 1823.

State made law to scale down debts owed by agriculturists may affect promissory notes executed by them. Now agricultural indebtedness is a State subject while the topic of "promissory notes" falls within the Central legislative sphere. In such a situation, the courts apply the principle of pith and substance; they determine the true nature and character of the law in question so as to decide under what entry the law falls. In the instant case[76]), the impugned Act deals with agricultural indebtedness primarily, with promissory notes only secondarily, and so the law falls within the State sphere. The doctrine of pith and substance gives quite a good deal of manoeuvrability to the court and out of a number of choices open to it, it would usually accept that which favours the law in question[77]).

On the whole, the scheme of distribution of powers may be said to have functioned well so far, and only two amendments have had to be made to it to meet new situations. The Third Amendment of the Constitution made in 1955 re-drafted entry 33 in List III so as to enable the Centre to enact a law to regulate trade and commerce in certain essential commodities in short supply like food, sugar, cotton, etc.[78]). The Sixth Amendment made in 1956 added entry 92 A to List I so as to enable the Centre to tax interstate sales which were going tax-free to the detriment of the intrastate trade and commerce[79]). From time to time, more amendments have been mooted but to no avail. Following the *Gujarat University Case*[80]), the Centre proposed that university education be placed in the concurrent List so that it could undertake greater responsibilities in that sector, but due to the opposition of the States it could not materialise and the proposal was never brought forward formally on the floor of the Parliament. This shows that the Centre cannot amend the legislative Lists without the concurrence of the States. Another proposal has been to transfer motor taxation to the concurrent List from the State list so that motor tax structure, which at present varies from State to State and thus hampers development

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[76]) *Prafulla Kumar* v. *Bank of Khulna,* 74 IA 23. The doctrine has been borrowed from Canada, see *e.g., Citizens Insurance Co.* v. *Parsons,* 7 A.C.580.

[77]) For example, a law banning the use of loud speakers at night is a law dealing with public health or with communications. Being a State law, the court held it valid as falling under the subject of public health, *State of Rajasthan* v. *Chawla,* AIR 1959 SC 544.

[78]) For details see, Jain, *op. cit. supra* note 32, 632–3.

[79]) For details, *ibid.,* 635–6.

[80]) Note 75 *supra.* The Government of India appointed a committee of members of Parliament, known as the Sapru Committee, to suggest steps to be taken so that the Centre could assume greater responsibility in the field of higher education. The committee suggested an amendment of the Constitution mentioned above, see Report of the Committee (1964), Ministry of Education, Government of India.

of motor transport, may be rationalised[81]). On the other hand, recently, in the new political atmosphere, Chief Ministers of Madras and Kerala have expressed sentiments that the Centre has too many, and the States too few, powers and that the States should be given more powers. But, as yet, these ideas remain vague and nebulous, and no concrete suggestions have been formulated regarding what powers should be given to the States. For the present, it is extremely doubtful whether any change would be made in the scheme of distribution of powers either in favour of the States or that of the Centre.

IV. Financial Relationship

The ordering of the Centre-State financial relationship in a federal polity constitutes a complicated exercise, for the crux of the matter is to allocate resources amongst two levels of governments so as to enable each of them to find funds adequate for its needs. An imbalance in the function-resource equation at any level cannot lead to good government and this is bound to create tension in the federal system. A viable scheme of Centre-State financial relationship therefore is a *sine qua non* for a proper functioning of a federal polity as a whole.

The framers of the Indian Constitution drew an elaborate scheme in this regard[82]). While doing so, they sought to avoid some of the difficulties faced in other federations in this area and adopted some of the techniques developed therein. The Indian Constitution demarcates the taxing powers of the Centre and the States; taxes of a local nature have been given to the States[83]); taxes with a tax-base extending through more than one State, or which should be levied on an uniform basis in the country and should not vary from State to State, or which can be collected more conveniently by the Centre rather than the States, have gone to the Centre[84]). A beneficial

[81]) Memorandum of the Ministry of Transport, Government of India, placed before the Transport Development Council, July 27, 1966. Report of the Road Transport Taxation Enquiry Committee, placed on the table of the Lok Sabha on March 21, 1967.

[82]) For details refer to Jain, Central-State Fiscal Relationship in India (1950–67): A Study of an Aspect of Indian Federalism, in: Jahrbuch des Öffentlichen Rechts, vol. 16.

[83]) State Taxes are: Land revenue, tax on agricultural income, death and estate duty on agricultural property, tax on lands and buildings, taxes on mineral rights, excise duties on liquors, opium, etc., octroi, tax on consumption and sale of electricity, sales tax, tax on advertisements, tax on goods and passengers carried by road or inland waterways, motor vehicles tax, tax on animals and boats, tolls, profession tax, capitation tax, entertainments tax, etc. (Entries 45 to 63, List II).

[84]) Taxes available to the Centre are: Tax on non-agricultural income, customs duties, excise duties, corporation tax, capital tax, estate and death duties, terminal taxes, stamp duty, tax on sale or purchase of newspapers, interstate sales tax, tax on transactions in stock exchanges (Entries 82–92 A, List I).

result of this scheme is to avoid all problems of multiple and overlapping taxation which arise in other federations and which make for complications both for the tax-payer and the tax-collector. But it has raised a problem, viz., that the taxes which have gone to the States are inelastic and hardly suffice to meet their needs. The fathers realised this and sought to augment State resources by providing for transfer of funds to them from the Centre through the techniques of tax-sharing and grants. Tax-sharing envisages that the Centre shares some of its taxes with the States. Income-tax is compulsorily, and excise voluntarily, sharable. The Centre is also required to make grants to those States which need help[85]). An autonomous finance commission is appointed every five years to make recommendations as to tax-sharing and fiscal-need grants. Since 1950, when the Constitution was made effective, four such commissions have made recommendations on these points resulting in a larger transfer of Central funds to the States each time. 75% of the income-tax revenue and 20% of the excise revenue are now transferred to the States. The fiscal-need grants have also expanded mani-fold over the time[86]). In fixing the State shares in the Central funds, the commission has kept in view the importance of reducing regional disparities so that the poor States are enabled to provide services comparable to the rich States. India has borrowed the idea of the finance commission from Australia[87]) but, whereas the Australian body is concerned merely with making annual fiscal-need grants to two States, the Indian body has a more extensive function to discharge as it goes into the area of tax-sharing and provides for fiscal-need grants for a large number of States. The finance commission ensures that funds would flow from the Centre to the States without political pressures and on objective criteria. It also introduces flexibility into the system as the flow of Central funds can be adjusted every five years. Besides the fiscal-need grants, the Constitution also provides for specific purpose grants which are given outside the finance commission, at the discretion of the Centre, for such State activities as the Centre may want to promote to achieve desired national goals[88]). These grants have increased mani-fold under the impetus of planning and have dwarfed the

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[85]) Art. 275 (1).

[86]) From Rs. 50.5 million made by the first commission, fiscal-need grants have expanded to Rs. 1220 million annually as suggested by the fourth commission, Jain, note 82 *supra*.

[87]) Note 30 *supra*.

[88]) Art. 282 runs as follows: "The Union or a State may make any grants for any public purposes, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws".

fiscal-need grants and are made on the recommendation of the planning commission.

But the compulsions of planning have cast a shadow on the smooth operation of the Centre-State fiscal relationship. For one thing, there is an overlap of functions between the planning and finance commissions, and the truth is that to-day more funds pass to the States under the former than under the latter, and so the finance commission has been overshadowed by an extra-constitutional body[89]). Further, in spite of the massive Central assistance to the States, the finances of most of them are in a none-too-happy position which results in deficit budgets and over-drafts on the Reserve Bank, and the States continuously pressurize the Centre for more and more funds. After the recent elections, some States have propounded the thesis that their taxing powers should be increased. The main difficulty in the Centre-State finances arises because of the large outlays needed for development and the limited taxing capacity of the people. The fact also remains that the States have not yet fully utilised whatever tax resources are open to them. Even before the recent elections, States were chary of taxing the rural sector because of political implications[90]). The newly installed State Governments, on the other hand, have even gone to the extent of reducing some taxes and committing more expenditure and thus producing larger deficits in their budgets[91]). It is extremely doubtful if re-allocation of taxing powers will provide any solution to the difficulties of the States. First of all, it is not easy to see what Central taxes can be transferred to the States. As things are, except customs and corporation tax which are exclusively Central, all other Central taxes are either shared or fully utilised by the States[92]), and it is unthinkable that customs or corporation tax can

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[89]) For planning and planning commission, see IX *infra*.

[90]) The planning and finance commissions have both commented on this aspect of the problem from time to time: Report of the Second Finance Commission, 26–33; of the Third Finance Commission, 38. For a circular by the planning commission to the States drawing their attention to this matter, see Times of India, November 20, 1963; Jain, Federalism in India, *op. cit. supra* note 13, 362 note 23.

[91]) At a conference of the Central and State Finance Ministers held soon after the fourth general elections, the Central Finance Minister appealled to the States not to give up important sources of revenue and also to avoid deficit financing to avoid inflation in the country. A survey of the State budgets for the year 1967/68, however, shows that, on the whole, States propose to incur a deficit financing amounting to Rs. 1250 million. They have gone for bigger development outlay but at the same time abolished or reduced such taxes as land revenue or urban land tax or granted some other concessions to this or that class of people.

[92]) Some taxes like estate duty, terminal tax, etc. are collected by the Centre but assigned wholly to the States, while such taxes as stamp duties, tax on interstate sales are levied by the Centre but collected by the States.

be transferred to the States. The transfer of any other tax would not increase the taxing capacity of the States. Further, care has also to be taken that problems of multiple and over-lapping taxation do not arise. Nor can it be that the States would dispense with the Central assistance in the near future, certainly not the poor States where taxing capacity is low. If that is so, there is no purpose served by resorting to a solution which reduces Central capacity to help the States without increasing their own capacity considerably. The solution lies in a more effective husbanding of available resources and their wise use. More will be said about this in the later section on planning which has an intimate relation with the problems considered here[93]).

V. Administrative Relationship

In the modern era, which is characterised as the administrative age, the need for an effective administration cannot be over-emphasized in India, much more so in the context of planning which requires sustained administrative effort, initiative and enterprise, on a large scale, to complete the plan programmes within a fixed time. The Indian Constitution lays down a flexible scheme of allocation of Central-State administrative responsibility which permits all kinds of co-operative arrangements between the governments as may be deemed desirable[94]). The Centre can administer any activity in its exclusive field, or leave it to the States; the States administer matters in their exclusive area but, by agreement, may leave any of their functions to the Central administration; matters in the concurrent field are ordinarily administered by the States but parliament can by law enable the Centre to take up any of them under its administration. A government can carry on any commercial or industrial activity, but if it falls outside its legislative domain, it would be subject to the laws made by the other government having power to do so[95]). The States are not to hamper or impede the Centre in exercising its executive powers; they have to exercise their executive powers as to comply with the laws made by the Parliament, and the Centre can give necessary directions to the States for these purposes. The Centre can direct the States to construct and maintain means of communications of national or military importance or for protecting the railways, the cost of this being defrayed by the Centre. A special obligation has been placed on the Centre to look after the welfare of the minor-

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[93]) On planning and planning commission, see sec. IX *infra.*
[94]) For details, see, Jain, note 32 *supra,* 309–314.
[95]) Art. 298.

ities, and, therefore, it can direct the States to draw up and execute schemes for the welfare of the scheduled tribes[96]) or to provide facilities for instruction in the mother tongue at the primary stage to the children of the linguistic minorities[97]).

Some of the above provisions are unique in the sense that no such parallel provisions exist in other federations. These provisions are the product of special needs of the country and are designed to avoid the difficulties arising in other federations by a rigid demarcation of functions. In practice, the Centre confines its administration to some matters in the exclusive List, *e.g.*, defence, foreign affairs, railways, collection of taxes and regulation of foreign trade, foreign exchange, or industries declared to be of national importance, etc. Quite a few of its exclusive functions are administered through the States, *e.g.*, till recently, passports were issued by the States, but this task has now been centralised; policing of some of the international borders still rests with the States; it is only recently that the Centre has set up a border roads organisation to construct roads in the border areas. Another conspicuous illustration of the States exercising administrative function in an exclusively Central area is under the Central Sales Tax Act, 1956; interstate sales tax though levied by the Centre is collected and assessed by the States. In the concurrent area, even when the Centre seeks to legislate on a matter, administration is mostly left to the States. Even if the Centre assumes powers in its hands under the law, it delegates most of them on the States. Thus, under the Essential Commodities Act, 1955, the power to regulate essential commodities has been centralised, but only textiles, sugar, iron and steel are under the Centre's direct administration, the rest being left with the States subject to such directions as may be given to them by the Centre[98]). In some cases, the Centre may reserve power to hear appeals from administrative decisions made by the States[99]). The States, however, carry out their own exclusive functions themselves and delegation by them of any such responsibility on the Centre is very rare[100]). It will thus be seen that most of the administration at the grass roots vests in the States. A large sector of five-year plans falls to their administration, and

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[96]) Art. 339.

[97]) Art. 350 A.

[98]) A few central statutes confer rule-making powers on the States, *e.g.*, the Industrial Disputes Act, 1947.

[99]) *E.g.*, the Mining Concession Rules, 1949. *Shriram Jhunjhunwala* v. *State of Bombay*, AIR 1962 SC 670; *Madan Gopal* v. *Secretary, Govt. of Orissa*, AIR 1962 SC 1513.

[100]) One such example is the construction of the Hirakud Dam by the Centre on behalf of the Orissa State. For details see, *N. B. Singh* v. *Duryodhan*, AIR 1959 Orissa 58, 65.

success of many all-India policies depends on the effectiveness with which the States administer them. The law enforcement machinery is almost entirely with the States, and many a time, the efficacy of the Central laws is diluted by indifferent enforcement. This great dependence of the Centre on the States for purposes of administration has been characterised as a weakness of the Indian Federalism. To some extent, even the failure of five-year plans in some sectors may be ascribed to the intertia of the States. The Centre's power to make the States move is limited; it can hold conferences, try to pursuade them, give them financial inducements through grants-in-aid, but even when it has power to issue directions, that power is not usually exercised. The pattern of administrative relationship woven around the grants-in-aid remains, by and large, vague as not much published information is available. What arrangements for supervision, control and auditing of accounts are made, what sanctions are exercised in case of use of money for purposes other than those sought to be aided, all these are questions on which information is lacking at present. No complete study has yet been made of the maze of administrative relationship which has come into existence under the large number of Central statutes[101]).

Time appears to have come for serious thought being given to the problems of Central-State administrative relationship. When the Congress party was dominant in the country, some cohesion could be applied through the party mechanism and the States made to discharge their tasks. But that mechanism has ceased to be available now, and there may be embarrassing moments for the Centre when a State Government of a different political complexion may not want to give its co-operation to it. Recently, such a case has occurred. For the Central jobs, a system of police verification of the antecedents of the applicants has been in vogue for long and this was done by the State police. Now Kerala has refused to undertake this work for the Centre. Examples may multiply in future when the Centre may find itself handicapped in carrying out its responsibilities due to resistance shown by the States. There may be several lines of adjustment in this area, viz., to federalise administration of more important functions: to strengthen the technique of grants-in-aid. In the U.S.A., grants-in-aid have been used to stimulate State activities in various fields and also improve performance by the States, because usually the Central administration introduces some kind of supervision over the State functioning in the aided

[101]) For a criticism of the present-day administrative system, Paul Appleby, Public Administration in India – Report of a Survey, 9, 10, 17, 22. In a comment in the Times of India, October 21, 1963, it was stated that States had accepted money from the Centre for industrial housing, but houses constructed were either lying vacant or were occupied by ineligible persons, Jain, *op. cit. supra* note 13, at 374.

field[102]). Another important aspect to consider is that the States' administrative machinery itself needs to be strengthened. It is necessary for the future well-being of the Indian federation that the States be in a position to discharge their tasks well. It, therefore, means that the quality of their administration has to be improved because many programmes, on which the well-being of the people so much depends, fall in their administrative area. A method now in use is to have a few all-India services, recruitment to which is made by the Union Public Service Commission and officers of such services are placed in the States' administration[103]). It may be advisable to institute many more such services as the quality of the people joining them is much better than those who go to exclusively State services[104]). In the U.S.A., a good deal of thought is at present being given to the question of finding ways and means of improving the State administrative machinery, and the problem in India is no less crucial.

VI. Intergovernmental Disputes

When a number of governments function within a polity as they do in a federation, areas of tensions, differences and disputes are bound to arise between them from time to time, and it, therefore, becomes necessary to have some mechanism to resolve these disputes in order to smooth the working of the federation. The Indian Constitution makes a few provisions with this in view. If the controversy has legal overtones, resort to the judiciary may help. For this purpose, the Supreme Court of India has been given original jurisdiction in any dispute between two governments[105]). This provision can be invoked to resolve a dispute involving a question of fact or law but can hardly be suitable for resolving disputes with political overtones. Up to date, it has been invoked only once in the famous case, *West*

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[102]) Jain, note 13 *supra*, 372–375. Also, Report of the Commission on Intergovernmental Relations, 126.

[103]) An outstanding example of this is the Indian Administrative Service. The services in India are of three categories – exclusively Central, exclusively State and Joint Central and State services.

[104]) Such a service can be created by Parliament passing a law after the Council of States declares in a resolution supported by at least two-thirds of the members present and voting that the creation of an all-India service common to the Centre and the States is necessary or expedient in the national interest. The Centre, however, does not move in this matter without having obtained a general State consensus for creation of such a service, and this is not forthcoming easily. Such services are now envisaged in the areas of health, forest and education.

[105]) Art. 131.

Bengal v. *Union of India*[106]). Originally, the case was filed by the State of West Bengal against the Central Government, but it developed into a full scale controversy between the Centre and the States as many of them intervened to support the point of view of Bengal. Another method to take recourse to the judiciary in the matter of intergovernmental disputes is by invoking the Supreme Court's advisory jurisdiction. A question of law or fact of public importance may be referred to the court for its advice by the President. The court holds a hearing and delivers its opinion in the open court[107]). This provision has been taken recourse to several times, as for example, in the *Kerala case*[108]) and the *Sea Customs case*[109]). Most of the constitutional controversies, however, arise in India on the initiative of private parties who seek to challenge the government action infringing their rights or interests. Many a time, such cases are blown up into a full scale intergovernmental controversy. Thus in *Bengal Immunity Co.* v. *State of Bihar*[110]), in which the question of the power of a State to levy sales tax on an out-of-State sale was involved, the State of West Bengal intervened in support of the appellant who challenged such a power, while a number of other States supported the view of Bihar which claimed such a power to levy the tax.

As a matter of practice, when an important case comes before the Supreme Court, it may itself issue notices to the Attorney-General of India and Advocates-General of States inviting them to place their respective points of view before the court so that the matter may be decided after all its aspects have been argued and considered.

India has a number of interstate rivers and river valleys. With the accent on development of irrigation and power-resources by training these rivers, it was anticipated that some disputes might arise among the States about sharing the waters of these rivers. The Constitution therefore makes special provisions for resolving such disputes. Power has been given to Parliament to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any interstate river and river valley and to bar the courts from taking cognisance of any such dispute[111]). Under this provision, Parliament has enacted two Acts. The River Boards Act, 1956, provides for the establishment of river boards for regulation and development of interstate rivers and river valleys, by

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[106]) Sec. VII *infra.*
[107]) Art. 143.
[108]) *Supra* note 65.
[109]) See sec. VII *infra.*
[110]) AIR 1955 SC 661.
[111]) Art. 262. Also entry 56, List I, note 57 *supra.*

the Central Government, on a request being received from State Governments or otherwise, and for advising the governments concerned in matters concerning regulation or government of an interstate river or river valley. The board may also advise the governments concerned to resolve their conflicts by co-ordination of their activities, may prepare schemes for regulating or developing the interstate river or river valley, may allocate among the governments the costs of executing any such scheme and may watch the progress of the measures undertaken by the governments concerned. The Inter-State Water Disputes Act, 1956, provides for adjudication of disputes relating to waters of interstate rivers and river valleys. When such a dispute arises, a State may request the Centre to refer the same to a tribunal for adjudication. The tribunal appointed by the Centre consists of a person nominated by the Chief Justice of India from amongst the present or ex-judges of the Supreme or High Courts. The tribunal may appoint two or more persons as assessors to advise it. The tribunal submits its report to the Central Government which on publication becomes binding on the parties concerned. A matter referable to a tribunal or a river board is not to be within the jurisdiction of any court. In spite of the existence of such detailed provisions for resolution of disputes, several disputes concerning interstate rivers have remained pending for long amongst the various States. Six such disputes may be identified, viz., Narmada water dispute among Maharashtra, Gujarat, Madhya Pradesh and Rajasthan[112]); Krishna-Godavari dispute among Andhra Pradesh, Madhya Pradesh, Maharashtra, Mysore and Orissa; Cauvery River dispute between Madras and Mysore; dispute regarding east and west flowing rivers in Kerala among Kerala, Madras and Mysore; Keolari Nadi dispute between Madhya Pradesh and Uttar Pradesh, and Tungabhadra River dispute between Andhra Pradesh and Mysore. The surprising part of the whole situation is that the machinery provided in the two Acts has not yet been resorted to and in the meantime execution of important river valley projects is held up to the national detriment. The Government of India's view is that it will be better to arrive at an amicable settlement of these disputes among the States concerned and that arbitration should be resorted to only as a last resort.

A machinery similar to the tribunal mentioned above has been provided for resolution of disputes among the governments under the Damodar Valley Corporation Act[113]). This machinery has been put into operation twice.

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[112]) The Centre set up a committee to draw a master plan for development of the Narmada valley.

[113]) Sec. XII *infra*. Two tribunals have been appointed; once Justice Jagannadhadas and at another time Justice Rajamannar sat on these Tribunals. Allocation of expenditure of the corporation has been the subject of arbitration.

The Constitution guarantees freedom of trade and commerce[114]). Parliament has been authorised to appoint by law an appropriate authority for carrying out the purposes of these constitutional provisions and confer on it necessary powers and duties for the purpose[115]). This would facilitate creation of a suitable mechanism for resolving disputes among the States regarding free flow of trade and commerce over State boundaries. One such body already created is the Interstate Transport Commission under the Motor Vehicles Act which consists of a chairman and two members and its purpose is to develop, co-ordinate and regulate the operation of transport vehicles in an interstate area or route. It may prepare schemes for the purpose, settle disputes, grant, revoke and suspend permits for an interstate route or area or issue directions to the interested State transport authorities for the purpose. The commission associates with it a representative from each of the States interested in an area or route[116]).

Another mechanism envisaged by the Constitution for smoothing intergovernmental relationship is the Interstate Council which may be appointed by the President and may be charged with the duty of inquiring into and advising upon disputes between States, investigating and discussing subjects in which States or the Centre may be interested, and making recommendations upon any such subject, particularly, for better co-ordination of policy and action thereon. The provision is a general one and any number of such bodies having various functions in different areas may be appointed. The Council is designed to be an advisory body with no authority to give any binding decisions[117]).

Apart from these constitutional provisions, an instrumentality very widely used to resolve complicated issues has been that of commissions under the Commissions of Inquiry Act. These commissions study the problems referred to them, hear evidence and such parties as may be interested in the issues, and then make their reports to the Government which takes final decisions. A number of commissions have been appointed for the purpose of smoothing the process of linguistic re-organisation of the country. Although, under the Constitution, Parliament has full power to take any decisions it wants in this matter[118]), in reality it is more of a responsibility than a power and has brought the Centre under heavy strains and pressures from various linguistic groups. Parliament cannot act in a vacuum or with

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[114]) Sec. VIII *infra.*

[115]) Art. 307.

[116]) Sec. 63 A of the Motor Vehicles Act, 1939; S.O. 188 of March 8, 1958, of the Ministry of Transport and Communications appointing the tribunal.

[117]) Art. 263. See note 190 *infra.*

[118]) Sec. XI *infra.*

impunity, and it has to take into consideration the sentiments of the people in deciding the issues involved. Often, conflicting claims are made, and this places a heavy responsibility on the Centre and often exposes it to pressures and criticism from interested parties. It has been found advisable that before taking any decision on such emotionally surcharged issues, an independent commission should conduct a thorough inquiry after hearing all opinions and make its report. The most important of such commissions was appointed in 1955 to consider and report on the thorough-going linguistic re-organisation of the country. Another commission was appointed in 1966 to go into the question of settling boundaries for the two proposed States of Punjab and Haryana out of the erstwhile State of Punjab. Another commission is now looking into the boundary disputes between Maharashtra and Mysore and between Mysore and Kerala. This problem has been so intractable that the Chief Ministers themselves could not resolve it after several meetings, and ultimately the Central Government had to appoint the commission[119]). All these commissions have been under the chairmanship of the sitting or retired Supreme Court judges so that their objectivity and non-partisanship may not be in doubt.

With the re-organisation of the States on linguistic basis, they have developed a sharper sense of identity which has made intergovernmental disputes rather more bitter. There have been controversies between the Centre and the States, and these belong mainly to the realm of planning and development, a topic considered in a separate section. There have been interstate disputes between the States surplus and deficit in food, border disputes as mentioned above, disputes regarding interstate river waters (mentioned above), and disputes regarding sharing of electricity and the like. One of the features of the Indian federalism is that the States find it almost impossible to resolve their disputes among themselves. The instrumentality of interstate compacts, which has come to be used so much in the U.S.A., does not function very much in India at present as every State wants to have its own way in every dispute. Sooner or later, therefore, the interstate dispute

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[119]) The commission consists of ex-Chief Justice Mahajan and was appointed on October 17, 1966. Because of the complexities of phrasing terms of reference in such a way as would satisfy both the Chief Ministers, no terms of reference were given to the commission except to say generally that the commission should take "into consideration the fundamental basis of the reorganisation of States with a view to solving the existing border disputes", between the States concerned. Mysore-Maharashtra dispute relates to a wide belt of territory, now a part of Mysore, but which Maharashtra claims is predominantly Marathi-speaking. On the other hand, Mysore claims some parts of Sholapur district from Maharashtra on the ground of its being Kannada speaking. Similarly, Mysore claims Kasargod area from Kerala. These disputes have been pending since 1957.

lands in the lap of the Centre for finding a solution, which puts the Centre under a great strain and makes its position vulnerable as well, as it is bound to be criticised by those who would feel dissatisfied with whatever the decision taken. When the Congress was dominant, the party machinery also sought to smooth the process and find formulae which might be acceptable to the contending parties. In 1965, the general body of the party discussed the question of interstate wrangles and resolved that a machinery be evolved for resolving such disputes with power to give final decisions[120]). Of course, there can be no single machinery for settling all kinds of disputes, and the fact also remains that in some cases, the existing machinery has not been used, *e. g.*, interstate rivers disputes. But the idea underlying the resolution is sound insofar as it leads to an objective solution of disputes by a non – political body and spares the Central Government from some pressures. But no action has been taken so far to give concrete shape to this resolution. In the meantime, the political situation has undergone a change. It means that in future the party machinery which could hitherto play some role would not now be available as various State Governments owe allegiance to various political parties; it may also lead to more bitter and open espousal of their respective points of view by the States in their disputes with the neighbours. Although, till now, the Congress Organisation did seek to smooth the intergovernmental relationship to some extent[121]), there was also a weakness in the procedure, viz., many a time decisions were based on *ad hoc* bases and inarticulate political premises, *e. g.*, interests of the party itself, personality and standing of the Chief Minister concerned, and this stood in the way of evolution of objective norms for settling disputes. In the new context, all this has to change. It is therefore worth considering whether or not it will be helpful to have in interstate Council, an expert non-political body, to keep the intergovernmental relationship under constant review and study problems on objective and dispassionate basis and project solutions of major issues. The body would be advisory but its findings and suggestions may find a greater acceptability because of its freedom from political considerations. The nearest model to this is to be found in the U.S.A. which has set up an Advisory Commission on Intergovernmental Relations in 1959 which functions in an advisory capacity and has the following purposes and duties: to bring together representatives of Central, State and local governments to

[120]) AICC meeting on July 24, 1965.

[121]) The formula for the commission for resolving Mysore-Maharashtra dispute was evolved at the meeting of the Congress Working Committee on October 9, 1966, and the Government of India adopted the same. Similarly, the question of partitioning Punjab was first resolved at the meeting of the CWC and then accepted by the Central Government.

consider common problems; to provide a forum for discussing the administration and co-ordination of federal grant programmes requiring intergovernmental co-operation; to give critical attention to controls involved in the administration of federal grant programmes; to make available technical assistance to the executive and legislative branches of the federal government in the review of proposed legislation to determine its over-all effect on the federal system; to encourage discussion and study of emerging public problems likely to require intergovernmental co-operation; to recommend within the framework of the constitution, the most desirable allocation of governmental functions, responsibilities and revenues among several levels of government; to recommend methods for co-ordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the governments. The main function of the commission is to increase the effectiveness of the federal system. It has studied a number of problems, has published a number of reports, has promoted the idea of cooperative federalism and has exercised healthy influence and impact on congressional legislation. The commission thinks that improvements in the federal system can be brought about by debating various alternatives[122]). Some such body, to study and suggest various alternative solutions to the issues causing friction in intergovernmental relationship, is called for in India as well.

VII. Intergovernmental Immunities

The doctrine of immunity of instrumentalities, applied in all federations to some extent, may be characterised as the doctrine of good neighbourliness. With two tiers of government having autonomous powers working side by side in the same community, it is possible that their operations may cross and intersect each other at some points. Sometimes, powers of one government may be exercised in a manner as to cause hindrance to the activities of the other. It is to avoid some of these contingencies, which may otherwise cause irritations amongst the governments in a federation, that the doctrine of immunity has been evolved. It was first expounded by the U.S. Supreme Court in *McCulloch* v. *Maryland*[123]) to protect the Central Government, then rather a weak entity, from hostile action of the State Governments. A State tax levied on the operations of the Bank of the U.S. created by the Congress was held bad. The doctrine was read impliedly into the Constitution as there was no explicit mention of it in any provision. Fifty years later,

[122]) Wright, Public Administration Review (1965), 193.
[123]) 4 Wheat. 316 (1819).

the doctrine was applied, on a reciprocal basis, in favour of the States by immunizing State officials from the Central income-tax[124]). In course of time, the doctrine was taken to great lengths; not only the government instrumentalities, but even private persons dealing with a government as suppliers, contractors or creditors were held immune from taxation by the other government in respect of their transactions with the government[125]). But then the courts realised that the doctrine of immunity was interfering too much with government activities and that it had created a class of privileged people who were non-tax payers without any consequent benefit to the government concerned. So, the doctrine came to be re-appraised and its scope was curtailed and taxation by one government of employees and business activities of the other came to be judicially permitted[126]).

In India, the doctrine of immunity has been incorporated into the Constitution to a limited degree. Property of the Central Government, whether used for business or government purposes, is immune from the State taxation except where Parliament provides otherwise. On a reciprocal basis, the Centre is barred from levying a tax on State property and income, excluding the property used for trade or business or income derived therefrom, but Parliament may declare any trade or business as incidental to government and thus make it immune from the Central taxation. There is an interesting difference between the exemptions granted to the Centre and the States from each other. While all types of property of the Centre are exempt from the State taxation, commercial property of the States is not so exempt from the Central taxation. Also, while State income is exempt from the Central taxation, a similar immunity has not been extended to the income of the Centre from the State taxation, the reason being that the States have no power to tax income except agricultural income, and so the Centre needs no such protection[127]). A few other restrictions imposed on the States may be noted. A State law levying a tax in respect of water or electricity stored, generated, consumed, distributed or sold by any authority established under a law of Parliament, needs the assent of the Centre[128]). Generally, the States are to exercise their executive power so as to comply with the Central laws and

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[124]) *Collector* v. *Day*, 11 Wall. 113 (1871).

[125]) Corwin, The Constitution and What it means to-day, 23 (1946); *Indian Motorcycle Co.* v. *U.S.*, 283 U.S. 570.

[126]) *South Carolina* v. *U.S.*, 199 U.S. 437; *Helvering* v. *Gerhardt*, 304 U.S.405; *New York* v. *U.S.*, 326 U.S. 572.

[127]) Arts. 285 and 289; Jain, *op. cit. supra* note 32, 289–296.

[128]) Art. 288; also, note 60 *supra*. Similarly, the States are barred from levying a tax on electricity consumed by the Government of India or consumed in running railways by that Government except to the extent provided by law by Parliament.

are not to impede or prejudice the exercise of the Union executive power[129]), and the Central Government is entitled to give any directions to a State for the purpose. The Centre can thus remove any obstruction caused by a State in the way of its exercising its legislative or executive power. As a matter of abundant caution, it has been laid down that when a government carries on a business outside its law-making powers, it would be subject to the law-making powers of the other government having such powers[130]).

The courts in India have refused to extend the area of exemptions in favour of the Centre or the States beyond what the above-mentioned provisions specifically lay down. The matter was raised in the leading case, *West Bengal* v. *Union of India*[131]). The Union Parliament enacted the Coal Bearing Areas (Acquisition and Development) Act, 1957, authorising the Centre to acquire coal bearing lands including those vested in the States. The validity of the Act was challenged by the State of West Bengal, the main issue being whether the Centre could acquire State-owned lands. By a majority, the court ruled that it could. Under entry 42, List III, Parliament has power to legislate with respect to acquisition and requisitioning of property. The power is plenary and is subject to express, and not any implied, interdicts. The court refused to read any restriction on this power on the ground of the doctrine of immunity of instrumentalities[132]).

In re Sea Customs Act, S. 20 (2)[133]), the question raised was whether exemption granted to the State property from Central taxation would extend to immunize imports and manufactures by the States from Central customs or excise duties. Answering in the negative, the court held that the constitutional exemption in regard to the State property extended to a tax levied directly on property and did not cover a tax affecting the State property indirectly. The duties of customs, held the court, were not a tax on property but an impost on imports which formed an essential aspect of the Central power to regulate foreign trade. Similarly, excise is not a tax on property but on the process of manufacture and production. In taking this approach, the court was helped by similar views propounded by the courts in Canada and Australia[134]).

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[129]) Arts. 256 and 257; *supra* sec. V.

[130]) Art. 298; note 95 *supra.*

[131]) AIR 1963 SC 1241.

[132]) Justice Subbarao, in his dissenting judgment pleaded for the operation of the implied doctrine that the Centre and the States "cannot encroach upon the governmental functions or instrumentalities of the other, unless the Constitution expressly provides for such interference".

[133]) AIR 1963 SC 1760.

[134]) In Canada, implied theory of immunity was rejected by the Privy Council, *Bank of Toronto* v. *Lambe,* 1887 A.C. 575. In Australia the High Court first applied the doc-

The scope of exemption of State income from Central taxation was tested in *Andhra Pradesh State R.T. Corp.* v. *Income-tax Officer*[135]), in which the court held that a corporation had a personality of its own, distinct from its shareholders and so also from its creator, the State. Therefore, the income derived by a corporation could not be regarded as the income of the State, and the constitutional provision exempting State income from Central taxation could not be extended to grant exemption to the income of a corporation. It made no difference that under the relevant law the corporation was required to turn over a part of its income to the State to be spent on road development, as this did not render the corporation's income as that of the State. The above cases reveal that the judicial attitude has been to interpret the exemptions from Central taxation granted to the States rather restrictively so as not to hamper the Centre in the collection of its tax-revenue. Vice-versa, a similar interpretation would be placed on the exemption granted to the Centre from State taxation, but the matter has not been tested in a court as yet.

VIII. Interstate Trade, Commerce and Intercourse

No federal country has a uniform or an even economy, and the constituent units in which it happens to be divided usually have varied economic patterns. Some of them may be agricultural, while others may be industrial; some of them may produce raw materials or other primary goods, but the processing and manufacturing industries may be located in other places outside these States, because of more favourable commercial, geographical or economic factors, *e. g.*, availability of labour or power, or ready markets, etc. This situation creates the danger that the units, taking a narrow and parochial view of their interests, rather than a broad based view of national interests, may seek to create barriers in the way of flow of trade and commerce over their boundaries, discriminate between indigenously-produced goods and those produced outside, deny access to raw materials to outsiders, or impose discriminatory taxes on entry of goods from outside. Each federal constitution contains some provisions to contain such dangers, to minimise the possibility of creation of local barriers on national economic activity,

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trine but then rejected it: *Amalgamated Society of Engineers* v. *Adelaide Steamship Co.*, 28 C.L.R. 129. In both countries, property of governments are exempted from taxation, but this has been held as not exempting imports from levy of customs duty: *Att. Gen. of Br. Columbia* v. *Att. Gen. of Canada*, 1924 AC 222; *Att. Gen. of N.S.W.* v. *Collector of Customs*, 5 C.L.R. 818. Also, M. P. Jain & S.N. Jain, Intergovernmental Tax Immunities in India, 2 Jl. of ILI, 101 (1960).

[135]) AIR 1964 SC 1486.

and to help in the development of the whole country as one economic unit transcending local boundaries. These constitutional formulae have helped in the development of these countries into highly industrialised societies with high standards of living[136]).

The founding fathers were acutely aware of these dangers in India. They realised that political unity of the country needed to be strengthened by economic unity as well, for India could make progress only as one single economic unit where the constituent States would not compete, between themselves, but co-operate with each other in commercial and economic matters. They therefore took care to make provisions with this end in view. The scheme of distribution of powers has been drawn in such a way as to give to the Centre broad powers in the economic field[137]). Interstate trade and commerce is a matter within the exclusive law-making jurisdiction of the Centre[138]), while the States have power only on trade and commerce within the State[139]), and even this is subject to entry 33 in List III[140]). Further, interstate salestax is a Central matter[141]), the States being confined to levying tax only on within-the-state sales. Further, art. 301 declares trade, commerce and intercourse throughout the country to be free. But as no freedom can be absolute, restrictions can be placed by Parliament and the State Legislatures subject to certain conditions. No preference can be given to one State over the other, and no discrimination can be made between one State and another, by virtue of any entry relating to trade and commerce. However, the rigours of this limitation have been relaxed in favour of Parliament; it can give preference to one State, or discriminate between the States if it becomes necessary to do so to deal with a situation arising from scarcity of goods in any part of India. Thus, if Parliament is faced with the task of alleviating scarcity of any type of goods in any part of India, it can make a law preferring that area over the rest of the country for the purpose in view. Besides the above limitations, States function under a few more. A State cannot impose on goods imported from other States a tax higher than that

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[136]) Notes 8 and 28 and sec. II *supra*. Australia has sec. 92 which makes interstate trade, commerce and intercourse free. For details, Jain, *op. cit.* note 32, 574–5. In Canada, regulation of trade and commerce is a Central subject but this entry in sec. 91 has been interpreted somewhat restrictively because of the provincial power over "property and civil rights"; *Citizens Ins. Co.* v. *Parsons*, 7 AC 96; *Att. Gen. for Canada* v. *Att. Gen. for Alberta*, (1916) 1 AC 588; *Att. Gen. for Ontario* v. *Att. Gen. for Canada*, 1937 AC 405.

[137]) Sec. III *supra*.

[138]) Entry 42, List I.

[139]) Entry 26, List II.

[140]) Note 78 *supra*.

[141]) Note 79 *supra*.

levied on similar goods manufactured within the State concerned. Further, it may impose reasonable restrictions on the freedom of trade, commerce and intercourse with or within the State in the public interest only if the relevant bill for the purpose has received the prior sanction of the Centre before it is introduced in the State Legislature. It is thus ensured that any State Legislation undertaken by a State under pressure from regional economic interests should be examined by the Centre from a national point of view. This mechanism seeks to draw a balance between national and regional economic interests. An advantage of the provision is that it makes the Centre, rather than the courts, the arbiter of what restrictions the States can be allowed to impose on trade and commerce. This would avoid the confusing case-law which has arisen in other countries around this point[142]). These restrictions on the State power have been applied by the courts in a number of cases to declare State Legislation invalid. A State law levying a sales tax on imported goods while the indigenous goods were not so subject has been held to be invalid[143]). In the famous *Atiabari case*[144]), a tax levied by the State of Assam without the approval of the Centre on the carriage of tea by road or inland waterways within the State was held to be invalid. The tax, being levied on the movement or transportation of goods, imposed a restriction on the freedom of trade and commerce and this could not be done without satisfying the constitutional requirement of Central assent. The Constitution also provides for the appointment of an authority by Parliament to effectuate the constitutional provisions regarding freedom of trade and commerce[145]).

In spite of these provisions, certain trade barriers have, however, come into existence although the problem has not yet assumed any significant proportions. At times, the cumulative incidence of a centrally-imposed interstate sales tax and the State levied sales tax on internal sales of a commodity makes it more costly than when it would be if it had not moved in interstate sale. At times, the State sales tax laws discriminate against outside goods, or exempt the sale of raw materials to in-state producers while levying sales tax on their supply to out-of-state producers. For example, the States having bauxite do not want to let it go outside the State for production of aluminium to where electricity is available or vice-versa. These restraints are not always created by law but by administrative procedures which become difficult to be challenged in courts. Perhaps, the time appears

142) Notes 8, 61 and 136 *supra*.

143) *Bhai lal Bhai* v. *Madhya Pradesh*, AIR 1956 Bom. 21; *Siddique* v. *Madhya Bharat*, AIR 1956 MB 214; *Bharat Automobile* v. *Assam*, AIR 1957 Ass. 1.

144) *Atiabari Tea Co.* v. *State of Assam*, AIR 1961 SC 232.

145) Notes 115 and 116 *supra*.

to have come when Parliament should set up the authority envisaged by the Constitution to look into all these trade barriers. The matter has assumed importance in view of the new political fragmentation of the country where interstate competition might become keener due to the varied political complexion of the State Governments[146]).

Mention may be made here of the food problem, a peculiarly Indian problem, which raises a good deal of tension in the federal structure between surplus and deficit States and between the Centre and the States. India has been facing shortage of food for some time now. Some of the States are surplus while others deficit; the deficit States clamour that there should be free movement of food in the country so that all share in what the country has. The surplus States do not like this; they want to export only the surplus after they have met the needs of their people. In a surplus State, people get enough food while in a neighbouring deficit State people get much less, and this makes interstate relationship sour. The deficit States then pressurize the Centre to supply them with food, but the Centre can do so to the extent it can get food by imports and from the surplus States, and so the Centre-State relations get somewhat bitter. At present, each State is treated as a food zone by itself[147]), and movement of food on private account from one zone to another is prohibited. Food moves from the surplus to the deficit zones on government account only. From a legal and constitutional point of view, the position is that under the constitutional provisions mentioned above guaranteeing freedom of trade, commerce and intercourse, no State can impose restrictions on the export of food without the Central assent. The position of the Centre is further re-inforced by entry 33, List III, under which the Centre has legislative power over food, an essential commodity. The Essential Commodities Act, 1955, confers all the powers on the Centre for the purpose and the States exercise only such powers in the matter of movement, trade and commerce in food as the Centre may permit to them. Therefore, there is no difficulty in the way of the Centre removing all restrictions on the movement of food from one State to another. But whether it is expedient to do so is a different question. Being a politically explo-

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[146]) See generally ILI, Interstate Trade Barriers and Sales Tax Laws in India. Disputes arise at times regarding operation of buses on interstate routes. One such dispute arose between Delhi and Uttar Pradesh. At times, States want to ban export of goods, in which they have a surplus, to conserve internal supplies, and the Centre may have to veto this. Thus recently the Centre refused to consent to Gujarat's suggestion to ban export of groundnut oil, as this would have greatly inconvenienced the States depending on the commodity. The Chairman of the Aluminium Corp. of India has complained of the unhelpful State attitude resulting in less production of aluminium, October 20, 1966.

[147]) The food zones are established by the Centre under the provisions of the Essential Commodities Act, 1955. For details, see Jain, note 43 *supra*.

sive matter, the Centre does not want to do anything unilaterally without consulting the States, and all the surplus States want zones to stay. There is other independent opinion as well in favour of the zones, for, so the argument runs, in view of the over-all shortage of food, the result of a free movement of food would be that the areas of high purchasing power would suck most of the food, creating pockets of distress even in the surplus States. Though the Centre is armed with all the necessary legal powers, it does not want to act unilaterally and must carry the States along with it[148]). The procurement of food depends on the States; the Centre does not have any machinery of its own for the purpose. Agriculture is a State subject and the Centre depends on the States to maximise food production. Conferences of the Central and State food ministers are held from time to time to evolve policies for the maximisation of production and procurement of food. Recently, the Centre has announced a scheme of bonuses payable to the surplus States for food exported to the deficit States. Food and agriculture thus constitute an area where the highest degree of co-operation and common approach between the Centre and the States are needed.

Another problem existing in India is the discrimination, which some States indulge into at times, between the local people and those coming from outside in matters of employment, services, trade, etc. The tendency, if not checked, may affect the very vitals of the federation. The framers of the Indian Constitution, foreseeing the danger, did make a number of provisions in the Constitution to meet such a problem. Art. 14 in a general way bars discrimination by the government. Art. 15 specifically bars the government from discriminating against any citizen of India on grounds only of religion, race, caste, sex or place of birth. Art. 16 debars a State from indulging in discrimination in matters of employment on grounds only of religion, race, caste, sex, descent, place of birth or residence. Other rights guaranteed are the right to move freely throughout the territory of India, the right to reside or settle in any part of the country, and the freedom to carry on trade or commerce, subject to reasonable restrictions being imposed by the government in the interests of the general public. Without going into the rami-

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148) At a conference of the food ministers of the Centre and the States held on September 27, 1967, at New Delhi, the decision to keep the food zones has again been reiterated on the ground that the State-wise zones would help in vigorous procurement of foodgrains from the farmers. The surplus States have, however, agreed to make available the surplus food for export to the deficit States. But there is always a discrepancy between the Central and the State estimates of how much surplus there is, as naturally each surplus State seeks to keep down the estimates of its surplus. On the other hand, the estimates of how much a deficit State needs also differ between the Centre and the State concerned, as the latter wants to bolster up its deficit to get as much food as possible.

fications of these various constitutional provisions[149]), suffice it to say that in most of the situations discriminatory laws made by the States between non-residents and residents in matters of trade or employment would infringe one or the other of these provisions and be thus bad. But the fact remains that many a time some discrimination is indulged into not through law but through other means, *e.g.*, persuading or pressuring the industries in the State to employ local people as far as possible. At times even the industries established by the Centre have been pressured to employ local people. Most of these difficulties arise, no doubt, because of the limited employment potential and would tend to disappear to some extent with the economic development of the country. Some of the discriminations may even escape the net of the constitutional prohibitions as is illustrated by *Joshi* v. *State of Madhya Bharat*[150]). The residents of Madhya Bharat were exempt from payment of a capitation fee to the medical college while non-residents were required to pay the same. The Supreme Court refused to hold it unconstitutional, because the ground of exemption from payment of the fee was r e s i d e n c e and not b i r t h, while art. 15 outlawed discrimination only on the ground of b i r t h and n o t r e s i d e n c e, residence and birth being two distinct concepts with different connotations both in law and fact.

IX. Planning

Since Independence, planning has been a major occupation of the governments in India, and it has had a deep impact on the evolution of Indian Federalism. India is economically an underdeveloped country; literacy is low, agriculture is in backwaters, living standards are poor as *per capita* income is meagre. With limited resources and large demands for development, it becomes inevitable to resort to planning so that available resources might be utilised with the maximum effect. The Constitution does not lay down any articulate economic policy or philosophy, but its main thrust is towards economic democracy and welfare State without which political democracy would be meaningless to large segments of the people. In the directive principles, the Constitution obligates the State to promote the welfare of the people by securing and protecting effectively a social order in which justice, social, economic and political, shall inform the institutions of the national life; the State is to formulate policy to secure to its citizens an adequate means of livelihood, to secure that ownership and control of the material resources of the community are so distributed as best to subserve the common good, and to secure that the operation of

[149]) J a i n, *op. cit.* note 32, 358–385. [150]) AIR 1955 SC 334.

the economic system does not result in concentration of wealth and means of production to the common detriment. A living wage, decent standard of life and full enjoyment of leisure and social and cultural opportunities should be secured to all workers, agricultural or industrial; education, health, unemployment and other welfare benefits are to be provided by the State "within the limits of its economic capacity and development" [151]). The Central and State Governments are thus placed under an obligation to play a creative role towards achieving these goals.

Though planning was in the air at the time of the constitution-making, and the scheme of distribution of powers was drafted with an eye on that [152]), the Constitution does not set up any planning machinery. In 1950, the Government of India set-up the planning commission by its resolution to discharge the following functions: (1) to make an assessment of the material, capital and human resources of the country and investigate the possibilities of augmenting such of these resources as are found to be deficient in relation to the nation's requirements; (2) to formulate a plan for the most effective and balanced utilisation of the country's resources; (3) on a determination of priorities, to define the stages in which the plan should be carried out and propose the allocation of resources for the due completion of each stage; (4) to indicate the factors which are tending to retard economic development and determine the conditions which, in view of the current social and political situation, should be established for the successful execution of the plan; (5) to determine the nature of the machinery which will be necessary for securing the successful implementation of each stage of the plan in all its aspects; (6) to appraise from time to time the progress achieved in the execution of each stage of the plan and recommend the adjustments of policy and measures that such appraisal might show to be necessary; and (7) to make such interim and ancillary recommendations as might be appropriate on a consideration of the prevailing economic conditions, current policies, measures and development programmes, or on an examination of such specific problems as may be referred to it for advice by the Central or State Governments. The planning commission consists of the Prime Minister as Chairman, a few Central Ministers and a few non-officials appointed for their expertise in matters with which the commission has to deal. The role of the commission is envisaged to be advisory.

Planning has been unified and comprehensive in India. The plans deal not only with the Central subjects but also with State subjects. The planning commission, which formulates the plans, though it includes members of

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[151]) Arts. 36–51. These principles are not legally enforceable.

[152]) Sec. III *supra*.

the Central cabinet, has no State representation as such. It has all along been a body nominated by the Centre without consulting the States. However, to give a sense of participation to the States in the decision-making process relating to planning, the national development council was set-up in 1952, consisting of the Prime Minister as Chairman, all State Chief Ministers and members of the planning commission[153]). The functions of the council have been laid down as "to strengthen and mobilise the efforts and resources of the nation in support of the plans, to promote common economic policies in all vital spheres and to ensure the balanced and rapid development of all parts of the country".

The pattern of plan formulation is somewhat as follows. Each State formulates a plan for itself for a five year period and submits it to the planning commission. The Commission discusses the plans with the State representatives, and after pruning and adjusting the plans in the light of resources and priorities and including the Central plans, evolves a master plan for the whole country for a five year period. The plan is broadly divided into two sections – industrial development and economic and social services. The former is more or less entirely the responsibility of the Centre, and the role of the States in the process of industrialisation hitherto has been subsidiary. The economic and social services are mostly those which fall within the State sphere, like education, health, agriculture, co-operation, social welfare, housing, etc. In this segment there are the State programmes and the Central programmes. Both are administered through the States, but the Centre participates to a much larger extent financially in the Central than the State programmes. In this area, the Centre helps the States through conditional grants given on the advice of the planning commission usually on a matching basis[154]). The five year plan is broken into annual plans. Each year, the planning commission discusses with each State its performance of the last year, the resources of the State and the quantum of Central assistance for the next year. An objective of this annual survey is to ensure that the States make an adequate tax-effort to raise the resources promised for implementing the plan programmes.

A few significant features of the planning process may be underlined. The planning commission and other planning processes, including the national development council, are based not on any law but on executive de-

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[153]) The Central Ministers, who are members of the planning commission, *ipso facto* become members of the national development council. Besides, other Central Ministers and State Ministers may also be invited to attend the council's meeting as and when their presence is considered necessary.

[154]) These grants are given under art. 282, sec. IV note 88 *supra*.

cisions taken by the Centre. Although there is, in the Concurrent List, an entry "social and economic planning", no legislation has been enacted under it setting up the planning machinery. In the concurrent field, under the Constitution, executive power lies with the States[155]) till Parliament by making a law takes over such power in relation to a particular matter. Therefore, the executive power in relation to social and economic planning constitutionally rests with the States in the absence of a law. But, in practice, the planning commission exercises such power most effectively. This is one of those cases where practices have developed not always consistent with the intentions of the Constitution. It is considered necessary to leave the situation as it is in the interests of flexibility.

Envisaged as an advisory body, the planning commission, in course of time, has grown into a huge bureaucratic machine and has assumed the role of a super "economic cabinet", parallel in many matters to the Central cabinet and not only advising the Centre, but in its own right determining socio-economic policies, objectives, and programmes, allocating resources and even interfering with day to day administration. Though in theory the responsibility to take final decisions rests with the Central and State Governments, yet, in practice, their roles have become more or less reduced to implementing decisions taken by the commission. An overlap between the planning and finance commissions in the area of federal-state fiscal relationship has already been pointed out[156]). In its report the Estimates Committee of the House of the People criticised this role of the commission[157]). The emergence of the commission into a deciding authority was made possible because of the association of the Prime Minister and a few important Central Cabinet Ministers. Now the commission is being re-organised. It will be cut down to size and made to function more as an advisory, rather than a decision-making, body. The Prime Minister will continue to be its chairman but no other Central Minister, except the finance minister, will now be its member formally. Other ministers may be invited as and when matters pertaining to their departments are discussed by the commission. D. R. Gadgil, an eminent economist, who has been a critique of the commission's power complex, of the neglect of its main functions and of the needless extension of its activities into many irrelevant fields, has now been appointed as the Deputy Chairman of the commission, and, therefore, it may be expected that the role of the commission will undergo a change in course of time.

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155) Sec. V *supra.*
156) Sec. IV *supra.*
157) XXI Rep., Second Lok Sabha.

Till now, the States have not played a significant role in the formulation of plans. Their role has mainly been that of implementing the decisions made by the planning commission and the Central Government. Even the major burden of financing the plan has been carried on by the Centre[158]). Although the national development council is envisaged to have wide and comprehensive functions to be the supreme body in matters of planning and development, having as its objectives promotion of central-state co-operation and co-ordination in planning, securing an uniformity of approach and outlook in the working of national plans and resolving conflicting views between the Centre and the States, and it approves the plan before it is placed before Parliament yet, in practice, this body has not made any effective contribution to the shaping and moulding of plan policies. With all its facade, it has mostly acted as a body registering decisions arrived at by the Central Government and the planning commission. It usually meets for a couple of days at irregular intervals and its deliberations are therefore bound to be perfunctory. A convention has come into existence that its decisions are binding on all governments. Differences between the planning commission and a State over allocations are also referred to the council, but in all these matters it has invariably followed the lead given by the Centre and the commission. The plans have been discussed in Parliament but not in the State Legislatures. The plans of each State, are, no doubt, discussed by the commission with the State concerned, but the States as such have not influenced much the over-all planning processes and policies.

Because of the centralised planning, the Centre has come to have a lot of influence in the area reserved to the States under the Constitution. Most of the State plans need Central help and, therefore, have to be discussed with, and scrutinised by the planning commission. Then, the Centre also sponsors its own programmes in the State sphere which though administered through the States are financed more liberally by the Centre. There is a discussion between the States and the planning commission before the formulation of the plan, and then every year, to maintain flexibility and effective management, each plan is broken up into annual plans. It means

[158]) Some of the statistics from the annual plan of 1967/68, just released, may be interesting in this connexion. The total governmental expenditure during the year is envisaged to be Rs 2,2460 millions divided as follows: Central sector: Rs 1,1720 millions; State sector: Rs 1,0100 millions and Union Territories: Rs 640 millions. The State sector is proposed to be financed as follows: Central assistance: Rs 5900 millions; State contribution: Rs 3660 millions; and not yet accounted for Rs 540 millions. Thus the effective State plan is Rs 9560 millions out of which the Centre is to contribute nearly 62 % and the States 38 %. Even this State contribution consists of tax-sharing and fiscal-need grants from the Centre which the States receive through the Finance Commission. Taking the whole plan of Rs 2,2460 millions, the Centre has to find Rs 1,8260 millions, *i.e.*, 82 % of total outlay.

that each State must approach the planning commission each year and the commission, after scrutinising plan performance and resources raised by the State, will allot Central assistance to it for the year. The Central assistance is given in the form of loans and grants-in-aid. The grants are on a matching basis and are a means of securing central-state coordination to promote plan programmes. But all this compromisis to a great deal the freedom of action of the States. Through this mechanism, the Centre is able to make an inroad into the State sphere. Many a time, the States accept the centrally-sponsored schemes, even though not entirely relevant to their local circumstances, because of the financial inducement attached, for to refuse the scheme would amount to forgoing the money which might not be politically expedient. The system has worked hitherto because of two important factors: one party control in the Centre and the States and the Central assistance. Control by one party was a great co-ordinating, cohesive factor, and it smoothed the planning processes a great deal, as the States owing allegiance to the Congress invariably fell in line with the Congress-led Centre, maybe sometimes after a show of protest. Then, for more than 60% of their plan expenditure, the States depend on the Central grants and loans through planning commission, and this is in addition to what they get through the finance commission. This also gives a great leverage to the Centre. One party control has now disappeared as different political parties have come on the scene, and this is bound to have its repercussions on the planning processes. Naturally, the States will now claim a much more active participation with plan formulation; and the result of this may be an activation of the national development council which may now become the focus of planning. Its discussions may become more meaningful as the States cannot now be expected to accept formulations of the planning commission uncritically. Secondly, the States may be expected to claim more freedom in ordering their plans in their own sphere. Though they would still depend on the Central assistance, yet they would want less Central control and scrutiny of their programmes. Thirdly, financing of the plan may undergo some changes and the pattern of grants may have to be made more flexible than what it is today.

Even with one party control and the habit of the States to follow the lead given by the Centre, there were certain areas of central-state friction. Practically, each State wanted to be industrialised rapidly and pressurised the Centre to locate some of its industrial plants therein. The debate was even carried on publicly[159]). Then, each State wanted to have big plans and

[159]) As for example, each of the States of Madras, Mysore, Andhra Pradesh and Madhya Pradesh is pressurising the Centre to set up a steel mill.

large assistance from the Centre. A point of debate was with regard to the basis on which the Central allocations should be made to the States, and population was being espoused as the basis for the purpose by the populous State, but the less populous States did not agree with this. No State, on the other hand, wanted to raise adequate resources by itself because of political considerations. They all wanted the Centre to help them out. Even when the States promised to raise certain resources, they invariably failed to do so. The implementation of the plan programmes by the States left much to be desired. The targets set in the plan were hardly ever reached while the expense always overshot the plan amounts. Then the States did not very much like the centrally-sponsored schemes in their area. Their view was that the Centre should give money to them for implementing their programmes rather than sponsor any programme of its own. They did not like the rigidity which went along with the Central programmes, as the money available had to be used only for the purposes sanctioned and could not be re-allocated to other, even though related programmes. The States did not like the matching basis on which Central grants are given, for it means that in order to get Central funds they should themselves raise a certain percentage of the expenditure. The Central Ministries, however, maintained that some of the programmes were of national importance, like family planning, and that if the Centre did not sponsor and supervise these programmes, then national interests would suffer. On the other hand, there were complaints made by many that there was too much laxity in the Central grants, that there were no adequate safeguards for the proper use of funds. Some of these problems will now be debated more intensely and would need solutions in the near future. The effective use of the national development council as a forum for exchange of ideas on these controversial matters, and the laying down of norms for regulating these matters through that body may be helpful. The council can serve as an effective clearing house of ideas and a co-ordinating link between the Centre and the States. It is also possible that with a more active participation of the States in the plan-making, implementation of the plan programmes by them may improve because they may feel a greater commitment to fulfilling the programmes to which they themselves are parties, rather than feeling that they are carrying out the dictates of a Central body without much involvement. Another change may be made in the emphasis of planning. The Centre may confine itself in future to its own plans in its sphere and only to those programmes in the State sphere which are absolutely essential to the national interests and need a uniformity of approach throughout the country. This will mean that, by and large, the States would have freedom to order

their plans for their sphere of action. This will reduce pressures on the Centre as well as chances of confrontation between the Centre and the States.

Although, in the present-day political spectrum of the country, some of the established practices in the area of planning are going to be challenged by the States resulting in some adjustments, and although there is scope for greater initiative and participation in the decision-making process by the States in matters of planning, it is important for the country's rapid growth that outlook be still national rather than regional. Too much regionalism in this area will retard national growth. It is also to be remembered that even in other countries, which were designed to be more federal than India ever was, the Centre has come to play a dominating role in the affairs of the country and grants have become an accepted vehicle of the Centre-State co-ordination and co-operation[160]). This means that in India, subject to some adjustments necessitated by recent political developments, the Centre should still play a dominant role. It is necessary to look upon the whole matter as that of the Centre-State partnership and co-operation, rather than as one of subordinate relationship, or as one of confrontation, between the Centre and the States. This is in line with the developments in other federal countries. It may, however, be emphasized that as yet there is no historical parallel in federal planning anywhere in the world, and thus in this respect India's experiment is unique and she has to find its own solutions to problems arising in a federal system from the pressures of socio-economic planning on a grand scale.

X. Emergency

"Federalism as a system of counterpoise is no longer viable in the field of war-making" and that there is "incomparability between the requirements of total war and principles thus far deemed to be fundamental to government under the Constitution". During the second world war crisis, the constitutions of the U.S.A., Canada and Australia underwent a metamorphosis; the behaviour of federalism during the war was very different from its peacetime, normal, behaviour; the Central Government's powers received a broad judicial interpretation so that it could have at its disposal all powers necessary to make the war-effort[161]). Accordingly, the Indian Constitution also

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[160]) Sec. II *supra*.

[161]) Notes 10, 18, and 26 *supra*. Also, C o r w i n , Total War and the Constitution, 70, 130.

makes some emergency provisions under which normal, peace-time federalism is adapted to the demands of the emergency. A unique feature of these provisions, however, is that instead of relying on the judiciary to effect necessary adjustments in the Centre-State power balance, they provide a simpler mechanism for the purpose, of executive determination subject to parliamentary control. A reason for this approach may be that, owing to elaborate nature of the distribution of powers[162]), there was not much room left for the judiciary to make necessary adjustments in emergency situations. Moreover, the emergency provisions in India envisage certain situations which are not to be found in any other federal constitution.

First of all, the President may issue a proclamation of emergency when he is satisfied that there is a threat to the security of the country either by external aggression or internal disorder – a concept which is parallel to the war-time emergency. The President's satisfaction is not justiciable but is subject to parliamentary control through the council of ministers. The democratic control is further strengthened by the requirement that the proclamation be laid before both houses of Parliament and, unless approved by them, it cannot be operative for more than two months. The effect of the proclamation on federalism is that the Centre becomes entitled to enact a law on any matter even if it falls in the exclusive State List. The State Legislatures continue to function, but a Central law will override a State law even on an exclusively State matter. Further, the constitutional provisions regarding the distribution of revenue between the Centre and the States[163]) can be modified by a presidential order, and the Centre also becomes entitled to give directions to the States as to how their executive power is to be exercised[164]). On October 26, 1962, when the Chinese troops had crossed the Sela pass in the North and were threatening the Assam foot-hills, a proclamation of emergency was issued. A few Acts were enacted to meet the situation, the most conspicuous of which has been the Defence of India Act which confers extensive rule-making powers on the Central Government to meet various situations and contingencies[165]). In no other way has the federal balance been affected by the emergency. The effect of the proclamation of emergency on the fundamental rights has not been considered here as it is beyond the scope of this paper.

Secondly, a financial emergency may be declared if the president is

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[162]) Sec. III *supra.*

[163]) Sec. IV *supra.*

[164]) Sec. V *supra.* Arts. 352, 353, 354.

[165]) Other Acts enacted have been: The Emergency Risks (Factories) Insurance Act, 1962; the Emergency Risks (Goods) Insurance Act, 1962.

satisfied that a situation has arisen threatening the financial stability or credit of the country. The proclamation is subject to parliamentary approval. The Centre becomes entitled to give directions to any State to observe such canons of financial propriety as may be specified in the directions. Directions may also be given for such purposes as reducing salaries and allowances of any categories of persons serving in a State or requiring that all money or financial bills or those involving expenditure shall be reserved for the President's consideration after being passed by the State Legislature. The salaries and allowances of persons in the service of the Union can also be reduced if necessary[166]). It will be noticed that financial emergency increases the Central supervision over the States in financial matters. Perhaps, the idea of such an emergency was adopted by the framers of the Constitution from the experiences of other federations during the depression of the 30's when the Central Governments in the U.S.A. and Canada found themselves hampered in taking effective action to meet the situation[167]). Till now, there has not been any occasion for the invocation of this provision in India.

Thirdly, the Indian Constitution envisages an emergency arising because of the failure of the constitutional machinery in a State. Under the U.S. Constitution, the Centre guarantees to every State a republican form of government, protects each of them against invasion, and on application of the legislature or the executive (when legislature cannot be convened) against domestic violence. Recently, under this provision, the Central Government sent its forces into Detroit, State of Michigan, on a request of the Governor, to contain the racial violence. A similar provision is to be found in Australia[168]). Parallel to these provisions there is art. 355 in the Indian Constitution which obligates the Union to protect every State against external aggression or internal disturbance and to ensure that the government of each State is carried on in "accordance with the provisions of the Constitution". The first limb of this provision, that of protecting the States, does not stipulate any State request to the Centre for sending its forces into a State to counter breakdown of law and order as is to be found in parallel provisions in the United States and Australia. It would, therefore, mean that, while the Centre may be under an obligation to send its forces when

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[166]) Art. 360.

[167]) Sec. II *supra*.

[168]) Sec. 119 of the Commonwealth of Australia Constitution Act, 1900 says, "the Commonwealth shall protect every State against invasion and, on application of the executive government of the State, against domestic violence". There appears to be no parallel provision in Canada.

so requested by a State, it is not bound to wait till that request is received; if the situation warrants, the Centre can act *suo motu*. Though ordinarliy, the Centre should not act without a State request, and it may be a good policy not to get involved in local matters, yet, there is no doubt that the Centre can act unilaterally if it feels that such a step is necessary in the interest of maintenance of law and order in a State. This is further re-inforced by the provision, mentioned above, to declare emergency when there is internal breakdown of law and order in any part of the country, and that envisages the taking of all steps thought to be necessary by the Centre for maintaining law and order in any part of the country.

To enable the Centre to discharge its obligation to see that the State Governments are carried on in accordance with the provisions of the Constitution, and this be it noted is a unique feature of the Indian Constitution, the Centre is authorised to take over the administration of a State if it is satisfied that it cannot be carried on according to the Constitution[169]). This can be done under a presidential proclamation which can be issued either on the report of the Governor concerned or through information received otherwise. The proclamation is subject to parliamentary control; it needs approval of both houses if it is to subsist beyond two months and then again after every six months, and it can remain in force for a maximum period of three years. It is of interest to note that the Centre's power to issue a proclamation of failure of machinery in a State is more rigorously controlled than its power to issue a proclamation of general emergency which neither needs repeated parliamentary approval after every six months nor is subject to any maximum time-limit. When the Centre takes over the State administration, the governor of the State acts as a delegate of the Centre, the council of ministers does not remain in office, the State Legislature may either be suspended or dissolved, and the legislative power for the State vests in Parliament. But, as Parliament may not possibly find the necessary time for this purpose, the expedient adopted is to enact a law delegating law-making power for the State concerned on the President, *i. e.* the Central executive with which is associated a committee of members of Parliament. The Acts, known as the President's Acts, are laid before Parliament which can direct any modifications therein.

This provision has had to be invoked, and governance of several States assumed by the Centre, several times. Primarily, this has been done when a council of ministers commanding majority support in the State Legislature

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[169]) Art. 356.

could not possibly be had in office[170]). In such cases, the Centre has intervened temporarily, fresh elections held as soon as possible and responsible council of ministers installed in office. But there has been one dramatic and controversial use of this power of the Centre which may be cited here because of its relevance to the present political situation in the country. As a result of the general elections in 1957, a communist government took office in Kerala enjoying a majority of two in a house of 127 members. Though the government continued to enjoy this support, outside the legislature the public opinion became hostile to it. Accusations were made that the government was subverting the Constitution by transplanting communist cells in police and administration, was using co-operatives for consolidating the party and was indoctrinating the students. A public agitation was started against the government threatening law and order, and in the meantime the financial position of the State also deteriorated. The Prime Minister of India suggested to the State Chief Minister to resign and seek fresh mandate from the electorate, but he did not heed this advice. At last, under public clamour, the Centre intervened, dismissed the ministry, dissolved the legislature and organised fresh elections which resulted in the defeat of the Communist Party at the polls. Except for the Kerala episode, the Centre has not till now interfered with a ministry enjoying confidence of the house. The Centre's action in Kerala was approved by all political parties except, of course, the communists. The Kerala case also raised, in an acute form, the question of implication of the words "in accordance with the provisions of the Constitution" in art. 355, noted above. Do these words mean only the letter of the Constitution, or do they also include the democratic spirit, conventions and fundamental assumptions on which the Constitution is based? If only the former, then obviously the Kerala Government was being carried on according to the Constitution as it enjoyed a majority in the legislature. But if the latter be the correct view, then the government in Kerala was not being carried on according to the Constitution, for the forms were being used to destroy the spirit of the Constitution. The Centre took this view in justification of its action. It is difficult to argue that the Centre should be a passive spectator when the whole constitutional fabric is being subverted in a State. It will be safe to argue that the Centre will be justified in intervening in a State in case of political break down, gross mismanagement of affairs or abuse of its powers by a State Government. The Centre's action can be justified by saying that temporarily a bigger democracy takes over a smaller democracy. But this places at once, in the

[170]) Punjab (1951); Pepsu (1953); Andhra (1954); Travancore-Cochin (1956); Orissa (1961); Kerala (1964) and again in 1965; Rajasthan (1967).

hands of the Centre, a great power vis-à-vis the States, as well as a great responsibility. The restraints on the use of this power are its own sense of prudence and judgment of the Central Government and the political realities of the situation. The action of the Centre is bound to be criticised by interested political parties as *mala fide* or as an unwarranted exercise of its power. In the present-day political fragmentation of the country with various political parties holding power, there is a danger that confrontation of political parties may lead to a confrontation of the Centre and the States, which may ultimately result in resumption of some State Governments by the Centre. The Centre will need all the prudence, caution and tact in judging when it should intervene. Greater opposition in Parliament also induces the necessity of caution. The Centre has a grave responsibility and it needs to act with circumspection and only when it is politically feasible, possible and justifiable, otherwise it may be accused of subverting the federal fabric of the Constitution which permits of various political parties being in power in various States and the Centre[171]).

Three side issues may be considered at this stage. The first relates to the position of a State governor. The office has suddenly come into limelight in the new political situation, for the governor has to act in certain situations as the balance-wheel of the Centre-State relationship. A governor has a dual capacity. He is the head of the State as well as a representative of the Centre. Ordinarily, he acts on the advice of his council of ministers, yet there are areas where he may have to act on his own judgment. The question of his reserving State bills for the Central assent is one such area, for obviously no State ministry is going to advise him to do so[172]). Another similar area is his making a report to the Centre on the question whether or not the State Government is being carried on in accordance with the Constitution[173]). As such a report may be against the State ministry in office, it will be mainly a question for the governor's own judgment whether the situation warrants such a report from him. After the fourth general elections, some State governors were called upon to decide between the claims and counterclaims of political parties that they enjoyed a majority in the

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[171]) The Prime Minister, Mrs. Indira Gandhi, has assured the State Chief Ministers that the Centre would continue to play its part and try to minimise whatever tensions there might be between the Centre and the States and help the State Governments no matter what their composition. "We are not interested in topling governments. We are genuinely interested in seeing that work is done. In that, we certainly want to help in every way we can. At the same time, I would ask for your co-operation also". Hindu Weekly Review, July 10, 1967, p. 2.

[172]) Note 62 *supra*.

[173]) Note 169 *supra*.

legislature and thus had a right to form the government. The governor has to perform such a task himself, according to his own light[174]). Recently, the Law Ministry of the Centre has taken the view that the governor is not bound to prorogue or dissolve a State Legislature on the advice of a defeated chief minister and that the governor can exercise his discretion whether to call the leader of opposition to form the ministry or hold fresh elections. By and large, the Centre has left the governors free to exercise their powers, yet, at times, governors do hold consultations with the Central ministers. It remains a matter shrouded in doubt whether the Centre can direct a governor to act in a particular manner. The position of a governor is rather delicate when he heads a State with a government of political complexion different from the Central Government, for there appear to be great difficulties in the way of a governor ignoring a Central directive if the Centre issues one. These circumstances raise problems with regard to the appointment of a State governor. The Constitution gives a *carte blanche* to the Centre in the matter of appointing a State governor, but, over the time, a practice has developed to consult the State Chief Minister before making an appointment[175]). So far, with one party dominance, this consultation was more of a formality and no difficulties ever arose in this regard, but in the changed situation, difficulties may now arise. The Centre would like to have a person as governor in whose judgment and independence it may have confidence; at the same time, a State Government would like to have a person as governor who would not be too much biased in favour of the Centre. Therefore, a person enjoying confidence of both, the Centre and the State Government concerned, has to be appointed as the governor. The Centre should not force a person upon a State against its wishes; otherwise relations between the governor and the State Government will become

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[174]) The Rajasthan Governor, Sampurnanand, decided that he would ignore the independent members of the Legislature for the purposes of assessing as to which political party had a majority. This led to a public furore and the imposition of the President's rule for nearly two months. After the retirement of Sampurnanand, the new Governor himself undertook the task of assessing the real position by talking to the members of the Legislature. Recently the Bihar Governor has held that a person who is not a member of the State Legislature cannot be the chief minister and has thus refused to instal a new ministry in office of a new party which claims a majority in the Legislature but whose leader is not yet a member of the State Legislature. This decision of the Governor, taken on the advice of the advocate-general of the State, does not appear to be correct in view of art. 164 (4) which permits a non-member to be a minister for six months. It can be seen that mostly the governors have acted on their own judgment without any interference from the Central Government, for in the case of Bihar, the Governor is an ex-Congressman and yet he refused to give a chance to the new party which has the backing of the Congress party.

[175]) Arts. 155 and 156.

sour. At the same time, no State Government can claim a final say in the matter and claim that only its nominee, and no one else, should be appointed as the governor. After all, the governor has certain functions to discharge independently of the State Government in office and the Centre has been vested under the Constitution with the ultimate responsibility to see that the States function according to the Constitution.

Another question relates to discussions on the floor of Parliament regarding State matters. There are certain occasions when Parliament has to discuss State matters, *e. g.*, imposition of the Centre's rule in a State as the Centre's action needs parliamentary ratification. But, discussions are commonly raised in Parliament from day to day on matters falling in the State sphere which would appear to be against the federal nature of the Constitution. The usual method to raise such a discussion is through an adjournment motion on a matter of public importance, and although many such motions are declared inadmissible, yet a miniature discussion does take place because the mover of the motion will argue as to why his motion should be admitted and the government will oppose the same. Recently, a very interesting discussion took place in the House of People on a State matter. The governor of a State prorogued the State Legislature on the advice of the chief minister whose majority was in doubt because a few of his supporters had crossed the floor. The opposition parties in the House of People brought an adjournment motion charging the Central Government that it had directed the governor, to prorogue the house and thus deny a chance to the opposition in the State from forming the government. The Central Government, agreeing to have the matter discussed, repudiated any suggestion of having directed the governor one way or another. The Home Minister maintained that, as the constitutional head of the State, the governor had acted on the advice of the chief minister and the Centre had not issued any directive to him. One may look forward to such discussions in Parliament in the future as well.

Lastly, a question of great interest is whether the Centre has any responsibility to take action when charges of corruption are made against a State Chief Minister. Till now, the position was not very difficult as the same political party was involved at the Centre and the States. The Centre appointed a commission of inquiry to go into charges against the chief minister of Punjab[176]), and because of an adverse report of the commission,

[176]) It is known as the Das commission as it consisted of ex-Chief Justice S.R. Das. Under the Commissions of Inquiry Act, the Central Government can appoint a commission to enquire into a definite matter of public importance. The commission after hearing evidence and arguments reported whether charges against the chief Minister were proved or not. It did not recommend any action to be taken against him.

the chief minister resigned. In Orissa, the chief minister resigned when a committee of the Central cabinet held, on a report from the Central Bureau of Investigation, that he had been guilty of administrative impropriety. In both these cases, the chief ministers belonged to the Congress Party to which the Centre also owed allegiance. In these cases, the line of division between the party and the government was somewhat blurred. The question may now take an important aspect in the new political context. While previously the motivations behind the action by the Centre might have been interpreted as an attempt to clear the image of the party, to-day such an action may be interpreted as an attempt to tarnish the image of the party in office in the State concerned. The Central responsibility in the matter can, however, be spelled out of arts. 355 and 356 mentioned above. It will be necessary to evolve certain norms for this matter so that political considerations are kept aside and the Centre-State relationship in the sensitive area is placed on an objective, non-party and non-political basis so that democracy and federalism can flourish in the country. The matter indeed is full of difficulties.

XI. The Language Problem

The language problem constitutes to-day a divisive influence in the Indian polity. India has two main linguistic groups, the Indo-Aryan and Dravidian, spoken by nearly 75 % and 24 % of the people respectively. Out of the 11 languages comprised in the first group, Hindi is spoken by nearly 42 % of the people, and out of the 4 languages in the second group, Telugu is spoken by nearly 9 %[177]). Some of these languages are very old, have a rich cultural and literary heritage, and are spoken, in absolute terms, by a larger number of people than many modern languages in the world. Each of them prevails in fairly compact area. During the British rule, English was the language of administration, instruction, examination, communication amongst the elite, and on an all-India basis. As a result, the indigenous languages languished and never properly developed. In spite of its pre-eminent position, however, English was spoken only by a microscopic minority of people and could never become a mass language. When independent India adopted democratic government based on adult suffrage, retention of English as the language of administration appeared to be an anachronism for that would have effectively cut off vast numbers of people

[177]) The Indo-Aryan languages are derivatives from Sanskrit and are Assamese, Bengali, Gujarati, Hindi, Marathi, Oriya, Punjabi, Sanskrit, Urdu, Kashmiri and Sindhi. The Dravidian languages are Telugu, Tamil, Malayalam and Kannada and are prevalent in the South India. Two minor language groups are Austro-Asiatic and Tibeto-Chinese.

from any real participation in country's affairs making democracy meaningless. An Indian language had to take its place and the choice fell on Hindi for the simple reason that it was spoken by the largest single group in the country. But as the intelligentsia was accustomed to thinking and speaking in English and as there was also the problem of non-Hindi speaking people, it was decided to have a 15-year transitory period and during the transition to continue English for the official purposes of the Centre. The 15-year period was not, however, envisaged as an absolute deadline; Parliament was authorised to enact a law to provide for the use of English for specified purposes, if necessary, even after that period. To facilitate the change-over from English to Hindi, provision was made in 1955 for appointing an official language commission, consisting of people from all regional languages, to make recommendations for progressive use of Hindi for the Centre's official purposes, restricting the use of English for any such purpose and for the use of language (English, Hindi or the official language in a State) in the Supreme Court and High Courts[178]). The recommendations of the commission were to be examined by a parliamentary committee, elected through proportional representation, and then the Government of India, was to take necessary action. The Constitution also directs that Hindi should be developed so that it may serve as a medium of expression for all elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, forms, style and expressions used in Hindustani and in other regional languages and by drawing for its vocabulary primarily on Sanskrit and secondarily on other languages. The Constitution also provides for promoting development of the regional languages which are mentioned in a schedule[179]). These languages were to be representated on the commission mentioned above and have to be used for drawing words for developing Hindi. The States have been authorised to adopt a regional language or Hindi for their official purposes. As regards the federal problem of communication between the various governments, Hindi is to be used. Provisions have also been made in the Constitution for linguistic change-over in the Supreme Court and the High Courts and in the field of legislation. The idea underlying these provisions is that the change-over in these spheres has to be gradual and approach has to be flexible and cautious. A careful analysis of the above provisions would show

[178]) The commission was required to keep in view the industrial, cultural and scientific advancement of India and the just claims and interests of non-Hindi persons in regard to public services.

[179]) The following languages are mentioned in the VIII Schedule: Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, Urdu and Sindhi.

that a number of built-in safeguards have been provided for the non-Hindi speaking people[180]).

These constitutional provisions, though adopted with a near unanimity in the Constituent Assembly, did not, however, give a quietus to the language problem which has tended to erupt again and again during the past seventeen years. A major apprehension of the non-Hindi speaking people is that the adoption of Hindi will give an edge to the Hindi-speaking people in the affairs of the Union and, more importantly, in the Union services in which today the non-Hindi people enjoy a major share. The Official Language Commission was appointed in 1955; it reported in 1957 favouring a change-over to Hindi in 1965. Its recommendations, after being scrutined by a parliamentary committee, led to the enactment of the Official Languages Act, 1963, laying down that English "may" continue to be used in addition to Hindi, even after January 26, 1965. It also provides for appointing a parliamentary committee some time after January 26, 1975, to be elected on the basis of proportional representation by the two Houses of Parliament, to review the progress made in the use of Hindi for official purposes of the Union. Provisions have been made for Hindi translations of laws made in English and English translations of laws made in regional languages. A governor of a State can, with the previous sanction of the President, authorise the use of Hindi or regional language in the High Court concerned in addition to English, but an English translation of the judgment delivered is also to be issued. In this way, the Centre is to decide finally whether a change-over from English to Hindi or regional language is to be permitted in a particular High Court. Since the commission's recommendations in 1957, non-Hindi speaking people have been agitating for the continued use of English, and Prime Minister Nehru gave an assurance to them that English would be continued as an associate official language of the Union as long as they would want. Presently, the Government of India is considering developing a satisfactory amendment to the Act giving statutory force to this assurance[181]). Another step being contemplated to allay apprehensions of the non-Hindi speaking people with regard to the Union services is to hold competitive examinations for the same in all recognised regional languages so that none has an undue advantage over the other.

The language problem has also manifested itself in another way, viz., the linguistic re-organisation of the country. Much before independence, the Congress had accepted this policy. Several provinces contained several linguistic minorities, and several linguistic groups were scattered over a number

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[180]) Arts. 343–349, 351.

[181]) It is also proposed to permit use of English for intergovernmental communications.

of provinces. These factors created difficulties in administration and so linguistic re-organisation was thought to be the way out. When independence came, the leaders began to be assailed with doubts over the wisdom of this policy as they were afraid that linguistic chauvinism might generate parochial tendencies resulting in the weakening of the country. But the die had been cast; each language group wanted its autonomy so that it could develop its language and preserve its culture. A major re-organisation of the country thus took place in 1956[182]), but that was not the end of the problem, and it has posed a challenge to the Central Government since then. By now, the whole country has been divided into States based on languages, but some issues still remain to be solved, *e. g.*, Maharashtra-Mysore dispute regarding some border areas[183]), claim to Chandigarh, presently a Union Territory and which serves as the capital for both the States, by Punjab and Haryana. Another tricky problem, at present engaging the attention of the Centre, is the re-organisation of Assam, a State which consists of hillsmen and plainsmen and the former desire a more autonomous status for their cultural and economic development[184]). There are other groups like Mizos and Nagas asserting their identity more and more and their problem is also receiving attention. During the British days, administration of some of these areas was only nominal, and the demand for preservation of identity by these peoples is also to be looked at in the context of the efforts now being made to bring these areas in a closer integral relationship with the rest of the country.

The re-organisation of the States on a linguistic basis has led each State to adopt the regional language as the official language. As each State has one predominant language group, it is easier to run the administration in that language. There is the difficult question of medium of instruction. The Constitution lays down no formula for this purpose. Legislatively, the power vests in the States to decide what should be the medium of instruction subject to the over-all limitation that it should not result in the falling of standards in the university education[185]). As a policy-decision it appears to be now accepted that regional languages should replace English. At the same

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[182]) Sec. VI *supra*.

[183]) *Ibid.*

[184]) Various suggestions have been put forward for this purpose. Nehru proposed a Scottish pattern of set-up for the hillsmen. The Pataskar Commission looked into this formula with a view to give more opportunity to the Hill people in Assam to express themselves and maintain their identity. This did not satisfy the hill people. Then the idea of organising Assam as a sub-federation of two areas was put forth. The plainsmen oppose this solution. The hillsmen want either this or a separate State of their own. A difficulty in the situation is that even hillsmen are not uniform and there are divisions among them, and each group wants its identity to be preserved.

[185]) Note 75 *supra*.

time there is a danger that too much stress on regional languages might weaken the channels of communication between the various language groups and thus weaken the unity of the country. To mitigate this difficulty, a three-language formula is being sponsored which means that students should study the regional, the Union and an international language.

The re-organisation of States on a linguistic basis threw out the problem of linguistic minorities. Though each State has one major language group, yet people of other languages are not completely absent. It is now provided in the Constitution that each State would provide adequate facilities for instruction in the mother tongue at the primary stage of education to the children of linguistic minorities. To ensure a due observance of this provision, the Centre has power to issue necessary directions to a State for the purpose. Further, to protect the interests of linguistic minorities, a Special Officer for Linguistic Minorities, has also been appointed. His duty is to investigate all matters relating to safeguards provided for linguistic minorities under the Constitution and to report to the President upon such matters and this report is laid before Parliament[186]). Another institution where problems of linguistic minorities may be discussed and adjusted amongst the neighbouring States is the zonal council[187]).

Federalism in India is to meet a unique challenge which it has never faced before. It has to succeed in India as a mechanism to bind together a number of language groups. In other federations, the problem of such dimensions has not been encountered. Switzerland is a small, well-developed country and has three official languages. No language problem arises in the United States or Australia. Canada has a bilingual population, and both French and English are recognised as official languages. The U.S.S.R. has a polyglot population, but the Russian language has always been the language of politics, education and administration and it enjoys a special status in the country though other languages are also encouraged. India's problem is *sui generis* as it does not approximate any of the models mentioned here and, therefore, it will have to find its own solutions. Federalism in India has to play the great role of maintaining unity among diversity, but, although the challenge may be big, the task is not alien to the concept of federalism which is historically designed to drawing a balance between local particularism and national consciousness.

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[186]) The President of India can direct a State to recognise a language used by a substantial proportion of the State population (art. 347). A person can give representation for redress of his grievances to the Union or a State in any of the languages used in the Union or in the State, as the case may be (art. 350).

[187]) For zonal council see next section.

XII. Co-operative Federalism

In common with the dominant theme of co-operative federalism emerging in other federations[188]), India too has developed a number of instrumentalities and techniques for promoting intergovernmental co-operation. Reference has been made to some of these in the previous pages[189]), but a few more may be noted here. Under the constitutional provision pertaining to interstate council[190]), two advisory bodies have been established – (1) the Central Council of Health consisting of Union and State Health Ministers and (2) the Central Council of Local Self-Government consisting of the Central Minister of Health and the State Ministers for Local Self-Government and Village Panchayats. Under an Act of Parliament[191]), five zonal councils were established in 1956 to counter the apprehended lack of co-operation and communication amongst the linguistic States. The Northern Zonal Council consists of the States of Punjab, Haryana, Rajasthan, Jammu and Kashmir, and the Union Territories of Delhi and Himachal Pradesh; the Eastern Council comprises the States of Bihar, West Bengal, Orissa, Assam, Nagaland, and the Union Territories of Manipur and Tripura; the Western Council includes the States of Maharashtra and Gujarat; the Central Council comprises the States of Uttar Pradesh and Madhya Pradesh and the Southern Zonal Council includes the four southern States of Andhra Pradesh, Madras, Mysore and Kerala. Each council is composed of the Central Home Minister as chairman, each of the State Chief Ministers acting as vice-chairman in rotation for a year, two other ministers from each State and two members from each Union Territory. Each council has certain official advisers with a right to participate in discussions without vote. Generally, a zonal council, which is an advisory body, can discuss any matter in which some States, or the Centre and a State, may be interested; more particularly, it can discuss matters of common interest in the area of economic

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[188]) Notes 13, 23, 30, 31 *supra*. Corwin defines co-operative federalism as: "The States and National Government are regarded as mutually complementary parts of a single governmental mechanism all of whose powers are intended to realize the current purposes of government according to their applicability to the problems in hand", The Constitution of the U.S.A., Senate Document (1953), 14.

[189]) Some, like the Finance Commission and Interstate Council, are prescribed by the constitution, sec. IV, and note 117, *supra*. Some, like the Interstate Transport Commission, function under parliamentary legislation, notes 115 and 116 *supra*, and some, like the planning commission and the national development council, work under executive decisions, part IX *supra*.

[190]) Art. 263; note 117 *supra*.

[191]) The States Reorganisation Act, 1956.

and social planning, border disputes, linguistic minorities, interstate transport, or any matter arising out of the re-organisation of States. The council may advise the Centre and the States as to the action to be taken in any such matter. Provisions have been made for each council to have a secretariat and for several councils to hold joint meetings to discuss matters of common interest. Voting at the council meeting is member-wise and not state-wise, *i. e.* members representing a State can vote individually according to their own ideas and do not have to vote as a unit. These bodies have no executive or legislative functions. Their sole aim is to promote interstate co-operation by bringing together the States in a region so that they may discuss their common problems and suggest joint action to solve these problems. Association of a Central Minister helps in promoting consultation and mutual understanding between the Centre and the States in a region. These councils, although they do not have many spectacular achievements to their credit, have, nevertheless, helped in developing a common approach to some regional problems, *e. g.*, the southern council has been able to devise a system of safeguards for linguistic minorities in each State; the northern body has been devoting its attention to the development of the crucial hilly areas in the region, to introducing uniform rates of sales tax to promote interstate trade and commerce, and to introducing common training programmes for the administrative services; the eastern zonal council has agreed to form a common reserve police and a standing committee to review implementation of minority safeguards. These bodies provide forums for development of a community of interests transcending differences and rivalries amongst neighbouring States.

A body of great importance in the field of university education is the University Grants Commission. According to the Constitution [192]), university education is a State subject, but co-ordination and maintenance of standards in this area is a Central charge and it is to fulfil this function that the Centre has created the commission with broad powers. It can enquire into financial needs of the universities, allocate grants to the central universities, and to the State universities for development or for a specified purpose, recommend measures to improve university education and advise a university upon action to be taken for this purpose, advise the Central or a State Government on allocation of any grant to universities for any general or specified purpose out of the Central or State funds, advise on establishing a new university, collect information regarding university education in India and abroad, require a university to furnish it with information regarding its

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[192]) Notes 75 and 185 *supra*.

financial position, standards of teaching, examination and courses of study, advise on any question referred to it and perform such other functions to advance the cause of higher education as may be incidental or conducive to discharging its functions. The commission can inspect a university for ascertaining its financial needs or teaching standards, recommend to the university action to be taken, and withhold grants if the university fails to comply with its recommendations. The funds of the commission come from the Centre. A distinction is drawn for purpose of grants between the Central and the State universities; for the former, the commission grants funds both for maintenance and development, but for the latter it can do so only for development, maintenance being a charge on the State Government concerned. The commission is an autonomous body and mitigates the difficulties which may otherwise arise in the field of university education because of its being a State matter. The commission ensures that a minimum standard will be maintained by each university. In the ultimate analysis, the sanction behind the commission is financial as it can withhold grants from a defaulting university. It is also an instrument through which the Centre can supplement the financial resources of the State universities. But the efficacy of the commission depends on how much funds it has to disburse among the universities. Paucity of funds has been a limiting factor. Further, the commission's efficacy is also restricted by the requirement that it can give funds to the State universities only for development and these universities have therefore to look to the State Governments for sizable funds for their maintenance, and even the commission's grants can be frustrated by a State not matching the grants which is usually a condition attached by the commission for its grants to the State universities. To the extent these inhibitions can be removed from the commission, to that extent its influence in the area of the university education can be strengthened.

The Damodar Valley Corporation, a joint enterprise of the Centre and the two States of Bihar and West Bengal, has been established under a Central law[193]) to develop the interstate valley of the Damodar River for irrigation, power and flood control. The corporation consists of three members appointed by the Central Government in consultation with the State Governments. In discharge of its functions, the corporation is to be guided by instructions on questions of policy issued by the Centre. The corporation's annual reports are laid before Parliament and the two State Legislatures. A basis for apportioning costs of the programmes executed by the corporation among various governments has been laid down in the Act. In case of a

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[193]) Notes 52 and 113 *supra*.

dispute, the matter is to be referred to an arbitrator appointed by the Chief Justice of India and the arbitrator's decision is to be final.

The above is only an illustrative, and not an exhaustive, description of the various bodies and institutions of intergovernmental co-operation functioning under the Constitution, the statutes and the administrative practices. Besides, conferences of the Central and State Ministers are held from time to time to discuss many matters of the Central-State relationship, and thus understanding and co-operation amongst the various governments is sought to be promoted to achieve the desired national goals[194]). Reference has already been made to the role of the Congress Party as a medium of cohesion amongst the various governments[195]), but this instrumentality is now no longer available in the changed political context of the country.

Needless to say that India can successfully face its many problems only when the Central and State Governments pull their weight together. When the Congress dominated the scene, intergovernmental frictions were kept in a low key, but in the new variegated political context, for sometime to come, there may be a tendency in State Governments to bolster up these differences and bring them into the open; there may be a greater emphasis on regional problems; and some governments may play for political advantage rather than try to solve the issues before the nation, in a constructive manner. In a federation, it is not unusual to have several political parties controlling various governments. To some extent, federalism may be likened to the fundamental rights. Just as the fundamental rights safeguard individual freedom against encroachment by the government, so also federalism seeks to maintain local identity against national policies. But then a balance has to be drawn between the two; regionalism cannot be pressed beyond the point when it becomes a threat to national integrity. This essential point has to be kept in view by the State Governments in shaping and moulding their relationship with the Centre. For years to come, the Centre has to play a dynamic role of leadership if the country is to make rapid strides. Though the Constitution provides adequate powers to the Centre to fulfil its role, yet, in actual practice, the Centre can maintain its dynamism and initiative not through a show of its powers – which should be exercised only as a last resort in a demonstrable necessity – but on the co-operation of the States secured through the process of discussion, persuasion and compromises. All governments have to appreciate the essential point that they are not independent but interdependent, that they should act not at cross-purposes but in union for the maximisation of the common good.

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[194]) Sec. IX *supra.*
[195]) Sec. I *supra.*

Federalism is not a static but a dynamic concept. It is always in the process of evolution. There is, therefore, no reason to doubt that the Indian Federalism also, with necessary adjustments, will be able to achieve a viable relationship between the Centre and the States in the new political context.