COMMISSION
ON
CENTRE-STATE RELATIONS

REPORT

PART I

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, NASIK-422 006
1988

CONTENTS

APPENDICES

INTRODUCTION

The Constitution of India envisages two tiers of government, one at the level of the Union, and the other at the level of the States. From the functional standpoint, such a Constitution is not a static format, but a dynamic process. Within this process, the interplay of centrifugal and centripetal forces influenced by a changing social, economic and political environment, constantly strives to find a new adjustment of the balance between unity and diversity.

The very dynamism of the system with all its checks and balances brings in its wake problems and conflicts in the working of Union-State relations. Stressess, strains and irritations generated by such problems may stifle the working of the system and endanger the unity and integrity of the country. It is, therefore, necessary to review from time to time, in the light of the past experience, the evolution of Union-State arrangements not only for the purpose of identifying persistant problems and seeking their solutions, but also to attune the system to the changing times so that propelled by a spirit of common endeavour and cooperative effort it takes the country ever forward towards the social welfare goals set out in the Constitution.

The Constitution has been in operation for the last 37 years. A review of the administrative aspects of Union-State relations was made by the Administrative Reforms Commission (1966-70). Much has happened since then in the realm of Union-State relations. In the wake of social, economic and political developments over the years, new trends, tensions and issues have arisen. 'Consensus States while keeping in view the social and economic developments that have taken place over the years. The review will take into account the importance of unity and integrity of the country for promoting the welfare of the people". She further enunciated that the Commission would examine "the working of the existing arrangements between the Centre and the States and recommend such changes in the said arrangements as might be appropriate within the present constitutional framework".

She declared that the Commission will review the existing arrangements between the Centre and the States while keeping in view the social and economic developments that have taken place over the years. The review will take into account the importance of unity and integrity of the country for promoting the welfare of the people". She further enunciated that the Commission would examine "the working of the existing arrangements between the Centre and the States and recommend such changes in the said arrangements as might be appropriate within the present constitutional framework".

Terms of Reference

The Commission was formally constituted per Government of India, Ministry of Home Affairs Notification No. IV/11017/1/83-CSR, dated June 9, 1983. Subsequently, two more members were inducted. Shri B. Sivaraman was appointed on July 7, 1983 and Dr. S. R. Sen on July 27, 1983.

The terms of reference of the Commission, as enunciated in this Notification, are as under :

"2. The Commission will examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate.

3. In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people".

The expression "arrangements", used twice in the context of the phrase "between the Union and the States", is of wider amplitude than the word "relations" occurring in the main caption of Part XI of the Constitution. It includes all inter-Governmental relations whether founded on or arising from or related to constitutional or statutory provisions, or administrative practices and conventions including the mechanisms through which they are worked.

The scope of the "Terms of Reference" would include an examination and review of the working of—

(a) the constitutional provisions in regard to "powers, functions and responsibilities" of the Union and the States having a bearing on the role of the Union and the States in relation to each other "in all spheres";

(b) the statutes having an inter-face between Union and States, particularly the extent to which they impinge upon each other's area of responsibility and functions;

(c) the administrative practices and conventions involving inter-action between the Union and the States in various areas of concurrent or separate responsibility, such as, planning, devolution of financial resources and financial grants, civil supplies, etc., including the mechanisms or agencies through which these functions are channelised.

In reviewing the arrangements and making recommendations as to changes and measures needed,

the Commission is required by the Terms of Reference, to—

(i) "keep in view the social and economic developments that have taken place over the years"; and

(ii) "have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance.....".

No. (i) would include, *inter alia*, social and economic developments that have taken place in pursuance of the Directive Principles of State Policy enshrined in the Constitution. Since these Directives are fundamental in the governance of the country, it is implicit that nothing is to be suggested or recommended which may thwart or undermine the implementation of that policy. This guideline does not preclude the Commission from taking into account political developments that have taken place or may take place in future, providing they have an impact on Union-State relations. Indeed, many of the problems arising from or concerning the "arrangements" between the Union and the States are inextricably intertwined with political issues.

As per (ii), the Commission is mandated that in its task it will have "due regard" to the "scheme and framework" of the Constitution. The criteria for identifying such "scheme and framework", as broadly indicated, are—

(a) that these have been 'sedulously designed by the founding fathers to protect the independence and ensure the unity and integrity of the country'; and

(b) that these are 'of paramount importance for promoting the welfare of the people'.

These criteria are illustrative, but not exhaustive.

The words "in the working", used twice in the context of "between the Union and the States", indicated that the primary endeavour of the Commission should be to find solutions to the various problems in the functional aspect of Union-State arrangements. The Commission may suggest structural changes when it finds that a persistent problem or dysfunctioning of these arrangements is due to some deficiency in the framework of the Constitution.

Some Initial Difficulties

In the initial stages, the Commission was faced with a number of difficulties which impeded its becoming promptly and fully operational. There was considerable delay in the appointment of staff and provision of proper office accommodation and facilities. The Commission could not settle down to its task till February, 1984. Another factor that caused delay and dislocation in its working, was the frequent transfers of the Secretaries of the Commission. As many as three Secretaries were appointed during the tenure of the Commission. Difficulties were also experienced in filling up posts at various levels promptly with suitable persons.

Collection of Basic Information

Preliminary Steps

The first task of the Commission was to collect basic information. For that purpose, several preliminary steps were taken. A public notice was issued and advertised in all leading newspapers of India inviting from all interested individuals, knowledgeable persons, organisations and other sources, information and factual data which would facilitate the identification of the problems, issues and difficulties experienced in the working of Union-State arrangements in the legislative, administrative, fiscal, economic and other spheres.

The Chairman wrote demi-officially to ninety former Chief Ministers and other eminent persons of different States soliciting such information and their views. Research dossiers were culled and relevant data collected from various publications, including proceedings of public seminars, debates and reports of former Commission, Committees, Studies, decisions of the Supreme Court and High Courts having a bearing on any aspect of Union-State relations. Communications were sent to all the State Governments requesting for information about the specific difficulties, if any, encountered by them in the working of these arrangements.

In January, 1984, a Questionnaire consisting of 109 questions divided into seven parts, *viz.*, Introductory, Legislative Relations, Role of Governor, Administrative Relations, Financial Relations, Economic and Social Planning and Miscellaneous including Industry, Trade and Commerce, Agriculture, Food and Civil Supplies, Education and Inter-Governmental Coordination, was issued. No less than 6800 copies of the Questionnaire, in English and 500 copies, in Hindi, were issued to Members of Parliament, Members of State Legislatures, Governors, ex-Governors, Chief Ministers, ex-Chief Ministers, Vice-Chancellors of Universities, Institutions, Journalists, Jurists, Statesmen, Economists, Trade Unions, former Members of Constituent Assembly and different political parties. Copies of the Questionnaire were also sent to the Union Government and its Heads of Departments.

Supplementary Questionnaires, each containing a set of about 10 or 12 questions on technical issues, were circulated to the specialists concerned including Central Government Ministries, State Governments, eminent Jurists, former Governors, distinguished Statesmen and others.

Response to the Commission's communications from the best informed sources, *viz.*, the State Governments, was far from being prompt. Their replies trickled in very slowly. When a reply was received, action was immediately initiated to hold a meeting of the Commission with the Chief Minister of the State with a view to obtaining further clari-

fications in respect of the important issues highlighted in the reply. However, there were delays in arranging for such meetings also. The following table gives the dates on which the replies were received and the dates on which meetings were held :

	Date of receipt of reply	Date of meeting
1. Madhya Pradesh	1-2-1984	3-8-1984
2. Kerala	4-6-1984	6-6-1984
3. West Bengal	3-8-1984	19-11-1984
4. Tripura	29-8-1984	19-2-1985
5. Himachal Pradesh	29-8-1984	17-9-1984
6. Nagaland	17-12-1984	27-9-1985
7. Karnataka	18-1-1985	10-4-1985
8. Assam	23-2-1985 30-7-1987	25-2-1985
9. Orissa	6-5-1985	6-7-1985
10. Andhra Pradesh	22-5-1985	12-6-1985
11. Haryana	24-6-1985	12-3-1986
12. Bihar	16-8-1985	19-12-1985
13. Meghalaya	29-9-1985	1-10-1985
14. Maharashtra	17-10-1985	21-11-1985
15. Tamil Nadu.	3-12-1985	31-12-1985
16. Uttar Pradesh	23-12-1985	20-1-1986
17. Gujarat	24-7-1986	20-11-1986
18. Sikkim	28-7-1986	Not held
19. Rajasthan	22-10-1986	19-3-1987
20. Manipur	19-12-1986	20-2-1987
21. Jammu & Kashmir	31-12-1986	16-2-1987

It will be observed that, during the first two years of the Commission's tenure, replies were received from only 10 State Governments.

Punjab was received ernment of Punjab was received Due to imposition prpril, 1987. Due to imposition lay, 1987, discussion rorom 11th May, 1987, discussion could not be held overnment could not be held. Meetings were, however, held on 29-6-1987 and 14-7-1987 with the former Chief Minister, Shri S. S. Barnala who had signed the State Government's response, when in office, but appeared before the Commission as President of Akali Dal (L) Party. This opportunity was utilised to discuss the memorandum of the State Government also. No response was received from the Governments of Arunachal and Mizoram. Submissions were, however, received from two Union Territory Administrations of Goa and Pondicherry on 11-11-1985 and 2-1-1986 respectively and discussions were also held with them. Responses were received and meetings were held with Ministers of Union Government as under :

	Date of meeting
1. Shri Ajit Kumar Panja, Minister of State for Planning	21-5-1986
2. Shri G. S. Dhillon, Union Minister for Agriculture	27-5-1986
3. Mrs. Mohsina Kidwai, Union Minister for Health and Family Welfare	29-5-1986
4. Shri N. D. Tiwari, Union Minister for Industries	30-5-1986
5. Shri P. Shiv Shankar, Union Minister for Commerce	3-7-1986
6. Shri Vishwanath Pratap Singh, Union Minister for Finance	8-7-1986
7. Shri P. V. Narasimha Rao, Union Minister for Human Resource Development	18-8-1986
8. Shri Buta Singh, Union Minister for Home Affairs	20-8-1986

Further, there was considerable delay in receiving replies to our Questionnaire and communications from most political parties of all-India stature. The following are the details of the dates when their replies were received and the dates on which meetings were held with the party representatives :—

	Date of receipt of reply	Date of meeting
1. Communist Party of India (Marxist)	30-3-1984	8-10-1984
2. Communist Party of India	24-4-1984	9-4-1986
3. Janata Party	5-7-1985	12-3-1986
4. Bharatiya Janata Party	12-2-1986	10-4-1986
5. Lok Dal	13-3-1986	17-3-1986
6. All India Congress Committee (Socialist)	2-5-1986	2-5-1986
7. All India Congress Committee (I)	30-5-1986	30-5-1986

The number of replies in response to the Questionnaire of the Commission was 405, including the Memoranda received from the State Governments. This figure does not include information received or collected by other modes.

The Commission set up four Study Teams to assist it in the study and analysis of all relevant material collected, including that received by it in response to the Questionnaires. Each team was headed by a Director. The distribution and coordination of the studies in their day-to-day working was supervised and coordinated by the Joint Secretary and the Secretary under the overall superintendence and direction of the Commission.

The broad topics of the study included—historical background and evolution of the Constitution; proceedings of the Constituent Assembly; Union-State arrangements and their working in the legislative, administrative, financial, socio-economic and other relevant spheres. The Constitutions of some federations, *inter alia* of Australia, Canada, Federal Republic of Germany, Switzerland, USA, USSR and Yugoslavia were also studied. A few experts from some of these countries met members of the Commission or wrote letters or sent documents on some matters.

From June 1984 onwards, the Commission visited 15 States and two Union Territories and held discussions with their Governments. During these visits, eminent publicmen, academicians, leaders of political parties and others located in those States, were also interviewed. The tour programmes to the States were fixed after prior consultation with the State Governments, who had either sent their Memoranda in advance or had done

so shortly before or during the visit to those States. These conferences were essential for elucidating many points which were either left obscure in their memoranda, or were peculiar to the conditions in those States. The Commission could not visit the States of Gujarat, Haryana, Jammu and Kashmir, Manipur, Punjab, Rajasthan and Sikkim, due to constraint of time as the memoranda of these Governments were received at a very late stage. Discussions with these State Governments, except the Government of Sikkim were held at the Commission's office in New Delhi. Sikkim Government felt that they have nothing to add more than what they have spelt out in replies to Questionnaire, submitted to the Commission.

The Commission has interviewed more than 850 individuals including Union Ministers, Chief Ministers, former Union Ministers, former Chief Ministers and State Ministers, Jurists, political parties, scientists, journalists, editors of leading newspapers and magazines, scholars, economists, fiscal experts, Parliamentarians, leader of political parties, senior officials of the Union Government, etc.

The Commission had the privilege of holding discussions with following members of the Constituent Assembly, in a group, on October 29, 1984 at New Delhi :

1. Shri R. R. Diwakar
2. Shri M. L. Dwivedi
3. Shri K. K. Jain
4. Shri R. L. Malviya
5. Dr. Mohan Singh Mehta
6. Shri S. Nijalingappa
7. Ch. Ranbir Singh
8. Prof. N. G. Ranga
9. Smt. Renuka Ray
10. Shri Satish Chandra
11. Pt. Ram Sahai Tiwari
12. Shri Kishori Mohan Tripathi

These apart, some other Members of the Constituent Assembly including Sarva Shri O. V. Alagesan, M. R. Masani, C. M. Poonacha, C. Subramaniam, Kalu Ram Virulkar, Dr. Hare Krishna Mehtab and Dr. Satyanarain Motturi were interviewed during the visits to the States. The Commission acknowledges the debt of gratitude which it owes them for having taken the trouble of appearing and giving the Commission the benefit of their valuable suggestions, discussions and information.

The task before the Commission covered a very wide spectrum. It had to sift virtually a cartload of material and data. Hence a selective approach became imperative so that its attention could be focussed on major and important issues.

The Commission noticed that there was near unanimity among all sections of public opinion on some of the major issues, particularly in regard to the imperative necessity of establishing an Inter-State Council.

The Commission's report consists of two Parts. The first Part contains the main report and the second the memoranda received from the State Governments and political parties. The report covers issues which have a direct bearing on inter-Governmental relations in legislative and administrative sphere and also the need for establishing a standing Inter-State Council under Article 263, to ensure inter-governmental coordination. It also includes related matters, such as, the Role of the Governor, Emergency Provisions, Deployment of Union armed forces in a State to help maintain public order, Reservation of State Bills for consideration of the President and All-India Services. The report further covers inter-governmental relations germane to socio-economic development, *viz.*, Financial Relations, Economic and Social Planning, National Economic and Development Council and miscellaneous items such as Agriculture and issues relating to industry, mines and minerals, inter-State trade and commerce, inter-State river disputes, forests, food and civil supplies and mass media. Lastly, the report contains miscellaneous matters like Language, Union Territories and General observations and Conclusions.

To start with, the Commission had no library of its own. It had to draw copiously for books and law reports on the Library of the Supreme Court. The Commission acknowledges with thanks the general permission granted so generously by the Chief Justice of India for the use of the Court's library. A report dealing with a subject as vast and complex as review of Union-State relations reflects the sum-total of the conclusions based on a study and analysis of the information drawn from publications which are too numerous to acknowledge. Nonetheless, the Commission expresses a special debt of gratitude towards the eminent authors of the publications and reports, a bibliography of which is given at the end of Part I.

The Commission has great pleasure in acknowledging the dedicated and painstaking work put in by the entire staff. The Commission records its appreciation of the valuable assistance rendered to it by the Directors and the Consultant. The teams functioning under the immediate control and guidance of the Directors greatly facilitated the task of the Commission by their patient work in critically analysing the mass of evidence received and the carrying out valuable studies for the Commission. Special mention must be made of the meritorious work done by the Directors, S/Shri B. P. Sinha and B. M. Rao. Way back, the latter had assisted the Study Team of the Administrative Reforms Commission and earned distinct recognition. By dint of dedicated and distinguished work as Director he has raised himself still higher in the estimation of this Commission. He was very ably assisted by Shri R. R. Mittal, Senior Research Officer, who brought to bear his rich experience on the work before the Commission. In the complex field of financial relations and Economic and Social planning Shri B. P. Sinha distinguished himself.

Shri M. K. Moitra, IAS was the Joint Secretary to the Commission for most of its term till the completion of his tenure on deputation. He organised

the studies with firm determination and devotion. Through his intensive and extensive studies he made very valuable contribution to the Commission's work. His successor Shri A. K. Verma, joined the Commission only a short time before the expiry of its term. He ensured the completion of the Report according to schedule under his overall supervision. The Commission acknowledges with thanks the work done by the Joint Secretaries.

The Commission was fortunate to have as its Secretaries very able and dedicated officers. At the inception of the Commission, Shri K. A. Ramasubramaniam, IAS was its Secretary. He took all preliminary steps, including the issue of the questionnaire, organisation of the Study Teams and the office establishment, arrangement of office accommodation, collection of basic information, preparation of discussion papers, etc., which were essential for making the Commission operational. Just when the Commission had embarked on the second phase of its work requiring visits to the States and discussion with the State Governments, he retired on attaining the age of superannuation. Shri G. V. Ramakrishna, IAS succeeded him. With great drive he galvanised the work of the Study Teams and accelerated the tempo of work. Comprehensive Notes prepared by him on certain topics helped to concretise the results of the discussions and deliberations of the Commission. Though his tenure with the Commission was short, yet the exemplary direction he gave to the Studies, endured. In the last but the longest and the most crucial phase of the Commission's work, Shri D. Sankaraguruswamy, IAS was its Secretary. The brunt of the work as the Chief assistant to the Commission and principal supervisor of the Studies fell on him. He assisted the Commission not only in its deliberations but also in drawing up its report. There is hardly any sentence in this voluminous Report which has not passed his masterly scrutiny. The Commission acknowledges with gratitude the commendable assistance rendered by him in its task pertaining to all spheres of Union-State relations.

Mention must also be made of Shri Ramesh Sharma, Senior Research Officer incharge of the Coordination Division, who painstakingly arranged all the visits of the Commission to the various States as also personally supervised the work of getting ready the report in its final shape.

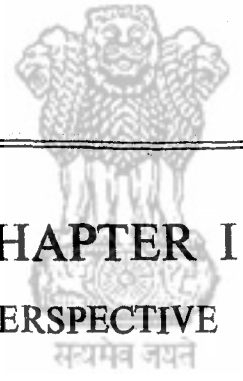
Though the Commission has acknowledged by name the outstanding work of a few officers, the Commission is conscious of the contribution of the other members of the Staff. The ministrial staff, under the direction of the Joint Secretaries whole heartedly cooperated in the successful completion of the task entrusted to them. The Chairman and the Members of the Commission also place on record with thanks the outstanding work of the personal staff who attended to them and other officers of the Commission.

Sd/-

(JUSTICE R. S. SARKARIA)
Chairman

Sd/-
(B. SIVARAMAN)
(*Member*)

Sd/-
(DR. S. R. SEN)
Member



CHAPTER I

PERSPECTIVE

CONTENTS

CHAPTER I

PERSPECTIVE

1. INTRODUCTION

1.1.01 The terms of reference enjoin us to examine and review the working of the existing arrangements between the Union and the States, keeping in view the socio-economic developments that have taken place and having due regard to the scheme and framework of the Constitution designed to protect the independence and ensure the unity and integrity of the country. This task requires not only an analysis of the Constitutional arrangements, but also their *raison d'etre* and the manner in which these have been put to use so far.

1.1.02 A Constitution is not a static frame but "an organic living institution". This is particularly true of a flexible, yet resilient, Constitution like that of India, designed to meet the needs and problems of a changing society for generations to come. Nonetheless, due to the dynamic interplay of socio-economic, political and other forces, the intent and actual working of the Constitution some time tend to diverge.

1.1.03 For a proper appreciation of the problems and issues that have arisen in the working of Union-State arrangements in the past 37 years, it is necessary to examine briefly the historical processes which influenced the framing of the Constitution, the Union envisaged by it, the subsequent socio-economic and political developments including the divergence between its principle and practice and its causes.

1.1.04 This Chapter which seeks to provide a perspective for our report contains four sections, apart from the very brief introduction given above. The next Section gives a short historical background. Section 3 deals with the nature of the Indian Union. Section 4 contains a survey of the socio-economic and political compulsions, and Section 5 gives an outline of the major issues in Union-State relations.

2. *HISTORICAL BACKGROUND*

1.2.01 India has geo-political and historical characteristics which have few parallels. Its size and population, geographical, linguistic, religious, racial and other diversities give it the character of a sub-continent. But its natural boundaries marked by mountains and seas, serve, to identify it as a separate geographical entity. This insularity, over the years, led to the evolution of a composite cultural unity, a feeling of common heritage and a pervasive under-current of one-ness. These gave the country the character of a general Indian personality.

1.2.02 India's history is replete with brief periods of political unity and stability followed by spells of dissension, chaos and fragmentation. The strongest kingdoms, from time to time, became empires, extending their sway, more or less, to the natrual boundaries of the sub-continent, bringing under their suzerainty the local principalities and kingdoms. But, undue centralisation often proved counter-productive and triggered a chain reaction of divisive forces. Whenever, due to this or other causes, the central authority became decadent and weak, the fissiparous forces became strong and led to its disintegration, sometimes tempting foreign invaders to conquer the country.

1.2.03 Another significant fact that stands out in India's history is that the provinces and the local Governments in the various empires, from the Mauryas to the Mughals, enjoyed considerable degree of autonomy. As noted by the historian, Sir Jadunath Sarkar, in ancient empires "each province led its own life, continued its old familiar system of Government (though under the agents of the central power) and used its local language". Whenever an over-ambitious emperor attempted centralisation by steam-rolling the local autonomy, it evoked strong resentment and reaction. Such extreme centralisation proved not only detrimental to administrative efficiency, but, in counter-effect, weakened the capacity of the Central power to maintain its hold over sub-national forces on a stable and enduring basis. The last of the great Mughals made a strong bid for complete centralisation and abolition of traditional diversities and autonomy of the regions. Soon after his death, the regional forces discarded the mantle of the Central authority. Governors of the Provinces and local chieftains asserted their independence and the entire structure crumbled.

1.2.04 The British also, at the commencement of their regime, tried to centralise all power. But they soon realised, especially after the traumatic consequences of Dalhousie's policies, that it was not possible to administer so vast and diverse a country like India without progressive devolution or decentralisation of powers to the Provinces and local bodies.

1.2.05 The administration of the country was taken over directly by the British Crown in 1858. A notable fall-out of the conflict in 1857 was the discovery by the British that the Princely States in India could be a source of strength for the maintenance of the British power. As a result, they discontinued their policy of expanding further their 'direct rule' in the sub-continent and preferred 'indirect rule' for these States. But the bulk of the 500 and odd Princely States were 'autonomous' only to a limited extent. In all important matters, they were no less submissive in practice to the

suzerain power than the British Indian Provinces. In the remote and inaccessible areas, strong local tribal customs and beliefs had to be given due regard and these areas, with long history of isolation, retained varying degrees of autonomy.

1.2.06 Too centralised an administration was found to be incompatible with the size and diversity of the country. It bred administrative inefficiency and local discontent. Some decentralisation became inevitable. The first small but significant step in this direction was taken by the Indian Councils Act, 1861. It reversed the centralising trend that had been set by the Charter Act of 1833. It provided for participation by non-officials in the Legislative Council of the Governor-General. Similar provisions were made for the Legislative Councils of the Provinces. The principle of indirect election to these Legislative Councils was established in 1892 and the functions were enlarged to include the right of discussion of the budget and interpellation in matters of public interest.

1.2.07 An important factor which helped and sustained the evolution of a 'dispersed' political system in India, was the decentralisation of finances. This process started with the Mayo Scheme in 1871 and continued till it was formalised by the Government of India Act, 1919.

1.2.08 Association of Indians with local self-government through elected municipalities and district boards was initiated in 1882 by Lord Ripon, along with the gradual transformation taking place in the legislative sphere. The authority allowed to these institutions was, however, very limited and was to be exercised under the watchful eyes of the officials.

1.2.09 The long-drawn-out struggle for self government by the Indian National Congress, joined by the other political parties formed later, led to the growth of Indian nationalism. Modulating their strategy step by step with the mounting demands and persistent pressures of the nationalist movement, the British started devolving more and more powers to the Provinces, involving increasing association of Indians on the one hand and promoting divisive forces on the other.

1.2.10 By the Indian Council Act, 1909 (Morley-Minto Reforms) the British further extended the association of Indians with the governance of the country but on the basis of separate electorates, narrow franchise and indirect election.

1.2.11 The Government of India Act, 1919[1] ushered in the first phase of responsible Government in India. It was a significant step in the development of a two-tier polity. While conceding representative government in a small measure in the Provinces under a 'dyarchical' system, it demarcated the sphere of Provincial Governments from that of the Centre. By the Devolution Rules framed under the Act, powers were delegated to the Provinces not only in the administrative but also in the legislative and financial spheres. For this purpose, separate Central and Provincial Lists of subjects were drawn up. The last item in the Provincial List allotted to the Provinces "any matter though falling within the Central subjects is declared by the Governor-General-in-Council to be of a merely local or private nature within the Province". The subjects in the Provincial List were further subdivided into 'reserved' and 'transferred' subjects. The Departments dealing with the 'transferred' subjects were placed in the charge of elected Ministers responsible to the Provincial Legislature, while Departments in respect of 'reserved' subjects were administered by the Governor with the assistance of an Executive Council nominated by him. Although with respect to 'transferred' subjects, the Provinces derived substantial authority by devolution from the Central Government, yet the Governor-General-in-Council remained in control at the apex of this centralised system, ultimately responsible to the Secretary of State for India in the U.K. There was also a third List regarding taxation powers of local bodies.

1.2.12 The reforms of 1919 failed to meet the aspirations of the people for full responsible government. In reality, the structure remained unitary with the Governor-General-in-Council in effective ultimate control. Finance was a 'reserved subject' in charge of a member of the Executive Council and no progressive measures could be put through without his consent. The main instruments of administration, namely, the Indian Civil Service and Indian Police were under the control of the Secretary of State and were responsible to him and not to the Ministers. The Governor could act in his discretion otherwise than on the advice of the Ministers. No Bill could be moved in a Provincial Legislature without the permission of the Governor-General. No Bill could become law without his assent.

1.2.13 The intense India-wide agitation carried on by the political parties for full responsible government, evoked a partial response from the British Government. In November 1927, they appointed a Statutory Commission under Sir John Simon for considering the grant of a further instalment of responsible Government. All the seven members of the Commission were British. The Indian National Congress and all other leading political parties boycotted the Commission. The Congress pressed the British Government to accede to the national demand for convening a Round Table Conference or Constituent Assembly to determine the future Constitution of India.

1.2.14 The British Government published a White Paper in 1933, embodying the principles of constitutional reforms in India. This, *inter alia*, sought to extend 'separate' electorates further to Scheduled Castes and Tribes, which had to be withdrawn after a protest "fast unto death" by Mahatma Gandhi. These proposals were considered by the Joint Select Committee of the British Parliament. On the basis of the Select Committee's Reports, a Bill was drafted and enacted in 1935 as the Government of India Act. The Federal subjects were classified into 'reserved subjects' and 'transferred subjects'. The Governor-General administered the 'reserved subjects' with the assistance of Councillors, and the 'transferred subjects' with the aid of the Council of Ministers

(1) The Montagu-Chelmsford Report led to this enactment.

responsible to the Central legislature. Wide discretionary powers were given to the Governor-General. Instrument of Instruction issued under the Act enabled the Governor-General to include, in his discretion, in his Council of Ministers representatives of the minorities and Indian States.

1.2.15 The Act envisaged an all-India Federation which was to consist of 11 Governor's Provinces, 6 Chief Commissioner's Provinces and such Indian States as would agree to join the federation. So far as the British Provinces were concerned it was obligatory for them to join the federation. The Governmental subjects were divided into three Lists—Federal, Provincial and Concurrent. The Legislatures of the Provinces were given exclusive power to legislate with respect to matters in the Provincial List. Similarly, the Central Legislature had the exclusive power to legislate with respect to matters in the Federal List. The Centre and the Provinces had concurrent jurisdiction with respect to matters in the Concurrent List. The Act thus introduced Provincial autonomy with responsible Government. However, certain safeguards by way of special powers and responsibilities were provided, which detracted from the concept of responsible government. Subject to the limitations provided therein, the Act allocated to the Federal and Provincial Legislatures plenary powers, making them supreme within their respective spheres.

1.2.16 The part of the Act which contemplated the inclusion of the Princely States never came into operation as the States did not opt to join the federation. However, its provisions relating to the Provinces came into effect in 1937 when elected governments responsible to legislatures, assumed office in the Provinces. But there was a deadlock when the Government of India declared a "state of war" without consulting the Legislatures. Governments in Provinces led by the Congress Party resigned in protest in 1939. Further, during the Second World War, a number of measures were introduced which considerably curtailed the powers of the provincial governments and virtually nullified provincial autonomy.

1.2.17 The Government of India Act, 1935, is nevertheless an important milestone in the history of constitutional devolution of power particularly from two stand-points. Firstly, it constitutionally distributed powers between the Centre and the Provinces. Secondly, subject to certain safeguards, it introduced representative government at the Provincial level responsible to the Provincial Legislature.

1.2.18 In March, 1942, Sir Stafford Cripps came th proposals of the British Government to resolve e political deadlock in India. These proposals visaged that a Constituent Assembly, elected rough proportional representation by the Provincial Legislatures, would frame a new Constitution for India after the cessation of hostilities. The British Government would accept the new Constitution subject, *inter alia*, to the condition that any Province would opt out of it and retain its constitutional position as in the 1935 Act. The Cripps proposals were rejected by all sections of public opinion in the country.

1.2.19 The next important event in the Constitutional history was the announcement of the British Cabinet Mission Plan by Mr. Attlee, the British Prime Minister, on May 16, 1946. It envisaged a Central Government with very limited powers and relatively strong Provinces having considerable degree of autonomy with all the residuary powers. The Indian National Congress had, on the other hand, throughout its long struggle for independence, emphasised the need to safeguard the unity and integrity of India. In the hope, however, of securing the co-operation of the Muslim League and thereby preventing the threatened partition of the Country, they accepted the Cabinet Mission Plan. The Objectives Resolution moved by Pandit Nehru on December 13, 1946 in the Constituent Assembly, was based on this Plan, although he was all along very apprehensive about it. But, all such concessional resolutions, conciliatory gestures and persuasive efforts failed to keep the country united. And, the partition of the Country was announced on June 3, 1947.

1.2.20 The Constituent Assembly thereupon sharply reversed its approach and resolved in favour of a Strong Centre. This reaction found unequivocal expression in the Second Report of the Union Powers Committee, dated July 5, 1947 : "Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak Central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern ..... and that the soundest framework of our Constitution is a federation with a "strong Centre".

1.2.21 The primary lesson of India's history is that, in this vast country, only that polity or system can endure and protect its unity, integrity and sovereignty against external aggression and internal disruption, which ensures a strong Centre with paramount powers, accommodating, at the same time, its traditional diversities. This lesson of history did not go un-noticed by the framers of the Constitution. Being aware that, notwithstanding the common cultural heritage, without political cohesion, the Country would disintegrate under the pressure of fissiparous forces, they accorded the highest priority to the ensurance of the unity and integrity of the country. As aptly observed by an eminent jurist, "the founding fathers were painfully conscious that the feeling of Indian nationhood was still in the making and required to be carefully nurtured. They therefore built a constitutional structure with a powerful Central Government envisaging the emergence of an indivisible and integrated India".[2]

1.2.22 It was realised that, in India, democracy was yet in its infancy and to prevent or remedy possible breakdowns of Constitutional machinery in the constituent units, it was essential to invest the Union with over-riding powers.

1.2.23 The contemporary events also had an inevitable impact on the formulation of the Constitution. The large-scale communal violence and the influx

(2) Setalvad, M.C.—"Union and State Relations under the Indian Constitution" (Tagore Law Lectures), page 31.

of millions of uprooted persons from Pakistan brought in their train colossal problems which could be tackled only with the pooled strength and resources of the nation.

1.2.24 Even as the Government was struggling to deal with the problems arising out of the partition, Jammu and Kashmir was invaded by outside forces. The consequences of this invasion are too well-known to require any recounting. The Princely States also posed a delicate problem which was solved in a statesman-like manner averting further fragmentation of the country. Eruption of violence in the neighbouring country, Burma, and the wanton killing of its Cabinet, spelt out clearly the possible dangers from extremist violent groups. The new Government and its leaders had more than what any one could be expected to cope with. The external aggression in Kashmir and the out-break of extremist violence in some parts of India underscored the imperative of building a strong Centre capable of protecting the independence and integrity of the country against dangers from both within and without.

1.2.25 The Constitution-framers were aware that several Provinces, regions or areas of India were economically and industrially far behind relatively to others. There were great economic disparities. The problem of economic integration had many facets. "Two questions, however, stood out: one question was how to achieve a federal, economic and fiscal integration, so that the economic policies affecting the interests of India as a whole could be carried out without putting an ever-increasing strain on the unity of India, particularly in the context of a developing economy. The second question was how to foster the development of areas which were underdeveloped without creating too many preferential or discriminative barriers".[3] Not much had been done for economic development of the country in the pre-Independence era. To catch up with the industrially developed nations, the progress that took them centuries, had to be compressed into decades. The nation was committed to a socio-economic revolution designed not only to secure the basic needs of the common man and economic unity of the country, but further to bring about a fundamental change in the structure of the Indian society in accordance with egalitarian principles. It was felt by the Constitution-framers that such a transformation could be brought about only by a strong Central Government.

1.2.26 All the above considerations weighed with the Constitution-framers in opting for a Constitution which blends the imperatives of a strong national control with the need for adequate local initiative. In a country too large and diverse for a unitary form of government, they envisaged a system which would be worked in co-operation by the two levels of government—national and regional—as a common endeavour to serve the people. Such a system, it was conceived, would be most suited to Indian conditions as it would at once have the advantages of a strong unified central power, and the essential values of federalism.

1.2.27 In the next Section we consider how these concepts of a strong Union have been woven into the warp and woof of the Constitution.

3. *NATURE OF THE INDIAN UNION*

1.3.01 The Constituent Assembly addressed itself to the immensely complex task of devising a Union with a Strong Centre. This task was b set with many difficulties. They had to bring into the Union not only the British Indian Provinces, but also the Princely States and the remote inaccessible Tribal Areas. They were conscious that several areas and regions of this sub-continent had, for a very long time part, been following their own subcultures, administrative systems, traditions, customs and ways of life. It was, therefore, readily accepted that "there are many matters in which authority must lie solely with the units". Further, that "it would be a retrograde step both politically and administratively" to frame a Constitution with a Unitary State as the basis.

1.3.02 They settled for a Parliamentary or Cabinet form of Government at the Union as well as in the constitutent units. The President and the Governors were envisaged as *de jure* heads of the respective Governments acting on the advice of the Council of Ministers, which comprised the *de facto* executive.

1.3.03 In fashioning the form of Parliamentary government, the Assembly drew largely on the British model. In devising the pattern of Union-State Relations they were influenced, in varying degrees, by the principles underlying the Contitutions of Canada and Australia, which had Parliamentary system, and the United States, which had Presidential system. They made use of the Government of India Act, 1935, after making significant changes in it. Nevertheless, the Constitution as finally passed, was *sui generies*. They were substantial differences in both legal provisions and conventions between India and these other countries. The reason was that the geographical, historical, political, economic and sociological conditions and compulsions in India were basically different.

1.3.04 The Constitution as it emerged from the Constitutent Assembly in 1949, has important federal features but it cannot be called 'federal' in the classical sense. It cannot be called 'unitary' either. It envisages a diversified political system of a special type. According to Dr. B. R. Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly, it is unitary in extraordinary situations, such as, war (or emergency) and federal in normal times. Some authorities have classified it as a "quasi-federal" Constitution. However, these labels hardly matter as both levels of government derive their respective powers from a written Constitution, which is supreme, and there is a Supreme Court to interpret the Constitution.

Indian Union Indestructible

1.3.05 Article 1 describes India as a 'Union of States'. These States are specified in the First Schedule to the Constitution. Articles 2, 3 and 4

(3) Automobile Transport Ltd. *vs.* State of Rajasthan, AIR 1962 SC 1406, page 1415.

enable Parliament by law to admit a new State, increase, diminish the area of any State or alter the boundaries or name of any State. A special aspect of the Indian Union is that the Union is indestructible but not so the States; their identity can be altered or even obliterated. This is a departure from a federal feature which obtains in a classical federation like the U.S.A. The Constituent Assembly rejected a motion in the concluding stages to designate India as a 'Federation of States'. Dr. Ambedkar, Chairman of the Drafting Committee, while introducing the Draft Constitution, explained the position thus :

> "..... that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to disputes"[4].

1.3.06 Another distinctive aspect of the Indian Constitution is that it provides for a single citizenship for the whole of India. There is no dual citizenship, one of the Union and the other of the States. In this respect, the Indian Union basically differs from the American federation which recognizes a dual citizenship and consequent diversity in the rights of the citizens of different States. This important difference between the two countries is due to their different historical backgrounds. Whereas the American Federation was the result of an agreement between preexisting independent States, in India the position was significantly different. Before the formation of the Indian Union, its units did not have the status of sovereign independent States.

1.3.07 In firm consistency with their resolve to constitute a Federation with a Strong Centre, the framers of the Constitution made an elaborate distribution of governmental powers—legislative, administrative and financial—between the Union and the States. To make it strong, they gave weightage to the Union, allocating to it dominant and relatively larger powers.

1.3.08 The Union legislature or Parliament has two Houses, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Unlike in most federations, representation in both is on the basis of population, through indirect election in the former and direct election in the latter. The Council of States has been given some special functions regarding matters effecting States, while the House of the People has been given some special role regarding financial matters. States have been given some flexibility about having bicameral or unicameral legislatures.

1.3.9 The subject of Lesgislative Power have been classified into three Lists—Union List (List I), State List (List II) and the Concurrent List (List III) in the Seventh Schedule of the Constitution. Parliament has the exclusive power to legislate in respect of matters in the Union List. Similarly, exclusive power has been conferred on the State Legislatures with respect to matters in the State List. Parliament, and the State Legislatures, also, have power to make laws on any matters in the Concurrent List (Articles 245 and 246 read with the Seventh Schedule). Residuary powers of legislation have been vested in Parliament (Article 248 read with Entry 97, List I).

1.3.10 Normally, the executive powers of the Union and the States are co-extensive with their legislative powers. However, with respect to matters in the Concurrent List, the executive power remains with the States unless the Constitution, or Parliament by law expressly provides otherwise (Articles 73 and 162). It is partinent to note that the powers, both of the Union and the States are derived from the Constitution and, as such, are subject to the limitations provided therein.

1.3.11 The Constitution makes a distribution of taxing powers between the Union and the States. The fields of taxation have been enumerated either in the Union List or in the State List. There is no subject of taxation in the Concurrent List. The Constitution recognises that the financial resources of the States may not be adequate for discharging their onerous responsibilities. It, therefore, envisages certain tax revenues raised by the Union to be shared with the States. It provides not only for their distribution between the Union and the States but also *inter se* among the States on the recommendations of the Finance Commission (Articles 268 to 281).

1.3.12 It is noteworthy that, though the Constitution creates a dual polity based on divided governmental powers, this division is not watertight. It is flexible. The large concurrent sphere let alone, several entries in the State List have an inter-face with the Union List. Such Entries are either subject to certain Entries in the Union List or Concurrent List, or a law made by Parliament.

1.3.13 Introducing the draft Constitution, Dr. Ambedkar pointed out that when diversity created by division of authority in a dual Polity goes beyond a certain point it is capable of producing chaos. In this context, he emphasised :

> "The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three :—
>
> (1) a single judiciary;
>
> (2) uniformity in fundamental laws, civil and criminal; and

[4]. Constituent Assembly Debates (Reprint); Volume VII page 43.

(3) a common All-India Civil Service to man important posts.[5]"

There are other special features also which highlight the predominance of the Union.

Supremacy of Union Legislative Power

1.3.14 Where, with respect to a matter, there is irreconcilable conflict or overlapping as between the three Lists of the Seventh Schedule, the legislative power of the States must yield to that of the Union [Non-obstante clauses in Article 246(2) and (3)]. A law made by a State legislature, repugnant to a law made by Parliament or an existing law applicable in that State, in regard to any matter enumerated in the Concurrent List, shall be void to the extent of repugnancy [Article 254(1)]. However, if such a State law having been reserved for the consideration of President receives his assent, if it shall remain operative [clause (2) of Article 254]. Nevertheless, Parliament may amend or repeal such State law notwithstanding the President's assent.

1.3.15 Every citizen in a State is subject to the operation of the laws of the Union and the States. Implementation of the Union laws could be entrusted to either a separate Union agency, if any, or to a State agency. The latter course has been followed in our Constitution in regard to a large number of Union Laws. Articles 256 and 257 cast obligations on the States to comply with Union laws and the existing laws, and not to impede the exercise of the executive power of the Union. The Union is authorised to give such directions as may be necessary for this purpose.

1.3.16 If a State fails to comply with any valid executive direction of the Union Government, it shall be lawful (under Article 365) for the President to hold that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution and, therefore, warrants action under Article 356.

Entrustment of Union Functions to the States and *vice versa*

1.3.17 Article 258(1) enables the President to entrust with the consent of the Government of a State to that Government or its officers notwithstanding anything in the Constitution, functions in relation to any matter to which the executive power of the Union extends. Under clause (2) of Article 258, Parliament may by law confer powers and impose duties on a State Government or its officers and authorities, notwithstanding that it relates to a matter with respect to which the legislature of the State has no power to make laws. The consent of the State Government is not a condition precedent for exercise of the power under this clause. Article 258A provides for entrustment, by a State, of functions in relation to any matter in respect of which the executive power of the State extends with the consent of the Government of India to the latter or its officers.

5. Constituent Assembly Debates (Reprint), Volume VII, Pages 36—37.

Control of the Union Executive over State Legislation

1.3.18 The control of the Union Executive over State legislation reserved for the consideration of the President, is another special feature of the Constitution. Article 200 provides that a Bill passed by a State Legislature shall be presented to the Governor, who may assent, withhold his assent or return the same for reconsideration by the Legislature. However, if it is again passed by the State Legislature with or without amendment, he shall not withhold his assent. The Governor may also reserve the Bill for consideration of the President (in effect the Union Council of Ministers) who may, in turn, signify his assent, withhold the same or return it for re-consideration. However, in contrast to the position of the Governor, the President need not give his assent when such a Bill is returned with or without amendment after reconsideration by the Legislature of the State (Article 201). There are special provisions also, some of which were inserted by subsequent Amendments, which require certain type of State Bills for certain purposes to be reserved for the consideration of the President.[6]

1.3.19 Another uuique feature of constitution is that it enables Parliament to legislate with respect to a matter in the State List if the Council of States by a two-thirds majority of the members present and voting, declares that it is necessary or expedient to do so in the national interest (Article 249). Such a resolutions remains in force for a period not exceeding one year.

1.3.20 The Constitution also enables Parliament to legislate in respect of any matter in the State List, if resolutions to that effect are passed by the legislatures of two or more States. Any Act so passed may be adopted in like manner by the Legislatures of other States (Article 252).

Emergency Provisions

1.3.21 During the two World Wars, even the 'classical' federations functioned as 'unitary' governments. This was made possible by the widest interpretation put by the courts on the "Defence Power" vested in them by their Constitutions. The Indian Constitution makes express provisions in this regard in Articles 352, 353, 354, 358 and 359. This special feature was described by Dr. Ambedkar as follows :

> "All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system..... Such a power of converting itself into a unitary State no federation possesses....."[7]

6. First Proviso to Article 31A(1) Proviso to Article 31C, Articles 254 (2) and 288 (2) and Proviso to Article 304 (b) read with Article 255, are examples of such provisions.

7. Constitutent Assembly Debates (Reprint), Volume VII, pages 34-35.

1.3.22 The Constitution provides for proclamation by the President of a grave emergency whereby the security of India is threatened by war or external aggression or armed rebellion (Article 352). When such a Proclamation is in operation, the Union may assume for its organs all the legislative and executive powers of the State. Consent of the State Government is not a condition precedent to such assumption (Article 353). A Proclamation of Emergency has the effect of converting the State List into Concurrent List ; and therefore, if Parliament legislates on any subject in the State List, the State laws, to the extent of repugnancy, shall be null and void and the law made by Parliament shall prevail. The executive powers of the State also become subject to the Directions of the Union as to the manner in which these powers are to be exercised.

1.3.23 Another important feature of the Constitution (Article 355) is the express provision casting a duty on the Union to :

(a) protect every State against external aggression, and internal disturbance; and

(b) ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

1.3.24 'Public Order' is the responsibility of the States. However, a State Government may require the assistance of the Union's armed forces for this purpose. In case of a serious disorder amounting to 'internal disturbance', the Union may deploy its forces, to put it down.

1.3.25 If the President on receipt of a report from the Governor of a State, or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, he may by Proclamation assume to himself all or any of the functions of the State Government or all or any of the powers vested in or exercisable by the Governor or any authority in the State. He may also declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament (Article 356). The purpose of Union intervention under this Article is to remedy a break-down of the Constitutional machinery in a State and to restore its functioning in accordance with the Constitution.

1.3.26 Yet another type of emergency, namely, Financial Emergency is envisaged by Article 360 of the Constitution. If the President is satisfied that a situation has arisen whereby the Financial stability or credit of India or of any part of its territory is threatened, he may proclaim a financial emergency. When such an emergency is in operation, the exeuctive authority of the Union extends to the giving of directions to any State for the purpose o securing observance of canons of financial propriety.

1.3.27 In all the above-noted cases, the 'President' actually means the Union Council of Ministers in as much as under Article 74 he is required to act on the aid and advice of the Council.

Inter-Dependence and Mutual Co-operation

1.3.28 Federalism is not a static paradigm. It is a changing notion. The classical concept of federation which envisaged two parallel governments of co-ordinate jurisdiction, operating in isolation from each other in water-tight compartments, is nowhere a functional reality now. With the emergence of the Social welfare State, the traditional theory of federalism completely lost its ground. After the First World War, it became very much a myth even in the older federations. By the middle of the Twentieth Century, federalism had come to be understood as a dynamic process of co-operation and shared action between two or more levels of government, with increasing inter-dependence and Centrist trends. The framers of the Constitution took due note of these changing concepts and functional realities. Avoiding a dogmatic approach, they fashioned a *sui generis* system of two-tier polity in which the predominant strength of the Union is blended with the essence of co-operative federalism. Several features and provisions of the Constitution appear to have been deliberately designed to institutionalise the concept of co-operation.

1.3.29 In the legislative sphere the most important of these is the provision of a fairly wide field of Concurrent jurisdiction. The framers recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union. Nonetheless, uniformity in the main principles of the law on those subjects was considered essential in the national interest. They, therefore, included them in the Concurrent List.

1.3.30 Several entries in the Union List are expressly interwined with certain items in the State List. These entries have been so designed that Parliament may, by making a declaration by law of public interest or national importance, assume to the extent so declared, jurisdiction to legislate on the connected matters in the State List. Examples of matters in this category are provided by entries 7, 23, 24, 27, 32, 52, 53, 54, 56, 62, 63, 64 and 67 of the Union List. Such entries having an interface with the State List, in a way, disclose another field of 'overlapping' responsibiliy. Overlap as between the Lists may also occur when aspects of the same subject are put in more than one List. For example, different aspects of 'trade and commerce' find mention in all the three Lists ; namely, Entries 41 and 42 in List I, Entry 26 in List II and Entry 33 in List III. From certain mattres in List II a portion has been carved out and specially put in List I. Entries 13 and 32 of List II and Entries 22, 43, 44 and 91 of List I are instances of inter-linked matters cutting across inter-List boundaries. These criss-cross patterns of the Entries in the Lists indicate not only flexibility in the division of powers but also postulate co-operation between the Union and the States in their working. There are inbuilt techniques, *inter alia*, in Articles 246 and 254 for resolving conflict and ensuring harmony and co-operation between the Union and the States in the exercise of their legislative powers in areas of over-lapping jurisdiction.

Forums for Co-ordination

1.3.31 The Constitution envisages forums for resolving issues and ensuring co-ordination of policy and action in the exercise of governmental functions by the Union and the States. Article 263 enables the President to establish an Inter-State Council for enquiring into and advising upon disputes between States and for investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have common interest and to make recommendations upon any such subject, particularly for better co-ordination of policy and action with respect to such subjects.

1.3.32 In the area of inter-State trade and commerce the Constitution contemplates the appointment of an authority for carrying out the purposes of Articles 301 to 304 (Article 307). Parliament has also been enabled by law to provide for the adjudication of disputes relating to waters of inter-State rivers or river valleys (Article 262). Inter-State River Water Disputes Act, 1956 provides for the constitution of Tribunals for adjudication of such disputes.

Role of the Judiciary

1.3.33 The role and structure of the judiciary also institutionalise the idea of co-operative federalism. Although the Constitution empowers Parliament to establish separate courts for enforcement of Union laws, it has, in the interest of unity and integrity of the nation and economy, continued the system of a single integrated judiciary for the Union and the States. The Supreme Court is at the apex of the combined judicial system. Article 131 confers exclusive original jurisdiction on the Supreme Court to decide suits between the Union and the States and the States *inter se*. Judges of the Supreme Court are appointed by the President (in effect, the Union Government) after consultation with the Chief Justice of India and such judges of the Supreme Court and the High Courts as the President may deem necessary. For every State or a group of States and a Union Territory, there is a High Court. Judges of a High Court are appointed by the President after consultation with the Chief Justice of the High Court, the Governor (in effect, the State Government) and the Chief Justice of India.

1.3.34 With a view to maintaining the constitutional division of powers, the Constitution authorises the Courts to review and pronounce upon the Constitutional *vares* of the legislative and executive actions of the Union and the States. The role of the judiciary in India, as in most federations, is one of guardian of the Constitution. As Constitutional intepreter, the Courts in the older federations have played a significant role in balancing the claims of the federal power and the rights of the constituent units, but generally with weightage in favour of the former. The Supreme Court of the United States and the High Court of Australia have, through expansive interpretation of their respective Constitutions, immensely increased the powers of their national governments with relative decline of those of the States. In India, the comprehensive nature of the Constitution, the detailed enumeration of the powers of the Union and the States and the comparative ease with which the Constitution can be amended, limit the scope for bringing about, through judicial interpretation, any substantial alteration in the balance of Union-State relations. There are only a few judgements of the Supreme Court in this area, dealing directly with Constitutional issues between the Union and the States. A review of these judgements would show that most of them have, in effect, upheld the primacy of the Union *vis-a-vis* the States. The need for a strong united India which was the prime objective before the Constitution-framers, appears to have been the silent premise dominating the process of adjudication of Union-State disputes in these cases.[8]

4. *POLITICAL AND SOCIO-ECONOMIC DEVELOPMENTS*

General

1.4.01 Since 1950, when the Constitution came into effect, there has been a revolutionary advance in science and technology. The world has entered the nuclear as well as space age. Planes travel now several times the speed of sound. Through satellite communications and television, anything happening in one place can be visually and instantly perceived in all parts of the world. The rapidly increasing population with its concomitant problems has added another dimension to the world scenario. International and intra-national mobility of people has also tremendously increased. Social and cultural intercourse between peoples within and across international boundaries is growing. Old concepts are yielding place to new. As a result of the changing attitudes, thinking and expectations of the people from a welfare State, there is hardly any walk of life that remains untouched by the activities of government. The functional methodology of federal systems, world over, has also been undergoing change with this changing environment. The centralising trends which were just discernible when the Indian Constitution was on the anvil, are now manifest realities of gigantic proportion in most federations.

1.4.02 However, this phenomenal spurt in scientific and technological advance is not an unmixed blessing. It has thrust into the hands of ambitious nations weapons of mass destruction. This has an inevitable impact on the concept of 'defence'. The defence requirements of nations have considerably increased. Even in peace-time, defence capability now requires a healthy people, advanced scientific and technical education, sophisticated industrial

---

8. Attabari Tea Co. Ltd., *v.* State of Assam 1961 (1) SCR 809
Babu Lal Parate *v.* State of Bombay 1960(1) SCR 605
State of West Bengal *v.* Union of India 1964 (1) SCR 371
In Re Sea Customs Act (1964) 3. SCR 787
Automobile Transport Ltd., *v.* State of Rajasthan 1963(1) SCR 491
Union of India *v.* H.S. Dhillon 1972(2) SCR 33
State of Rajasthan *v.* Union of India 1978(1) SCR 1
Karnataka *v.* Union of India 1978(2) SCR 1
Andhra Pradesh Road Transport Corporation *v.* Union of India 1964(7) SCR 17
In Re Coffee Board 1970(3) SCR 147
Mohamed Serajuddin *v.* State of Orissa 1975 (Spp.) SCR 169.

self-sufficiency, civil defence, continuous improvement and moderanisation of weaponry to match that of a possible enemy. These requirements now extend even to areas of domestic policy-making.

1.4.03 While under the inexorable pressures of various conceptual, technological, demographic and other factors indicated above, the role of the national government in all countries having a two-tier polity, has immensely expanded, the functioning of their system has progressively become a co-operative process of shared responsibilities.

The United States of America

1.4.04 In the New Deal era of late 1930s, the governmental system even of the United States, the classical federation, entered a new phase. Through a series of decisions, their Supreme Court, by a liberal construction of the Police, Commerce, Taxation and Spending Powers under their Constitution, practically left it to the Congress to determine by legislation what was a 'national purpose', 'national interest' or 'national objective' for evaluation of the proposals for federal aid programmes. The resulting proliferation of the federal power continued through the 1950s. This centralising process gained momentum after 1960. The extension of the Police power was specially notable.[9] By 1980, the federal role had become 'biger, broader and deeper', covering a wide range of governmental functions in new fields which had hitherto been the exclusive or predominant preserve of the States or their local sub-divisions. The regulatory role of the federal government directly covered big business, labour, agriculture, communications, transportation, banking, securities, environment, health and safety, consumer protection and social equality areas. It also got indirectly expanded through the use of grant conditions as means of furthering national, social, environmental, agalitarian and other goals. While the dominant ethic of the federal grant system was still largely the co-operative one, in practice, it had become co-optive and dysfunctional.[10]

Canada

1.4.05 The British North America Act, 1867 (renamed in 1982 as the Constitution Act, 1867) placed only two subjects, *viz.* Agriculture and Immigration, in the concurrent legislative field of the Dominion and the Provinces. Classes of Subjects allocated to the Dominion and the Provinces were also indicated in Sections 91 and 92 of the Act. The residuary powers with respect to unspecified Classes of Subjects were left in broad terms to the Dominion. The centralising tendency in the Canadian Constitution was tempered by judicial pronouncements of the Privy Council. However, the experience of the working of the system soon led to the realisation that most problems required joint action by the federal and provincial governments. In recent years,a fairly large field of *de facto* concurrency has emerged. After the mid 1950s, a "consociational"type of federation was gaining favour gradually overcoming formal demarcation of powers in the Constitution Act. In this type of federation, according to one expert[11], the dominant principle of co-operation is given practical shape through joint endeavours and a continuing dialogue between the Federal Government and the federating units. This type of co-operative federalism has been ushered in Canada by various devices. Principal among these were conferences of the Federal Prime Minister and the Provincial premiers. It has come to be one of the most crucial institutions of Canadian federalism. Allocation or sharing of revenues and tax fields, equalisation grants, unified control of borrowings have been other extra-constitutional methods to resolve financial problems of the federation. Thus, in Canada also, the system has assumed, on the basis of practical arrangements, a *de facto* form of co-operative federalism transcending the boundaries formally designated in its Constitution.[12]

Australia

1.4.06 In Australia, liberal interpretation of its Constitution by their High Court has helped to increase the powers of the Federal Government. Its financial resources enabled it to expand its role through the instrument of financial grants to the States. Many other factors—social, political and economic—have also contributed to the growth of the Federal power in Australia. In West Germany and Switzerland also, the trend has been broadly similar.

Functional Trends in Union-State Relations in India

1.4.07 In India, the last 37 years of the working of the Union-State relations witnessed continuous expansion of the responsibilities of the national government. The role of the Union now extends into areas in the State field. This extension has come about as a result of the legislative and executive action of the Union.

1.4.08 The Union has through the exercise of its dominant legislative power taken over functions which normally were to be left to the States. Acts passed by Parliament by virtue of Entries 52 and 54 of the Union List are typical examples. Under Entry 52, Parliament has passed the Industries (Development and Regulation) Act, 1951. As a result, the Union now controls a very large number of industries mentioned in Schedule I to the Act. The Constitutional effect is that to the extent of the control taken over by the Union by virtue of this Act, the power of the State Legislatures with respect to the subject of 'Industries' under Entry 24 of the State List, has been curtailed. This Act also brings under Central regulation agricultural products such as tea, coffee, etc. Similarly, Parliament has, by making the requisite declaration of public interest under Entry 54 of the Union List, enacted the Mines and Minerals (Development and Regulation) Act, 1957. The legal effect is that to the extent covered by this Act, the legislative powers of the State Legislatures under Entry 23 of the State List have been ousted.

9) See Annexure-VI.1 to Chapter VI on "Emergency Provisions".

(10) Report of the Advisory Commission on Intergovernmental Relations in USA—June 1981.

(11) Dr. Mc Whinny, Member, Permanent Court of Arbitration, Canada and author of many books, *inter alia*, on the Canadian and West German Constitutions.

(12) Dr. McWhinny, *ibid.*

Parliament enacted under Entry 33 of the Concurrent List the Essential Commodities Act, 1955 to regulate trade and commerce in many essential commodities including certain agricultural products. A large number of Union laws, including existing laws, relating to matters in the concurrent field, are in operation. These include the Civil Procedure Code and the Criminal Procedure Code, 1973. To the extent, the Concurrent field is occupied by a Union law, the power of the State Legislatures to enact a law in variance with it, becomes inoperative. Power under Articles 200 and 201 and other special provisions (some of which were inserted later) have also enabled the Union Executive to centralise control over State Legislation. The reservation by the Governor of State Bills for Presidential consideration with respect to matters in the Concurrent List, also contributed to the expansion of the power of the Union government.

1.4.09 Centralised planning through the Planning Commission is a conspicuous example of how, through an executive process, the role of the Union has extended into areas, such as agriculture, fisheries, soil and water conservation, minor irrigation, area development, rural reconstruction and housing etc. which lie within the exclusive State field. The Planning Commission was set up by a resolution of the Union Cabinet in 1950. Primarily, the Commission was charged with the duty to prepare plans for the most effective and better utilisation of the country's resources. The Constitution envisages that fiscal resources would be transferred to the States on the recommendation of the Finance Commission. But, in practice, the role of the Finance Commission has come to be limited to channelising of revenue transfers (including a very small capital component) only. The capital resources (including a revenue component) for planned development, are now transferred on the recommendation of the Planning Commission.

1.4.10 The National Development Council, which was set up in 1952 by a resolution of the Union Government, is supposed to be the highest deliberative body in the field of Planning. It includes the Prime Minister (as its Chairman), the Members of the Planning Commission and the Chief Ministers of all the States. Its function is to oversee the working of the Plans from time to time, to consider important questions of social-economic policy affecting national development and to recommend measures for implementing the aims and targets set out for the National Plans.

1.4.11 These institutions were expected to play an effective role as adequate forums of consultation and co-operation between the States and the Union, but within a centralised framework.

Current Scenario

1.4.12 We now consider the consequences of the dynamic interplay of various forces both at the national and sub-national levels in India giving rise to a set of situations, or, what may be called the present imperatives, affecting the working relationship of the Union and the States.

Socio-Economic Changes

1.4.13 The last 37 years have seen many changes in the socio-economic and political fields. When the Constitution came into force in 1950, India was just emerging from her colonial past with its social stratification, allowing very little mobility. The feudal system was still very much in evidence. In the rural areas, the Zamindari system and the rich absentee land-lords held sway over precarious tenants and share-croppers. In the urban areas, the Government servants, professionals and the trading classes had a clear edge over the technicians and the artisans. No doubt, during this period, the Zamindari system has been abolished, tenancy reform has been largely implemented and land ceiling laws have been applied with varying degrees of success. Yet, much more remains to be done.

1.4.14 Economic development has led to the growth of an affluent community of gentlemen farmers who now form the rural elite and the landless labourer continues to struggle to maintain his place at the periphery. There has been a sea change in agriculture—a subsistence economy has yielded place to surpluses and a market economy, with almost all crops having a market relevance in the country. Migration of agricultural labour seeking employment in the more agriculturally advanced areas has been yet another significant development. In the urban areas, a new class of entrepreneurs, many of them immigrants, has emerged, who have by hard work and perservence established many a successful enterprise. Large business houses have also put highly sophisticated industries all over the country. One of the most significant gains of the last three and half decades of development is the emergence of a vast common integrated market with mobility of capital and skilled labour. Investment opportunities are perceived with reference to factors of production seen on a national basis.

1.4.15 Another important feature has been the pace of urbanisation and the sharp increase in population in the entire hierarchical structure of urban conglomerates starting with metropolitan cities to small municipalities. The urge to get away from the drudgery of village life or its caste identities, or the quest for better job opportunities, are some of the factors which have contributed to exodus from villages to cities, and across inter-State boundaries. Apart from this, the poor immigrants are inevitably drawn into the slums which abound in the metropolitan cities and large towns. Deprived of even the basic amenities, these dwellers of shanty towns, living in the shadow of the affluent, nurture an intense hatred of society itself. The sadism building up within them, requires but a spark to explode into full-scale savage rioting. The problems related to them are no longer considered to be the exclusive concern of the States and their local bodies.

1.4.16 The metropolitan areas, with high degree of industrialisation, have become multilingual islands surrounded by rural-unilingual seas in almost all the States. These have provided scope for some unscrupulous elements to whip up antagonisms based on language with a view to securing narrow political gains.

1.4.17 Free flow of inter-State trade and commerce has perhaps been the most outstanding achivement during this period. Massive investments in socio-economic development under Central guidance have also contributed very largely to the strength of the nation, but with large regional variations.

Political Changes

1.4.18 The political scene has over the last three decades undergone a major transformation along with other aspects of national life. At the time of Independence, the Congress Party occupied a predominant position in national life. Leaders and many in the rank and file of this party were old freedom fighters who had come from the legal, medical and academic professions. They had good education, patterned mainly on the Engilsh system and values. The Congress Party formed the Government at the Centre and in the States for nearly two decades after Independence. In these conditions, Union-State relations under the Constitution were essentially an intra-party arrangement of the Congress. Differences between the State Governments and the Union Government were quite easily sorted out at the party level. Stalwarts at the Union and those in the States acted with a sense of mutual respect and accommodation. As the old guard of the pre-Independence days began to vanish from the political scene by sheer efflux of time, the composition of the Congress Party underwent a change particularly in the States. The new political leaders were distinctly different from their predecessors. They were younger and not steeped in the Gandhian traditions of the pre-Independence era. Political life was not seen as in the days of the freedom struggle, as a sacrifice for the nation. Rather, it became a political career and a means of reaching for power and pelf in varying proportions. It was no longer the lawyer or doctor sacrificing a lucrative practice or the teacher throwing up his calling to join politics. It was the local leader commanding money, muscle power and caste or communal loyalties who came to the forefront of State politics. In a sense, this process was inevitable with the growing vacuum at the top and the new mores and ethos of electoral politics which afforded no place—and gave no quarter—to those who did not acknowledge the new rules of the game. Starting with national parties in 1947, a span of mere twenty years witnessed the rise of regional parties and the split of the national parties. The developments of 1967 came to stay.

1.4.19 The Indian Constitution contemplates election of representatives both to Parliament and to the State Legislature on the basis of territorial constituencies. This led to replacement over the years of ideology-oriented intellectuals by vote-bank-based political leaders in the power structure. Their vision and approach to national and local, long term and short term and basic and populist issues, varied widely. Populism became a much more important factor for them and the new generation of politicians found it essential to combine money and manpower with populist slogans, to capture and stay in power. In the absence of the idealism of the freedom struggle. very often the success or failure has come to depend to a large extent on the shifting loyalties of factions owing allegiance to an individual and none to any ideal.

1.4.20 Wherever the majority in a territorial constituency, although with general electorate, could be swayed by communal (or linguistic) slogans, the behaviour pattern tender to be nearly the same as in a territorial constituency, with separate electorate, which had led to the creation of Pakistan and had been firmly discarded by the Constituent Assembly.

1.4.21 Elections have become today very costly with all round allegations of corrupt practices. Controltor influence over the State machinery secured at large expense has to be increasingly used by politicians to give as *quid pro quo* special advantage to those moueyed interests who help to meet this expense It is inevitable that such a development should result in retreat from politics of those who did not conform to the realities of power play. Those in power at the national level have been obliged to use diverse strategies and tactics, which were not always sound from long-term interests, in order to maintain their hold on the State level forces. It was not uncommon for the national level leaders to lay down high principles for selection of candidates; but the political machinery was in the hands of the local bosses whose only concern was winning the elections. This led to selection of candidates based on communal and caste grounds.

1.4.22 Local bodies have always played an important role in India. They were the cradle for the emerging leadership in the second half of the nineteenth and early twentieth centuries. Unfortunately, over the years, these have, for all practical purposes, ceased to be significant for power-sharing. The safety valve which local bodies provide for minority communities to effectively participate in the governance of the country, was often abandoned thoughtlessly for small immediate advantage. The consequences have been serious in a composite society like ours. Frustrations of the deprived communities have often led them to give up the Constitutional path in favour of violent agitations.

Growth in Sub-National Forces

1.4.23 In examining the various issues connected with Union-State relations, it would be useful to recognise that a number of problems between the Union and the States arise in matters not directly connected with the various provisions in the Constitution. These are nevertheless important because they have an impact on the working of constitutional arrangements between the Union and the States. These problems are distinguished by the fact that they arise not so much from the actions of the State Governments or the Union Government but from various groups which operate both at the State and the national levels.

1.4.24 Although they all start with different bases and address themselves to different group affinities and sensitivities, the common characteristic of many of these groups in a plural society like ours is to promote sub-nationalism in a manner that tends to strengthen divisive forces and weaken the unity and integrity of the country. Very often the sub-nationalist sentiment which is initially based on linguistic, religious or ethnic groupings gains strength

with a blend of economic issues such as those relating to land, water and regional backwardness. One of the most significant developments has been the rise of linguistic chauvinism, rearrangement of the boundaries of the States on linguistic basis, imposition of the language of the majority in a State on the minorities and disregard of the special provision relating to language spoken by a section of the population of a State (Article 347), resulting in fissiparous tension.

1.4.25 One State Government has observed that "with the reorganisation of the States on a linguistic basis, these are no longer mere administrative subdivisons of the country with their boundaries for the most part a historical legacy. These are now deliberately reorganised homelands of different linguistic-cultural groups. These groups are, in fact, growing into distinct nationalities". An opposite view is that forces of modern communication and industry are working against such incipient localised homeland idea by promoting country-wide mobility, inter-State migration and social intercourse of people. The whole of India is in fact now the homeland of every citizen of the country. That this should be the correct approach, was emphasised by the States Reorganisation Commission itself, which observed :

> "It is the Union of India that is the basis of our nationality. It is in that Union that our hopes for the future are centred. The States are but the limbs of the Union, and while we recognise that the limbs must be healthy and strong and any element of weakness in them should be eradicated, it is the strength and the stability of the Union and its capacity to develop and evolve that should be the governing consideration of all changes in the country."[13]

If a particular community, religious or linguistic group claims one region of the country as its homeland, it generates antagonism of other communities or groups both within that region and elsewhere: For, the very idea of "homeland" within a country implies a pernicious discrimination between the so-called original inhabitants or 'sons of the soil' and so-called 'immigrants' or 'outsiders' from other States. Practice and promotion of such unhealthy ideas eventually lead to creation of two or more classes of citizens all over the country. While, at heart, thoughtful persons in all communities realize this danger, even they, with the motive to gain or maintain political power,— euphemistically disguised as 'political compulsions'— often find it expedient not to be less loud and hoarse than their more desperate rivals in swearing by this hyper-parochial credo.

1.4.26 In analysing the origins of these tendencies, several causes can be identified, both legitimate and pernicious. Among the more legitimate origins of sub-nationalist groupings can be included a search for identity, a need for security and the demands for a fair share in the national cake in terms of education, employment and industrial opportunities.

1.4.27 Among the more pernicious of these motivations can be recognised the role of vested interests in converting legitimate aspirations into strident discord and dissent by clever manipulation and encouragement of psychological alienation. The use of the sub-nationalist plank for building of group leadership which commands attention at the national level, is another strong motivation which is sometimes responsible for throwing up the more vociferous leaders. It is from these origins that the more extreme forms of dissent and revolt against the existing order emerge in the form of extremist and terriorist actons.

1.4.28 While poorer States have been pressing the Union Government earlier to ensure for them a greater share of the national cake, richer States have started asking for more powers for themselves recently so as to be able to protect their share. The conflict between centripetal and centrifugal forces, that this tends to accentuate, deserves greater attention than it has been given so far. It is thought-provoking that the Government of one borderland State, which has higher per capita income and growth rate than heart-land States has complained about the latter's Hindu-Hindi-Hind based domination and that of another borderland State over a thousand miles away with nearly the same income and growth record, has also expressed similar sentiments. Only purposive promotion of a general political will to understand one another's compulsions and give priority to mutual accommodation, as against hard bargaining, can help resolve this conflict.

Political Parties

1.4.29 India had the immense advantage of outstanding leaders who had been in the forefront of the struggle for independence stepping into political office and the Constituent Assembly to guide the destinies of the nation. They were imbued with spirit of sacrifice and service. The Congress Party had evolved, over the years a policy of rapid economic development which these leaders put into action soon after coming into the Government. It has held for a long time the reins of power both at the Union and in the States. This lent a great measure of stability to the nation. At the same time the fact that a strong single monolithic party continued to hold power both in the Union as well as the States for a long time had unexpected adverse effect on the healthy growth of Union-State relations. There was very strong leadership at the apex in the Congress Party and Union-State issues, as already noted, came to be resolved through party channels. Need for institutions which would have enabled effective Union-State dialogue and meaningful discussion in a spirit of compromise and cooperative partnership to arrive at solutions based on consensus, was not felt. Lack of internal democracy within the parties also contributed, in no small measure, to this development.

1.4.30 Another development has been the fragmentation of the Congress Party, itself, and the emergence of new political parties earlier at the national, and later at the regional levels. In the last fifteen years or so, regional parties and coalitions have formed governments in a number of States. With the substratum of political activists being thrown up by the same society with its changing

(13). States Reorganisation Commission (1955); Para 876, page 236 of report.

values, these new parties and splinter groups did not show much differences in their basic characteristics. When some of these parties came to power in the States, their attitudes, also, to power and to the problems of the people, were not significantly different from those who had held sway earlier. A large number of splinter groups with shifting loyalties and narrow interests have been thrown up rather than large-sized political parties with healthy traditions and broad outlook which could shoulder heavy responsibility if occasion arose. This has tended to encourage irresponsible political behaviour.

1.4.31 Effective functioning of a democracy requires an adherence to basic political morality. A sad commentary is the spectacle of members of the legislatures changing their allegiance from one party to another for personal or factional gains. The result has been an undermining of confidence in all institutions barring the few having constitutional sanction. How far the recently enacted anti-defection law can effectively check this evil, only time will tell.

1.4.32 The above survey of the developments of the past thirtyseven years brings out clearly two diametrically opposed trends. On the one hand, a number of factors, primarily centripetal economic forces, have strengthened the impulses of centralisation, modernisation, growth and development. On the other, very strong centrifugal forces have been unleashed in the country on account of break-up of the old political order, split of national parties, ever-increasing exploitation of populist slogans and caste, language, money and muscle power in elections. Corruption in many walks of life, emergence of linguistic chauvinism and fissiparous tendencies—all these point to increasingly rough weather ahead for our ship of State.

5. *MAJOR ISSUES IN UNION AND STATE RELATIONS*

1.5.01 A study of the memoranda submitted by the various State Governments, political parties and the evidence given by many eminent persons and the replies received in response to the questionnaire circulated by us, shows a wide divergence of views. Many are of the opinion that the basic structure of the Constitution is sound and should not be tampered with. On the other side, there are some who are of the view that it requires drastic alteration so as to bring it in accord with their own perception of an ideal federal system.

1.5.02 The Constitution is what we make of it, so runs the argument of those who lay emphasis on the divergence between theory and practice. They point out that the actions of the Union have led to a very large degree of over-centralisation in all aspects, reducing the States to mere administrative agencies of the Union. Such over-centralisation in legislative, administrative and financial spheres, it is contended, has been effected by the Union to the detriment of the States.

1.5.03 They allege that the Union has occupied most of the concurrent field leaving little for the States, and by indiscriminately making declarations of public interest or national importance, taken over excessive area of the linked entries in the State field at the expense of the State legislative power. They point out that legislation in these fields is "more often than not, undertaken with no or inadequate prior consultation with the States. The net effect of many recent amendments of the Constitution and judgements of the Supreme Court has been to give more power to the Union than was contemplated by the Constituent Assembly". They question the wisdom of a legislation that seeks to secure dull uniformity in all matters, instead of laying down the main parameters and leaving the States free to legislate in regard to other matters in the light of local conditions.

1.5.04 The institution of Governor was conceived of as an effective link between the two levels of Government. It was expected to encourage nation-building forces, made for unity and integrity and ensure the conduct of the affairs of government in the State in accordance with the Constitution. It is alleged that this instrument has been made use of to destabilise the State Governments run by parties different from that in power in the Union, to facilitate imposition of the President's rule and reserve for President's consideration many State Bills to thwart the States' legislative process.

1.5.05 It is complained that the resources of the States have not grown at a rate commensurate with the growth in their responsibilities. The gulf between available resources and responsibilities is steadily widening. On this ground it is demanded that more resources be included in the shareable pool, if necessary, by amending the Constitution.

1.5.06 Another issue raised is that the emergence of planned development has concentrated all power in the hands of the Union, with the Planning Commission acting as a limb of the Union Government. It is emphasised that even in matters which lie within the exclusive competence of the States, through a variety of means, particularly the mechanism of Centrally Sponsored Schemes, deep in-roads have been made by the Union. On these premises it is

demanded that the Planning Commission be restructured to limit the scope of the Union's interference in the area reserved for the States.

1.5.07 The system of controls, licences and permits, which had its origin during the Second World War, has proliferated greatly to subserve the requirements of a planned regime. This, it is argued, has led to vast expansion in the powers of the Union Government at the expense of the State Governments and local bodies. The consequent unhealthy centralisation, giving undue power to a small coterie, it is urged, needs to be reversed.

1.5.08 It is also pointed out that institutions or forums specially envisaged in the Constitution for sorting out problems arising in the working of inter-governmental relations (*e.g.* a permanent Inter-State Council with a comprehensive charter as contemplated in Article 263) have not been created at all. It is urged that in matters of dispute between the Union Government and a State Government, the former should not be both the disputant and the Judge but should get the case examined by an independent assessor before taking a decision.

1.5.09 The basic thrust of these and other criticisms is that while the Union-State relations were intended to be worked on the basis of co-operative federalism and consensus in all areas of common interest, they have not been so worked and the forums envisaged by the Constitution for that purpose, have not been established.

CHAPTER II

LEGISLATIVE RELATIONS

CONTENTS

LIST OF ANNEXURES

CHAPTER II

LEGISLATIVE RELATIONS

1. *INTRODUCTION*

2.1.01 The Union Powers Committee, in their report on July 5, 1947 to the President of the Constituent Assembly, declared that the "soundest framework for our Constitution is a Federation, with a strong Centre".[1] At the same time, they ruled out the idea of framing a Constitution on the basis of a Unitary State as "it would be a retrograde step, both politically and administratively".[1] We have discussed earlier in Chapter I on "Perspective", why the Constituent Assembly opted for a "strong Centre" and at the same time, decided to decentralise and distribute powers between the Union and the States on the federal principle. It is not necessary to recapitulate all that we have said there. Suffice it to say, that a strong Centre was considered necessary, not only to protect the independence and preserve the integrity and unity of the country but also to coordinate policy and action between the Union and the States on basic issues of national concern.

2.1.02 In devising the scheme of distribution of powers between the Union and the States, the Constitutent Assembly did not adopt a doctrinaire approach based on the out-moded concept of classical federalism. They moulded the federal idea to suit the peculiar needs, traditions and aspirations of the Indian people. They had learnt from the experience of the working of the older federations as to what institutional improvements would be necessary to ensure the vitality of the system and its adaptability to the changing needs of a dynamic society. It did not escape their notice that even in the United States which was the home of 'classical' federation, the trend was towards centralisation and the functional reality did not square with the constitutional theory. Due to dynamic interplay of various factors, the American system was undergoing considerable changes and adjustments. Inter-governmental dependence was increasing. Emphasis was shifting from co-ordination to co-operation. New areas of national concern were emerging. National policies were extending into new fields which were the traditional preserve of the States and their local subdivisions.

2.1.03 The framers of the Indian Constitution were also alive to the fact that under the Canadian Constitution—which they studied as a model—the intergovernmental arrangements were evolving into a *de facto* system of cooperative endeavour of shared responsibilities, transcending the formally demarcated frontiers.

2.1.04 These functional realities, centralising trends and changing concept of federalism find reflection in the scheme of distribution of powers adopted in our Constitution. This scheme seeks to reconcile the imperatives for a strong Centre with the need for State autonomy. It distributes powers, yet does not effect a rigid compartmentalisation. Functionally, it is an inter-dependent arrangement. Its elastic frontiers stretch as far as inter-governmental cooperation and comity can take them in pursuit of their common goal—the Welfare of the People. It is flexible enough to keep pace with the movement of a complex, heterogeneous society through time.

2.1.05 These are the main considerations which weighed with the framers of the Constitution in assigning to the Union a pre-eminent role in all spheres of Union-State arrangements. They have not lost their relevance under the present-day world conditions. Any approach to an examination of the Union-State arranegments must, therefore, be informed by these primary considerations.

2. *DISTRIBUTION OF LEGISLATIVE POWERS*

2.2.01 The distribution of legislative powers between the Union and the States is the most important characteristic of a federal constitution. This distribution can be achieved by a single, two-fold or three-fold enumeration of Governmental powers. The Constitution of the United States of America specifically enumerates the powers of the Federation and leaves the unenumerated residue, except those prohibited by the Constitution, to the States. The Australian Constitution, while enumerating the powers of the Commonwealth, leaves the residue to the States. Though in it there is no separate list enumerating concurrent powers, by implication some of the enumerated powers of the Commonwealth are concurrent. The Constitution of Canada distributes the powers between the Dominion and the Provinces by making a three-fold enumeration. Section 91 of its Constitution Act enumerates Classes of Subjects which are within the exclusive competence of the Parliament of Canada. Section 92 contains a list of Classes of Subjects which are within the exclusive competence of the Provinces. Section 95 demarcates a narrow area for concurrent legislative jurisdiction of the Union and the Provinces. Section 91 gives general "residuray" power to the Dominion Parliament to make laws for peace, order and good Government of Canada, in relation to all matters, not coming within the Classes of Subjects assigned to the Legislatures of the Provinces.

2.2.02 The Government of India Act, 1935, made a comprehensive enumeration of subjects of legislative powers and divided them into three Lists—Federal, Provincial and Concurrent. It conferred the residuary powers on the Governor-General who could, in the exercise of his discretion, place any subject not found in the three Lists, in any of these Lists.

(1) Rao, B. Shiva : "Framing of India's Constitution", Vol. II, p. 777.

3. *OUTLINE OF THE CONSTITUTIONAL SCHEME*

2.3.01 The Constitution of India also adopts a three-fold distribution of the subjects of legislative power by placing them in any one of the three Lists, namely, I (Union List), II (State List) and III (Concurrent List).

2.3.02 Chapter I in Part XI of the Constitution contains the provisions which govern Union-State relations in the legislative sphere. It comprises eleven Articles, 245 to 255. Out of these, the provisions in Articles 245, 246, 248 and 254 (read with the Seventh Schedule) constitute the core of the scheme of distribution of powers.

2.3.03 Clause (1) of Article 245 defines the extent of *territorial* jurisdiction of Parliament and State Legislatures. It confers power on Parliament to legislate for the whole or part of India and on State Legislatures to legislate for the whole or part of a State. The legislative power so conferred by Article 245 is distributed by Article 246 between the Union and the States with reference to the subjects enumerated in the three lists of Schedule VII. Clause (1) of Article 245 is expressly "subject to the provisions of this Constitution". It follows that the legislative powers derived both by Parliament and the State Legislatures from Article 246, are also subject to the limitations imposed by the other provisions of the Constitution.

2.3.04 Article 246 confers exclusive legislative power on Parliament with respect to matters in List I. Likewise, the Legislature of a State has been invested with exclusive power to make laws with respect to matters in List II. Parliament and State Legislatures have concurrent powers with respect to matters enumerated in List III.

2.3.05 The powers assigned to the State Legislatures under Article 246 is expressly subject to the Supremacy of Parliament in case of irreconcilable overlap between the Lists. A facet of the same principle, applicable in the Concurrent sphere, is embodied in Article 254(1).

2.3.06 Article 248 read with Entry 97 of List I gives exclusive power to Parliament to make any law with respect to any matter not enumerated in the Concurrent List or the State List.

2.3.07 The provisions of Articles 249 to 253 are in the nature of exceptions to the normal rule that in respect of a matter coming in its pith and substance within the State Lis the State Legislatures have exclusive power to make law.

2.3.08 Article 249 enables Parliament to legislate with respect to a matter in the State List, if the Rajya Sabha[2] by a two-thirds majority passes a resolution that it will be expedient in the national interest to do so. The life of such a legislation cannot exceed one and a half years.

2.3.09 Parliament may also legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation (Article 250).

2.3.10 Parliament may also legislate for two or more States by consent with respect to a matter in the State List. Any other State can also adopt such a Legislation (Article 252).

2.3.11 Parliament can also legislate in the State field to the extent necessary for giving effect to an international agreement (Article 253).

2.3.12 Apart from the provisions contained in Chapter I of Part XI, there are Articles 352, 353, 358 and 359 (read with Article 250) and Article 360 which govern legislative relations between the Union and the States during an Emergency. The inter-linked Articles 356 and 357 govern Union-State relations during the President's Rule. The reservation of State Bills under Article 200 and the exercise of its powers by the Union Executive with respect to such Bills under Article 201 have a direct impact on Union-State relations in the legislative sphere. Several Articles, such as Article 3, 4, 31A, 31C, 285, 286, 288, 289, 293 and 304(b) have also a bearing on these relations.[3]

4. *CRITICISM AND ITS CLASSIFICATION*

2.4.01 There is total unanimity among all cross-sections of public opinion in regard to the need for a strong Union to enable it to maintain and protect the unity and integrity of the country. The centra theme of the criticism levelled against the working of Union-State legislative relations is "over-centralisation". The criticism may be classified into four broad categories.

2.4.02 **Category I**—Most State Governments, political parties and eminent persons, who have communicated their views to us, believe that there is nothing fundamentally wrong with the scheme of the Constitution in securing a constitutionally 'strong Centre' having adequate powers both in extent and nature. They accept that only a strong Centre can effectively preserve the unity and integrity of the nation. They agree that in time of 'emergency' (as defined in Article 352), the Union should be able to exercise full powers with respect to all matters in the three Lists of the Seventh Schedule. But, they also emphasise that in normal times, the division of powers between the Union and States, which really represents the basic 'federal characteristic' of our Constitution, should not only be scrupulously observed but also amplified by further decentralisation to the Units. They complain that, in practice, this has not happened.

(2) 249(2). A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the Continuance in force of any such resolution is passed in the manner Provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) In addition to Article 246 read with Schedule VII, there are many other provisions which confer independent powers of legislation, e.g., Articles 35, 97, 98(2), 105(3), 241(1), 262, 275, 312A on Parliament; Articles 186, 187(2), 189(3), 194(3), 210(2), 229(2), 283(2) and 345 on the State Legislatures, for specific purposes. Article 300A gives concurrent power to the Union and State Legislatures to deprive a person of his property by authority of law.

They contend that undue centralisation has occurred or been brought about in the working of the Union-State arrangements by making indiscriminate declarations of public interest or of national importance under certain Entries in the Union List which control certain inter-linked Entries in the State List or the Concurrent List. They have a grievance that the Union has in several matters enumerated in the Concurrent List, occupied the field of legislation in its entirety. Further, the Union has sought to dictate its policy to the State Legislatures with regard to such matters by improper use of its power under Article 201 with respect to Bills passed by the State Legislatures. They suggest that before Parliament undertakes legislation with regard to a Concurrent matter the State Governments must be consulted.

2.4.03 **Category II**—Four State Governments and their supporting political parties and a few others have severely criticised both the structural and functional aspects of the Union-State Legislative Relations. They contend that the Constitution is much too tilted in favour of the Union and this imbalance needs rectification by restructuring these relations. They ask for exclusion of those clauses and words from Articles 246 and 254 which give predominance to the legislative power of the Union over that of the State Legislatures. In common with the first category, they complain that further over-centralisation and distortion of the constitutional scheme has been brought about by working it in a manner contrary to the letter and spirit of the Constitution. They suggest drastic structural changes such as abolition or substantial reduction of the Concurrent List and transfer of all or most subjects therein to the State List. They further suggest reformulation of Article 248 so as to vest the residuary powers in the State Legislatures. They have also asked for deletion or substantial modification of Articles 31A, 31C, 154(2), 249, 252, 253, 254, etc. Two in this category have further suggested reformulation or transfer of several Entries in List I to List II or List III.

2.4.04 **Category III**—Proceeding on the premise that "India is a federal and republican geographical entity of different languages, religions and cultures", one Regional party has submitted to us a resolution by its "Whole House" which urges *inter alia* that to "safeguard the fundamental rights of the religious and linguistic minorities, to fulfill the demands of democratic traditions and to pave the way for economic progress, it has become imperative that the Indian Constitutional infrastructure should be given a real federal shape by redefining the Central and State relationships on the aforesaid principles and objectives". It mentioned that an earlier draft of this resolution by its "Working Committee" had no doubt demanded that the interference of the Union should be restricted to Defence, Foreign Relations, Currency and General Communications only and all other governmental powers (including residuary powers) should be assigned to the States. Further, that the States would contribute for the expenditure of the Union in respect of the above subjects. But its "Whole House" had substantially amended that in the final resolution which was passed and was authenticated by its then President.

Be that as it may, it has at the same time, proposed not only redistribution of subjects on a three-fold basis, "among the Union List, the Concurrent List and the State List", but also that "the executive power in respect of matters included in the Concurrent List, irrespective of the fact as to whether legislation is by the Centre or by the State should vest with the States". It has propounded that "the Union taxes/duties should be demarcated from the States' domain of taxation". Further, it has suggested that the Finance Commission should be reactivated to discharge its Constitutional duties.

The State Government, where this Regional party was in power, has suggested shifting of several Entries from the Union List to the State List and a few to the Concurrent List. It has sought a drastic reduction of the Concurrent List. But, it has not suggested deletion or abolition of the Concurrent List or any major change with respect to the heads of taxation enumerated in the Union List.

2.4.05 **Category IV**—Critics in this category have chosen a middle course. They want only a few structural changes, and, in common with those in categories I and II, substantial changes in the functional aspects of Union-State legislative relations. They suggest reformulation of Article 248 so as to vest the residuary power in the State Legislatures. Two State Governments, including one in category III, would have this power placed in the Concurrent List. Another has asked for reformulation of Article 3 also.

2.4.06 We have, therefore, examined the scope of the Constitutional provisions, the manner in which they have been worked during the last thirty-seven years, the validity of the criticism levelled and the need for remedial measures. The remaining part of this Chapter has been divided into four Parts for convenient examination of the various issues. Part I deals with Articles 245, 246, 248 and 254(1).[4] In Part II, we have considered the structure and the use of the entries in the three Lists of the Seventh Schedule.[5] Part III deals with issues relating to Articles 247, 249 and 252.[6] In Part IV, we have covered all the miscellaneous provisions not comprised in Chapter I of Part IX of the Constitution, but which are strewn at other places in the Constitution and have not been dealt with at length in any other Chapter of this Report. These are Articles 3, 4, 31A, 31C, 154(2)(b), 258, 169, 269, 285, 286, 288, 289, 293, 304(b), 368 and 370.[7]

5. *PART I—ARTICLES* 245, 246, 248 & 254

Articles 245 & 246

2.5.01 Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State (Article 245).

---

(4) Paras 2.5.01, to 2.6.18

(5) Paras 2.7.01 to 2.23.02

(6) Paras 2.24.01 to 2.25.05

(7) Paras 2.26.01 to 2.38.08

2.5.02 Article 246 read with Schedule VII of the Constitution, provides for distribution of legislative powers. It reads :

"(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List".

Non-Obstante Clause : Rule of Union Supremacy

2.5.03 The *non-obstante* clause in the beginning of clauses (1) and (2) and the words "subject to clause (1)" in clause (2) and the words "subject to clauses (1) and (2)" in clause (3) of Article 246 are based on the principle of Union Supremacy. It implies that where there is an irreconcilable conflict or overlapping as between Entries in the three Lists, the legislative power conferred on Parliament under clauses (1) and (2) shall predominate over that of the State Legislatures.

Rationale of the Rule

2.5.04 The subjects of legislation enumerated in these Lists have been made, as far as possible, mutually exclusive. Nonetheless, it has been observed that "it would be a supreme draftsman who could so draw these Lists that no charge of overlapping could be brought against them.[8] Despite an attempt to make the Legislative Lists mutually exclusive, some overlapping may remain due to limitations of drafting.

Application of the Rule : Test of Pith and Substance

2.5.05 Moreover, no unfailing formulae for identifying matters of exclusive 'national' or 'local' concern or of 'concurrent' interest is available. These concepts are neither absolute nor constant. While in some matters overlap between the Lists is inevitable, in certain others it is part of a deliberate design to ensure the adaptability of the system to changing times and circumstances. If it is not possible to eliminate such overlapping absolutely, how is the resultant conflict resolved? The *non-obstante* clause in Article 246 supplies the answer. However, this *non-obstante* clause "ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship."[9] Therefore, when a question of an apparent conflict between mutually exclusive Lists, e.g., List I and List II, arises, the first attempt should be to reconcile them. This is done by applying the test of 'pith and substance'. The impugned legislation is examined as a whole to ascertain its true nature and character for the purpose of determining whether it falls in List I or List II. If by this test it is found that in pith and substance it falls under one of these Lists, but in regard to incidental or ancillary matters it encroaches on an Entry in the other List, the conflict would stand resolved in favour of the former List. If the overlapping or conflict between the two Lists cannot be fairly reconciled in this manner, the power of the State Legislature with respect to the overlapping field in List II, must give way to List I. In short, when a matter, in substance, falls within the Union List, Parliament has exclusive legislative power with respect to it, notwithstanding that it may be covered also by either or both the other two Lists.

Rule of Repugnancy

2.5.06 Another facet of the rule of Legislative Supremacy of the Union is contained in Article 254 which provides :

"(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List., then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

2.5.07 In the context of this Article, the expression "existing law" would mean a pre-Constitution law in force, relating to a matter in the Concurrent List, *vide* Article 366(10).

2.5.08 From the provisions quoted above, it is clear that the substance of the rule of repugnancy contained in clause (1) of Article 254 is that with

(8) Wheare K. C. : Federal Government Forth edition) page 78

(9) In re C. P. & Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, AIR 1939 FC I, Page 8.

respect to a matter in the Concurrent List, a valid Union Law or an existing law prevails over a repugnant State law which is otherwise valid, to the extent of repugnancy. Clause (2) is an exception to clause (1). It relaxes the rigidity of the rule of repugnancy contained in clause (1), in as much as it lays down that if a law passed by State Legislature in respect of a matter in the Concurrent List, receives President's assent, then such a law would prevail notwithstanding its being inconsistent with the law passed by Parliament or an existing law on the subject. However, this exception is not absolute. The proviso clarifies that such a law which had received the President's assent can be amended, varied or repealed by Parliament, either directly or by passing a law inconsistent with it.

2.5.09 Although the *non-obstante* clause of Article 246, and clause (1) of Article 254 are facets of the rule of 'Union Supremacy', there is a difference in the nature, extent and effect of their operation. While the *non-obstante* clause of Article 246 is attracted when there is an irreconcilable conflict between the mutually exclusive Legislative Lists, Article 254(1) applies only where there is repugnancy between a Union law and a State law, both occupying the same field with respect to a matter in the concurrent List. It has no application where the State law in its pith and substance falls within an Entry in the State List, its incidental trespass on an Entry in the Concurrent List notwithstanding. Further, a challenge on the ground of *non-obstante* clause of Article 246 is more fundamental than the one on the plea of repugnancy under Article 254(1), as the former goes to the root of the jurisdiction of the legislature concerned. Article 254(1) does not rest on the principle of ultra vires, but of repugnancy which renders the State law 'void' i.e., 'inoperative' or mute only to the extent of repugnancy.

Pre-requisites for application of the rule of Repugnancy

2.5.10 **'Repugnancy'** under Article 254(1) arises where

(i) there is in fact, such a direct conflict between the provisions of a Union law or an existing law and a State law, occupying the same field with respect to the same matter in List III, that the two provisions cannot stand together and it is not possible to obey the one without disobeying the other;

OR

(ii) the Union law was clearly intended to be a complete and exhaustive code, replacing the State law with respect to a particular matter in the Concurrent List.

If all the conditions of either proposition are not fully satisfied, the rule of repugnancy contained in Article 254(1) will not be attracted.

Criticism : Issues raised regarding Articles 246 & 254

2.5.11 As noticed already, most State Governments, political parties and eminent persons find no fault with the structural aspects of Articles 246 and 254. Only two State Governments have asked for reformulation of Article 246 so as to exclude from it words and clauses which give supremacy to the Union legislative power over that of the States. One of them has suggested that Article 246 be substituted by a new Article which will read as follows :

"246. **Subject-matter of laws made by Parliament and by the Legislatures of States**—(1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Parliament and subject to clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

Provided that no such law shall be made by Parliament except with the concurrence of the State Legislature.

(3) The Legislature of any States has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the "State List".

2.5.12 This State Government has further suggested that the Proviso to Article 254 should be revised so as to read as under :

"Provided that Parliament shall have no power to enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by Legislature of the State."

It is claimed that such a reformulation of Article 246 would "preserve the prerogative of both the Parliament and the States in their respective legislative fields". The suggestion is designed to secure : (i) that in case of an irreconcilable conflict or overlapping between the three Legislative Lists, the power of Parliament does not prevail over that of the State Legislatures : and (ii) that Parliament has no power to legislate with respect to matters in the Concurrent List except with the concurrence of the State Legislatures.

2.5.13 The suggestions dealt with in the preceding paragraphs are based on the proposition that no law should be enacted by Parliament in respect of a matter falling within the Concurrent List except with the concurrence of the State Legislature. If no such concurrence is obtained then the law made by Parliament in respect of a Concurrent subject *will not be applicable to that State*. Another State Government has suggested : "The States' legislative competence with regard to the Concurrent List may be reinforced by providing, by a Constitutional amendment, that whenever the Union proposes

to legislate on a concurrent matter, it shall be obligatory for it to consult seriously, and not in a mere perfunctory manner, the States and to secure the approval of the majority of them to the proposal. If the majority of the States disapprove of the proposal, the Union will need to recast it taking into account the States' views so as to secure approval of a majority of States for it. Otherwise the proposal shall be dropped." According to it, a possible alternative approach to safeguarding the competence of the States with regard to the Concurrent List may be that, though prior genuine consultation is made obligatory, approval of the proposed legislation by a majority of the States is not insisted upon. Instead, States which do not approve of it are excluded from the purview of this legislation. The State Government itself asserts that this approach is inappropriate.

2.5.14 Three other State Governments have asked for modification or deletion of Article 254, although the modifications suggested vary in nature and extent. One of them has suggested abolition of or amendment to Article 254 so that "no State could be deprived of any legislative powers which belong to it without its prior concurrence."

2.5.15 One State Government has suggested modification of clause (2) of Article 254 as follows :—

"(a) In the proviso, after the word 'provided' the word, 'further' may be inserted.

(b) After the clause and before the proviso as amended in sub-clause (a), the following proviso may be inserted, namely—

"Provided that if the approval of the President is not received within a period of one year from the date of its receipt the law shall be deemed to have been approved by the President."

In Chapter V we have examined the causes of delay in processing State Bills reserved for President's consideration. We have found that one of the important factors which contribute to such delays is the abnormally heavy inflow of reserved Bills into the Union Secretariat.[10]

2.5.16 The demand of some of the State Governments and their supporting political parties seeking radical changes in the scheme of legislative relations, in general, and Articles 246 and 254, in particular, rests on the broad premise that this is necessary to bring about a 'true' federation.

Supremacy Rule is the Key-stone of Federal Power

2.5.17 An appraisal of this criticism can appropriately begin by addressing ourselves to the question, whether the two-fold principle of Union Supremacy in Articles 246 and 254 is an anti-federal feature of our Constitution. The Constitution of the United States of America which has been considered the most 'federal' and unquestionably the pioneer in experimenting with federalism—*inter alia* provides that the laws of the United States made in pursuance of the Constitution shall be the supreme law of the land; and anything in the Constitution or laws of any State to the contrary notwithstanding. This provision, known as Supremacy Clause has been interpreted by their Supreme Court to mean that "State action incompatible with any legitimate exercise of federal power, loses all validity even though taken within a sphere in which the State might otherwise act".[11] Because of the Supremacy clause, Federal and State powers do not stand on equal elevation. This clause has been called "the very key-stone of the arch of federal power"[12].

Analogous Principle recognised in Canada

2.5.18 In Canada, judicial decisions have held (i) that if there is an irreconcilable overlapping or conflict as between the heads of Dominion and Provincial power enumerated in Sections 91 and 92, respectively, the latter shall yield to the former and (ii) that a Dominion legislation which strictly relates to a head of its power enumerated in Section 91 is of paramount authority, notwithstanding the fact that it trenches upon a head specified in Section 92.

Position in Australia not different—Section 109 of Australian Constitution

2.5.19 The Commonwealth Parliament of Australia has exclusive powers in certain matters (Sections 52, 90, 111, 114 and 115). Out of the 39 heads of power enumerated in Section 51 some are within the exclusive competence of Commonwealth Parliament but others are, by implication, concurrent. Section 109 provides : "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid".

2.5.20 The West German Constitution gives supremacy to Federal legislation in case of conflict with State legislation.

Rule is kingpin of the System

2.5.21 In every Constitutional system having two levels of government with demarcated jurisdiction, contents respecting power are inevitable. A law passed by a State Legislature on a matter assigned to it under the Constitution, though otherwise valid, may impinge upon the competence of the Union or *vice-versa*. Simultaneous operation side-by-side of two inconsistent laws, each of equal validity, will be an absurdity, The rule of Federal Supremacy is a techinque to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal Constitution. It is indeed the kingpin of the federal system. "Draw it out, the entire system falls to pieces"[13].

2.5.22 If the principles of Union Supremacy are excluded from Articles 246 and 254, it is not difficult to imagine its deleterious results. There will

(10) Chapter V on "Reservation of Bills by Governors for President's consideration": Para 5 14.02

(11) Licence Cases, 5, HOW, 504, 538

(12) Schwartz, Bernard: " Text Book of US Constitutional Law", 2nd Edn, Page 48.

(13) Schwartz, Bernard: "Textbook of Constitutional Law", 2nd Edition, Page 51.

be every possibility of our two-tier political system being stultified by internecine strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-State concern will be stymied. The federal principle of unity in diversity will be very much a casualty. The extreme proposal that the power of Parliament to legislate on a Concurrent topic should be subject to the prior *concurrence* of the States, would, in effect, invert the principle of Union Supremacy and convert it into one of State Supremacy in the Concurrent sphere. The very object of putting certain matters in the Concurrent List is to enable the Union Legislature to ensure uniformity in laws on their main aspects throughout the country. The proposal in question will, in effect, frustrate that object. The State Legislatures because of their territorially limited jurisdictions, are inherently incapable of ensuring such uniformity. It is only the Union, whose legislative jurisdiction extends throughout the territory of India, which can perform this pre-eminent role. The argument that the States should have legislative paramountcy over the Union is basically unsound. It involves a negation of the elementary truth that the 'whole' is greater than the 'part'.

2.5.23 The suggestion (vide para 2.5.15 above) that a Proviso be added to clause (2) of Article 254 to the effect that President's approval should be deemed to have been received, if the same is not formally given within a period of one year from the date of receipt of the Bill, and the causes of delay in processing State Bills reserved for President's consideration have been examined in Chapter V. Certain suggestions for streamlining the processing of such cases have been made. A specific recommendation has also been made that as a matter of salutary convention such references should be disposed of by the President within a period of 4 months from the date on which the reference is received by the Union Government.[14]

2.5.24 For all the reasons aforesaid, we are unable to support the suggestions for structural changes in Articles 246 and 254 of the Constitution.

6. *ARTICLE 248 READ WITH ENTRY 97, LIST I OF SCHEDULE VII*

2.6.01 Residuary powers of legislation with respect to any matter not enumerated in the Concurrent List or State List have been vested by Article 248 of the Constitution in Parliament. Such residuary powers include the power of making any law imposing a tax not mentioned in these Lists. Entry 97 of the Union List is to the effect : "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists".

Genesis—Analogy of Canada

2.6.02 The genesis of these provisions may be traced back to the British North America Act, 1867[15], which gave the residuary powers to the Dominion Parliament. Section 91 of that Act provides that it shall be lawful for the Parliament of Canada to make laws "in relation to all Matters not coming within the Classes of Subjects of this Act assigned exclusively to the Legislatures of the Provinces". Section 104 of the Government of India Act, 1935, departing from the Canadian pattern, vested the residuary powers in the Governor-General who could, in his discretion, by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to that Act, including a law imposing a tax not mentioned in any such Lists.

Historical Background and Rationale of Article 248

2.6.03 The framers of the Constitution drew up three exhaustive Legislative Lists. They included in one or the other of these Lists all topics of legislation which they could then conceive of or foresee. However, they were conscious of the fact that human knowledge being limited and perception imperfect, in future a contingency may arise where it becomes necessary to legislate in regard to a matter not found in any of the three Lists. To take care of such unforeseen eventualities they made the residuary provisions in Article 248 and Entry 97 of List I. This is the rationale of Article 248. There was, yet, another important consideration that weighed with the framers of the Constitution in vesting these residuary powers in Parliament. After the question of the partition of the Indian sub-continent became a settled fact, the framers decided that the framework of the Constitution would be a federation with a strong Centre. In firm pursuit of this objective, they gave larger and dominant powers of legislation to the Union Legislature. The conferment of these residuary powers particularly in matters of taxation on Parliament is a part of the constitutional scheme designed by them to secure a 'strong Centre'. After emphasising the need for a strong Central authority capable of ensuring peace and coordination of vital matters of common concern, Jawaharlal Nehru, Chairman of the Union Powers Committee, reported to the Constituent Assembly as under [16] :

> "We think that residuary powers should remain with the Centre. In view however of the exhaustive nature of the three Lists drawn up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot therefore be included now in the Lists."

Issues raised regarding Residuary Powers

2.6.04 Most State Governments do not seek any change in the existing provisions relating to the residuary powers. However, four State Governments have suggested that the residuary powers should be vested in the States, and two State Governments have proposed that Entry 97 of List I be transferred to the Concurrent List.

(14) Chapter V on "Reservation of Bills by Governors or President's consisderation" : Para 5.16.03.

(15) Now renamed as the Constitution 'Act, 1867, by the Constitution Act, 1982.

(16) Rao, B. Shiva : ' 'The Framing of India's Constitution", Vol. II, Page 777.

Limited scope of residuary power –Very few legislations attributable solely to Residuary Power

2.6.05 Enumeration of topics of legislation in the Legislative Lists is so exhaustive that some of the framers of the Constitution thought that they were leaving little for the residuary field. Some of them even predicted that the residuary power would largely remain a matter of academic significance. The thirty-seven years of the working of the Constitution have not demonstrably belied this prediction. The result of our study (*vide* Annexure II.1) shows that there are very few reported decisions of the Supreme Court/High Courts where the competence of Parliament to enact a Union Statute has been ascribed *solely* to the residuary power. However, the number of cases in which the residuary power of Parliament for sustaining the validity of a Union Statute was relied upon as an alternative or additional ground, is not insignificant.

2.6.06 Out of the 9 Union Laws[17] of the former category identified by us, four were special remedial statutes; one was passed to rescue several States from embarrassing situations in which they had landed themselves by collecting unauthorised taxes. Another was passed to give, with retrospective effect, validity to the Constitution and proceedings of the Legislative Assembly of an erstwhile Part-C State. A third was passed to take over the management of a public institution though it had been earlier registered under the Societies Registration Act. of A fourth was passed to curb the evil practice using certain emblems for commercial purposes. The remaining 5 were taxation laws. Out of them, two have since been repealed. Thus, only 3 Union Laws are in force with respect to which the competence of Parliament can be wholly attributed to its residuary power.

Principles of Interpretation of Entry 97, List I

2.6.07 Prior to the decision (October 21, 1971 in *Union of India* Vs. *H. S. Dhillon*[18], the Supreme Court consistently held that before recourse can be had to the residuary Entry 97 of List I it must be found as a fact that there is no Entry in any of the three Lists under which the impugned legislation can come. For, if the impugned legislation is found to come under any Entry in List II, the residuary Entry will not apply. Similarly, if the impugned legislation falls within any Entry in one or the other of the two remaining Lists, recourse to the residuary Entry will hardly be necessary. The Entry is not a first step in the discussion of such problems but the last resort. (Per Hidayatullah J. in *Hari Krishna Bhargava* Vs. *Union of India.*[19]).

2.6.08 The decision in *Dhillon's case* (rendered by a majority of 4 Judges against 3) appears to deviate from this principle, particularly, with regard to the residuary power of Parliament in matters of taxation. According to the ratio of *Dhillon's case*, once it is established that the taxing power claimed is not covered by any Entry in List II or List III, it is competent for Parliament to resort to its residuary power under Entry 97, List I or to combine it with its power under Entry 86, or any other Entry in List I. The correctness of this decision continues to be the subject of perennial debate in academic and legal circles.[2] We do not want to enter into this controversy. will be sufficient to say that the majority decision in Dhillon's case turns on its own peculiar facts. One of the difficult questions before the Court was, whether what was excluded by the words "exclusive of agricultural land" from the competence of Parliament under Entry 86 of List I, could be brought back through the 'residuary' door of Entry 97 in List I. The Court answered this question in the affirmative, particularly in view of its finding that the impugned provision did not fall within the competence of the State Legislatures either under Entry 49 or any other tax-topic in List II.

2.6.09 Be that as it may, the general principle which still holds the field is that all the Entries in the three Lists, including the specific Entries 1 to 96 in the Union List, should be given broad interpretation so as to avoid resort to the residuary Entry 97. If there is a competition or apparent conflict between items in the State List and the 'specific' items in Union List/Concurrent List, attempt should be made to harmonize them, if necessary, by delimiting their scope. But, "where the competing entries are an Entry in List II and Entry 97 of List I, the Entry in the State List must be given a broad and plentiful interpretation". This principle was reiterated by the Supreme Court in a recent decision. It was emphasised that in a Constitution like ours "where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power cannot be so expansively interpreted as to whittle down the power of the State Legislatures". (M/s. *International Tourist Corporation* Vs. *State of Haryana.*[21]).

Experience of other Federations

2.6.10 The proponents of the proposal to assign the residuary powers to the States draw their inspiration from the Constitution of the United States of America and of the Commonwealth of Australia. The Constitutions of these countries give enumerated powers to the National Government and the undistributed residuum to the Units. The proponents do not appear to have gone behind the theoretical facade of these Constitutions to see their functional reality and historical background. They have overlooked two crucial facts. The first is that, in the United States, the federation came into existence as a result of a voluntary compact whereby the pre-existing independent States surrendered a part of their sovereign powers with respect to certain specified matters of common concern to a unified federal entity, retaining the unsurrendered residue with them. The Commonwealth of Australia was also formed in a similar manner. The mode of formation of the Union of States in India was entirely different. Even under the Government of India Act, 1935, which introduced the federal concept, the Provinces were not sovereign entities. The Constitution of India is not the result

(17) See Annexure II.1 for details.

(18) 1972 (2) SCR 33.

(19) 1966(2) SCR 22.

(20) See Seervai H. M. : Constitutional Law of India, 3rd Edition, p. 2012.

(21) 1981 (2) SCR 354 (372).

of any agreement or compact between sovereign independent Units. The basic premise on which the non-descript residuary powers could be left with the constituent units, did not exist in the case of India. The Units (Provinces/States) have been the creature of the Constitution. The Constitution itself was framed by the 'People of India' in the Constituent Assembly. Thus, from a historical stand-point, the constituent units of the Indian Union has no pre-existing right or inherent claim to be invested with the residuary powers.

2.6.11 The second stark fact which has escaped their notice is that, both in Australia and the United States of America, there has been a continuous expansion of the functional role of the Federal Government. Such expansion has completely altered the federal balance of powers in favour of the National Government with corresponding attenuation of the residuary powers of the constituent States.

2.6.12 How this transformation has come about in America can best be described in the words of United States Advisory Commission on Inter-Governmental Relations. Reporting in July 1980, this Commission observed :

> "The period since about 1960 has been an era of dramatic, even drastic, change in American Federalism .... The resulting transformation in fiscal, administrative and political arrangements has left no governmental jurisdiction, and very few citizens untouched. The rate and magnitude of change has been so great over this period that some observers contend that an entirely new inter-governmental system has emerged."

Again in June, 1981, the same Commission reported : ".....Since the so-called Roosevelt-Court battle in 1937, Congress has been relatively unconstrained in its interpretation of what is "necessary and proper", of what constitutes legitimate spending for the "general welfare" and of what activities-intra as well as inter-State are justifiable national concerns under the inter-State Commerce clause. Moreover, since the early 1920s, the (Supreme) Court has consistently given its okay to the accomplishment of national purpose through conditional grants-in-aid. All of these "green lights" offered to Congress the legal mechanisms for expanding the federal functional role."

> "Thus through the mid of late 1950s and continuing and gaining momentum through the 1960s and 1970s, what has come to be known as "judicial activism" worked both directly and circuitously to enlarge the number and type of functions that were to be legitimate national activities under Congress substantial spending and commerce powers and under the First and Fourteenth Amendments.....[22]

2.6.13 As in the United States of America so in Australia, the Courts, through liberal interpretation of the Constitutional provisions, have helped substantial extension of the federal legislative power into fields which were originally considered to be the exclusive concern of the States.

2.6.14 The experience of the working of the federation in the United States of America and in Australia shows that expansion in the power of the Central Government with relative decline in that of the State Governments is inevitable to reach something of an equilibrium in that delicate balance of Central and State powers essential to the working of a federal system under modern world conditions. The Courts play a significant role as a balancing wheel for harmonious adjustment of Union-State relations.

2.6.15 For reasons mentioned in the preceding paragraphs, we are unable to accept the suggestion that residuary powers should be vested in the States.

2.6.16 We now take up for consideration the suggestion that Entry 97 of the Union List be transferred to the Concurrent List. Such an arrangement would have the advantage of enabling both the Union and the States to legislate in regard to any new matter, which is not enumerated in any of the three Lists. However, it is noticed that Entry 97 of List I read with Article 246 and Article 248 includes the power of imposing a tax not mentioned in either List I or List II. The Constitution-makers did not place any Entry relating to tax in the Concurrent List. They advisedly refrained from doing so, to avoid Union-State frictions, double taxation and frustrating litigation. The placement of the residuary matters of taxation in the Concurrent List, thereofore, would run counter to these basic considerations underlying the scheme of the Constitution. Further, the power to tax may be used not only to raise resources but also to regulate economic activity. Situations may arise where, under the garb of a new subject of taxation, a State may legislate in a manner prejudicial to national interest. We are of the view that residuary power of legislation in regard to taxation should advisedly remain with Parliament. But, the residuary field other than that of taxation, may be transferred to the Concurrent List.

2.6.17 We have noted earlier that one of the reasons for vesting residuary powers in the Unionwas the need for ensuring a strong Centre. The proposal which we are making does not detract from the objective; for, the residuary matters of taxation would continue to remain in the Union List. Only non-descript matters (*sans* taxes) would be excluded from the ambit of Entry 97, List I and transposed to the Concurrent List. The exercise of legislative power of the States with respect to such residuary non-tax matters, in the Concurrent List, would also be subject to the rules of Union Supremacy built in the scheme of the Constitution, particularly Articles 246 and 254.

2.6.18 We recommend that residuary powers of legislation in regard to taxation matters should remain with Parliament, while the residuary field, other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation.

(22) Report of Advisory Commission on Inter-governmental Relations, June 1981, page 21.

7. *PART II—STRUCTURAL & FUNCTIONAL ASPECTS OF THE LEGISLATIVE LISTS*

Outline and Scheme of the Legislative Lists

2.7.01 Originally, there were 97 items in the Union List, 66 in the State List and 47 in the Concurrent List. As a result of subsequent amendments of the Constitution, the number of Entries in the Union List and the Concurrent List has increased to 99 and 52, respectively; while the number of Entries in the State List has decreased to 62. (Details of the additions and deletions are given in Annexure II.2).

2.7.02 The Union List includes matters, such as, Defence, Foreign Affairs, Foreign Jurisdictions, Citizenship, Railways, Posts & Telegraphs, Telephones, Wireless, Broadcasting and other like forms of communication, Airways, Banking, Coinage, Currency, Union Duties and Taxes etc. The Union has exclusive legislative power with respect to matters in the Union List. The State List includes items, such as, Public Order, Police, Public Health, Local Government, Agriculture, Land, Rights in or over Land, land Tenures, Land Improvement, Alienation of Agricultural Land, Colonisation, Fisheries, Markets and Fairs, Money Lending and Money Lenders, Relief of Agricultural Indebtedness, Preservation, protection and improvement of live stock and prevention of animal diseases etc. and certain duties and taxes. The State Legislatures have exclusive powers of legislation with respect to matters in the State List. The Concurrent List includes items of concurrent legislative jurisdiction of the Union and the States, such as, Criminal Law, Criminal Procedure, Administration of Justice, Constitution and Organisation of all Courts, except the Supreme Court and the High Courts, Marriage and Divorce, Adoption, Wills, Intestacy and Succession, Contracts, Actionable Wrongs, Trusts and Trustees, Civil Procedure, Forests, Economic and Social Planning, Population control and Family Planning, Social Insurance, Welfare of Labour, Commercial and Industrial monopolies, Legal, Medical and other professions, Price Control etc. There are no taxes and duties in the Concurrent List.

2.7.03 The three-fold division of subjects of legislation rests on the broad postulate that matters of national concern are placed in the Union List and those of purely State or local significance in the State List. Matters of common Union-State interest requiring uniformity in main principles throughout the country are included in the Concurrent List. Nonetheless, these three Lists do not effect a watertight division.

Entries having Inter-face or enabling the Union to Control or take over State Field

2.7.04 It is inevitable that many Entries in the State List should have an inter-face with those in the Union and Concurrent Lists. In the Constitutional scheme six different pattens of inter-connection can be discerned. Certain aspects or parts of a subject may be of local concern, while other aspects of the same subject are of national importance (Group I). Some subjects of legislation, which belong exclusively to the States are made expressly subject to certain Entries in the Concurrent List (Group II). Certain other subjects in List II have been similarly made subject to certain provisions in the Union List (Group III). Certain Entries in List II have been made subject to laws made by Parliament (Group IV). Certain subjects which in the first instance are within the exclusive competence of the States, can become the subject of exclusive Parliamentary legislation if the requisite declaration of public interest or national importance, as the case may be, is made by Parliament by law (Group V). Yet another pattern of inter-connection is seen in certain Entries in List III being made subject to certain Entries in List I or a law made by Parliament (Group VI).

2.7.05 We have identified the important Entries having an inter-face and classified them into these six groups, as shown below. It is not claimed that this grouping is perfect. While illustrating the pattern of inter-connection, it does not denote rigid compartmentalisation. An Entry may have attributes of more than one group.

Group I

(i) With respect to "roads, bridges, ferries and other means of communication", Entry 13, List II covers only the remainder of the same matters in the Union List.

(ii) Entry 63 of List II with respect to rates of stamp duty on documents other than those specified in List I (e.g. in Entry 91, List I).

(iii) Entry 32, List II includes only the remainder of what in the same area, is covered by Entries 43 and 44 of List I.

Group II

(i) Entry 26 (Trade and Commerce within the State) and Entry 27 (Production, Supply and distribution of goods) in List II are subject to Entry 33 of List III.

(ii) Entry 57 (Taxes on Vehicles) of List II is subject to the provisions of Entry 35 of List III.

Group III

(i) Entry 2 (Police) of list II is subject to the provisions of Entry 2A, (Deployment of armed forces.... of the Union in aid of the civil power) in List I.

(ii) Entry 13 of List II, with respect to inland waterways and traffic thereon, is subject *inter alia* to Entry 24 of List I and, among others, to Entry 32 of List III.

(iii) Entry 22 of List II is subject to Entry 34 of list I, with respect to Courts of Wards.

(iv) Entry 33 with respect to 'Theatres and dramatic performances, cinemas', in List II is subject to Entry 60 of List I.

(v) Entry 54 (Taxes on the sale or purchase of goods) of List II is subject to Entry 92A of List I.

Group IV

(i) Entry 37 of List II (Elections to State Legislaures) is subject to provisions of any law made by Parliament.

(ii) Entry 50 (Taxes on mineral rights) of List II is subject to any limitations imposed by Parliament by law relating to mineral development.

Group V

(i) Entry 17 (Water supplies, irrigation and canals, drainage and embankments, water storage and water power) of List II is subject to the provisions of Entry 56 of List I which enables the Union to take over regulation and development of Inter-State rivers and river valleys 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.

(ii) Entry 23 (Regulation of mines and mineral development) in List II is subject to the provisions of List I with respect to regulation and development under the control of the Union, to the extent it is declared by Parliament by law to be expedient in the public interest, in terms of Entry 54 of List I.

(iii) Entry 24 (Industries) in List II is expressly subject to the provisions of Entries 7 and 52 of List I, and its field becomes a subject of exclusive competence of the Union if Parliament by law makes the requisite declaration under Entry 7 or 52 of List I, as the case may be.

(iv) By making the requisite declaration of national importance in terms of Entries 62, 63, 64 and 67 of List I, Parliament can enable the Union to take over, wholly or in part, the field of certain Entries, such as , Entries 12 and 32 in List II and Entries 25 and 40 of List III.

Group VI

(i) Entry 19 of List III, is subject to Entry 59 of List I, with respect to opium.

(ii) Entry 31 of List III is subject to law made by Parliament.

(iii) Entry 32 of List III is subject to the provisions of List I, with respect to national waterways.

(iv) Entry 33(a) of List III, with respect to 'trade and commerce in and the production. supply and distribution of, the products of any industry' is subject to any law made by Parliament by making a declaration of public interest under Entry 52 of List I.

(v) Entry 40 (Archaeological sites and remains) of List III is subject to law made by Parliament by making a declaration of national importance under Entry 67 of List I.

(vi) Entries 63 to 65, List I *inter alia* deal with certain educational institutions, and Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Entry 25 of List III, dealing with education, including universities, is subject to Entries 63 to 66 of List I.

8. CRITICISM AND ISSUES RAISED REGARDING THE UNION LIST

2.8.01 Most State Governments, political parties and others do not desire any basic change in the structure of the Union List. Their criticism is chiefly directed aginst the operational use of the Union List. The complaint is that the Union has through indiscriminate use of its legislative power under some of the Entries in List I, particularly Entries 52 and 54, appropriated to itself needlessly excessive area of the State field, resulting in relative denudation of the States' legislative power under Entries 24 and 23, respectively, of List II. This complaint has been voiced by almost all the State Governments. However, one in this group, wants Entry 56 of List I to be transferred to the Concurrent List.

2.8.02 Two State Governments and some others complain that the scheme of distribution of powers is too much biased in favour of the Union and it requires revision. However, they have not made any specific proposals for deletion, reformulation or transfer of any item of the Union List, except that one of them has stated that items like 'Broadcasting' (which is part of Entry 31 of List I) should be transferred to the Concurrent List, and that the scope of Entry 52 of List I be circumscribed by clearly defining the term 'public interest'. Two other State Governments have suggested transfer of certain tax-items to the State List.

2.8.03 Another State Government and an All India Party maintain that "while enlarging the scope of the States' sphere, we must also try to preserve and strengthen the Union authority in subjects.... such as Defence, Foreign Affairs including Foreign Trade, Currency, Communication and Economic Coordination". This statement is rather vague and general. It is difficult to construe it as a plea for limiting the authority of the Union, to the few subjects such as Defence, Foreign Affairs, Currency etc. and for transferring the other items in List I to List II.

2.8.04 As noted in paragraph 2.4.04 the "Working Committee" of a Regional party had demanded in a draft resolution that the jurisdiction of the Union should be restricted to only four subjects, namely: Defence, Foreign Relations, Currency and General Communications and the rest of the subjects should be the responsibility of the States. But neither the "Whole House" nor the President of that same Regional Party, who appeared before us, nor any other political party that has communicated its views to us, nor any State Government, has taken such an extreme stand.

2.8.05 One State Government has suggested extensive structural changes affecting 29 Entries in the Union List. It has asked for total omission of Entry 2A. It has suggested reformulation, partial deletion or transfer, wholly or in part, of Entries 7, 24, 25, 30, 31, 32, 33, 40, 45, 48, 51, 52, 53, 54, 55, 56, 58, 60,62, 63, 64, 66, 67, 76, 84, 85, 90 and 97 of List I to list II or some of them to List III. The main object of these proposals is to curtail the powers of the Union, and increase those of the States. The focus of the criticism is on those Entries of List I which enable the Union to control or take over the field of certain

Entries in List II. (These have been set out in paragraphs 2.7.05). The broad argument is that these Entries are anti-federal. The proposed changes would not only restrict the scope of these Entries but completely delink them from the provisions of List II and List III and thus disable the Union in the exercise of its legislative power under these Entries from taking over any part of the State or the Concurrent field. In short, the purpose of these proposed changes is to make the three lists, in terms, mutually exclusive. However, in the case of Entry 56 of List I, the proposal is in reverse. It seeks to enlarge its scope so as to give the Union power to divert by law waters of any inter-State river to any part of the territory of India.

2.8.06 Another State Government has sought large-scale changes in List I, in many cases similar to the changes mentioned in the preceding paragraph. However, as regards Entry 56, List I, it has sought deletion of this Entry.

9. *ANALYSIS OF THE UNION LIST*

Principles of Ancillary Powers guiding criterion for analysis

2.9.01 The Constitutions of older federations specify only a few broad heads of legislation leaving it to the Courts to fill the gaps and details through a process of liberal interpretation, deduction and adaptation to meet the exigencies of particular cases. The Constitution of the United States of America enumerates the powers of the National Government under 17 broad heads only. Among those heads are 'defence' 'coinage', 'commerce'. The Surpreme Court of the United States of America, over the years, by a liberal interpretation, has expanded these heads of power to cover a variety of legislative fields. As aids to interpretation, the American Courts have evolved several principles, including the doctrine of "Incidental and ancillary powers".[23] Because of the comprehensive nature of the enumeration of subjects in the three Lists of our Constitution, those American doctrines do not have full and free application in India.[24] This, however, does not mean that the Entries in the three Lists of our Constitution are to be interpreted in a narrow, pedantic sense. It is an accepted principle that the legislative heads in these Lists should be generously interpreted and given the widest scope, and "each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it".[25] The test for the application of this doctrine is, whether the power claimed can be reasonably comprehended within the Constitutional power expressly granted. However, this doctrine cannot be extended to include something which is specifically provided in another Entry relating to that subject. Nevertheless, it can serve as a useful criterion for analysis and classification of many Entries in List I.

2.9.02 Defence, Foreign Affairs, Communication and Currency are matters which are patently of special significance for the nation as a whole. They constitute a class by themselves. For the first stage of analysis, the question to be addressed is: If only the four subjects viz., Defence, Foreign Relations (Affairs), Communication and Currency were mentioned in List I, how many other related items in the List would be subsumed under these heads as necessarily incidental, or ancillary thereto? Keeping this criterion in view, we have attempted to classify the items in List I into four groups under these four heads. It is not claimed that this grouping is perfect. Some Entries may fall in more than one group. However, this would suffice for the limited purpose of identifying the total number of entries in List I which could reasonably be comprehended within these four main heads of legislation.

2.9.03 On the principle of incidental and ancillary powers, items of this kind in List I which can be grouped under these four categorical heads, are as follows:

Class I—Matters patently of National Concern

A. **Defence** : This main subject would cover these items :

(i) Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation. (Entry 1)

(ii) Naval, Military and Air Forces; any other armed forces of the Union. (Entry 2)

(iii) Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment. (Entry 2A)

(iv) Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas. (Entry 3)

(v) Naval, military and air force works. (Entry 4)

(vi) Arms, firearms, ammunition and explosives. (Entry 5)

(vii) Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. (Entry 7)

(viii) Atomic energy and mineral resources necessary for its production. (Entry 6)

(ix) Preventive detention for reasons connected with Defence, Foreign Affairs or the security of India; persons subjected to such detention. (Entry 9)

(x) Central Bureau of Intelligence and Investigation. (Entry 8)

(xi) Admiralty jurisdiction (Part of Entry 95).

(xii) War and Peace. (Entry 15).

(*Total Entries* : 12)

(23) See M' Culloch V. Marylands (1819) 4 Wheat 316.

(24) Bombay V. F. N. Balsara (1951) SCR 682 and other cases.

(25) Hans Muller V. Superintendent 1955(1) SCR 1285 and other cases.

B. Foreign Affairs : This main subject, "Foreign Affairs", is wide enough to encompass these items:

(i) Foreign affairs; all matters which bring the Union into relation with any foreign country. (Entry 10).

(ii) Diplomatic, consular and trade representation. (Entry 11).

(iii) United Nations Organisation. (Entry 12).

(iv) Participation in international conferences, associations and other bodies and implementing of decisions made thereat. (Entry 13).

(v) Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries. (Entry 14).

(vi) Foreign jurisdiction. (Entry 16).

(vii) Citizenship, naturalisation and aliens. (Entry 17).

(viii) Extradition. (Entry 18).

(ix) Admission into, and emigration and expulsion from, India; passports and visas. (Entry 19).

(x) Pilgrimages to places out side India. (Entry 20).

(xi) Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air. (Entry 21).

(xii) Port quarantine, including hospitals connected therewith; seamen's and marine hospitals. (Entry 28).

(xiii) Foreign loans. (Entry 37).

(xiv) Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers. (Entry 41).

(xv) Establishment of standards of quality for goods to be exported out of India or transported from one State to another. (Entry 51).

(xvi) Fishing and fisheries beyond territorial waters. (Entry 57).

(*Total Entries* : 16)

C. Communicatons : This generic head, "Communications", would carry in its sweep the following items :

(i) Railways (Entry 22).

(ii) Highways declared by or under law made by Parliament to be national highways. (Entry 23).

(iii) Shipping and navigation on inland water-ways, declared by Parliament by law to be national water-ways, as regards mechanically propelled vessels; the rule of the road on such water-ways. (Entry 24).

(iv) Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies (Entry 25).

(v) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft. (Entry 26).

(vi) Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein. (Entry 27).

(vii) Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies. (Entry 29).

(viii) Carriage of passengers and goods by railway, sea or air, or by national water-ways in mechanically propelled vessels. (Entry 30).

(ix) Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication. (Entry 31).

(*Total Entries* : 9)

D. Currency :The main subject "Currency" would take in the following matters :

(i) Public debt of the Union. (Entry 35).

(ii) Currency, coinage and legal tender ; foreign exchange. (Entry 36).

(iii) Reserve Bank of India. (Entry 38).

(iv) Post Office Savings Bank. (Entry 39).

(v) Banking. (Entry 45).

(vi) Bills of exchange, cheques, promissory notes and other like instruments. (Entry 46).

(*Total Entries* 6)

Thus, the classes of subjects : Defence, Foreign Affairs, Communications and Currency would encompass as many as 43 Entries in List I.

Class II—Matters vital for the Union and its Functioning[26]

2.9.04 In every dual system based on separation of responsibilities there are certain legislative matters which are inherently essential for the distinct existence of the National entity and the effective exercise of its governmental functions. They are, so to say, integral to the Union organisation, its agencies and functions. From their very nature, therefore, such matters cannot but be the exclusive concern of the Union. Matters in List I belonging to this Class are :

(i) Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides. (Entry 32).

(ii) Courts of wards for the estates of Rulers of Indian States. (Entry 34).

(26) Note : In some of the Entries, the portions shown within brackets essentially relate to States and have been dealt with separately.

(iii) Lotteries organised by the Government of India or the Government of a State. (Entry 40).

(iv) Industrial disputes concerning Union employees. (Entry 61).

(v) Union Public Services : All India Services: Union Public Service Commission. (Entry 70).

(vi) Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India. (Entry 71).

(vii) Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President ; the Election Commission. (Entry 72).

(viii) Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People. (Entry 73).

(ix) Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House ; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament. (Entry 74).

(x) Emoluments, allowances privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union : the salaries, allowances and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General. (Entry 75).

(xi) Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein, persons entitled to practice before the Supreme Court. (Entry 77).

(xii) Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts. (Entry 78).

(xiii) Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory. (Entry 79).

(xiv) Audit of the accounts of the Union and of the States. (Entry 76).

(xv) Inquiries, surveys and statistics for the purpose of any of the matters in this List. (Entry 94).

(*Total Entries :* 15)

Class III—Matters having National Dimensions

2.9.05 Activities relating to many matters in List I have national dimensions and implications. Some of them have even international ramifications. For effective administration of such matters, an integrated policy uniformly applicable throughout the country is essential. These are :

(i) Inter-State trade and commerce. (Entry 42).

(ii) Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities. (Entry 44).

(iii) Establishment of standards of weight and measure. (Entry 50).

(iv) Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. (Entry 66).

(v) Inter-State Migration; inter-State quarantine. (Entry 81).

(vi) The Survey of India, the Geological, botanical, Zoological and Anthropological Surveys of India; Meteorological Organisations. (Entry 68).

(vii) Census. (Entry 69).

(viii) Insurance. (Entry 47).

(ix) Stock exchanges and futures markets. (Entry 48).

(x) Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies. (Entry 43).

(xi) Patents, inventions and designs; copyright; trade-marks and merchandise marks. (Entry 49).

(xii) Cultivation, manufacture, and sale for export, of opium. (Entry 59).

(*Total Entries :* 12)

Class IV—Tax Matters

2.9.06 The Union List includes 13 specific tax-items. These are in Entries 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 92A and 92B. Residuary nondescript texes are covered by Entry 97. Taxation items are separately mentioned from general legislative heads in the Union List and the State List. There are no tax-items in the Concurrent List.

2.9.07 The allocation of fields of taxation between the Union and the States is designed to promote maximum possible efficiency in tax administration without impairing the economic unity of the nation. In distributing the taxation powers, the Constitution endeavours to take care of both aspects of this basic principle. Most of the major taxes figuring in the Union List, such as, customs duties, Union excise duties, Corporation Tax and Income-Tax, can, by their very nature, be effectively administered by the Union. Broad uniformity in the charging principles and incidence of these taxes is essential for preserving the economic integrity of the country. The Constitution seeks to ensure this by putting them in the Union List.

2.9.08 The core of the constitutional scheme which governs Union-State financial relations is contained in Articles 268 to 281. The outline of this scheme is that stamp duties and excise duties mentioned in Article 268 and Entries 84 and 91 of List I are levied by the Union but collected and appropriated by the States. Duties and taxes mentioned in clauses (a) to (h) of Article 269(1) referable to Entries 87, 88, 89, 90, 92, 92A and 92B, are levied and collected by the Union but assigned to the States. Income-tax (Entry 82, List I) is compulsorily shareable with the States. At present, the bulk of income-tax proceeds are being distributed among the States on the recommendations of the Finance Commission. Union duties of excise other than excise on medicinal and toilet preprations, mentioned in Entry 84, List I, are optionally shareable with the States. The proceeds of these duties to the extent of 45% are being distributed among the States. Duties of customs (Entry 83) have an interface with foreign trade, which involves movement of goods across the international borders.

2.9.09 It will be seen that the proceeds of some of the taxes under these 13 Entries in List I, do not form part of the Union fisc. Many of them, though levied by the Union, are distributed among the States. One of the objects of making the Union the larger tax collector and distributor of revenues to the States, is to enable the Union to reduce economic disparities and regional imbalances through equitable distribution of resources among the States. Through tax-sharing and grants, the constitutional scheme further seeks to mantain a proper balance between the tax revenues and the governmental responsibilities of the Union and the States. Trasnfer of tax-revenues by the Union to the States is made on the recommendations of the Finance Commission. The issues raised by some State Governments with respect to certain specific tax-items or financial provisions have been dealt with in the Chapter on "Financial Relations". It will suffice to say here that, *prima facie*, there appear to be good reasons for including these tax-items in the Union List.

2.9.10 The above analysis of matters in List I leads to the following conclusions :

(i) Forty-three Entries threin are necessarily incidential or ancillary to the four subjects, viz., Defence, Foreign Affairs, Currency and Communications, which are indisputably matters of national concern.

(ii) Fifteen Entries comprise matters which are integral to or esssential for the effective functioning of the Union and its organisation.

(iii) Twelve Entries are in respect of matters which are predominantly of national significance. They have national dimensions and implications. They can be best handled at the national level.

(iv) Thirteen Entries relate to fields of taxation. Proceeds of a number of these taxes are trsnsferred by the Union to the States by way of tax-sharing or grants.

2.9.11 In the light of the above analysis we now proceed to consider the structural and functional changes proposed with respect to the Union List.

2.9.12 We would first consider the extreme demand in a draft resolution as noted at Para 2.4.04 'that the interference of the Union should be restricted to Defence, Foreign Relations, Currency and General Communications ; and all other powers should vest in the States. Further, that for the expenditure incurred by the Union in respect of the above subjects, the States would contribute in proportion to their representation in Parliament'.

2.9.13 Taking the demand, *ex-facie*, without any addition or subtraction, it means that only these four subjects should remain in the Union List and all other items including heads of taxation, should be excluded from this List and assigned to the States. As demonstrated in paragraphs 2.9.03 these four 'subjects' if interpreted in their widest amplitude on the principle of implied and ancillaty powers will not include any taxation items. This being so, we are of the view that under such arrangements the country cannot survive as one integrated nation. Nowhere in the world today, exists a Union or a federation in which the National Government has no fiscal resources of its own, independent of the constituent units.

2.9.14 Moreover, the proposed redistribution of powers would require drastic changes in the basic scheme and Frame work of the Constitution "so sedulously designed to protect the independence and ensure the unity and integrity of the country". This is an implication which under our Terms of Reference, we are imperatively required not to disregard. Making of such wholesale structural changes in the fundamental fabric of the Constitution may even be beyond the scope of Article 386.

2.9.15 For these reasons, we are unable to support the extreme demand that the jurisdiction of the Union should be limited to four subjects only and that it should have no powers of taxation, but subsist on contributions from the States.

10. *ISSUES RELATING TO LIST I*

2.10.01 One State Government has suggested a large number of modifications in the Union List. This will entail drastic reduction in the legislative sphere of Parliament and, in most cases, a corresponding increase in the ambit of the legislative field of the States. Before commencing examination of these suggestions, it is necessary to recapitulate that the Union List enumerates matters of exclusive or dominant national interest, whereas the scope of the State List is restricted to areas of purely local concern.

2.10.02 We have, in paragraphs 2.9.02 and 2.9.03 above, tried to group the various Entries in List I, *inter alia*, under the broad heads of Defence, Foreign Affairs, Communication and Currency. We have noted there that an Entry or a part thereof may relate to more than one of these heads. It is nobody's case that Defence, Foreign Affairs, Communications and Currency are not matters of national concern. Many of the suggestions relate to deletion of portions of certain Entries, which, incidentally or by necessary implication, could fall within these four heads. In this connection, we have to keep in view the objective sought to be subserved by an Entry in question and

the likely impact on it of the modification suggested. Any suggestion which would detract from or impede the achievement of the objective, would not be in the interests of the nation. The possible impact of the suggestion on other important matters of national concern has also to be considered. We have not been supplied by the State Governments with particulars of actual hardship, if any, to the Sate arising out of the operation of any Entry in question. In the absence of the same, the suggestions have to be dealt with purely on a theoretical plans.

2.10.03 The first set of the entries in question consists of Entry 2A of List I and Entries 1 and 2 of List II. These Entries now read as under :—

2.10.04 **Entry 2A, List I**—"Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any States in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment".

2.10.05 **Entry 1, List II**—"Public Order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power".

2.10.06 **Entry 2, List II**—"Police (including railway and village police) subject to the provisions of Entry 2A of List I".

2.10.07 **Entry 2A of List I and Article 257A**[27] were introduced in the Constitution by the Forty-second Amendment. Prior to this amendment, Entry 1 of List II only excluded "the use of naval, military or air forces or any other armed force of the Union in aid of the civil power" from its purview, while Entry 2 of List II was not subject to any Entry in List I. The latter Entry read : "Police, including railway and village police". The Forty-second Amendment extended the scope of the exclusionary clause of "any other force subject to the control of the Union or of any contingent or unit thereof" and made Entry 2 subject to the provisions of Entry 2A of List I.

2.10.08 Article 257A was repealed by the Forty-fouth Amendment, but Entry 2A of List I and Entries 1 and 2 of List II were left untouched.

2.10.09 Two State Governments have each proposed a set of modifications of the aforesaid Entries. The suggstion of one of them is that in Entry 2A of List I, the words "or any other armed force of the Union or of any other force subject to the control of the Union" in Entry 1 of List II, and the words "subject to the provisions of Entry 2A of List I" in Entry 2 of List II, be deleted. In support of this demand, it is contended that "Entry 2A was actually introduced by the Constitution (Forty-second Amendment) Act, 1976 in order to confer on the Union Government power to control the armed forces of the Union, such as, BSF, CRP etc., when they are deployed in any State on the request of a State Government in aid of the civil power in such State". It is claimed that "the State Governments have the right to requisition Central Reserve Police Force when they have reasons to believe that the State Police Forces will require to be adequately supplemented to deal with likely situations of serious disturbances. It is only the State Government who may call for the Central Reserve Police for the purpose of preserving public order and protecting property and of quelling disturbances".

2.10.10 According to the other State Government, Entry 2 of List I does not mention any forces of the Union other than the armed forces, including the naval, military and air forces. Prior to the insertion of Entry 2A in this List, therefore, the Union would create and maintain only genuine paramilitary forces and defence intelligence establishments to aid the armed forces in the defence of the country. However, the Union created a number of forces like the Central Reserve Police Force, the Border Security Force etc. which were mainly of the nature of police forces and had largely a police rather than a paramilitary role. This was an encroachment by the Union on the fields of "public order" and "police", both of which were the responsibility of the States under Entries 1 and 2 of List II. According to the State Government, the encroachment was sought to be legitimised by inserting Entry 2A in List I which, for the first time, made a mention of "any other force subject to the control of the Union".

2.10.11 The State Government has further argued that *suo motu* deployment by the Union of its armed forces cannot be reconciled with the expression "in aid of the civil power" occurring in Entry 2A of List I. Deployment of such forces in a State, if it is to be an "aid", cannot be forced on a State administration but must be at its request or with its concurrence.

2.10.12 The State Government has, therefore, suggested the following amendments : —

(i) The first part of Entry 2A in List I, *viz.*, "Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power", may be followed by the words "at the request or with the concurrence of that State".

(ii) The second part of Entry 2A of List I, *viz.*, "powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment", may be replaced by the words "determination of terms and conditions of such deployment applicable to all States with the concurrence of the Inter-State Council". This will ensure that the terms and conditions will be the same for all the States.

---

(27) **"257A. Assistance to States by deployment of armed force or other forces of the Union**—(1) The Government of India may deploy any armed force on the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State.

(2) Any armed force or other force or any contingent or unit thereof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment."

(iii) Entry 1 of List II should read : "Public order subject to Entry 2A of List I".

2.10.13 This State Government does not agree with the view of the Administrative Reforms Commission that, by virtue of Article 355, the Union is competent to use its armed police forces in aid of the civil power in a State, even *suo motu*. According to the State Government, Article 355 is, at best, a sort of preamble to Article 356. It does not confer any powers and responsibilities on the Union other than those implied in other Articles. The powers and responsibilities of the Union *vis-a-vis* the States will not be any less if Article 355 is omitted. (In fact, Article 355 could be omitted). However, if it is retained, it may be amended so as to replace the expression "internal disturbance" by the expression "serious and prolonged breakdown of public order". The State Government is of the view that a serious and prolonged breakdown of public order in a State is a valid justification for invoking Article 356 on the ground that a situation of failure of the constitutional machinery in the State has arisen.

2.10.14 The suggestions of the first State Government appear to rest on the twin assumptions that (a) the Union can deploy its forces in a State, only on the request of the State Government, and (b) the State Government has a right to requisition Union armed forces and to use them under its control to quell public disorder.

2.10.15 The second State Government has interpreted Article 355 and Entry 2A of List I to mean that the Union Government cannot, in any circumstances, deploy its armed forces in a State in aid of the civil power *suo motu*. A necessary pre-condition for such deployment is a request from the State Government or its concurrence. If, in a situation which obviously calls for intervention by the Union in aid of the civil power, a popularly elected Government of a State fails to make a request or give its concurrence to such intervention, the President may legitimately take over the Government of the State under Article 356 on the plea of complete breakdown of law and order and clear the way for intervention at the request or concurrence of the Governor's administration. Also, according to the State Government, the Central Reserve Police Force, the Border Security Force, etc. are not "armed forces but come under the expression "any other force subject to the control of the Union" occurring in Entry 2A of List I. Further, in suggesting an amendment to the second part of Entry 2A of List I, the State Government apparently does not consider it necessary that the Union should lay down the powers, jurisdiction etc. of its forces, armed or otherwise, while on deployment in a State in aid of the civil power. It need determine only the terms and conditions of such deployment with the concurrence of the Inter-State Council. These should be uniform for all the States.

2.10.16 As noticed in paragraph 2.10.07, even before the Forty-second Amendment, maintenance of public order which required the use of the armed forces of the Union in aid of civil power of the State, had been expressely excluded from the ambit of Entry 1, List II. The question is whether, what stands expressely excluded from the purview of Entry 1, List II, was (before the Forty-second Amendment) within the exclusive competence of the Union. For this purpose, it is necessary to have a look at the relevant provisions. The subject-matter of Entry 2, List I is : "Naval, military and air forces; any other armed forces of the Union". Entry 2, List II deals with "Police". (The Forty-second Amendment made it expressly subject to Entry 2A of List I). Entry 1 (Criminal Law) of List III expressly excludes the use of the armed forces of the Union in aid of civil power from its purview. Entry 2 of List III comprises : "Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution". "The civil power" in the context of Entry 1, List II and Entry 1, List III "Criminal Law"—obviously refers to the civil authorities of the State Government charged with the responsibility of maintaining public order.

2.10.17 It is well-settled that the entries in the legislative lists should be given the widest scope and the main topic of an Entry is to be interpreted as comprehending all matters which are necessary, incidental or ancillary to the exercise of power under it. By this token, the use of the armed forces of the Union in aid of the civil power in a State, is a matter which is necessarily incidental or subsidiary to the express subject-matter of Entry 2 of List I. Entry 2, List I—before the insertion of Entry 2A in that List—could be construed as conferring exclusive power on Parliament to make laws with respect to the use of any armed force of the Union in aid of civil power. In view of Article 73, the executive power of the Union would also extend to this matter.

2.10.18 Thus, even before the Forty-second Amendment, the Union had the power to deploy its armed forces in aid of the civil power for the purpose of maintaining public order or quelling an internal disturbance. Insertion of Entry 2A in List I by the Forty-second Amendment not only made explicit what was earlier implicit in Entry 2 of List I but further enlarged its scope by adding the words "any other force subject to the control of the union..... in aid of the civil power". The words "any other force" in this Entry refer to a force other than an armed force, but which is subject to the control of the Union. Such a force of the Union may be deployed to aid the civil power of a State whose even tempo of life is disrupted due to some widespread natural calamity such as cyclone, earthquake, floods etc. In case of such an internal disturbance, the Union may send its force of technical experts (which may not be integral to its armed forces) to aid the civil power of the State to meet the situation.

2.10.19 The expression "in aid of the civil power" used in Entry 2A is not necessarily to be read as meaning that the Union can deploy its armed forces in a State only at the request of the State Government. It may happen that the State authorities responsible for maintenance of law and order are unable or unwilling to deal with a serious disturbance of public order, and the State Government fails or refuses to seek the aid of the Union armed forces for suppressing it. It does not mean that in such a grave situation, the Union is expected to remain an idle spectator. It has a duty to intervene

and power to deploy *suo motu* its armed forces if, in its opinion, the public disorder in the State has assumed the magnitude and character of an 'internal disturbance' within the contemplation of Article 355.

2.10.20 Article 355 casts a duty on the Union to protect every State *inter alia* against internal disturbance. It refers to three kinds of situations. One is that of 'external aggression', the other is of 'internal disturbance' and the third is a situation of 'breakdown of the constitutional machinery'. These situations may either arise singly or in combination with one another. If an internal disturbance does not involve a failure of the constitutional machinery in the State, no action can be taken simply on this ground under Article 356. Article 355 does not expressly say about the acts which the Union may do or the means which the Union may employ to quell an internal disturbance, simpliciter. However, it is a firmly established rule that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution"[28]. In the light of this fundamental principle, Article 355 not only imposes a duty on the Union to protect a State against external aggression and internal disturbance but also, by inevitable implication, grants to the Union the power of doing all such acts and using all reasonable means as may be essential for the effective performance of that duty.

2.10.21 Of course, in exercise of the power available by necessary implication, the Union cannot assume to itself the responsibilities exclusively assigned to the States by virtue of Entries 1 and 2 of the State list. In other words, unless National Emergency is proclaimed under Article 352 or powers of the State Government are assumed under Article 356, the Union Government cannot assume responsibility for maintenance of public order in a State to the exclusion of the State authorities charged with the maintenance of law and order. The use of the expression "aid" in Entry 2A indicates that the Union armed forces can be deployed to help and supplement the efforts of the State police and magistracy in quelling the disturbance and restoring order. The Union armed forces and the State authorities concerned have to act in concert for this purpose. Union's overriding power to ensure such co-ordination to put down an internal disturbance in a State is also impliedly relatable to Article 355. If the State Government or its authorities, despite informal requests or warnings, do not cooperate or they impede the exercise of the power of the Union in dealing with the internal disturbance, a formal direction under Article 257 can be issued. This is, however, a last resort power. Since non-compliance with such a direction may attract the sanction in Article 365 and further entail action under Article 356, even a fore-warning about the issue of such a formal direction will, in most cases, be enough to secure the necessary co-operation of the State authorities.

2.10.22 The contention of one of the State Governments that it has got a right to requisition the armed forces of the Union for the purpose of preserving public order, appears to be misconceived. Though it has not referred to the provisions contained in Sections 130, 131 and 132 of the Code of Criminal Procedure, 1973, yet in making this claim it possibly had these provisions in mind.

2.10.23 Section 130 of the Code lays down that if any unlawful assembly cannot be otherwise dispersed and it is necessary for the public security that it should be dispersed the Executive Magistrate of the highest rank who is present, may cause it to be dispersed by the armed forces. Such Magistrate may require any officer of the armed forces to disperse the assembly with the help of the armed force under his command and to arrest and confine members of the unlawful assembly. "Every such officer of the armed forces shall obey such requsition in such manner as he thinks fit ....." *vide* Section 130(3). Before the Forty-second Amendent, matters contained in Sections 130, 131 and 132 could be related to Entry 2 of the Union list and Entry 2 of the Concurrent list. After the Forty-second Amendment, such use of the armed forces of the Union would fall not only under Entry 2, list I and Entry 2, List III, but also come within the purview of Entry 2A of List I. Thus, there is an overlapping area as between Entries 2 and 2A of List I and Entry 2 of List III with respect to matters contained in Sections 130, 131 and 132 of the Code of Criminal Procedure. In view of the principle of legislative paramountcy of the Union embodied in Articles 246 and 254(1), there is little scope for the exercise of the legislative power of the State Legislatures under Entry 2 of the Concurrent List with respect to the matters comprised in Sections 130, 131 and 132 of the Code of Criminal Procedure.

2.10.24 A perusal of the provisions of Sections 130, 131 and 132 of the Code would show that they do not confer any direct right on the State Government to requisition the armed forces of the Union. Of course, there is nothing in the Constitution or the Code of Criminal Procedure which debars a State Government from requesting the Union Government for making available the aid of its armed forces for suppressing public disorder. But that does not mean that the State Governments have an indefeasible right to ask for the aid of the armed forces of the Union, whenever they like. In a situation of public disorder, not amounting to internal disturbance, the Union Government has a discretion to accept or decline the request of the State Government for such aid.

2.10.25 The Central Reserve Police Force, the Border Security Force, the Central Industrial Security Force etc. were consitituted by Parliamentary enactments as "armed forces". It would be incorrect to categorise them as "any other force subject to the control of the Union" in terms of Entry 2A of list I.

2.10.26 The suggestion that the expression "powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment", occurring in Entry 2A of List I should be replaced by the words "determination of terms and conditions of such deployment applicable to all States with the concurrence of the Inter-State Council" has been examined

---

([28]) ITO *Vs* M. K. Mahammed Kunhe (1969), 2SCR 65 at Page 69.

in Section 8 of Chapter VII on "Deployment of Union armed forces in a State for public order duties". As pointed out there, the proposed amendment of Entry 2A of List I will create an operational vacuum. Also, it will needlessly burden the Inter-State Council with a comparatively routine administrative task of concurring in the terms and conditions of deployment of Union forces in a State.

2.10.27 In the light of the foregoing discussion, it is not possible to support the demands of the two State Governments for deletion and modification of Entry 2A of List I and Entries 1 and 2 of List II.

2.10.28 **Entry 7, List I**—Entry 7 of List I relates to "Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war".

It has been suggested that this should be modified as "Industries necessary for the purpose of armament". Entry 7, as it exists, contains a very important safeguard, namely, Parliament has to declare by law that the industry is necessary for the purpose of defence or for the prosecution of war. The amendment suggested would do away with this safeguard. Further, the scope of the expression 'armament' is highly restricted. Armament is only one of the several aspects of 'defence or prosecution of war'. The proposed modification, if accepted, would seriously cripple the capacity of the Union for effective discharge of its responsibilities with respect to defence or prosecution of war. New concepts in defence and in the prosecution of war are all the time being thrown up. It is a dynamic situation. An industry which is considered essential today for defence or war, may not be so regarded tomorrow and *vice-versa*. We are, therefore, of the view that it would not be in the national interest to modify the existing Entry as suggested.

2.10.29 **Entry 24, List I**—"Shipping and navigation on inland waterways declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways".

One State Government seeks to restrict Union's jurisdiction only to shipping and navigation on inter-State rivers. Another State Government has argued that "this Entry is widely worded and may take in shipping and navigation on inland waterways of rivers which are completely within a particular State. Shipping and navigation on inland waterways of intra-State rivers completely belong to the States over which the Union Government or Union Parliament should not have much power to intervene".

Means of communication are the lifeline of the nation. Important inland waterways, which are declared to be national waterways form part of the national communication network and are vital for the nation. Significantly, the Constitution has conferred powers on the Union to give directions to the States in regard to maintenance of means of communication of national or military importance (Article 257). Inland waterways of national importance may be inter-State rivers as also others. All inter-State rivers may not be of national importance from the point of view of communications. Further, the mere fact that a particular inland waterway happens to be entirely within a State does not in any way detract from its national or military importance. Inland waterways are often useful for purposes of defence. It is pertinent to note that the scope of the existing Entry is limited by the words "as regards mechanically propelled vessels". This is so because of the complex problems associated with development, maintenance and regulation in waterways used by mechanically propelled vessels. We are, therefore, of the view that no amendment of Entry 24 is called for.

2.10.30 **Entry 25, List I**—"Maritime shipping and navigation, including shipping and navigation on tidal waters, provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies". It has been suggested that the expression, "Provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies" should be deleted and transferred to the Concurrent List. Maritime shipping and navigation, including shipping and navigation on tidal waters, is essentially matter falling under the broad head, "Communications" and is admittedly a matter of national concern. It is also of great significance for defence. "Maritime shipping and navigation, including shipping and navigation in tidal waters" is proposed by the State Government to be left in the Union list, obviously because it is of national importance. Provision of education and training and regulation of such education and training provided by States and other agencies is closely connected with and ancillary to the main topic of the Entry and therefore is a matter of national concern. The only effect of transferring this part of Entry 25 to the Concurrent list would be to extend the legislative competence in regard to regulation of such education and training to the States, also. The transerred position will not be materially different for even now, this Entry 25 saves the powers of the States to provide such education and training. 'Regulation' of such education and training imparted by the States and other agencies has been included in List I, obviously to enable the Union to ensure uniformity of syllabi and standards. This is also in corformity with Entry 66 of List I which enables the Union to determine and coordinate standards of technical education. We cannot, therefore, support the demand for modification of Entry 25 of List I.

2.10.31 **Entry 30, List I**—"Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels".

It has been suggested by two State Governments that the scope of the later part of this Entry may be limited to inter-State rivers, in line with the suggestions for modification of Entry 24, List I. Clearly, there is a misapprehension that the responsibility of the Union is restricted to inter-State rivers and not what may be considered "national waterways". We have dealt with this aspect under Entry 24, above. For the reasons stated therein, we do not agree that the

scope of the later part of this Entry should be modified and restricted to inter-State rivers as against national waterways.

2.10.32 **Entry 31, List I**—It relates to "Posts and Telegraphs : telephones, wireless, broadcasting, and other like forms of cmmunication".

It has been suggested by one State Government that Broadcasting and Television should be transberred to the State List. Another State Government has suggested that these matters should be transberred to the Concurrent List.

2.10.33 There are various facets of Broadcasting. These powerful media, *inter alia*, have a vital role in national integration, education and socio-economic development of the country. Establishment and working of this media involve large investments and complex technological requirements. 'Broadcasting' includes not only 'Radio and Television' but also other forms of wireless communication. The criticism of most of the States is mainly directed against the functional and not against the structural aspect of this Entry. Their main grievance is about lack of access to these media, which is an entirely different issue. We have considered these complaints and suggestions in detail in the Chapter on "Mass media"[29]. Suffice it to say here, that Broadcasting and Television are a part of the Broad head of 'Communications' which are universally recognised as matters of national concern. These media have even inter-national dimensions.

One State Government has pointed out that while in the past the telephone facilities were departmentally run, now the Mahanagar Telephone Nigam, an autonomous body has been set up for the management and development of these facilities in Bombay and Delhi. It is argued that, in line with this trend, autonomous bodies set up by the Union are made responsible for telephone facilities in metropolitan towns while in other towns and rural areas similar autonomous bodies set up by States may be made responsible. It has proposed that for this purpose telephones may be shifted rom List I to List III.

Telephones are a very important means of communication. Stretching over the length and breadth of the country, they help to bind the nation together. They are vital for practically every facet of the nation's life e.g. in trade and commerce. These facilities require large investments. Technological advances are taking place all the time in this field. For the successful operation of these facilities, they lean on other facilities like satellites which are with the Union. Establishment of autonomous bodies at important centres is only an administrative arrangement decided upon by the Union for the more efficient discharge of its functions. But such an action cannot be made the basis for a plea to transfer part of the subject to the Concurrent List.

It is in the larger interests of the nation that this important means of communication remains within the exclusive jurisdiction of the Union so that the entire system develops as an integrated, sophisticated and modern facility.

(29) Chapter XIX.

2.10.34 **Entry 32, List I**—"Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides".

It has been suggested that the saving clause at the end, *viz.*, "save in so far as Parliament by law otherwise provides" is unnecessary and should be deleted, because "Article 285 itself provides for such powers"

2.10.35 **Article 285(1)** provides for exemption of all Union property from taxes levied by a State or by any authority within a State. We have dealt with the issues relating to Articles 285 and 289 in a subsequent part of the Chapter[30] and have concluded that no structural change in these provisions is called for. It will be sufficient to say here that the exception carbed out by the saving clause of Entry 32 in question is in conformity with the basic scheme of inter-governmental tax immunities provided in Articles 285 and 289. If this saving clause is deleted from Entry 32, as suggested, the Entry will become incompatible with Article 285. We are, therefore, unable to support the suggestion for modification of Entry 32.

2.10.36 **Entry 33, List I**—The Constitution (Seventh Amendment) Act, 1956 deleted this Entry as also Entry 36 in List II and modified Entry 42 in List III to read "Acquisition and requisitioining of property".

2.10.37 The suggestion of a State Government is that the pre-1956 position should be restored. An Entry "Acquisition and requisitioning of property for the purposes of the Union" should be inserted in List I and a new Entry 36 inserted in List II which will read "Acquisition and requisitioning of all property other than for the purposes of the Union". Entry 42 in List III, it is suggested, should be omitted. The State Government has not pointed out any difficulty that they might be facing on account of the present Entry 42 being in the Concurrent List.

2.10.38 Prior to the Seventh Amendment, both Entry 33 of List I and Entry 36 of List II provided for aquisition and requisitioning of property, the former for the purpose of the Union and the latter for purposes other than those of the Union, subject, however, to the provisions of Entry 42 of List III. The last named Entry provided for "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

2.10.39 Such trifurcation of the subject led to several difficulties. Questions arose as to whether a State Government could acquire or requisition property for a "Union purpose". It was held by the Supreme Court, in *State of Bombay* V. *Ali Gulshan*[31] that a State was not competent to requisition or acquire property under the Bombay Land Requisition Act, 1948, for the accommodation of the staff of a foreign consulate, because that was a 'Union purpose' and not a purpose of the State.

(30) Paras 2.34.01 to 2.35.11.

(31) 1955(2) SCR 867.

2.10.40 It was to get over these problems that the Seventh Amendment was enacted. According to the Statement of Objects and reasons of the Amendment, the changes were made to obviate technical difficulties and to simplify the constitutional position. As a result of the Amendment, the entire field of acquisition and requisitioning of property is available for the exercise of concurrent legislative power by the Union and the States. An objection that the State or the Union cannot acquire or requisition property for each other's public purpose, is no longer tenable. Further, it is no longer necessary to delegate, under Article 258(1) to a State Government, the executive power to acquire or requisition property for a purpose of the Union.

2.10.41 Thus the existing arrangement is more flexible in that a State Government is competent to acquire or requsition property for a "Union purpose" and *vice versa*. It is not clear what advantage would accrue on account of the change proposed by the State Government. Rather, it might lead to friction. In fact, if the pre-Amendment position were to be reverted to, operation of the restored Entries would re-create the same difficulties to obviate which the Amendment was made. In view of the many advantages which have been secured by having a single Entry *viz.* Entry 42 in List III, we are unable to support the suggestion for reverting to the pre-1956 situation.

2.10.42 **Entry 40, List I**—"Lotteries organised by the Government of India or the Government of a State".

The proposal of three State Governments is that the words "or the Government of a State" be omitted from this Entry and the subject of 'lotteries organised by the Government of a State' should be transferred to the State List. One State-level political party has also recommended that this Entry should not apply to lotteries organised by the State.

2.10.43 Entry 40, List I should be read with Entry 34 of List II which comprises : "Betting and gambling". There is a bead-roll of Court decisions[32] which have consistently held that the expression, "Betting and gambling" includes the conduct of lotteries. 'Lotterries organised by the Government of India or the Government of a State' has been taken out from the legislative field comprised in Entry 34, List II and reserved under Entry 40 of List I to be dealt with exclusively by Parliament. As a result, in view of Article 246(1) and (3), State Legislatures are not competent to make law touching lotteries organised by the Union or a State Government. But so long as Parliament does not legislate under Entry 40, List I, a State is competent under Entry 34, List II read with Article 298, to conduct a lottery. To the best of our information, at present, there is no legislation made by Partliament on the subject of lotteries under Entry 40, List I.

2.10.44 State Lotteries always assume inter-State dimensions. Distributors of lottery tickets and subscribers are scattered all over the country. A State organising a lottery is inherently incompetent to control or regulate its operations or implications beyond its territorial limits. A typical illustration of such a difficulty is furnished by the Maharashtra case[33] which went up to the Supreme Court. By an executive order, the Union Government allowed the Government of Maharashtra and other State Governments to conduct lotteries 'for finding funds for financing their development plans'. At the same time, it advised that suitable steps be taken to safeguard the interests of such States as did not desire to start State lotteries. Armed with this "permission"—which had no legal sanction—the Government of Maharashtra imposed a ban on sale or distribution of lottery tickets of other States. Feeling aggrieved, some persons filed writ petitions in the Supreme Court challenging the validity of this ban. The Supreme Court held that since Parliament had not enacted any legislation under Entry 40, List I, the Government of Maharashtra was competent under Entry 34, List II read with Article 298 to organise its lottery. It had also the necessary executive power for that purpose. It was, therefore, not required to obtain the permission of the Union Government to organise its lotteries. Even assuming that such permission is necessary, a condition imposed by virtue of such permission that lottery tickets of one State may not be sold in another State, cannot be enforced by the other State. The other State has no power to make laws in regard to the lotteries organised by the first State. Its executive power, by virtue of Article 298, extends to lotteries organised by itself, but not to lotteries organised by the other State. If these conditions had been imposed by a law made by Parliament under Entry 40, List I, they would be legally enforceable throughout the area of its inter-State operation. Keeping the subject of 'regulation of lotteries organised by the State Governments' in List I, enables Parliament to regulate this matter including its inter-State aspect, effectively.

For the foregoing reasons, we are not in favour of modifying Entry 40, List I and transferring any part thereof to List II.

2.10.45 **Entry 45, List I**—"Banking".

It has been suggested that this subject may be transferred to the Concurrent List.

2.10.46 "Banking" has been defined by Section 5(b) of the Banking Regulation Act, 1949 as "the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise". This definition is not exhaustive. Two important aspects to be considered in this connection are the territorial nexus of Banks and the close connection of Banking with currency and credit. Operations of the Banks are not confined to the territorial limits of the States in which they are located. Their banking activities have nation-wide implications. Banking business has an important impact on inter-State trade also. Currency and credit are vital for promoting socio-economic development of the country. The Constitution has allocated the field of Banking, exclusively to Parliament. The States have the power to borrow but this is subject to the control of the Union under certain circumstances (Article 293). In view of the fact that Banking plays

(32) State of Bombay *Vs.* Chamarbaugwala, 1957 SCR 874.

(33) H. Anrai and others *Vs.* State of Maharashtra, (1984) 2 SCR 440.

a very important role in the organisation of credit, facilitation of inter-State trade and commerce, the growth of national economy and economic welfare of the nation as a whole, we are unable to support the demand for transfer of this Entry to the Concurrent List.

2.10.47 **Entry 48, List I**—"Stock exchanges and futures markets".

It has been contended that "futures markets" are essentially intra-State in character, dealing with local mercantile and commercial subjects, mostly of local and regional significance. On these premises, two State Governments have suggested that the subject 'futures markets' be transferred to the State List. One of them has further suggested that the corresponding part of Entry 90 of List I *viz.* "Taxes other than stamp duties on transactions in futures markets" be also shifted to the State List.

Commercial activities in "futures markets" involve 'forward contracts'. If there is too much speculation in the futures markets its impact spills over inter-State boundaries causing artificial fluctuation in prices and scarcity of commodities traded. It has a close connection with price control and regulation of the production, supply and distribution of commodities essential for the life of the community. From this standpoint, the problem is bigger than the individual States. In our country in the case of several essential commodities e.g. edible oils, wheat, rice, pulses, spices and sugar etc., the producing States are different from those where the bulk of them is consumed. For example, ground-nut is mainly produced in Gujarat, while the consumers of this commodity are spread throughout the country. Similarly, in production of wheat and rice, Punjab is surplus, while the North Eastern and Southern States are in deficit. To check this aspect of 'futures markets' having inter-State dimensions, Parliament has under this Entry, enacted the Forward Contracts (Regulation) Act, 1952 and the Securities Contracts (Regulation) Act, 1956. These legislations regulate forward trading in certain goods throughout the country.

The expression "futures markets" in Entry 48, List I does not mean the place or the locality where transactions of sale and purchase of goods takes place. If there was ever any doubt about the connotation of this expression it has been unequivocally dispelled by a Constitution Bench of the Supreme Court with those observations : "The word 'futures' means 'contracts which consist of a promise to deliver specified qualities of some commodity at a specified future time..... Futures are thus a form of security, analogous to a bond or promissory note'. In this sense a market can have preference only to business *and not any location*".[34] On these premises, the court held that the Forward Contracts (Regulation) Act, 1952 was a legislation on 'futures markets' under Entry 48, List I. In the light of this authority, it is abundantly clear that 'futures markets' are commercial activities which are not purely or mainly of local or regional concern. They are essentially inter-State in character. No practical difficulty, disadvantage or hardhsip experienced in or resulting from the operation of this Entry or the Acts passed thereunder, has been brought to our notice.

As regards the proposal for deletion of the tax on transactions in 'futures markets' from Entry 90, List I and its transposition to List II, it may be observed that under Article 269(1) (e) it is mandatory for the Union to assign and distribute all such taxes among those States within which it was levied. The proceeds of this tax do not form part of the Consolidated Fund of India except in so far as the proceeds represent the proceeds attributable to the Union Territory. The States are its sole beneficiaries. For the foregoing reasons, we are not persuaded to support the suggestion for transferring that part of Entries 48 and 90 of List I to List II, which relates to "futures markets".

2.10.48 **Entry 51, List I**—"Establishment of standards of quality for goods to be exported out of India or transported from one State to another".

It has been proposed that the phrase "or transported from one State to another" be deleted. The argument is that each State can independently judge for itself the quality of the goods it is purchasing from the other States and a decision to accept such transportation of goods exported by them has to be left to the discretion of the State concerned.

2.10.49 The Constitution envisages free flow of goods across State borders (Article 301). Parliament alone has the power to impose restrictions on inter-State trade (Article 302). One of the important achievements during the last three decades and more, is the emergence of the country as a single economic union. This has enabled the country to march faster towards industrialisation. Uniform standards throughout the country are a must for promotion of inter-State trade, also. Determination of standards as to the quality of goods are also essential for export. They help build international credit and goodwill for the country in foreign trade. The suggestion of the State Government would result in economic fragmentation of the commercial unity of the nation. We cannot, therefore, subscribe to the proposed modification of this Entry.

2.10.50 **Entry 52, List I**—"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

Most State Governments and political parties have not suggested any specific structural change in Entry 52 of List I. But, all of them complain that by enacting the Industries (Development and Regulation) Act, 1951 and amending it from time to time on the basis of declarations of public interest, the Union has indiscriminately taken over under its control most of the industries, with consequent denudation of the powers of the State Legislatures under Entry 24 of List II. They have suggested that the First Schedule to the IDR Act should be reviewed from time to time and those items, Union control over which is no longer expedient in the public interest, should be deleted therefrom. Some of them have given a list of specific items of industries which, they suggest, should be deleted from the First Schedule to the Act. One State Government after stating that 'the Union

(34) Waverly Jute Mills Co. Ltd. and others *Vs.* Roman and Co. and the Attorney General of India (AIR 1963 SC 90).

has tended to touch the State legislative field by invoking the powers available under Entries 52, 54 and 92 etc. in List I', has asked for a general review of the Entries in the three Lists. Only two State Governments have specifically demanded structural changes in Entry 52, List I and Entry 24, List II of the Seventh Schedule. One of them has suggested that Entry 24, List II should be reformulated so as to read : "Industries other than those specified in Entries 7 and 52 of List I". It has further urged that Entry 52, List I be substituted by a new Entry, which by itself, will enumerate the "core industries of crucial importance for national development" and that the words which enable Parliament to take over the field of Entry 24, List II by making a declaration of public interest, should be deleted. A list of such "core industries" has been suggested for insertion in the new Entry 52. Another State Government has suggested that Entry 52 should be modified to limit Union's control to specified key, basic and strategic industries enumerated in the Entry itself. It has also given a list of such industries for incorporation in Entry 52. In short, the suggestion is that Entry 52, List I and Entry 24, List II should be so restructured as to become mutually exclusive and independent.

2.10.51 We have in a foregoing paragraph considered the proposal of the State Government for restructuring Entry 7, List I. We have dealt with, in detail, the issues and problems in the context of Union-State relations, concerning the various aspects of Entries 52 of List I and Entry 24 of List II in Chapter XII on "Industries". At this place, the focus of the discussion will primarily be on the demand for restructuring these Entries.

2.10.52 The Constitutional position is that when Parliament by law declares unde Entry 52, List I that Union control over a particular industry is expedient in the public interest and passes a legislation pursuant to such declaration, such industry, to the extent laid down in the declaration and the legislation, becomes the exclusive subject of legislation by Parliament, with corresponding denudation of the competence of the State Legislatures under Entry 24, List II. By making the requisite declaration under Entry 52, List I Parliament passed the Industries (Development and Regulation) Act, 1951. This Act has been amended several times in the same manner. The result is that the competence of the State Legislatures under Entry 24, List II with respect to a very large number of industries enumerated in the First Schedule of the IDR Act, has been taken away to the extent laid down in this Act.

2.10.53 There are three important objectives of National Industrial Policy which stem from the Directives enshrined in Articles 38 and 39 of the Constitution. One is to secure dispersal of industries in a manner which would help correct regional imbalances. The other is encouragement and protection of small-scale industries. The third is curbing of monopolies. Regulation and control at the national level of the establishment, growth and development of *certain* industries or some of their aspects, having a nation-wide significance, is necessary for ensuring progress towards the welfare goals of governmental policy envisioned by the Constitution. Identification of such industries of nation-wide significance and public interest, from those which are not of such interest, is essential for implementation of this policy.

2.10.54 Since socio-economic conditions are never constant, industries cannot be classified once-for-all into those which are of public interest/or national importance and which are not of such interest or importance. 'Public interest' or 'national interest' are not static notions. They are dynamic concepts. Union control of any industry considered expedient in public interest, today, may not be so regarded in future. Concepts keep changing with change in circumstances. Enumeration of specific industries in Entry 52, itself, is thus neither feasible nor desirable. The Entry has advisedly left it to Parliament to determine by law from time to time as to whether Union control over a particular industry would be expedient in the public interest.

2.10.55 However, this is not to say that once an industry has been so brought by Parliament by law under the control of the Union by including it in the enactment, (in the instant case in the First Schedule to the IDR Act), it should remain there for ever. We have in Chapter XII on "Industries", emphasised the need for periodic review of laws enacted under Entry 52, List I.

2.10.56 We have recommended in that Chapter [35] that there should be a review, every three years, to determine whether, in respect of any of the industries in question, the Union's control should be continued or relaxed. Such a review may be undertaken by a committee of experts, on which State Governments should be represented on a zonal basis. The result of the review may also be placed before the National Economic and Development Council proposed by us. This will help foster the needed coordination and cooperation between the Union and the States.

2.10.57 This will go a long way in ensuring that at any point of time, only such industries are kept within the purview of this Act, Union control of which is essential in the public or national interest. As we are of the view that the remedy of the problem lies not in enumeration of specific industries of national or public interest in Entry 52, itself, but in effective periodic review of the list of industries included in the IDR Act (or any other Act passed under Entry 52, List I), we do not recommend amendment of this Entry itself, as suggested. The necessity of making any consequential change in Entry 24, List II, also, does not arise.

2.10.58 **Entry 53, List I**—"Regulation and development of oil-fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

One State Government has suggested that the Entry may be shifted to the Concurrent List, but has not given any reasons in support of it. Another State Government has suggested that the Union's control may be limited to petroleum, oil and gas exploration, extraction, transport and marketing; and petroleum refineries and gas processing units. It has suggested

(35) Chapter XII on "Industries": Para 12.5.10.

that wholesale marketing of petroleum products and LPG should be in the State List. It has also suggested that dangerously inflammable substances should be the concern of the States as it will have to bear the consequences of any mishap relating to such substances, and that to ensure uniform approach to these substances on the part of the States, the Inter-State Council may frame guidelines on the subject. Yet another State Government has urged that onshore development of Oil fields and mineral oil resources should be transferred to the State List for balancing regional development and for allowing the State to obtain a just share in the profits made by the Central Government.

2.10.59 Regulation and development of oil-fields and mineral oil resources is a matter of vital interest to the nation as a whole. It is an essential commodity for the economic life of the community. It is, therefore, not reasonably possible to say that its inclusion in List I was unjustified. Availability of petroleum and petroleum products is important not only for development of the country but is also of significance from the view-point of defence. Safe storage, handling and transportation of inflammable substances is today a very complex subject. We, therefore, do not find a good case for transferring it to the Concurrent List or any portion of this Entry to the State List.

2.10,60 **Entry 54, List I**—"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."

It has been suggested by a State Government that this Entry may be shifted to the Concurrent List. Another State Government has stated that the Union ought to be concerned with key and strategic minerals. Even in the case of strategic minerals, unless security considerations for conservation of these minerals require otherwise, the Union should be concerned only with significant deposits. It has suggested that Union's control may be limited to key and strategic minerals. A list of such minerals to be enumerated in Entry 54 has also been furnished. We have dealt with "Mines and Minerals", separately.[36] Mines and minerals furnish an important industrial input for economic and industrial development. Entry 23 of List II provides for "Regulation of mines and mineral development subject to provisions of List I.....". Parliament has enacted Mines and Minerals (Regulation and Development) Act, 1957. The observations made by us in regard to emumeration of certain industries in Entry 52 are equally valid in respect of the suggestion to enumerate certain minerals in Entry 54, itself. For all those reasons we are unable to support the suggestion for restricting Entry 54 to certain specific minerals or for transferring it to the Concurrent List.

2.10.61 **Entry 55, List I**—"Regulation of labour and safety in mines and oilfields."

One State Government has demanded that this Entry be shifted to the Concurrent List. Another State Government has suggested that regulation of labour and safety in oil-fields ought to be, as it is at present, within the exclusive jurisdiction of the Union, but Union's responsibility in regard to mines should be limited to such mines as are within the jurisdiction of the Union as suggested by it in regard to Entry 54. Regulation of labour and safety in mines and oil-fields is closely connected with and incidental to the main topics enumerated in Entries 53 and 54, List I. We are, therefore, unable to support the suggestion for transfer of Entry 55 to the Concurrent List or its modification.

2.10.62 **Entry 56, List I**—"Regulation and development of inter-State rivers and river valleys 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."

Contrary to the general trend of its suggestions one State Government has proposed that "diversion of the waters of inter-State rivers to any part of the territory of India and apportionment among the States (but not including the use within the States) of the waters of inter-State rivers" be added to this Entry. We note that the State Government has also suggested that all inter-State water disputes should be referred to a permanent tribunal constituted by the Supreme Court. Another State Government has urged exactly to the contrary. It has pleaded for deletion of this Entry. This State Government is of the view that Entry 56 gives the Union jurisdiction over water resources in inter-State rivers and river valleys even when there is no dispute between the States. According to them it confers vast and unfettered power on the Union which the Union, on account of its much larger resources, uses to encroach on an area which is rightly in the jurisdiction of the States. It is argued that there is need for greater devolution of powers to the State for accelerating development and in the crucial area of water resources this concept is equally important.

We have dealt with the various aspects of inter-State river water disputes in Chapter XVIII. Apportionment of the waters of inter-State rivers by the various States rests generally on any agreement among them in regard to the utilisation of the same. Keeping in view the sensitivities involved, the Constitution makes a special provision for resolution of water disputes (Article 262). The basic principle underlying the Inter-State Water Disputes Act, 1956 is that such disputes should be resolved, as far as possible, by negotiation and when that is not possible, by a judicial process through a tribunal constituted for this purpose, and not through litigation in courts. Water disputes raise highly emotive issues. It would not, therefore, be prudent to leave their resolution entirely to the Union executive. We are of the view that the existing arrangements which provide for judicial determination by tribunals of such complex but emotional questions—when they cannot be settled through negotiation—is the best way of dealing with them.

Water resources of inter-State rivers do not belong to any one State through which it passes. Flowing through the various States, such waters are not located in any one State. It is, therefore, essential that the Union should have jurisdiction in regard to regulation

(36) Chapter XIII.

and development of inter-State rivers and river valleys to the extent determined by Parliament to be expedient in public interest.

2.10.63 **Entry 58, List I**—"Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies".

It has been suggested that regulation and control of manufacture, supply and distribution of salt by agencies other than Union agencies should be taken out of this Entry and transferred to the State List. It is pertinent to note that salt is one item which is consumed by every citizen and essential for human existence. It is a basic necessity of life. But production is concentrated in a few States along the sea coast. A relatively insignificant amount is produced by way of lake or mineral salt etc. in a few non-maritime States. The regulation and control of manufacture, supply and distribution of salt is thus a matter of national interest. Therefore, it should remain in the Union List.

2.10.64 **Entry 60, List I**—"Sanctioning of cinematograph films for exhibition."

The suggestion of a State Government is that this Entry should be transferred to the State List. It is argued : "The current system of censoring by Board of Censor nominated by the Union which might or might not adequately provide for representation from each of the States, is a feature which has to be borne in mind while considering the real purport of this Entry. India has got now a linguistically based foundation with certain traditions, cultures, practices and habits peculiar to each State. (sic) Even the faiths are some times radically different. Cinematograph exhibition has now attained a peculiar position in the field of communication and information. Having regard to the different tastes, varied culture, mosaic (sic) habits of the people in each State in our country, the power to sanction cinematograph films for exhibition should be under the supervision and control of the States and should not be the subject-matter of legislation of Parliament. The Government suggests that this Entry, viewed in the light of independent developmental conscience of States, has to be transferred to the State List". Another State Government has also urged that this Entry be transferred to the State List. It is argued : "The suitability of cinematographic films for exhibition is intimately related to the culture, deeply-held beliefs and values of the particular population. In India there is a marked ethnic, linguistic, religious and cultural diversity. It is quite possible that a particular film which may be received very well by a predominant section in one State may provoke roits in another State where it deeply offends the sensibilities of a major section of the population."

2.10.65 The Entry relates to only one particular aspect of cinematograph viz., the sanctioning of films for exhibition. All other matters relating to cinemas are included in Entry 33 of List II. This matter appears to have been put in List I because this has inter-State or even international implications. Some of these films have not only a country-wide market but also a world-wide one. It is a very powerful medium, which has the potentiality of endangering or strengthening national integration. If properly used, it can educate the masses on healthy lines, and in the result, weld the diverse elements into a strong nation and strengthen political and cultural unity and integrity of India. On the other hand, this suggestion of the State Government, if accepted, may result in practical difficulties. Different States may enact diffenent criteria for sanctioning exhibition of films and the producers of films may be required to obtain a separate licence from each State Government for exhibiting them in the State concenred. This may lead to serious problems. The very fact that a film well received in one State may offend the sensibilities of people in another State, instead of supporting, militates against the suggestion for transfer of this Entry to the State List. We are, therefore, of the view that the existing arrangements need not be changed.

2.10.66 **Entries 62, 63 and 64, List I**—These three entries apart from enumerating certain institutions as institutions of national importance, provide for Parliament to declare and determine by law from time to time new institutions of national importance.

It has been suggested : "Parliament should not have any such power. Ours is a rich cultural heritage. In a free India this would be further enriched over the years. It is essential that institutions which are associated with this rich heritage, our freedom struggle, the blossoming of the nation, building up places of excellence (sic), are recognised from time to time as institutions of national importance". The State Government has, however, not given any reasons for proposing curtailment of the powers of Parliament in this regard. Another State Government has suggested that it will be unfair if Parliament brings another institution, within the jurisdiction of the Union by declaring it by law to be an institution of national importance, even if Government of India is financing it partly. On this premise it has suggested that in Entries 62 and 64 it should be stipulated that this should be permissible only if the Government of India is financing the institution to the extent of a minimum of 75 percent. In line with its suggestion to transfer "education" back to the State List, it has argued that no new Central Universities should be set up. No other State Government has raised any such objection.

2.10.67 Entry 62 covers institutions like National Library and the Indian Museum. Entry 64 deals with institutions for scientific or technical education. These institutions could be institutions of national importance by virtue of their position in depicting our national heritage or institutions of excellence in the field of scientific or technical education. It would not be appropriate to link recognition of these institutions as of national importance with a degree of minimum funding by the Government of India. Extent of funding by Government of India is a matter of administrative convenience. We are, therefore, unable to support the suggestions for modification of Entries 62 and 64. We have also not found it possible to support the suggestion that Education should be brought back into the State List. Therefore, we are unable to agree to the modification of Entry 63.

2.10.68 **Entry 66, List I**—"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions".

It has been suggested by one State Government that the Entry be transferred to List II. Another State Government has suggested that in line with its suggestion that Education should be again placed in List II, the jurisdiction of the Union under Entry 66 should be limited to only those institutions, which are financed by the Union to the extent of a minimum of seventyfive percent and declared by law to be institutions of national importance. Coordination and determination of standards in institutions of higher education or research and scientific and technical institutions on a uniform basis for the whole country is vital for the growth of the nation. It is significant that in 1976, the Entry regarding "Education" was transferred from the State List to the Concurrent List. In the circumstances, it is not clear why the Union should be deprived of this power. No other State Government has objected to this Entry. We are unable to support this suggestion. The problem has been dealt with further in paragraphs 2.17.08 to 2.17.17.

2.10.69 **Entry 67, List I**—"Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance".

2.10.70 As regards ancient and historical monuments and records and archaeological sites and remains, other than those covered by Entry 67 of List I, the constitutional scheme of distribution of powers is as follows :

(i) Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance, is part of Entry 12 in List II.

(ii) Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance, is Entry 40 in List III.

2.10.71 In all the above Entries, the expression "declared by or under law made by Parliament" was inserted by the Constitution (Seventh Amendment) Act, 1956 replacing the expression "declared by Parliament by law". In the Government of India Act, 1935, Entry 15 in List I, the Federal Legislative List, read as "Ancient and historical monuments; archaeological sites and remains".

2.10.72 One State Government has suggested that both Entry 67 in List I and Entry 40 in List III should be transposed to the State List. However, that Government has not given any reason in support of the suggestion.

2.10.73 Ancient and historical monuments and records and archaeological sites and remains are not matters purely of State or local interest. These have aspects of general, historical, cultural or religious importance, extending beyond the territorial boundaries of the States wherein they are located. The upkeep of ancient and historical monuments and archaeological operations both require highly sophisticated technologies and large investments. Some of them may be more important than others from the national point of view. A few may even be of international interest. That is why Parliament has been empowered by Entry 67 in List I to make a law enabling these to be declared to be of national importance and taken over by the Union.

2.10.74 Even if the archaeological finds and remains at a particular site are not of national importance, it is essential that Archaeological Departments in individual States, in the interests of scientific investigation, historical research and due preservation of sites and remains, should follow standard method processes and procedures. This explains why this subject has been included in the Concurrent List as Entry 40 enabling the Union *inter alia* to lay down such standards.

2.10.75 Also, maintenance and preservation of ancient monuments and archaeological sites and remains are quite expensive. Therefore, retention of Entries 67 and 40 in Lists I and III respectively is advantageous to the States as the related expenses will continue to be borne largely by the Union.

2.10.76 We are, therefore, of the view that there is now a fair sharing of responsibilities as between the Union and the States, in the matter of ancient and historical monuments and records and archaeological sites and remains and that Entries 67 and 40 in List I and III, respectively, do not need any change.

2.10.77 **Entry 76, List I**—"Audit of the accounts of the Union and of the States".

Two State Governments have recommended that this Entry should be amended and the subject of "audit of the accounts of the States" should be transferred to the State List. Barring these States no other State Government, political party or individual has made such a demand.

2.10.78 Articles 148 to 151 of the Constitution deal with the office of the Comptroller and Auditor General (C & A.G.). The C & A.G. holds a Constitutional office (Article 148). Article 149 provides *inter alia* that his duties and powers in relation to the accounts of the Union and the States may be prescribed by or under a law of Parliament. Under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, he is *inter alia* responsible for the audit of the accounts of the Union and the States. Under Article 150, the form of accounts of the Union and the States is prescribed by the President on the advice of the C & A. G.

2.10.79 As discussed in the Chapter on "Financial Relations", there is close interaction between the Union and the State Governments in fiscal and financial matters. Maintenance of accounts of these Governments on the basis of uniform principles, early detection by an independent authority of irregularities in financial transactions, and timely remedial action to correct the irregularities, are some of the basic ingredients of proper fiscal and financial management and coordination between the Union and the State Governments in these fields. It would be difficult, if not impossible, to achieve these objectives if there were to be a multiplicity of audit authorities each prescribing its own system of accounting and adopting its own audit methods and procedures. The Constitution has, therefore, provided a single authority viz. C & A.G., subservient neither to the Union Government nor to the State Governments, who is empowered to advise on the form in which accounts of the Union and the States are to be kept, and to audit the accounts. Thus the Constitution envisages the C & A.G. to

function as the watchdog of the country's finances. This arrangement makes for economy in expenditure as well. We are, therefore, unable to support the proposal for modifying Entry 76.

2.10.80 **Entry 84, List I**—"Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption,

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry".

It has been suggested by one State Governments : "The power to levy excise duty on medicinal and toilet preparations containing alcohol etc. should be made over to the States". This Entry was incorporated as it was felt at the time of framing the Constitution that this was essential for the development of the pharmaceutical industry. The levy of different rates of such duties in different States, it was felt, would lead to a discrimination in favour of goods imported which would be detrimental to the interest of the local industry. No hardship has been brought to our notice on account of existing Entry. Another State Government has drawn attention to the fact that whereas that State contributes 5 to 6 percent of the Union Excise revenue, it receives only 1.2 percent of the 40 percent distributed on the recommendation of the last Finance Commission. It has, therefore, urged that excise duty on industrial units defined by Parliament by law as small-scale units be excluded from the jurisdiction of the Union and shifted to the State-List. We have pointed out in the Chapter on Financial Relations that such division would lead to many administrative problems. For these reasons and those mentioned in the Chapter on Financial Relations, we are of the view that there is no need for a change in the existing Entry 84 of List I.

2.10.81 **Entry 90, List I**—"Taxes other than stamp duties on transactions in stock exchanges and futures markets".

It has been suggested that the power regarding taxes on "futures markets" should be transferred to the State List because it is consequential to the State Government's suggestion for transfer of the subject "futures markets" to the State List. We have already dealt with "futures markets" in paragraph 2.10.48. In view of that, we cannot support this suggestion.

2.10.82 **Entry 97, List I**—This is a residuary Entry. It has already been considered alongwith Article 248 in paras 2.6.01 to 2.6.18 of this Chapter.

11. *NEED FOR CONCURRENT LIST*

2.11.01 The Concurrent List, at present, comprises 52 items. The State Legislatures are fully competent to legislate with respect to matters in this List, subject to the rule of repugnancy in Article 254. If Parliament *completely* occupies the field of a concurrent Entry, the power of the State Legislatures to legislate in the same field is rendered inoperative. The parameters of the rule of repugnancy and its effect on the State legislative power have been discussed earlier in paras 2.5.06 to 2.5.10 of this Chapter. Reservation of State Bills under clause (2) of Article 254 read with Article 200 will be dealt with later in a separate Chapter[37]. Issues directly related to entries in the Concurrent List will be considered here.

Demand for abolition of the concurrent list

2.11.02 Two State Governments and their supporting parties have proposed abolition of the Concurrent List and transfer of all its items to the State List. The demand apparently rests on two-fold premises. First, that in a truly federal Constitution there is no need for a Concurrent sphere of jurisdiction, and, as such, a polity postulates a complete and mutually exclusive division of power between the two levels of government. Second, that the Concurrent List has been operated by the Union in a monopolistic and unilateral manner as if it were a second Union List.

2.11.03 Thus, the first point for consideration is, whether from a functional stand-point, it is feasible in any system of two levels of government, to have no area, whetsover, of their concurrent responsibility or overlapping jurisdiction. The history of the working of the older federations attests that the emergence of a wide-ranging area of concurrent jurisdiction is inevitable with the passage of time.

Position in USA

2.11.04 The Constitution of the United States of America is supposed to be a classic model of water-tight compartmentalisation of governmental functions. It enumerates the power of the National Government and reserves residuary powers, except those prohibited by the Constitution, for the States. It has no Concurrent List. Most of the powers delegated to the National Government are specified in Article 1, Section 8. All the powers granted to the Congress are not exclusive. Over the years as a result of judicial interpretation, a concurrent field has emerged. Those powers which do not belong to the Congress exclusively, *and are not forbidden to the States*, are con current in the sense that so long as the Congress does not formally pre-empt or occupy the subject-matter of these powers, the State legislatures may also exercise them. Instances of matters which fall under this 'concurrent' category are : bankruptcy, electric power and gas, regulation of public utility, food and drug regulation, public welfare and social insurance, planning, taxes, borrowing money, establishment of courts, chartering banks, corporations, acquisition of private property for public purposes etc. Most of these 'concurrent' powers are liable to pre-emption by the Congress through statutory elaboration, while others such as the power to tax, are not pre-emptible. Thus, in this so-called concurrent sphere the ligislative power of the Congress predominates over that of the State Legislatures. Nonetheless, the scope of concurrent sphere continues to be large because Congress seldom occupies to the full, the field of a subject in the concurrent sphere. Indeed, the Congress did not for a number of years after the advent of the U.S. Constitution, exercise all the powers delegated to it. The power to regulate bankruptcies, for instance, was not exercised by it until 1933. Prior to the

(37) Chapter V on "Reservation of Bills by Governors for President's consideratson" paras 5.7.01 to 5.7.08.

passage of the Water Quality Act, 1965, the occasions on which Congress exercised its power of total or partial pre-emption in respect to matters in the concurrent sphere, were few and far between. The underlying rationale of the pre-emption doctrine is that the Supremacy Clasuse in Article VI, Clause 2 of the United States Constitution invalidates State laws that interfere with, or are contrary to the laws of the Congress The doctrine does not withdraw from the States either the power to regulate what is merely a peripheral concern of federal law or the authority to legislate when Congress could have regulated a distinctive part of a subject which is peculiarly adapted to local regulation but did not. In case of a conflict, between a State law and a Federal law on a concurrent subject the former must yield to the latter[38]. An analogue of this rule is embodied in Article 254 of our Constitution. After 1965, Congress has evinced an increasing tendency to pass such pre-emptive statutes relating to matters in this so-called concurrent sphere. Air Quality Act, 1967 and Pollution Control Amendments of 1972 are examples.

2.11.05 Formal pre-emption apart, through the technique of conditional grants-in-aid, the Federal Government of the United States of America has immensely expanded its role and extended its activities to many fields which are traditionally the concern of the States and their local sub-divisions. After 1960, " the federal role has become bigger, broader and deeper-bigger within the federal system both in size of its inter-governmental outlays and in the number of grant programmes; broader in its programme and policy concerns ....deeper in its regulatory thrusts and pre-emptions" (ACIR Report). Today, the delivery of most governmental services in the United States has become inter-governmental in nature and most functional responsibilities from a practical stand-point, can no longer be described as exclusively of federal or state or local concern. The federal government is now playing an ever-increasing role in functional areas outside all those delegated to the Congress by Section 8 of Article I. This is a major development. The broad interpretation placed by the Supreme Court of United States on the Commerce Clause, Police Power and General Welfare in its Constitution has had the effect of narrowing down the scope of legislative power of the States in various fields. Nonetheless, where diversity and not uniformity is needed and the matter is considered to be one of local or State concern, the States are conceded the power of legislation.

Canada

2.11.06 Sections 91 and 92 of the Constitution Act of Canada enumerate the Classes of Subjects within the exclusive competence of the Dominion and the Provinces, respectively. Section 95 places only two subjects viz., Immigration and Agriculture within the Concurrent legislative competence of the Dominion and the Provinces. Subsequently, through an Amendment in 1951, Section 94A was inserted which brought 'old age pensions' within the overlapping jurisdiction of the Dominion and Provinces. A profound transformation has taken place in the institutions of government in response to a sequence of changing pressures. Judicial interpretation has also facilitated this change. Inter-governmental bargaining tend to take place among executives, to evolve complex agreements and tax transfer arrangements and on occasions confront legislatures with a *fait accompli.* The position has been succinctly summed up by the Royal Commission on Economic Union and Development prospects for Canada, (1985), thus :

> "..... The categories set out in those sections (SS 91, 92, 95 etc.) largely reflect mid-nineteenth-century attitudes towards governments; they bear little relation to the functions of the state today or to the concepts and terminology of policy decision. The area of *de facto* concurrent Federal-Provincial jurisdiction have multiplied far beyond the formally designated fields of immigration, agriculture and pensions .....".

2.11.07 A persistent demand has been made in recent years to include many more subjects in the formally demarcated Concurrent field, with the object of ensuring coordination and cooperation between the two levels of governments over a much larger area of inter-governmental functions.

Australia

2.11.08 The Australian Constitution does not specifically provide for a Concurrent field. But it impliedly recognises it. Section 51 of its Constitution Act enumerates the legislative powers of the Commonwealth parliament under 39 heads. There is nothing in the wording of Section 51 which makes the matters enumerated therein as subjects of exclusive legislative power of Commonwealth. It has been held in the light of Section 107 that with respect to matters enumerated in Section 51, the State Legislatures also may legislate on these subjects if considered necessary for the Government of the States. Thus, a fairly large concurrent field has come into existence in Australia. The power of the States to legislate in regard to Concurrent matters is subject to the rule of Federal paramountcy contained in Section 109 of the Australian Constitution. Article 254 of the Indian Constitution lays down a similar principle.

West Germany

2.11.09 The West German Constitution also provides for a substantial field of concurrent jurisdiction.

2.11.10 Even in the United States of America and Australia whose constitutions did not specifically provide for a Concurrent List, a large area of inter-governmental cooperation, concurrent jurisdiction and shared responsibilities has emerged. The existence of a sphere of concurrent jurisdiction is not only desirable but inevitable. Due to the inexorable pressure and inter-play of various factors—social, economic, technological, demographic, ecological and egalitarian—the role of the National Government in all dual systems is expanding. The Constitutional line dividing the domains of the national and the State Governments has become increasingly blurred. Areas of common concern to the nation as a whole

(38) Chicago & N W Tr Co. V. Kalo Brick & Tile, 950 US 311.

are bound to grow with social, economic and technological developments. The primary goal of both levels of government is the welfare of the people. The *sine qua non* of progress towards that goal is inter-governmental cooperation, consultation and coordination between the two levels of government in all areas of common concern or concurrent jurisdiction. Elimination of all areas of concurrent jurisdiction through a constitutional amendment will only incapacitate the body politic in striving towards this goal. Considered from this aspect, the demand for abolition of the Concurrent List would be a retrograde step. Furthermore, abolition of the Concurrent List would involve a drastic change in the fundamental scheme and framework of the Constitution, which, under our Terms of Reference, we are imperatively required not to disregard. For all these reasons, it is not possible to support the demand for abolition of the Concurrent List.

12. *DEMAND FOR CONSULATION WITH STATES BEFORE UNDERTAKING LEGISLATION*

2.12.01 The next issue relating to the Concurrent List is whether there should be consulation with the States before the Union initiates legislation with respect to a matter in the Concurrent List. Almost all the State Governments, political parties and eminent persons are of the view that there should be such consultation. However, their views vary with regard to—

(a) whether this should be a matter of constitutional obligation or of convention;

(b) the mode and extent of consultation; that is to say, whether in addition to consultation with individual State Governments, there should be collective consultation with the proposed Inter-State Council;

(c) whether this consultation should assume the character of concurrence;

(d) whether this consultation should be with the State Legislatures also.

The Instrument of Instructions issued under the Government of India Act, 1935 contained a provision that, whenever any legislation was undertaken by the Centre on a Concurrent subject, the Provincial Governments would be consulted beforehand. There is no such instrument of instructions envisaged by our Constitution.

2.12.02 We have already dealt with the demand (c) in para 2.5.22. It would, in effect, reverse the rule of Union Supremacy into one of State Supremacy. For reasons given there this demand cannot be supported.

2.12.03 **Regarding (d)**—One State Government has suggested the insertion of a new Article 254A as follows :—

"254A. **Consultation with State Legislature and Parliament**—(1) No Bill with respect to any matter enumerated in the Concurrent List shall be introduced in either House of Parliament unless the Bill has been referred by the President to the Legislatures of the States for expressing their views thereon within such period as may be specified in the reference and the period so specified has expired.

(2) No Bill with respect to any matter enumerated in the Concurrent List shall be introduced in the House or either House of a State Legislature unless the Bill has been referred by the Speaker of the Legislative Assembly of such State to the Speaker of the House of the People for expressing the views of Parliament thereon within such period as may be specified in the reference and the period so specified has expired".

2.12.04 It will be observed that instead of facilitating, this proposal, if implemented, would make the working of the constitutional scheme of checks and balances with respect to the concurrent sphere of jurisdiction exceedingly cumbersome and dilatory. We cannot, therefore, commend this proposal.

13. *RATIONALE OF THE CONCURRENT LIST*

2.13.01 The rationale of putting certain subjects in the Concurrent List and giving the Union and the State Legislatures concurrent powers regarding them, is that they can be classified as matters neither of exclusive national concern, nor of purely State or local concern. They belong to a grey zone in which the Union and the States have a common interest. On the main aspects of these subjects, uniformity in law throughout the country is necessary in the national interest. The jurisdiction of a State Legislature, by its very nature, is restricted to persons, objects and things situated within its territories. It does not extend to those things with which it has no territorial nexus. The State Legislature, therefore, cannot ensure such uniformity. Further, if a mischief or epidemic emanating in one State extends beyond its territorial limits, it can be effectively prevented or remedied only by a law passed by Parliament. On the other hand, problems and conditions may vary greatly from State to State and may require diverse remedies suited to their peculiarities. If a Union law, occupying the entire field of a Concurrent subject, attempts to enforce a Procrustean uniformity, regardless of the special problems of different States requiring diverse solutions, it may defeat its own purpose. Where diversity is needed, the States know what is best for them. That is why, the Constitution gives to the State Legislatures, also, power to make laws on a Concurrent matter to suit its peculiar conditions. Then some subject matters of legislation may be multifaceted. By their very nature, they cannot be wholly allocated either to the Union or the States. Overlapping is unavoidable in such cases. A typical instance is of Trade and Commerce. Where it involves trade with foreign countries or import or export across borders, it is the subject-matter of Entries 41 and 42 of the Union List. Where it concerns Trade and Commerce within the State, it is incorporated in Entry 26 of List II. But 'Trade and Commerce' in the products of any industry controlled by the Union or of food grains and like items is put in Entry 33 of the Concurrent List. Entry 26 of List II is subject to Entry 33 of List III.

14. *UNION LEGISLATION ON A CONCURRENT SUBJECT-PRIOR CONSULTATION WITH STATES ESSENTIAL FOR HARMONIOUS WORKING OF THE SYSTEM*

2.14.01 The enforcement of Union Laws, particularly those relating to the Concurrent sphere, is secured through the machinery of the States. Coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, collective concultation with the representatives of the State Governments at the *forum* of the proposed Inter-Governmental Council will also be necessary.

Whether such Consultation should be a Constitutional Obligation or one of Convention

2.14.02 The only question that now remains is whether such consultations should be made a matter of constitutional obligation or left to be observed as a salutary convention. A number of State Governments and political parties insist that the requirement of consultation should be incorporated in the Constitution to ensure its strict observance, while others would allow the matter to rest on convention. We have given careful consideration to these divergent views.

2.14.03 We are of the view that it is not necessary to make the Union-State consultation regarding legislation on an item in the Concurrent List a Constitutional requirement. This will make the process needlessly rigid. But this should be a firm convention. The advantage of a convention or rule of practice is that it preserves the flexibility of the system and enables it to meet the challenge of an extreme urgency or an unforeseen contingency. We recommended that this convention as to consultation with the State Governments individually, as well as collectively, should be strictly adhered to, except in rare and exceptional cases of extreme urgency or emergency.

15. *CHANGES SUGGESTED IN LIST III*

2.15.01 We have discussed earlier that there is a category of legislative subjects which are neither exclusively of national interest, nor purely of domestic or local concern of the States. They are subjects some aspects of which are of national interest and others of State interest. Both these aspects are inextricably intertwined. Their relative strength and proportion in a subject does not, over a long period of time remain, constant or immutable. Nonetheless, they are matters of common or conjoint interest to the Union and the States. Uniformity, at least in the main principles of law on such subjects, is desirable. These matters, therefore, cannot be allocated to the exclusive legislative sphere either of the Union or of the States. Their proper place is in the sphere of concurrent jurisdiction of the Union and the States. Bearing in mind these broad principles we will now consider the demand for transfer of certain entries from the Concurrent to the State List.

2.15.02 Two State Governments have demanded far-reaching changes in the Concurrent List. One of them wants that the subject-matters of thirty-four Entries in this List, namely : 3 (partly), 4, 5, 8, 10, 11, 11-A, 14, 15, 16, 17, 17A, 17B 18, 19, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 33A, 34, 35, 36, 37, 39, 40 and 42 (partly) be transferred to the State List. It has further suggested modification of Entries 27 and 45 of List III. A regional Party of that State has demanded that, with the exception of seven Entries, namely : 4, 27, 29, 41,45, 46 and 47, all other Entries in List III be transferred to the State List. The other State Government has also made similar suggestions. In addition, this State Government has made certain suggestions in respect of Entries 20-A and 38. It has also suggested placing the residuary powers in the Concurrent List.

2.15.03 For considering the proposed changes it will be convenient to divide the Entries in question into five groups.

16. *GROUP I*

2.16.01 **Group I.**—The first group would cover Entries 3, 4, 14, 15,18, 21 and 32 of List III. No specific reason has been given for transfer of these Entries to the State List.

2.16.02 **Entry 3, List III.**—"Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention". One State Government has suggested that since public order is a State subject preventive detention for reasons connected with the security of a State, or the maintenance of public order and the persons subjected to such detention should be a State subject. Further, there may be no detention for reasons connected with the maintenance of supplies and services essential to the community and persons who endanger such supplies and services may be proceeded against only for violation of specific laws. On these premises it has suggested that Entry 3 of List III may be deleted and shifted in a modified form as Entry 1-A to List II. Another State Government has suggested retention in the Concurrent List of "preventive detention for reasons connected with maintenance of services and supplies essential to the community and persons subjected to such detention" and shifting of the remaining part of the Entry to the State List.

2.16.03 Maintenance of Public Order, simpliciter, except where it requires the aid and use of the forces of the Union, is the sole responsibility of the States. Lack of public order would cover a very wide range of situations from chaos and threat to the security of the State by small disturbances. The prevention of a threat or danger due to war, external aggression or armed rebellion to the security of the Union or any part of the territory thereof, in a situation of grave emergency, is the responsibility of the Union (Article 352). Where in a State, a problem of public disorder assumes the magnitude of an 'internal disturbance', it is the duty of the Union to intervene and protect the State against such disturbance (Article 355). When does a public disorder assume the character of an 'internal disturbance', is a matter

which has been left by the Constitution to the subjective satisfaction of the Union Government. Thus, the aggravated forms of public disorder are matters of common concern of the Union and the States.

Preventive detention is an extraordinary power and it cannot be used for dealing with ordinary problems of public order. The legislative power in respecty of preventive detention is expressly limited by the Constitution to the specific purposes having a reasonable nexus with (i) Defence, Foreign Affairs, or the Security of India (Entry 9, List I); (ii) the Security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community (Entry 3, List III). The difference between problems of 'public order' simpliciter, and 'public disorder' of an aggravated kind which could call for preventive detention, though of a degree, should be treated as if it was a difference of a kind. Assuming for the sake of argument that 'public order' within the contemplation of Entry 3 of List III means the same thing as in Entry 1 of List II, then it must be remembered that preventive detention is not the normal mode of maintaining 'public order'. Preventive detention is not meant to deal with ordinary problems of law and order. Neither Entry 9 of List I nor Entry 3 of List III confers on legislatures powers to make any law relating to preventive detention for reasons connected with the maintenance of law and order and 'persons subjected to such detention'. The reasons for non-conferment of such power are obvious. If the law and order problems were allowed to be controlled by or under the preventive detention laws the esecutive would have surely taken recourse to the extraordinary machinery of detention without trial on bare subjective satisfaction rendering the ordinary criminal law otiose, futile and superfluous. It follows, therefore, that detention for purpose of 'law and order' is foreign to the preventive detention laws.

2.16.04 Preventive detention being an extraordinary power must be exercised with utmost caution and care. It has the potential to subvert the democratic form of government based on rule of law. Inclusion of the subject in the Concurrent List enables Parliament, by law to regulate the exercise of this power throughout the country, in accordance with certain principles. Articles 21 and 22 confer important fundamental rights relating to protection of life and personal liberty and protection against arrest. These fundamental rights are part of the very foundations of our democracy. Preventive detention is an exception and a drastic power available to the executive. Clauses (4) to (7) of Article 22 provide for certain safeguards in case of preventive detention. In order that preventive detention is not misued it is essential that Parliament should have the power to lay down a uniform law not only covering the essentials of law but also providing necessary safeguards. Neither State Government has brought to our notice any hardship experienced by them on account of the existing arrangements. We notice that Section 3 of the National Security Act (1980) empowers both Union and State Governments to make orders detaining a person under certain circumstances. By way of safeguard, the Central Government may revoke or modify the detention order made by a State Government or any officer subordinate to it (Section 14). We are, therefore, unable to support the suggestion for transfer of Entry 3, List III or any part of it to the State List.

2.16.05 As regards the suggestion that persons who endanger the maintenance of supplies and services essential to the community may be proceeded against only for violation of specific laws, it may be noted that criminal proceedings and preventive detention are not parallel proceedings. The former is punitive, the latter is preventive. An order of preventive detention is not a bar to prosecution for specific offences.

2.16.06 **Entry 4, List III.**—"Removal from one State to another State of Prisoners, accused persons and persons subjected to preventive detention for reasons specified in Entry 3 of this List". The suggestion of one State Government is that this Entry may be transferred to the State List with the modification that transfer of prisoners from one State to another State would be made with the consent of the other State. Another State Government has suggested that this Entry may be deleted. They are of the view that there is no need to transfer the persons detained outside the State.

2.16.07 The subject-matter of this Entry has an inter-State aspect. So far as that aspect is concerned, it can be effectively dealt with on uniform basis, only under a law made by Parliament. The laws made by a State Legislature cannot have operation beyond its territorial limits. Therefore, if the Entry is transferred to the State List, it will become inperative. Even the State Government asking for its transfer, seems to be conscious of this difficulty. This is why it has suggested that before transferring it to the State List, the words "with the consent of the transferee State" be inserted in this Entry. Transfer outside the State of a person detained, may become necessary in certain extreme cases of large-scale public disorders and violent crime, in the interests of the security of the State and the prisoners and for like administrative reasons. We cannot support the proposal for amendment of this Entry.

2.16.08 **Entry 14, List III.**—"Contempt of Court, but not including contempt of the Supreme Court".

The broad object of the law of contempt of court is to safeguard the status, dignity and capacity of the courts to administer justice without fear or favour, obstruction or interference. A unique feature of our two-tier system, which distinguishes it from other federations, is that it has a single unified judiciary which administers Union Laws as well as State laws. The Union and the States are thus equally interested in the subject-matter of this Entry. This subject has also a nation-wide dimension which can be effectively handled only by Parliament. An illustration will make the point clear. Parliament has, in exercise of its power under this Entry, passed the Contempt of Court Act, 1971. Section 11 provides that a High Court shall have jurisdiction to enquire into or try a contempt of itself or any subordinate court, whether the contempt was committed within the territorial limits of the State in which it exercises jurisdiction or outside it. This provision

is an illustration of the nation-wide aspect of the subject. In view of Article 245, only a law made by Parliament could take effective care of it.

2.16.09 Inclusion of the subject of 'contempt of court, in the Concurrent List is consistent with the constitutional scheme which safeguards the position of the High Court from being undermined by State Legislation. If a legislation relatable to Entry 14, List III is passed by a State Legislature it can be stopped from reaching the Statute Book by the action of the Governor under Article 200 (Second Proviso) and the exercise of Presidential veto under Article 201. Even if the legislation escapes this check and receives the assent of the Governor, it can be amended, varied or repealed by Parliament either directly or by passing a law inconsistent therewith *vide* Proviso to Article 254(2). If the subject-matter of this Entry is transferred to the State List, these safeguards against parochial or unjustifiable use of their legislative powers on this subject, by States, would disappear. The proposal is thus untenable.

2.16.10 **Entry 15, List III.**—"Vagrancy nomadic and migratory tribes". This subject has inter-State dimension. The activities and mobility of such tribes do not remain confined to boundaries of a particular State or States. The problems relating to them have inter-State dimensions. The reason for including this subject in the sphere of concurrent jurisdiction is thus obvious. We find no substance in the demand for its transfer to the State List.

2.16.11 **Entry 18, List III.**—"Adulteration of food stuffs and other goods". This evil has country-wide dimensions. Adulteration of foodstuffs and goods may take place in one State and its deleterious effects may occur in another State where they are consumed. This widespread evil can be effectively combated at the National level. Union laws on the subject can be supplemented by the State laws. If there are peculiar problems limited to a particular State which require special legal remedies in variance with those uniformly provided in the Union law, a State legislation enacted with President's assent under article 254(2), can take care of the same. We are, therefore, of the view that this Entry should continue to remain in the Concurrent List.

2.16.12 **Entry 21, List III.**—"Commercial and industrial monopolies, combines and trusts". The commercial and industrial activities related to the subject have inter-State dimensions and implications. Unethical trade or industrial practices can be effectively regulated or curbed only by a Union law applicable uniformly throughout the country. Hence the reason for putting this subject in the Concurrent List.

2.16.13 **Entry 32, List III.**—"Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways".

This Entry is subject to Entry 24 of List I which reads :

"Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways".

2.16.14 Regulation of shipping and navigation on inland waterways has a very close and substantial connection with shipping and navigation on inter-State waterways. Navigation on inland waterways may even have a close nexus with sea-ports and navigation on sea waters. This aspect of the subject-matter of Entry 32 is of national significance. It may even assume dominant importance from the national point in the circumstances of a particular waterway. Parliament has been given under Entry 24, List I, the exclusive power to declare by law that a particular inland waterway shall be a national waterway. To the extent of such declaration, the power of the State Legislatures under Entry 32 would stand superseded. Since the inter-State and intra-State aspects of the subject-matter of Entry 32 cannot be sharply distinguished or isolated from each other, it cannot be allocated to the exclusive legislative sphere either of the States or of the Union. Its appropriate place can only be in the Concurrent List.

17. *GROUP II*

2.17.01 This group may be sub-divided into three sub-groups—(a), (b) and (c).

Sub-Group (a)

It will comprise Entries 11A, 17A, 17B, 25 and 33A. The only argument advanced for shifting these Entries to the State List is that the Constitution (Forty-Second Amendment) Act, 1976, during the Emergency period, brought them from List II to List III.

2.17.02 The mere fact that these Entries were originally in List II, does not, by itself, lead to the conclusion that their transfer to the Concurrent List was not justified. The Forty-Second Amendment came into force on 3-1-1977, i.e., about 27 years after the advent of the Constitution. These two and a half decades was a period of crises and trial for India. It had to fight three wars to protect its idependence against external aggression. On the home front, it had to meet the challenge of fissiparous forces which exploited for their sustenance a host of problems facing the country. There was an acute food shortage accentuated by a rapidly increasing population. There was paucity of essential commodities, industrial goods and essential machine tools. The bulk of the population was illiterate and living below the poverty line. There were great social and economic disparities. India made an all-out effort to tackle these problems. It embarked on social and economic planning and development in a big way under national leadership. For this purpose, modern advances in technology and communications were pressed into service. In India, as elsewhere in the world, these changes in technology, communications and social environment had a profound influence on the thinking patterns, expectations and attitudes of the people with respect to the responsibilities of the Union and the State Governments. Several governmental functions which two and a half decades earlier were considered purely

of State or local concern, now became in the general perception of the people, matters of shared responsibility of the Union and the States.

2.17.03 The expressions 'national interest', or 'State or local concern' do not denote static ideas. They are opinions or beliefs grounded on experience conditioned by a given set of circumstances. These concepts undergo change on fresh experience in a changed set of circumstances. The twenty-five years after the commencement of the Constitution, was a period of renascent activity, experimentation and experience. The transfer of the Entries in question to the Concurrent List is, therefore, to be appreciated in the light of the experience of the working of the Constitution during the two and a half decades preceding the Forty-Second Amendment.

2.17.04 **Entry 11A, List III**—"Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts".

The field of legislation covered by this Entry was originally a part of Entry 3 of List II. By Section 57 (b) (iii) of the Forty-Second Amendment Act, 1976, that part was omitted from Entry 3, List II, and by clause (c) of Section 57 it was inserted in List III as item 11A.

2.17.05 No specific argument has been advanced to show that the transfer of this Entry to the Concurrent List has, in operation, been detrimental to the interests of the States. Nor is there any evidence before us from which such a factual conclusion can be drawn. However, one general argument is that the transposition of this Entry impairs the basic federal features of the Constitution. In *re Special Courts Bill*, 1978[39], a similar argument was advanced. The Supreme Court negatived it with the observation :

> "We are unable to appreciate how the conferment of concurrent power on the Parliament in place of the exclusive power of the States, with respect to the constitution and organisation of certain courts affects the principle of federalism in the form in which our Constitution has accepted and adopted it".

In regard to the scope of Entry 11A, the Court opined that the words of this Entry are sufficiently wide to enable Parliament not merely to set up courts of the same kind and designation as are referred to in the relevant provisions but to create new or special courts subject to the limitation mentioned in the Entry as regards the Supreme Court and the High Courts.

2.17.06 The Union Government, while introducing the Forty-Second Amendment Bill in Parliament, did not make any statement of 'objects and reasons' for all the proposed amendments including the one relating to the Entry in question. We are, therefore, left to draw our own inference from the apparent circumstances. The subject-matter of the Entry in question is allied and complementary to the subjects of Entries 1, 2 and 13 of List III. Though two State Governments have suggested the transposition of Entry 11-A to List II, they have not sought any change in regard to these three Entries. A good part of the field of these three Entries has been occupied by the great Codes—Indian Penal Code, Criminal Procedure Code and Civil Procedure Code. The origin of these Codes goes back to the ninetieth century. The pre-Constitution Codes of Criminal Procedure and Civil Procedure have recently been replaced by the revised Codes enacted by Parliament. The concept of uniformity and equality of treatment before law ensured by these Codes have become deeply ingrained in the common consciousness of the people of India. The inclusion of this Entry in the Concurrent List enables Parliament to secure a measure of uniformity in the administration of justice, and constitution and organisation of courts subordinate to the High Court, in the States. To some extent, the area of Entry 2 occupied by the Criminal Procedure Code, could overlap the laws enacted by the States with regard to the organisation and jurisdiction of the subordinate courts in the States. By bringing that part of Entry 3, List II into the Concurrent List, the risk of such conflict will also be obviated. The suggestion for restoration of the subject-matter of Entry 11-A to List II is only theoretical and, perhaps, founded on imaginary fears that Parliament would occupy needlessly excessive field of Entry 11-A and render inoperative the power of the State Legislatures with respect thereto. We, therefore, find that there are not sufficient grounds for transposing this Entry back to List II.

2.17.07 **Entry 17 A, List III**—"Forests"

Entry 17B, List III—"Protection of wild animals and birds".

In 1952, the Union Government formulated the National Forest Policy. The Policy set a target of bringing 1/3rd (i.e. about 100 million hectares) of the total area of India under forest cover. About 75 million hectares were found recorded as under forest cover. The States, however, did not seriously implement this Policy. The depletion of forests continued. Apart from the pressures of human and cattle population and the increasing demand for fire-wood, timber and fodder, one of the main causes which led to deforestation was the diversion of forest land to non-forestry purposes. We are informed by the Government of India that contrary to the National Forest Policy, during the period of 30 years between 1951—1980, i.e., before the Forest (Conservation Act, 1980 came into force, approximately 4·5 million Hectares of the forest land were officially diverted for non-forest purposes. The average annual rate of such diversion works out to 1.5 lakh hectares. Extensive deforestation and degradation of vegetation caused an alarming destabilisation of the hydrological cycle resulting in rapid run-offs in the form of flood waters. It also led to progressive shrinkage of the habitat of wild animals and birds and erosion of genetic diversity in the recognised ecological sub-divisions of the country. Eighty-one species of mammalian fauna and some species of birds were on the verge of extinction. The welfare of tribals, who are ecologically and economically inseparable from the forest was also put in jeopardy. The adverse effects and implications of deforestation, extended far beyond the territorial boundaries of the States. The problems and mischief resulting from deforestation had assumed national dimension. There was thus ample justification for transferring "Forests" to the Concurrent List to enable Parliament to pass the Forest (Conservation) Act, 1980.

(39)1979)(2) SCR 476.

The primary object of this Act is to check indiscriminate diversion of forest land for non-forestry purposes. The Union-State problems or difficulties in the administration of this Act, have been dealt with in the Chapter on "Forests".

2.17.08 **Entry 25, List III**—"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour".

'Education' is an important legislative head. To appreciate its allocation in the scheme of distribution of powers between the Union and the States, it will be useful to have a glimpse of the history of Government policy on education over a period of 130 years preceding the Constitution. This history is interspersed by periods of extreme decentralisation and extreme centralisation. Prior to the Charter Act of 1833, each of the three Presidencies of British India formulated its own education policy. From 1833 to 1870 was a period of extreme centralisation. Thereafter, gradual decentralisation continued up to 1918. In 1897, the Indian Education Service was established. Members of this service manned all crucial posts in Provincial Education Departments. Through this service, the Centre exercised limited control over the Provincial education policy. With the introduction of dyarchy by the Government of India Act, 1919, 'education' was made a 'transferred' subject and Central control over education became minimal. This position continued till the adoption of the Constitution in 1950.

2.17.09 The Constitution, as originally adopted, tried to strike a balance between these two extremes. It allocated "Education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and entry 25 of List III" to the States as item 11 of List II. "Vocational and technical training of labour" and "Legal, medical and other professions" were included as items 25 and 26, respectively, in the Concurrent List. The authority for coordination and determination of standards in institutions for higher education or research and scientific and technical institutions was assigned exclusively to the Union (Entry 66 of List I). The Union was also enabled to assume exclusive power with respect to "institutions for scientific or technical education financed by the Government of India wholly or in part, and declared by Parliament by law to be institutions of national importance" (Entry 64 of List I). The Union is competent to set up and run its own agencies and institutions, *inter alia*, for professional, vocational or technical training or promotion of special studies of research (Entry 65, List I).

2.17.10 It is noteworthy that the subject 'education' though originally allotted by the Constitution to the exclusive State field, was subject to Entry 25 of List III and Entries 63 to 66 of List I. The distribution of power with respect to 'education', between the Union and the States in this interlinked manner was prone to conflicts and difficulties. So long as the same political party was in power at the Union and in the States, these difficulties did not come to the fore, and education, for all practical purposes, was being administered as a subject of "*de facto* concurrency". The Union and the States were co-operating and collaborating in most educational programmes and were benefitting from the large Union grants made for educational development. However, after 1967, conflicts and controversies started manifesting themselves. For example, the Government of India advised that in the interest of national integration, no State should put restrictions on admission to medical and engineering colleges on the ground of domicile. Despite persistent persuasion by the Union, the States did not agree to the suggestion. It was felt that the powers conferred on the Union in the matter of education were not adequate enough to resolve such difficulties effectively. A debate was going on in educational and political circles for more than a decade preceding the Forty-Second Amendment as to whether the subject of education should not be transferred from the State List to the Union List or the Concurrent List. The Sapru Committee[40] suggested in its report (1964) that 'education be transferred from the State List to the Concurrent List, while retaining Entry 66 in the Union List as it was. It was only the Forty-Second Amendment (1976) that could give concrete shape to this recommendation.

2.17.11 It was against this background that the Forty-Second Amendment transferred and combined item 11 of List II with item 25 of List III. The suggestion of the State Governments is that "education" should be transferred back to the State List.

2.17.12 Though the Statement of Objects and Reasons appended to the Constitution (Forty-Second Amendment) Bill is silent on the point, it is not difficult to discern the reasons and objects for the transposition of Entry 25 effected by this Amendment. Education is a subject of prime importance to the country's rapid progress towards achieving desired socio-economic goals. This apart, there were other objectives to be achieved. One was to enable Parliament to secure a measure of uniformity in standards and syllabi of education which is essential *inter alia*, for promotion of national integration. An incidental purpose to be served by this Amendment, was to obviate problems arising out of Union legislation encroaching upon the States' sphere. The chances of such conflict have been rendered remote, as a result of this Amendment. No part of the subject of 'education' now belongs to the exclusive sphere of State legislative power. The Amendment was designed to give the Union adequate power to enable it to minimise the great disparities in the levels of educational development and standards of education as between States. It was also intended to reinforce the capacity of the Union to play its role more effectively, to stimulate and assist the States in their efforts for achieving the goal of universal primary education fixed by the Constitutional Directive.

2.17.13 In our view, it will not be advisable to revert to the pre-Amendment position by transferring this subject back to the State List. However, education continuous to be a very sensitive issue. In formulating a national education policy, or in its review the Union should not take a rigid stand on its paramount authority, but ensure that such a policy is framed through

(40) Committee set up by Parliament in the wake of the Judgement of the Supreme Court in *Gujarat University Vs. Shri Krishna* (1963) (1) Supp. SCR 112.

a process of dialogue, discussion and persuasion on the basis of consensus between the Union and the States.

2.17.14 For effective and smooth working of Union-State Relations in matters relating to higher education, close consultation and co-operation between Governments at both the levels is a must. This is so because 'co-ordination' in its intrinsic sense necessarily implies "harmonising or bringing into proper relation in which all the things co-ordinated participate in a common pattern of action". (*Gujarat University case*, AIR 1963 S.C. 703, para 25). Further, though the powers of the Union and the State Legislatures with respect to universities and institutions for higher education and research are referable to separate Lists of the Seventh Schedule, yet there is a degree of inevitable overlap between Entry 66 of List I and Entry 25, List III, The existance of such overlap was noticed in *Gujarat University case,* though the general head of education was then in the State List.

2.17.15 Even though 'education' was transposed to and included in Entry 25 of the Concurrent List by the Forty-second Amendment with effect from 3-1-1977, there has been no follow-up legislation by the Union under this head. For all practical purposes, thereforre, the situation continues to be what it was before the Forty-Second Amendment. The Regulation of (University) Standards Bill, 1951 contained two provisions : One relating to the establishment of universities and the other conferring power on the Union to derecognise any degree granted by a university. These provisions were subsequently deleated possibly because, at that time, general head of 'education' was in the exclusive State List. The deletion of these provisions, in consequence, debilitated the capacity of the Union and the U.G.C. for co-ordination and determination of standards in institutions for higher education.

2.17.16 Recently, in *Osmania University Teachers Association* Vs. *State of Andhra Pradesh* (Civil Appeal 1205-06 of 1987 decided on 13-8-1987), the Supreme Court has struck down the Andhra Pradesh Commissionerate of Higher Education Act, 1986, as *ultra vires* the State Legislature, on the ground that this Act, in substance, attempted to co-ordinate and determine standards of higher education in the universities located in that State, which subject is by virtue of Entry 66, List I and the University Grants Commission Act, 1956 within the exclusive competence of the Union and its agency (U.G.C.). This Judgement of the Supreme Court has brought about a situation of stalemate or vacuum in matters relating to higher education in the universities. The Court itself pertinently observed that while the impugned Andhra Pradesh Act had disappeared as a result of its judgement, the need for such a legislation for co-ordinating and streamlining the standards of higher education in the national interest has not "vanished into the thin air". It drew attention to the disparities, defects and deficiencies in the standards of higher education obtaining in the universities situated in Andhra Pradesh and also in the other States. It underscored the imperative need for the U.G.C. to play a greater and more effective role in ensuring high standards of academic excellence in the various universities in India. These observations of the high authority have incidentally highlighted that the U.G.C. has been unable to carry out effectively the duty of co-ordinating and determining standards in the universities and other institutions for higher education. Without an exhaustive survey of the working of the U.G.C. and the performance of the various universities in maintaining standards of academic excellence, it is not possible for us to pinpoint precisely, whether the failure of the U.G.C. to discharge its duties effectively, is due to any deficiency in its statutory powers, composition or/and *modus operandi.* Nevertheless, it is necessary to emphasise that, among others, there are two basic pre-requisites of smooth and successful working of the U.G.C. and other like professional bodies (such as I.C.A.R.), charged with the duty of co-ordinating and determining standards in institutions for higher education or research. Firstly, their composition, functioning and mode of operation should be so professional and objective that their opinion, advice or directive commands implicit confidence of the States and the universities/institutions concerned. Secondly, this objective cannot be achieved without close concert, collaboration and co-operation between the Union and the States.

2.17.17 Some such relationship is envisaged in a presentation of National Policy on Education, 1986 formulated by the Government of India. Its para 2·19 declares : "The amendment of the Constitution to include Education in the Concurrent List was a far-reaching step whose implications... substantive, financial and administrative ... require a new sharing of responsibility between the Union Government and the States in respect of this vital areas of national life. While the States would administer the subject in the normal course, the Union Government would accept responsibility to ensure the national and integrative character of education, to maintain comparable quality and standards, including those of the teaching profession at all levels .... and in general to promote excellence at all levels of the educational pyramid throughout the country. The concept of concurrency signifies a partnership....". This is as it ought to be. Education is so close to the needs and concerns of the people that active involvement of the States is vital, indeed indispensable. That being so, the best and the most feasible way of working the Union-State relations in the sphere of education, would be that norms and standards of performance are determined by the Union and its agencies like the U.G.C. set up for this purpose under Central statutes, but the actual implementation is left to the States. By the same token, a system of monitoring would have to be established by the Union.

2.17.18 **Entry 33-A, List III.**—"Weights and measures except establishment of standards".

Originally, the subject-matter of this Entry was item 29 of the State List. It was transposed to List III by the Forty-Second Amendment. No official statement of objects and reasons for this particular change accompanied the Amendment Bill. However, it is obvious that fixation of weights and measures directly affects inter-State trade and commerce. The obvious object of transferring this subject to the Concurrent List is to enable the Union to ensure

with respect to this matter a measure of uniformity of policy and co-ordination of action between the Union and the States. At the same time, power of the State Legislatures to make a law in respect to this matter, subject to the rule in Article 254A, has also been preserved.

2.17.19 No practical difficulty or disadvantage experienced by the State Government, arising from the operation of Entry 33A, has been brought to our notice. We do not find sufficient reason for recommending restoration of this Entry to List II.

Sub-Group (b)

2.18.01 This sub-group comprises Entry 42—"Acquisition and requisitioning of property". In paras 2·10·37 to 2·10·41, we have already dealt with the suggestion that this Entry should be deleted and that Entries 33 and 36 in List I and List II respectively, which were deleted in 1956, should be restored. We have explained there why we cannot support the proposal.

Sub Group (c)

2.19.01 The Entries which are being dealt with in this Sub-group are :

Entry 28, List III.—"Charities and charitable institutions, charitable and religious endoments and religious institutions."

Entry 30, List III.—"Vital statistics including registration of births and deaths."

Entry 31, List III.—"Ports other than those declared by or under law made by Parliament or existing law to be major ports."

The argument of one State Government for transfer of Entries 28 and 31 to List II is that under the Government of India, Act, 1935, these subjects were included in the Provincial List. Regarding Entry 30, it is pointed out that prior to the Constitution, this matter was the subject of local laws or Acts. It is suggested that the pre-Constitution position should be restored. Another State Government has stated that, keeping in view the great religious, cultural, social and institutional diversity in the country, and the very large and growing number of charities and charitable institutions, charitable and religious endowments and religions institutions, it is proper that these institutions should be subject to the jurisdiction of the State in regard to their operations in that State. They have pointed out that since such institutions sometimes also acquire a covert, if not an overt, political role, there can arise serious inter-State complications, if institutions controlled and managed in one State operate in other States without the latter having any jurisdiction in respect of their operations there.

2.19.02 The subject-matter of these Entries are not purely of State or local concarn. They have important aspects of nation-wide interest.

2.19.03 Charitable and religious institutions mentioned in Entry 28 have their importance for all beneficiaries wherever they may be residing. Moreover, properties of institutions or endowments may be situated in more than one State. Likewise, their activities may extend beyond the boundaries of one State. As regards possible inter-State complications arising out of institutions, controlled and managed in one State and operating in another State, it is clear that these can best be avoided by having uniformity in regard to essential principles of the law throughout the country, and this is possible only if the Entry remains in the Concurrent List. Indeed, a shift to the State List may only add to avoidable complications.

2.19.04 Collection and determination of full and accurate statistics mentioned in Entry 30, List III, particularly about births and deaths, is not a matter of exclusive State concern. It has implications and significance for the nation as a whole. Growth or decline of population is States have an all-India impact on socio-economic problems. Uniformity in the main principles of law or policy governing the subject-matter of this Entry is, therefore, essential in the national interest.

2.19.05 The subject-matter of Entry 31 has an interface with List I and linkage with foreign trade which is patently of national interest.

2.19.06 Reversion to the pre-Constitution position would, in our view, be irrational and contrary to the basic principles on which the subjects of legislative power have been distributed between the Union and the States. We, therefore, do not subscribe to the proposition for transfer of Entries 28, 30 and 31 of List III to List II.

20. *GROUP III*

2.20.01 **Entries 16 and 17 of List III.**—Fall in this group. The argument is that these entries comprise matters which are purely local in character and should, therefore, be transposed to List II.

2.20.02 **Entry 16—List III**—"Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients".

It is a matter of common knowledge that persons suffering from some types of lunacy or insanity often need prolonged treatment or stay in mental hospitals or asylums. Some mentally retarded persons or mental deficients are destitutes. Others are not fortunate enough to have wealthy parents or close relations capable of bearing the expenses of their prolonged treatment or hospitalisation. The Government or some charitable persons or institutions have to bear their expenses. The smaller States with relatively meagre resources cannot efficiently maintain such institutions. The matter is thus inherently of an inter-State character.

2.20.03 To have this matter in the Concurrent List is advantageous to the States. The Union shares the responsibility with the States in establishing or aiding the establishment or maintenance of asylums from its own funds or by making grants. The asylums established or licensed by the Union, cater to mental patients or lunatics from a number of States; whereas lunatics resident in one State can be sent to an

asylum maintained by another State, only with the consent of the latter State. It is in the larger interest of the nation to retain this subject in the Concurrent List.

2.20.04 **Entry 17—List III.**—"Prevention of cruelty to animals". *Prima facie*, this subject appears to be mainly local in character. On further reflection, it can be said that it is not bereft of inter-State implications, altogether. It may even assume international dimensions. The question of preventing cruelty to animals has now received international recognition. For instance, some years back, wild monkeys in India were caught *en masse* and packed like sardines in congested crates and exported to foreign countries for scientific experiments. Many of them died in transit. The rest were subjected to cruel or lethal experimentation. In such cases where the cruelty is committed in transit in the course of inter - State or international trade, or, in the importing country, the matter assumes not only national but even international dimensions. No specific difficulty arising out of the operation of this Entry in the context of Union-State relations has been brought to our notice. There is, in our view, no valid reason for an amendment of the Constitution for this purpose.

21. *GROUP IV*

2.21.01 Entries 8, 10, 11, 19, 20A, 22, 23, 24, 35 38 and 39 of List III are covered by this group. The broad argument is that the transposition of these Entries to the State List would be conducive to greater administrative efficiency, because the State Governments are in a better position to appreciate the needs in respect of these matters which are administered and enforced through the machinery of the States. A perusal of these Entries would show that they are not matters of exclusive State concern. They have implications and dimensions which are of an inter-State character. Some of them are of nation-wide importance.

2.21.02 **Entry 8—List III.**—"Actionable wrongs".

Actionable wrongs are civil wrongs, contradistinguished from criminal wrongs or offences which are the subject-matter of Entry 1 of this very List. Apart from the fact that the matter in certain circumstances can assume inter-State dimensions, the law on this subject in main principles, just like the criminal law, requires uniformity throughout the country. The appropriate place for this subject is, therefore, in the Concurrent List.

2.21.03 **Entry 10—List III.**—"Trust and Trustees".

The properties of a trust may be situated in more than one State. Similarly, its activities may cover several States. Suffice it to say that some aspects of the subject-matter of this Entry are of significance for the country as a whole. We cannot, therefore, support the proposal for transfer of this Entry to the State List.

2.21.04 **Entry 11—List III.**—"Administrators-general and official trustees".

An Administrator-General may have concern with the properties and assets situated in more than one State, belonging to the same deceased person. His functions, in such cases, have inter-State or national dimensions. This is illustrated by Section 20 of the Administrators-General Act, 1963. Under this Section, the probate or letters of administration granted to the Administrator-General of any State shall have effect over all the assets of the deceased situated anywhere in India (excepting-Jammu & Kashmir) and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, throughout the territory of India. A provision like that of Section 20, ensuring uniformity throughout the territory of India on this aspect of the subject, would be inherently beyond the competence of the State Legislatures. By its very nature, the subject-matter of Entry 11, List III is not one of exclusive concern of the States. We cannot support the suggestion for its transposition to the State List.

2.21.05 **Entry 19—List III.**—"Drugs and poisons, subject to the provisions of Entry 59 of List I which respect to opium".

Control of production, trade and use of drugs and poisons is an important component of the subject of this Entry. This matter is not purely of local or State concern. For instance, spurious drugs manufactured in one State may be despatched and sold in another State and there consumed with harmful or fatal effects. In such cases, a law of the State of despatch, owing to its territorially limited operation, cannot effectively prevent or penalise the mischief committed in the State of destination. Only a Union law, having operation throughout the territory of India, can effectively deal with such inter-State problems.

2.21.06 Another closely associated aspect of the subject-matter of Entry 19, List III is drug-trafficking and drug addiction. This evil has assumed not only national but global dimensions. Its network is no respector of international frontiers. Dope-trade is run like a multi-national concern. The control over production, supply and distribution of narcotics and the financing of this illicit business is in the hands of international syndicates. Drug trafficking induces and promotes drug addiction in a big way. Habitual use of drugs like heroin, smack, L.S.D. has a devastating effect on the mental and physical health of the user. Large scale drug addiction may condemn a whole generation of people to a vegetative existence, and thus undermine the health, defence capability, intellectual advancement, economic development and progress of a nation. To highlight these dangers which the evil of drug-trafficking poses, Colombia calls it "drug terrorism". Several countries have launched relentless compaigns against this evil. Initiatives have also been taken for a coordinated crusade at the international level against trafficking and use of dangerous drugs. Being the large producer of opium in the world, India has always maintained a steady "interest" in this area of United Nations activity. India was a party to all important international treaties and conventions in the field of drug abuse control.

2.21.07 It may be noted that Entry 19, List III has been expressly made subject to Entry 59, List I which comprises : "Cultivation, manufacture, and

sale or export, of opium". Heroin and smack which are two of the dangerous drugs generally peddled by the drug traffickers, are derivatives of opium. In sum, the subject-matter of Entry 19, List III, has important aspects of national and international significance. This matter cannot, therefore, be allocated to the exclusive legislative sphere of the States. We cannot, or these reasons, support the suggestion for transfer of this Entry to List II.

2.21.08 **Entry 20A, List III**—"Population Control and Family Planning."

Only one State Government has suggested that this Entry should be transferred to the State List. According to them family planning facilities should be an integral part of the health facilities which is a State subject and the present dichotomy between the two facilities hampers their adequate integration.

Population control and family planning are a vital part of the national effort at development. This Entry was inserted by the Forty-second Amendment to the Constitution recognising the importance of this matter. It is well known that a significant part of the fruits of development is neutralised by the high growth in population. With more mouths to feed, less savings are available for development. Large addition to the population has its impact on every aspect of the nation's life. Many of the ills of the society can be traced back to large numbers who are unable to find a rewarding employment. It is necessary to recognise this inter-dependence between family planning and other sectors. We are, therefore, of the view that Population Control and Family Planning is a matter of national importance and of common concern of the Union and the States.

2.21.09 **Entry 22, List III**—"Trade unions; industrial and labour disputes".

Entry 23, List III—"Social security and social insurance; employment and unemployment".

Entry 24, List III—"Welfare of labour including conditions of work, provident funds, employers, liability, workmen's compensation, invalidity and old age pensions and maternity benefits".

These three Entries relate to subjects of social welfare. They have nexus with the Directive Principles of State Policy contained in Articles 38, 39, 42 and 43. These Directives are addressed to the Union and the States, jointly. These are matters of common Union-State interest having important aspects of nation-wide significance. It is, therefore, not correct to say that the transposition of these items to List II would be conducive to better and effective administration of these subjects. Rather, it may lead to a contrary result. State laws on these subjects would be unable to deal with their inter-State aspects or implications.

2.21.10 **Entry 35, List III**—"Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied".

The suggestion of a State Government is that while taxes on mechanically propelled vehicles are a State subject under Entry 57 of List II, the jurisdiction for determining principles of such taxes should also be under State's jurisdiction, instead of keeping it in the Concurrent List. Entry 57 of List II (relating to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads including tramcars) is expressly subject to Entry 35 of List III. This is to say, if there is an existing law or a law made by Parliament, laying down under Entry 35 of List III, the principles on which the tax on mechanically propelled vehicles should be levied, the law made by a State Legislature under Entry 57, List II must conform to those principles. If the law made by Parliament does not indicate the principles relating to taxation on mechanically propelled vehicles, the power of the State Legislatures to tax such vehicles would remain unfettered.

2.21.11 The main object of including the subject-matter of Entry 35 in the Concurrent List is to enable Parliament to regulate the exercise of the taxation power of the States with respect to mechanically propelled vehicles. If a law laying down such principles is made by Parliament under this Entry, any State law imposing tax under Entry 57 of List II on principles repugnant to those laid down by Parliament, shall be rendered invalid to the extent of repugnancy, by Article 254(1).

2.21.12 To give an example, the Union Government has been able to obtain the agreement of all State Governments to the charging of the same composite fee in lieu of the tax payable by the holder of a national permit for plying motor-vehicles. In pursuance of this agreement, the individual State Governments have to prescribe the agreed rate by suitably amending their respective Motor Vehicular Taxation Acts. In this case, a law of Parliament under Entry 35 of the Concurrent List has not been found necessary. Nevertheless, the Entry underlines the need for initiative by the Union in the matter of ensuring uniformity in principles of taxation and related policies in the various States so as to facilitate smooth inter-State and inter-regional freight traffic by road. We are, therefore, of the view that the Entry in question should continue in the Concurrent List without any change.

2.21.13 **Entry 39, List III**—"Newspapers, books and printing presses." This Entry does not relate purely to a local matter of exclusive State concern. Its dimensions and implications extend beyond the boundaries of individual States. Some periodicals, magazines and newspapers have circulation throughout or over a large part of India. The rationale of putting this subject-matter in the Concurrent List is obvious. We are unable to support the demand for transposition of this Entry to the State List.

2.21.14 **Entry 38, List III**—"Electricity".

One State Government has complained that taking advantage of the entire field of electricity being at present a Concurrent subject, the Union Government is steadily taking over this sector. It is argued : "The States are greatly hampered in electricity development as all their projects, including even small projects, need Centre's approval. This often takes years and seriously delays development. This is an important contributory factor to varying degree of chronic power deficit suffered by most States." On

these premises it suggests that the subject be divided into two parts. While electricity generation and high voltage transmission (110 Kv. and above) by public utilities may remain a Concurrent subject, low voltage transmission (below 110 Kv.) distribution and rural electrification and captive power plants may be made an exclusive State subject. Finance of electricity development may be a Concurrent subject. To give effect to these suggestions, it is urged that a new Entry 25A be added to the State List and Entry 38 of the Concurrent List be appropriately modified.

There is need for ensuring uniform standards all over the country in regard to production, supply and distribution of electricity, irrespective of voltage levels. We are in agreement with the view that the States should have adequate powers for sanctioning of various schemes for generation and transmission. We have considered this aspect in detail in the Chapter on "Economic and Social Planning" and have recommended periodic review of the norms for approval of schemes by the Union Government, Central Electricity Authority and the Planning Commission.

22. *GROUP V*

2.22.01 **Miscellaneous**—Suggestions relating to Entries 5, 26, 33, 34, 36, 37, 40, 27 and 45 of List III are dealt with in this group.

2.22.02 **Entry 5, List III**—"Marriage and divorce; infants and minors; adoption, wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."

It is suggested by two State Governments that this Entry may be transferred in its entirety to the State List. One of them has observed that the subject-matter concerning the Entry has a positive impact on the personal law of the subjects of the State which undoubtedly varies from State to State.

2.22.03 Before the adoption of the Constitution, most of the personal law of the Hindus, who constitute the bulk of the population of India, in matters of marriage, divorce, adoption, succession, joint family and partition etc. was uncodified. There were several schools of the Hindu law which varied from region to region. Local customs could also outweigh and modify the text of the Hindu Law. There was thus a bewildering uncertainty and diversity. The main object of including the subject-matters of this Entry in the Concurrent List obviously is to enable Parliament to remove this disconcerting unpredictability in personal law and secure a measure of uniformity on its macro-aspects throughout the country. Several steps have already been taken by Parliament in this direction. Acts relating to several aspects of the Hindu Law, such as succession, marriage, divorce, have been enacted by Parliament. Thus a significant advance has been made towards the goal set out in Article 44. This Article directs : "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". Transfer of the matters comprised in Entry 5 to the State List would halt further progress towards the goal. It might even reverse it. In any case, the macro-aspects of these matters are of nation-wide significance. They cannot be assigned to the exclusive State sphere. Their appropriate allocation could only be to the sphere of Concurrent jurisdiction of the Union and State Legislatures. The proposal for transfer of these matters to the State List is not sound. It is not possible to support it.

2.22.04 **Entry 26, List III**—"Legal, medical and other professions."

A bald demand, unsupported by reasons, has been made for transfer of this Entry to the State List.

2.22.05 Article 19(g) guarantees the fundamental right of the citizens of India to practise any profession, or to carry on any occupation. Clause (e) of the same Article protects the right of the citizens to reside and settle in any part of the territory of India. The field of practice available to a member of the legal or medical profession is not restricted to the territorial limits of the State wherein he for the time being resides. The activities of persons practising these professions may extend throughout the country. Considered from this stand-point, the subject matters of this Entry is not of exclusive concern of the States. Hence, it has been rightly included in the Concurrent List.

2.22.06 **Entry 33, List III**—"Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned and cotton seed; and

(e) raw jute."

This Entry is linked with Entries 26 and 27, List II, which are as follows :

"26. Trade and Commerce within the State subject to the provisions of Entry 33 of List III."

"27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III."

2.22.07 The suggestion of one State Government is that the words "subject to the provisions of Entry 33 of List III" may be omitted from both Entries 26 and 27, the remainder of Entry 26 and Entry 27 may be combined with the transferred Entry 33 of List III, after omitting from clause (a) of the latter the words "where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest". The recast Entries 26 and 27 of List II would read thus :

"26. Trade and Commerce within the State including trade and commerce in—

(a) the products of any industry and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils ;

(c) cattle fodder, including oil-cakes and other concentrates;

(d) raw cotton, whether ginned or unginned and cotton seed; and

(e) raw jute."

"27. Production, supply and distribution of goods including the production, supply and distribution of—

(a) the products of any industry and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

Another State Government has stated that there is no reason why trade and commerce within a State may not be in the exclusive jurisdiction of that State. They are of the view that the only reasonable exception to this might be the inputs of Defence and War industries within the purview of Entry 7 of List I and therefore trade and commerce in these inputs may be put in the Concurrent List to ensure uninterrupted flow to production units. Modifications to Entries 26 and 27 of List II have been accordingly suggested, but deletion of Entry 33 of List III in its entirety has been proposed.

2.22.08 The original Entry 33 of List III did not contain clauses (b), (c), (d) and (e). The last limb of clause (a) *viz.*, "and imported goods of the same kind as such products" was also not there. This limb and clauses (b) to (e) were inserted by the Constitution (Third Amendment) Act. 1954.

2.22.09 A perusal of Entry 33 would show that the matters comprised in it are not of exclusive concern either of the State or of the Union. Some aspects of these matters are primarily of State concern, while others are of common Union-State concern. There can be no sharp distinction or division between these aspects. A certain amount of flexibility in the distribution of these matters between the Union and the States is not only unavoidable but desirable. That is why some aspects of these matters, supposed to be of dominant State interest were included in Entries 26 and 27 of List II and were made subject to Entry 33 of List III containing other aspects of the same matters considered to be of Union-State common interest.

2.22.10 Clause (a) of Entry 33 has an inter-face with Entry 52 of List I. We have discussed the problems relating to industries, in the context of Union—State relations, in detail in a separate Chapter.[41] We have concluded that, in our view, no change or amendment of the language of Entry 52 of List I or Entry 24 of List II is called for. It would follow that the Union cannot divest itself of the power to regulate trade and commerce in, and the production, supply and distribution of, products of any industry which has come under its control by virtue of a law of Parliament. It is not, therefore, possible to support the suggestion that this power should be entirely with the States. We are of the view that clause (a) of Entry 33 of List III should continue in its present form in that List.

2.22.11 We have also discussed the problems bearing on Union-State relations regarding trade and commerce in and, production, supply and distribution of, essential commodities of the kind mentioned in clauses (b), (c), (d) and (e) of this Entry in the Chapter on "Food and Civil Supplies"[42]. It is sufficient to reiterate here that the Union should continue to play an overall supervisory and regulatory role in the production, supply and distribution of these commodities. Supply and distribution of these essential commodities is a problem that has assumed national dimensions. The retention of these matters in List III is fully justified in the larger interest of the country.

2.22.12 One of the State Governments (presumably in the alternative) has raised certain issues relating to the functional aspect of these matters. It has urged that "the State Government or its agencies should be permitted to purchase levy paddy and rice from the surplus States without interference by the Centre", and "the Reserve Bank of India should charge concessional rate of interest in this regard". It has also urged that "in the interest of effective control over the roller flour mills and ensuring proper production and distribution of *maida* and *sooji* to consumers, it is but necessary that the licensing powers of roller flour mills are again vested with the State Governments, subject to general guide lines from the Government of India." It further goes on to suggest that "if the power to grant exemption from ceiling on stocks of pulses, in cases where the genuineness is satisfied, is vested with the State Governments without reference to the Government of India, it will do a lot of good to dealers besides making pulses available in plenty to the consumers at reasonable price". It wants that the power of appointing new wholesale dealers in kerosene should be with the State administration. These issues, mainly of an administrative nature, have been dealt with in the Chapter on "Food and Civil Supplies."[43]

2.22.13 **Entry 34, List III**—"Price control".

There was no item corresponding to this Entry in the Legislative Lists of the Government of India Act, 1935. Entry 29 of List II in the Seventh Schedule to that Act, referred, *inter alia*, to distribution of goods. It was held by the Calcutta High Court that fixation of price was involved in regulating the distribution of articles under this Entry 29.

2.22.14 To clarify the position, the Constitution has made 'price control' a specific item in the Concurrent List. However, the fact remains that 'price control' is closely connected with the regulation of "trade and commerce in, and the production, supply

(41) Chapter XII

(42) Chapter XVI

(43) Chapter XVI

and distribution" of certain industrial and agricultural products mentioned in Entry 33, List III. The reasons given by us for not favouring the suggestion for change and transfer of a good portion of Entry 33, List III and List II, apply equally to demand for transposition of this item to List II. No reason for the proposed transfer of this Entry to List II has been given. It is a well-known fact that, whenever the country or a part thereof suffers from scarcity of essential commodities or products, country-wide unethical trade practices and black-marketing make their ugly appearance in a menacing form cutting across State boundaries. Overall price control is essential not only to curb such evil practices but also to ensure Inter-State distribution of scarce goods and essential foodstuffs on an equitable basis to the people of all the States. This function can be best performed through concerted coordinated action of the Union and the States. This is the rationale of including 'price control' in List III. We find no justification for suggesting its transfer to List II.

2.22.15 The State Government has, however raised certain issues relating to the functional aspect of Entry 34 of List III. It has contended that "in the matter of fixation of procurement price, the previous approval of Central Government is not necessary" It has further pointed out that "several schemes in the course of education, obliteration of illiteracy, Nutritious Noon-Meal Scheme (feeding about 84 lakhs of childern and old age pensioners) have been conceived for the first time in the country by the Hon'ble Chief Minister". In this connection, it has suggested introduction of a "subsidised control of prices for essential commodities for continuan of such welfare schemes such as the Nutritious "Noon-Meal Scheme" These problems relating to the administrative aspects of 'price control' have been dealt with in the Chapter of "Food and Civil Supplies"[44].

2.22.16 **Entry 36, List III.**—"Factories".

Entry 37, List III—"Boilers".

A State Government has suggested that these two Entries should be transferred to List II as they have an impact on the development activities of a State including setting up of industries etc. Another State Government has proposed that in line with their suggestion for limiting the scope of Entries 7 and 52, List I, the two Entries 36 and 37 of List III may be shifted to List II. A glance at the Factories Act would show that it makes provisions for the safety, health and welfare of workers in factories. It prohibits employment of young children below 14 years in any factory. It prohibits employment of women in factories except between 6 AM and 7 PM. The Boilers Act defines "boiler" as any "closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure". Sometimes owing to defects of manufacture or wrong handling, boilers used in factories or in engines. leak or burst or otherwise cause accidental injuries to workers or their users. The Boilers Act secures uniformity throughout India in all technical matters connected with boilers with a view to preventing accidents. Non-compliance with the requirements of this Act have been made criminal offences carrying penalties. The root-cause of an unsafe boiler *viz.*, manufacture may be located in one State and the mischief or harm due to it may take place in another State. It is thus clear that the object of putting Entries 36 and 37 in the Concurrent List is to enable Parliament to secure by law a measure of uniformity in these matters throughout the country. There is no case for transfer of these Entries to the State List.

2.22.17 **Entry 40, List III**—"Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance." In paras 2.10.69 to 2.10.76 we have already dealt with the suggestion that this Entry, along with Entry 67 in List I, should be transferred to List II. We have explained there why we cannot support the proposal.

2.22.18 **Entry 27, List III**—"Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan".

A State Government has recommended that the expression "by reason of setting up of the Dominions of India and Pakistan" may be omitted. However, it has not given any reasons for so deleting the same. Another State Government, while urging the deletion of these words, has suggested that the Entry may be modified as under :

> "Relief and rehabilitation of persons displaced from their original place of residence in foreign countries and territories or in other States and Union Territories."

This Entry is a specific provision intended to cover a situation created by partition of the country at the time of Independence. The Constitution expressly recognises the need for providing relief to and rehabitating persons displaced from Pakistan, even though they could not technically be called at that point of time, citizens of the country. We have carefully considered the suggestion of the State Government. If the expression "by reason of setting up of the Dominions of India and Pakistan" is omitted, then the scope of the Entry becomes wide open and could cover all aliens coming to India at any point of time. This could possibly lead to a large influx of foreigners into this country with all its undesirable consequences. Indeed, serious problems have already arisen in certain part of India due to continuous influx of persons from outside into this country. The Citizenship Act (1955) has been recently amended, tightening up the qualifications by which a person can become a citizen of this country. We are of the view that the suggested deletion could become a source of considerable difficulty and, therefore, cannot be supported.

As regards the suggestion for inserting 'persons displaced from other States and Union Territories' in this Entry, we feel that it is unnecessary. There are other provisions, such as Article 282, which give ample discretionary powers to the Union as well as

(44) Chapter XVI.

the States to make grants for any public purpose. Entry 42, List III givest power to the Union and the Status to acquire property (including Land) for any public purpose.

2.22.19 **Entry 45, List III**—"Inquiries and Statistics for the purposes of any of the matters specified in List II or List III."

The first preference of one State Government is that this Entry should be nmitted from the Concurrent List. In the alternative, it is suggested that the Entry should be recast as follows :

> "Inquiries and statistics for the purpose of any of the matters specified in List II or List III but not including inquiries in respect of the conduct of any Minister of a State Government while in office or after demitting office."

Another State Government has argued that there is no justification why inquiries and statistics for the purposes of any of the matters specified in List II may be in the Concurrent List and has suggested that Entry 45 of List III may be limited to enquiries and statistics for the purposes of any matters specified in List III.

2.22.20 In support of its suggestion, the State Government has advanced these arguments :

> "This entry has been interpreted by the Courts so as to enable Parliament to order a commission of inquiry in respect of matters exclusively falling within the State legislative field. In fact, the validity of the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952) has been justified with reference to this entry. The power under the Commission of Inquiry Act in respect of the conduct of the Ministers of a State Government even while in office has been resorted to by the Central Government purporting to exercise the powers under the Commissions of Inquiry Act, 1952. In a Federal set up, it is inconceivable that the Central Government should have the power to order a Commission of Inquiry in respect of the conduct of State's Ministers while in office or in respect of the past conduct of the Ministers. It is, therefore, necessary that Parliament should have no power to order an inquiry in respect of the conduct of Ministers of State Government. This aspect assumes very great importance in the context of different ruling parties at the Centre and at the State level. Almost in all cases, the Central Government has resorted to order a Commission of Inquiry into the conduct of Ministers of the State Government when the State Government is headed by a Chief Minister belonging to a party different from the ruling party at the Centre."

2.22.21 The object sought to be achieved by the proposed changes, is, that "Parliament should have no power to order a Commission of Inquiry in respect of the conduct of a Minister of a State Government, while in office or after demitting office". The State Government has suggested a new Article 246A declaring that Parliament shall not have this power.

2.22.22 Parliament passed the Commissions of Inquiry Act, 1952. The Act came into force on 1-10-1952. Section 2 defines the "appropriate Government" as (i) the "Central Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution"; and (ii) the "State Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution". Section 3 empowers the appropriate Government to appoint a Commission of Inquiry. It is bound to appoint such a Commission if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State. The purpose of appointing a Commission under this Section is to make an inquiry into any definite matter of public importance. The proviso to this Section says that where any such Commission has been appointed to inquire into any matter —

(a) by the Central Government, no State Government shall except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government, is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

Sections 4 and 5 enumerate the powers of a Commission.

2.22.23 The *vires* of Section 3 of this Act was challenged before the Supreme Court in *State of Karnataka* v. *Union of India* in Shri Devraj Urs's case.[45] The Supreme Court, by a majority, held that the expression "inquiries" in item 45 of List III covers all inquiries for the purpose of any of the matters specified in List II or List III. The language used, viz., "any of the matters specified" is broad enough to cover anything reasonably related to any of the enumerated items even if done by holders of Ministerial offices in the States. In the alternative, it held that even if neither Entry 94 of List I nor Entry 45 of List III would cover inquiries against Ministers in the States relating to acts connected with the exercise of Ministerial powers, Article 248, read with Entry 97 of List I, must necessarily cover an inquiry against Ministers on matters of public importance whether the charges include alleged violations of criminal law or not.

2.22.24 The judgement of the Supreme Court in the *Karnataka case* continues to be the subject of serious debate in legal and political circles. We do not want to enter into this controversy. But one startling result which might flow from the interpretation put by the Court on Entry 45, List III, is that, if it is permissible for the Union Government by

(45) 1978(2) SCR 1.

virtue of the Commissions of Inquiry Act passed under this Entry, to appoint a Commission of Inquiry to investigate into charges of misconduct or corruption against Ministers of a State relating to any of the matters in List II or List III, on parity of reasoning, a State Government also, is competent to set up a Commission for inquiring into charges of corruption against Union Ministers in respect of any matter in List II, if not in respect of any matter in List III also.

2.22.25 The interpretation of Entry 45, List III given by the Supreme Court highlights the potentiality of this extraordinary power for misuse by the two levels of government by initiating mutually recriminatory inquiries through the Commissions set up by them against each other. However, the mere fact that this power is capable of being misused, is no ground for amending the Constitution. It will be a case for providing appropriate safeguards against the misuse of this power in the Commissions of Inquiry Act, itself. Such safeguards can be —

(i) that no Commission of Inquiry against an incumbent or former Minister of a State Government on charges of abuse of power or misconduct shall be appointed by the Union Government unless both Houses of Parliament, by resolution passed by a majority of members present and voting, require the Union Government to appoint such a Commission,

OR

The Minister or Ministers concerned request in writing for the appointment of such a Commission; and

(ii) no Commission of inquiry shall be appointed to inquire into the conduct of a Minister (incumbent or former) of a State Government with respect to a matter of public importance touching his conduct while in office, unless the proposal is first placed before the Inter-Governmental Council (recommended to be established under Article 263)[46] and has been cleared by it.

As regards the suggestion that Entry 45, List III may be limited to inquiries and statistics for the purposes of List III only, we have noted earlier that it is inevitable that Entries in List II may have an interface with Entries in List I and List III. The objective sought to be achieved by initiating inquiries in to matters in List I and/or List III may be frustrated if the matters in List II are also not covered by Entry 45 of the Concurrent List. We are, therefore, unable to support the suggestion for the modification of this Entry.

2.22.26 For all these reasons, while appreciating the apprehensions of the State Government with regard to the potentiality of this power for misuse, we would decline to support their proposal for amendment of Entry 45 of List III and for insertion of the suggested Article 246A in the Constitution.

2.22.27 We recommend that appropriate safeguards on the lines indicated above, be provided in the Commissions of Inquiry Act, 1952 itself, against the possible misuse of this power, while appointing a Commission to inquire into the conduct of a Minister or Ministers of a State Government.

2.22.28 Our observations with regard to the suggestions of the State Government for transfer or modification of a large number of Entries in the Concurrent List to the State List apply *mutatis mutandis* to the wide-ranging demand of a Regional Party for transfer of all but seven entries of the Concurrent List to the State List. Indeed, these demands, in their totality, would substantially truncate the basic scheme of distribution of powers between the Union and States, and considerably weaken the Constitutional capacity of the Union to ensure a uniform, integrated policy on basic issues of national concern.

23. *EXTENT OF A CONCURRENT SUBJECT TO BE OCCUPIED BY UNION*

2.23.01 After a careful analysis and examination of the Entries in the Concurrent List, we have come to the conclusion that good enough case does not exist for amending the Constitution to transfer any Entry in the Concurrent List to the State List. However, we may recall the general complaint of the States that the Union has evinced a tendency to occupy needlessly excessive field of the Entries in the Concurrent List as if it were a second Union List. Such comprehensive occupation of the concurrent field, it is contended, results, by the operation of the rule of repugnancy contained in Article 254, in excessive attenuation of the legislative power of the States with respect to matters in List III.

2.23.02 In examining this issue it would be advantageous to begin by recapitulating that matters in the Concurrent List are those which are of common interest to both the Union and the States. The need for Union legislation may arise for the following reasons :

(1) Need to secure uniformity in regard to the main principles of law throughout the country.

(2) The subject matter of legislation may have inter-State, national and even international, aspects and the 'mischief' emanating in a State may have impact beyond its territorial limits.

(3) It may be important to safeguard a fundamental right, secure implementation of a Constitutonal directive or,

(4) Coordination may be necessary between the Union and the States and among the States as may be necessary for certain regulatory, preventive or developmental purposes or to secure certain national objectives.

2.23.03 There are over 250 Union Statutes (including Existing Central Laws relating to the various matters in the Concurrent List. These cover a very wide spectrum. At one end stands the Forest (Conservation) Act, 1980 where in respect of diversion of reserved forest land to other uses there is no discretion whatever left to the States. At the other end is the Electricity (Supply) Act, 1959 wherein the States have been delegated most of the powers. The extent of occupation of the field in the public interest would depend

(46) Chapter IX on "Inter-Governmental Council-Article 263": Para 9.3.05.

on the requirements in a particular case and may even vary from time to time. Indeed, needless occupation of the field by the Union, may create avoidable difficulties in the achievement of the objective in view. Our study of the Essential Commodities Act, 1955 (ECA), an enactment relatable to Entries 33 and 34 of List III, will be found in Chapter XVI on "Food and Civil Supplies". In that Chapter, one would notice the advantages and disadvantages of having an exhaustive Union code on a Concurrent List matter. In the case of the ECA, one distinct advantage is that it empowers the Union Government to monitor the production, availability etc. of essential commodities in the different parts of the country, so that prompt action can be taken in the event of a crisis anywhere. The ECA also facilitates the planning, on a national basis, of production, supply, distribution etc. of foodgrains and other essential commodities. However one major short-coming is that, in order to be able to deal with the problems of food and civil supplies in their States, the State Governments have to be delegated adequate powers by the Union Government under the ECA. We have observed therein that there is a case for delegation of enhanced powers to the State Governments under the Act and this problem requires to be reviewed periodically by the Union Government in consultation with the State Governments. In dealing with the matters enumerated in Eentries 33 and 34 of List III, it is of utmost importance that the large diversity in the local situations is taken into account. A higher degree of delegation may take care of some of the problems arising out of the diversity. One may wonder whether it admits of only one uniform system or plan of regulation, or very objectives sought to be achieved would not be better served by leaving that part of the legislative field unoccupied to the States where diversity or peculiarity of local situation is an overriding consideration.

2.23.04 Before enacting a Union Law in respect of a matter in the Concurrent List, it is necessary to strictly consider how important, if at all, it is that there should be uniformity in regard to the main principles of the law in respect of that matter and evaluate the deficiencies in the existing State laws which can be rectified only through a Union Law. Keeping in view the fact that the legislative powers of the States get attentuated to the extent the field of legislation is occupied by the Union, it is necessary to confined the Union Legislation only to the main aspects in the light of the relationals outlined in para 2.23.02 ante.

2.23.05 One general conclusion that can be drawn is that when there is no compulsion to occupy the field of Concurrent jurisdiction, it is necessary not to occupy the field. We, therefore, recommend that ordinarily the Union should occupy only that much field of a Concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for State action within the broad framework of the policy laid down in the Union law. Further, whenever the Union Proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State Governments, individually, but also, collectively, with the Inter-Governmental Council which, as we have recommend should be established under Article 263[47], A resume of the views of the State Governments and the comments of the Inter-Governmental Council should accompany the Bill when it is introduced in Parliament.

24. *PART III— ARTICLES* 247, 249 *AND* 252

Article 247

2.24.01 The power to provide for the administration of a law is necessarily incidental to the power to make laws relating to the subject. In consonance with this principle, Article 247 empowers Parliament to establish additional courts for the better administration of Union laws relating to any matter in List I only.

2.24.02 One State Government has objected that 'Article 247 is so wide that it enables Parliament to establish additional courts for the exercise of normal civil and criminal jurisdiction also during the peaceful time... as such observance of due process of law is also the responsibility of the States, this provision may be omitted", Another State Government has objected to the establishment of additional courts on the grund that these courts are a departure from the normal judicial structure envisaged by the Constitution where the same Courts administer all laws whether made by Parliament or the State Legislature. There should be no justification for setting up such courts in normal non-Emergency times. These objections possibly stem from a misapprehension of the scope of Article 247, The Article does not enable Parliament to establish courts for the administration of Union laws with respect to a matter in the Concurrent List. Administration of State laws whether they relate tc matters in List II or List III are outside its purview. The Article thus does not in any way derogate from the powers assigned to the States by the Constitution. We, therefore, find no substance in these objections.

25. *ARTICLE* 249

2.25.01 Article 249 is an exception to Article 246(3). Clause (1) of the Article authorises Parliament to make law on a matter enumerated in the State List, if the Council of States (Rajya Sabha) by not less than two-third majority of the members present and voting, resolves that it is necessary or expedient in the national interest so to legislate. Clause (2) provides that such a resolution shall remain in force for a period not exceeding one year as may be specified therein. The proviso to this clause enables the continuance in force of the resolution, if and so often a resolution approving the continuance is passed in the manner prescribed by clause (1). The life of the temporary statute extends for a period of six months after the resolution has ceased to be in force.

Effect of the Use of Article 249

2.25.02 When Parliament assumes power under this Article, the subject-matter of the Parliament legislation, in a sense, stands temporarily transferred to the Concurrent List and the exercise of the power of the

(47) Chapter on "Inter-Governmental Council Article 263": Para 9.3.05.

State Legislatures in regard to that matter bacomes subject to the rule of inconsistency laid down in Article 251.

Issue Raised

2.25.03 Four State Governments specifically, and one more State Government indirectly, have asked for deletion of Article 249. Two of them have suggested, in the alternative, that Articles 249 and 252 should be so amended that the Union Government powers to legislate on items in the State List do not exceed a period of six months each proposed legislation must first be approved by the Inter-State Council. Political parties supporting these State Governments, have also made a similar)demand. One Regional Party has also made a similar demand. Some experts and public-men who appeared before the Commission, have also suggested the deletion of this Article. On the other hand, most State Governments and political parties do not find fault with the provisons of Article 249.

2.25.04 The main argumens advanced for deletion of Article 249 are : that it short-circuits the amending process prescribed in Article 368 and enables only one House of the Union Legislature to unilaterally transfer a subject from the State List to the Concurrent List. The two-thirds majority of members present and voting in the Council of States (Rajya Sabha) may not necessarily reflect the consent of the majority of the States through their representatives. The initial life of the statute, though limited to one year, may be prolonged indefinitely through successive resolutions of the Rajya Sabha and a better alternative is available in Article 252(1).

2.25.05 We have carefully considered the arguments for deletion or amendment of Article 249. These stem from fears about the possible misuse of this power. These fears have no empirical basis. The evidence before us shows that the Article has been availed of very sparingly to meet abnormal situations.

2.25.06 Article 249 was first invoked in August, 1950 "for the effective control of black-marketing", when, in pursuance of the resolution, dated August 8, 1950 of the "Rajya Sabha", (See Foot Note 56—under paragraph 2.26.17), Parliament enacted the Essential Supplies (Temporary Powers) Amendment Act, 1950 and the Supply and Price of Goods Act, 1950. Again, in 1951, pursuant to another resolution of the "Rajya Sabha" under this Article, Parliament passed the Evacuee Interest (Separation) Act, 1951, applicable to all evacuee property including agricultural land. This Act was enacted to resolve an unusual problem relating to rehabilitation and settlement of displaced persons from Pakistan.

2.25.07 After 1951, for a period of about 35 years, this Article remained dormant. Thereafter, it was resorted to recently in August, 1986. On August 13, 1986, the Council of States with the requisite two-thirds majority resolved that it was necessary in the national interest that Parliament should for a period of one year from 12th August 1986, make laws with respect to the matters comprised in six Entries in the State List, namely, Entries Nos. 1 (Public Order), 2 (Police), 4 (Prisons....), 64 (Offences against laws with respect to matters in the State List), 65 (Jurisdiction and Powers of all courts, except the Supreme Court, with respect to matters in List II) and 66 (Fees in respect of any of the matters in List II, but not including fees taken in any court). The reasons and objects for invoking this provision, as indicated in the preamble of the Resolution, were :

> "Whereas the situation in Punjab and other areas in the north-west borders of India has become extremely grave due to infiltration from across the north-western borders and unabated terrorist activities in the border areas,....."

2.25.08 No legislaton, in pursuance of the resolution, dated August 13, 1986, of the Rajya Sabha was passed by Parliament.

2.25.09 There are three in-built safeguards against the misuse of the power conferred by this Article. The first is that Parliament can assume jurisdiction only when two-thirds ofthe members of the Rajya Sabha present and voting pass a resolution to that effect. Secondly, the resolution is required to specify the matter enumerated in the State List, with respect to which Parliament is being authorised to legislate in the national interest. Some Entries in List II comprise a cluster of several matters. It is, therefore, open to the Rajya Sabha to limit the resolution specifically with respect to any one of those matters (which may even be a particular aspect of a matter) in an Entry. Thirdly, a resolution passed under clause (1) of the Article remains in force for a period not exceeding one year as may be specified therein unless extended for a further period not exceeding one year by a fresh resolution. A law passed in pursuance of clause (1) ceases to have effect on the expiry of six months after the resolution has ceased to be in force. It is true that these safeguards are not fool-proof. But the basic fact that, in any case, the power is to be exercised by Parliament which consists of the representatives of the people from all the States, is itself a guarantee against its misuse. There is no allegation that, when this power was exercised in 1950-51 to pass the aforesaid temporary statutes, it worked to the disadvantage of the States or the interests of their people. In the recent case, power was conferred on Parliament to legislate with respect to certain matters in the State List to meet a situation on the north-western border, which, according to the Rajya Sabha resolution under Article 249, was "extremely grave".

2.25.10 The Article provides a simple and speedy method for effective handling, at the national level, or urgent problems of an extraordinary nature which temporarily assume national significance. The Article may also be availed of in a situation in which speed is the essence of the matter, and invocation of the Emergency Provisions in Article 352 and 356 is not considered necessary or expedient. Compared with Article 249, the procedure provided in Article 252 very cumbersome, and time-consuming. It cannot, therefore, be reasonably said that Article 252 provides an equally efficacious or a better alternative to Article 249. On the basis of evidence before us, therefore, it is not possible to say that this extra-ordinary power has been misused. It has been exercised with due restraint in extraordinary situations for temporary periods which have not been indefinitely extended by successive resolutions.

2.25.11 We do not favour the suggestion that, in addition to the requisite resolution of Rajya Sabha, the prior approval of the Inter-Governmental Council should also be a condition for authorising Parliament to legislate on a matter in the State List. In our view, it would operate as a clog on the speedy and effective use of the Article in extraordinary situations, requiring urgent action.

2.25.12 For these reasons, we cannot support the suggestion for deletion or amendment of the provisions of Article 249.

26. *ROLE OF THE COUNCIL OF STATES (RAJYA SABHA) IN RELATION TO ARTICLE 249*

Views of State Governments

2.26.01 In the preceding Section, we have referred to the suggestion of some State Governments for the deletion of Article 249. In this connection, two of them consider that there is a serious flaw in the composition of the Rajya Sabha. One of the latter has observed that, when a resolution is passed by the Rajya Sabha under Article 249 by a two-thirds majority of the members present and voting, the majority would not necessarily reflect the consent of the majority of the States through their representatives. The existing allocation of seats in the Rajya Sabha is responsible for what the State Government has termed as the short-circuiting of the amending process prescribed in Article 368. It has pointed out that a two-thirds majority can be mustered by seven States viz., Uttar Pradesh, Bihar, Maharashtra, Andhra Pradesh, Tamil Nadu, Madhya Pradesh and West Bengal ; along with the 12 nominated members. In that event, opposition from the representatives of the remaining States will be of no avail.

2.26.02 According to the other State Governments, the seats allocated to the States in the Rajya Sabha are heavily weighed by their populations. This contrasts with the position in the U.S.A., where the States have 2 representatives each in the Senate. In the Rajya Sabha, a majority of two-thirds of the members present and voting will be available for passing a resolution under Article 249, even if it is opposed by all the members elected from the last 14 States in the list of States arranged according to the descending order of their populations. A resolution which lacks the support of almost two thirds of the total number of States, cannot be regarded as a decision of the States as such.

2.26.03 This State Government has suggested that the Rajya Sabha may have the following composition which could lend to the House the character thati ts name suggests :

Population of a State	No. of seats to be allocated in the Rajya Sabha
(i) Upto 1 million . . .	1
(ii) Between 1 and 3 million . .	2
(iii) Between 3 and 10 million . .	5
(iv) More than 10 million . .	14

Delhi and Pondicherry may be allocated one seat each.

2.26.04 The regional party supporting this particular State Government has, however, suggested that the States should have equal representation in the Rajya Sabha. It has also suggested that the diversity of nationalities and religious, linguistic, cultural and ethnic minorities should be adequately reflected in the composition of Rajya Sabha. One all-India Party and a number of other regional parties have also emphasised that all States should have equal representation in this House.

2.26.05 A third State Government has observed that the Members of the Rajya Sabha elected from the State Legislatures are not expected to override the rights of the States, except when a legislative measure being considered by them is really necessary in the national interest. Therefore, the possibility of misuse of Article 249 by the Union to encroach on the State's Legislative field is negligible.

Rajya Sabha's Role as Envisaged by the Constitution-Framers

2.26.06 The composition and functions of the Rajya Sabha were designed by the framers of the Constitution to subserve the following purposes :—

(i) securing, for the legislative process at the Union level, the thinking and guidance of mature and experienced persons, popularly known as "the Elders", who are disinclined to get in volved in the rough-and-tumble of active politics and contest in direct elections to the Lok Sabha;

(ii) enabling the States to give effective expression to their view-points at the Parliamentary level;

(iii) ensuring some degree of continuity in the policies underlying Parliamentary legislation; and

(iv) functioning as a House of Parliament which would, more or less, be coordinate with the Lok Sabha, with safeguards for speedy resolution of any conflicts between the two Houses on legislation.

The above purposes were given expression to in the Constitution in the manner explained below.

The Members their back-ground and experience

2.26.07 The members of the Rajya Sabha, except for twelve of them to be nominated by the President, would be representatives of the States and elected by the electedmembers, of their Legislative Assemblies. The nominated members would be persons having special knowledge or practical experience in respect of matters like literature, science, art and social service (Article 80). Thus,members of the Rajya Sabha would be seasoned poeple, not in the thick of politics, who would lend a stamp of learning and importance to the debates in the House. The Rajya Sabha could be expected to bestow calm consideration on the various legislative measures coming to it, particularly those that might have been some what hastily drafted and equally hastily passed by the Lok Sabha. [48].

(48) Constitutent Assembly Debates (Raprint) : Volume IV : Page 876.

Projection of the totality of views in each state made possible

2.26.08 Elections to the Rajya Sabha from the Legislative Assembly of each State would be in accordance with the system of proportional representation by means of the single transferable vote [Article 80 (4)]. While framing the Constitution, it was decided that the strength of the Rajya Sabha would be distributed among the States, as far as possible, in proportion to their population. The scale adopted was of one representative for every whole million of the population of a State upto 5 million plus one representative for every additional 2 million [49]. Accordingly, the number of members of the individual States varies from 1 to 34, apart from 12 nominated members (vide Schedule IV). These provisions, it was felt, would enable fair representation to be given to minorities in each State who held views different from those of the majority [50]. The members elected by a State Legislative Assembly would thus represent a fair cross-section of the views of the parties elected to the State Legislative Assembly. The Rajya Sabha would thereby be an instrument for the effective expression at the Parliamentary level of the points of view of the States [51].

2.26.09 It may be mentioned that in the Constituent Assembly, an amendment to Draft Article 67 [now Article 80(1)], which provided that each State should elect 5 members to the Council of States by adult franchise, was negatived[52]. One reason for not accepting the principle of equal represention for each component State in the Upper Chamber (as obtaining in the U.S.A. and Australia) was that the States of the Indian Union were not independent entities having pre-existing rights or powers anterior to or apart from the Constitution. Another reason obviously was that the constituent units of the Indian Union differed vastly in area and population. This part, the Rajya Sabha was not envisaged to function primarily as a Federal Chamber of the classical type like the Senate of the U.S.A. Apart from the representatives of the costituent units, it was to have a nominated element, also.

2.26.10 The Constitution-framers provided that the Rajya Sabha would be a permanent body not subject to dissolution. One-third of the members would retire at the expiration of every second year. This type of arrangement was designed to secure the representation of past as well as current opinion and help in maintaining continuity in public policy[53].

Upper House not to impede Legislative process

2.26.11 In order that the Rajya Sabha should not prove to be a clog to legislation and administration, the Constitution-framers provided that, in the event of a conflict between the Upper and the Lower Houses on a Money Bill, the view of the Lower House would prevail. Such amendments to Money Bills as the Rajya Sabha might suggest would be left to the Lok Sabha to accept or not to accept (Article 109). Also, no Financial Bill, including a Money Bill, would originate in the Rajya Sabha (Articles 109 and 117).

2.26.12 In regard to Bills other than Money Bills, the Lok Sabha and the Rajya Sabha would have equal powers. Deadlocks would be resolved by joint meetings (Article 108). In order that the view of the Lok Sabha should generally prevail during such joint meetings, the Rajya Sabha would have a strength not exceeding 250 members [Article 88(1)], while the Lok Sabha would have not more than 500 members chosen by direct election in the States and members representing Union Territories [Article 81(1)].[54]

Some important powers of the Rajya Sabha

2.26.13 The two Houses of Parliament have coordinate powers not only in the matter of passing Bills (other than Money Bills) but also in regard to approving a Proclamation issued under Article 352 or Article 356 or approving continuance in force of such a Proclamation. However, the Rajya Sabha does not have the power, which has been conferred on the Lok Sabha under Article 352(7), of passing a resolution disapproving a Proclamation issued under Article 352(1) or disapproving the continuance in force of such a Proclamation, thus making it obligatory for the President to revoke the Proclamation in question.

2.26.14 The Rajya Sabha has a significant power in relation to a Bill seeking to amend the Constitution. Such a Bill has to be passed in each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. Should such a Bill not be passed by the Rajya Sabha for lack of the requisite majority in that House, it can neither be presented to the President for his assent nor sent to the State Legislatures for being ratified by them, where ratification by the States for the Bill is necessary (vide Article 368).

2.26.15 The Rajya Sabha has certain special powers under Articles 249 and 312, which the Lok Sabha does not possess. We have discussed the provisions of Article 249 in the preceding section. Under Article 312, Parliament may, by law, provide for the creation of one or more All India Services common to the Union and the States, provided that the Council of States has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do.

2.26.16 From the above conspectus, it is clear that the Rajya Sabha in our Constitution does not exclusively represent the federal principle. The primary role assigned to it is that of a Second Chamber of Parliament exercising legislative functions, more or less, coordinate with the Lok Sabha. However, in the

(49) Rao, B. Shiva : "The Framing of India's Constitution", Vol. II, Page 581 and Vol. IV Pages 513-514.

(50) Constituent Assembly Debates (Reprint) : Vol. VII Page 1225.

(51) Rao, B. Shiva : "The Framing of India's Constitution" A Study, Page 424.

(52) Constituent Assembly Debateds (Reprint) : Vol. VII: Pages 1208 and 1229.

(53) Rao, V. Shiva : "The Framing of India's Constitution", Volume II, Page 442.

(54) These figures were subsequently revised. At present, 525 members are to be elected from the States and 20 from Union Territories.

exercise of its special functions such as those under Articles 249 and 312, its role assumes a pre-dominantly federal character. Explaining the reason for assigning this special role to the Rajya Sabha, Dr. B.R. Ambedkar said : "*Ex-hypothesi*, the Upper Chamber represents the States and therefore, their resolution would be tantamount to an authority given by the States".[55] How far, in reality, a resolution of the Rajya Sabha passed under Article 249 by a two-thirds majority of members present and voting, signifies consent of the majority of the States, is a matter which is discussed in the following paragraphs.

2.26.17 As noticed in paragraphs 2.25.02, 2.25.03 and 2.25.04 *ante*, Article 249 has been invoked during the last 37 years, only on three occasions. It was invoked first in 1950 and again in 1951,before the constitution of the Rajya Sabha in 1952.[56] Article 249 was invoked again after a lapse of 35 years, only in 1986. An analysis of the voting pattern on this occasion shows that the requisite two-thirds majority did not come only from members belonging to a few populous States, who out-voted the members from the smaller States, even though the latter were larger in number.

Voting pattern in the Rajya Sabha

2.26.18 Though, in theory, the pattern of voting on a resolution moved in the Rajya Sabha under Article 249, is supposed to reflect the broad view-point or consent of the State Assemblies and their Governments, yet, in practice, it may not be invariably so. It may happen that the concerted view of the majority party in the Rajya Sabha supporting the resolution, stands, at that point of time, in direct contrast to the known views of the parties running the governments and dominating the majority of the State Legislatures. While electing members to the Rajya Sabha, members of State Assemblies vote on party lines. It is only to be expected that the members so elected would continue too we allegiance to their respective parties and vote on party lines in the Rajya Sabha. The pattern of voting that took place on the resolution passed by the Rajya Sabha on August 13, 1986, in pursuance of Article 249, to which we have made a reference in para 2.25.07 *ante*, provides an illustration. The members who voted in favour of the resolution, comprised members belonging to the ruling party and some other parties and, in all, constituted 78 per cent of the total number of members present and voting. Also, at least one member belonging to every State voted in favour of the resolution.

2.26.19 For the past nearly two decades, parties other than the ruling party at the Union, have been in power in many States. The fact that these other parties or groups of them have been in a majority in certain State Legislative Assemblies, has had an impact on the relative strengths of the different parties in the Rajya Sabha.

2.26.20 As a result, the ruling party and its allies have generally been having a lower percentage of seats in the Rajya Sabha than in the Lok Sabha. In fact, there were occasions when the ruling party was not able to muster the requisite two-thirds majority in the Rajya Sabha in order to pass a Constitution Amendment Bill. For example, the 43rd and 44th Constitution Amendment Acts could not have been passed in 1977 and 1978, respectively, but for the broad agreement between the ruling party, which had a majority only in the Lok Sabha, and the main opposition party, which had a majority in the Rajya Sabha.

2.26.21 The apprehension of the two State Governments and some political parties, noticed in paragraphs 2.26.01 and 2.26.02 *ante*, to the effect, that in the Rajya Sabha as at present composed, a few bigger States can muster the requisite two-thirds majority of votes to push through a legislation or a resolution, even when a larger number of smaller States are opposed to it, is not borne out, as already noticed, by an empirical analysis of the voting pattern with respect to the Resolution passed in the Rajya Sabha in 1986 when Article 249 was invoked. Nevertheless, a remote possibility of the apprehended situation arising in future, cannot be ruled out. The problem is aggravated when the more populous States are ruled by one party, and the opposition party or parties are running the government in the smaller States. But, the question is, will the suggested changes in the composition of the Rajya Sabha, eliminate this possibility and provide a workable remedy for the alleged distortions that have come about in the role of the Rajya Sabha as an instrument effectively representing the diverse view-points of the States, particularly in the exercise of its special powers enabling Parliament to legislate with respect to a matter in the State List. In the light of the discussion that follows, the answer to this question has to be in the negative.

System of allocation of seats in the Rajya Sabha question of alteration

2.26.22 The new scale of representation proposed by one of the State Governments, vide para 2.26.03 *ante*, does not seem to have been derived from any understandable criteria. All that it seeks to achieve is that States, with a population of more than 10 million get 14 seats each, while those with lesser population get a substantially reduced number. No explicable reason has been indicated for this larger gap in the representation of the two groups of States.

2.26.23 As noticed in pargraph 2.26.09 *ante*, the suggestion that all the States should have equal representation in the Rajya Sabha, was not accepted by the Constitution-makers. The reasons that weighed with the Constitution-framers, in not accepting this suggestion, are as valid today as they were then. Moreover, the changes, suggested in the compositon of the Rajya Sabha, will not solve the problem which has more than one dimension. In actual practice, the remedy suggested may aggravate the 'disease'. It may have deleterious effects even on the primary role of the Rajya Sabha. If the suggested scale of representation were to be adopted, besides the party in power, the numerically lesser political parties in a State Legislative Assembly, may not be able to elect and send their representatives to the Rajya Sabha. The membership of the Rajya

(55) Constituent Assembly Debates (Reprint): Volume IX: Page 1118.

(56) With the commencement of the Constitution, the Constituent Assembly was turned into the Provisional Parliament by virtue of the transitional provision in Article 379(1). The Resolutions in question were passed by the Provisional Parliament. functioning as the Council of States, by virtue of adaptation made in Article 249 by the Constitution (Removal of Difficulties) Order No. II (Second Amendment) Order, dated August 11, 1950, made by the President under Article 392(1).

Sabha would then cease to reflect a fair cross-section of the various parties in the State Legislative Assemblies. The demand by one of the regional parties that the diverse "nationalities" and minorities should be adequately reflected in the composition of the Rajya Sabha, would prove to be impracticable if its simultaneous demand for equal representation for all the States were to be met. Indeed, these twin demands are mutually inconsistent.

2.26.24 In sum, neither of the two proposals—one suggesting a new scale of representation and the other equal representation for the States in the Rajya Sabha, can stand close scrutiny. Neither of them would provide a fool proof safeguard against the interests or view points of the smaller States being overridden by the bigger and more populous States, *inter alia*, due to the prevailing pattern of voting on party lines. Rather, the proposed changes in the composition of the Rajya Sabha, if made, might mar its proceedings by endemic conflicts and frequent deadlocks, seriously undermining its primary role and smooth functioning as a second Legislative Chamber of Parliament. We are, therefore, unable to support any of these proposals.

2.26.25 The crux of the problem is, how to strengthen the special role of the Rajya Sabha as an instrument for effective representation of the view-points of the States? This can be best solved not by restructuring the composition of the Rajya Sabha, but by devising procedural safeguards in its internal functioning. The Rajya Sabha by its Rules of Procedure may provide for setting up of a special Committee reflecting various cross-sections of the House. This Committee shall ascertain by free and frank discussions the views of the various cross-sections of the House and thus ensure, beforehand, that a proposed resolution under Article 249 or Article 312 would be passed only on the basis of consensus. This procedural device will serve to dispell the apprehensions about the misuse of these special provisions for transferring the power otherwise belonging to the smaller States to the Union with the support of numerically larger votes of a few bigger States which are under the control of the party in power at the Union, and will thus ensure the exercise of these special powers by the Rajya Sabha in accordance with the principles of cooperative federalism.

27. *ARTICLE* 252

2.27.01 Clause (1) of Article 252 provides that if the Legislatures of two or more States by a resolution desire that Parliament should by law regulate in those States a matter in the State List, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution of its Legislature.

Clause (2) of the Article provides :

"Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State" (emphasis added).

Effect of the operation of clause (1)

2.27.02 The underlined words indicate that the State Legislatures will have no power to repeal or amend an Act of Parliament relating to a State subject, passed or adopted in the manner provided in clause (1). It may be amended or repealed only by Parliament in the manner laid down in clause (2). The effect of the operation of clause (1), is, that the State Legislature ceases to have power to make laws on the subject to the extent its field is covered by the resolution under clause (1), although the matter continues to be in List II. It has been held [57] that any Act of the State Legislature will be subject to the principle of repugnancy, though Article 254, in terms, may not apply. If any State Act relating to the same matter, occupying the same field as the law made by Parliament under clause (1), is repugnant to the latter, it will be rendered inoperative to the extent of repugnancy.

Instances of Acts passed under Article 252

2.27.03 Article 252 has been invoked a number of times. Some important instances of legislations by Parliament under this Article are :

(i) Estate Duty Act (34 of 1953)—in its application to agricultural land.

(ii) Prize Competition Act (42 of 1955).

(iii) Seeds Act, 1966 (54 of 1966).

(iv) Water Preservation and Control of Pollution Act, 1974 (6 of 1974).

(v) Urban Land Ceiling and Regulation Act, 1976 (33 of 1976).

(vi) National Capital Region Planning Board Act, 1985 (2 of 1985).

Issues Raised

2.27.04 Only one State Government has suggested deletion of Article 252. It has pleaded that the States must themselves enact legislation on matters in the State List. It has argued that if coordination between two or more States is necessary with respect to legislation on a particular matter, this may be arranged through the medium of the Zonal Council or the Inter-State Council. The Union Government might also help by framing model legislation on that matter. According to it, "a possible, though less satisfactory, alternative to omission of Article 252 may be" to substitute the following for clause (2) of Article 252 :—

> "An Act so passed may be amended or repealed only by an Act of Parliament passed or adopted in like manner, but as respects any State to which it applies it may also be amended or repealed by an Act of Legislature of that State."

None else has voiced any criticism in regard to the provisions of clause (1).

The need for these provisions is obvious. It is an example of flexibility built in the scheme of distribution of powers under our Constitution. However,

(57) R.M.D.C. *Vs.* State of Mysore, A.I.R., 1962 SC 594.

clause (2) of the Article, in general, and its underlined portion in particular, has come in for much criticism from most cross-sections of public opinion. In the evidence before us, there is near unanimity in regard to the need for amending clause (2) to remove the bottle-neck in the amending procedure. There is also general agreement in support of the proposal that a legislation passed under this Article should be subject to periodic review.

Clause (2) of the Article while taking away the power of the State Legislatures to amend or repeal any Act passed by Parliament with their consent under clause (1), enjoins on Parliament that if it wants to amend or repeal such Act it can do so "in like manner" *i.e.*, in the manner similar to the one provided in clause (1). This can mean that Parliament will have authority to amend or repeal an Act passed under clause (1) of the Article, only if the State Legislatures concerned by resolution authorise it to amend or repeal the Act. If the State Legislatures do not give the necessary consent to amend or repeal it in the manner laid down in clause (1), neither Parliament nor the State Legislatures may have the power to amend or repeal the Act under clause (2). The resultant disadvantages, therefore, outweigh any possible advantage envisaged by the framers of the Constitution in making the provisions in question.

2.27.05 After considering the matter from all aspects, we recommend :

(i) Clause (2) of Article 252 may be substituted by a new clause providing that an Act passed by Parliament under clause (1) may be amended or repealed either by Parliament in the manner provided in clause (1) or also by the Legislature of the State to which it applies, provided no such amending or repealing legislation of the State Legislature shall take effect unless, having been reserved for the consideration of the President, it has received his assent.

(ii) Any law passed by Parliament with respect to a matter in List II under clause (1) of Article 252, should not be of perpetual duration but should remain in force for a specific term, not exceedin three years. The Act should make a provision requiring its periodic review before the expiry of its term. If, after such review, it is considered necessary to re-enact the law in its original or modified form, such law may be enacted for a period not exceeding the original term, by following the same procedure as specified in clause (1) of the Article.

28. *PART IV—MISCELLANEOUS PROVISIONS*

General

2.28.01 This part deals with miscellaneous provisions not comprised in Chapter I of Part XI of the Constitution but are found elsewhere in the Constitution. These are in Articles 3, 4, 31A, 31C, 154(2)(b)/258, 169, 269, 285/289, 286, 288, 293, 304(b), 368 and 370.

29. *ARTICLES* 3 & 4

2.29.01 Article 3 provides :

"Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State ;

(b) increase the area of any State ;

(c) diminish the area of any State ;

(d) alter the boundaries of any State

(e) alter the name of any State :

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I—In this article, in clauses (a) to (e), "State" includes a Union Territory, but in the proviso "State" does not include a Union Territory.

Explanation II—The power conferred on Parliament by clause (a) includes the power to form a new State or Union Territory by uniting a part of any State or Union Territory to any other State or Union Territory".

During the discussions in the Constituent Assembly, some Members suggested that alterations in the boundaries of the States should be carried out only with the consent of the Legislatures of the States concerned. This suggestion was turned down by the Assembly on the ground that this "would make the provisions of Article 3 very rigid and redistribution of the boundaries of States under this Article would be very difficult, if not an impossibility; for a State will hardly agree to be divested of any area which forms part of it".[58]

Scope of Articles 3 and 4

2.29.02 Article 3, as it finally emerged from the Constituent Assembly, enables Parliament to make by law internal adjustment *inter se* of the territories of the States constituting the Union of India. The exercise of this power is subject to two conditions. First, that no Bill for the purpose can be introduced in either House of Parliament except on the recommendation of the President. Second, that before making such recommendation the President shall refer the Bill for ascertaining the views of the legislature of the State or States affected by the proposal in the Bill. The amendment of the Article in 1955,[59] gives the President power to specify in the reference a time-limit within which the Legislatures of the affected States would be required to communicate their views. If they fail to communicate their views within the specified time, the Bill may be introduced in Parliament, even though their views have not been ascertained.

(58) Constituent Assembly Debates, Vol. VII, Page 439.

(59) The Constitution (Fifth Amendment) Act, 1955.

2.29.03 Article 4 lays down that any law made under Article 3 shall provide for the necessary amendment of the First and the Fourth Schedules as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential matters. Clause (2) expressly provides that no such law within the scope of this Article shall be deemed to be an amendment of the Constitution.

Issues Raised

2.29.04 Most State Governments have not asked for any change in the provisions of Article 3. However, two State Governments have suggested that prior consent of the affected State or States should be obtained before invoking Article 3. Another State has suggested that the Inter-State Council should be consulted before Article 3 is invoked. Only one State Government has suggested that this provision should be deleted. One more State Government has stated that the justification for vesting with Parliament the power to legislate with regard to name, territory, and boundary of States, if necessary even without the concurrence of the States affected, will disappear after the territory and boundary of States have been finalised on the basis of principled application of the linguistic or ethnic basis of States' reorganisation. It has suggested that, when the boundary between the two States has been finalised and the two States have made a joint declaration to that effect approved by their respective legislatures by two-thirds majority this boundary must henceforth be unalterable by Parliament except, at the request or concurrence of the two States. Likewise, any change in the name of the State shall be only on the request or concurrence of that State.

2.29.05 At the time of framing of the Constitution, the princely States had not been fully integrated. Their number was unduly large. Considerable reorganisation was anticipated. The Congress Party had for a long time supported the principle of linguistic States. But, soon after the attainment of Independence, the national leaders had second thoughts on this issue. The Dar Commission appointed by the Constituent Assembly advised against the formation of Provinces exclusively or mainly on linguistic considerations. A Committee, consisting of Shri Jawaharlal Nehru, Sardar Vallabhbhai Patel and Dr. B. Pattabhi Sitaramayya, set up by the Congress Party, endorsed the views of the Dar Commission with the reservation that "if public sentiment is insistent and overwhelming, we, as democrats, have to submit to it, but subject to certain limitations".[60] The Constituent Assembly did not find it advisable to reorganise the Provinces/States on linguistic basis in the Constitution, itself. Nonetheless, they foresaw that, under the mounting public pressures and clamour as well as on administrative considerations, the reorganisation of the States could not be indefinitely postponed. In Article 3, therefore, they provided an easy and simple method for formation of new States and alteration of the areas, boundaries or names of States constituting the Union of India at any point of time. Every reorganisation of States or formation of a new State brings in its wake a number of constitutional, legal, administrative and political problems. For tackling such problems, apart from the amendment of the First and Fourth Schedules, other *ad hoc* consequential and supplemental changes in the Constitution and the laws may be necessary. For instance, it would be necessary to make provisions for constituting the legislative, executive and judicial machinery of a new State, distribution of assets, division, allocation and integration of services, adaptation of laws etc. Article 4 enables Parliament to incorporate such 'supplemental, incidental and consequential provisions' in the reorganisation Bill, itself, and enact it by a simple majority, without going through the cumbersome procedure prescribed in Article 368 for amendment of the Constitution.

2.29.06 These Articles were invoked [61] in 1953 when Andhra State was created. Its creation necessitated several consequential changes, such as, refixing the representation of the existing State of Madras in Parliament, composition of its Legislature, jurisdiction of the High Court etc. Provisions for all such consequential, incidental and supplemental matters were made by virtue of Article 4, in the Andhra State Bill, itself, The Bill was passed by Parliament like any other ordinary legislation. The utility of these Articles was fully demonstrated by the passage of the States Reorganisation Act, 1956, which brought about a general reorganisation of States and reduced their total number. Apart from other consequential provisions, this Act provided for the setting up of five Zonal Councils as advisory bodies, competent to discuss matters of common interest, particularly in the field of economic and social planning. These Articles were invoked on subsequent occasions, also. In all, during the last 37 years, 20 Acts have been enacted by Parliament under Articles 3 and 4 to bring about changes in the areas, boundaries and names of States.

2.29.07 It is noteworthy that these legislations were passed either with the consent of the States affected, or on the recommendations of a Commission or Committee set up for the purpose. The proposal to make the exercise of the power of Parliament under Article 3, conditional on the consent of the Legislatures of the affected States, in our view, will make these provisions well nigh unworkable. The reasons given by the framers of the Constitution, to which a reference has been made earlier, are still a good ground for negating this proposal. Questions relating to readjustment of boundaries of some States still remain unsettled. The need for Articles 3 and 4 in their present form has not disappeared.

2.29.08 We are, therefore, of the view that the provisions of Articles 3 and 4 should be retained as they are.

30. *ARTICLES 31A AND 31C*

2.30.01 Three State Governments and some political parties have strongly urged for amendment of Article 31A(1) and deletion of its First Proviso. They have also asked for omission of the Proviso to Article 31C. The argument is that there is no justification,

(60) J. V. P. Committee Report quoted at Page 231 in K.M. Munshi's Pilgrimage to Freedom Vol. I.

(61) The Assam (Alteration of Boundaries) Act, 1951 was the first occasion when these provisions were invoked.

whatever, for discriminating between legislations passed by Parliament and those passed by the State Legislatures with regard to the subjects specified in these Articles. It is pointed out that the State Legislatures have exclusive powers of legislation with respect to matters in List II. They are independent legislative bodies, in no way subordinate to the Union Legislature. "It is equally clear"—proceeds the argument—"that the State Government is not subordinate to the Union Government in respect of matters belonging exclusively to the State sphere". It is stressed that "the Union Government cannot be permitted to sit in judgement over the policy or the constitutionality or legality of an enactment passed by a State Legislature". Another State Government has stated that a valid legislation sponsored by a State Government, if it is not altogether out of line with the prevailing ethos, should secure without undue delay the protection of Articles 31A & 31C. For this purpose, it has suggested that President's assent shall continue to be necessary to secure protection for State legislation under Articles 31A and 31C, but with respect to such legislation, the President shall be guided by the advice of the Inter-State Council and not that of the Union Council of Ministers.

2.30.02 Article 31A(1) (so far as material for our purpose) provides :

Article 31A

"31A. Saving of laws providing for acquisition of estates, etc.—(1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in Order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accuring by virtue of any agreement, lease or licence for the purpose of searching for or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is in consistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

2.30.03 Article 31A was introduced by the Constitution (First Amendment) Act, 1951 to validate the acquisition of Zamindaries or the abolition of Permanent Settlement without interference fr Courts and to protect, with retrospective effect, la of agrarian reform from attack on the ground that they violated the provisions of Part III (Fundamenta Rights) of the Constitution. The Constitution (Forth Amendment) Act, 1955 *inter alia* added sub-clauses (b), (c), (d) and (e) in clause (1) of the Article. Thus, after this Amendment, the scope of Article 31A(1) has been extended to other social welfare matters, such as, taking over of management of any property, amalgamation of corporations, extinguishment or modification of rights of directors, shareholders etc., and extinguishment or modification of rights under mining leases.

Article 31C

2.30.04 Article 31C Provides :

"31C. **Saving of laws giving effect to certain directive principles**—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy :

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, ha received his assent".

2.30.05 It will be seen that if a Parliamentary leg lation satisfies the conditions set out in the substantive part of Article 31A(1), or 31C, it automatically becomes eligible to protection against a challenge on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. If, however, a legislation of a type mentioned in these Articles is passed by a State Legislature, then such protection will be available only if (in compliance with the Proviso in question), having been reserved for the consideration of the President, it has received his assent. We have discussed in detail the reason and object of these provisions in the Chapter on "Reservation of Bills by Governors for President's consideration".[62]

2.30.06 It would be sufficient to mention here that the Provisos in question enable the Union Executive to ensure (i) that the State legislation referred to the President strictly satisfied the conditions set out in Article 31A(1) or 31C, as the case may be. That is to say, the President has to ensure that if his assent is sought under the First Proviso to Article 31A(1), the legislation is clearly one providing for any of the matters specified in sub-clauses (a), (b), (c), (d) and (e) of clause (1) of the Article; and, if such assent is sought under the Proviso to Article 31C, it really seeks to implement the policy of a

(62) Paras 5.8.01 to 5.8.07.

Directive Principle specified in Part IV; (ii) that the legislation, in effect, will not abridge or curtail the fundamental rights under Article 14 or 19, more than what is genuinely essential for achieving the object of the legislation; (iii) that there is a measure of uniformity and coordination of legislative policy and action among the States in such matters of agrarian reform or social welfare which abridge or curtail fundamental rights; and (iv) that even in abridging or curtailing fundamental rights in respect of matters covered by Articles 31A(1) and 31C, it endeavours to accord a broad equality of treatment to persons similarly situated within the ambit of the legislation.

2.30.07 The Provisos in question are a part of the Constitutional scheme of checks and balances. They are safety valves of a democratic Constitution like ours.

2.30.08 For all the reasons aforesaid, we cannot support the suggestion for deletion of the Provisos in question from Article 31A and 31C.

31. *ARTICLE* 154(2)

2.31.01 One State Government has suggested that "Articles 154(2)(b) and 258(2) should be so amended that, if the Union were to exercise the power as contemplated in both these Articles, consent of the State should be obtained".

Scope of Article 154(2)

2.31.02 Clause (1) of Article 154 vests the executive power of the State in the Governor who exercises it either directly or through officers subordinate to him in accordance with the Constitution. Clause (2) of the Article contains a two-pronged saving provision. It lays down :

"(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor."

2.31.03 Clause (2) of Article 154 corresponds to the latter part of Section 49(1) of the Government of India Act, 1935. Section 49(1) of that Act provided that it was competent for the Federal or the Provincial Legislature to confer executive functions upon the authorities subordinate to the Governor. Sub-clause (b) of the Article clarifies that Parliament or a State Legislature can by law take away the Governor's executive power derived from clause (1) and confer it on subordinate authorities. However, those functions which are specifically vested in the Governor by some provision outside Article 154, cannot be conferred upon any other authority. The effect of delegation of executive powers by statute to a specified subordinate authority under sub-clause (b), is that the Governor is divested of any responsibility in respect thereof. The source of the power of the delegated authority is entirely statutory and its exercise is subject to the conditions and limitations laid down in the statute. Nonetheless, the competence of Parliament or of the State Legislature to make such delegation is subject to the limitations imposed by the other provisions of the Constitution.

32. *ARTICLE* 258

2.32.01 Article 258 reads as under :

"258. **Power of the Union to confer powers, etc., on States in certain cases**—(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this Article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties".

Scope of Article 258 (1) & (2)

2.32.02 It will be seen that clause (2) of the Article is analogous to sub-clause (b) of Article 154(2). It is further noteworthy that under clause (1) of Article 258, the entrustment of such functions by the President is made only with the *consent* of the State Government. But, under clause (2), the conferment is made by Parliament by law and no consent of the State Government is required for it. Of course, while exercising its power under clause (2), Parliament can act only within its own competence. Under clause (2), Parliament can delegate quasi-judicial and quasi-legislative powers for effective execution of a Union law. Such powers are also deemed to be a part of the executive power of the Union. Clauses (1) and (2) of the Article largely overlap so far as matters with respect to which the executive functions of the Union can be delegated. However, the power of Parliament under clause (2) is *sui juris* and untrammelled by anything in clause (1).

2.32.03 We have discussed, in the next Chapter on "Administrative Relations", the rationale underlying the above two clauses. As will be explained there, whenever the assistance of States is required for enforcing a law of Parliament, the enactment itself may contain provisions for the exercise of the requisite powers and duties by States, or may empower the Union Government to delegate or entrust such powers and duties to them. This mode of entrustment of powers and duties derives its validity from clause (2) of Article 258. However, where a provision of this nature is not available in a law of

Parliament for entrustment of certain powers and duties, the Union Government may invoke its power under clause (1) of Article 258 to entrust those powers and duties under that law to a State with its consent.

Rationale of Article 154(2)(b) and Article 258(2)

2.32.04 The rationale of the provisions in Article 154(2)(b) and Article 258(2) is that our constitutional system does not envisage that there should necessarily be separate, parallel agencies of the Union and the States for carrying into effect their respective laws. Most Union laws, particularly those relating to matters in the Concurrent List, are executed through the machinery of the States. These provisions have been designed to obviate the necessity of constituting separate Union agencies for enforcement of Union Laws. The present arrangement under which Union laws are executed through agencies of the States, is economical, secures coordination between legislative policy and action in matters of national interest. It also strengthens national integration and cohesion. In most cases, the State Governments should have no valid objections to the conferment of Union executive power on it or its authorities by a Presidential order under clause (1) of Article 258. The only valid objection on the part of the State Government could be that it might mean extra burden on the State exchequer. This has been taken care of by clause (3) of the Article which provides that the State Government shall be paid by the Government of India such sums as may be agreed or as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of the powers and duties conferred on it or its officers, under clauses (1) and (2) of the Article.

2.32.05 For these reasons, we find no substance in the suggestion of the State Government that Article 154(2)(b) and Article 258(2) be so modified that powers thereunder are exercised by Parliament with the consent of the State Government.

33. *ARTICLE* 169

2.33.01 Article 169 of the Constitution provides as follows :

> "169. **Abolition or creation of Legislative Councils in States.**—(1) Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.
>
> (2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.
>
> (3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368".

Issues Raised

2.33.02 One State Government has suggested "……In this Article, the word 'may' after the word 'Parliament' must be replaced by the word 'shall'. It is better to modify it in such a way as to state that Parliament shall by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of not less than two-thirds of the members of the Assembly present and voting, unless the President refers the State resolution within fourteen days of its receipt to the Supreme Court under Article 143 for advisory opinion on the necessity or urgency of abolition or creation of Legislative Council and the Supreme Court has advised against it". Subsequently, the State Government revised its stand and asked for deletion of the words beginning with "unless the President refers" and ending with "has advised against it". In short, their revised stand is that, if the necessary resolution for abolition of a Legislative Council is passed by the Legislative Assembly of a State, it should be mandatory for Parliament to pass a law abolishing the same. It is argued that the Union Executive is not entitled to sit in judgement over the resolution of a State Legislature for abolition or creation of a Legislative Council. But it is bound to move the Bill in accordance with the Resolution before Parliament. Another State Government has stated that the Legislative Assembly, the popularly elected House of the State, has no power by itself to create or abolish the Legislative Council, no matter how strong is the support among the Assembly Members for this. The State Government is obliged to move the Parliament for undertaking the necessary legislation to implement the Assembly resolution. It has, therefore, pleaded that Article 169 be amended to empower the Legislative Assembly of the State, to itself create or abolish the Legislative Council, by law passed by a majority of total membership of the Assembly and by a two-third majority of Assembly members present and voting.

2.33.03 The practice followed by the Union Executive in the past, on receipt of such resolutions of the State Assemblies, does not show a uniform pattern. While the Union Government had promptly introduced Bills to implement the Resolutions of the Legislative Assemblies of Punjab and West Bengal for abolition of their Legislative Councils, it had declined to do so when the Resolutions of the Assemblies of Uttar Pradesh and Bihar were received for abolition of the Legislative Councils in those States. It also did not agree to move a Bill in accordance with the Resolution of Punjab Legislative Assembly for recreation of a Legislative Council for that State. The absence of a settled policy to be followed by the Union Executive in this matter generates controversy and friction between the Union and the States.

2.33.04 It is clear that the word "may" used in clause (1) of Article 169 imports a discretion to accept or reject the resolution of the Legislative Assembly of a State for abolition or creation of Legislative Council. But this discretionary power belongs to Parliament and not to the Union Executive.

It is, therefore, not proper for the Union Government to withhold presentation of such a resolution to Parliament and reject or decline it at their own level.

2.33.05 The mere fact that the correct procedure with respect to such a resolution of a Legislative Assembly is not being followed, is no ground to substitute the word "may" by "shall" in clause (1) of the Article. The word "may" has been deliberately used by the Constituent Assembly. There may be situations where abolition or creation of Legislative Council may not be proper in the peculiar circumstances of the case. In some States there may be important linguistic or ethnic minorities which are provided representation in the Legislative Councils, though it may not be possible for them, under our majority rule system of elections, to get elected to the Legislative Assembly. Conversely, due to migration of some minorities or groups of persons from one State to another, the cultural or ethnic configuration of the population may not be reflected in the Legislative Assembly, and the State may be economically affluent to support a second Chamber. Furthermore, acceptance of any such resolution of a Legislative Assembly would require consequential and supplemental changes which, in substance—though not in law—amount to an 'amendment' of the Constitution. In principle, therefore, it is but proper that only Parliament should pass the requisite legislation effecting such changes. For these reasons, it is not possible to accept the proposal of the State Government that the word "may" in clause (1) of the Article be substituted by the word "shall".

2.33.06 We would recommend that when a Resolution passed by the Legislative Assembly of a State for abolition or creation of a Legislative Council in the State is received, the President shall cause the Resolution to be placed, within a reasonable time, before Parliament together with the comments of the Union Government. Parliament may thereupon by a simple majority of the members present and voting, declare that they adopt or reject the request contained in the Resolution. If the Resolution is so adopted by Parliament, the Union Government shall introduce the necessary legislation in Parliament for implementation of the resolution. If necessary, Article 169 may be amended to provide for this procedure.

34. *ARTICLE* 269

2.34.01 One State Government has suggested that "terminal taxes on goods or passengers, carried by railway, sea or air, taxes on sale or purchase of goods which takes place in the course of inter-State trade etc..... be brought under the purview of Article 268". It is further argued that it will be in the interest of tax administration to progressively allow the State Government to levy and administer these taxes which have now been included in Article 269. Another State Government has also asked for the transposition of the taxation heads comprised in Entries 89 and 92 of List I to List II. "Yet another State Government has suggested that a tax on advertisements should be imposed and the scope of Article 269(1)(f) may be widened to include, besides newspaper advertisements, advertisements broadcast by radio or telecast by television".

2.34.02 At the outset, it may be observed that it is not clear from the memorandum of the State Government as to what is precisely meant when they say that the power to levy these taxes mentioned in Article 269 be "delegated" to the States. Does it mean that while these taxation heads may remain in the Union List, the power to levy the same may be delegated by the Union under Article 258 or otherwise to the States ? If that be the stand of the State Government, then it is highly doubtful whether the Union is competent under the present Constitutional arrangements to delegate its exclusive legislative power to impose a tax specified in the Union List to the States. The Constitution divides the legislative power between the Union and the States. It also ordains that "no tax shall be levied or collected except by authority of law". It is thus clear beyond doubt that no tax specified in the Union List can be levied save by authority of a legislation enacted by Parliament. Can this essential legislative power of Parliament to enact a substantive law imposing a tax in the Union List be delegated under Clause (2) of Article 258 to the State Legislatures or the State executives ? In this connection, it is noteworthy that while clause (1) of Article 258 has been made subject to the words, "notwithstanding anything in this Constitution", no such *non-obstante* phrase has been engrafted to Clause (2). Clause (2) of the Article, therefore, is "practically no exception" to the primary division of legislative powers between the Union and the States made by the Constitution, in as much as Parliament, while legislating on matters within its competence, is also competent to delegate administrative powers or powers of subordinate legislation relating to those matters, but not its *essential* legislative functions.[63]

We have dealt with the suggestion for transfer of Entries 89 and 92 from List I to List II in the Chapter on Financial Relations, in detail.

For the reasons stated therein we are unable to support the demand that these Entries be shifted to List II.

2.34.03 We have considered the suggestion that this tax should be imposed and the scope of Article 269(f) widened to include, besides advertisements in newspapers, advertisements broadcast by radio or telecast by television in the Chapter on Financial Relations, in detail.

State's power to levy a tax on advertisements broadcast by radio or television was taken away by amending Entry 55 of List II by the Constitution (Forty-second Amendment) Act, 1976. But, no corresponding addition was made to Entry 92, List I which deals with taxes on advertisements in newspapers and to Article 269(f). Two arguments adduced by the Union Ministries of Information and Broadcasting and Law and Justice in favour of the present arrangements are : that the revenues from these advertisements should be fully available for the development of these services and a tax on advertisements might seriously erode accrual of revenue

(63) Basu, D.D., Commentary on The Constitution of India, Vol. K. (Sixth Edition) page 18.

In re Delhi Laws Act (1951) SCR 747.

Ram Jawaya Kapur *Vs.* State of Punjab (1955) 2 SCR 225 at P. 235.

Jayantilal *Vs.* Rana, AIR 1964 SC 648.

to them. A tax on advertisements which will be borne by the advertiser, does not in any way affect the availability of revenues from these advertisements for the development of these services. As regards the apprehension that a tax may have an adverse effect on the growth of advertisements, we have drawn attention to the fact that the steep hike in rates of advertisements did not have any adverse effect on the demand for advertisement time. A tax on advertisements in newspapers and a tax on advertisements in radio and television are on the same footing. For these reasons and others stated in the Chapter on Financial Relations, we are of the view that the Constitution should be amended suitably to add the subject of taxation of advertisements broadcast on radio or television, to the present Entry 92 of List I and Article 269(i)(f).

35. *ARTICLE* 285

2.35.01 Article 285(1) provides for exemption of the property of the Union from State and local taxation, "save in so far as Parliament may by law otherwise provide". Clause (2) relaxes this limitation on State taxation power. It says that Union properties, which were liable or treated as liable to a tax by any authority within a State immediately before the commencement of the Constitution, will continue to be so liable until Parliament by law otherwise provides, but so long as that tax continues to be levied in that State.

Underlying Principle

2.35.02 An essential pre-condition for the harmonious working of a two-tier polity is, that neither the National nor the Regional Government should have power to make laws which are directed against and impair the exercise of essential governmental functions of the other. The immunity of the property of one government from taxation by another is a manifestation of that principle. To ensure that the smooth working of the Union-State relations is not marred by a "tax-war" between them, Articles 285 and 289 exempt the property of one government from taxation by the other.

Scope of Article 285

2.35.03 The object of the Article is not to prevent State or local taxation of Union property altogether, but to bring it under control of Parliament. The exemption granted under the Article extends only to Union Government's properties. It does not affect the competency of the State Legislature to impose a tax directly on the interest of a lessee or occupier of Union Properties.

Issues Raised

2.35.04 One State Government has pointed out that, as a result of the operation of this Article, the municipalities in that State are losing revenue, though they render civic services related to the Union undertakings, particularly the Railways. Its complaint is that, even in the cases where service charges were payable by the Union in terms of circulars of the Union Ministry of Finance, amounts were not being paid regularly resulting in large outstanding dues of the urban local bodies. The State Government has also drawn attention to the circulars [64] of the Ministry of Finance of the Union Government in terms of which the urban local bodies of State Government can realise service charges, at a rate varying between 33 percent and 75 percent of the property-tax rate realisable from private individuals, from the Union with respect to its properties. In view of these difficulties, the State Government has suggested amendment of Article 285 to enable the urban local bodies to impose rates on the properties of the Union Government. It has also asked for repeal of the Railways (Local Authorities' Taxation) Act, 1941.

2.35.05 Section 154 of the Government of India Act, 1935 exempted the property of the Central Government from taxation by Provinces or local authorities. However, the proviso contained in Section 154 enabled the liability existing on 1-4-1937 to be maintained, until otherwise provided for by the Central Legislature. It follows that if any property of the Central Government was non-existent on 1-4-1937, or was built or acquired by the Central Government subsequently, it would not get the benefit of the proviso.

2.35.06 In so far as properties of the Central Government, other than the Railways, are concerned, the result of the operation of Section 154 of the Government of India Act and Article 285, in the absence of any legislation, has been to freeze the tax liability as it existed on 1-4-1937.

2.35.07 Since the issue has been raised specifically in the context of services rendered by the local bodies to the State-owned railways and railway properties it is necessary to notice the relevant provisions of two central statutes bearing on the point. The first is Section 135 of the Indian Railways Act, 1890 which provides as under :

> '135. **Taxation of railways by local authorities.**— Notwithstanding anything to the contrary in any enactment or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administration in aid of the funds of local authorities, namely :
>
> (1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the (Central Government) has by notification in the Official Gazette, declared that railway administration to be liable to pay the tax.
>
> (2) While a notification of the (Central Government) under clause (1) of this Section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum if any as an officer appointed in this behalf by the (Central Government) may, having regard to all circumstances of the case, from time to time determine to be fair and reasonable.

(64) Ministry of Finance, letters—
(i) 4(2)PF 1 dt. 28-5-76.
(ii) 14(1) p. 52 dt. 10-5-654.
(iii) 4(7) p.85 dt. 29-3-67.

(3) The (Central Government) may at any time revoke or vary a notification under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river".

Various notifications were issued under the above provisions enabling the local authorities to levy a tax. However, Section 154 of Government of India Act, 1935 posed problems in relation to Railways which in the meantime came to be owned by the Government of India. Section 135 of the 1890 Act could no longer be applied to State-owned railways in view of the provisions of Section 154 of the Government of India Act, 1935. Section 154 also exempted State-owned railway property from provincial or local taxation, except in so far as a Central legislation might otherwise provide. The position thus was that, until such a law was enacted, no new tax could be imposed in respect of such property; nor could any existing notification in respect of such a property be varied or revoked. The proviso to Section 154 of the Government of India Act, 1935, however, maintained all the taxes payable by virtue of notifications issued under the Railways Act before 1st April, 1937, until legislation otherwise provided. The said proviso did not include property acquired by the Government after 31st March, 1937. It was confined to the property of the Government of India which was subject to taxation on that date. The local authorities had thus been deprived of revenue from taxation in respect of several railway administrations purchased by the Government after 31-3-1937 and, in the absence of legislation, were likely to lose further revenue in the future.

2.35.08 To remove this complaint of the Provinces and the local bodies regarding loss of revenue, the Railways (Local Authorities' Taxation) Act, 1941 was enacted. Section 3 of the said Act provides :

"Liability of railways to taxation by local authorities.

(1) In respect of property vested in the Central Government, being property of a railway, administration shall be liable to pay any tax in aid of the funds of any local authority, if the Central Government, by notification in the Official Gazette, declares it to be so liable.

(2) While a notification under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any, as a person appointed in this behalf by the Central Government may, having regard to the services rendered to the railway and all the relevant circumstances of the case, from time to time determine to be fair and reasonable. The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge".

Section 4 enables the Central Government, by notification, to revoke or vary any notification issued under clause (1) of Section 135 of the Indian Railways Act, 1890. This enactment proved beneficial to the Provinces and their local bodies as it made the property of the Railways liable to tax by local bodies, even when the property was acquired or built by the Government of India after 31st March, 1937.

2.35.09 It would be pertinent to take note at this stage of the effect of States re-organisation laws on the liability of the Railways to pay taxes to local bodies. The Supreme Court held in the case of the City Municipal Council Bellary[65] as under :

"The property of the Union is exempt from all taxes imposed by a State or by any authority within a State under Cl. (1) of Article 285 unless the claim can be supported and sustained within the four corners of Cl. (2). The local authority, however, can reap advantage of Cl. (2), only under two conditions namely, (1) that it is "that tax" which is being continued to be levied and on other; (2) that the local authority in "that State" is claiming to continue the levy of the tax. In other words, the nature, type and the property on which the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be the local authority of the "same State" to which it belonged before the commencement of the Constitution. There does not seem to be any ambiguity in this matter and there is, therefore, no escape from the position that the Bellary Municipal Council in the City of Bellary which was a local authority within the State of Madras cannot take the advantage of Cl. (2) as at the time when it was making the claim for realization of the tax it was a part of the Mysore State".

2.35.10 The Supreme Court further held in the Bellary Municipal Council case that a claim by a local authority based on the continued operation of Railways (Local Authorities' Taxation) Act, 1941 by virtue of Article 372 of the Constitution could not be sustained since Article 372 is operative subject to the other provisions of the Constitution and the Railways (Local Authorities' Taxation) Act, 1941 was not a law made by Parliament.

2.35.11 The net result of the various developments has been that only a few local bodies are today in a position to collect taxes in regard to the properties of the Central Government. The entire question was gone into by the Taxation Enquiry Commission as early as 1953, which recommended :

"In the case of Railways properties and other properties of the Central Government used for commercial or semi-commercial or

(65) AIR 1958 Supreme Court 1853.

industrial purposes, e.g., Posts and Telegraphs, the Central Government should pay to local bodies contributions equal to the amounts which would have been paid, had the general and services taxes been levied in full. Necessary legislation should be passed by Parliament to authorise such payments.

In respect of other properties of the Central Government, the principles recently adopted by the Central Government for making payments in respect of "service charges" with effect from the 1st April, 1954 may be followed, but the principles should be liberally interpreted and applied."

2.35.12 The Government of India, on receipt of the recommendations of the Taxation Enquiry Commission, agreed to pay charges for services rendered to such properties by local bodies *in lieu* of property tax. Subsequently, the Ministry of Finance, Government of India, issued a circular in 1967 laying down the procedure for calculation of such service charges as a percentage of the property tax applicable to private properties. However, no legislation, as recommended by the Taxation Equiry Commission, has been enacted by Parliament so far. Most local bodies levy specific charges for particular services rendered e.g. supply of water. A property tax is levied by them to cover not only the cost of the other specific services rendered but also the expenditure on the total infrastructure maintained by them and to generate resources for further development. Levy of property tax by local bodies is well recognised as a legitimate resource available to them to discharge their responsibilities. We have noted above that the Taxation Enquiry Commission recommended a full contribution from the departmental undertakings of the Government of India like Railways, Posts and Telegraphs, Telephones, etc. If these undertakings pay only a percentage of the property-tax leviable as service charges, it implies a subsidy to them, which is contrary to the commercial principles on which such undertakings are supposed to function. Moreover, the loss to the local bodies has to be made good by increasing the liabilities of other beneficiaries of their services. This is obviously inequitous.

2.35.13 After a careful consideration of the whole matter in relation to the taxation of the Union properties by local bodies, we have come to the conclusion that no structural change in the provisions of Article 285 is called for. In order to remedy the unfortunate situation in which the local bodies find themselves, a comprehensive law (under Clause (1) of Article 285 read with the saving clause in Entry 32 of List I), analogous to Section 135 of the Railway Act, 1890, and Sections 3 and 4 of the Railways (Local Authorities' Taxation) Act, 1941 be passed making liable the properties and administrations of all undertakings like Railways, Posts and Telegraphs, Telephones etc., of the Union at such fair and reasonable rates as may be notified from time to time by the Union Government after taking into consideration the recommendations of a person, who is or has been a Judge of a High Court or a District Judge.

2.35.14 One Union Government undertaking has suggested that the exemption from State taxation available under Article 285(1) should be extended to all taxes in relation to the property of all undertakings of the Government of India. In this connection, it may be noted that there is a reciprocal provision in Article 289(1) which exempts the property and income of a State from Union Taxation. However, this immunity from Union taxation does not extend to business activities conducted by a State or property used or occupied for the purpose of such trade or business or any income accruing or arising in connection therewith. In *re Sea Customs Act*[66], the Supreme Court expressed the view that the immunity, conferred by clause (1) of Articles 289, extends only to direct taxes on property and does not extend to indirect taxes "in relation to property" of the State, irrespective of whether the properties were used or not used for the purpose of trade or business so as to attract clause (2). The Punjab and Haryana High Court, on the analogy of the principle enunciated in *re Sea Customs Case*[67], has held, in a judgement dated October 18, 1976, that the limitation on the State taxing power under Article 285(1) does not extend to the taxation of business activities of the Union. The Supreme Court has held in *Western Coal Fields Ltd.*, V. *special Area Development Authority* [68] that the property owned by a Corporation, whose entire share capital is owned by the Government of India, cannot be treated as the property of the Union and, as such, immune from State taxation under Article 285(1). We do not find any good reason for supporting the proposal that the exemption from State taxation available under Article 285(1) should be extended to all taxes leviable by States in relation to the property of all undertakings of the Government of India.

2.35.15 In the light of these judicial pronouncements, we think that the constitutional provisions in Article 285(1) and 289(1), which exempt the properties of the Union and States from taxation by each other, are well-balanced and reasonable. We do not find any good reason for supporting the proposal for amending Article 285(1) in order to exempt the properties of the Union Government undertakings from indirect taxes in relation to them leviable by States.

36. *ARTICLE* 289

2.36.01 One State Government has suggested omission of clauses (2) and (3) of Article 289. The argument is that these clauses mete out unfair, discriminatory treatment to the States in the matter of exempting their property and income from Union Taxation. It is submitted that "under Article 289(2), Parliament is empowered to impose any tax in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith..... Notwithstanding clause (3) of Article 289 which again gives the power to the Parliament to make law to declare any trade or business as being indicental to the ordinary functions of Government, yet this provision by itself creates discrimination". It is pointed out that on the other hand (under Article 285), no tax

(66) (1964) 3 SCR 787

(67) 1977, Tax L. R. 1713 Pb. (DB)

(68) (1982) 2 SCR 1

is contemplated on the income from the occupational or trading operations of the Union. In this behalf referrence has been made to *Andhra Pradesh Road Transport Corporation* V. *ITO*[69]. The proposed omission of clauses (2) and (3), it is argued, would place "both the Union and the States at par in so far as their occupations, particularly in the matters of trade and business are concerned".

2.36.02 Article 289(1) is, in a sense, a counterpart of Article 285(1). Whereas 285(1) exempts the property of the Union from State taxation, Article 289(1) exempts the property and income of a State from Union taxation. Clause (2) of Article 289 carves out an exception to clause (1). It enables the Union by law to impose tax in respect of trade or business carried on by or on behalf of the Government of a State, or any property used for the purpose of trade or business or any income accruing or arising in connection therewith. Clause (3) empowers Parliament by law to exempt any trade or business activity of a State from Union taxation by declaring that it is incidental to the ordinary functions of Government.

2.36.03 It will be seen that, in Article 285, there is no provision analogous to clauses (2) and (3)[70] of Article 289. It has been held by the Supreme Court that even a public utility service systematically undertaken by a Government, with a profit motives, would be a 'trade or business' within the contemplation of clause (2) of Article 289. It can be exempted from Union taxation if Parliament declares under clause (3) that it is incidental to the ordinary functions of Government.

Supreme Court in Re Sea Customs Act

2.36.04 The scope of Article 289(1) directly, and of Article 285(1) incidentally, came up for consideration before the Supreme Court in *re Sea Customs Act*, 1878[71]. Prior to 1962, the State properties enjoyed exemption from Union taxation, whether direct or indirect. In 1962, a draft Bill was introduced in Parliament for amending Section 20 of the Sea Customs Act, 1878, and Section 3(1A) of the Central Excises and Salt Act, 1944. The object of the amending Bill was to enable the Union to impose customs duty and excise duty of salt manufactured by the States. The States opposed this measure. The President referred the matter under Article 143(1) to the Supreme Court for opinion. The Supreme Court opined that having regard to the scheme of the Constitution, a tax 'on property' and a tax 'in relation to property' were two different things. Therefore, the immunity from taxation granted under Article 285(1) to the property of the Union, and under Article 289(1) to the property of the States, was restricted to direct taxes 'on property' and did not extend to indirect taxes 'in relation to property', such as, export duty, excise duty etc.

2.36.05 It may be noted that, while from one aspect, the Court opinion appears to have enlarged the taxing powers of the Union qua State property, it has from another standpoint, by restricting the exemption under Article 285, to taxes 'directly on property' laid down several activities of the Union 'in relation to' its property to tax, which the States might impose under list II. Sales-Tax is a typical instance of such a tax, which is levied on a transaction of sale *in relation to* property and not one *on* the property, itself.

Property of Corporations not exempt under Article 285 (1) or Article 289 (1)

2.36.06 It is further noteworthy that the exemption from taxation under Articles 285(1) and 289(1) is available only to the property of the Union or of the States, respectively. It does not extend to the property or income of companies or corporations, which are juristic entities, even though they may be wholly owned or controlled by the Union or a State. In *A. P. Road Transport Corporation* V. *ITO*[72], the Supreme Court held that the income of the Andhra Pradesh Road Transport Corporation, established under the Road Transport Corporation Act, 1950, is not the income of the State of Andhra Pradesh within the meaning of Article 289(1) and as such, was not exempt from Union taxation. It was not considered necessary for the decision of that case to go to clauses (2) and (3) of Article 289.

2.36.07 *In Western Coal Fields* V. *Special Area Development Authority*[73], the Supreme Court held that exemption conferred by Artcile 285(1) cannot be claimed by companies and corporations owned by the Union.

2.36.08 The conclusion that emerges from the above conspectus is that, in the matter of granting exemption to the property of the Union or of the States from taxation by each other the Constitution does not make unreasonable discrimination against the States. So far as indirect taxes 'relating to property', as distinguished from taxes 'on property' are concerned, both the Union and the States for the purpose of the exemption stand on the same footing. Though the provisions of clauses (2) and (3) of Article 289 apply only to the trade activities of the States and, as such, are unique, there is a rational basis for this differentiation. Income from business or trading activities of a State are like the income of any private business concern liable to income-tax. The goods manufactured by a State concern are also liable to excise duty. There is no reason to give a favourable treatment to the goods manufactured by a State as part of its commercial activity, in the matter of its liability to excise duty from those manufactured by any other private industrial concern. Leaving aside the case of some maritime States, these are the main taxes which are imposed on the income and the manufacturing activities of any business concern. Both these taxes though levied by the Union, are compulsorily or optionally shareable with the States. Indeed, as much as 85% of the net proceeds of income-tax and 45% of the net proceeds of the Union excise duty, on the recommendation of the Finance Commission[74], are now being trans-

(69) (1964) 7 SCR 17

(70) Satya Narain Singh V. District Engineer, P. W. D.; AIR (1962) S. C. 1161.

(71) (1964) 3 SCR 787

(72) (1964) 7 SCR 17

(73) (1982) 2 SCR 1

(74) VIIIth Finance Commission.

ferred to the States. If the trading or business activities of the States who have gone into it in a big way, are exempted from income-tax and excise duty, the scheme of the Constitution governing distribution of revenues will get distorted. The flow of the proceeds of income-tax and excise duty into the divisible pool will dwindle. The consequent shrinkage of the pool will jeopardise the capacity of the Union to transfer resources, particularly, to the economically weaker States, on equitable basis.

2.36.09 Clause (3) of Article 289 empowers Parliament to declare by law that any trade or business would be taken out of the purview of clause (2) and restored to the area covered by clause (1). Income from ordinary functions of the State are exempt from Union taxation by virtue of clause (1). Even though income from trade or business is not exempt, clause (3) enables such exemption to be given by Parliament in respect of income from trade or business incidental to the ordinary functions of Government. This is the rationale of clause (3) of the Article. We are, therefore, of the view that no case has been made out for the proposed restructuring of Article 289.

2.36.10 As regards the functional aspect of clause (3), it may be observed that the concept of the governmental functions of a modern welfare State is not easy to define. It is not a static notion. The public utility services rendered by the State are progressively proliferating. Many of such services or welfare activities judged by the orthodox standard of 'profit motive' may fall within the wide phrase. 'trade or business of any kind', used in clause (2). The vast expansion in the socio-economic responsibilities of a welfare State to build an egaliterian society, has blurred the distinction between the 'ordinary' and 'incidental' functions of Government.

2.36.11 Cases may arise, particularly in the modern context where States may feel aggrieved on account of taxes imposed by the Union on the trade or business in terms of clause (2) of Article 289. The scheme of the Constitution envisages remedial action under clause (3). We recommend that where one or more State Governments feel aggrieved on account of any action of the Union Government covered by clause (2) of Article 289, adequate consultation should be held with the State Governments or the National Economic and Development Council proposed by us and action taken to afford relief in terms of clause (3) of Article 289.

37. *ARTICLE* 286

Article 286

2.37.01 One State Government has suggested that the power of Parliament under clause (3) of Article 286 should not be exercised except in consultation with the States. Another State Government has asked for amendment of Article 269 to ensure that the taxes mentioned therein are levied by the Union but are collected by the States themselves. One regional Party has suggested that Entries 92A and 92B from List I be omitted and from the connected Entry 54 of List II, the words, "subject to the provisions of Entry 92A of List I" be deleted. This proposal would, by implication, involve consequential changes in the related provisions.

Related constitutional provisions

2.37.02 The relevant provisions which impose restraints on the State taxation power in the matter of sales-tax are contained in Entry 54 of List II, Entries 92A and 92B in List I read with Articles 269(1)(g) & (h) and 286.

2.37.03 Entry 54 in List II empowers the Legislatures to impose taxes on the sale or purchase of goods other than newspapers. It is expressly subject to the provisions of Entry 92A of List I. Under Entry 92A, Parliament may tax sale or purchase of goods other than newspapers, in the course of inter-State trade or commerce. Entry 92B of List I empowers Parliament to impose "taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce".

2.37.04 Article 269 contains provisions for the assignment of the taxes imposed by the Union under Entries 92A and 92B to the States.

Clause (1) of the Article 286 precludes the States from imposing by law a tax on the sale or purchase of goods where such sale or purchase takes place–

(a) outside the State, or

(b) in the course of import of goods into, or export of the goods of, the territory of India.

Clause (2) of the Article enables Parliament to formulate by law principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). Clause (3)(a) of Article 286 makes the legislative power of the States to impose tax on sale or purchase of goods which are declared by Parliament by law to be of special importance in inter-State trade or commerce, subject to the restrictions and conditions imposed by Parliament, even though such sale does not take place in the course of inter-State trade or commerce. A tax under sub-clause (b) of clause (3), also, is subject to the same conditions and restrictions as Parliament may by law impose.

2.37.05 The objection is confined to Entries 92A, 92B of List I, that portion of Entry 54 of List II which makes it subject to Entry 92A of List I, and the related provisions in Article 269 and 286. The provisions in question were not there in the original Constitution. Instead of the present clause (2) of Article 286, there was an 'explanation' appended to clause (1). The original clause (2), *inter alia*, provided: "Except in so far as Parliament may by law otherwise provide, no law of a State shall impose.....a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce....." The 'explanation' appended to the original clause (1) was couched in a very ambiguous language and gave rise to conflicting interpretations. In *State of Bombay* V, *United Motors (India) Ltd*[75] the Supreme Court interpreted this. Explanation as providing "by means of legal fiction that the State in which the goods sold or purchased are actually delivered for the consumption therein, is

(75) 1953 SCR 1069.

the State in which the sale or purchase is to be considered to have taken place, notwithstanding (that) the property in such goods passed in another State". As a result of the application of this 'delivery-cum-consumption' test, devised by the Supreme Court, the operation of the original clause (2) was largely stultified. It also created problems in the trading circ-

In Bengal Immunity Co. V. State of Bihar [76] decided on September 9, 1955, the Supreme Court over-ruled its earlier decision in the *United Motors case*. Thereupon, Parliament passed the Sales Tax Laws Validation Act, 1956 to validate the imposition of sales tax which would have been rendered invalid as a result of the subsequent Court decision. The final result was that inter-State sales made after September 6, 1955 could neither be taxed by the State of despatch, nor by the State in which the delivery was made till Parliament by law otherwise provided. This led to revenue loss resulting from non-taxation of inter-State sales.

2.37.06 On the recommendation of the Taxation Enquiry Commission [77] (1953-54), the Constitution (Sixth Amendment) Act, 1956 and the Central Sales Tax Act, 1956 were enacted. The Sixth Amendment inserted Eentry 92A in List I and restructured Article 286. It made Entry 54 of List II subject to this new Entry 92A. This amendment also inserted sub-clause (g) in clause (1) of Article 269. The Forty-Sixth Amendment of the Constitution (1982) inserted Entry 92B in List I and made consequential insertion in Article 269 with respect to assignment of the tax proceeds under the new Entry 92B to the States. It also expanded the definition of 'Sales-tax' by inserting the new clause (29A) in Article 366.

2.37.07 From a conspectus of the relevant provisions, it is clear that the entire net proceeds of the taxes that might be levied by the Union under Entries 92A and 92B of List I in accordance with sub-clauses (g) and (h) of Article 269(1), are assigned to the States. The limitations imposed under Article 286 on the taxation power of the States ultimately rebound to the fiscal advantage of the States. The broad three-fold object of these provisions, as they stand after the aforesaid Constitutional amendment, is —

(i) to prevent, as far as possible, multiple taxation of the same transaction by different States in the course of inter-State trade or commerce, the accumulated burden of which ultimately falls on the consumer;

(ii) to ensure uniformity in taxation at a relatively lower rate on sale or purchase of goods of special importance in inter-State trade, and

(iii) to plug the loopholes in the law through which some sales might escape assessment, and to enlarge the powers of the States to levy sales-tax by expanding the definition of sales-tax to cover transactions in the nature of works contract or hire-purchase.

2.37.08 In short, the ultimate benefit of the operation of the questioned provisions accrues wholly to the States. We find no merit in the demand for omission or making any structural change in any of these provisions. However, since Entries 92A and 92B of List I have an inter-face with Entry 54 of List II, the formulation of law of policy in respect of these subjects is a matter of common interest to the Union and the States.

2.37.09 We recommend that before a law is passed by Parliament by virtue of clause (3) of Article 286 read with Entries 92A and 92B of List I, the State Governments and the National Economic and Development Council (proposed by us to be reconstituted under Article 263) [78] should be consulted and the resume of their comments should be placed before Parliament along with the Bill.

38. *ARTICLE* 288

2.38.01 One State Government has urged that Article 288(2) be so amended as to ensure that the Legislature of a State may impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority, whether subservient to the Central or State Government. However, it has not formulated its proposal in precise terms. We, therefore, take it that the plea is for exclusion from this clause of those expressions which make the previous assent of the President, a pre-condition for giving validity and effect to a State legislation imposing a tax mentioned in clause (1) of the Article.

2.38.02 Entry 53 of List II read with Article 246 empowers a State Legislature to impose "taxes on the consumption or sale of electricity", irrespective of whether it is generated, sold, or consumed by Government or by any other person. Articles 287 and 288 put limitations on this power. Article 287 prohibits a State Legislature from imposing a tax on the consumption or sale of electricity (whether produced by a Government or other person) which is (a) consumed by or sold to the Government of India for consumption by the Government, or (b) consumed in the construction, maintenance or operation of any railway. However, this restraint may be removed by Parliament by a law securing that the price of the electricity sold to the Government of India shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

2.38.03 Article 288(1) provides : "Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley". Clause (2) empowers a State Legislature to impose tax mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent. This requirement as to the Presidential

(76) 1955 (1) SCR 603.

(77) Report of the Taxation Enquiry Commission (1953-54) Vol. III : Pages 55 to 66.

(78) Chapter IX on "Inter-Governmental Council Article 263" : Para 9.4.07.

assent is applicable to rules or orders made under the authority of such law providing for fixation of rates or other incidents of such tax.

2.38.04 It is noteworthy that the subject of taxation under Article 288(2) is 'water or electricity stored, generated, consumed, distributed or sold by an authority established by an existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley". The basis for the restriction imposed by Article 288(2) on the legislative power of States, therefore, is a corollary of the doctrine of 'inter-governmental tax immunities'. However, such restrictions would stand lifted and the State legislation validated if it receives President's assent. The subject of taxation under this clause is a matter of inter-State 'Utility' and, as such, of national concern. The President's assent ensures that the concerned legislation of the State would not operate to the detriment of inter-State interests or cast unjustifiable burdens on the cost of generation, storage, consumption, distribution of water or electricity. or otherwise impair the arrangements relating to the regulation and development of the inter-State river or river-valley by the Union authority. The previous assent of the President as a pre-requisite for giving validity to a State legislation imposing tax under clause (2) of the Article, serves a very wholesome purpose in this area of inter-governmental interest. We find no justification for suggesting restructuring of clause (2) of Article 288 so as to eliminate therefrom this requirement.

39. *ARTICLE* 293

2.39.01 Issues relating to Article 293 have been dealt with in the Chapter on 'Financial Relations'. [79] We have not recommended any structural change in this Article. However, recommendations with respect to the functional aspect of the provision have been made.

40. *ARTICLE* 304(*b*)

2.40.01 Some State Governments and a political party have asked for omission of Article 304, and, in the alternative, for deletion of the Proviso to Article 304(b). The arguments advanced are :

> "Whether the restrictions imposed by an Act of a State Legislature on the freedom of trade and commerce are reasonable and whether the are in the public interest for purposes of 'Article 304(b) are questions to be decided ultimately by the High Court or Supreme Court. If the High Court finds that the restrictions are unreasonable or opposed to the public interest, previous sanction of the President or his subsequent assent cannot cure the infirmity. If the legislation is otherwise valid and the restrictions are reasonable and in the public interest, his previous sanction will be a superfluity. In any case the requirement relating to the previous sanction of the President directly encroaches on the field assigned to the State Legislature....".

Inter-State Trade

2.40.02 Part XIII of the Constitution contains provisions relating to "Trade, Commerce and Intercourse within the Territory of India". It comprises seven Articles - 301 to 307. Article 301 provides that "subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free". Article 302 empowers Parliament to impose restrictions [80] on trade, commerce and intercourse. Article 303(1) ordains that neither Parliament not a State Legislature shall have power to make any law giving any preference to one State over another or discriminating between one State and another by virtue of any entry relating to trade or commerce in the Legislative Lists. Notwithstanding the principle of freedom of inter-State trade declared in Article 301, clause (a) of Article 304 permits the Legislature of a State by law to tax goods imported from the other States or Union Territories. However, this taxing power of the State is subject to the limitation that no discrimination is made between goods imported from other States and similar goods manufactured or produced within the State. Clause (b) enables the Legislature of a State by law to "impose such reasonable restrictions on the freedom of trade, commerce or inter-course with or within that State as may be required in the public interest : Provided that no Bill or amendement for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

Whether 'restrictions in article 304 (b) include A 'Tax'

2.40.03 There is some divergence of opinion as to whether the expression 'restrictions' used in this clause (b) includes a tax. Prior to the decision of the Supreme Court in *Atiabari Tea Co. Ltd. V. State of Assam* [81], some High Courts had held that no question of violation of the provisions of clause (b) arises when a State Legislature exercises its legislative power under the State List with respect to a subject other than 'trade, commerce or intercourse'. In *Atiabari case*, the Supreme Court by a majority of 4 : 1 reversed this view. In *Automobile Transport Rajasthan Ltd. V. State of Rajasthan* [82], a seven-Judge Bench of the Supreme Court partially over-ruled the decisions in *Atiabari Case* in so far as it had held that if the State Legislature wanted to impose a tax in order to maintain roads that could only be done after obtaining the sanction of the President as provided in Article 304(b). However, it did not make a complete departure from the *ratio* of *Atiabari Case* in as much as it had held that taxes *other than* compenesatory taxes, can amount to a 'restriction' on trade and commerce within the contemplation of clause (b) of Article 304.

2.40.04 The correctness of these decisions has been questioned by eminent authors of commentaries on the Indian Constitution. In *G. K. Krishnan V. State of Tamil Nadu* [83], Mathew J. observed :

(79) Chapter X.

(80) The Supreme Court has held that although the word 'restrictions' in Article 302 has not been expressly qualified by prefixing the word 'reasonable', yet it is evident that restrictions contemplated by it must bear a reasonable nexus with the need to serve "public interest". (Prag Ice and Oil Mills Vs. Union (1978) 3 SCR 293).

(81) 1961 (1) SCR 809.

(82) 1963 (1) SCR 491.

(83) (1975) 2 SCR 715.

"Article 304(a) prohibits only imposition of a discriminatory tax. It is not clear from the Article that a tax *simpliciter* can be treated as a 'restriction' on the freedom of internal trade. Article 304(a) is intended to prevent discrimination against imported goods by imposing on them tax at a higher rate than that borne by goods produced in the State". The learned Judge further pointed out : "A discriminatory tax against outside goods is not a tax *simpliciter* but is a barrier to trade and commerce. Article 304 itself makes a distinction between 'tax' and 'restriction'. That apart, taxing powers of the Union and States are separate and mutually exclusive. It is rather strange that power to tax given to States, say, for instance under Entry 54 of List II to pass a low imposing tax on sale of goods should depend upon the goodwill of the Union executive".

Narrow scope of article 304(b)

2.40.05 Be that as it may, the Court decisions, including those in *Atiabari* and *Automobile cases*, have considerably narrowed down the scope of the expression 'restriction' in Article 304(b) by giving a restrictive meaning to the terms 'trade', 'commerce' and 'intercourse', and by holding that only those measures which directly and immediately impede the free movement of trade, would fall within the ambit of 'restriction'. Further, they have excluded regulatory measures and compensatory taxes-consstrued in their widest amplitude from the purview of Articles 301 and 304(b).

Object of article 304(b)

2.40.06 The broad object of the provisions of Articles 301 and 304 is to ensure that the commercial unity of India is not broken up by physical and fiscal barriers eracted by the State Legislatures through parochial or discriminatory exercise of their powers. The proviso to Article 304(b) enables the President to ensure, at the initial stage, that the State Legislation does not, by imposing unreasonable restrictions on trade, commerce or intercourse, endanger the commercial unity of the nation. It is true that clause (b) is not confined to inter-State trading activities, it extends to trade within the State, also. But intra-State trading activities often have a close and substantial relation to Inter-State trade and commerce. State laws , though purporating to regulate trade within a State, may have inter-State implications. They may impose discriminatory taxes or unreasonable restrictions which impede the freedom of inter-State trade and commerce. That is why, both inter-State and intra-State trade have been made the subject of limitations on State legislative power under Article 304(b).

2.40.07 Whether a State legislation imposes in the public interest reasonable restrictions on trade and commerce, is, no doubt, a question which is to be decided ultimately by the High Court or the Supreme Court, But, such legislation is not automatically, as a requirement of law, referred to the court for pronouncing on the reasonableness or otherwise of such restrictions. The Courts take cognizance only of cases brought before them in accordance with the prescribed procedure by litigants having the necessary *locus standi*. Judicial review is thus not an adequate substitute for the consideration of a State Bill by the President, at the pre-introduction stage, or, thereafter before it becomes law. If, on such scrutiny, the President finds that the State Bill patently contravenes the provisions of Article 304(b), or otherwise attempts to impose an unreasonable restriction, he may withhold assent therefrom or he may return it with a message for reconsideration by the State Legislature. However, no instance of a Bill reserved under the Proviso to clause (b) of Article 304, which might have been vetoed by the President, has been cited.

2.40.08 For these reasons, we cannot support the demand for amendment of Article 304, or omission of the Proviso to its clause (b).

41. *ARTICLE* 368, *CRITICISM AND SUGGESTIONS*

2.41.01 Only one State Government has suggested that Article 368 should be amended to provide that :

(1) The Constitutional Amendments in general shall require also ratification by not less than one half of the States; and

(2) the amendment of specified Articles pertaining to the basic structure of the Constitution shall require ratification by not less than two-thirds of the States.

It has, in support of the above proposals observed :

"There will be nothing wrong if by a Constitutional amendment a particular matter is transferrred from the jurisdiction of the States to that of the Union when new developmentsin the Indian economy, society or polity fully justify this. But Constitutional amendments of the kind undertaken as part of the motivated drive of the country's dominant supranational forces to undermine the jurisdiction and significance of the States as the homelands of different emerging and emerged Indian nationalities by converting the country increasingly into an essentially unitary State must be resisted and made more difficult. The ultimate safeguard against such amendments necessarily has to be the strong political awareness of the electorate with regard to the true significance of such amendments, reinforced by the prevalence of a climate of freedom, rule of law and cooperative federalism. But it will also be necessary to amend Article 368 to provide for greater say to the States in Constitutional Amendments".

Proceedings in the constituent assembly

2.41.02 The questionnaire issued by the Constitutional Adviser in March 1947 invited suggestions in regard to the amending procedure to be adopted. The replies received recognised the need for a special procedure for amending the Constitution. Some of the proposals were complicated and included a suggestion that all amendments to the Constitution should be first approved by a two-thirds majority in each House of Union Legislature and that no such proposal would take effect unless it was also approved by the Legislatures of not less than two-thirds of the Units.

Observations of the Drafting Committee

It was, however, realised that the procedure should not be made unduly complicated or rigid. The Chairman of the Drafting Committee, while introducing the Draft Constitution, observed : [84]

"The provisions of the Constitution relating to the amendment of the Constitution divide the articles of the Constitution into two groups. In one group are placed articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the courts. All other articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely a majority of not less than two-thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these articles does not require ratification by the States. It is only in those article which are placed in the first group that an additional safeguard of ratification by the states is introduced, one can therefore safely say that the Indian federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation."

2.41.03 The Constitution provides three modes of altering its provisions :

I. Firstly, quite a number of provi ions or matters in the Constitution can be altered by a simple majority vote of Parliament. Most prominent of these are : —

(i) Artilces 2, 3 and 4— admission or establishment of new States into the Union ; formation of new States and alteration of areas, boundaries or names of existing States and making such changes in the First Schedule and the Fourth Schedule and in any other provisions of the Constitution as may be supplemental, incidental and consequential to give effect to the laws made under these Articles.

(ii) Articles 168 and 169—creation or abolition of Legislative Council in a State and consequent alteration in Article 168.

(iii) Provisions of the Fifth and Sixth Schedules relating to the administration of Scheduled Areas and Scheduled Tribes.

(iv) Article 343(2) as regards the timelimit of 15 years specified therein, for use of English.

No alteration or change made by this mode is to be deemed an amendment of the Constitution for the purpose of Article 368.

II. Provisions or matters, the alteration of which is not permissible by a simple majority vote of Parliament and which do not fall within the purview of the proviso to clause (2) of Article 368, may be amended by means of a Bill passed in each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of the House preseent and voting.

III. The third group is comprised of provisions mentioned in the proviso to clause (2) of Article 368. These are as follows :

(a) Articles 54 and 55 --manner of election of the President; Articles 73 and 162-extent of the executive power of the Union and the States; Article 241-High Courts for Union Territories.

(b) Chapter IV of Part V—The Union Judiciary; Chapter V of Part VI—The High Courts in the States; Chapter I of Part XI—Legislative Relations between the Union and the States.

(c) Lists I, II and III in the Seventh Schedule.

(d) Representation of States in Parliament.

(e) Provisions of Article 368 itself.

A Bill for amending any provision in Group III, also, has to be passed by Parliament by a double majority-as in the case of an amending Bill relating to Group II—and followed by ratification by Legislatures of not less than one-half of the States.

2.41.04 The problem of devising a mechanism for amendment of a Constitution which envisages more than one level of Government, is, how to reconcile the rival claims of rigidity and flexibility. The former preserves continuity and stability, the latter facilitates adaptation and reform. If the scales are too heavily tilted in favour of rigidity, it tends to make the system immutable and out-dated in a changing world. If on the other extreme it is too flexible and pliant, the system tends to become something like a changeling changing shape with every passing gust of political wind. The Constitution-makers avoided these extremes. They chose a middle, but trifurcated, course. They conceived of three groups of constitutional provisions for adopting a three-way alteration process. The rationale for this grouping and adopting different modes of altering provisions in each group, is that all the provisions in our elaborate Constitution are not of the same substantive significance to its structure. Many of them are matters of mere form or procedural details ; or are otherwise of a subsidiary, incidental or transitional character. Provisions of this kind which are of a non-fundamental character, have been kept outside the pale of Article 368 and can be altered in the same manner as any Union law, by a simple majority vote of Parliament. All such matters for the purpose of this discussion have been placed by us in Group I.

2.41.05 Most Articles in the Constitution-not covered by Group I-are matters of substance. For the purpose of amendment under Article 368 these have been placed in a separate group, numbered II by us). These provisions can be amended by Parliament by a double majority, as described above in paragraph 2.41.03, sub-para II.

2.41.06 A few provisions which were considered of crucial importance in the scheme of distribution of powers between the Union and the States on the federal principle, or were otherwise considered vital to the two-tiered polity, have been placed in another

(84). Rao, B. Shiva : "The Framing of India's Constitution", Vol. V. P. 829.

group, vide Proviso to Article 368(2). The process for amending the provisions in this group, is more stringent than the one applicable to Group III. In other words, while the process for amending matters in Group II balances the considerations of flexibility and rigidity on an even fulcrum, the one provided and Group III registers a reasonable tilt in favour of

2.41.07 While suggesting that the amendment of the Articles constituting the basic structure of the Constitution must be ratified by at least 2/3rds of the total number of States, the State Government has not identified such Articles. However, in a subsequent paragraph of its Memorandum, while reiterating the same suggestion, it has, instead of the expression "basic structure", used the words "Articles bearing on the Union-State relations". If that be the true import of the suggestion it has been very largely met by the proviso to clause (2) of Article 368—the shortfall in ratification being only as respects 1/6th of the total number of States.

3.41.08 It may be reiterated that the main provisions governing Union-State relations in the legislative and executive spheres have been specified in this proviso and every amendment of these provisions, passed by Parliament with the requisite majority, is required to be ratified by the legislatures of not less than one-half of the States. If, as suggested by the State Government, the requirement as to ratification by one-half of the States, is engrafted on the process prescribed for amending the provisions in Group II, and the word "one-half" occurring in this Proviso is replaced by the expression "2/3rds", it will make the process of amending matters in Group II *needlessly* rigid and those in Group III very difficult. Yet, every Constitution, however carefully conceived and skillfully framed, needs to be adapted and attuned to the march of time. It is fairly conceded even by the State Government that there will be nothing wrong if by a Constitutional amendment, a particular matter is transferred from the jurisdiction of the States to that of the Union when new developments in the economy, society or polity fully justify this.

2.41.09 Amendment is the primary method of making changes or reforms in a Constitution. Experience of the United States of America holds a lesson that if this primary channel for amending the Constitution is hemmed in by too rigid conditions, requiring it to pass the test of too high consensual barriers, it loses much of its utility. The result is that instead of following the frustrating process of amending the Constitution, people agitating for a reform to update the Constitution, increasingly look to other institutions, particularly the Supreme Court, for getting the Constitution moulded to the changing exigencies of the time. Such are the tendencies which have appeared in the United States, an amendment of whose Constitution requires not only approval of two-thirds of both Houses of Congress, but also its ratification by three-fourths of the States[85]. It will be seen that the amending process in the United States of America is so rigid that "for an amendment to clear the barriers to passage, its acceptance must come close to unanimity. For one-third plus one of those voting in either the Senate or the House can kill it". This exceedingly rigid process, according to some observers, has proved a formidable barrier to the structural reform of that Constitution. An American scholar notes that out of twenty-six successful efforts to amend the Constitution, "there has not been a single amendment in two hundred years that redistributed governmental power. The two amendments that can be called as even affecting the institutional structure at all, the Seventeenth (1913) and the Twenty-second (1951) concerned only the selection of the individuals who would wield institutional power not the scope of the institutional authority itself,[86]

2.41.10 There is, yet, another reason why the process of amending our Constitution should not be too rigid and inflexible. The Constitutions of the older Federations are shorter. They lay down only broad fundamental principles of the polity in general terms. There is ample scope for filling the blanks and interstices therein, by what some scholars call, "Court Legislation".[87] Our Constitution, by contrast, is very comprehensive, and consequently, the scope for moulding or changing it by judicial interpretation and activism is limited.

2.41.11 There can be no gainsaying the fact that the three-fold scheme of making alterations in the Constution has been designed by the framers with sedulous care after bestowing deep consideration on all the pros and cons of the problem. Granville Austin verily observes[88] that the amending process, in fact, has proved itself one of the most ably conceived aspects of the Indian Constitution, and although it appears complicated, it is merely diverse, providing three ways of ascending difficulty for altering the Constitution.

For all the foregoing reasons, we are unable to support the suggestion of the States Government.

42. *ARTICLE 370 : TEMPORARY PROVISIONS WITH RESPECT TO THE STATE OF JAMMU AND KASHMIR*

2.42.01 One all India Political Party has demanded that Article 370 being a transitory Article should be delected in the interests of national integration. No

(85) There is also an alternative to Congress as the initiator of amendments. On a perition by 2/3 rds of the State Legislatures a Constitutional Convention can be called. But this method has remained largely otiose.

(86) James L. Sundquist's "Constitutional Reforms and Effective Government" (1986), pp. 246-47. Sundquist analyses various proposals for altering the structure of U.S. Constitution and the relationships among its institutional elements—President, Congress and Parties. He identifies three fundamental problems in these areas and suggests measures to alleviate or resolve them. He participated as head of a group in the deliberations of the Committee on the Constitutional System (CCS) Formed in 1982 the CCS is a group of persons including present and former governors, executives, legislators, scholars and other observers who examine the political system and search for ways to remove its short-comings and improve its performance. (See Reforming American Government—The Bicentennial Papers of CCS, edited by D. L. Robinson, published by CCS, 1985.)

(87) e.g. Nelson W. Polsby, Congress and the Presidency, 4th Edition, Page 3.

(88) Austin Granvile—The Indian Constitution: Corner stone of a Nation. First Indian Edition, 1972, p. 255.

other political party has made such a demand. The Jammu & Kashmir State Government has drawn attention to the Special Constitutional position of the State. In their Memorandum, the Government of Jammu & Kashmir State have, *inter alia*, questioned the Constitutional validity of the Constitution (Applicable to Jammu & Kashmir) Amendment Order, 1986 dated 30-7-1986, which applies Article 249 of the Constitution of India, with slight modifications, to Jammu & Kashmir.

2.42.02 The text of Article 370 is as under :

"(1) Notwithstanding anything in this Constitution :—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this Article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu & Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify ;

Provided that no such order which relates to the matters specified in the instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State :

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify :

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification".

2.42.03 First, we take up the demand that Article 370 being a transitory provision, should be deleted. The constitutional history of the provisions in Article 370, is too well known to require any recapitulation. Suffice it to say that, as a result of the numerous orders passed by the President from time to time under Article 370(1), a large number of the provisions of the Constitution of India have become applicable to the State of Jammu and Kashmir. The only precondition for the exercise of this power by the President is the concurrence of the Government of the State i.e. of its Governor acting on the advice of his Council of Ministers[89].

2.42.04 There is no limitation on the excercise of this power in relation to one or more of the remaining provisions of the Constitution of India. It is important to note that the process of extending the various provisions of the Constitution to the State, has been gradual and founded on consensus and experience, to the mutual advantage of the Union and the State. Because of the special circumstances in which Jammu & Kashmir became an integral part of India, the question whether its distinct constitutional status ought or ought not to continue, bristles with political complexities and is not a mere legal issue. We, therefore, refrain from making any suggestions in this regard.

2.42.05 We now consider the plea of the State Government questioning the constitutional validity of the President's Order applying Article 249 of the Constitution of India, with some modification, to the State of Jammu and Kashmir. The argument is that on the date of the Order (30-7-1986), the proclamation made earlier on March 7, 1986, under Section 92 of the State Constitution, whereunder the Governor had assumed to himself all the functions of the State Government and dismissed the Council of Ministers and suspended the Legislative Assembly, was still in force, and that in these circumstances, the concurrence, if any, given by the Governor to the making of the "1986 Order" by the President, was not the concurrence of the Government of State of Jammu and Kashmir, i.e. of the Governor *acting on the advice of the State Council of Ministers*, and as such, it was *ultra vires* the Constitution. We have been informed by the Advocate-General of the State of Jammu and Kashmir that the Constitutional validity

(89) The provisions of the Constitution referred to in the First Proviso to sub-clause (d) of Article 370 (1) where to be made applicable *in consultation* with the Goverment of the State.

of the "1986 Order" of the President, is under challenge in the High Court of Jammu and Kashmir. As the matter is *sub-judice*, we would refrain from expressing any opinion on it. Nevertheless, we would like to re-emphasise the axiom that every action which is legally permissible may not be necessarily prudent or proper from the political stand-point.

43. *RECOMMENDATIONS*

2.43.01 Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament, while the residuary field other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation.

(Para 2.6.18)

2.43.02 (i) The enforcement of Union laws particularly those relating to the Concurrent shpere, is secured through the machinery of the States. Coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, consultation may be carried out with the State Governments individually, and collectively at the forum of the proposed Inter-Governmental Council.

(Para 2.14.01)

(ii) It is not necessary to make the proposed consultation a constitutional obligation. This will make the process needlessly rigid. The advantage of a convention or rule of practice is that it preserves the flexibility of the system and enables it to meet the challenge of an extreme urgency or an unforeseen contingency. This convention as to consultation with the State Governments, individually, as well as collectively, should be strictly adhered to except in rate and exceptional cases of extreme urgency or emergency.

(Para 2.14.03)

2.43.03 The best way of working Union-State relations in the sphere of education would be that the norms and standards of performance are determined by the Union and the professional bodies such as the U.G.C. set up under Central Enactments but the actual implementation is left to the States. By the same token a system of monitoring would have to be established by the Union. The basic prerequisites of successful working of such professional bodies are—(i) that their composition, functioning and mode of operation should be so professional and objective that their opinion, advice or directive commands implicit confidence of the States and Universities/ institutions concerned and (ii) this objective cannot be achieved without close concert, collaboration and cooperation between the Union and the States.

(Paras 2.17.16 and 2.17.17)

2.43.04 There is a potential for misuse by the two levels of government of the powers available by virtue of Entry 45 of List III. However, the mere fact that this power is capable of being misused, is no ground for amending the Constitution. There is a case for providing appropriate safeguards against the misuse of this power, in the Commissions of Inquiry Act, itself. Such safegaurds can be :—

(i) that no Commission of inquiry against an incumbent or former Minister of a State Government on charges of abuse of power or misconduct shall be appointed by the Union Government unless both Houses of Parliament, by resolution passed by the majority of members present and voting, require the Union Government to appoint such a Commission *or*, the Minister or Ministers concerned request in writing for the appointment of such a Commission; and

(ii) No Commission of inquiry shall be appointed to inquire into the conduct of a Minister (incumbent or former) of a State Government with respect to a matter of public importance touching his conduct while in office, unless the proposal is first placed before the Inter-Governmental Council (recommended to be established under Article 263) and has been cleared by it.

(iii) Appropriate safeguard on the lines indicated above, be provided in the Commissions of Inquiry Act, 1952 itself, against the possible misuse of this power, while appointing a Commission to inquire into the conduct of a Minister or Ministers of a State Government.

(Paras 2.22.25 to 2.22.27)

2.43.05 Ordinarily, the Union should occupy only that much field of a Concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for State action within the broad frame-work of the policy laid down in the Union Law. Further, whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State Governments, individually, but also, collectively, with the Inter-Governmental Council, which as we have recommended, should be established under Article 263. A resume of the views of the State Governments and the comments of the Inter-Governmental Council should accompany the Bill when it is introduced in Parliament.

(Para 2.23.05)

2.43.06 (i) Clause (2) of Article 252 may be substituted by a new clause providing that an Act passed by Parliament under clause (1), may be amended or replaced either by Parliament in the manner provided in clause (1), or also by the Legislature of the State to which it applies, provided no such amending or repealing legislation of the State Legislature shall take effect unless, having been reserved for the consideration of the President, it has received his assent.

(ii) Any law passed by Parliament with respect to a matter in List II under clause (1) of Article 252, should not be of perpetual duration but should remain in force for a specific term, not exceeding three years. The Act itself should contain provisions requiring its periodic review before the expiry of its term. If, after such review, it is considered necessary to re-enact the law in its original or modified form, it may be done

for a period not exceeding the original term, by following the same procedure as specified in clause (1) of the Article.

(Para 2.27.04)

2.43.07 When a Resolution passed by the Legislative Assembly of a State for abolition or creation of a Legislative Council in the State is received, the President shall cause the Resolution to be placed, within a reasonable time, before Parliament together with the comments of the Union Government. Parliament may thereupon accept or reject the request contained in the Resolution. If the Resolution is so adopted by Parliament, the Union Government shall introduce the necessary legislation in Parliament for implementation of the same. If necessary, Article 169 may be amended to provide for this procedure.

(Para 2.33.06)

2.43.08 In order to remedy the unfortunate situation in which the local bodies find themselves, a comprehensive law (under clause (1) of Article 285 read with the saving clause in Entry 32 of List I), analogous to Section 135 of the Railway Act, 1890, and Sections 3 and 4 of the Railways (Local Authorities' Taxation) Act, 1941 be passed making liable the properties and administrations of all undertakings like Railways, Posts and Telegraphs, Telephones etc. of the Union at such fair and reasonable rates as may be notified from time to time by the Union Government after taking into consideration the recommendations of a person, who is or has been a Judge of a High Court or a District Judge.

(Para 2.35.1)

2.43.09 Cases may arise, particularly in the modern context where States may feel aggrieved on account of taxes imposed by the Union on the trade or business in terms of clause (2) of Article 289. The scheme of the Constitution envisages remedial action under clause (3). Where one or more State Governments feel aggrieved on account of any action of the Union Government covered by clause (2) of Article 289, adequate consultation should be held with the State Governments or the National Economic and Development Council proposed by us, and action taken to afford relief in terms of clause (3) of Article 289.

(Para 2.36.11)

2.43.10 Before a law is passed by Parliament by virtue of clause (3) of Article 286 read with Entries 92A and 92B of List I, the State Governments and the National Economic and Development Council should be consulted and the resume of their comments should be placed before Parliament along with the Bill.

(Para 2.37.09)

ANNEXURE II . 1

The question whether a particular Union law is attributable *solely* to the Residuary power of Parliament is finally settled by judicial decisions. We have, therefore, studied as many re-many decisions of the Supreme Court/High Courts on this po nt as possible. The Union Laws, the constitutional validity of which was questioned, relevant to the enquiry, may be classified into two broad categories: (i) Those with respect to which the competence of Parliament was upheld *solely* on the ground of its residuary power under Article 248 r w Entry 97 of List I; (ii) those in regard to which residuary power was relied upon as an alternative or additional source of the competence of Parliament.

As a result of our study—which is not claimed to be exhaustive—the following cases fall under the first category :

(a) The Gift Tax Act 1958, imposing tax on gifts of moveable and immoveable property (including agricultural land).

Andhra Pradesh High Court in *Jupudi Sesharatnam V. Gift Tax Officer* (AIR 1960 AP 115.; the Kerala High Court in *M.T. Joseph and other* V. *Gift Tax Officer* (AIR 1962 Ker. 97) and the Madras High Court in *S. Dandapani* V. *Addl. Gift tax Officer* (AIR 1963 Mad. 419) are cases wherein the constitutionality of certain provisions of the Gift Tax Act 1958 was challenged on the ground that they encroached upon the subject-matter of Entry 18 of List II in as much as they sanctioned levy of tax on gifts of agricultural land. Overruling this plea, the High Courts observed that the subjects of taxing powers of the Union and the States were mentioned specifically in the Union and State Lists respectively. The taxing power could not, therefore, be inferred as ancillery or incidental to any other entry relating to a legislative matter. It was held that the competence of Parliament to enact the impugned provisions was attributable *solely* to the residuary power of Parliament.

In Mrs. Ghendi W/o Umrao Singh V. *Union of India and Others* (AIR 1965 Punjab 65) certain provisions of the Gift Tax Act were challenged on the ground th t they amounted to an encroachment upon the legislative powers of the States under Entry 49 of List II (taxing of lands and buildings). The Court held that the gift tax was not a tax on land and building, as such, but on transactions of transfers relating to property. On these premises it was held that the impugned provisions did not fall under Entry 49 of List II, but *entirely* under Entry 97 of List I read with Article 248.

The decision of the Allahabad High Court in *Shyam Sunder* V. *Gift Tax Officer* (AIR 1967 All. 19) is also to the same effect.

These decisions of the Punjab and Allahabad High Courts were approved by the Supreme Court in *Gift Tax Officer* V. *D.H. Nazarath and others* (AIR 1970 SC 999). The Supreme Court had held that the Gift Tax Act was enacted by Parliament and no Entry in the Union List and State List mentions such a tax. Therefore, Parliament purported to use its powers derived from Entry 97 of the Union List read with Article 248 of the Constitution. There being no other entry which covers the gift tax, the residuary powers of Parliament were exercised to enact the law.

(All the above cases are in respect of one and the same enactment, namely the Gift Tax Act 1958. In them, the High Courts and subsequently the Supreme Court have held that the Gift Tax Act, 1958 is an Act which is covered *solely* by the residuary powers of Parliament under Article 248 read with Entry 97 of List I of Schedule VII of the Constitution).

(b) Himachal Pradesh Assembly (Constitution and Proceeding Validation) Act, 1958.

In *Jadab Singh and Other* V. *Himachal Pradesh Administration* (1960) 3 *SCR* 75). The Supreme Court upheld the competence of Parliament to enact this Act solely by virtue of its residuary power. The facts were these. The Assembly of Himachal Pradesh originally was constituted under Part C States Act, 1951 and elections were held in 1952. A new State of Himachal Pradesh was formed after merger of Bilaspur in 1954. Though the members of Assembly were deemed to continue to represent their constituencies, no notification under Section 74 of the Representation of People Act, 1951, was not issued. A Bill (No. 7 of 1953) has been introduced in the original Assembly. However, by the time it was passed in May 1954, the new Assembly had come into being. The Supreme Court in *Shree Vinod Kumar & Others* V. *The State of Himachal Pradesh* (*AIR* 1959 *SC* 223) by its decision of October 10, 1958 invalidated the Act No. 15 of 1954 on the ground that the Legislative Assembly of the new Himachal Pradesh State was not duly constituted and, as such, was incompetent to pass this Act. Parliament then enacted Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act, 1958. Section 3 of this Union Act validated the constitution and proceedings of the Legislative Assembly of Himachal Pradesh State and Section 4 prohibited the courts from questioning the validity of any Act or proceedings of the Assembly on the ground of defect in its constitution.

The Supreme Court upheld the competence of Parliament to enact the validating Act by virtue of its power under Article 248 read with item 97 of List I.

(c) Sugarcane Cess (Validation) Act, 1961 validated certain Acts of State Legislatures Imposing cess on entry of sugarcane into the premises of a factory.

This example is furnished by the Supreme Court decision in *Jaora Sugar Mills* V. *State of M.P.* (*AIR* 1966 *SC* 416) wherein the competence of Parliament to enact the above Act was upheld *solely* on the ground of its residuary power.

The facts of the case were that the Madhya Pradesh Legislature enacted M.P., Sugarcane (Regulation of Supply and Purchase) Act, 1958, levying a cess on the entry of sugarcane into the premises of the factory on the assumption that a factory was within the purview of Entry 52 of List II a 'local areas' Th validity of this State Act was challenged in the High Court. Following an earlier decision of the Supreme Court in *Diamond Sugar Mills Ltd.* V. *U.P.* (1961) AIR 1961 SC 652, the Madhya Pradesh High Court declared that the State Act was *ultra vires* the State Legislature. Parliament than enacted the validating Act 1961 (mentioned above). The v lidity of Section 3 of this (Central) Act was assailed before the Supreme Court on the ground that this provision was *ultra vires* the Parliament.

The Supreme Court rejected this plea observing that what Parliament had done by enacting this Section was not merely to validate the invalid State statutes, but "to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation retrospectively". It was held that Parliament's power to levy the cess of this nature under the invalid State Acts was derived from Article 248 read with Entry 97 of the Union List.

This *ratio* of this decision was reiterated by the Supreme Court in *Shetkari Sahakari Shakkar Karkhanas* vs. *The Collector of Sangli and others* (AIR 1979 *SC* 1972).

(d) *Punjab Excise* (*Delhi Amendment*) *Ordinance* 1979.

M/s. Satpal & Co., etc. vs. *Lt. Governor of Delhi & Others AIR* 1979 *SC* 1950. Punjab Excise Act 1914 was extended to Delhi. While implementing the provisions of the Act, the concerned authorities held an auction for the grant of licence for selling country liquor and at one such auction, the petitioner's bid was accepted. The licence included a condition to sell a bottle of 750 ml. of country liquor at Rs. 15 which included the excise duty at the rate of Rs. 10.23. This excise duty was styled as "still head duty". In a writ petition before the High Court, the levy of "still head duty" was challenged on the ground that it was nothing but countervailing duty and in the absence of manufacture of liquor in Delhi, countervailing duty on the import of liquor cannot be constitutionally levied. This contention found favour with the learned

single judge of the Delhi High Court and a number of letters Patent Appeals were filed against that judgement which were pending in the High Court. In the meantime, the President of India promulgated the Ordinance purporting to amend the Punjab Excise Act with retrospective effect and conferring power on the Government under the provisions of the Act to levy special duty on the import of country liquor in Delhi. The Delhi High Court heard the letters Patent Appeals against the judgement of the learned Single Judge and held the Ordinance as well as the impost there-under valid and dismissed the writ petition. Against the judgement, the Petitioners preferred Special Leave Petitions before the Supreme Court. The precise question before the Supreme Court was, whether the impugned provision levying import duty on liquor could be defended as an exercise of its power by Parliament under Article 246 read with Entry 51 of List. II. The next question was, whether the legislation was beyond the competence of Parliament. Upholding the Validity of the Ordinance, the Supreme Court held that though Parliament could not levy such duty under Entry 51 of List II, it could do so under Entry 97 of List I read with Article 248.

It observed ;

"Complex modern governmental administration in a federal set-up providing distribution of legislative powers coupled with power of judicial review may raise such situations that a subject of legislation may not squarely fall in any specific Entry in List I or III. Simultaneously, on correct appraisal it may not be covered by any Entry in List II, though on a superficial view it may be covered by an Entry in List II. In such a situation, Parliament would have power to legislate on the subject in the exercise of residuary power under Entry 97. List I and it would not be proper to unduly circumscribe, corrode or whittle down this power by saying that the subject of legislation was present to the mind of framers of the Constitution because apparently it falls in one of the Entries in List II, and thereby deny power to legislate under Entry 97".

(e) Section 12 (2) of the Rubber Act 1947 as amended by the Rubber Amendment Act, 1960, imposing a rubber cess.

(*M/s Jullundur Rubber Goods Manufacturers' Association* Vs. *The Union of India and others* (AIR 1970 SC 1589). The Rubber Act, 1947, ws amended by the Rubber Amendment Act 1960. The Amendment Act-- imposed new excise duty either on the manufacturers or on the owners of the estates. The Petitioners challenged the validity of Amendment Act in so far as it authorised imposition of new excise duty on the use of rubber and its collection by the Rubber Board. It was contended that under Entry 84 of List I the duties can be levied only on the actual producers and manufacturers of rubber but in the very nature of such duty it could not be imposed on users or consumers of that commodity. The Court held that what was called excise duty on the use of rubber which does not fall within Entry 84, List I—"will be a kind of non-descript tax which has been given the nomenclature of the duty of excise", and consequently Parliament had undoubted competence under Entry 97 of List I in the Seventh Schedule read with Article 248 to enact the impugned provisions.

(f) *The Emblems and Names (Prevention and Improper use) Act* 1980.

M/s Sable Wagers & Co. and others Vs. *Union of India* (*AIR* 1975 *Supreme Court Page* 1172). In this case, the validity of the Emblems and Names (Prevention and Improper Use) Act List was under challenge. So far as the legislative competence is concerned, it was held by the Supreme Court that the residuary power of Entry 97 of List I has wide ambit to take care of particular subject matters of the legislation.

(g) *Auroville (Emergency Provision) Act* 1980

(*S.P. Mittal* Vs. *Union of India AIR* 1983 *SC I*). Shree Aurobindo Society, was a non-governmental organisation for a generation of funds for the setting up of a cultural township known as "Auroville" where people of different countries are expected to live in harmony as one community and engage in cultural, educational, scientific and other activities aiming at human unity. This society developed a township with the aid from different organisations in and out of India and also from Central and State Governments. Serious irregularities in the management of the society and mis-utilisation of funds were detected. The Government, therefore, took over in public interest the management of "Auroville" by the Presidential Ordinance, namely, Auroville (Emergency Provision) Ordinance, 1980 which was subsequently replaced by Auroville (Emergency Provision) Act, 1980 (Act 59 of 1980)'.It was held that Parliament had the legislative competence to enact this law by virtue of Entry 97 of List I of the VII Schedule.

(h) *Section 24 of the Finance Act, 1969 amending the Wealth Tax Act, 1957*

(*Union of India* Vs. *H S. Dhillon* 1972 (2) *SCR* 33). This case stands as a category apart. In this case, a Bench of seven Judges decided questions of far-reaching importance as to the taxing powers of Parliament and the State Legislatures. The question for determination was, whether S. 24 of the Finance Act, 1969 (S. 24") which amended the provisions of the Wealth Tax Act, 1957, so as to include the capital value of agricultural land for computing the net wealth, was within the legislative competence of Parliament. By a majority of 4 to 3 it was held that Parliament was competent to enact S. 24. Sikri C. J. held that S. 24 fell within Entry 86, List I, read with Entry 97 of List I or/and Article 248. Shelat J. held that S. 24 was *ultra vires* the legislative power of Parliament. Section 24 did not fall under Entry 86. List I, nor did it fall under Parliament's residuary power. However, he held that a power to tax the capital value of agricultural lands as an asset belonged to State Legislatures under Entry 49, List II.

ANNEXURE II·2

Additions and deletions in the Seventh Schedule

The three Lists under the Seventh Schedule were amended from time to time making certain omissions and additions. Brief details of the changes are as follows :—

Union List (List I).

In this List, originally, there were 97 Entries; 3 new Entries 92A (Sixth Amendment Act, 1956), 2A (Forty Second Amendment Act, 1976) and Entry 92B (Forty Sixth Amendment Act, 1982) were added later. Entry 33 was deleted by Constitution (Seventh Amendment) Act, 1956. Thus, there are 99 Entries, at present.

State List (List II)

This List originally contained 66 Entries of which 5 Entries were later deleted—Entry 36 by the Seventh Amendment Act (1956) and Entries 11, 19, 20, 29, all, by Forty-Second Amendment Act, (1976). At present, List II contains 61 Entries.

Concurrent List (List III).

Originally, List III contained 47 Entries. which increased by the addition of five more viz. Entries 11A, 17A, 17B, 20A, 33A. All these five were inserted by the Forty-second Amendment Act, 1976. At present, the total number of Entries in this List stands at 52.

ANNEXURE II.3

Table showing amendments to the Constitution made between 1950—1987 (August)

S.No.	Name of the Act	Nature of the Amendment Act
1.	Constitution (First Amdt.) Act, 1951. (Came into force on 18-6-51)	Articles 31A & 31B and Schedule IX were added. Articles 15, 19, 85, 87, 174, 176, 341, 342 & 376 were amended. In Art. 19(2), three new grounds of restriction to freedom of speech & expression viz. (i) friendly relations with foreign states; (ii) public order & (iii) incitement to an offence were added. Art. 31A, 31B & Sch. IX secured the Constitutional validity of Zamindari abolition laws. 13 State Acts which provides for the Zamindari abolition were added in Sch. IX.
2.	Constitution (Second Amdt.) Act, 1952. (Came into force on 1-5-53) (With ratification by states)	Art. 81(1)(b) was amended *inter alia* to provide that the total strength of Lok Sabha would be more than 500.
3.	Constitution (Third Amdt. Act, 1954. (Came into force on 22-2-55) (With ratification by states)	Entry 33 of List III was enlarged by transferring the contents of Art. 369, so that Parliament could have a concurrent jurisdiction to legislate as regards trade & commerce in, and the production, supply and distribution of the commodities included under the entry.
4.	Constitution (Fourth Amdt.) Act, 1955 (Came into force on 27-4-55)	Articles 31, 31A & Sch. IX were amended to make the question of compensation, non-justiciable before the Courts. It was also made clear that payment of compensation would arise only in two cases viz., (i) where threre was both acquisition and requisition of property and (ii) where there was complete transfer of ownership or the right to possession of an individual to the state. Art. 31A was amended to providing for taking over under the state control for temporary period all commercial or industrial undertaking. Art. 305 was substituted in order to save the existing laws and laws providing for state monopolies. In Sch. IX seven more Acts were added.
5.	Constitution (Fifth Amdt.) Act, 1955. (Came into force on 24-12-55).	Art. 3 was amended to provide for the imposition of a time-limit within which the states were to give their views regarding reorganisation of the states etc.
6.	Constitution (Sixth Amdt.) Act, 1956. (Came into force on 11-9-56) (With ratification by states)	Articles 269, 286 and Sch. VII were amended to give effect to the recommendation of the taxation Enquiry Commission regarding Sales Tax; certain other changes relating to taxation of sales or purchases on certain goods were also made.
7.	Constitution (Seventh Amdt.) Act, 1956. (Came into force on 1-11-56) (With ratification by states)	Articles 80, 81, 82, 153, 158, 170, 171, 239, 240, Schedules I, II, IV and VII were amended to implement States' Reorganisation scheme. Articles 238, 242, 243, 259, 278, 306, 379 to 391 were omitted. Art. 131 was amended to adjust the original jurisdiction of the Supreme Court on account of the abolition of part B states. Art. 216 was amended and the provision regarding the maximum strength of Judges was omitted. Art. 220 was amended to enable a retired judge of the High Court to practise before the Supreme Court. Art. 224 made certain provisions for the appointment additional & acting judges in the High Court and in their cases the age of retirement was fixed at 60 years. Art. 230 extended the jurisdiction of High Courts to the Union Territories. Art. 231 provided for the establishment of a common High Court for two or more states. New Articles 258A, 290A, 350A, 350B, 372A & 378A were inserted.
8.	Constitution (Eighth Amdt.) Act, 1959. (Came into force on 5-1-60)	Art. 334 was amended to extend the period of reservation of Scheduled Castes and Scheduled Tribes in the House of People and in the legislative Assemblies in the states and the representation of Anglo-Indian Community in the House of the People and in the legislative assemblies by nomination.
9.	Constitution (Ninth Amdt.) Act, 1960. (Came into force on 17 1-61)	First Schedule was amended to transfer certain territories to Pakistan, implementing the Indo-Pakistan Agreements.
10.	Constitution (Tenth Amdt.) Act, 1961 (Came into force with retrospective effect from 11-8 61)	Art. 240 & Schedule I was amended to make Dadra & Nagar Haveli as a Union Territory.
11.	Constitution (Eleventh Amdt.) Act, 1961. (Came into force on 19-12-61)	Articles 66 & 71 were amended in order to narrow down grounds for challenging the validation of election of President or Vice-President.
12.	Constitution (Twelfth Amdt.) Act, 1962. (With Retrospective effect from 20-12-1961.)	Art. 240 & Schedule I were amended to include Goa, Daman & Diu as a Union Territory.
13.	Constitution (Thirteenth Amdt.) Act, 1962. (came into force from 1-12-62) (With ratification by states)	Art. 371A was inserted to make special provisions for the administration of the state of Nagaland.
14	Constitution (Fourteenth Amdt.) Act, 1962. (Some provisions came into force on 28-12-60 and other provisions from 16-8-1962).	Art. 239A was inserted; first Schedule was amended to include some of the former French Territories as the Union Territory. 239A enabled the creation of the legislatures & council of ministers for the Union Territories—Himachal Pradesh, Manipur, Tripura, Goa, Daman & Diu and Pondicherry.

(ANNEXURE II.3—*Contd.*)

S.No.	Name of the Act	Nature of the Amendment Act
15.	Constitution (Fifteenth Amdt.) Act, 1963. (Came into force on 5-10-63) (With ratification by States)	Articles 124, 128, 217, 222, 224, 224A, 226, 297, 311 & 316 were amended. It was provided that the question regarding the age of a judge of Supreme Court or High Court shall be decided by the President. The retirement age of the High Court Judges was raised to 62 years. Provisions were made for appointment on ad-hoc judges. A retire judge of a High Court could practise in the Supreme Court and in all High Courts except one in which he served as a judge for not less than 5 years immediately before his retirement. Art. 226 was amended to extend the writ jurisdiction of a High Court. Art. 311 modified the procedure for dismissal or removal of civil servants.
16.	Constitution (Sixteenth Amdt.) Act, 1963. (Came into force on 5-10-63) (With ratification by States)	Art. 19 was amended to enable Parliament to make laws providing restrictions upon the freedom of expression questioning the sovereignty integrity of the Union of India with consequential changes in Articles 84, 173 & Schedule III.
17.	Constitution (Seventeenth Amdt.) Act, 1974. (Came into force on 20-6-64)	Art. 31A & Sch. IX were amended. The Term "estate" was given and extended meaning 44 new Acts were added to the IX schedule.
18.	Constitution (Eighteenth Amdt.) Act, 1966. (Came into force on 27-8-66)	In Art. 3, explanations were added.
19.	Constitution (Nineteenth Amdt.) Act, 1966. (Came into force on 11-12-66)	Art. 324 was amended and the power of the Election Commission to appoint Election Tribunal was taken away and their work was entrusted to the High Courts.
20.	Constitution (Twentieth Amdt.) Act, 1966. (Came into force on 22-12-66)	Art. 233A was inserted for the validation of appointments of and judgements etc., delivered by certain District Judge.
21.	Constitution (Twenty First Amdt.) Act, 1967. (Came into force on 10-4-67)	The eighth schedule was amended to include "Sindhi" in the list of official languages.
22.	Constitution (Twenty Second Amdt.) Act. 1969. (Came into force on 25-9-69) (With ratification by States)	Articles 244A, 371B and Cl. (1A) in Art. 275 were inserted to facilitate the creation of an autonomous State of Meghalaya within the State of Assam. Later on by the North-Eastern Areas (Reorganisation) Act, 1971 Meghalaya was admitted as a State under First Schedule.
23.	Constitution (Twenty Third Amdt.) Act, 1969. (Came into force on 23-1-70) (With ratification by States)	Articles 330, 332 to 334 were amended to extend the period of reservation for Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States and nomination of representation of Anglo-Indians in the House of People and in the State legislatures.
24.	Constitution (Twenty Fourth Amdt.) Act, 1971. (Came into force on 5-11-71) (With ratification by States)	In Art. 13 a new clause (4) was added. In Art. 368, the marginal note was amended. The amendments were made to remove the difficulties created by the decision of the Supreme Court in Golak Nath vs. State of Punjab.
25.	Constitution (Twenty Fifth Amdt.) Act, 1971. (Came into force on 20-4-72) (With ratification by States)	In Article 31(2), the word "compensation" was substituted by the word "amount". A New clause (2A) was inserted to make it clear that a deprivation law passed under Art, 31 could not be challenged on the ground that it infringed rights guarantee d by Art. 19. A new Art. 31 was inserted to provide that a law passed for giving effect to the Directive principles of State Policy specified in Art. 39(b) and (C) could not be challenged before courts on the ground that it offends Articles 14, 19 & 31. (These amendments were Consequent to decision of the Supreme Court in Bank Nationalisation Case).
26.	Constitution (Twenty Sixth Amdt.) Act, 1971. (Came into force on 28-12-71)	Article 291 and 362 were omitted. A new Article 363A was added and Art. 366(22) was amended. (These amendments were Consequent to the decision of the Supreme Court in Privy Purse Case).
27.	Constitution (Twenty Seventh Amdt.) Act, 1971. Some provisions came into force on 15-2-71 and some provisions came in force on 30-12-71.	Articles 239A and 240 were amended and new Articles 239B & 371C were inserted. (These amendments were to bring changes in the constitution of Union Territories).
28.	Constitution (Twenty Eighth Amdt.) Act, 1972. (Came into force on 29-8-72)	Article 314 was repealed and new Art. 312A was added. The new articles deals with the power of Parliament to vary or revoke conditions of service of the members of Indian Civil Service.
29.	Constitution (Twenty Ninth Amdt.) Act, 1972. (Came into force on 9-6-72)	Schedule IX was amended to include two more State Acts.
30.	Constitution (Thirtieth Amdt.) Act, 1972. (Came into force on 27-2-73)	Article 133(1) was amended to remove monetory conditions for filing appeals to the Supreme Court in civil matters. (This amendment was based on Law Commission's recommendations).
31.	Constitution (Thirty First Amdt.) Act, 1973. (Came into force on 17-10-73)	Articles 81, 330 & 332 were amended. This relates to the upper limit of the total membership of the House of People and also regarding reservation of seats to scheduled castes and scheduled tribes in legislatures.
32.	Constitution (Thirty Second Amdt.) Act, 1973.	Article 371 was amended and new Articles 371-D & 371-E were inserted. The amendments were to provide certain special provisions regarding Andhra Pradesh.

(ANNEXURE II. 3—*Contd.*)

S. No.	Name of the Act	Nature of the Amendment Act
33.	Constitution (Thirty Third Amdt.) Act, 1974. (Came into force on 19-5-74)	Articles 101 & 190 were amended to provide that the resignations of the members of the Parliament and the State legislatures may be accepted by the speaker only, if he is satisfied that the resignation is voluntary or genuine. If it was made under some threat or coercion, if would not be accepted.
34.	Constitution (Thirty Fourth Amdt.) Act, 1974. (Came into force on 7-9-74) (With ratification by States)	Schedule IX was amended to add twenty more Acts.
35.	Constitution (Thirty Fifth Amdt.) Act, 1974. (Came into force on 22-2-75) (With ratification by States)	Articles 80 & 81 were amended and a new Article 2A was inserted. By these amendments..... one seat each in the Lok Sabha and Rajya Sabha was provided to Sikkim representatives. It was however provided that the Sikkimse representatives in Parliament shall not have the right to vote in the election of President and Vice-President of India.
36.	Constitution (Thirty Sixth Amdt.) Act, 1975. (Came into force on 26-4-75) (With ratification by States)	All provisions added by the Constitution 35th Amdt. Act were omitted. Sikkim was made the 22nd State under Sch. I and consequential changes were made in Articles 80(1) & 81(1).
37.	Constitution (Thirty Seventh Amdt.) Act, 1975. (Came into force on 3-5-1975)	Articles 239 A and 240 were amended to provide for Legislative Assembly and a Council of Ministers for Arunachal Pradesh.
38.	Constitution (Thirty Eight Amdt.) Act, 1975. (Came into force on 1-8-75) (With ratification by States)	Articles 352, 356, 359 & 360 were amended to make it clear that the "Satisfaction" of the President under these articles shall be final. Similar amendments were made in Articles 123, 213 & 239-B.
39.	Constitution (Thirty Ninth Amdt.) Act, 1975. (Came into force on 10-8-75) (With ratification by States)	Articles 70 and Sch. IX were amended and a new Article 329A was inserted. It was provided that the election disputes relating to the Prime Minister and the speaker of the Lok-Sabha shall not be called in question before any court of Law and the existing jurisdiction in this regard was taken away. 37 more Acts including the Maintenance of Internal Security Act, 1971, and, the Representation of Peoples Act, 1951 were included under Schedule IX to raise it to a total of 124.
40.	Constitution (Fortieth Amdt.) Act, 1976. (Came into force on 27-5-76)	64 more Acts were added to Schedule IX to making a total of 188. Article 297 was substituted to empower Parliament to specify by law the limits of country's territorial waters, the continental shelf, the exclusive economic zone, and maritime zone.
41.	Constitution (Forty-First Amdt.) Act, 1976. (Came into force on 7-9-1976)	Article 316 was amended to raise the age of retirement of the members of State Public Service Commissions to 62.
42.	Constitution (Forty Second Amdt.) Act, 1976. (Different provisions of the Act came into force on different dates as per notification dated 3-1-1977) (With the ratification by States)	The following provisions were amended : — Preamble, Articles 31C; 39; 55; 74; 77; 81; 82; 83; 100; 102; 105; 118; 145; 166; 170; 172; 189; 191; 194; 208; 217; 225; 227; 228; 311; 312; 330; 352; 353; 356; 357; 358; 359; 366;, 368; 371 F and seventh schedule.; (ii) The following articles were substituted; Articles 103; 150; 192 & 226. (iii) The following new Article were inserted. Articles 31D; 32A; 39A; 48A; 51A; 131A; 139A; 144A; 226A; 228A; 257A; 323A; and 323B. (iv) Some of the important amendments on centre state relations are :— (i) A new Act 257A empowered the Central Govt. to send any armed or other forces to any State to deal with grave law and order situation. (ii) A new Entry 2A regarding deployment of armed or any other force, was inserted in List I; and (iii) List II (State List) was amended and the subjects, "Administration of Justice, Constitution and organisation of all courts except the Supreme Court and the High Courts, Education, weights and measures, Forests, and protection of wild Animals & Birds" were transferred to the Concurrent List. (iv) In List III, "Entry 20A-Population Control and family Planning" was inserted.
43.	Constitution (Forty Third Amdt.) Act, 1977. (Came into force on 13-4-78)	Articles 31D, 32A, 131A, 144A, 226A & 228A which were inserted by the Constitution 42nd Amdt. Act were repealed. Articles 145, 226, 228 & 366 were amended.

(ANNEXURE II. 3—*Contd.*)

S. No.	Name of the Act	Nature of the Amendment Act
44.	Constitution (Forty Fourth Amdt.) Act, 1978. (Came into force on 30-4-79) (With ratification by States)	The primary object of this Act was to protect the fundamental Rights of citizens and provide adequate safeguards against misuse of authority in future and to ensure to the people themselves an effective voice in determining the form of Govt., under which they are to live with this object. (i) Articles 19, 22, 30, 31A, 31C, 38, 74, 77, 83, 100, 102, 105, 118, 123, 132, 133, 134, 139A, 150, 166, 172, 189, 191, 194, 208, 213, 217, 225, 226, 227, 239B, 329, 352, 356, 358, 359, 360, 371F & Sch. IX were amended. (ii) Articles 19(1)(f); Sub. heading "Right to property" after Arti. 30; and Articles 31, 257A & 329A were omitted; (iii) Articles 71, 103 and 192 were substituted; and (iv) Articles 134A, chapter IV in Part XII containing new Articles 300A and 361A were inserted. In Sch. IX, Entry 87 (The Representation of Peoples Act, 1956) (The Representation of peoples (Amdt.) Act 1974, and the Election Laws Amdt. Act, 1975); Entry 92 (The maintenance of internal security Act, 1971) and Entry 130 (The Prevention of objectionable Matters Act, 1976) were omitted.
45.	Constitution (Forth Fifth Amdt.) Act, 1980. (Came into force with retrospective effect from 25-1-80)	Art. 334 was amended to extend the period of reservations made for Scheduled Castes & Scheduled Tribes in legislatures.
46.	Constitution (Forty Sixth Amdt.) Act, 1982. (Came into force on 2-2-83)	(i) Articles 269, 286, 366 and Sch. VII were amended. (ii) Articles 269, 286 were amended to provide for the Levy of consignment tax & expand the definition of "Sale or purchase of goods". (iii) In Schedule VII, a new entry 92B—Taxes on the consignment of goods (whether the consigment is to the person making it or to any other person) were such consignment to take place in the course of inter-state Trade or Commerce.
47.	Constitution (Forty Seventh Amdt.) Act, 1984. (Came into force on 26-8-84)	Schedule IX was amended. 14 more State Acts were included to make a total 202.
48.	Constitution (Forty Eight Amdt.) Act, 1984. (Came into force on 26-8-84)	Clause (5) of Act 356 was amended to extend the President's Rule in Punjab.
49.	Constitution (Forty Ninth Amdt.) Act, 1984. (Published after obtaining the assent of President on 11-9-84).	Article 244 and Schedule V were amended to extend the provision of Schedule V to Tripura State.
50.	Constitution (Fiftieth Amdt.) Act, 1984. (Came into force on 11-9-84)	Article 33 was substituted to cover the application of the Article to armed and other forces and certain other personal engaged in intelligence etc. of the Union.
51.	Constitution (Fifty-First Amdt.) Act, 1984.	To Articles 330 and 332 were amended to provide for the Reservation of seats for S.Ts. except the S.Ts. in the autonomous districts of Assam, in the House of the people and in the Legislative Assemblies of the States, respectively.
52.	Constitution (Fifty-Second Amdt.) Act, 1985.	Articles 101 & 102 regarding vacation of seats and disqualifications for membership of Parliament; and arts. 190 & 191 with respect to State Legislatures were amended to take anti-defection measure. After the 9th schedule to the Constitution, a new 10th Schedule was added with reference to Articles 102(2) and 191(2).
53.	Constitution (Fifty-Third Amdt.) Act, 1986.	A new Article 371G was added to make special provision with respect to the State of Mizoram.
54.	Constitution (Fifty-Fourth Amdt.) Act, 1986.	Two Articles 125 and 221 and Part D of the Second Schedule were amended to provide for highe salaries for Supreme Court and High Court Judges.
55.	Constitution (Fifty-Fifth Amdt.) Act, 1986.	A new Article 371H was added to make special provision with respect to the State of Arunachal Pradesh.
56.	Constitution (Fifty-Sixth Amdt.) Act, 1987.	A new Article 371-I was added to make special provision with respect to the State of Goa.

CHAPTER—III

ADMINISTRATIVE RELATIONS

CONTENTS

CHAPTER III

ADMINISTRATIVE RELATIONS

1. *INTRODUCTION*

3.1.01 The Constitution distributes executive power also between the Union and the States. "Executive power" defies a precise definition. Ordinarily, it connotes "the residue of governmental functions that remain after legislative and judicial functions are taken away".[1] The exercise of the executive function "comprises both the determination of the policy as well as carrying it into execution.....the maintenance of order, the promotion of social and economic welfare.....in fact, the carrying on or supervision of the general administration of the State".[1] Though the authority to execute or administer the laws made by the Legislature is a primary component of "executive power", yet its exercise is not necessarily dependent on prior legislative sanction.

3.1.02 Normally, the executive powers of the Union and the States are coextensive with their respective legislative powers. There are two exceptions to this rule provided in the Proviso to clause (1) and in clause (2) of Article 73. First, that the executive power in States with respect to matters in the Concurrent List shall ordinarily remain with the respective States unless the Constitution or Parliament by law expressly provides otherwise. Second, the executive power of a State or its officers and authorities existing immediately before the commencement of the Constitution even with respect to matters in the Union List, shall continue until otherwise provided by Parliament.

3.1.03 There are certain other provisions of the Constitution which expressly confer executive power on the Union and the States. For instance, Article 298 specifically extends the executive power of the Union and of each State to the carrying on of any trade or business and the acquisition, holding and disposal of property and (read with Article 299) making of contracts for any purpose.

3.1.04 The division of executive powers between the Union and the States even with reference to matters in List I and List II, is not sharp, hard and fast. The limits of their executive powers indicated by Articles 73 and 162 are flexible and extensible. In certain matters or situations, for example under Articles 72 (1)(c), 253 and 356 (1)(a), the executive power of the Union may project into the State field. Similalry, in some cases, as for instance, in the matter of any grant for any public purpose under Article 282, the division of powers with reference to the three Lists in the Seventh Schedule loses significance.

3.1.05 The administration of laws in a two-tier system can be secured either by the same or their separate agencies In some countries, the Federal and State Governments have separate agencies, parallel services and courts for the administration of their respective laws.

3.1.06 However, under our Constitution, the position is different. Broadly, there is only one set of courts with the Supreme Court at its apex. Jurisdiction for administration of Union as well as State laws is conferred on the same hierarchy of courts through legislations enacted by the Union and the State Legislatures under the relevant Entries, e.g., 46 of List III, 95 of List I and 65 of List II.

3.1.07 The Union has no separate instrumentalities of its own for execution of many of its laws. Only a few subjects in the Union List—such as Defence, Foreign Affairs, Foreign Exchange, Posts and Telegraphs, All India Radio and Television, Airways, Railways, Currency, Customs, Union Excise, Income-Tax, etc.—are administered by the Union directly through its own agencies. Administration of several matters in the Union List and most matters in the Concurrent sphere and the enforcement of Union laws relating to them, is secured through the machinery of the States.

3.1.08 The Constitution enables the Union to entrust its executive power to the agencies of the States for administration of Union Laws. There are several matters in the Union List which have an interface with those in the State List. The Union may leave the administration of laws with respect to these matters to the States, subject to the former's directions. For instance, the Mines and Minerals (Regulation and Development) Act, 1957, enacted by Parliament by virtue of Entry 54, List I, and the Mineral Concessional Rules framed thereunder, leave the initial power to grant a mining licence to the State. But such grants made by a State, are subject to the orders of the Union Government in appeal or revision filed by an aggrieved party. Another example is of the Central Sales Tax Act enacted by Parliament by virtue of Entry 92A of List I read with Article 269(1)(a). Under this Act, tax on sale or purchase of goods, other than news-papers, which takes place in the course of inter-State trade, is levied by the Union but is assessed and collected by the States on behalf of the Union Government.

3.1.09 While exercising its legislative power in the Concurrent field, the Union may adopt any one of the following modes for enforcement of its laws :

(i) It may leave the administration of a Union legislation entirely to the States. A typical example of this mode is the Electricity (Supply) Amendment Act, 1956 which leaves the administration of this Act wholly to the States.

1. Ram Jawaya *V.* State of Punjab, 1955 2 SCR 225.

(ii) It may reserve to itself the whole responsibility for administration of all aspects of the subject-matter of the legislation. Forest (Conservation) Act, 1980 illustrates this technique.

(iii) It may assume the executive power with respect to some aspects of the legislation, leaving the administration of the remainder to the States. The Essential Commodities Act, 1955 exemplifies this pattern. The Act provides for conferring of powers and imposing of duties on State Governments by the Union Government. Powers and duties so conferred vary from commodity to commodity and also from time to time, depending on their availability at fair prices, need for their equitable distribution, and similar other factors.

3.1.10 The general provisions which have been grouped together in the same chapter of the Constitution under the caption, "Administrative Relations", are contained in Articles 256, 257, 258, 258A, 260 & 261. Articles 262 (Disputes relating to waters) and 263 (Coordination between States) have also been placed in the same Chapter. Apart from these Articles, there are special provisions in Articles 353(a) and 360(3) which, in the event of an Emergency, extend the executive authority of the Union to the State field. Article 356 enables the President to assume functions of the Government of the State and powers vested in or exercisable by the Governor or subordinate authorities.

3.1.11 These apart, certain other provisions also have an important bearing on Union-State administrative relations. Article 275(1), First Proviso; Articles 339(2) and 350A, for instance, cast special obligations on the Union for the welfare of Scheduled Tribes and development of Scheduled Areas or for providing adequate facilities for imparting instruction to the children belonging to linguistic minority groups, in their mother tongue at the primary stage of education.

3.1.12 Article 258 of the Constitution enables the Union to entrust functions to the State or its agencies. A complementary provision in Article 258A enables the Governor of a State to entrust, with the consent of the Government of India, either conditionally or unconditionally, to that Government or its officers, functions in relation to any matter to which the executive power of the State extends.

2. *ISSUES RAISED*

3.2.01 In the evidence before the Commission, most State Governments have appreciated the need for the provisions contained in Articles 256 and 257. One of them has asked for deletion of Article 365. Another State Government is of the view that Article 365 adds nothing to the power available to the Union under Article 356 to proceed against an errant State. Another group of States criticises these provisions on the ground that they are anti-federal. Even so, one in this group has not asked for their deletion and has suggested that they must be "drastically amended" and "if any directive is to be issued to the States under Article 256 or Article 257, it should be issued only after adequate consultation with, and only after ce of, the Inter-State Council". It has ur ce of, the tion under Article 365 should be taken o tion under Inter-State Council has given its seal (Inter-State

3.2.02 One of them is of the view that the State are bound to comply with laws made by Parliament and any existing law and it is difficult to understand why a State Government normally may be unwilling to do the needful, particularly as payment of compensation for extra expenditure is also provided for in certain circumstances under Article 257(4). It has therefore suggested that Articles 256, 257, 339 and 350A be omitted "so as to remove an avoidable irritant and restore a more even balance between the Union and the States. In the event of refusal by the State Government to do the needful in these respects, with a view to disrupting national security and national defence, action could be taken under Article 356". The State Government has also criticised the powers available to the Union under Articles 339 and 350A on the ground that the Union has hardly made any use of its power under these provisions for the benefit of the tribes and the minorities.

3.2.03 One State Government, however, has suggested deletion of these Articles, including Articles 365 and 356, on the ground that these provisions "by precept and practice have the tyrannical potential to cause serious inroads into the functioning of the States, vested both with the executive and legislative powers". The "chain-reaction" between these provisions, it is argued, is "bound to intrude into the autonomy of the States".

3.2.04 The same State Government has asked for the revision and modification of Article 258(2) so as to ensure—(i) that this Article does not enable Parliament to redelegate the legislative power delegated to it under the Constitution; and (ii) that the power thereunder is exercised by Parliament only with the prior consent of the State.

3.2.05 Regarding the use of Article 258, some Union Ministries have referred to occasional difficulties which arise in the proper implementation by the States, of Union measures for lack of funds or infrastructural facilities, or on account of State rules and regulations. Clause (3) of Article 258 provides that the Government of India shall bear any extra cost that may be incurred by a State in the exercise of the powers and duties entrusted to it by the Union. It has also been recognised by the Union Ministries that, by an large, these problems are progressively sorted out through mutual consultations.

3.2.06 Some apprehensions have also been expressed in regard to the serious consequences that may follow, by virtue of Article 365 read with Article 356, in the event of non-compliance with the formal directions issued by the Union in the exercise of its executive powers.

DISCUSSIONS IN THE CONSTITUENT ASSEMBLY

3.3.01 In the Constituent Assembly, there was some discussion on clause (3) of Article 257 dealing with protection of railways, but none on Article 256

and the remaining clauses of Article 257.[2] The provisions in Article 365, however, attracted criticism.[3] Some members expressed an apprehension that the provisions of Article 365 might be invoked even in cases of minor infraction of a direction from the Union. The Chairman of the Drafting Committee, Dr. Ambedkar, pointed out : "Once there is power given to the Union Government to issue directions to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is failure to carry-out those directions, is practically negativing the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy."[4]

3.3.02 The Constitution, as it emerged finally, incorporated provisions which enable the Union to give directions to the States under certain circumstances. It also provides in Article 365, a sanction to ensure compliance with those directions.

3.3.03 Matters relating to Articles 262 and 263 have been dealt with elsewhere in this Report. Articles 260 and 261 do not call for any special consideration in the context of Union-State relations. No criticism has been levelled before us with regard to the structural or functional aspects of Articles 258(1) and 258A. Articles 353 and 360 have been noticed in the Chapter dealing with Emergency Provisions. Issues raised in regard to Articles 256, 257, 258(2) and 365 only are the main subjects of the present discussion.

4. *CONSTITUTIONAL PROVISIONS AND THEIR SCOPE*

3.4.01 Article 256 provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. A plain reading of the provisions of this Article shows that the existence of a law made by Parliament or an 'existing law' which applies in that State, is a condition precedent which must be satisfied for the issuance of a 'direction' under it. It shall not be a valid exercise of the powers conferred if a direction is given in a situation where no enforcement of the law made by Parliament or an existing law, applicable in that State, is involved.

3.4.02 Further, while the State Government is obliged to so exercise its executive power as to ensure compliance with the law made by Parliament or an existing law which applies in that State, the powers conferred on the Union are not unlimited It has been observed by the Supreme Court that this Article does not empower the Union to issue a direction with respect to a matter, e.g., dissolution of the Legislative Assembly under Article 174, which is the exclusive concern of the State.[5]

3.4.03 Article 257(1) provides : "The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose". Clause (2) of the Article specifically extends the executive power of the Union to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance. Clause (3) expressly extends the executive power of the Union "to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State".

3.4.04 The words "for that purpose" in clause (1) of this Article limit its use to those situations only where some executive action of a State impedes or prejudices the valid exercise of the executive power of the Union. If the Union Government purported to give directions about the exercise of executive power in any field reserved for the State executive, which power does not collide with, or prejudice the exercise of, the Union's executive power, such a direction would be invalid.[6]

3.4.05 Even though clause (1) of Article 257 gives the Union full control over the exercise of the executive power of every State to ensure that it does not impede or prejudice the exercise of the executive power of the Union, the Constitution-makers, nevertheless, considered it necessary to make separate provisions in clauses (2) and (3) regarding means of communication and protection of railways. Clause (1) primarily emphasises the principle of federal supremacy. Clause (2), on the other hand, is intended to lay stress on the overall importance of well-coordinated effective executive action in regard to means of communications and railways which are so vital for the defence of the country, inter-State social intercourse, travel, trade and commerce, and incidentally are conducive to national integration. Further, as the States have exclusive legislative and executive power in respect of 'land' (vide Entry 18 in the 'State List' read with Article 162), the Constitution-framers appropriately found it necessary in the national interest, for the Union to have control over the State executive to ensure availability of 'land' for purposes of communications and protection of railways.

3.4.06 Clause (4) recognises the fact that for carrying out any direction given to a State under clauses (2) and (3), the State may incur extra costs. This clause, therefore, provides that it shall be the obligation of the Government of India to pay to the State such sums as may be agreed upon, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.

2. Constituent Assembly Debates (Revised Edition), Volume VIII, Page 816 and Volume IX, Pages 1185 to 1187.

3. Constituent Assembly Debates (Revised Edition), Volume XI, Pages 506 to 520.

4. Constituent Assembly Debates (Revised Edition), Volume XI, Page 507.

5. State of Rajasthan *V.* Union of India AIR, 1977 (SC 1361), Para 196.

6. Seervai H.M., Constitutional Law of India, Volume I, 3rd Edition, Para 5.28, Page 160.

5. *WHETHER ARTICLES 256 AND 257 ARE REPUGNANT TO FEDERAL PRINCIPLE*

3.5.01 The demand for deletion or "drastic" amendment of these provisions, mainly rests on the theoretical premise that the provisions of Articles 256 and 257 are repugnant to the federal principle. The argument is that, in a 'federal polity', there is no place for provisions which confer powers on the Union to give directions to the States. It is pointed out that there is no precedent for these Articles in the Constitutions of United States of America and Australia.

3.5.02 For understanding the significance and necessity of these provisions, it is important to remember that there is no static, immutable format of a 'federal' constitution. Each country adapts and moulds the federal idea to its peculiar conditions and needs. Our Constitution-makers in their wisdom chose to secure execution of many Union laws through the enforcement agencies of the States. They had learnt from a study of the working of older federations, that the classical concept of federalism in which the government powers are supposed to be divided into two watertight divisions, was nowhere a functional reality. They were also conscious of the transformation of 'classical federalism' into a dynamic process of cooperative action and shared responsibility between the Federal and State Governments. They preferred this cooperative arrangement as it was considered best suited to the social conditions, needs and aspirations of the Indian people. It is more economical and effective than the one in which the Union and the States have separate agencies for administration of their respective laws, often working at cross-purposes rather than in cooperation with each other. The State administrative apparatus in its day-to-day working remains in close touch with the people and is, therefore, capable of acting with greater efficiency in the local application of the legislative and executive policy of the Nation. Having provided for the execution by the States of the laws made by Parliament, the framers of the Constitution cast, expressly, an obligation on the States to secure compliance with them rather than leave it to their goodwill.

3.5.03 While it can be said that, in the Constitutions of older federations, there is no provision conferring on a Federal Government the power to issue executive directions to the States, the basic principle of Federal Supremacy underlying Articles 256 and 257 is recognised by them; only the technique or mode of carrying it into effect is different from the one adopted by our Constitution. The relevant constitutional provisions in the USA, Australia and West Germany are discussed below.

Federal Supremacy in USA Constitution

3.5.04 Section 2 of Article VI of the USA Constitution ordains :[7]

> "*This Constitution and the Laws of the United States* which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, *shall be the supreme Law of the Land*; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding." (emphasis added)

The import of the above provision known as the Supremacy Clause, has been considerably amplified through judicial interpretation.

3.5.05 As early as in 1819, the US Supreme Court enunciated that the acts of the Federal Government done in pursuance of the Constitution are operative as Supreme Law throughout the Union and, as a basic consequence of this supremacy, the States have no power to impede, burden or in any manner control the operation of the laws enacted by the Government of the nation.[8] In 1824, the principle underlying the Supremacy Clause was articulated by the Supreme Court thus : "Federal action in any administrative, legislative or judicial form, if itself constitutional, must prevail over State action inconsistent therewith even when the State action was taken within a sphere in which it might otherwise act".[9] In *Re Eugene Debs* (158 US 564), the Supreme Court affirmed that "the entire strength of the nation may be used to enforce in any part of the land, the full and free exercise of all national powers and security of all rights entrusted by the Constitution to its care".

3.5.06 The Supremacy Clause of Article VI is considered the very key-stone of the arch of Federal power. "Without the Supremacy Clause", observes Schwartz, "there would be no real federal system, but only a moral union between the states. Draw out this particular bolt, and the federal machinery falls to pieces".[10]

3.5.07 Section 3 of Article II of the USA Constitution confers on the President the duty and power *inter alia* to "take care that the Laws be faithfully executed". Further, Section 8(18) of Article I empowers the Congress "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof". Section 8(15) of Article I authorises the Congress "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions".

3.5.08 By virtue of the above provisions, the Congress enacted the Enforcement Act, 1795 delegating this power to the President. This was supplemented by a statute of 1807 authorising the President to use the regular armed forces to supplement the Federal Militia for law enforcement purposes. The scope of Presidential authority was further enlarged when an Act of the Congress of April, 1871 conferred on the President the right and the duty to take such measures by the employment of the militia or the

7. Annexure VI. 1 of Chapter VI on "Emergency Provisions" discusses the principle of Federal Supremacy in the U.S.A. with reference to the Supremacy, the Guarantee and the Protection Clauses in the American Constitution.

8. *Mc-Culloch V Maryland*, Wheats 316, 436 (US 1819).

9. *Gibbons V Ogden*, Wheat 1 (US 1824), as "digested" by Bernard Schwartz in his book, "Constitutional Law, A Text book" (1979)

10. Schwartz, Bernard : "Constitutional Law, A Text book" (1979), Page 51.

and or naval forces of the United States or of either, or by other means, as he may deem necessary, for the suppression of any insurrection, domestic violence, or combinations in a State which hinder the execution of the laws, state or national.

3.5.09 Thus, the Constitutional provisions, Supreme Court Judgments and Federal Statutes have combined to invest the Federal Government, i.e., the President with the paramount duty and power to secure enforcement of Federal action through the use of force, if necessary. Among the few occasions that the U.S. Presidents had to invoke this power, two are typical and are briefly described below. [11]

(i) Disregarding the orders of the Supreme Court on racial de-segregation in schools, the Governor of Arkansas, in 1957, used the State National Guards to bar prospective Negro students from entering the high schools for whites at Little Rock. The guards were later withdrawn when the Attorney-General obtained an injunction against such action by the Governor. However, a large unruly mob prevented the students from entering the school. Thereupon, President Eisenhower despatched several companies of the US Army to Little Rock on September 25, 1957. Mob resistance disappeared and the Negro students were able to enter the schools without interference.

(ii) In September 1962, the Governor of Mississippi was convicted for contempt by the Court of Appeals for defying an order of the Supreme Court and using State and local police to prevent James Meredith, a Negro student, from registering at the State University. President Kennedy, through a proclamation, warned the State against resisting Federal authority. Thereupon, the University agreed to register Meredith. However, riots broke out in and around the University Campus when Meredith, accompanied by a big force of United States marshals, went to the University to register himself. President Kennedy sent several thousand US Army troops and several units of the State's National Guards to put down the riots. Resistance then collapsed. Meredith registered at the University and began attending classes.

Commonwealth Supremacy in Australian Constitution

3.5.10 Section 61 of the Australian Constitution states that the executive power of the Commonwealth extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. One important aspect of this executive power is the protection of the Constitutional organs of Government viz., the Executive, the Legislature and the Judiciary. This Section in conjunction with Section 51 (XXXIX) (which speaks of matters incidental to the execution of any power vested by the Constitution), is the basis for Commonwealth legislation establishing a police force to carry out this function, as well as to enforce the laws of the Commonwealth, either directly, or by coming to the aid of the judicial power. The State authorities also have the duty of enforcing Commonwealth laws.[12]

Federal Supremacy in West German Constitution

3.5.11 Article 83 of the West German Constitution provides that the Laender (i.e. the States) shall execute Federal laws as matters of their own concern, except where the Constitution itself provides otherwise. Article 84 of the Constitution enables the Federal Government to exercise supervision to ensure that the States execute the Federal laws and, for that purpose, to send Commissioners to the States. A Federal law which has been passed with the consent of the Upper House of the Federal Parliament (the Bundesrat) may provide that the Federal Government may issue individual instructions to State authorities for the execution of that law in particular cases.

Rule of Union Supremacy—Article 257(1) an executive Counterpart of Articles 246 and 254.

3.5.12 The essence of the rule embodied in Article 257(1) is that, in case of conflict, the valid exercise of Union executive power must take priority over the valid exercise of State executive power. Indeed, it is an 'executive' facet of the principle of Union Supremacy. We have already noted the legislative facet of the same principle in the Chapter on "Legislative Relations".[13]

3.5.13 The rationale of the principle of Union Supremacy in the executive field is that, in every constitutional system having two levels of government with demarcated jurisdictions, contests in respect of power are inevitable, even if each government is unmotivated by any desire to trespass upon the competence of the other. Application of the rule of executive supremacy of the Union resolves such conflicts and ensures harmony in the exercise of their respective powers by the two governments.

3.5.14 Articles 256 and 257 cast a mandatory duty on the States in regard to the exercise of their executive powers. The Calcutta High Court has observed :

> "The authority and the jurisdiction of the State Government to issue administrative directives are limited, firstly by the Constitution and, secondly, by the laws of the land. There is no law which authorises the State Government to issue directives to officers in charge of maintenance of law and order not to enforce the law of the land upon certain conditions being fulfilled and complied with. The provisions in Article 256 of the Constitution, which require that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, are mandatory in nature.....".[14]

3.5.15 Our Constitution, as already noted, envisages a single judiciary for enforcing both the Union and State laws. It has been pointed out that :

11. Kelly and Harbinson's The American Constitution (Fourth Edition) : Page 930.

12. Lumb R. D. and Ryan K.W.—The Constitution of the Commonwealth of Australia : Para 474.

13. Chapter II; Paras 2.5.02 to 2.5.22.

14. Jay Engineering Works *V.* State of West Bengal A. I. R. 1968 Cal. 407 at 488.

"Having regard to this unified system of administration of justice, it became essential to provide for the obligations and powers enacted in Articles 256 and 257 in order to ensure effective compliance with the Union laws and the due execution of the Union Executive powers".[15]

3.5.16 We have already noted that one State Government has stated that these Articles (256 and 257 read with Articles 365 and 356) 'by precept and practice have the tyrannical potential to cause serious inroads into the functioning of the States.' The various instances of 'misuse' of Article 356 cited by them, have nothing to do with Articles 256 and 257.

3.5.17 Apart from Articles 256 and 257, there are other provisions in the Constitution which give authority to the Union to give directions to the States. Article 339(2) also expressly extends the executive power of the Union to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction, to be essential for the welfare of the Scheduled Tribes in the State. No instance of such direction having been given has come to our notice. The President has also been empowered to give directions under Article 344(6) in regard to official language of the Union, under Article 347 with regard to the language spoken by a section of the population of a State and under Article 350A for providing adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. There is some divergence of opinion whether non-compliance of directions issued by the President by virtue of these provisions would attract Article 365. The better opinion appears to be that these provisions also, by inevitable implication, extend the executive power of the Union to the giving of these directions to the States in the exercise of its executive power. Any direction given by the President under any of these provisions is intended to be complied with and not ignored by the State concerned. These provisions would be rendered futile if any direction issued thereunder by the President or the Union Government were to be disobeyed or ignored with impunity. In sum, if any direction issued by the Union under any of the provisions, namely, Articles 256, 257, 339(2), 353, 360, 344(6), 347, 350A, 371C(2) and para 3 of the Fifth Schedule, is not complied with, then Article 365 will be attracted.

3.5.18 In a two-tier system of government, with a single judiciary, where the administration of Union law is largely secured through the machinery of the States, differences are bound to arise between the Union and the States in regard to the manner of implementation of Union laws and the exercise of Union's executive powers, specially if they conflict with the exercise of the executive powers of the State. Articles like 256 and 257 are essential to ensure harmonious exercise of the executive power by the Union and by the States, in keeping with the principle of Union supremacy and to enforce this principle, by giving appropriate directions, in the event of irreconcilable differences on vital issues.

3.5.19 The factual position is that the power to give directions under Article 256 and 257 has never been invoked and no proclamation has been made so far under Article 356 by the application of Article 365. Normally, as hitherto, differences between the Union and the States, in this context, would be sorted out by mutual consultation so as to maintain a healthy and constructive relationship between them, without resorting to the issue of formal constitutional directions. However, such provisions, to be used as a measure of last resort, are necessary to cope with situations of irreconcilable differences. The scope and limitations of these articles as discussed above and the fact that they have not been resorted to all these years clearly show that the objections to these provisions are hardly warranted. They rest mainly on hypothetical rather than empirical basis.

Scope of Article 365

3.5.20 Article 365 provides : "Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution". Without this provision, there would have been no sanction to ensure enforcement of the directions issued by the Union under any provision of the Constitution in the exercise of its executive power. Article 365 can be validly invoked, only if :—

(i) any direction is given by the Union in the valid exercise of its executive power under any of the provisions of the Constitution; and

(ii) such direction has not been complied with or given effect to by the State.

Misuse of Article 365—Judicial Review

3.5.21 If either of these pre-conditions is not satisfied Article 365 cannot be invoked. As has been rightly observed, 'the power conferred by Article 365 is not absolute; it is subject to the conditions mentioned in Article 365 and is therefore open to judicial review".[16] If a direction from the Union did not fulfil the preconditions laid down for the exercise of the power in the constitutional provision under which it was purportedly issued, or was given for a purpose extraneous to the one for which the power has been conferred by that provision, it would be invalid and open to challenge on that ground in Court.

Article 365 Does not impose an obligation

3.5.22 The words "it shall be lawful for the President to hold", do not impose an obligation. They only confer a power, the exercise of which is a matter of discretion with the President. On every non-compliance with a Union direction, irrespective of its effect, extent and significance, the President (in effect, the Union Council of Ministers) is not bound to hold that a situation has arisen in which the government of the non-complying State cannot be carried on in accordance with the Constitution. The President should exercise this drastic power in a reasonable

15. Setalvad M.C. "Union State Relations Tagore Law Lectures", Page 88.

16. Seervai H M, Constitutional Law of India, Volume I, 3rd Edition, Para 5.28, Page 160.

manner with due care and circumspection, and not mechanically. He should give due consideration to all relevant circumstances, including the response, if any, of the State Government to the direction. In response to the direction, the State Government might satisfy the President that the direction had been issued on wrong facts or misinformation, or that the required correction has been effected. The President should also keep in mind that every insignificant aberration from the constitutional path or a technical contravention of constitutional provisions by the functionaries of the State Government, would not necessarily and reasonably lead one to hold that the government in the State cannot be carried on in accordance with the Constitution.

3.5.23 Thus, Article 365 acts as a screen to prevent any hasty resort to drastic action under Article 356 in the event of failure on the part of a State Government to comply with or give effect to any constitutional direction given in the exercise of the executive power of the Union. The extraordinary powers under Article 365 are therefore necessary but should be exercised with great caution and in extreme cases.

Citizen can seek Judicial Redress if State does not perform the Constitutional duty under article 256

3.5.24 Even a private citizen whose interests or rights are jeopardised or affected by the failure of the the State Government to discharge the obligation imposed upon it by Article 256, can seek relief from court requiring the State Government to exercise its executive power to ensure compliance with the laws made by Parliament and existing laws. (The decisions in *Jay Engineering Works* vs. *State of West Bengal*, AIR 1968 Calcutta 407 and *Deputy Accountant General* vs. *State of Kerala*, AIR 1976 Kerala 158, Full Bench—ILR Kerala 492 are in point).

3.5.25 We would like to reiterate the caution sounded by the Administrative Reforms Commission that before issue of directions to a State under Articles 256 and 257, the Union should explore the possibilities of settling points of conflict by all other available means.[17] A direction under these provisions and the application of the sanction under Article 365 in the event of its non-compliance, is a measure of last resort. It is required to be administered with utmost caution after all other available alternatives to resolve the deadlock or conflict had been tried and failed. Indeed, in certain sensitive areas, a directive issued for correction of an aberration from the constitutional course, without prior ascertainment and consideration of the views of the State Government and the feelings of the interest groups, may itself produce a strong reaction, precipitating a constitutional crisis of grave magnitude.

3.5.26 We have given our anxious consideration to the suggestion that before issuing a formal direction under the provisions of Articles 256 and 257, the Union Government should consult the proposed Inter-Governmental Council and seek its good offices in settling the points of conflict. We are unable to support this suggestion because it will dilute the accountability of the Union Government for its actions to Parliament.

3.5.27 In the light of what has been said above, the conclusion is inescapable that Articles 256 and 257 which give power to the Union Executive to issue directions to the State and Article 365, without which there would be no sanction for securing compliance with those directions, are vital for ensuring proper and harmonious functioning of Union-State relations in accordance with the Constitution. They do not derogate from the federal principle, rather give effect to it.[18] They provide a technique for ensuring effective inter-governmental cooperation and maintaining the Rule of Law which are the fundamental values enshrined in our Constitution.

6. *SUGGESTION FOR DELETION OF ARTICLES* 339 *AND* 350*A*

3.6.01 We have referred in para 3.2.02 *ante* to the view put forward by one of the State Governments that the powers available under Articles 339 and 350A have hardly been made use of by the Union for the benefit of the Scheduled Tribes and linguistic-minorities, respectively, and that these two Articles could well be deleted. 'This would remove an avoidable irritant, viz. the power of the Union under these Articles to issue directions.'

Article 339

3.6.02 The Constitution envisages special attention being paid to the educational and economic interests of the weaker sections and, in particular, of the Scheduled Castes and the Scheduled Tribes (*vide* Article 46). This responsibility is shared jointly by the Union and the States. (*vide* Article 36 read with Article 12). In recognition of the importance of development of the Scheduled Tribes, specific provision has been made in the first Proviso to Article 275 for the payment, out of the Consolidated Fund of India, as grants-in-aid of revenues of the States to enable them to meet the costs of schemes under-taken by them, with the approval of the Government of India, for promoting the welfare of scheduled Tribes. Article 339(1) provides for the appointment of a Commission to report on the administration of Scheduled Areas and the welfare of Scheduled Tribes in States. A commission was accordingly set up in 1960, and it gave its report in 1961. Article 339 (2) provides that the Union Executive may, if necessary, give directions to a State as to the drawing up and execution of schemes essential for the welfare of Scheduled Tribes in the State.

3.6.03 It is evident that the Union Government has an important role to play in regard to the development and welfare of the Scheduled Tribes, not only by providing the necessary funds but also by way of effectuating the needed coordination among the various Union and State agencies for the successful implementation of the various schemes undertaken for the purpose. Further, the members of many a Scheduled Tribe live in areas which fall under two

17. Administrative Reforms Commission, "Report on Centre-State Relationships" : Recommendation 20, Pages 37-38.

18. Seervai H.M., "Constitutional Law of India", Volume I, 3rd Edition, Para 5.27, Page 159.

or more States and, in their case, inter-State coordination of welfare and development scheme is important. The Union should therefore have the power to issue directions, if necessary, to States in order to ensure proper planning, implementation and coordination of schemes for Scheduled Tribes. Although, the Union has not invoked this power so far, it would be incorrect to assume that the need for it will never arise. Hence, we cannot agree that Article 339 should be deleted.

Article 350A

3.6.04 The States Reorganisation Commission had observed [19] that the scheme of redistribution of State territories which it was recommending would in many cases, result in bringing together people speaking a common, language and, to that extent reduce the number of linguistic minorities. However the problem of such monorities would remain, notwithstanding the safeguards embodied in the Constitution, e.g. Articles 29 and 30 relating to cultural and educational rights and Article 347 relating to the use of minority languages in the administration. The Commission observed that the Union should be responsible not only for prescribing policies governing important matters, such as, the education of minority groups and use of minority languages for official purposes, but also for due observance of such policies.

3.6.05 The said Commission viewed the right of linguistic minorities to instruction in their mother-tongue and the use of monority languages in the administration as constituting the core of the problem of these minorities and therefore a positive duty should be cast on the State to provide for facilities to the minorities for education in the mother-tongue at the primary school stage. The Commission recommended that constitutional recognition should be given to this right and the Union Government should be empowered to issue appropriate directives for the enforcement of this right. The above recommendation was accepted and Article 350A incorporated in the Constitution in 1956.

3.6.06 We consider education in the mother-tongue as of fundamental significance for a child's development. The responsibility for providing all necessary facilities for such education should rest primarily with a State Government. But the Union Government should continue to be the overall authority for ensuring that this right of every linguistic minority is fully protected. It is therefore important that the Union Government should have the power to give directives to a State Government for the purpose.

3.6.07 None of the State Governments has advanced any argument to show that the exercise of the power of the Union to issue directions to a State under Article 350A, would result in hardship to a linguistic minority or cause an impediment to a State Government in providing facilities for instruction in the mother-tongue at the primary stage. We do not, therefore, see any valid reason for deleting this important Article.

19. Report of the State Reorganisation Commission (1955) Part IV : Chapter I : Pages 205-214.

7. *SUGGESTION FOR REVISION OF ARTICLES* 154(2) (b) *AND* 258(2)

3.7.01 The suggestion put forth by one State Government is that the provisions of Articles 154(2) (b) and 258(2) be revised to ensure that the powers thereunder are exercised only with the consent of the State Government. Before dealing with this suggestion it will be useful to notice these provisions :

154. "(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this Article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) Prevent Parliamnt or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor".

Scope of Article 258

3.7.02 Article 258(1) contemplates a situation where notwithstanding anything in the Constitution, the President may, with the consent of the State, entrust conditionally or un-conditionally to the State Government or its officers, functions in relation to any matter to which the executive power of the Union extends. It has been oberved by the Supreme Court that "the effect of Article 258(1) is merely to make a blanket provision enabling the President by notification to exercise the power which the Legislature could exercise by legislation, to entrust functions to the officers to be specified in that behalf by the President and subject to the conditions prescribed thereby". [20] It is significant that the entrustment takes place with the consent of the State. The functions which may be entrusted under clause (1) of Article 258 should relate to a matter with respect to which the executive power veted in the Union either under the general provision in Article 73 or any specific provision (e.g. Article 298) in the Constitution. It does not authorise the President to delegate those powers and functions with which he is, by the express provisions of the Constitution, invested *as President* [21] Functions of the Union in relation to a Union Territory, in respect of matters in the Union, State or Concurrent List can also be entrusted to a State under this provision.

3.7.03 Article 258(2) empowers Parliament to enact a law providing for conferring of powers and imposition of duties or for authorising the conferring of powers and imposition of duties upon the State or its officers and authorities, notwithstanding the fact that it relates to a matter with repect to which the legislature of the State has no power to make laws. Thus, it covers a situation where without a State's consent, powers can be conferred and duties imposed by a law made by Parliament within its competence, even if the State legislature has no power to make a law with repect to the subject matter of the Union law.

20. Jayantilal Amratlal *V.* F.N. Rana, 5 SCR 294, Para 16.
21. Ibid, Para 12.

the the conferred on Parliament by the Constitution States is required for enforcing a law of Parliament, the enactment itself makes provisions for the exercise of the requisite powers and duties by States, or enables the Union Government to delegate or entrust such powers and duties to them. (An enactment of Parliament may contain both these types of provi-

States is required for enforcing a law of Parliament, the enactment itself makes provisions for the exercise of the requisite powers and duties by States, or enables the Union Government to delegate or entrust such powers and duties to them. (An enactment of Parliament may contain both these types of provisions). However, a law of Parliament or an "existing" amount to redelegation of its delegated powers by the delegatee. This assumption is fallacious. the legislative powers of Parliament entrenched in the Constitution, are plenary powers and not delegated powers. Reference to the said maxim is entirely misplaced.- The maxim contains a kindred principle which limits the operation of the maxim *qui facit per alium facit per se*, so that one agent cannot lawfully appoint another to perform the duties of his agency. This is not the position here.

3.7.05. The question why unlike Clause (1), the entrustment of Union power under Clause (2) of the Article can be made without the consent of the State, is to be answered not in terms of abstract legal aphorisms but on pragmatic considerations of the functional viability and necessity of these provisions. We have noticed that the Constitution-makers instead of having the more expensive and conflict-prone arrangement of securing enforcement of Union and State laws through separate agencies, opted to have the Union laws and policies enforced through the machinery of the States. Article 258 provides two alternative courses for securing the implementation of the laws and policies of the Union. Under Clause (1), the President may entrust, with the consent of the State, any of the functions to which the executive power of the Union extends, Under Clause (2) the entrustment is by law enacted by Parliament. While executive action to confer powers and duties requires consent of the State Government, Parliament has the power to determine the appropriate instrumentalities, whether these belong to the Union or a State or both, for enforcing its laws, Entrustment of powers and duties on a State Government or its officers of authorities by law by Parliament does not therefore require any consent by the State Government.

3.7.06. The entire scheme illustrates the close interdependence of the Union and the States in their executive functioning. A special feature of such functioning is that the administrative powers and duties which a State or its officers/authorities are called upon to exercise in implementing Union laws, are closely allied to and often inter-mingled with the normal activities undertaken by the State in running its own administration. If such administrative powers and duties were to be undertaken by the Union instead of by a State there would be two parallel agencies undertaking almost similar functions. Such an arrangement would not only be more expensive and less efficient but also couldlead to conflict between the two sets of agencies.

3.7.07 Thus, clause (2) of Article 258 gives unqualified power to Parliament to enact a law conferring powers and imposing duties on a State or its officers/authorities, notwithstanding that the law relates to a matter with respect to which the State has no legislative competence. The only valid objection to such statutory delegation of powers and imposition of duties could be that it may result in extra financial burden on the State exchequer. Clause (3) of the Article imperatively requires that "there by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties".

3.7.08. In practice, whenever the assistance of States is required for enforcing a law of Parliament, the enactment itself makes provisions for the exercise of the requisite powers and duties by States, or enables the Union Government to delegate or entrust such powers and duties to them. (An enactment of Parliament may contain both these types of provisions). However, a law of Parliament or an "existing" law applicable in a State may make it the responsibility of the Union to exercise certain powers/duties and may not specifically provide for their delegation or entrustment to States. At the same time, any such law may not prohibit such delegation or entrustment. In that event, the Union may entrust any of these powers and duties to a State with its consent, by invoking clause (1) of Article 258. Also, executive powers and duties of the Union which are not governed by either a law of Parliament or an "existing" law may be entrusted by the Union to a State, again with its consent, by invoking clause (1).

3.7.09 No specific case has been brought in evidence before us to show that there has been any problem between the Union and the States in the operation of clauses (1) and (2) of Article 258 or that the mechanism provided in clause (3) has been found inadequate to compensate a State for the extra costs incurred by it in connection with the exercise of its delegated powers and duties.

3.7.10 Federalism is more a functional arrangement for co-operative action, than a static institutional concept. Article 258 provides a tool, by the liberal use of which, co-operative federalism can be substantially realised in the working of the system. We, therefore, recommend a more extensive and generous use of this tool, than has hitherto been made. for progressive decentralisation of powers to the Governments of the States and/or their officers and authorities.

8. *INTER-GOVERNMENTAL CO-ORDINATION AND CO-OPERATION*

3.8.01 The diffused pattern of distribution of governmental functions between the Union and the States, and the manner in which the administration and enforcement of most Union laws is secured through the machinery of the States, postulate that

the inter-governmental relations under the Constitution have to be worked on the principles of cooperative federalism. Several other features of the Constitution reinforce this conclusion. For ensuring intergovernmental coordination and cooperation, the Constitution envisages several institutions or bodies. The most important of them is the forum of Inter-State Council contemplated by Article 263. We have dealt with this aspect in Chapter IX.

9. *RECOMMENDATIONS*

3.9.01 Articles 256, 257 and 365 are wholesome provisions, designed to secure coordination between the Union and the States for effective implementation of Union laws and the national policies indicated therein. Nonetheless, a direction under Articles 256 and 257 and the application of the sanction under Article 365 in the event of its non-compliance, is a measure of last resort. Before issue of direction to State or aplpication of sanction under Article 365, utmost caution should be exercised and possibilities explored for settling points of conflict by all other available means.

(Paras 3.5.25 & 3.7.10)

3.9.02 Federalism is more a functional arrangement for cooperative action, than a static institutional concept. Article 258 provides a tool, by the liberal use of which, co-operative federalism can be substantially realised in the working of the system. A more extensive and generous use of this tool should be made, than has hitherto been done, for progressive decentralisation of powers to the Governments of the States and/or their officers and authorities.

Para 3.7.10)

CHAPTER IV

ROLE OF THE GOVERNOR

16—325/87

CONTENTS

LIST OF ANNEXURE

CHAPTER IV

ROLE OF THE GOVERNOR

1. *INTRODUCTION*

4.1.01 The role of the Governor has emerged as one of the key issues in Union-State relations. The Indian political scene was dominated by a single party for a number of years after Independence. Problems which arose in the working of Union-State relations were mostly matters for adjustment in the intra-party forum and the Governor had very little occasion for using his discretionary powers. The institution of Governor remained largely latent. Events in Kerala in 1959 when President's rule was imposed, brought into some prominence the role of the Governor, but thereafter it did not attract much attention for some years. A major change occurred after the Fourth General Elections in 1967. In a number of States, the party in power was different from that in the Union. The subsequent decades saw the fragmentation of political parties and emergence of new regional parties. Frequent, sometimes unpredictable realignments of political parties and groups took place for the purpose of forming governments. These developments gave rise to chronic instability in several State Governments. As a consequence, the Governors were called upon to exercise their discretionary powers more frequently. The manner in which they exercised these functions has had a direct impact on Union-State relations. Points of friction between the Union and the States began to multiply.

4.1.02 The role of the Governor has come in for attack on the ground that some Governors have failed to display the qualities of impartiality and sagacity expected of them. It has been alleged that the Governors have not acted with necessary objectivity either in the manner of exercise of their discretion or in their role as a vital link between the Union and the States. Many have traced this mainly to the fact that the Governor is appointed by, and holds office during the pleasure of, the President, (in effect, the Union Council of Ministers). The part played by some Governors, particularly in recommending President's rule and in reserving State Bills for the consideration of the President, has evoked strong resentment. Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office. Criticism has also been levelled that the Union Government utilises the Governors for its own political ends. Many Governors, looking forward to further office under the Union or active role in politics after their tenure, came to regard themselves as agents of the Union.

2. *HISTORICAL BACKGROUND*

4.2.01 The Government of India Act, 1858 transferred the responsibility for administration of India from the East India Company to the British Crown. The Governor then became an agent of the Crown, functioning under the general supervision of the Governor-General. The Montagu-Chelmsford Reforms (1919) ushared in responsible Government albeit in a rudimentary form. However, the Governor continued to be the pivot of the Provincial administration.

4.2.02 The Government of India Act, 1935 introduced provincial autonomy. The Governor was now required to act on the advice of Ministers responsible to the legislature. Even so, it placed certain special responsibilities on the Governor, such as prevention of grave menace to the peace or tranquility of the Province, safeguarding the legitimate interests of minorities and so on. The Governor could also act in his discretion in specified matters. He functioned under the general superintendence and control of the Governor-General, whenever he acted in his individual judgement or discretion.

4.2.03 In 1937, when the Government of India Act, 1935 came into force, the Congress Party commanded a majority in six provincial legislatures. They foresaw certain difficulties in functioning under the new system which expected Ministers to accept, without demur, the censure implied, if the Governor exercised his individual judgement for the discharge of his special responsibilities. The Congress Party agreed to assume office in these Provinces only after it received an assurance from the Viceroy that the Governors would not provoke a conflict with the elected Government.[1]

4.2.04 Independence inevitably brought about a change in the role of the Governor. Until the Constitution came into force, the provisions of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 were applicable. This Order omitted the expressions 'in his discretion', 'acting in his discretion' and 'exercising his individual judgement', wherever they occurred in the Act. Whereas, earlier, certain functions were to be exercised by the Governor either in his discretion or in his individual judgement, the Adaptation Order made it incumbent on the Governor to exercise these as well as all other functions only on the advice of his Council of Ministers.

4.2.05 The framers of the Constitution accepted, in principle, the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. While the pattern of the two levels of government with demarcated powers remained broadly similar to the pre-Independence arrangements, their roles and inter-relationships were given a major re-orientation.

4.2.06 The Constituent Assembly discussed at length the various provisions relating to the Governor. Two important issues were considered. The first

[1]. Munshi K.M.: "Pilgrimage to Freedom" Vol. I: page 44.

issue was whether there should be an elected Governor. It was recognised that the co-existence of an elected Governor and a Chief Minister responsible to the Legislature might lead to friction and consequent weakness in administration. The concept of an elected Governor was therefore given up in favour of a nominated Governor. Explaining in the Constituent Assembly why a Governor should be nominated by the President and not elected, Jawaharlal Nehru observed that "an elected Governor would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre."[2]

4.2.07 The second issue related to the extent of discretionary powers to be allowed to the Governor. Following the decision to have a nominated Governor, references in the various articles of the Draft Constitution relating to the exercise of specified functions by the Governor 'in his discretion' were deleted. The only explicit provisions retained were those relating to Tribal Areas in Assam where the administration was made a Central responsibility. The Governor as agent of the Central Government during the transitional period could act independently of his Council of Ministers. Nonetheless, no change was made in Draft Article 143, which referred to the discretionary powers of the Governor. This provision in Draft Article 143 (now Article 163) generated considerable discussion. Replying to it, Dr. Ambedkar maintained[3] that vesting the Governor with certain discretionary powers was not contrary to responsible Government.

3. *CONSTITUTIONAL PROVISIONS AND THEIR SCOPE*

4.3.01 The Constitution as it finally emerged, envisages that normally there shall be a Governor for each State (Article 153). The Governor is appointed by the President and holds office during his pleasure [Articles 155 & 156(1)]. Article 154 vests the executive power of the State in the Governor who exercises it either directly or through officers[4] subordinate to him in accordance with the Constitution. Under Article 163(1), he exercises almost all his executive and legislative functions with the aid and advice of his Council of Ministers. Thus, executive power vests theoretically in the Governor but is really exercised by his Council of Ministers, except in the limited sphere of his discretionary action.

4.3.02 Article 167 of the Constitution imposes duties on the Chief Minister to communicate to the Governor all decisions of the Council of Ministers and proposals for legislation and such other information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and "if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council'. The information which the Governor is entitled to receive under clause (b) of the Article, must not only be related to the affairs of the State administration, but also have a nexus with the discharge of his Constitutional responsibilities.

4.3.03 The nature and scope of these duties of the Chief Minister and the corresponding rights and powers of the Governor are to be understood in the context of their respective roles and responsibilities under a Cabinet system of government *as adopted in our Constitution*. Under this system, the Governor as Constitutional head of the State has "a right to be consulted, to warn and encourage" and his role is overwhelmingly that of "a friend, philosopher and guide" to his Council of Ministers. Harmoniously with this role, the Governor also functons as a sentinel of the Constitution and a live link with the Union. The rationale of Article 167 is that by affording access to necessary information relating to the administration of the affairs of the State and the legislative proposals, it enables the Governor to discharge effectively this multi-faceted role.

4.3.04 The options available to the Governor under Article 167 give him persuasive and not dictatorial powers to override or veto the decisions or proposals of his Council of Ministers relating to the administration of the affairs of the State. At best, "they are powers of giving advice or counselling delay or the need for caution and they are powers which may be used to build bridges between the Government and opposition".[5] The efficacy of this advisory role of the Governor depends, in no small measure, on the respect which the incumbent of the office inspires for his wisdom and integrity in the mind of his Chief Minister and Ministers, in particular, and the legislature and the public, in general.

4.3.05 The Governor does not exercise the executive functions individually or personally. The State Government at various levels takes executive action in the name of the Governor in accordance with the rules of business framed under Article 166(3). Hence, it is the State Government and not the Governor who may use or be sued in respect of any action taken in the exercise and performance of the powers and duties of his office (Articles 361, 299(2) and 300).

4.3.06 In a very limited field, however, the Governor may exercise certain functions in his discretion, as provided in Article 163(1), which reads as follows :

> (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
>
> (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

---

[2]. Constituent Assembly Debates (Revised Edition); Volume VIII : page 455.

[3]. Constituent Assembly Debates (Revised Edition) : Volume VIII : pages 500 to 502.

[4]. The expression 'officers' in this Article includes Ministers.

[5]. Seervai H.M., Constitutional Law of India, 3rd Edn., Vol. II, Para 18.52, page 1732.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired in to in any court.

4.3.07 The first part of Article 163 (1) requires the overnor to act on the advice of his Council of Misters. There is, however, an exception in the latter art of the clause in regard to matters where he is *by or under* the Constitution required to function in his discretion. The expression "required" signifies that the Governor can exercise his discretionary powers only if there is a compelling necessity to do so. It has been held [6] that the expression "by or under the Constituion" means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication. We would like to add that such necessity may also arise from rules and orders made "under" the Constitution.

4.3.08 Thus, the scope of discretionary powers as provided in the exception in clause (1) and in clause (2) of Article 163 has been limited by the clear language of the two clauses. It is an accepted principle that in a parliamentary democracy with a responsible form of government, the powers of the Governor as Constitutional or formal head of the State should not be enlarged at the cost of the real executive, viz. the Council of Ministers. The scope of discretionary powers has to be strictly construed, effictively dispelling the apprehension, if any, that the area for the exercise of discretion covers all or any of the functions to be exercised by the Governor under the Constitution. In other words, Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The area for the exercise of his discretion is limited. Even this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.

4.3.09 The Constitution contains certain provisions expressly providing for the Governor to act—

(A) in his discretion; or

(B) in his individual judgement; or

(C) independently of the State Council of Ministers; viz.

(a) (i) *Governors of all the States*—Reservation for the consideration of the President of any Bill which, in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill [Second Proviso to Article 200].

(ii) The Governors of Arunachal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura have been entrusted with some specific functions to be exercised by them in their discretion (*vide* Articles 371A, 371F and 371H and paragraph 9 of the Sixth Schedule). These have been dealt with in detail in Section 14 of this Chapter.

(b) The Governors of Arunachal Pradesh and Nagaland have been entrusted with a special responsibility with respect to law and order in their respective States. In the discharge of this responsibility, they are required to exercise their "individual judgement" after consulting their Council of Ministers. This aspect also has been discussed in Section 14 of this Chapter.

(c) *Governors as Administrator of U. T.*—Any Governor, on being appointed by the President as the administrator of an adjoining Union Territory, has to exercise his functions *as administrator*, independently of the State Council of Ministers [Article 239(2)]. In fact, as administrator of the Union Territory, the Governor is in the position of an agent of the president.

4.3.10 Articles 371(2) and 371C(1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively. Article 371(1), which has since been deleted, made a similar provision in respect of the Governors of Andhra Pradesh and the erstwhile composite State of Punjab. The Presidential Orders so far issued under these Articles have provided that the concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion. (All these Orders, except the one issued under Article 371C, have since been rescinded). It has to be noted that these Articles themselves do not expressely provide for the exercise of discretion by the concerned Governors. Thus, these Presidential Orders are instances of a Governor being required to act in his discretion "under" the Constitution. These Orders are discussed in some detail in Section 14 of this Chapter.

4.3.11 The obligation of the Governor to discharge a function under the Constitution in the exercise of his discretion may also arise by implication from the tenor of the constitutional provision, the very nature of the function or the exigencies of a particular situation where it is not possible or practicable for the Governor to seek or act on Ministerial advice. Some typical situations are given below :—

(a) A Governor has necessarily to act in his discretion where the advice of his Council of Ministers is not available, e.g. in the appointment of a Chief Minister soon after an election, or where the Council of Ministers has resigned or where it has been dismissed [Article 164(1)].

(b) A Governor may have to act against the advice of the Council of Ministers, e.g. dismissal of a Ministry following its refusal to resign on being defeated in the Legislative Assembly on a vote of no-confidence [Article 164(1) &(2)].

(c) A Governor may require that any matter decided by a Minister may be considered by the Council of Ministers (Article 167).

(d) A Governor may have to make a report to the President under Article 356 that a situation has arisen in which the government of the State cannot be carried on in accordance with the

6. Samsher Singh *Vs.* State of Punjab (AIR 1974 SC 2192): Para: 48 and 54 to 56.

provisions of the Constitution. Obviously, in such a situation he may have to act against the aid and advice of the Council of Ministers as the situation may be due to the various acts of omission or commission on the part of the Council of Ministers (Article 356).

(e) A Governor may have to exercise his discretion in reserving a Bill for the consideration of the President (Article 200).

4.3.12 The Governor must discharge his discretionary functions to the best of his judgement and not at the dictation of any outside authority, unless such authority is authorised by or under the Constitution to issue directions in that matter. An instance of such authorisation is furnished by Article 371F(g) which makes the discharge by the Governor of Sikkim of his special responsibility subject to such directions as the President may issue.

4.3.13 Article 355 of the Constitution imposes a duty on the Union (i) to protect every State against external aggression and internal disturbance; and (ii) to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. If a situation arises when the Government of a State cannot be so carried on in accordance with the Constitution, Article 356 provides for a report from the Governor of the State to the President. It is implicit in these two Articles that, for the proper discharge of its paramount responsibilities, the Union has a right to expect and the Governor an obligation to send reports on important developments in the State as and when they take place, which appear to the Governor to contribute towards a potential or actual situation of external aggression or internal disturbance or failure of the constitutional machinery in the state.

4.3.14 The Constitution thus assigns to the Governor the role of a Constitutional sentinel and that of a vital link between the Union and the State. The Governor, on occasions, could also play a useful role as a channel of communication between the Union and the State in regard to matters of mutual interest and responsibility. If any directions are issued by the Union in the exercise of its executive power to the State Government under any provision of the Constitution, such as, Articles 256 and/or 257, it will be the duty of the Governor to keep the Union informed as to how such directions are being implemented by the State Government. Being the holder of an independent Constitutional office, the Governor is not a subordinate or a subservient agent of the Union Government. However, in respect of those specified functions which the Constitution requires him to perform as agent of the Union, he is accountable to the President.

4.3.15 We have indicated in the preceding paragraphs the duties of the Governor as the Constitutional head of the State, his responsibility to the Union and his role as a link between the Union and the State. In the discharge of these responsibilities he should have due regard to his oath of office, vide Article 159 which binds him to preserve, protect and defend the Constitution and the law, and also to devote himself to the service and well being of the people of the State concerned.

4.3.16 The Administrative Reforms Commission (ARC) considered certain aspects of Union-State relations. The Study Team constituted by the ARC explaining the nature of the Governor's role, observed[7] that the "office of the Governor is not meant to be an ornamental sinecure." It pointed out that his character, calibre and experience must be of an order that enables him to discharge with skill and detachment his dual responsibility towards the Union and the State of which he is the constitutional head. According to the Study Team, this duality is perhaps its most important and certainly its most unusual feature. It stated that "it is vitally important therefore that what the Governor is required to do should be clearly understood by him, by the State Government and by the Centre. And it is equally important that the Governor should discharge his functions judiciously, impartially and efficiently".

4.3.17 The Administrative Reforms Commission in its Report (1969), observed [8] that the Governor as head of the State should by his impartiality and sense of fair-play, command the respect of all parties in his State. Much has happened since then. Nonetheless, these observations remain as valid today as they were then.

4. *MAIN FACETS OF THE GOVERNOR'S ROLE*

4.4.01 The three important facets of the Governor's role arising out of the Constitutional provisions, are :—

(a) as the constitutional head of the State operating normally under a system of Parliamentary democracy;

(b) as a vital link between the Union Government and the State Government; and

(c) as an agent of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article 356(1)].

Criticism of the Role of the Governor as to—

4.4.02 There is little controversy about (c) above. But the manner in which he has performed the dual role, as envisaged in (a) and (b) above, has attracted much criticism. The burdern of the complaints against the behaviour of Governors, in general, is that they are unable to shed their political inclinations, predilections and prejudices while dealing with different political parties within the State. As a result, sometimes the decisions they take in their discretion appear as partisan and inended to promote the interests of the ruling party in the Union Government, particularly if the Governor was earlier in active politics or intends to enter politics at the end of his term. Such a behaviour, it is said, tends to impair the system of Parliamentary democracy, detracts from the autonomy of the States, and generates strain in Union-State relations.

7. Paras 18.1 and 18.10 of report.

8. "Report on Centre-State Relatonships": Chapter IV: Para 4.

Use of Discretion—

(i) In Choosing Chief Minister

4.4.03 (a) Soon after an election when a single party or a coalition emerges as the largest single party or group, there is no difficulty in the selection and appointment of a Chief Minister. However, where no single party or group command absolute majority, the Governor has to exercise his discretion in the selection of Chief Minister. In such a situation, the leader of the party or group which, in so far as the Governor is able to ascertain, has the largest support in the Legislative Assembly, may be called upon to form the Government, leaving it to the Assembly to determine the question of confidence. This procedure leaves little scope for any allegation of unfairness or partisanship on the part of the Governor in the use of his discretion. Such a situation may also arise when a Ministry resigns after being defeated in the Assembly or because it finds itself in a minority. The above principle was followed in Madras (1952) when the Congress Party was called upon to form the Government. It was also followed in Bihar (June 1968). When the Government resigned, the leader of the Congress Party was invited to form the government and appointed Chief Minister. However, this method was not followed in the case of Andhra (1954). Even though the Communist Party was the largest single party, its leader was not called upon to form the Government.

(ii) In Testing Majority

(b) Governors have employed various ways to determine which party or group is likely to command a majority in the Legislative Assembly. Some have relied only on lists of supporters of rival claimants produced before them, as in Bihar (June 1968) when the Congress Party was called upon to form a government. In some cases, physical verification by counting heads was carried out as in the case of Gujarat (1971), when the leader of the newly formed Congress (C) Party was called upon to form the government. Similarly, in Uttar Pradesh (1967), the leader of the Congress Party was appointed Chief Minister after the Governor had physically counted his supporters. In the case of Rajasthan (1967), physical verification was resorted to and the leader of the Congress Party was called upon to form the Government; but, in determining the relative strengths of the Congress Party and Samyukta Dal, the Independents were ignored. If they had been taken into account, the result might well have been different. Further, when the leader of the Congress Party did not form the government, the leader of the opposition group was not called upon to do so; instead, President's rule was imposed.

(iii) In Dismissal of Chief Minister

(c) There has been no uniformity in regard to the criteria adopted for dismissal of a Chief Minister. Obviously, a Chief Minister cannot continue in office after he ceases to command a majority in the Legislative Assembly. It is normal for a Chief Minister to resign immediately or face the Legislative Assembly to prove that he continues to enjoy majority support. The Chief Minister of West Bengal (1967) neither resigned nor faced the Assembly within the time indicated by the Governor. The Governor first gave a fortnight's time and later extended it by a week, giving time till the end of November, 1967 to summon the Assembly. As the Ministry would not agree to summon the Assembly earlier than on 18th December, 1967, the Governor dismissed the Ministry on 21st November, 1967. In the case of Uttar Pradesh (1970), the Chief Minister was asked to resign, even though he was prepared to face the Assembly within two days.

(iv) In Dissolving the Legislative Assembly

(d) Various Governors have adopted different approaches in similar situations in regard to dissolution of the Legislative Assembly. The advice of a Chief Minister, enjoying majority support in the Assembly, is normally binding on the Governor. However, where the Chief Minister had lost such support, some Governors refused to dissolve the Legislative Assembly on his advice, while others in similar situations, accepted his advice and dissolved the Assembly. The Assembly was dissolved in Kerala (1970) and in Punjab (1971) on the advice of the Chief Minister whose claim to majority support was doubtful. However, in more or less similar circumstances in Punjab (1967), Uttar Pradesh (1968), Madhya Pradesh (1969) and Orissa (1971) the Legislative Assembly was not dissolved. Attempts were made to instal alternative Ministries.

(v) In Recommending Presidents's Rule

(e) In a number of situations of political instability in the States, the Governors recommended President's rule under Article 356 without exhausting all possible steps under the Constitution to induct or maintain a stable government. The Governors concerned neither gave a fair chance to contending parties to form a Ministry, nor allowed a fresh appeal to the electorate after dissolving the Legislative Assembly. Almost all these cases have been criticised on the ground that the Governors, while making their recommendations to the President, behaved in a partisan manner. Further, there has been no uni formity of approach in such situations. We have dealt with these aspects in Chapter VI, "Emergency Provisions".

(vi) In Reserving Bills for President's Consideration

(f) Governors have generally gone by the advice of their Council of Ministers in reserving State Bills passed by the Legislature for the consideration of the President. There have been, however, some instances when Governors reserved State Bills in the exercise of their discretion, creating a controversy in some cases. We have dealt with the various aspects of reservation of Bills for the consideration of the President, in Chapter V.

Other Criticisms Regarding Nominations to Legislative Council

4.4.04 The use of discretion by Governors in the nomination of members to the Legislative Council has been criticised. The first case of exercise of discretion in regard to such nomination arose as early

as in 1952, in Madras, when Shri C. Rajagopalachari was nominated to the Legislative Council and was then appointed as Chief Minister. This issue apparently cropped up again in Maharashtra in the recent past. The action has been criticised on the ground that the Governor has no discretion in such matters.

Regarding exercise of Discretion as Chancellor of University

4.4.05 The use of discretion by Governor, in nominating members of a University Council or University functionary, in his capacity as Chancellor of a University in the State, has also come in for criticism. In several State Universities, the concerned legislations specifically provide that the Governor by virtue of his office shall be Chancellor or head of the University and by these legislations certain powers have been conferred on the Chancellor. Governors have exercised their powers as Chancellor under the statute and not as Governor. Actions of the Governors have again been questioned on the premise that they have to abide by the advice of the Council of Ministers even in such cases.

4.4.06 Perceptions of Governors of their own role have varied. In one case a Governor wrote that "a Governor's *first* duty is to know that he is the representative of the Centre. The Governor's *second* duty is to look after the interests of the State to which he is assigned". Some Governors could not resist the temptation to take active part in politics, e.g. in the election of the Leader of the ruling party in the Union : influencing voters to return to power the person holding the office of the Prime Minister : and in the distribution of party tickets for Lok Sabha elections. In some cases, even where they were expected to abide by the advice of the Council of Ministers, either the approvals were delayed or not given.

5. *SUGGESTIONS IN REGARD TO INSTITUTION AND ROLE OF GOVERNOR*

4.5.01 A wide spectrum of suggestions in regard to various aspects of the institution and role of the Governor have been placed before us by the State Governments and other knowledgeable persons. A majority of the State Governments do not find anything wrong with the institution of the Governor. However, a few of them have demanded abolition of the post of the Governor. But their demand on this point is not rigid. They (with the exception of one) have given alternative suggestions with regard to selection, appointment, powers and role of the Governor.

Need for Governor's Office—Vital Importance of his Multi-Faceted Role

4.5.02 The Parliamentary system of the Cabinet type, which the Constitution has adopted at the State level, is not on all fours with that of the United Kingdom. It is a case *sui generis*. The Governor in our system does not function as constitutional head for the whole gamut of his responsibilities. There is an important area, though limited and subject to Constitutional constraints, within which he acts in the exercise of his discretion. It will bear reiteration that there are more than one facet of his role. As a 'bridge' between the Union and the State, he can foster better understanding between them and remove such misapprehensions as may be souring their relations. He is sentinel of the Constitution. He is a live link or channel between the Union and the State. As such link, it is his duty to keep the Union informed of the affairs of the State Administration, whenever he feels that matters are not going in accordance with the Constitution, or there are developments endangering the security or integrity of the country. The Governor thus assists the Union in discharging its responsibilities towards the States. The part which the Governor plays to help maintain the democratic form of Government in accordance with the Constitution is of vital importance. In the ultimate analysis, due observance of the Constitutional provisions is the soundest guarantee of enduring unity and integrity of the nation.

Governor is Linchpin of Constitutional Apparatus

4.5.03 The Governorr whether acting with or without the adivce of the Council of Ministers, plays a pivotal role in our constitutional system and in its working. He is the linchpin of the constitutional apparatus of the State. All executive action of the State Government is expressed to be taken in his name. He chooses and appoints the Chief Minister in his discretion, on the criiterion that the latter should be able to form a Ministry commanding majority Support in the Assembly without his assent, no Bill can become law. Without his prior authorisation no Money Bill can be introduced in the State legislature. Without his orders, the House or Houses of the State Legistature cannot be summoned or prorogued. It is he who orders dissolution of the legislative Assembly, sometimes in his discretion when satisfied after exploring all alternatives that there is no person commanding majority support in the Assembly to form a Council of Ministers. A large number of other important functions have also been entrusted by the Constitution to the Govornor. It is not necessary to recapitulate all of them here.

Governors's Office assures continuity of Government

4.5.04 The tenure of the Governor, unlike that of the Chief Mini,sters does not depend on majority support in the Legislative Assembly. Chief Ministers change from time to time depending on their enjoyment of loss of such support. But the Governor continues irrespective of change of Ministries or even dissolution of the Legislative Assembly. The Governor continues even on the expiry of his 5 year term till his successor takes over. Thus, the institution of Governor assures continuity of the process of Government. He fills the political vacuum as and when there is a breakdown of the constitutional machinery in the State. Even in the normal working of the system, there may be some situations under the Constitution where the advice of Council of Ministers is not available to him for a short period. An instance of such a situation would be where a Ministry resigns and refuses to stay in office as care-taker till another Ministry is formed or till President's rule is imposed. During a short interregnum of this nature, the Governor would be within his power to

carry on the executive affairs of the State through his subordinates, as the Constitution does not intend that there should be a break or paralysis of the executive government in such situations.[9]

4.5.05 A suggestion has been made that the Chief Justice of the High Court or the Speaker of the Legisslative Assembly can be entrusted, in addition to his normal duties, with the functions of the Governor. Governors have a multi-faceted role and there will be an undue mixing of responsibilities and power leading to complicatons. We are, therefore, unable to agree with this suggestion.

Indispensability of Governor's Office

4.5.06 In sum, the functions of the Governor are at once diverse and important. Functioning in normal times as the constitutional head of the State and as a vital link between the Union and the State, he becomes an agent of the Union in certain special circumstances, *e.g.*, when a proclamation under Article 356 is in operation. He fills the vacuum and ensures continuity in executive government for short periods during which no Council of Ministers is available to aid and advise him. The Governor is the key functionary of the system envisaged by the Constitution. No other constitutional functionary can discharge these responsibilities in addition to his own duties. We are, therefore, of the firm view that it is an office which cannot be dispensed with.

4.5.07 In para 4.1.02, we referred to the criticism levelled against the manner in which some Governors have exercised their functions as also against the role of the Union Government in relation to this office. It has been suggested to us that effective constitutional safeguards should be provided to ensure that the office of the Governor is free from controversy. While we agree that effective safegaurds for this purpose should be evolved, we are of the view that not all these safeguards can be written into the Constitution. As we shall see in the succeeding paras, most of the safeguards will be such as cannot be reduced to a set of precise rules of procedure or practice. This is so because of the very nature of the office and the role of the Governor. The safeguards have mostly to be in the nature of conventions and practices, to be understood in their proper perspective and faithfully adhered to, not only by the Union and the State Governments but also by the political parties.

6. *SELECTION OF GOVERNORS*

4.6.01 In all the evidence before us, a common thread is that much of the criticism against the Governors could have been avoided if their selection had been made on correct principles to ensure appointment of right type of persons as Governors. Even the most critical of the witnesses agree that if proper persons are chosen there will be little cause of complaint.

4.6.02 Most of the replies to our questionnaire received from a cross-section of the public, are critical of the quality and standard of some of the persons appointed as Governors. To summarise their comments :—

- Discarded and disgruntled politicians from the party in power in the Union, who cannot be accommodated elsewhere, get appointed. Such persons, while in office, tend to function as agents of the Union Government rather than as impartial constitutional functionaries.
- The number of Governors who have displayed the qualities of ability, integrity, impartiality and statesmanship has been on the declining side.

A State Government has cited recent instances of persons who had to resign from office as Ministers following judicial strictures, being subsequently appointed as Governors. It has also quoted instances of Governors who returned to active politics. Another State Government, however, is of the view that persons who have been in active politics need not be debarred from being considered for appointment as Governor if they are of high public stature and are capable of rising above party and political affiliations.

4.6.03 Speaking in the Constituent Assembly on the choice of Governors, Jawaharlal Nehru observed:[10]

> "I think it would be infinitely better if he was not so intimately connected with the local politics of the province.....And would it not be better to have a more detached figure, obviously a figure that..... must be acceptable to the Government of the province and yet he must not be known to be a part of the party machine of that province..... But on the whole it probably would be desirable to have people from outside—eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally while cooperating fully with the Government and carrying out the policy of the Government, at any rate helping in every way so that that policy might be carried out, he would nevertheless represent before the public someone slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine.
>
> .....
>
> But it is obviously desirable that eminent leaders of minorities.....eminent leaders of groups should have a chance. I think they will have a far better chance in the process of nomination than in election."

4.6.04 The ARC Study Team on Centre-State Reltionships[11] found that many Governors had fallen

[9]. Golak Behari *V.* State AIR 1972 Orissa 1; and Seervai H.M., Constitutional Law of India (Third Edition) : Volume II : pages 1741-42.

[10]. Constituent Assembly Debates (Revised Edition) Vol. III, pages 455-456.

[11]. Para 18.12 of Report.

short of the standards expected. It suggested that a systematic and careful search should be made to locate the best men for this office.

4.6.05 The ARC observed[12] that there was a wide-spread feeling that, in some cases, Governors were appointed on considerations extraneous to merit. The dignity of the office suffered when persons defeated in elections were appointed. It recommended that the person to be appointed as Governor should be one who has had long experience in public life and administration and can be trusted to rise above party prejudices and predilctions. The Government of India accepted this recommendation.

4.6.06 Our survey of the appointments of Governors made since Independence till October 1984 shows that over 60 per cent of the Governors had taken active part in politics, many of them immediately prior to their appointment. Persons who were eminent in some walk of life constituted less than 50 per cent. This percentage shows a steep fall when the figures for the period from 1980 onwards are compared with those for Nehru period (August 1947 to May 1964), notwithstanding the fact that the Government of India accepted the recommendation of the Administrative Reforms Commission in this regard.

4.6.07 Political turbulance and party rivalries at the State level, often create problems for the Governor in the discharge of his delicate functions. These problems for their resolution demand exercise of more than ordinary skill, tact and wit by the Governor. Only a person of calibre, statesmanship and integrity can be fit this role. Where the Governor is required to exercise his discretion, he should not only act in a fair, just and impartial manner but also seen to be acting as such.

Criteria recommended for Selection

4.6.08 The conditions prevailing today are, if anything, far more complex than those prevailing at the time the Constitution was framed. Consequently, the demands on the Governor have become much more exacting, making it all the more important that the right type of persons are selected for the office. In order to ensure proper selection of Governors, we cannot do better than re-iterate the criteria laid down in this regard by Jawaharlal Nehru.

4.6.09 We recommend that a person to be appointed as a Governor should satisfy the following criteria :—

(i) He should be eminent in some walk of life.

(ii) He should be a person from outside the State.

(iii) He should be a detached figure and not too intimately connected with the local politics of the State; and

(iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

Mode of Selection

4.6.10 We have received various suggestions in regard to the mode of selection of persons for appointment as Governors. These may be broadly grouped under two categories. Firstly, there are those which are aimed at making involvement of the State Government in the selection of the Governor more meaningful. Secondly, there are those which seek to lay down consultation with, or concurrence of, a constitutional authority or body in the selection of a Governor. Consultation or concurrence, it is claimed, would make the selection more objective; it would also enable the Governor to function in a non-partisan manner, without being influenced by the Union Executive.

Role of State Government in Selection of Governor

4.6.11 We proceed to consider the following suggestions made in the matter involving the State Government viz. appointment of the Governer should be made :

(i) from a panel to be prepared by the State Legislature; or

(ii) from a panel to be prepared by the State Government (in effect the State Chief Minister) or invariably with the concurrence of the State Chief Minister; or

(iii) invariably in consultation with the State Chief Minister.

4.6.12 Preparing a panel of names in accordance with the suggestion at (i) above will, in fact, mean a process of direct or indirect election by the State Legislature. A Governor so 'selected' may well seek to override the powers of his Chief Minister, leading to friction between them and distortion of the system of responsible government. Such a Governor can hardly be expected to function as a constitutional head of the State. This was the reason why the Constitution-framers gave up the proposal to have an elected Governor. There is the other possibility that an elected Governor may labour under a sense of obligation to the Chief Minister but for whose support his name might not have appeared in the panel prepared by the State Legislature. Such a Governor will not be able to perform the delicate task of harmonising his responsibility to the Union with his duties as constitutional head of the State. His role as a sentinel of the Constitutional and a vital link between the Union and the State would thus get seriously undermined. For these reasons we cannot support the suggestion at (i), above.

4.6.13 The two suggestions made in sub-para (ii) of para 4.6.11 above, are that the Governor should be appointed either from a panel to be prepared by the State Government (in effect, the State Chief Minister), or with the concurrence of the State Chief Minister. Firstly, neither suggestion is a workable proposition. If the Prime Minister and the Chief Minister belong to different political parties, the process of selection

[12]. Para 5, Chapter IV of "Report on Centre-State Relationships."

will frequently end in deadlock, instead of concurrence. Secondly, if in the process, a Chief Minister succeeds in securing the Prime Minister's concurrence for appointment of an 'insider' backed by his party in the Legislative Assembly, the selection will be vulnerable on the same grounds on which framers of the Constitution ejected the proposal to have a Governor directly or indirectly elected by the State. Besides this, there is a real danger that regional chauvinism might dictate the preference for a person of parochial views as Governor. The primary responsibility for appointing persons of merit as Governors is that of the Union Council of Ministers headed by the Prime Miinister. Choice of a Governor is an executive function for which the Prime Minister/ the Union Cabinet is answerable to Parliament. The Union Cabinet has the sole responsibility for the due discharge of this function. It will be against the basic principle of responsible government if the Union Cabinet is made to share it with a State functionary not answerable to Parliament for its action.

4.6.14 We cannot, therefore, subscribe to the suggestion that the Governor of a State should be appointed either from a panel to be prepared by the State Government or with the *concurrence* of the Chief Minister.

4.6.15 We now turn to the suggestion made in sub-para (iii) of para 4.6.11 above, that the Governor should always be appointed after *consultation* with the Chief Minister of a State. There has never been any difference of opinion in political or public circles as to the disirability of such consultation.

4.6.16 The framers of the Constitution were of the view that the person to be nominated as Governor should be acceptable to the State Government and the Chief Minister should be consulted. To quote Pandit Jawaharlal Nehru, the Governor "must be acceptable to the Government of the Priovince".[13] The ARC study team on Centre-State Relationships (1967) recommended[14] that the practice of consulting the Chief Minister should remain but this should not dilute the primary responsibility of the Union to appoint competent and suitable persons as Governors. The ARC also recommended[15] that the convention of consulting the Chief Minister should continue. The Government of India accepted this recommendation of the ARC in the early seventies.

4.6.17 It is necessary to be quite clear as to the precise reasons why such consultation is essential. For proper working of the Parliamentary system, there has to be a personal rapport between the Governor and the Chief Minister. The importance of such rapport will be easily comprehended when it is remembered that the Governor, as the constitutional head, has to act as 'friend, philosopher and guide' of his Council of Ministers. (Cf. para 4.3.03 above). It is from this aspect of personal relationship that consultation with the Chief Minister at the initiation itself, may help prevent the choice of a person with whom the Chief Minister for personal reasons may not be able to work satisfactorily. Further, from the stand-point of local socio-political environment, the Chief Minister may be harbouring certain mental reservations against a particular choice being made for the office of Governor of the State. Consultation would enable the Chief Minister to advise the selectors about this at the very beginning.

4.6.18 It follows that, where two or more States are to have a common Governor (*vide* Proviso to Article 153), the Chief Minister of each of them will have to be consulted. Only two State Governments consider the system of a common Governor inappropriate. We do not see any drawback in it. On the contrary, a common Governor could promote greater understanding and cooperation between his Chief Ministers.

4.6.19 As senior politicians are among those who are eligible for selection, it is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or a combination of other parties. Any error in this respect can be pointed out by the Chief Minister during consultation at the pre-appointment stage.

4.6.20 Thus, the main purpose of consulting the Chief Minister is to ascertain his objections, if any, to the proposed appointment. If the Union Government considers that the objections of the Chief Minister are not groundless, it may suggest an alternative name. However, if it finds that the objections are frivolous or manifestly untenable, it may inform the Chief Minister accordingly and proceed to make the appointment.

4.6.21 All the State Governments (with one solitary exception), political parties and eminent persons who have responded to our questionnaire, are of the view that appointment of the Governors should always be made after consultation with the Chief Minister of the State. Quite a number of them insist that such consultation should be made a constitutional requirement, and not left to convention which, it is pointed out, is not being regularly and properly followed for sometime past. The stand of the Union Government is that appointments of the Governors are being made after consultation with the Chief Minister concerned.

4.6.22 However, so far as we have been able to ascertain, consultation with the Chief Minister has not invariably been taking place in recent years. Some Chief Ministers have informed us that the Union Government did not ascertain their views before appointing Governors in their respective States. The general practice, as far as we have been able to ascertain, seems to be that the Union Government merely informs the Chief Minister that a certain person is being appointed as Governor of the State. Sometimes, even such prior intimation is not given.

4.6.23 It is well established that 'consultation' in the context means ascertainment of the views of the person consulted as to the suitability of the person proposed for the appointment. A mere intimation that a certain person is being appointed as

---

13. Vide para 4.6.03 above.

14. Para 18.14 of report.

15. Recommendation 8, Chapter IV of "Report on Centre State Relationships".

Governor is not 'consultation', as it reduces it to an empty formality. The reason why the procedure of effective consultation with the Chief Minister has been given up is not clear. We have given anxious thought to the question whether such consultation should not be made mandatory by writing it into the Constitution.

4.6.24 The framers of the Constitution refrained from incorporating, in specific terms, procedures aimed at securing political accountability which could best be evolved over a period of time through experience gained in working the Constitution. Consultation with the Chief Minister is one such procedure which by now should have got assimilated into the system of Union-State relations, but that unfortunately has not happened.

4.6.25 In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, we recommend that this procedure should be prescribed in the Constitution, itself. Article 155 should be suitably amended to give effect to this recommendation.

4.6.26 We next consider the second category of suggestions referred to in para 4.6.10 above :—

(a) A National Presidential Council should be set up to advise the President on matters of national interest, *inter alia* for selection of persons to be appointed as Governors. This Council would be analogous to the Council of State originally proposed at the time of framing of the Constitution. It would be composed of the Prime Minister, Presiding Officers and the Leaders of the Opposition in the two Houses of Parliament, former Presidents, Prime Ministers and Chief Justices of India, the Attorney-General for India, and a certain number of nominees of the President.

(b) Appointment should be made by the President on the advice of the Inter-Governmental Council. One of the State Governments has further suggested that the Council should maintain a panel of names suitable for appointment as Governors. The Chief Minister of the State where the office of Governor is to be filled should choose three persons from the panel and the Inter-State Council should select one of them for appointment. The advice of the Inter-State Council should be accepted by the Union Executive.

(c) Leaders of the opposition parties in Parliament should be consulted.

4.6.27 The suggestion at (a) of para 4.6.26 above is that a National Presidential Council should advise the President, *inter alia*, on the appointment of Governors. The Council in its composition and function would be analogous to the Council of State proposed by the Constitutional Adviser at the initial stages of framing the Constitution. The Council of State was conceived as a body consisting of eminent persons whose advice would be available to the President in all matters of national importance in which he was required to act in his discretion. This proposal was not accepted by the Constitution-makers who considered it to be irreconcilable with the parliamentary type of government adopted at the Union level.[16] The National Presidential Council that has been proposed, has to be ruled out for the same reasons.

4.6.28 The suggestion in sub-para (b) of para 4.6.26 above has been discussed in the Chapter on "Inter-Governmental Council—Article 263".[17] As pointed out there, a procedure for consulting such a Council in the appointment of Governors, will politicise such appointments and dilute the responsibility of the Union Executive to Parliament in this matter. We are, therefore, unable to agree with this suggestion.

4.6.29 The ARC Study Team on Centre-State Relationships observed[18] that consultation with the Leader of the Opposition in the Lok Sabha would not prove workable immediately, but could be considered for adoption in due course. Its success would depend on the health of the working relationship between the Government and the Opposition. As rightly pointed out by M.C. Setalvad,[19] this proposal involves the danger of making the appointment of the Governor a matter of controversy between the party in power and the Opposition. In view of these considerations, we are unable to support the suggestion in sub-para (c) of para 4.6.26 that leaders of Opposition parties in Parliament should be consulted.

4.6.30 There is no gainsaying that a procedure must be devised which can ensure objectivity in selection and adherence to the criteria for selection recommended in para 4.6.09 above, and insulate the system from political pressures. Also, the new procedure must not only be fair but should be seen to be fair. Further, it is important that the flaws, noticed in the different procedures already discussed, are avoided.

4.6.31 It is clear that the manner of selection should be such as would inspire the confidence of the people. In this connection the following observations of Dr. Rajendra Prasad[20] are pertinent :

> "Now-a-days, because of differences between the various political parties or members of the same party, the people of every State are disgusted and troubled by the political situation and party politics. They do not have the same confidence in politicians as they once had. It is necessary, therefore, that the people of a State should have full confidence in a supreme non-partisan institution like that of Governor".

4.6.32 We are of the view that both to bring in greater objectivity in the appointment of a Governor and to ensure that selections are not only made

---

16. Rao, B. Shiva "The Framing of India's Constitution". "Study" : Page 339.

17. Chapter IX : Para 9.4.02.

18. Para 18.16 (2) of report.

19. "Union-State Relations—Tagore Law Lectures" : Pages 169-170.

20. Personal diary of Dr. Rajendra Prasad, India's first President, quoted by Shri Kuldip Nayyar in his article "Governors as Centre's Tools" in the Tribune of 4th July, 1985.

on principles of suitability but are seen to have been so made, consultation with a group which can give dispassionate advice is desirable. Among the various costitutional offices at the union level, those of the Vice-President of India and the Speaker of the Lok Sabha give their incumbents a good objective overall view of the political imperatives in the country at any point of time. The manner of their functioning provides an assurance that matters referred to them will be dealt with impartially and with detachment.

4.6.33 We recommend that the Vice-President of India and the Speaker of the Lok Sabha should be consulted by the Prime Minister in selecting a Governor. Such consultation will greatly enhance the credibility of the selection process. The consultation should be confidential so that there is no danger of the type mentioned in para 4.6.28 above which might deter eminent persons from making themselves available for appointment as Governors. The proposed consultation will be informal and not a matter of constitutional obligation.

7. *GOVERNOR'S TERM OF OFFICE*

4.7.01. A Governor's term of office on appointment to a State is five years. However, he holds that office during the pleasure of the President. He may also resign his office. If a Governor's term expires, he continues to hold office until his successor takes over (Article 156). A survey of the tenures of Governors from 1947 upto October, 1986 shows that, out of the 154 tenures that ended during this period, 104, i.e. two-thirds of them, were each of duration of less than 5 years.

4.7.02. Many Governors have held office in more than one State successively without a break. During the period upto October, 1986, 31 persons held 63 tenures of Governors. Out of these, 58 tenures were for a period of less than 5 years. The Union Ministry of Home Affairs have clarified that, "normally, the term of a Governor is computed from the date he first assumes charge of office till the expiry of his term of five years irrespective of whether or not he holds charge of the office of Governor in one State or in more than one State. The appointment of a Governor from one State to another State during his tenure of office of five years, in continuity without any break, is not treated as a separate appointment for purpose of computation of tenure". We wish to point out that this method of computation is not envisaged by Article 156 of the Constitution, which prescribes a tenure of 5 years for each appointment. Each appointment to a State constitutes a separate tenure. It is unrelated to any tenure in a preceding or succeeding appointment.

4.7.03 Apart from the fact that the constitutionality of the method of computation adopted by the Union Government appears to be highly doubtful, it is noticed that even in such cases there has beeen little uniformity. Among the 31 Governors who accounted for the 63 tenures mentioned above, 8 had resigned and 3 were continuing in office as on October, 1986. Of the remaining 20, four served for more than 7 years.

4.7.04 Many Governors served in only one State. Of them, 35 did not complete their full tenure of 5 years. Some Governors were appointed to more than one State. But in their case, there was a time-gap between two successive tenures. The Union Ministry of Home affairs has clarified, in the case of the latter category of Governors, that "their first appointment as Governor in one State has no bearing on the subsequent appointment as Governor in another State and such appointments are treated as separate for all purposes". Here again, there were 11 tenures of less than 5 years, making a total of 46 such cases.

4.7.05. In general, the reasons why certain Governors in the category mentioned in the above para did not complete their normal tenure of 5 years were (a) tendering of resignation, (b) demise in office, or (c) revocation of the pleasure of the President. In the 46 cases referred to above, there were 2 instances in which the Governors had to demit office without completing five years on the withdrawal of pleasure of the President.

4.7.06 Annexure IV. 1 to this Chapter depicts graphically the number of cases in which the tenure of the Governor was terminated before he had completed in office 1, 2, 3, 4, or 5 years, separately, during each of the periods from August, 1947 to March, 1967 and from April 1967 to October, 1986. It will be observed that during the latter period, pre-mature exits from office occurred at a much faster rate and relatively fewer Governors completed their normal term of office, as compared to those during the former period.

4.7.07. A Governor, being a person from outside the State, necessarily needs, after his appointment, sometime to get himself acquainted with the problems of the State, the aspirations of its people, and the working of the State Government. It is only thereafter that he can address himself to the important tasks, first, as the constitutional head, of helping his Ministry but without interfering in its work, and second, of functioning as an effective constitutional link between the Union and the State. In this way, the Council of Ministers can benefit, of a resonably long period, from the counsels of Governor who is experienced and a person of eminence.

4.7.08. Further, the ever-present possibility of the tenure being terminated before the full term of 5 years, can create considerable insecurity in the mind of the Governor and impair his capacity to withstand pressures, resist extraneous influences and act impartially in the discharge of his discretionary functions. Repeated shifting of Governors from one State to another can lower the prestige of this office to the detriment of both the Union and the State concerned. As a few State Governments have pointed out, Governors should not be shifted or transferred from one State to another by the Union as if they were civil servants. The five year term of Governor's office prescribed by the Constitution in that case loses much of its significance. We recommend that the Governors tenure of office of five years in a State should not be disturbed except very rarely and that too for some extremely compelling reason. It is indeed very necessary to assure a measure of security of tenure to the Governor's office.

8. *SECURITY OF TENURE*

4.8.01. The suggestions received by us on the subject of guaranteeing the Governor a full five-year term, can be summarised as under :

(i) A Governor should have a guaranteed tenure so that he can function impartially. The different procedures suggested for Governor's removal, are—

(a) The same procedure as for a Supreme Court Judge.

(b) An investigation into the Governor's conduct by a parliamentary Committee.

(c) Impeachment by the State Legislature.

(d) Inquiry by the Supreme Court.

(e) Written request from the Chief Minister, followed by a resolution of the Legislative Assembly.

(f) Recommendation of the Inter-State Council.

(ii) Tenure should not be guaranteed to a Governor because—

(a) the nature of his duties and functions and the manner of their performance are fundamentally different from those of a Judge. The former has a multi-faceted role and his duties are mainly non-judicial, while those of a Judge are entirely judicial to be discharged in his own independent judgement;

(b) it will be difficult to remove a Governor who is not of the requisite ability and impartiality, or who is not able to fuction smoothly with the Chief Minister or who does not function in coordination with the Union.

4.8.02. Apart from some eminent persons, one State Government is in favour of prescribing the same procedure for the removal of a Governor which has been laid down for that of a Judge of the Supreme Court. Another State Government has observed that as the functions of these two offices are entirely different, their tenure, manner of appointement and removal cannot be the same.

4.8.03 The question whether a special procedure should be provided in the Constitution for the removal of a Governor and, if so, what that procedure should be, has to be examined by a comparison of the duties and functions of the Governor with those of other constitutional functionaries. The role and functions of the President, who is the constitutional head of the Union, are broadly similar to those of the Governor in so far as the latter has to function as the constitutional head of the State. The functions of both are essentially political and governed by certain conventions of a parliamentary system of government. However, the similarity ends here. Whereas the President acts invariably on the advice of his Council of Ministers, the Governor, as explained earlier, may exercise certain functions in his discretion. The Governor has also certain important responsibilities towards the Union.

4.8.04 In contrast with those of the Governor, the nature of the duties and functions of other constitutional functionaries, such as Judges of the Supreme Court and the Comptroller and Auditor-General, is entirely different. They are bound by the very oath of their office to perform their duties "to the best of their ability, knowledge and judgement, without fear or favour", independently of the Executive. This is why a Supreme Court Judge or the Comptroller and Auditor-General cannot be removed from his office except by following the very stringent procedure prescribed in the Constitution on the ground of proved misbehaviour or incapacity.

4.8.05 Because of the Governor's multi-dimensional role and functions which have a heavy political content, it is not possible to lay down a set of concrete standards and norms with reference to which a specific charge against a Governor may be examined. The grounds for removal may not, therefore, be susceptible of investigation and proof by judicial standards. This is particularly true of a charge of being partisan which, according to one view, should be a sufficient ground for the Governor's removal. In our view, it would be neither advisable nor realistic to adopt, for the removal of a Governor, a procedure similar to that laid down for the removal of Judges.

4.8.06 The fact that it will be impossible to lay down a concrete set of standards and norms for the functioning of a Governor will make it difficult for a Parliamentary Committee or the Supreme Court to inquire into a specific charge against a Governor. Further, while discharging his role as a constitutional sentinel and a vital link between the Union and the State, the Governor may have incurred the displeasure of the political executive in the State. Therefore, removal of a Governor through a process of impeachment by the State Legislature or in pursuance of a written request from the Chief Minister, followed by a resolution of the Legislative Assembly, may not ensure objectivity and impartiality. The Inter-State Council, too, being a political forum, there is a danger that investigation by it of a charge against a Governor may not be totally free from political bias. Therefore, it would not be the appropriate body to investigate charges against Governors. Thus, none of the procedures suggested in para 4.8.01 (i) can be supported by us.

4.8.07 While it is not advisable to give the same security of tenure to a Governor as has been assured to a Judge of the Supreme Court, some safeguard has to be devised against arbitrary withdrawal of President's pleasure, putting a premature end to the Governor's tenure. The intention of the Constitution-makers in prescribing a five-year term for this office appears to be that the President's pleasure on which the Governor's tenure is dependent, will not be withdrawn without cause shown. Any other inference would render clause (3) of Article 156 largely otiose. It will be but fair that the Governor's removal is based on procedure which affords him an opportunity of explaining his conduct in question and ensures fair consideration of his explanation, if any.

4.8.08 Save where the President is satisfied that, in the interest of the security of the State, is it not expedient to do so, as a matter of healthy practice,

whenever it is proposed to terminate the tenure of a Governor before the expiry of the normal term of five years, he should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (which, in effect, means the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendations of this Group, the President may pass such orders in the case as he may deem fit.

4.8.09 We recommend that when a Governor, before the expiry of the normal term of five years, resigns or is appointed Governor in another State, or his tenure is terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of his tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him in reply. This procedure would strengthen the control of Parliament and the Union Executive's accountability to it.

9. *ELIGIBILITY FOR FURTHER OFFICES*

4.9.01 Our attention has been drawn by some State Governments to the behaviour of a few Governors in actively lobbying for political appointments. This is a matter of grave concern. It is difficult for a Governor with such propensity to function, specially in his discretionary sphere, in an independent and impartial manner if he looks foward to being given other public office or to resuming his political career at the end of his term as Governor.

4.9.02 One of the State Governments has observed that Governorship should be really the last lap on the journey of a politician. If Governors become Ministers or hold other official positions, the dignity of the office is marred. Two State Governments feel that a Governor should not be appointed for a second term whether in the same or in another State. Another State Government is of the view that a person who has served as Governor should be ineligible for further appointment in any capacity under the Union Government or a State Government. He should also not take up any private appointment.

4.9.03 We broadly agree with the above views. However, we see no objection to a person, who has completed a term as Governor, being appointed or elected to an equivalent or higher constitutional office. Also, it is undesirable that a person who has held the high constitutional office of Governor would take up private employment after completing this tenure.

4.9.04 We recommend that as a matter of convention the Governor, on demitting his office, should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor, or election as Vice-President or President of India. Such a convention should also require that after quitting or laying down his office, the Governor shall not return to active partisan politics.

10. *RETIREMENT BENEFITS FOR GOVERNORS*

4.10.01 If a Governor after demitting office, is made ineligible for any other appointment or office of profit except as recommended above, and at the same time given reasonable retirement benefits, his capacity to act with due objectivity and impartiality and independence—where such independence is required—in the discharge of his functions, will be strengthened. A Governor on demitting his office should be, therefore, provided sufficient means to enable him to lead a life of reasonable comfort in keeping with the dignity of this high office. We have found that not all former Governors were fortunate enough to have sufficient financial resources of their own. There have, in fact, been a few instances of retired Governors left with inadequate means of livelihood. It is surprising that an incumbent of this high office is no given any pension or post-retirement benefits.

4.10.02 We recommend that a Governor should at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse, if any.

11. *SOME AREAS WHERE DISCRETION MAY HAVE TO BE EXERCISED*

Choice of Chief Minister

4.11.01 The leader of the party which has an absolute majority in the Legislative Assembly should invariably be called upon by the Governor to form a government. This is a time-honoured convention of a cabinet form of government. There is no controversy in this regard. However, where no party has a clear majority, there are two views as to the procedure to be adopted for identifying the person who can form a government. According to some State Governments, the leader of the single largest party should be given the opportunity. According to some others, the Governor, acting on his own, should summon the Assembly for electing a person to be the Chief Minister. Certain other State Governments have suggested that the person to be appointed as Chief Minister should be chosen or elected by the Legislative Assembly, even if he is the leader of a party which has secured absolute majority. Some of the State Governments consider that the Governor should try to ensure that the government to be formed will be stable.

4.11.02 It is important to note that, in appointing the Chief Minister, the Governor is required to ensure that the Council of Ministers is collectively responsible to the Legislative Assembly *vide* Article 164(2). Accordingly, in order to continue in office, the Council of Ministers, and not the Chief Minister alone, should continue to have majority support in the Assembly. Also, it is only against the Council of Ministers that a no-confidence motion may be moved. We are, therefore, unable to agree with any suggestion which would require a Chief Minister to

be elected or chosen by the Legislative Assembly. To ensure strict adherence to the principle laid down by Article 164(2), and fair-play to all the parties in the Legislative Assembly, we suggest as follows.

4.11.03. In choosing a Chief Minister, the Governor should be guided by the following principles, viz.—

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.

(ii) The Governor's task is to see that a Government is formed and not to try to form a Government which will pursue policies which he approves.

Thus, if there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.

4.11.04 If there is no such party, the Governor should select a Chief Minister from among the following parties or group of parties by sounding them, in turn, in the order of preference indicated below :

1. An alliance of parties that was formed prior to the Elections.
2. The largest single party staking a claim to form the government with the support of others, including "independents".
3. A post-electoral coalition of parties, with all the partners in the coalition joining the Government.
4. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including "independents" supporting the Government from outside.

4.11.05 The Governor, while going through the process of selection described above, should select a leader who, in his (Governnor's) judgement, is most likely to command a majority in the Assembly. The Governor's subjective judgement will play an important role.

4.11.06 A Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be strictly adhered to with the sanctity of a rule of law.

4.11.07 We are firmly of the view that when a number of Members of the Legislative Assembly approach the Governor and contest the claim of the incumbent Chief Minister to continued majority support in the Assembly, the Governor should not risk a determination of this issue, on his own, outside the Assembly. The prudent course for him will be to casue the rival claims to be tested on the floor of the House. Such a procedure will be not only fair but also seen to be fair. It will also save the Governor from embarrassment consequent upon any error of judgement on his part.

Dismissal of Chief Minister

4.11.08 The State Governments are unanimous suggesting that the question whether a Ministry has lost majority support in the Legislative Assembly should be decided on the floor of the House and that the Chief Minister should be given a reasonable opportunity to establish such majority. In order that this principle is invariably followed, one of the State Governments has suggested that Article 164 should lay down that a Chief Minister will hold office so long as he continues as leader of a majority of the members of the Assembly. Another State Government h suggested that Article 164 of the Constitution shou specifically provide that if it appears to the Governc that the Ministry has lost the confidence of the Assembly, he should, of his own motion, summon the Assembly to enable the Ministry to secure a vote of confidence. In this connection, it has also been suggested by one of the State Governments that a Minister may be dismissed only on the advice of the Chief Minister.

4.11.09 The Council of Ministers hold office during the pleasure of the Governor. The Chief Minister is first appointed and, on his advice, the other Ministers are appointed by the Governor. The joint responsibility of the Council of Ministers operates through the personality of the Chief Minister. The Constituent Assembly considered a specific amendment to the effect that the Ministers could remain in office only so long as they retained the confidence of the Legislature. It was made clear by Dr. Ambedkar that the 'pleasure' should not continue when the Ministry had lost the confidence of the Assembly; and the moment this happened, the Governor would use his 'pleasure' to dismiss it.[21] In the result, the Governor cannot dismiss his Council of Ministers so long as they continue to command the majority, and conversely, he is bound to dismiss them, if the loss the same but do not resign.

4.11.10 The question of majority can be easily tested on the floor of the House when the Assembly is in session. However, during the period the Assembly remains prorogued, a Governor may receive reliable evidence (e.g. one or more letters signed by, or a non-confidence motion proposed by, a majority of members with their signatures authenticated by the Secretary of the Assembly) that the Ministry has lost its majority. Should the Governor in this situation on his subjective satisfaction dismiss the Ministry without giving it a chance to prove its 'majority' on the floor of the House ?

4.11.11 Arid legality apart, as a matter of constitutional propriety, the Governor should not dismiss a Council of Ministers, unless the Legislative Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible. If the Chief Minister does not accept the Governor's advice, the Governor may, as explained in paras 4.11.19 and 4.11.20 below, summon the Assembly for the specific purpose of testing the majority of the Ministry.

4.11.12 In deciding on the date of summonir the Chief Minister should be allowed such time as tl Governor in his judgement considers reasonable.

(21) Constitution Assembly Debates (Reprint) : Vol. VII : page 520.

prolonged period of uncertainty for the Ministry-in-office can lead to political as well as administrative malpractices. At the same time, insistence that the Chief Minister should prove his majority in the Assembly within the period which he considers unduly short, leads to resentment and evokes avoidable criticism that the Governor is unreasonably hasty or partisan in his approach. This is one of those situations which call for all the political acumen, experience and persuasive skills of the Governor.

4.11.13 Considering all factors, we recommend that the Assembly should be summoned to meet early within a reasonable time. What is "reasonable" will depend on the circumstances of each case. Generally, a period of 30 days will be reasonable, unless there is very urgent business to be transacted, such as passing the Budget, in which case, a shorter period may be indicated. In special circumstances, it may even exceed this period and go up to 60 days

4.11.14 Under Article 164(1), the Chief Minister is appointed by the Governor and the other Ministers are appointed by him on the advice of the Chief Minister. In dismissing a Minister other than the Chief Minister, therefore, the correct procedure is for the Governor to act entirely on the advice of the Chief Minister. In so far as we are aware, this has all along been the practice and has not been objected to by any one.

4.11.15 Defections were at one time a major cause of instability which often led to proclamation of President's rule, as no viable Ministry could be formed. With the incorporation of the anti-defection provisions in the Constitution by the 52nd Amendment, instability should be significantly reduced. However, party-splits and breakdowns of coalition governments may continue to occur till such time as political maturity develops among the parties.

Summoning, Proroguing and Dissolving the Legislative Assembly

4.11.16 The Governor is empowered to summon, prorogue and dissolve the Legislative Assembly. The Draft Constitution provided *inter alia* that both in the matter of summoning the Legislative Assembly or Council and dissolving the Assembly, the Governor would be required to act in his discretion. But this provision was subsequently deleted on the ground that a Governor would not exercise any function in his discretion and would follow the advice of his Ministry in all these matters.

4.11.17 It is a well-recognised principle that, so long as the Council of Ministers enjoys the confidence of the Assembly, its advice in these matters,—unless *patently* unconstitutional—must be deemed as binding on the Govenror. It is only where such advice, if acted upon, would lead to an infringement of a constitutional provision, or where the Council of Ministers has ceased to enjoy the confidence of the Assembly, that the question arises whether the Governor may act in the exercise of his discretion. One of the State Governments, answering the question in the affirmative has suggested that Article 174 may be amended, so as to make the position explicit.

Summoning

4.11.18 Some State Governments are of the view that if the Governor comes to know that the Ministry in office may have lost majority support in the Assembly, he may summon the Assembly on his own with a view to testing whether the Ministry continues to have majority support. One of them has suggested amendments to Article 174 so as to confer this power on the Governor in the situation just mentioned. Another State Government has suggested that the Governor may summon a House of the State Legislature on his own, if the Chief Minister fails to advise him to summon the House within six months of the last day of the preceding session. However, certain other State Governments are not in favour of the Governor exercising this power. One of them is apprehensive that the power may be exercised at the behest of the Union Government. According to some others, the Governor should dismiss the Ministry, if the Chief Minister does not accept the Governor's suggestion that the Assembly should be summoned within a reasonable time in order to test the majority of the Ministry, which according to available indications, has ceased to enjoy majority support. Some State Governments feel that the responsibility to summon the Assembly should be left to the Chief Minister.

4.11.19 Normally, the State Legislature is summoned by the Governor on the advice of the Chief Minister. The Chief Minister provides business agenda for the Legislative Assembly and also for the Legislative Council, if there is one. However, the exigencies of certain situations may require a departure from this convention. The Governor, then, exercises his own discretion to summon the Assembly. He exercises this discretion only to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution. A situation may, however, arise where the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period. The Governor can, then summon the Assembly within the period of six months specified in Article 174(1), the neglect or wrong advice of the Chief Minister notwithstanding. Again, in our view, the Governor would be justified in summoning the Assembly when the Chief Minister, in contravention of the rule suggested in para 4.11.06 above, is not prepared to summon it within 30 days of his taking over. Similarly, when at a later stage, on the basis of reliable evidence it appears to the Governor that the incumbent Ministry no longer enjoys the confidence of the Assembly, he should ask the Chief Minister to have the question of his majority support tested on the floor of the House within a reasonable time as suggested in para 4.11.13 above.

4.11.20 The exigencies of the situations described above are such that the Governor must necessarily over-rule the advice of his Ministry if he is to ensure that the relevant constitutional requirements are observed both in letter and spirit. As already explained in paras 4.3.07 and 4.3.11, the Governor would, in the special circumstances, be within his constitutional right in summoning the Assembly in the exercise of his discretion. It is neither necessary nor advisable

to amend the Constitution to make any express provision in this regard. We, therefore, recommend that, if the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose.

Proroguing

4.11.21 Most of the State Governments are of the view that, in the matter of proroguing a House of the State Legislature, the Governor should act on the advice of his Council of Ministers. However, one of them has suggested that, when a Chief Minister, being aware that he no longer enjoys majority support, advises the Governor to prorogue the Assembly, the Governor would be justified in compelling the Chief Minister to face the Assembly in order to demonstrate his majority.

4.11.22 We too are of the view that, as regards proroguing a House of Legislature, the Governor should normally act on the advice of the Chief Minister. But where the latter advises prorogation when a notice of a no-confidence motion against the Ministry is pending, the Governor should not straightaway accept the advice. If he finds that the no-confidence motion represents a legitimate challenge from the Opposition, he should advice the Chief Minister to postpone prorogation and face the motion.

Dissolution

4.11.23 Varying views have been expressed on the line of action to be adopted by the Governor in regard to the dissolution of the Legislative Assembly when the Ministry in office loses majority support in the Assembly and no new Ministry can be formed. One State Government has suggested that the Assembly should stand dissolved on the expiry of one month from the date the Ministry in office was defeated in the Assembly on a vote of confidence. According to another State Government, the Governor may, on his own, dissolve the Assembly so that fresh elections could be held. A third State Government has suggested that the Assembly should be given an opportunity to show cause why it should not be dissolved. Some State Governments are of the view that the Governor should always act in accordance with the advice of the Chief Minister. One of them, however, considers that the Chief Minister should place the question of dissolution before the Council of Ministers.

4.11.24 We have considered the above suggestions. The one for automatic dissolution of the Assembly at the end of one month from the date of defeat of the Ministry implies that the State administration will be carried on during that period by the Governor on the advice of a Ministry which has ceased to enjoy the confidence of the Assembly. The other suggestion that, in deciding whether the Assembly should be dissolved, the Governor should invariably act on the advice of the Ministry implies that he should do so even if the Ministry has lost majority support. Both the suggestions are patently unconstitutional. We, therefore, propose as follows.

4.11.25 The Council of Ministers may advise the Governor to dissolve the Legislative Assembly on the ground that it wishes to seek a fresh mandate from the electorate. If the Ministry enjoys a clear majority in the Assembly the Governor must accept the advice. However, when the advice for dissolving the Assembly is made by a Ministry which has lost or appears to have lost majority support, the Governor should adopt the course of action suggested in paras 4.11.09 to 4.11.13 and 4.11.20 above as may be appropriate.

4.11.26 If ultimately a viable Ministry fails to emerge, a Governor is faced with two alternatives. He may either dissolve the Assembly or recommend President's rule under Article 356, leaving it to the Union Government to decide the question of dissolution. We are firmly of the view that the porper course would be "to allow the people of the State to settle matters themselves".[22] The Governor should first consider dissolving the Assembly and arranging for a fresh election. Before taking a decision, he should consult the leaders of the political parties concerned and the Chief Election Commissioner.

4.11.27 If the Governor concludes that the Assembly should be dissolved and an election can be held early, he should normally ask the outgoing Ministry to continue as a caretaker Government. Here, a convention should be adopted that a caretaker Government should not take any major policy decisions.

4.11.28 However, if the Governor has reliable evidence that the outgoing Ministry has been responsible for serious maladministration or corruption, it would not be proper for him to install such a Ministry as a caretaker Government. In such an event and also if the outgoing Ministry is not prepared to function as a caretaker Government, the Governor, without dissolving the Assembly, should recommend President's rule in the State. It will be then for the Union Government to arrange for early election.

4.11.29 It may happen that, if the Assembly is dissolved, fresh election cannot be held immediately on account of a national calamity or State-wide disturbances. It would then not be proper for a caretaker Government to be in office for the long period that must elapse before the next election is held. The correct course for the Governor would be to recommend proclamation of President's rule under Article 356, without, however, dissolving the Assembly. As suggested in para 6.6.20 of Chapter VI on "Emergency Provisions", it is only after Parliament has had an opportunity to consider the Proclamation bringing the State under President's rule, that the Union Government may decide whether the Assembly should be dissolved and election held in due course.

4.11.30 Another possible situation is that it may be too early to hold a fresh election, the Assembly not having run even half its normal duration of 5 years. Frequent elections, one closely following another, tend to distract the attention of the people, disturb the continuity of administration, and involve heavy expenditure. In such an event also, the correct course for the Governor would be to recommend President's rule under Article 356 without dissolving the Assembly.

22. Constitutent Assembly Debates (Revised Edition), Vol. IX, Page 177 (Dr. Ambedkar).

Nomination to Legislative Council/Assembly

4.11.31 A question has been raised whether the Governor has discretion in making nominations to the Legislative Council under Article 171(3)(e) and (5) and to the Legislative Assembly vide Article 333. Article 171 does not provide for the exercise of discretion by the Governor. Similarly, no discretion is available to the Governor to make a nomination to the Legislative Assembly under Article 333. The Governor should await the formation of a Ministry, if at the time of making a nomination, a Ministry has not been formed or has resigned or lost majority in the Assembly.

Role of the Governor as Chancellor of a University

4.11.32 State University Acts generally provide that the Governor by virtue of his office, shall be the Chancellor or head of the University concerned and endowed with various powers such as appointment of Vice-Chancellor. The question is whether the Governor's functions as Chancellor of a University fall within the purview of Article 163(1). This would imply that a Governor is bound to act on the aid and advice of his Council of Ministers in the discharge of his functions as Chancellor except in so far as he is required by the statute to exercise any of the functions in his discretion. There have been instances where, in selecting Vice-Chancellors, Governors as Chancellors have acted in their discretion, overruling the advice of the Council of Ministers.

4.11.33 The question first arose when the Governor of Bombay had to nominate members of the Senate of the University of Poona in consultation with the Vice-Chancellor. The Attorney-General for India reportedly held that, as Chancellor, the Governor was not bound to act on the aid and advice of his Ministers. The position was later accepted by Pandit G.B. Pant as Chief Minister of Uttar Pradesh when a question arose about the role of the Governor as Chancellor of Universities in that States.[23]

4.11.34 Two State Governments have suggested that the Governor, while functioning as Chancellor of a Univeristy in an *ex-officio* capacity, should exercise his functions in regard to the appointment of Vice-Chancellor only on the aid and advice of his Council of Ministers. However, one of them has pointed out that it would be permissible to make an express provision in the State enactment governing the university, requiring the Governor to exercise his discretion in this matter. Two State Governments have expressed a different view. One of them has said that, as Chancellor of a University, the Governor is not bound to accept the advice of his Ministry. Yet another State Government has sought to make a distinction between the statutory functions of the Governor as Chancellor which can (and are) challenged in a court of law, while the action taken by him in his capacity as Governor cannot be so challenged.

4.11.35 In its report on "State Administration" the Administrative Reforms Commission recommended[24] that the functions assigned to a Governor by statute (e.g. those of Chancellor of the University) should be exercised by him in his discretion. The Governor may consult the Chief Minister if he so wishes, but he should not be bound by the latter's advice. The Commission surmised that the idea underlying the assignment of certain functions to the Governors by statute was to insulate them from political influence.[25]

4.11.36 The powers and duties conferred on the Governor by a statute fall in two distinct categories. Those conferred on the Governor in his capacity *as Governor* constitute one such category. Such functions pertain to the office of the Governor, as provided for in Article 154(1) and are to be exercised by him on ministerial advice in accordance with Article 163(1). Further, by virtue of Article 361(1), the Governor enjoys personal immunity from answerability to any court for the exercise by him of such functions.

4.11.37 The other category of functions are those which a statute may confer on the Governor, not in his capacity as Governor but in a different capacity, such as, for instance, the Chancellor of a University. Here, the Governor functions in pursuance of a statute in relation to the affairs of the University—not as Governor but as Chancellor, notwithstanding that he holds the office in the University in an *ex-officio* capacity. Even though the Governor is the Chancellor by virtue of his office and would cease to be the Chancellor on ceasing to be Governor, it does not necessarily follow that the functions assigned to him as Chancellor of the University are to be performed by him in his capacity as the Governor. In fact, University Acts generally confer certain powers on the State Government which are distinct and separate from those conferred on the Chancellor. It has been held[26] that the immunity given to the Governor under Article 361(1) does not extend to the exercise of powers and duties falling under this category. The statutory functions of the Chancellor do not fall within the purview of Article 154(1) and cannot be regarded as 'business of the Government of the State' under Article 166(3), the reason being that the office of Chancellor is distinct from that of the Governor.

4.11.38 In relation to exercise of executive power of a State, the word 'Governor' can normally be equated with the State Government. However, the office of Chancellor, even though held by the Governor under a statute in an *ex-officio* capacity cannot be so equated. The former, being an officer of the University, is not obliged to seek the advice of the State Government in the matter of exercise of his functions such as the appointment of Vice-Chancellor. The

(23) Munshi K.M. : "Pilgrimage to Freedom", Vol. I: Pages 271 and 272.

24. Administrative Reforms Commission : "Report on State Administration" : Para 6 and Recommendation 1 (1) : Pages 5-6.

25. This view has been upheld by the Andhra Pradesh High Court in M. Kiran Babu vs. the State of Andhra Pradesh (AIR 1986 Andhra Pradesh 275). The High Court observed in Paras 33 and 34 that "the autonomy of the University and the interest of higher education demand that there should be no political interference in the governanace of the Universities, as also in the appointment of Vice-Chancellor.....".

(26) S. C. Barat Vs. Hari Vinayak: AIR 1962 Madhya Pradesh 73 (V 49 C31).

same view has been taken by the Andhra Pradesh High Court in *M. Kiran Babu Vs. Government of Andhra Pradesh.*[27]

4.11.39 Although there is no obligation on the Governor always to act on ministerial advice under Article 163(1), there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. The Governor, in his capacity as Chancellor of a University, may possibly be required by the University's statute (e.g. the Calcutta and the Burdwan University Acts) to consult a Minister mentioned in such statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

12. *GOVERNOR'S FORTNIGHTLY REPORT TO THE PRESIDENT*

4.12.01 Each Governor sends to the President every fortnight a report on important developments that have taken place in the administration of the State. The practice generally followed is to send a copy of this report to the Chief Minister.

4.12.02 One of the State Governments considers that these reports are useful as they keep the President, informed about the state of affairs in the State and, at the same time, enable the Chief Minister and his colleagues to know the views of the Governor on such matters. The reports also enable the Chief Minister to correct any wrong policies that may have been pursued. Another State Government would like fortnightly reports to offer objective advice to both the Union and the State Governments in order to remove misunderstandings and differences between them. These reports should create mutual trust between the Governor and the Chief Minister. It should therefore be made obligatory for the Governor to make a copy of the fortnightly report available to the Chief Minister.

4.12.03 However, two other State Governments are opposed to the practice of the Governor sending periodical reports to the President on the ground that it makes the Governor subservient to the Union Government. One of them has suggested that the fortnightly reports to the Union Government should be sent by the Chief Minister and not by the Governor.

4.12.04 The ARC Study Team on Centre-State Relationships recommended in its report that Governors should keep themselves informed about key sectors of public administration in the State so that their fortnightly reports could provide the Union with meaningful information and, at the same time, give timely advice and warning, if necessary, to the Chief Minister also. The Study Team was of the view that Governors were perfectly within their right to send reports, fortnightly and *ad hoc*, to the President without any obligation to send copies to the Chief Ministers.[28]

4.12.05 In its report on Centre-State Relationships, the Administrative Reforms Commission observed that, through his fortnightly reports, the Governor should keep the Union Government adequately informed of the developments and events in the State and the manner in which the Government of the State was being carried on. In making fortnightly and *ad hoc* reports, the Governor should act according to his own judgement. However, he should take his Chief Minister into confidence, unless there are overriding reasons to the contrary.[29]

4.12.06 We do not see any reason to recommend a change in the well-established practice of Governors sending fortnightly reports to the President, with copies thereof to the Chief Minister. However, we are of the view that it would not be constitutionally proper to make it obligatory for the Governor to send a copy of the report to the Chief Minister. As explained earlier in paras 4.3.11(d) and 4.3.13, the Governor may be obliged to report to the President some important developments together with his own assessment of them. He may consider it inadvisable to endorse a copy of such a report to the Chief Minister. Normally, such a report should not be included in the fortnightly letter but sent as a separate *ad hoc* report. However, in principle, it is the Governor's right and duty to make a report, whether it is fortnightly or *ad hoc*, without the obligation of informing the Chief Minister. Even so, what is legally permissible may not always be politically proper. We would, therefore, reiterate the recommendation of the Administrative Reforms Commission that while sending these *ad-hoc* or fortnightly reports the Governor should normally take his Chief Minister into confidence, unless there are over-riding reasons to the contrary.

13. *NEED FOR DISCRETIONARY POWER*

4.13.01 It has been suggested to ust hat the discretionary power of the Governor under Article 163 should be removed. The Governor may be assigned only some symbolic functions to perform but must act only according to the advice of the State Council of Ministers. Two State Governments are of the view that the expression "except in so far as he is, by or under this Constitution required to exercise his functions or any of them in his discretion" in Article 163(1) should be retained. However, the Governor should exercise his discretion, in public interest, not arbitrarily, and so as to subserve the purpose for which discretionary power has been conferred. One of these State Governments has further suggested that the discretionary power needs to be curtailed, as the present interpretation of the scope of this power is a potential threat to the autonomy of the States and to the right of the people of the State to be governed by a responsible government. It has accordingly suggested that, if exercise of discretion by the Governor under a particular Article of the Constitution cannot be regarded as justified, the Article should be amended so as to remove that function from the purview of the Governor's discretionary power.

(27) M. Kiran Babu Vs. the State of Andhra Pradesh etc. (AIR 1985 Andhra Pradesh 275).

(28) Paras 18.20 to 18.22 of report.

(29) Administrative Reforms Commission: "Report on Centre-State Relationships"; Paras 11 and 12 and Recommendation 19 : Pages 26-27.

4.13.02 As it is humanly impossible to visualise and provide for all contingencies in which the Governor may be required to act in the exercise of his discretion for discharging his constitutional responsibilities, the Constitution-makers advisedly refrained from putting it within the strait jacket of a rigid definition. The ways in which the Constitution can be tampered with cannot be foreseen. Political pressures and human ingenuity may try many methods of circumventing the Constitution and creating chaos. Which way the Governor may have to react under any such situation cannot be pre-determined.

4.13.03 For all these reasons, we are of the opinion that the discretionary power of the Governor as provided in Article 163 should be left untouched. It is neither feasible nor advisable to regulate its exercise or restrict its scope by an amendment of the Constitution.

4.13.04 In the earlier paragraphs we have indicated broadly the principles and conventions to be followed by the Governor in exercising discretion in relation to some specified functions. On all such occasions when a Governor finds that it will be constitutionally improper for him to accept the advice of his Council of Ministers, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

14. *SPECIFIC FUNCTIONS ENTRUSTED TO GOVERNORS OF CERTAIN STATES*

Functions to be exercised in their discretion

4.14.01 In para 4.3.09 (A)(ii) *ante*, we referred to the fact that specific functions have been enstrusted to Governors of certain States to be exercised by them in their discretion. These are listed below :

(i) *Governor of Nagaland*

(a) Deciding whether a matter does or does not relate to the special responsibility for law and order in the State entrusted to him under Article 371A(1) (b)[First Proviso to Article 371A(1)(b)].

(b) Framing of rules for a regional council for the Tuensang district [Article 371A(a)(d)].

(c) Arranging for an equitable allocation of any money, provided by the Government of India to the Government of Nagaland to meet the requirements of the State as a whole, between the Tuensang district and the rest of the State [Article 371A(2) (b)].[30]

(d) Deciding all matters relating to Tuensang District (Article 371A (2)(f)].[30]

(ii) *Governor of Sikkim*

Discharge of the special responsibility entrusted to him for peace and for equitable arrangements for ensuring the social and economic advancement of different sections of the population of Sikkim. This power is subject to such directions as the President may issue. [Article 371F(g)].

(iii) *Governor of Arunachal Pradesh*

Deciding whether a matter does or does not relate to the special responsibility for law and order in the State entrusted to him under Article 371H(a) [First proviso to Article 371H(a)].

(iv) *Governors of Assam, Meghalaya, Tripura and Mizoram.*

Any dispute, in regard to the share of royalties payable to a District Council in Assam or Meghalaya or Tripura or Mizoram by the State Government, shall be referred to the Governor for determining such share, in his discretion [para 9(2) of the Sixth Schedule].

4.14.02 It has to be noted that the above provisions are applicable only to a few States and are in the nature of temporary, transitional or special provisions as the case may be. It will also be observed that some among the functions listed above, are expressly termed as "special responsibilities". While the remaining have not been so termed. Notwithstanding this distinction, all these functions have some features in common. First, the final decision in all the cases has to be taken by the Governor on his own. That is to say, he is not bound to seek or accept the advice of his Council of Ministers. Second, the functions relate entirely to State administration for which the Council of Ministers in each of these States is ultimately accountable to the Legislative Assembly. In contrast, the Governors of States other than these are expected to exercise the corresponding functions, to the extent applicable, only on the aid and advice of their Council of Ministers.

Functions to be exercised in their individual judgement

4.14.03 As mentioned in para 4.3.09(B), the Governors of Arunachal Pradesh and Nagaland have been entrusted with a special responsibility with respect to law and order in their respective States. In deciding the action to be taken in the discharge of this special responsibility, the Governor concerned has to exercise his individual judgement *after consulting his Council of Ministers.* [Articles 371H(a) and 371A (1) (b)]. These are the only two provisions in the Constitution which use the expression 'individual judgement' and make prior consultation with the Council of Ministers mandatory. The ultimate decision, as already pointed out is taken by the Governor on his own. This feature distinguishes these provisions from a provision for the exercise of discretion by the Governor (either expressly or by necessary implication). In the latter case, the Governor is not bound to seek or accept the advice of his Council of Ministers.

Functions entrusted by presidential orders under the Constitution and exercisable in their discretion

4.14.04 As mentioned in para 4.3.10 *ante* there is yet a third category of functions envisaged in Articles 371 and 371C. These functions, however, arise only after the President has made an Order under either

(30) The period of ten years from the date of formation of the State of Nagaland during which the Governor had this power expired on 1-12-1973.

Article providing for any special responsibility of the Governor of the State in respect of the matters specified in the Article. Two such Orders made with respect to the States of (composite) Punjab and Andhra Pradesh under Article 371(1)[31] enabled the irrespective Governors to decide finally, in the exercise of their discretion/judgement, certain matters on which there was a difference of opinion between the Council of Ministers and the Regional Committee. Two other Presidential Orders made with respect to the State of Gujarat[32] [Article 371 (2)] and Manipur [Article 371C(1)] specifically empowered the Governor to exercise discretionary power.

4.14.05 In the discharge of the functions referred to in paras 4.14.01 and 4.14.04 above, the Governor concerned has to exercise his discretion. He is thus *not bound* to seek or accept the advice of his Council of Ministers. But that does not mean that he is forbideen to consult them. Rather, it is advisable that the Governor should, if feasible, consult his Ministers even in such matters, which relate essentially to the administration of a State, before taking a final decision in exercise of his discretion. Such a practice will be conducive to the maintenance of healthy relations between the Governor and his Council of Ministers. Further. going by the principle recommended in para 4.13.04 in the preceding Section, a Governor, while exercising any of the functions referred to in this Section too, may act in his discretion only when he finds that the advice given by his Council of Ministers would be prejudicial to the effective discharge of such functions.

15. *GUIDELINES FOR GOVERNORS*

4.15.01 A number of views have been expressed before us as to whether guidelines are necessary for Governors in regard to the exercise of their discretionary powers. According to one view, it will be difficult to frame a set of guidelines because the characteristics of the situations in which they have to be exercised will be so diverse as to defy even broad categorisation. Another view is that guidelines may lead to litigation. In any case, they are unnecessary and it should be assumed that a Governor will use his discretion properly in accordance with the spirit of the Constitution.

4.15.02 There is the opposing view that guidelines are necessary. They should be directory and embody accepted conventions. While some would prefer the guidelines to be kept outside the Constitution, others would like them to be issued in the form of an Instrument of Instructions under the Constitution. According to one view, an Instrument of Instructions may be formulated by the Union in consultation with the States. Another view is that this should be done by the Inter-Governmental Council.

4.15.03 The Draft Constitution provided that, in choosing his Ministers and in his relations with them, the Governor would be guided by the Instructions set out in a Schedule (viz. the Fourth) [33]. The Schedule was subsequently deleted by the Constituent Assembly. While doing so, it was explained that the Governor had to act on the advice of his Ministers. His discretion being very meagre, his relations with his Ministers should be left entirely to convention.[34]

4.15.04 The ARC Study Team on Centre-State Relationships (1967) emphasised the need for the evolution of a national policy to which the Union and the States subscribe, which gives recognition to the role of the Governor and guides the responses of the Union, the States and the Opposition parties to any actions taken in discharge of it. The national policy, according to it, should spell out the implications of the Governor's role in the form of conventions and practices, keeping in view the national objective of defending the Constituition and the protection of democracy. [35]

4.15.05 The Administrative Reforms Commission (1969) recommended that guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and, on acceptance by the Union, issued in the name of the President.[36] The Government of India, however, did not accept this recommendation on the ground that these matters should be left to the growth of appropriate conventions and that the formulation of rigid guidelines would be neither feasible nor appropriate.

4.15.06 Considering the multi-faceted role of the Governor and the nature of his functions and duties, we are of the view that it would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise by him of his discretionary powers. No two situations which may require a Governor to use his discretion, are likely to be identical. Their political nuances too are bound to be different, making it virtually impossible to foresee and provide for all such situations. Consequently, guidelines will be too broad to be of practical use to a Governor and yet may force him to search for precedents every time. It is important that no such handicaps should be placed on him. He should be free to deal with a situation, as it arises, according to his best judgement, keeping in view the Constitution and the law and the conventions of the parliamentary system outlined in the preceding paragraphs as well as in the Chapters on "Reservation of Bills by Governors for President's consideration", [37] and "Emergency Provisions".[38]

---

(31) Clause (1) of Article 371, inserted by the Constitution (Seventh Amendment) Act, 1956 with effect from 1-11-1956, was modified by the Punjab Re-organisation Act, 1966, section 26 (with effect from 1-11-1966), omitting therein references to the State of Punjab. The provision was eventually repealed by the Constitution (Thirty-second Amendment) Act, 1973 with effect from 1st July, 1974.

(32) The Presidential order with respect to the State of Gujarat made under Article 371 (2) of the Constitution on the 28th February, 1977 remained un-implemented. It was eventually repealed by another Presidential order made under the said provision on 17th February, 1978.

(33) Rao, B. Shiva: The Framing of India's Constitution Volume III. Page 569 [Article 144 (4)] and Page 650 (Fourth Schedule).

(34) Constituent Assembly Debates: Volume X. Pages 114 to 116.

(35) Report of the Study Team on Centre-State Relationship Para 18.5; Pages 273 and 274.

(36) Administrative Reforms Commission : "Report on Centre-State Relationships" : Recommendation 9 : Page 25.

(37) Chapter V.

(38) Chapter VI.

16. *RECOMMENDATIONS*

4.16.01 A person to be appointed as a Governor should satisfy the following criteria :

(i) He should be eminent in some walk of life.

(ii) He should be a person from outside the State.

(iii) He should be detached figure and not too intimately connected with the local politics of the State; and

(iv) He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

1 selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

(Para 4.6.09)

4.16.02 It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or a combination of other parties.

(Para 4.6.19)

4.16.03 In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155.

(Para 4.6.25)

4.16.04 The Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. The Consultation should be confidential and informal and should not be a matter of constitutional obligation.

(Para 4.6.33)

4.16.05 The Governor's tenure of office of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reason.

(Para 4.7.08)

4.16.06 Save where the President is satisfied that, in the interest of the security of the State, it is not expedient to do so, the Governor whose tenure is proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendation of this Group, the President may pass such orders in the case as he may deem fit.

(Para 4.8.08)

4.16.07 When, before expiry of the normal terms of five years, a Governor resigns or is appointed Governor in another State, or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him, in reply.

(Para 4.8.09)

4.16.08 As a matter of convention, the Governor should not, on demitting his office, be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India. Such a convention should also require that, after quitting or laying down his office, the Governor shall not return to active partisan politics.

(Para 4.9.04)

4.16.09 A Governor should, at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse.

(Para 4.10.02)

4.16.10 (a) In choosing a Chief Minister, the Governor should be guided by the following principles, *viz.* :

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.

(ii) The Governor's task is to see that a government is formed and not to try to form a government which will pursue policies which he approves.

(b) If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.

If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below :

(i) An alliance of parties that was formed prior to the Elections.

(ii) The largest single party staking a claim to form the government with the support of others, including 'independents'.

(iii) A post-electoral coalition of parties, with all the partners in the coalition joining government.

(iv) A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents', supporting the government from outside.

The Governor while going through the process described above should select a leader who in his (Governor's) judgement is most likely to command a majority in the Assembly.

(c) A Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly

within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

(Paras 4.11.03 to 4.11.06)

4.16.11 The Governor should not risk determining the issue of majority support, on his own, outside the Assembly. The prudent course for him would be to cause the rival claims to be tested on the floor of the House.

(Para 4.11.07)

4.16.12 The Governor cannot dismiss his Council of Ministers so long as they continue to command a majority in the Legislative Assembly. Conversely, he is bound to dismiss them if they lose the majority but do not resign.

(Para 4.11.09)

4.16.13 (a) When the Legislative Assembly is in session, the question of majority should be tested on the floor of the House.

(b) If during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost 'majority', he should not, as a matter of constitutional propriety, dismiss the Council unless the Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible so that the 'majority' may be tested.

(c) Generally, it will be reasonable to allow the Chief Minister a period of 30 days for the summoning of the Assembly unless there is very urgent business to be transacted like passing the Budget, in which case, a shorter period may be allowed. In special circumstances, the period may go up to 60 days.

(Paras 4.11.10, 4.11.11 and 4.11.13)

4.16.14 So long as the Council of Ministers enjoys the confidence of the Legislative Assembly, the advice of the Council of Ministers in regard to summoning and proroguing a House of the Legislature and in dissolving the Legislative Assembly, if such advice is not *patently* unconstitutional, should be deemed as binding on the Governor.

(Para 4.11.17)

4.16.15 (a) The Governor may in the exigencies of certain situations, exercise his discretion to summon the Assembly only in order to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution.

(b) When the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period, the Governor can summon the Assembly within the period of six months specified in Article 174(1).

(c) When a Chief Minister (who is not the leader of the party which has absolute majority in the Assembly), is not prepared to summon the Legislative Assembly within 30 days of the taking over [*vide* recommendation 4.16.10(c) above] or within 30 days or 60 days, as the case may be, when the Governor finds that the Chief Minister no longer enjoys the confidence of the Assembly [*vide* recommendation 4.16.13 (c) above], the Governor would be within his constitutional right to summon the Assembly for holding the "Floor Test".

(Paras 4.11.19 and 4.11.20)

4.16.16 If a notice of a no-confidence motion against a Ministry is pending in a House of the Legislature and the motion represents a legitimate challenge from the Opposition, but the Chief Minister advises that the House should be prorogued, the Governor should not straightaway accept the advice. He should advise the Chief Minister to postpone the prorogation and face the motion.

(Para 4.11.22)

4.16.17 (a) When the advice for dissolving the Assembly is made by a Ministry which has lost or is likely to have lost majority support, the Governor should adopt the course of action as recommended in paras 4.16.12, 4.16.13 and 4.16.15 (c) above.

(b) If ultimately a viable Ministry fails to emerge, the Governor should first consider dissolving the Assembly and arranging for fresh elections after consulting the leaders of the political parties concerned and the Chief Election Commissioner.

(c) If the Assembly is to be dissolved and an election can be held early, the Governor should normally ask the outgoing Ministry to continue as a caretaker Government. However, this step would not be proper if the outgoing Ministry has been responsible for serious mal-administration or corruption.

(d) A convention should be adopted that a caretaker Government should not take any major policy decisions.

(e) If the outgoing Ministry cannot be installed as a caretaker Government for the reason indicated in (c) above or if the outgoing Ministry is not prepared to function as a caretaker Government, the Governor, without dissolving the Assembly, should recommend President's rule in the State.

(f) If fresh election cannot be held immediately on account of a national calamity or State-wide disturbances, it should not be proper for the Governor to install a caretaker Government for the long period that must elapse before the next election is held. He should recommend proclamation of President's rule under Article 356 without dissolving the Assembly.

(g) If it is too early to hold fresh election, the Assembly not having run even half its normal duration of five years, the Governor should recommend President's rule under Article 356 without dissolving the Assembly.

(Paras 4.11.25 to 4.11.30)

4.16.18 The Governor has no discretionary power in the matter of nominations to the Legislative Council or to the Legislative Assembly. If at the time of making a nomination, a Ministry has either not been formed or has resigned or lost majority in the Assembly, the Governor should await the formation of a new Ministry.

(Para 4.11.31)

4.16.19 Where a State University Act provides that the Governor, by virtue of this office, shall be the Chancellor of the University and confers powers and duties on him not as Governor of the State but as Chancellor, there is no obligation on the Governor, in his capacity as Chancellor, always to act on Ministerial advice under Article 163(1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. In his capacity as Chanceller of a University, the Governor may be required by the University's statute to consult a Minister mentioned in the statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters, also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

(Paras 4.11.37 to 4.11.39)

4.16.20 The Governor, while sending *ad hoc* or fortnightly reports to the President, should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

(Para 4.12.06)

4.16.21 The discretionary power of the Governor as provided in Article 163 should be left untouched.

(Para 4.13.03)

4.16.22 When a Governor finds that it will be constitutionally improper for him to accept the advice of his Council of Ministers, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

(Para 4.13.04)

4.16.23 Certain specific functions have been conferred (or are conferable) on the Governors of Maharashtra and Gujarat [Article 371(2)], Nagaland [First Proviso to Article 371A(1)(b), Article 371A(1)(d) and Article 371A(2)(b) and (f)], Manipur [Article 371C(1)], Sikkim [Article 371F(g)] and Arunachal Pradesh [First Proviso to Article 371H(a)] to be exercised by them in their discretion. In the discharge of these functions, the Governor concerned is *not bound* to seek or accept the advice of his Council of Ministers. However, before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible, consult his Ministers even in such matters, which relate essentially to the administration of a State.

(Para 4.14.05)

4.16.24 It would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise of the discretionary powers of the Governor. A Governor should be free to deal with a situation according to his best judgement, keeping in view the Constitution and the law and the conventions of the Parliamentary system outlined in this Chapter as well as in Chapter V "Reservation of Bills by Governors for President's consideration" and Chapter VI "Emergency Provisions".

(Para 4.15.06)

COMPARISON BETWEEN NUMBER OF TENURESOF GOVERNORS AND THEIR DURATIONS (EACH LESS THAN THE NORMAL TENURE OF 5 YEARS) DURING -

451

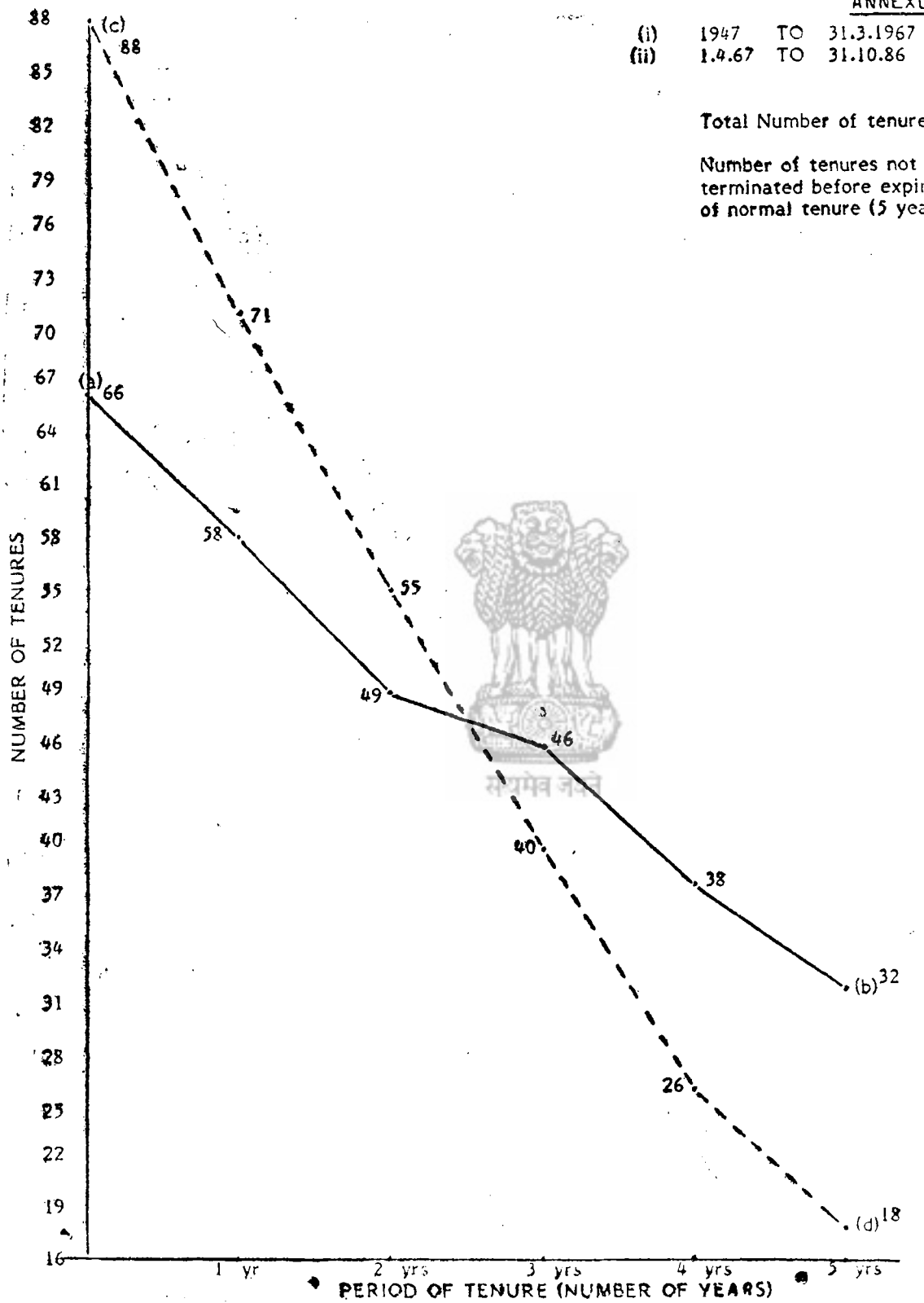
ANNEXURE IV.1

(i) 1947 TO 31.3.1967 _____

(ii) 1.4.67 TO 31.10.86 ----------

Total Number of tenures (a) and (c)

Number of tenures not terminated before expiry of normal tenure (5 years) (b) and (d)



CHAPTER V

RESERVATION OF BILLS BY GOVERNORS FOR PRESIDENT'S CONSIDERATION, AND PROMULGATION OF ORDINANCES

CONTENTS

LIST OF ANNEXURE

CHAPTER V

RESERVATION OF BILLS BY GOVERNORS FOR PRESIDENT'S CONSIDERATION AND PROMULGATION OF ORDINANCES

1. *INTRODUCTION*

5.1.01 The Constitution makes the Governor a component part of the State Legislature (Article 168). He cannot be a member of either House of that Legislature. In order to become an Act, every Bill passed by the State Legislature must receive his assent or, having been reserved by him for President's consideration, receive the assent of the President[1]. If the Governor or the President, as the case may be, withholds his assent, the Bill fails to become law.

Article 200

5.1.02 Article 200 provides that when a Bill passed by the State Legislature, is presented to the Governor, the Governor shall declare—

(a) that he assents to the Bill; or

(b) that he withholds assent therefrom; or

(c) that he reserves the Bill for the President's consideration; or

(d) the Governor may, as soon as possible, return the Bill (other than a Money Bill) with a message for re-consideration by the State Legislature. But, if the Bill is again passed by the Legislature with or without amendment, the Governor shall not withhold assent therefrom (First Proviso); or

(e) if in the opinion of the Governor, the Bill, if it became law, would so derogate from the powers of the High Court as to endanger its constitutional position, he shall not assent to but shall reserve it for the consideration of the President (Second Proviso).

5.1.03 If the Governor reserves a Bill for President's consideration, the enactment of the Bill then depends on the assent or refusal of assent by the President.

5.1.04 In the case of a reserved Bill, the President shall, under Article 201, either declare his assent or withhold his assent thereto. Instead of following either of these courses, the President may (if the Bill is not a Money Bill) direct[2] the Governor to return the Bill together with a message to the State Legislature for reconsideration. The State Legislature shall then reconsider the Bill within 6 months of its receipt and, if it is again passed, it shall be presented again to the President for his consideration. In contrast with the power of the Governor regarding a reconsidered Bill, it is not obligatory for the President to give his assent to a reconsidered Bill.

5.1.05 State Bills reserved for President's consideration under the Constitution, may be classified as follows :—

I. Bills which must be reserved for President's consideration

In this category come Bills—

(i) which so derogate from the powers of the High Court, as to endanger the position which that Court is by this Constitution designed to fill (Second Proviso to Article 200);

(ii) which relate to imposition of taxes on water or electricity in certain cases, and attract the provisions of Clause (2) of Article 288; and

(iii) which fall within clause (4)(a)(ii) of Article 360, during a Financial Emergency.

II. Bills which may be reserved for President's consideration and assent for specific purposes

(i) To secure immunity from operation of Articles 14 and 19. These are Bills for—

(a) acquisition of estates, etc. (First Proviso to Article 31A(I));

(b) giving effect to Directive Principles of State Policy (Proviso to Article 31C).

(ii) A Bill relating to a subject enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or an existing law, by securing President's assent in terms of Article 254(2).

(iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the Proviso to Article 304(b) read with Article 255.

III. Bills which may not specifically fall under any of the above categories, yet may be reserved by the Governor for President's consideration under Article 200.

2. *CRITICISMS AND SUGGESTIONS BY STATE GOVERNMENTS AND OTHERS*

5.2.01 Most State Governments, who have apprised the Commission of their views, are not in favour of making any change in the substantive provisions of Articles 200 and 201. They are of the view that the object of these provisions is to ensure broad uniformity of legislation and conformity with the Constitution. This is chiefly necessary to avoid repugnancy to Union laws, of Bills relating to matters in the Concurrent List. According to them, these provisions also act as a safety-valve against hasty legislation, and by their operation enable the State

1. Articles 200 and 201.
2. Proviso to Article 201.

20—325/87

Government and Legislature to have a second look at it. It is added that even otherwise, situations are conceivable where the State Government may think it prudent to bring the Bill to the notice of the Union Government. Two of them have emphasised that the Governor (under Article 200) and the Union Government (under Article 201) should not exercise their discretion in an arbitrary manner. They recommend that guidelines for the exercise of such discretion should be laid down. One of them has stressed that the Union Government should not, by the use of its powers under Article 201, try to dictate its policies to the State Government, unless the proposed Bill goes against the national interest or the provisions of the Constitution. Several States in this group, expressly or impliedly, complain of delays in the consideration of State Bills referred to the President. They have suggested the fixing of a time-limit for processing and securing President's orders on the reserved Bills. Some of them have given specific instances of such delays.

5.2.02 A different view has been propounded by some State Governments. They question the need for these provisions and ask for their deletion or substantial modification. It is argued that these provisions are subversive of the true federal principle. On this ground, one of them has suggested reformulation of these Articles to exclude the power of the Governor to reserve a Bill relating to a matter in the State List and the President's power to veto such a Bill. Another State Government maintains that these provisions are 'basically incosistent with the supremacy of the State Legislature, consisting of representatives of the people in whom the sovereignty of the State vests'. It is argued that the power of referring a State Bill for President's consideration operates to subordinate the State Legislature to the Union Executive. It is alleged that the power is not being exercised in conformity with the purpose and object of these provisions. There have been cases where Governors have reserved Bills contrary to the advice of the Council of Ministers. The legislative organ being independent of the executive, the Constitution should be amended so that only the Union Legislature—and not the Union Executive—may have power to approve or disapprove a repugnant State legislation in the Concurrent field. They have also asked for fixing a time-limit in Article 201 for completing consideration of the reserved Bills by the President. A State Government has suggested modification of clause (2) of Article 254 and addition of another proviso before the existing proviso to that clause, to the effect, that if the approval of the President to the Bill is not received within the period of one year from the date of its receipt it shall be deemed to have been approved by the President. Yet, another State Government has alleged that powers under Articles 200 and 201 are being misused to serve the partisan interests of the Union Council of Ministers. It has cited a recent example of a Bill to amend the law governing a University, reserved by the Governor in his discretion for the consideration of the President. It has urged for deletion of these two Articles. In the alternative, it has suggested modification of Article 200 so as to make it clear that, in the exercise of his functions under it, the Governor shall, in all cases, act on the advice of his Council of Ministers. It has also suggested providing of a time-limit of one month for the Governor to make up his mind for reservation of a Bill for President's consideration, and six months for consideration of such Bills at the level of the Union Executive. Another change suggested is that, if a reconsidered Bill is presented again to the President, the latter shall not withhold assent therefrom. Thus, the power of the President in the case of reconsidered Bills is sought to be curtailed and made the same as that of the Governor. Another State Government has argued that, if this power is exercised otherwise than on the advice of the State Council of Ministers, it involves a major effective constraint on the States' legislative autonomy. It has therefore suggested that the existing Second Proviso to Article 200 be replaced to provide that the Governor shall exercise his functions under Article 200 in accordance with the advice of the State Council of Ministers.

5.2.03 One all-India Party complains that Bills have been reserved for consideration of the President in order to create difficulties for the State Governments. To prevent this alleged misuse, it suggests that Article 200 should be so amended as to ensure that when a Bill relating to a subject in the State List, is presented to the Governor he shall not withhold assent therefrom or reserve it for consideration of the President. In their view, a time-limit of 3 months for consideration and orders of the President on a reserved Bill relating to a matter in the Concurrent List, should be prescribed.

5.2.04 Another all-India Party has proposed that these provisions be amended to ensure that in reserving a Bill passed by the State Legislature, the Governor acts strictly on the advice of his Council of Ministers. It should be further provided, through a constitutional amendment, that the President shall complete consideration of the Bill within three months.

5.2.05 A third all-India Party has propounded the view that no Bill excepting a Bill falling within the purview of the second proviso to Article 200, should be reserved by the Governor for the consideration of the President. To ensure this, it has suggested that Article 200 should be suitably amended. If the Bill appears to violate the Constitution, then that is a matter to be left to the Judiciary and not to the political judgement or prejudices of the Union Government. The power of the President to veto a Bill (on this ground) should be taken away by repeal of Article 201. In the alternative, they have asked for prescribing a time-limit for consideration of the reserved Bills by the President.

5.2.06 Another suggestion in regard to Bills which may appear to be unconstitutional, is that they may be referred to the Supreme Court by the President under Article 143 for its opinion.

5.2.07 One of the State Governments, which is of the view that the Governor should act in accordance with the advice of the Council of Ministers in seeking President's assent to State Bills, has observed that a Council of Ministers may not advise the Governor to reserve a Bill for President's assent under Article 254(2) or the First Proviso to Article 31A or the Proviso to Article 31C if they do not mind foregoing the

special protection for the validity of the particular legislation under the said Articles. They further consider that the President should be guided by the advice of the Inter-State Council and not that of the Union Council of Ministers in respect of Bills reserved under Article 31A or 31C.

3. *ISSUES FOR CONSIDERATION*

5.3.01 Thus, the main issues that require consideration are :—

(a) Whether the provisions of Articles 200 and 201 are subversive of the federal principle and the supremacy of the State Legislature in the field demarcated for it by the Constitution, and should therefore be deleted, or materially modified.

(b) Whether the Governor has to exercise his functions under Article 200, in all cases, in accordance with the advice of his Council of Ministers or whether, in some exceptional circumstances, he can act in the exercise of his discretion. And, whether it is feasible, and desirable to lay down guidelines to regulate the exercise of this discretion.

(c) Whether there have been delays in the process of securing orders of the President on the reserved Bills. If so, what measures, including fixation of time-limits, are necessary to minimise such delays.

4. *LEGISLATIVE HISTORY OF ARTICLES* 200, 201 *AND* 254

5.4.01 For appreciating these issues in the proper perspective, it is necessary to have a short look at the historical background of these provisions. Article 200 uses the phraseology of Section 75 of the Government of India Act, 1935 but makes two main departures from it :—

(a) It omits the words 'in his discretion'.

(b) It adds at the end of the first proviso, the words 'and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom'.

In order to gauge the significance and effect of these departures, we must hark back to the Constitution-makers.

5.4.02 The provisions which finally emerged from the Constituent Assembly as Articles 200 and 201, were, to start with, in the form of Clauses 147 and 148 of the Draft Constitution prepared by the Constitutional Adviser. These were renumbered by the Drafting Committee as Articles 175 and 176, respectively. The first paragraph of the Draft Article 175 was substantially similar to that of the present Article 200. Thereunder, the Governor could assent to the Bill or withhold assent therefrom or reserve it for the consideration of the President. The proviso to this Draft Article provided that in the case of a Bill passed by a State Legislature having only one House, the Governor may in his discretion return the Bill with a message for reconsideration to it, but he shall not withhold his assent from a Bill which had been passed again by the Legislature with or without amendment. It is noteworthy that in discharging his functions under this proviso, the Governor was expressly authorised to act in the exercise of his discretion. The Second Proviso to Article 200 was not originally there in the Draft Article. It was added[3] by the Constituent Assembly at the final stage of the discussions.

5.4.03 Draft Article 176 was in *pari materia* with the present Article 201.

5.4.04 We have noticed in the Chapter on the 'Role of the Governor'[4] that, after prolonged consideration, the Constituent Assembly decided to have nominated, instead of elected, Governors. Consequent upon this decision, they deleted[5] from the various provisions of the Constitution, including the Draft Article 175, all references to the discretionary powers of the Governor. However, the Constituent Assembly did not exclude the reference to the discretionary power of the Governor from the Draft Article 143 (later renumbered as Article 163 of the Constitution).

5.4.05 Some members of the Constituent Assembly[6] suggested to the Drafting Committee that the words which would enable the Governor to withhold assent from a Bill or reserve it for the consideration of the President or return the Bill for reconsideration, should be deleted from the Draft Article 175. The implication[7] of a further suggestion which one of the Members made, was that the President should not have the power under Draft Article 176 to withhold assent from a Bill reserved by the Governor for his consideration where such Bill having been returned to the State Legislature with a message for reconsideration in pursuance of directions of the President under that Article, was passed again with or without amendment.

5.4.06 In the context of these objections, the Constitutional Adviser submitted a Note to the Drafting Committee explaining the need for these provisions and the manner in which the functions conferred thereunder would be exercised by the Governor. The Note reads as follows :

> "Under Article 175, the power of the Governor to declare that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President will be exercised by him on the advice of his Ministers. Accordingly, there will be hardly any occasion to withhold assent from a Bill which has been passed by the Legislature. There is therefore no harm in retaining the provision with regard to the withholding of assent from a Bill in this article. There may be cases where it might be

3. Constituent Assembly Debates (Revised Edition), Volume X, pages 392 to 394.

4. "Role of the Governor", Chapter No. IV, Para 4.2.06.

5. Constituent Assembly Debates (Revised Edition), Vol. IX, Pages 41 to 42 and 59 to 62.

6. Rao B. Shiva, "The Framing of India's Constitution—Select Documents," Vol. IV, Page 125.

7. Rao B. Siva, "The Framing of India's Constitution—Select Documents," Vol. IV, Page 129.

necessary for the Governor to exercise the power of withholding assent even on the advice of the Ministers. If after a Bill is passed by the Legislature, the Ministers resign before the Bill is assented to by the Governor, the new Ministry which would be formed might not want the Bill to be enacted and might advise the Governor to withhold assent from the Bill. But if the provision relating to the withholding of assent is omitted from this article, it will not be possible for the Governor to withhold it. There is thus a distinct advantage in retaining the provision relating to the withholding of assent in this Article.

The provision regarding reservation of a Bill for the consideration of the President is also necessary in view of the provisions contained in clause (2) of Article 231."[8]

For[9] the reasons given by the Constitutional Adviser in his notes, including the one reproduced above, the suggestions of these Members for deletion of the clauses in question could not be accepted.

5.4.07 A suggestion was made by some members for deletion of clause (2) of the Draft Article 231 (corresponding to clause (2) of Article 254 of the Constitution). The Drafting Committee rejected it for reasons noted by them, as follows :—

"If this amendment is accepted, then the Legislatures of the States will hardly have any power to make laws with respect to any matter enumerated in the Concurrent List with regard to which any provision exists in any earlier law made by Parliament or in any existing law with respect to that matter, as the expression "repugnant" has sometimes been construed very widely. This would unduly restrict the powers of the Legislatures of the States to make laws with respect to matters in the Concurrent List."[10]

5.4.08 The above survey of the Constitution-making process brings out clearly that the Governor should, as a rule, exercise his functions under Article 200 on the advice of his Council of Ministers. By saying that "there will be hardly any occasion' for the Governor to exercise these powers irrespective of the advice of his Ministers, the Constitution-makers were emphasising that in the context of Article 200, occasions for the exercise of his discretionary power by the Governor would be extremely rare. The process of exclusion and inclusion by which they fashioned and finalised the provisions of Article 200, reinforces this conclusion. Deliberately departing from the language of Section 75 of the Government of India Act, 1935, they omitted from the substantive part and the First Proviso of Article 200, the phrase "in his discretion" and added at the end of the First Proviso, words which expressly divest the Governor of the power to veto a reconsidered Bill whether passed in the original or amended form.

8. Rao B. Shiva, "The Framing of India's Constitution—elect Documents" Volume IV, Page 125.

9. Rao B. Shiva, "The Framing of India's Constitution—elect Documents". Vol. IV, Pages 125 to 129.

10. Rao B. Shiva, "The Framing of India's Constitution—elect Documents", Vol. IV, Page 264.

Utility and purpose of reservation under Articles 200 and 254

5.4.09 It was further clarified by the Constitution-makers that the power of reserving Bills for the consideration of the President conferred by the Article, was a necessary channel for references under Article 254(2) to save the competence of the State Legislatures from being unduly restricted by the operation of the rule of repugnancy embodied in clause (1) of that Article. The point sought to be made out was that since the power of reserving a Bill for President's consideration under Article 200 read with Article 254(2) was being conferred primarily for preserving the States' legislative competence in the Concurrent sphere, it would be exercised by the Governor on the advice of his Ministers.

5. *AMENDMENT OF ARTICLES 200 AND 201 NOT NECESSARY*

5.5.01 We will now consider the demand for the deletion of those clauses from Articles 200 and 201 which enable the Union Executive to control the exercise of the legislative power of the States. It is argued that these provisions are subversive of the federal principle and the supremacy of the State Legislatures in their demarcated sphere. The principle of Union supremacy in the legislative sphere which underlies Articles 246(1) and 254(1) is recognised by most constitutions which are admittedly 'Federal'. In the United States of America this principle is called the[11] 'key-stone of the arch of Federal power'. Our Constitution is not cast in a tight mould. It is *sui generis*. It harnesses the federal principle to the needs of a "Strong Centre". The various provisions of the Constitution which require State Bills relating to certain matters to be referred to the President for consideration or assent are a part and parcel of this scheme of checks and balances adopted by our Constitution.

5.5.02 The Constitution-makers noted that Articles 200 and 201 are also necessary in view of clause (2) of Article 254. This needs a little amplification. Matters enumerated in the Concurrent List are of common interest to the Union and the States. On the basic aspects of such matters legislative uniformity throughout the country is desirable. However, if Parliament occupies the field of a Concurrent subject, the power of the State Legislature to enact a law on that subject, in variance with the Union law, is practically taken away. This result is brought about by the operation of the rule of repugnancy containded in clause (1) of Article 254. Nonetheless, peculiar conditions, problems and practices relating to that subject in a State, may need regulations and remedies quite different from the one provided in the Union law. In such a situation, a legislation of the State Legislature making provisions suited to the peculiar conditions in the State, though inconsistent with the Union law, can be saved from invalidation on the ground of repugnancy, if, having been reserved by the Governor for President's consideration, it receives his assent. Thus, Articles 200 and 201 provide a necessary channel through

11. Schwartz Bernard, Constitutional Law— A Textbook (Second Edition). 1979, Page 48.

which clause (2) of Article 254 operates to save the powers of the State Legislatures from being unduly abridged by the rule of repugnancy.

5.5.03 Sometimes, after a Bill is passed by the State Legislature, the Ministers resign before the Bill is assented to by the Governor and the new Ministry may not want the Bill to be enacted, and may advise the Governor to withhold assent therefrom. Cases are also conceivable where under popular pressure a State Legislature rushes through a Bill without fully considering its implications. Soon after it has been passed by the Legislature, the Council of Ministers, on second thought, may themselves discover defects in the Bill and decide that it should be further considered. In such a situation, Articles 200 and 201 afford them a way to get out of the predicament. They may advise the Governor to withhold assent from the Bill or return it for reconsideration of the Legislature or reserve it for the consideration of the President.

5.5.04 The chief utility of the provisions in Articles 200 and 201 for reservation of State Bills for the consideration of the President, lies in the fact that they help ensure uniformity and harmony in the exercise of the legislative power of the Union and State Legislatures with respect to the basic aspects of a matter in the Concurrent List.

5.5.05 There are other provisions also in the Constitution which require reservation for President's consideration of certain kind of Bills. These have been classified in para 5.1.05 above. For reservation of such Bills also, Article 200 is a necessary channel.

5.5.06 One of the State Governments who have objected to these provisions, has suggested that through suitable amendments of the Articles concerned, the power of control over State legislation should be withdrawn from the Union Executive, and instead, given to Parliament. In our Parliamentary system of government, the Union Council of Ministers remain in office so long as they command the confidence of Parliament. In practice, the fate of a Union Bill or measure depends on whether the Union Ministers support or oppose it. Therefore, this suggestion, if accepted, will, for all practical purposes, hardly make any difference. Rather, it will make the working of the provisions more cumbersome and dilatory.

5.5.07 We will now consider the suggestion that the existing Second Proviso to Article 200 be deleted and replaced by a Proviso making it obligatory for the Governor to exercise his functions in accordance with the advise of his Council of Ministers. This Proviso, as it stands, requires more as a matter of obligation rather than of discretion, that the Governor shall reserve a State Bill which, in his opinion, if it became law, would so derogate from the powers of the High Court as to endanger the position which it is designed to fill by the Constitution. Needless to emphasise that for the proper functioning of a two-tier democratic system, governed by rule of law, as envisaged by the Constitution, an independent judiciary is an integral and indispensable part of the Constitutional edifice.

5.5.08 For all these reasons, we do not support the proposals for deletion or amendment of Articles 200 and 201 of the Constitution.

6. *SCOPE OF GOVERNOR'S DISCRETION UNDER ARTICLE 200*

5.6.01 The next important question is whether the Governor has any discretion in discharging his functions under the substantive part of Article 200. If so, in what cirumstances can he act in the exercise of his discretion irrespective of the advice of his Ministers? Can any norms or guidelines be laid down in this matter?

5.6.02 There is some divergence of opinion on this point. One view is that the powers vested in the Governor under Article 200 are discretionary powers. Its protagonists maintain that on each occasion when a Bill is presented to the Governor for assent, it will be for him to decide whether as part of the Legislature he should or should not assent to it and, if he feels some doubt about the validity or propriety of any provision of the Bill, he may ask the Legislature to reconsider the whole or any part of it; and, if he thinks that the matter is of some importance, he may in his discretion, reserve it for the consideration of the President. The other view is that excepting in the case of Bills falling under the Second Proviso, the Governor has no discretion in the performance of his functions under Article 200.

5.6.03 The first view is too wide and general. Such a broad construction of the discretionary powers of the Governor would be repugnant to the Parliamentary system of government envisaged by the Constitution. This view stands impliedly disapproved by the dictum of the Supreme Court in *Samsher Singh's case*, (AIR 1974 SC 2912). It was held there in that the Governor in our Constitution enjoys the status of a Constitutional head in a Cabinet type of Government—a few exceptions and marginal reservations apart. In the context of Article 200, only the Second Proviso of the Article was cited as an illustration of such an exception (Para 54, of the judgement).

5.6.04 Article 163(1) of the Constitution enjoins that, normally, in the discharge of his functions, the Governor has to abide by the advice of his Council of Ministers, "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion". The words "by or under" restrict the scope of the discretionary power of the Governor. The emphasise that the Governor may exercise his discretion only where he is 'required' expressly or by necessary implication by the Constitution to act in the exercise of his discretion.

Article 200 does not confer a general discretion on Governor

5.6.05 We have already noticed while reviewing the proceedings of the Constitution-framing process, that the Note of the Drafting Committee read in the light of the circumstances, viz. (i) the omission from the Draft Article 175 of any express reference to the discretionary power of the Governor, and (ii) the addition at the end of the (First) Proviso, words

that prohibit the Governor from withholding assent to a reconsidered Bill,—emphasise the extremely limited scope for the Governor's discretionary power under Article 200.

5.6.06 We are of the opinion that Article 200 does not invest the Governor, expressly or by necessary implication, with a general discretion in the performance of his functions thereunder, including reservation of a Bill for the consideration of the President.

5.6.07 We now consider the view that in exercising his functions under Article 200 (save under its Second Proviso) the Governor has absolutely no discretion, but must abide by the advice of his Ministers under all circumstances. It appears to proceed on an extermely restricted interpretation of the Note of the Drafting Committee (extracted in Para 5.4.06 above). Evidently, it has construed literally the words "there will hardly be any occasion for the Governor", in this Note as conveying that "there will absolutely be no occasion" for the Governor to exercise his discretion. Firstly, it is to be noted that these words were used in the context of the Governor's power "to withhold assent from a Bill which has been passed by the State Legislature". Secondly, this Note cannot be read in isolation from that part of the Draft Article 143 [corresponding to the present Article 163(2)] whereunder the question whether any matter is such as respects which the Governor is by or under the Constitution required to act in his discretion, is to be determined by the Governor himself in his discretion and his decision on that question shall be final.

Discretionary power for reservation under Article 200 may be exercised only in rare cases

5.6.08 Unconstitutionality of a Bill may arise on various grounds. The Bill may *ex-facie* relate to a matter in List I and not in List II or List III and, as such, may be beyond the legislative competence of the State Legislature. The provisions of the Bill may *clearly* violate Fundamental Rights or transgress other constitutional limitations. The provisions of the Bill may *manifestly* derogate from the scheme and frame-work of the Constitution so as to endanger the sovereignty, unity and integrity of the nation.

5.6.09 In all cases of *patent* unconstitutionality, the Governor may—in the exercise of his discretion, reserve it for the consideration of the President. Save in such exceptional cases, the Governor must in the discharge of his functions under Article 200, abide by the advice of his Ministers. He should not act contrary to their advice merely because he personally does not like the policy embodied in the Bill.

Exhaustive guidelines neither feasible nor Desirable

5.6.10 We have noted in the Chapter on Governor that it is neither[12] possible to lay down exhaustive guidelines, nor desirable to imprison the discretionary powers of the Governor within the strait-jacket of rigid norms. The point that needs to be re-emphasised is that the Governor should act in his discretion only in *rare and exceptional* cases of the kind mentioned above, where he is compelled by the dictates of good conscience and duty to uphold the Constitution. In so acting, he should bear in mind that the Constitution is founded on the fundamental principles of Parliamentary democracy and division of powers. In an overwhelming area of his functions, the Governor can best defend and uphold the Constitution "not by denying its spiritual essence of Cabinet responsibility but by accepting as his Constitutional function what his 'responsible' Ministers have decided".[13]

A.R.C.'s View

5.6.11 The Administrative Reforms Commission (Study Team) observed[14] that, if the Provisions of Article 200 are given a very wide interpretation, it would lead to a large number of Bills being reserved for the consideration of the President, contrary to the federal spirit of the Constitution. They also pointed out that this Article must be interpreted as enabling Presidential intervention only in special circumstances, such as those in which there is a clear violation of fundamental rights or a patent unconstitutionality on some other ground or where the legitimate interests of another State or its people are affected. It further observed that this article also provides an opportunity for Presidential intervention in the event of a clash with a union law.

5.6.12 We are in agreement with the above observations. These observations are applicable, as far as may be, to the consideration by the President (*i.e.* the Union Executive) of the Bills reserved by the Governor in the exercise of his discretion under Article 200.

5.6.13 We are, therefore, of the view that :

(i) Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. However, in *rare and exceptional* cases, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are *patently* unconstitutional, such as, where the subject-matter of the Bill is *ex-facie* beyond the legislative competence of the State Legislature, or where its provisions *manifestly* derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation; or *clearly* violate Fundamental Rights or transgress other constitutional limitations and provisions.

(ii) In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill.

7. *ARTICLE* 254

5.7.01 We now consider some other provisions which require or necessitate reservation of certain kinds of Bills for assent or consideration of the

12. Chapter IV, "Role of the Governor", para 4.15.06.

13. Samsher Singh V. State of Punjab (V.R.K. Iyer, J., Para 117). AIR 1974, S.C. 2192.

14. A.R.C.'s Study Team Report on Centre-State Relationships, Volume I, Page 277.

President. The most important of such provisions is contained in Article 254(2). Our survey shows that approximately, 75 per cent of the total number of Bills reserved by the Governors for President's consideration, relate to matters in the Concurrent List. They were purportedly reserved under Article 254 (2) on the advice of the Council of Ministers. It is, therefore, necessary to examine the provisions of Article 254.

5.7.02 Clause (1) of Article 254 lays down that a valid law of the Union, with respect to a matter in the Concurrent List, shall prevail over a valid law of the State with respect to the same matter, to the extend of repugnancy. Clause (2) of the Article is an exception to this rule. It provides :

"Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

5.7.03 Resort to clause (2) is necessitated in the case of those legislations only which are affected by the operation of the rule of repugnancy contained in clause (1). Clause (1) applies only where the Union and the State Legislatures acting in the exercise of their powers, have passed mutually inconsistent law with respect to the same matter in the Concurrent List. If there is no Union Law or an existing law with respect to a Concurrent subject to which the State Law relates, this clause does not become operative. In such a situation the State legislation upon that Concurrent subject will prevail *proprio vigore* and the question of reserving it for consideration and assent of the President under clause (2) of the Article does not arise.

5.7.04 Further, Article 254 is not attracted if the State law in its pith and substance relates to a subject in List II, notwithstanding the fact that it incidentally trenches upon an Entry in the Concurrent List.

Scope of Article 254 (2)

5.7.05 In sum, clause (2) of Article 254 is applicable only where these two conditions are cumulatively satisfied :

(a) There is a valid Union law or an existing law on the same subject-matter occupying the same field in the Concurrent List to which the State legislation relates.

(b) The State legislation is repugnant to the Union law. That is to say,

(i) there is direct conflict between the provisions of the two laws, or

(ii) the Union law is intended to be an exhaustive code on the Concurrent List subject.

If either of these conditions is not satisfied, the reservation of the Bill for Presidential consideration, will fall outside the scope of Article 254(2). The Union cannot, in terms of the Constitution, require that all Bills on Concurrent List subjects passed by the State Legislatures, be referred for the consideration of the President. Even in cases where the reference is made in pursuance of Article 254(2), it is necessary that the reference should clearly identify the repugnant provisions of the State legislation with respect to which the assent of the President is sought.

Article 254(1) was conceived to save States' Legislative Competence under list III

5.7.06 The provisions of Article 254(2) have been conceived to save the power of the State Legislatures to make laws with respect to matters in the Concurrent List from being unnecessarily supeseded by the operation of the rule of repugnancy. It is, therefore, reasonable to assume that the Council of Ministers would themselves advise the Governor to reserve a Bill under this Article if any of its provisions are repugnant to a Union law or an existing law and that the Governor would invariably act according to such advice. Indeed, the survey made by us, confirms this position.

5.7.07 President's assent to a State Bill has been withheld on certain occasions on the ground that the Union is contemplating a more comprehensive legislation with respect to that subject. If the contemplated legislation is not already on the anvil of Parliament, this may be misconstrued by the State Government concerned as an excuse to delay or defeat its measure. If the State Government thinks that the measure is one of urgency and insists on an early order of the President on its Bill, and the Bill does not suffer from any patent unconstitutionality, it will perhaps be better for the Union Government to secure the President's assent to the Bill rather than allow it to drift indefinitely till the Union in its own time considers and enacts a law. No irremediable harm will be done if the President in order to avoid undue delay accords assent to such Bills. President's assent does not confer irrevocable immunity on the State Legislation from the operation of the rule of repugnancy. Parliament has always the power to amend, vary or repeal such a State law either directly, or indirectly by passing a subsequent law inconsistent therewith. This position is clear from a plain reading of the Proviso to Article 254(2).

5.7.08 We recommend that President's assent should not be ordinarily withheld on the ground that the Union is contemplating a comprehensive law in future on the same subject, and no irremediable harm will be done if President's assent is accorded to avoid undue delay.

5.7.09 As regards the suggestion that President's approval should be deemed to have been received if the same is not formally given within a period of one year from the date of receipt of the Bill, we consider that our suggestions for time-limits as contained in paragraph 5.16.03 hereinafter and the recommendation in paragraph 5.7.08 to the effect that no irremediable harm will be done if President's assent is accorded to avoid undue delay, will ensure that no case of a

Bill pertaining to a Concurrent List subject will be delayed. We do not, therefore, consider that any amendment to Article 254 in this context is called for.

8. *ARTICLES 31A AND 31C*

5.8.01 Article 31A(1) provides that any law in regard to acquisition of estates, etc. shall not be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19. A State Bill under this Article acquires this immunity only if it had been reserved for consideration of the President and received his assent (First Proviso). The First Proviso to Article 31A has been criticised on the ground that it makes an invidious distinction between the laws of the Union and those of the States.

5.8.02 The Proviso enables the Union Executive to control and oversee the exercise of the power of the State Legislatures in making laws with respect to any of the matters and purposes specified in Article 31A(1). The necessity for providing this check is obvious. The operative part of clause (1) of this Article enables the Union and the State Legislature to take away Fundamental Rights guaranteed under Articles 14 and 19 by passing a law, within their competence, falling under any of the categories specified in its sub-clauses (a), (b), (c), (d) and (e). A law of this kind renders inoperative a wide spectrum of Fundamental Rights guaranteed under Articles 14 and 19. It is, therefore, necessary to have a look at these Articles.

5.8.03 Article 14 enjoins upon the State not to deny any person equality before the law or the equal protection of the laws within the territory of India. 'Equal protection' within the contemplation of this Article means right to equal treatment in similar circumstances both with respect to rights and privileges conferred and liabilities imposed. Article 19(1) guarantees to all citizens the right :

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

* * * * * *

(g) to practise any profession, or to carry on any occupation, trade or business.

5.8.04 It is noteworthy that the protection of the guarantees in Articles 14 and 19 extends to all persons or citizens throughout the territory of India. In principle, therefore, if these rights are to be curtailed by certain types of laws, then there should be a degree of uniformity both with regard to the extend of the curtailment and the purpose for which this is done. The Provisio in question enables the Union to ensure such uniformity, in principle. We are, therefore, not persuaded that there is any invidious distinction between the laws made by Parliament or those made by a State Legislature. Indeed, as explained above, this Proviso is necessary.

5.8.05 Taken together, the Fundamental Rights conferred under Articles 14 and 19 constitute a substantial part of all such rights guaranteed in Part III of the Constitution. The operation of Article 31A(1) has a constricting effect on Articles 13, 32 and 226 also. In result, this whittles down the scope of judicial review on the grounds of Articles 14 and 19. This loss of judicial review has, to some extent, been compensated in another form by the Proviso which enables the Union Executive to ensure—(i) that its legislative power has not been exercised by a State for a purpose extraneous or collateral to the purposes specified in the sub-clauses of Article 31A(1); and (ii) that the legislation in question does not operate to abridge the Fundamental Rights under Articles 14 and 19 more than what is genuinely necessary for protection of the legislation.

Object of Article 31A(1) First Proviso

5.8.06 Properly invoked, Article 31A(1) operates as a very beneficent instrument for protection of agrarian reforms and social welfare legislations against frustrating litigation. Nonetheless, its potential for harm to or subversion of the constitutional system through misuse of legislative power cannot be underestimated. Article 355 imposes on the Union a duty *inter alia* to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. If the State legislation by reason of its unduly excessive and indiscriminate abridging effect on Fundamental Rights, or otherwise, clearly tends to subvert the constitutional system of the State, the Union Government may, consistently with this obligation, advise the President to withhold assent to the Bill and thus prevent it from taking legal effect.

Article 31C Proviso

5.8.07 The same criticism has been levelled against the Proviso to Article 31C. For the same reasons which we have given in the preceding paragraphs, it is not possible to subscribe to the suggestion for its deletion.

9. *ARTICLES 304 AND 288*

5.9.01 Two State Governments have asked for the deletion of the Proviso to Article 304(b). The Proviso requires that no Bill or amendment for the purpose of imposing reasonable restrictions on freedom of trade, commerce or intercourse with or within a State as may be required in the public interest, shall be introduced or moved in the legislature of a State without the previous sanction of the President. In the absence of such prior sanction, the defect can be cured in terms of Article 255 if assent to the legislation is obtained subsequently by making a reference through the Governor. It has been argued by one of the State Governments that, as there is already a built-in restraint on the State Government, viz. that the restrictions contemplated in the Bill should be 'reasonable' and 'in the public interest', the Proviso imposes an unjustifiable constraint on the legislative autonomy of the States.

5.9.02 We have dealt with this issue in the Chapter on 'Legislative Relations'[15] and need not repeat all that we have said there. Parliament's responsibility

15. Chapter II, Paras 2.40.01 to 2.40.08.

for imposition of restrictions on freedom of trade, commerce or intercourse extends both to inter-State and intra-State trade. Suffice it to say that the Proviso enables the Union Government to ensure that the economic and social unity is not disrupted and the freedom of trade, commerce and intercourse throughout the territory of India is not hampered through the parochial use of its legislative power by a State.

5.9.03 A Bill imposing or authorising the imposition of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority, established by any existing law or a law made by Parliament for regulating or developing any inter-State river or river-valley, must be reserved for President's consideration and assent to ensure its validity and effect [Article 288(2)]. No specific criticism has been levelled by any State Government against this provision.

10. *SCOPE OF UNION EXECUTIVE'S DISCRETION UNDER ARTICLE* 201

5.10.01 An incidental question—but no less important that remains for consideration is about the scope and manner in which the President (in effect, the Union Council of Ministers) should exercise this power with respect to a State Bill. Most authorities are agreed that once a Bill is reserved for the consideration and assent of the President, the Union Executive entitled to examine it from all angles such as, whether is it is in conformity with the legislative policy and provisions of any Union law, whether it is in harmony with the scheme and provisions of the Constitution, whether it is *ultra vires* any existing Union regulation, whether procedural safeguards are provided for the aggrieved party, etc. A study of the information availble to us shows that the Union Executive also examines a State Bill from the point whether or not it conforms with the policy of the Union Government.

Scope of Union's Power under Article 201 to withhold Assent on Ground of Non-Conformity with its Policy

5.10.02 While we agree that the scrutiny by the Union Government need not be confined to the general constitutionality of the Bill or conformity with constitutional provisions under which the Bill has been reserved, we would sound a note of caution that non-conformity of a State Bill to the policy of the Union Government is not always a safe ground for withholding Presidential assent from it. In this connection it is necessary to bear in mind the general principles that underlie the division of legislative powers between the Union and the States with reference to Lists I, II and III of the Seventh Schedule. All matters in the Concurrent List are manifestly of common interest to the Union and the States. The supervisory powers conferred on the Union under Articles 201 and 254(2) enable it to secure a broad uniformity in the main principles of the laws on Concurrent List subjects throughout the country.

5.10.03 From a functional angle, all matters in List II cannot be said to be exclusively of State or local concern. Several Entries in List II are either expressly subject to certain entries in List I or overlap to some extent matters in List I or List III. Securing uniformity and coordinating policy on the basic aspects of such matters in List II, having an interface with those in List I, cannot be extraneous to the functions exercised by the President in considering State Bills, under Article 201.

5.10.04 Articles 31A(1), 31C, 288(2), and 304(b) provide for reservation of certain types of State Bills for the consideration and assent of the President. These provisions, read with Article 201, enable the Union Executive to ensure, on the basic aspects of these special matters, a certain degree of uniformity in the interests of the social and economic unity of the country. Examination of State Bills of this special category, from the point of their compatibility with the settled policy of the Union, therefore, does not involve any impropriety.

President should not withhold assent merely on consideration of policy differences with respect to matters in List II

5.10.05 Apart from all such matters on which a measure of uniform coordinated policy is desirable, there remains in List II and area which is purely of local or domestic concern to the States. It is with respect to Bills falling within this area of exclusive State concern that utmost caution, circumspection and restraint on the part of the Union Executive is required in the exercise of its supervisory powers under Article 201. This is all the more necessary if the Bill has been reserved by the Governor in the exercise of his discretion, contrary to the advice of his Ministers. It may not be prudent to veto such a Bill merely on the ground that the legislative policy of the Bill, though otherwise constitutional, does not conform with what the Union Government thinks should be its policy with respect to the subject-matter of the Bill.

5.10.06 We recommend that as a matter of convention, the President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State List, except on the grounds of patent unconstituionality such as those indicated in para 5.6.13 above.

5.10.07 We now consider the suggestion that the President may seek the opinion of the Supreme Court under Article 143 in respect of Bills which may be deemed to be unconstitutional. Article 143 provides for reference by President to the Supreme Court in respect of matters of public importance where he is of the view that it would be expedient to obtain the opinion of that court. We consider that there is no need for making any specific prescription in this regard as the President can always make such a reference in appropriate cases.

5.10.08 We agree with the view expressed by one of the State Governments that it is not obligatory to reserve all Bills attracting the provisions of Articles 254(2), 31-A and 31-C for President's consideration. We have already stated in paragraph 5.1.05-II that the Bills under these articles *may* be reserved for President's consideration.

5.10.09 The suggestion that, in regard to Bills under Articles 31-A and 31-C, the President should be guided by the advice of the Inter-State Council

instead of that of the Union Council of Ministers, is apparently based on a misconception of the scheme of the Constitution. Firstly, the President is bound under Article 74(1) to act in accordance with the advice of the Council of Ministers in the exercise of his functions. The suggestion is contrary to this basic principle. Further, there is no justification for treating Bills relatable to Articles 31-A and 31-C alone in a manner different from other Bills which may be reserved for President's consideration under other provisions. In paragraph 5.8.06, we have already pointed out that a specific duty has been cast on the Union in this regard and this can be discharged only by the Union Executive, which is accountable to Parliament. The Inter-State Council being a high-level body (not accountable to Parliament), with members subscribing to widely different political views, cannot be the appropriate forum for referring such matters. We are therefore unable to support this suggestion.

11. *CONDITIONAL ASSENT BY THE PRESIDENT NOT PROPER*

5.11.01 A case study relating to the period 1956-67 conducted under the auspices of the Indian Law Institute concluded that 'the Centre does try to dictate its policies to the States' by attaching certain conditions to the Presidential assent. It expressed a doubt with regard to the propriety and constitutional validity of such conditional assent. A study of the available material on the subject shows that conditional assent as such is not given to State Bills referred for President's consideration. However, in some cases, the State Governments are persuaded to undertake amendments to the Bill through an Ordinance or an amending legislation to meet the changes in the Bill considered necessary by the Union. Simultaneously, assent to the Bill as already reserved, is accorded. This procedure does not appear to be quite in accord with the provisions of the Constitution. The Proviso to Article 201, *inter alia*, enables the President to direct the Governor to retrun the Bill (if it is not a Money Bill) to the State Legislature, with a message for reconsideration wihin a period of 6 months. It is open to the President to suggest changes considered necessary by the Union Government, and return the Bill for reconsideration. The State Legislature may or may not accept the suggestions made. It is equally not binding on the part of the President to assent to the Bill presented to him again after reconsideration, if the Bill has not been amended as suggested or even if the suggestions made have only been partially accepted by the State Legislatures. Depending upon the importance and significance of the suggestions made, the President may then either accord assent to the Bill or withhold assent.

5.11.02 We recommend that in cases where the Union Government considers that some amendments to a State Bill are essential before it becomes law, the President may return the Bill through the Governor in terms of the Proviso to Article 201 for reconsideration, with an appropriate message, indicating the suggested amendments. The practice of obtaining the so-called 'conditional assent' should not be followed when a constitutional remedy is available.

12. *STATISTICAL INFORMATION*

5.12.01 The Union government has informed us that during the period from 1977 to November, 1985, 1130 State Bills were reserved for the consideration of the President. Out of these, 1039 Bills were assented to by the President. The assent was withheld only in 31 cases; five cases were returned for reconsideration with President's message and 55 were still pending on November 22, 1985. Our analysis of the information furnished by the States shows that approximately 75 per cent of the Bills reserved for consideration of the President relate to matters in the Concurrent List and were reserved by the Governor for President's consideration under Article 254(2) on the advice of his Council of Ministers. Our survey also shows that a very small number of Bills during the last 35 years were reserved by the Governors in the exercise of their discretion.

13. *RATIONALE OF SYSTEM OF RESERVING BILLS*

5.13.01 In the light of the foregoing discussion, we are of opinion that the scheme of the Constitution and the various Articles, providing for reservation of State legislations for the consideration and assent of the President are intended to subserve the broad purpose of co-operative federalism in the realm of Union-State legislative relations. They are designed to make our system strong, viable, effective and responsive to the challenges of a changing social order. They are necessary means and tools for evolving cohesive, integrated policies on basic issues of national significance. Even from the federal standpoint, the reservation of State Bills, if made sparingly in proper cases, e.g. where the Bill relates to a matter falling clearly within the Union List, serves a useful purpose. But, as aptly cautioned by D.D. Basu, "its use cannot be extended to such an extent as to install the Union Executive over the head of the States Legislature in matters legislative."[16]

14. *DELAYS IN DISPOSAL OF STATE BILLS*

5.14.01 Much of the criticism has been directed against delay that takes place in securing the assent of the President. Specific instances of State Bills that remained pending consideration of the Union Government for more than two years have been brought out in evidence. Such delays cause unnecessary mis-givings and irritations in Union-State relations. Once State Government has observed that it is not the small number but the kind of Bills, vetoed by the President which causes irritations in Union-State relations. Almost all the State Governments and political parties unanimously demand that a time-limit should be prescribed for completing consideration of such Bills by the Union Executive.

5.14.02 A large number of Bills are being reserved for consideration of the President and this could lead to delays. As mentioned above, during the period from 1977 to 1985, no less than 1130 State Bills were reserved for consideration of the President.

16. Basu, D.D. : "Comparative Federalism (1987)" ; Page 531.

It requires extraordinary effort and time to cope with such abnormal inflow of work. An examination of the material collected by us shows that delays in disposal of such Bills have largely occurred due to differences between the Union and States on policy issues reflected in the legislations. By way of example, a list of some of the Bills which were delayed for more than a year and a half is given in Annexure V.1.

5.14.03 In our opinion, delays in the process of securing President's assent can be minimised, if not eliminated, by—

(i) streamlining the existing procedures both in making the reference by the State Government and its consideration by the Government of India;

(ii) prior consultation at the stage of the drafting of the Bill itself; and

(iii) prescribing time-limits for disposal.

5.14.04 The evidence before us has left us with a feeling that most, if not all, Bills relating to matters in the Concurrent List are being reserved for President's consideration without adequate examination as to whether or not they fall within the purview of Article 254(2). This results in unnecessary increase in the work-load of the Union Government.

5.14.05 Needless reservations should, therefore, be avoided specially where it is not required under some special provisions such as Articles 31A(1), 31C, 254(2), 288(2) and 304(b).

15. *STREAMLINING PROCEDURES*

5.15.01 To facilitate its speedy examination by the Union Executive, every reference of a State Bill from the State should be self-contained, setting out precisely the material facts, points for consideration and the ground on which reference has been made. It should contain information on the following points:

(i) The relevant provisions of the Constitution attracted or applicable, with reasons.

(ii) If the reference is made under Article 254(2), clear identification of the provisions of the Bill which are considered repugnant to, or inconsistent with, the specific provisions of a Union law or an existing law.

(iii) Urgency, if any, of passing the law within a certain time-limit.

(iv) A clear statement that the Bill is being reserved as per the advice of the Council of Ministers, or in the exercise of his discretion by the Governor, with reasons for the same.

(v) A lucid explanatory note on the intended policy behind the legislation instead of merely referring to the objects and reasons of the Bill.

(vi) An indication whether the Bill was sent for prior scrutiny of the Union Government, and if so, deviations , if any, from the prior reference.

5.15.02 There is evidence before us that as a matter of practice, State Governments often consult the Government of India at the drafting stage of a Bill. Generally, high-level officers of the State Government hold discussions on the provisions of the draft Bill with their counterparts at the Union. This is a healthy practice and should continue. This will also help cut short delays in consideration of the Bill by the Union Executive if, at the post-legislation stage, it is again referred by the Governor under the Constitution for Presidential consideration and assent.

16. *TIME-LIMITS*

5.16.01 Several State Governments and political parties have suggested that time-limits be incorporated in Article 201, itself. Some have, however, suggested that this can be done by making it a rule of practice or convention. The proposal of prescribing a time-limit under the Constitution is not new. Article 201 itself prescribes that when a Bill is returned by the President to the House or the Houses of the State Legislature, it shall reconsider it within a period of 6 months from the date of receipt of the President's message. The Constitution Act of Canada prescribes time-limits for the disposal of Bills by the Lt. Governor and the Governor-General.

5.16.02 If, as proposed in the preceding paras, the procedures for reserving a Bill for President's consideration are streamlined, high-level discussions are held whenever necessary between the Union and the State Governments at the drafting stage of the Bill, and procedural delays at the level of the Union Government are eliminated, the time taken to process Bills reserved for President's consideration will get effectively reduced. It has come to our notice that the Ministry of Home Affairs issued instructions, as early as in 1952, which were reiterated in 1978, that the Bills received from the States should be very expeditiously considered by the concerned Ministries and returned to them within a few days. It appears that these instructions are not being strictly followed. The Ministry of Home Affairs are now making all-out efforts to speed up the disposal of such State Bills. We are, therefore, of the opinion that it is not necessary to amend the Constitution for prescribing a time-limit. However, the Union and State Governments should adopt definite periods within which to process Bills and dispose of related references.

5.16.03 We recommend that—

(i) As a matter of salutary convention, a reference should be disposed of by the President within a period of 4 months from the date on which the reference is received by the Union Government.

(ii) If, however, it is considered necessary to seek clarification from the State Government or to return the Bill for consideration by the State Legislature under the Proviso to Article 201, this should be done within two months of the date on which the original reference was received by the Union Government.

(iii) Any communication for seeking clarification should be selfcontained. Seeking clarification piecemeal should be avoided.

(iv) On receipt of the clarification or the reconsidered Bill from the State under the Proviso to Article 201, the matter should be disposed of by the President within 4 months of the date of receipt of the clarification or the back reference on the reconsidered Bill, as the case may be, from the State Government.

5.16.04 Normally, when a Bill passed by the State Legislature is presented to the Governor with the advice of the Council of Ministers that it be reserved for the consideration of the President, then the Governor should do so forthwith. In exceptional circumstances, as indicated earlier, if the Governor thinks it necessary to act and adopt, in the exercise of his discretion, any other course open to him under Article 200, in respect of any Bill, he should do so within a period not exceeding one month from the date on which the Bill is presented to him. These rules of practice should be firmly adhered to and seldom departed from.

17. *WITHHOLDING OF ASSENT*

5.17.01 In cases where the Union Executive proposes to withhold assent from a Bill, it has been its practice to make an effort to convince the State concerned of the Union's point of view. In some cases, the views of the State Government were sought with respect to the grounds on which the assent was proposed to be withheld by the President, and the State's comments, if any, were considered before a final decision was taken by the Union Executive. We recommend that, wherever possible, the reasons for withholding assent from a State Bill should be communicated to the State Government.

18. *STATE ORDINANCES*

5.18.01 During a recess of the State Legislature, circumstances may exist which are considered by the State Government to necessitate immediate legislative action. To meet such an urgency, Article 213 empowers the Governor to promulgate an Ordinance with respect to any matter within the legislative competence of the State Legislature, if necessary, after obtaining instructions from the President. This power has to be exercised by him with the aid and advice of his Council of Ministers and not in his discretion. Its exercise is further subject to the following conditions precedent :

(a) The Governor (in reality, the Council of Ministers) must be satisfied "that circumstances exist which render it necessary for him to take immediate action".

(b) The Legislative Assembly is not in session, or where there is also a Legislative Council in the State, both Houses of the Legislature are not in session.

5.18.02 Clause (2)(a) of the Article requires that the Ordinance "shall be laid" before the State Legislature when it reassembles. The clause further makes it clear that the Ordinance shall have only a limited life. Its imperative is that the Ordinance shall cease to operate at the expiration of six weeks from the reassembly of the Legislature unless disapproved earlier by resolution of the Legislature or withdrawn earlier by the Governor.

5.18.03 As a safeguard against circumvention of the other provisions of the Constitution requiring that certain types of Bills cannot be introduced in a State Legislature without the previous sanction of the President, or take legal effect without consideration and assent of the President, the Proviso to Article 213(1) enjoins on the Governor not to promulgate any Ordinance without instructions from the President, if—

(a) a Bill containing the same provisions would under the Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under the Constitution have been invalid unless having been reserved for the consideration of the President, it had received his assent.

5.18.04 In tune with the prohibition in (c) is the provision contained in clause (3) of the Article. This clause provides

"If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void."

An analogue of the principle in Article 254(2) underlies the Proviso[17] to clause (3) of Article 213.

5.18.05 When a law containing a provision repugnant to a Union law or an existing law relating to a matter in the Concurrent List, has to be legislated by a State, the type of procedure to be adopted for ensuring the operational validity of that provision depends on whether it is contained in a Bill or in an Ordinance. The only difference between the two procedures is that, under Article 254(2), assent of the President is required *subsequent* to the passing of the Bill by the State Legislature, while, under the Proviso to Article 213(3), the instructions from the President under Article 213(1) are a condition *precedent* to the promulgation of the Ordinance.

5.18.06 The Proviso to Article 213(3) will not be attracted unless any provision of the Ordinance proposed to be promulgated is, in fact, repugnant to the provision of a Union law or an existing law relating to a matter in the Concurrent List. If there is no such repugnancy, the Ordinance would be valid even if it was promulgated without the previous instructions from the President, provided such instructions are not required on a ground other than that of repugnancy.

5.18.07 No Ordinance promulgated in any State by a Governor was re-promulgated till the year 1967. Thereafter, however, some State Governments have

[17]. "Provided that, for the purpose of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State, which has been reserved for the consideration of the President and assented to by him."

by successive repromulgation of the same Ordinance continued it in force for an indefinite period of time without attempting to get it replaced by an Act of the Legislature. In one State, the persistence and magnitude of this mode of 'law-making' by executive fiat, in preference to enactments by the Legislature, had assumed abnormal proportions. The Governor of that State promulgated 256 Ordinances during 1967-81 and all these Ordinances were kept alive for periods ranging between 1 to 14 years by repromulgation from time to time. Out of these 256, as many as 69 were repeatedly promulgated with the prior instructions of the President.

5.18.08 Eminent public men and scholars including those who have communicated their views to us, have voiced concern at the growth of this 'reprehensible' practice which poses a threat to Parliamentary democracy. In December, 1983, the Opposition in Parliament demanded an assurance from the Union Government not to accord permission for repromulgation of Ordinances which were never laid before the State Legislature for conversion into Acts. The Union Law Minister is reported[18] to have replied that while the Centre did not wish to withhold permission for repromulgation of an Ordinance, it had advised the concerned State to convert it into an Act.

5.18.09 A Professor in the Gokhale Institute of Politics and Economics, Pune, made an intensive study of the practice adopted by one State in promulgating and repromulgating Ordinances from time to time without enacting them into Acts of the Legislature. Thereafter, he and three others filed Writ Petitions in the Supreme Court challenging the constitutional validity of three repromulgated Ordinances. On merits, the principal questions for consideration before the Court, was : can the Governor mechanically go on repromulgating an Ordinance for an indefinite period of time and thus take over to himself the power of the Legislature to legislate, though that power is conferred on him under Article 213, only for the purpose of enabling him to take immediate action at a time when the House or Houses of the State Legislature, as the case may be, are not in session ? Answering this question in the negative, the Court enunciated that the power conferred under Article 213 on the Governor, is in the nature of an emergency power, which is to be exercised where, in the public interest, immediate action becomes necessary at a time when the Legislature is not in session. It was pointed out that the primary law-making authority under the Constitution is the Legislature and not the Executive. It was further stressed that an Ordinance issued by a Governor in exercise of such an emergency power must necessarily have a limited life. It was emphasised :

> ".....every Ordinance promulgated by the Governor must be placed before the Legislature and it would cease to operate at the expiration of six weeks from the reassembly of the Legislature or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any... Since Article 174 enjoins that thte Legislature shall meet at least twice in a year but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session and an Ordinance made by the Governor must cease to operate at the expiration of six weeks from the reassembly of the Legislature, it is obvious that the maximum life of an Ordinance cannot exceed seven and a half months unless it is replaced by an Act of the Legislature or disapproved by the resolution of the Legislature before the expiry of that period.... The Constitution-makers expected that if the provisions of the Ordinance are to be continued in force, this time should be sufficient for the Legislature to pass the necessary Act. But if within this time, the Legislature does not pass such an Act, the Ordinance must come to an end. The Executive cannot continue the provisions of the Ordinance in force without going to the Legislature".

5.18.10 The Court, however, conceded that "there may be a situation where it may not be possible for the Government to introduce and push through in the Legislature a Bill containing the same provisions as in the Ordinance, because the Legislature may have too much legislative business in a particular session or the time at the disposal of the Legislature in a particular session may be short, and in that event, the Governor may legitimately find that it is necessary to repromulgate the Ordinance. Where such is the case, repromulgation of the Ordinance may not be open to attack. But, otherwise, it would be a colourable exercise of power on the part of the Executive to continue an Ordinance with substantially the same provisions beyond the period limited by the Constitution, by adopting the methodology of repromulgation". In this context, it further observed :

> "It is settled law that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision".

5.18.11 It may be noted that there were several telling facts in that case which highlighted the unconstitutionality and impropriety of the practice of keeping Ordinances alive for several years by repeated repromulgation without ever bringing them before the Legislature. The *modus operandi* of repromulgation of Ordinances was vividly revealed by a circular letter which used to be sent by the Special Secretary to the Government in its Department of Parliamentary Affairs, immediately at the conclusion of each session of the State Legislature to all the Commissioners, Secretaries, Additional Secretaries and Heads of Departments. By this circular letter, the addressees were informed that the session of the Legislature had been 'got prorogued' on such and such date and that, under Article 213(2) (a) of the Constitution, all the Ordinances would cease to be in force after six weeks of the date of reasssembly of the Legislature if not repromulgated before that date. The letter further directed those officers to get in touch with the Law Department and initiate immediate action to get "all the concerned Ordinances repromulgated" before the date of their expiry. The letter also used to advise the officers that if the old Ordinances were repromulgated in their original form without any amendment, the approval of the

[18]. Economic Times, dated December 26, 1983.

Council of Ministers would not be necessary. In view of these "startling facts" the Court held that the Executive in that State "has almost taken over the role of the Legislature in making laws, not for a limited period, but for years together in disregard of the Constitutional limitations. This is clearly contrary to the Constitutional Scheme and it must be held to be improper and invalid".

5.18.12 In consonance with this pronouncement of the Supreme Court, we hope and trust that State Governments will eschew the wrong practice of mechanical and repeated repromulgation of an Ordinance without caring to get it replaced by an Act of the Legislature.

5.18.13 The Supreme Court has observed that there is not a single instance in which the President of India, in exercise of his power to issue an Ordinance under Article 123, has repromulgated any Ordinance after its expiry.

5.18.14 We recommend that, in due regard to the requirement of clause (2) of Article 213, every State Government should adopt a practice similar to that of the Union Government : that is to say, when the provisions of an Ordinance have to be continued beyond the period for which it can remain in force, the State Government should ensure, by scheduling suitably the legislative business of the State Legislature, enactment of an Act containing those provisions in the next ensuing session. The occasions should be extremely rare when a State Government finds that it is compelled to repromulgate an Ordinance because the State Legislature has too much legislative business in the current session or the time at the disposal of the Legislature in that session is short. In any case, the question of re-promulgating an Ordinance for a second time should never arise.

5.18.15 We further recommend that a decision to promulgate or repromulgate an Ordinance should be taken only on the basis of stated facts necessitating immediate action, and that too, by the State Council of Ministers, collectively.

5.18.16 When an Ordinance proposed to be re-promulgated is sent by the Governor, under the proviso to Article 213(1), to the Union Government for instructions from the President, withholding of such instructions may create Union-State friction. It is necessary to evolve suitable conventions so as to avoid needless controversies in this regard.

5.18.17 We recommend that the President may not withhold instructions in respect of the first re-promulgation of an Ordinance, the provisions of which are otherwise in order, but could not be got enacted in an Act because the Legislature did not have time to consider its provisions in that session. While conveying the instructions, the Union Government should make it clear to the State Government that another re-promulgation of the same Ordinance may not be approved by the President, and if it is considered necessary to continue the provisions of the Ordinance for a further period, the State Government should take steps well in time to have the necessary Bill containing those provisions passed by the State Legislature, and if necessary, to obtain the assent of the President to the Bill so passed.

5.18.18 One State Government has suggested that "some provision like the provision of Article 255 of the Constitution should be incorporated in Article 213 so that the Governor can exercise power in utmost urgency to promulgate Ordinance without instructio from the President".

5.18.19 It may be noted that the proviso to Article 213(1) enjoins on the Governor not to promulgate any Ordinance in cases falling under any of its sub-clauses (a), (b) and (c), without instructions from the President. It follows that the instructions fron the President are not necessary to enable the Governor to promulgate an Ordinance in a case not covered by this proviso.

5.18.20 Article 255 so far as material for our purpose, reads :

> "No Act.....of the Legislature of a State, and no such provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—
>
> (a) *** *** ***
>
> (b) *** *** ***
>
> (c) where the recommendation or previous sanction required was that of the President, by the President."

Clause (c) of this Article substantially corresponds to sub-clause (a) of the proviso to Article 213(1). There is no reference in Article 255 to the constitutional requirements mentioned in sub-clauses (b) and (c) of the proviso to Article 213(1). It is obvious, therefore, that in the context of a State legislation, subsequent assent of the President cures only that invalidity which arises from non-compliance with a Constitutional provision requiring the previous sanction of the President to the introduction of a certain type of Bill in the Legislature of a state. Article 304(b) is a typical example of such a provision. Article 255 does not encompass or cure an invalidity due to non-compliance with the Constitutional requirements mentioned in sub-clauses (b) and (c) of the Proviso to Article 213(1).

5.18.21 Extension of the principle of Article 255 to the Ordinances so as to leave the non-compliance with the Constitutional requirements in all or any of the cases mentioned in sub-clauses (a), (b) and (c) of the Proviso to Article 213(1), to be cured, by a subsequent, albeit uncertain, assent of the President, will tend to subvert the normal democratic process of legislation and encourage misuse of this emergency power at the cost of the primary law-making authority which, under our Constitution is the Legislature and not the Executive. It may be recalled that the instruction from the President is a necessary safeguard against circumvention of the Constitutional scheme of checks and balances which requires that certain types of Bills shall not be introduced in a State Legislature without the previous sanction of the President, or take legal effect without consideration or consent of the President.

5.18.22 For all these reasons, it is not possible to accept this suggestion of the State Government. Nevertheless, we would emphasise the desirability of

disposing of a reference made by the Governor for seeking instructions from the President under the Proviso to Article 213(1), with utmost despatch.

5.18.23 The various recommendations made by us in this Chapter in reagrd to reservation of State Bills will apply *mutatis mutandis* to the seeking of instructions from the President for the promulgation of a State Ordinance. In regard to time-limits, however, we recommend, keeping in view the urgent nature of an Ordinance, that a proposed Ordinance referred by the Governor to the President for instructions under the Proviso to Article 213(1), should be disposed of by the President urgently and, in any case, within a fortnight.

19. *RECOMMENDATIONS*

5.19.01 Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. Article 200 does not invest the Governor, expressly or by necessary implication, with a general discretion in the performance of his functions thereunder, including reservation of a Bill for the consideration of the President. However, *in rare and exceptional* cases, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are *patently* un-constitutional, such as, where the subject-matter of the Bill is *ex-facie* beyond the legislative competence of the State Legislature, or where its provisions *manifestly* derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation, or *clearly* violate Fundamental Rights or transgress other constitutional limitations and provisions.

(Paras 5.6.06 & 5.6.13(i))

5.19.02 In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill.

(Paras 5.6.09 & 5.6.13(ii))

5.19.03 Needless reservation of Bills for President's consideration should be avoided. Bills should be reserved only if required for specific purposes, such as :—

(a) to secure immunity from the operation of Articles 14 and 19 *vide* the First Proviso to Article 31A(1) and the Proviso to Article 31C;

(b) to save a Bill on a Concurrent List subject from being invalidated on the ground of repugnancy to the provisions of a law made by Parliament or an existing law *vide* Article 254 (2);

(c) to ensure validity and effect for a State legislation imposing tax on water or electricity stored, generated, consumed, distributed or sold by an authority established under a Union law, *vide* Article 288(2);

(d) a Bill imposing restrictions on trade or commerce, in respect of which previous sanction of the President had not been obtained, *vide*— Article 304(b) read with Article 255.

(Para 5.14.05)

5.19.04 Normally, when a Bill passed by the State Legislature is presented to the Governor with the advice of the Council of Ministers that it be reserved for the consideration of the President, then the Governor should do so forthwith. If, in exceptional circumstances, as indicated in para 5.19.01 above, the Governor thinks it necessary to act and adopt, in the exercise of his discretion, any other course open to him under Article 200, he should do so within a period not exceeding one month from the date on which the Bill is presented to him.

(Para 5.16.04)

5.19.05 (a) Every reference of a State Bill from the State should be self-contained, setting out precisely the material facts, points for consideration and the ground on which the reference has been made. The relevant provisions of the Constitution should also be indicated.

(b) If the reference is made under Article 254(2), the provisions of the Bill which are considered repugnant to or inconsistent with the specific provisions of a Union law or an existing law, should be clearly identified.

(Para 5.15.01(i) & (ii))

5.19.06 State Governments often consult the Government of India at the drafting stage of a Bill. Generally, high-level officers of the State Government hold discussions on the provisions of the draft Bill with their counterparts at the Union. This is a healthy practice and should continue.

(Para 5.15.02)

5.19.07 (a) As a matter of salutary convention, a Bill reserved for consideration of the President should be disposed of by the President within a period of 4 months from the date on which it is received by the Union Government.

(b) If, however, it is considered necessary to seek clarification from the State Government or to return the Bill for consideration by the State Legislature under the Proviso to Article 201, this should be done within two months of the date on which the original reference was received by the Union Government.

(c) Any communication for seeking clarification should be self-contained. Seeking clarification piecemeal should be avoided.

(d) On receipt of the clarification or the reconsidered Bill from the State under the Proviso to Article 201, the matter should be disposed of by the President within 4 months of the date of receipt of the clarification or the back reference on the reconsidered Bill, as the case may be, from the State Government.

(e) It is not necessary to incorporate these or any other time-limits in the Constitution.

(Paras 5.16.03 & 5.7.09)

5.19.08 (a) As a matter of convention, the President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State List, except on grounds of patent unconstitutionality such as those indicated in the recommendation in paragraph 5.19.01 above.

(Para 5.10.06)

(b) President's assent should not ordinarily be withheld on the ground that the Union is contemplating a comprehensive law in future on the same subject.

(Para 5.7.08)

5.19.09 If a State Bill reserved for the consideration of the President under the First Proviso to Article 31A(1) or the Proviso to Article 31C clearly tends to subvert the constitutional system of the State, by reason of its unduly excessive and indiscriminate abridging effect on Fundamental Rights or otherwise, then, consistently with its duty under Article 355 to ensure that the government of every State is carried on in accordance with the provisions of the Constitution, the Union Government may advise the President to withhold assent to the Bill.

(Paras 5.8.06 and 5.8.07)

5.19.10 In cases where the Union Government considers that some amendments to a State Bill are essential before it becomes law, the President may return the Bill through the Governor in terms of the Proviso to Article 201 for reconsideration, with an appropriate message, indicating the suggested amendments. The practice of obtaining the so-called 'conditional assent' should not be followed when a constitutional remedy is available.

(Para 5.11.02)

5.19.11 To the extent feasible, the reasons for withholding assent should be communicated to the State Government.

(Para 5.17.01)

5.19.12 State Governments should eschew the wrong practice of mechanical and repeated re-promulgation of an Ordinance without caring to get it replaced by an Act of the Legislature.

(Para 5.18.12)

5.19.13 In due regard to the requirement of clause (2) of Article 213, whenever the provisions of an Ordinance have to be continued beyond the period for which it can remain in force, the State Government should ensure, by scheduling suitably the legislative business of the State Legislature, enactment of law containing those provisions in the next ensui session. The occasions should be extremely ra when a State Government finds that it is compell to repromulgate an Ordinance because the Sta Legislature has too much legislative business in t current session or the time at the disposal of the Leg lature in that session is short. In any case, the qu tion of re-promulgating an Ordinance for a seco time should never arise.

(Para 5.18.

5.19.14 A decision to promulgate or re-promulgate an Ordinance should be taken only on the basis of stated facts necessitating immediate action, and that too, by the State Council of Ministers, collectively.

(Para 5.18.15)

5.19.15 Suitable conventions should be evolved in the matter of dealing with an Ordinance which is to be re-promulgated by the Governor and which is received by the President for instructions under the Proviso to Article 213(1).

(Para 5.18.16)

5.19.16 The President may not withhold instructions in respect of the first re-promulgation of an Ordinance, the provisions of which are otherwise in order, but could not be got enacted in an Act because the Legislature did not have time to consider its provisions in that session. While conveying the instructions, the Union Government should make it clear to the State Government that another re-promulgation of the same Ordinance may not be approved by the President, and, if it is considered necessary to continue the provisions of the Ordinance for a further period, the State Government should take steps well in time to have the necessary Bill containing those provisions passed by the State Legislature, and if necessary, to obtain the assent of the President to the Bill so passed.

(Para 5.18.17)

5.19.17 The recommendations in para 5.19.01 to 5.19.11 will apply *mutatis mutandis* to the seeking of instructions from the President for the promulgation of a State Ordinance. However, keeping in view the urgent nature of an Ordinance, a proposed Ordinance referred by the Governor to the President for instructions under the Proviso to Article 213(1), should be disposed of by the President urgently and, in any case, within a fortnight.

(Para 5.18.23)

ANNEXURE V.1

Examples of State Bills reserved for President's consideration, orders on which were passed after one and a half years

.o.	Name of Bill	Name of State	Date of reference	Date of disposal	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
	Orders passed after 1½ years				
1.	The Andhra Pradesh (Telengana Area) Abolition of Inams (Amendment) Bill, 1983.	Andhra Pradesh	7-6-84	17-12-85	Assented to
2.	The West Bengal Motor Vehicles Tax (Amendment) Bill, 1983.	West Bengal	8-4-83	27-1-85	Assented to
3.	Kerala Headload Workers' Bill, 1977	Kerala	27-11-78	28-9-80	Assented to
4.	The Orissa Estates Abolition (Amendment) Bill, 1977 .	Orissa	16-11-77	25-4-80	Assent withheld
5.	The West Bengal Estate Acquisition (Amendment) Bill, 1977	West Bengal	13-9-77	24-4-80	Assented to
6.	The Madhya Pradesh Lokayukta Evam Uplokayukta Vidheyak, 1974.	Madhya Pradesh	3-5-75	5-4-78	Assent withheld
	Orders passed after 3 years				
7.	Sikkim Urban Land (Ceiling and Regulation) Bill, 1976 .	Sikkim	18-10-76	25-4-80	Assent withheld
8.	The Notaries (Amendment) Bill, 1977 (Jammu & Kashmir) (Bill No. 13 of 1977).	Jammu & Kashmir	1-12-77	19-6-81	Assented to
9.	The Land Acquisition (Maharashtra Amendment) Bill, 1977	Maharashtra	24-11-77	25-8-81	Assent withheld
10.	The Bihar Urban Property (Ceiling) Bill, 1972 . .	Bihar	13-7-72	2-8-76	Assent withheld
11.	The Kerala Land Reforms (Amendment) Bill, 1980 .	Kerala	30-4-80	28-2-85	Assent withheld
	Orders passed after 6 years				
12.	Karnataka Civil Service Bill, 1978	Karnataka	29-6-79	12-7-85	Assented to
13.	The Public Property (Prevention of Destruction & Loss) Bill, 1978.	Kerala	3-10-78	22-3-85	Assent withheld
14.	The Essential Commodities (Karnataka Amendment) Bill, 1976.	Karnataka	28-6-76	16-8-84	Assent withheld
	Orders passed after 12 years				
15.	The Trade Unions (West Bengal Amendment) Bill, 1969	West Bengal	10-11-69	22-9-82	Assent withheld

CHAPTER VI

EMERGENCY PROVISIONS

CONTENTS

LIST OF ANNEXURES

CHAPTER VI

EMERGENCY PROVISIONS

1. *INTRODUCTION*

6.1.01 The framers of the Constitution were conscious that, in a country of sub-continental dimensions, immense diversities, socio-economic disparities and "multitudionus people, with possibly divided loyalties, "[1] security of the nation and stability of its polity could not be taken for granted. The framers, therefore, recognised that, in a grave emergency, the Union must have adequate powers to deal quickly and effectively with a threat to the very existence of the nation, on account of external aggression or internal disruption. They took care to provide that, in a situation of such emergency, the Union shall have overriding powers to control and direct all aspects of administration and legislation throughout the country. A violent disturbance, paralysing the administration of a State, could pose a serious danger to the unity and integrity of the country. Coping with such a situation of violent upheaval and domestic chaos, may be beyond the capacity or resources of the State. Intervention and aid by the Union will be necessary. A duty has, therefore, been imposed[2] by the Constitution on the Union to protect every State against external aggression and internal disturbance.

6.1.02 The Constitution-makers were alive to the fact that several regions or areas of the country had no past experience or deep-rooted tradition of Parliamentary form of Government, and a failure or break-down of the constitutional machinery in a State could not be ruled out as an impossibility. A further duty was, therefore, laid[3] on the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

6.1.03 The provisions of Article 352 have been invoked so far, twice, on grounds of 'external aggression', and once, on the plea of 'internal disturbance'. Article 356 has been brought into action seventy-five times since the commencement of the Constitution. In the initial years it was used sparingly. Upto the end of 1967, it had been invoked only twelve times. However, in the next eighteen years, it was resorted to on as many as sixty-two occasions. The very first occasion of its use (Punjab 1951) for resolving an internal crisis in the ruling party, contained the seeds for future misapplication. It rose to a crescendo in 1977 (again in 1980) when, in nine States, President's rule was imposed at the same time.

6.1.04 The 'Emergency Provisions[4] of the Constitution form a fasciculus of nine Articles giving the President overriding authority to assume and exercise powers to deal with four types of extra-ordinary situations :

(a) A situation of grave emergency whereby the security of India or any part of its territory is threatened by war or external aggression or armed rebellion. (Articles 352 and related Articles : 353, Proviso to 83(2), 250, 354, 358 and 359).

(b) A situation involving breakdown of constitutional machinery in a State, i.e., where the Government of the State cannot be carried on in accordance with the provisions of the Constitution (Articles 356 and 357).

(c) A situation of 'external aggression' and/or 'internal disturbance' which is not grave enough to satisfy the requirements of either Article 352 or 356, but nevertheless, calls for other action by the Union pursuant to the first part of Article 355.

(d) A situation where the financial stability or credit of India or any part thereof is threatened enabling the Union to give suitable directions (Article 360).

6.1.05 'Emergency' under Article 352 was declared for the first time in October, 1962 following the Chinese aggression. It continued to remain in force during the Indo-Pakistan conflict (1965) and was revoked only in January, 1968. 'Emergency' was proclaimed again in December, 1971 in connection with 'external aggression'. While this proclamation was already in force, a fresh proclamation of Emergency on the ground of 'internal disturbance' was issued in June, 1975. Both these proclamations were revoked in March, 1977. The propriety of the action under Article 352 on the ground of 'internal disturbance' and the suspension of the enforcement of certain fundamental rights, by orders under Article 359, were major issues in the mid-seventies. However, the scope for action under Articles 352, 358 and 359 has been considerably restricted and hedged in, by incorporating tight safeguards through the Constitution (Forty-Forth Amendment) Act, 1978. This Amendment replaced in Article 352 the term 'internal disturbance' by the expression 'armed rebellion'.

6.1.06 The Constitution (Thirty-eight Amendment) Act, 1975 had put proclamations under Articles 352 and 356 beyond the ken of judicial review "in any court on any ground". The Forty-fourth Amendment revoked this impediment. Article 352 has not been invoked since the Forty-fourth Amendment and, considering the adequacy of the safeguards provided by it, apprehensions of its possible misuse are no longer rife. In all the evidence before us, no concern has been expressed about the structure of Article 352 as it now stands. The provisions of Article 360 have not been invoked so far. Its provisions have not been criticised on any tangible ground.

---

1. Constituent Assembly Debates (Revised Edition) Volume IX, Pages 545; Alladi Krishnaswamy Ayyar.
2. Article 355.
3. ibid.
4. For the text of the provisions, see Annexure VI. 1.

6.1.07 However, there has been persistent criticism, in ever-mounting intensity, both in regard to the frequency and the manner of the use of Article 356. The gravemen of the criticism is that, more often than not, its provisions have been misused, to promote the political interests of the party in power at the Union. In the context of Union-State relations, therefore, a critical examination of the scope and use of Article 356 is necessary.

6.1.08 Article 356 was brought into operation as early as 1951. In the initial years, there were not many instances of its use. But, with the passing of years, these provisions have been invoked with increasing frequency. This is evident from the data given below :

Period	Frequency
1950-1954	3
1955-1959	3
1960-1964	2
1965-1969	9 (7 cases in 1967-69)
1970-1974	19
1975-1979	21 (9 cases in 1977)
1980-1987	18 (9 cases in 1980)

These figures reveal a sharp rise in the incidence of such cases from 1967 onwards. The Fourth General Elections saw the emergence in the country of a multi-party polity, fragmentation of political parties, and rise of regional parties. There was a sea change in the political scene. Coalition ministries were formed in a number of States for the first time. Many of them were unstable, being coalitions based on convenience rather than principle, The General Elections to Lok Sabha, held in March 1977, led to a landslide victory of the Janata Party which thereupon formed the Union Government. The Union Home Minister wrote to the Chief Ministers of the nine Congress Party-ruled States that they should seek a fresh mandate. Some of them approached[5] the Supreme Court for a declaration that the Union Home Minister's letter, asking for dissolution of their Legislative Assemblies, was unconstitutional, illegal and *ultra vires,* but were not successful. President's Rule was imposed immediately after the pronouncement of the Court's verdict; and, simultaneously, the Assemblies of these nine States were dissolved. A similar situation arose in 1980 when, in nine Janata-ruled States, on similar grounds, President's Rule was imposed following the victory of the Congress (I) Party in the General Elections to Lok Sabha. The propriety of this whole sale use of Article 356, in 1977 and again in 1980, has been widely questioned, the judgement of the Supreme Court notwithstanding. It is, therefore, apposite to examine the genesis, scope and nature of these emergency powers conferred on the Union under Articles 355 and 356.

2. *HISTORICAL BACKGROUND*

6.2.01 Historically, the proximate origin of these 'emergency' powers can be traced back to the Government of India Act, 1935. Section 93 of the Act provided that if the Governor of a Province was satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation assume to himself all or any of the powers vested in or exercisable by a Provincial body or authority, including the Ministry and the Legislature, and to discharge the functions thus assumed in his discretion. The only exception was that he could not encroach upon the powers of the High Court. Similar powers were conferred on the Governor-General under Section 45, which was a part of the Federal Scheme. However, this Part never came into operation.

6.2.02 The Constitution-framers were deeply concerned with the need for ensuring peace and tranquillity throughout the country. External aggression in Jammu and Kashmir, the emergence of disruptive forces and wide spread violent disturbances in the wake of partition, demonstrated to them the imperative necessity of making special provisions for effectively and swiftly dealing with grave situations of law and order. The need for conferring special powers on the Union Government was accepted. It was agreed[6] that the President would be given the powers of superseding the State Legislature and Government. Initially, it was also envisaged that the Governor could issue[7] a proclamation that a state of emergency had arisen in which peace and tranquillity could not be maintained and the Government of the State carried on in accordance with the Constitution.

6.2.03 An important issue for consideration before the framers was, whether the President and the Governor, or either of them, should be vested with special responsibilities to be discharged by them in the exercise of their discretion, for such purposes as maintenance of peace and tranquillity. It was decided[8] at a very early stage of constitution-framing that the President should have no such special powers and that he would exercise all his functions on the advice of his Council of Ministers. However, the question of vesting the Governors with discretionary powers remained under prolonged consideration. We have dealt[9] with this in detail in the Chapter on the Governor. It will be sufficient to say here that, at a later stage, the Constituent Assembly decided[10] that the Governor should not be an elected, but be a nominated functionary. Consequent upon this decision, the Constituent Assembly, departing from the provisions of the Government of India Act, 1935, limited the Governor's powers to merely furnishing a report to the President of the circumstances showing that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

6.2.04 Thus, finally, the Constituent Assembly decided[11] that the responsibility of intervention in the administration of a State, when it was faced with a

5. State of Rajasthan V. Union of India A.I.R. 1977 (SC 1361).

6. Rao B. Shiva; "The Framing of India's Constitution", Vol. III. Draft Articles 275-280 at pages 622-625.

7. Ibid, Vol. II—Pages 610,650—652.

8. Rao B. Shiva; "The Framing of India's Constitution", Volume II—Page 555.

9. Chapter IV: para 4.2.07.

10. Constituent Assembly Debates (Revised Edition), Vol. VIII—Pages 424-469.

11. Constituent Assembly Debates (Revised Edition), Vol. IX—Pages 130-180.

threatened or actual break-down of the Constitutional arrangements, would be exclusively that of the President, in effect, of the Union Government, and the Governor would have no authority in such a situation to assume, in his discretion, the powers of the State Government even for a short period. The provisions so finalised, it was considered, would be broadly in accord with the basic principle of Parliamentary democracy, the Union Government being accountable for all its actions to Parliament.

Rationale and Purpose of Articles 355 and 356

6.2.05 The underlying principle and purpose of introducing Article 355 was explained by the Chairman of the Drafting Committee in the Constituent Assembly. It was 'stressed[12] that our Constitution, notwithstanding that many of its provisions bestow overriding powers on the Centre, nonetheless gives, on the federal principle, plenary authority to the Provinces to make laws and administer the same in the field assigned to them. That being so, if the Centre is to interfere in the administration of provincial affairs. it must be, by and under some obligation which the Constitution imposes upon the Centre. It was emphasised that the 'invasion' by the Centre of the Provincial field "must not be an invasion which is wanton, arbitrary and unauthorised by law".

6.2.06 The introduction of a provision casting a duty on the Union to protect the States against 'external aggression' and 'internal disturbance' and 'to ensure that the government of every State is carried on in accordance with the provisions of this Constitution' was therefore, considered essential to prevent such an unprincipled invasion.

Articles 355 and 356 not unprecedented

6.2.07 In reply to the criticism that such provisions were not found in any other Constitution, it was pointed out[13] in the Constituent Assembly that they were based on the prinicple underlying Article IV, Section 4 of the United States Constitution, which provides :

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic voilence".

The first part of this provision is known as the Guarantee Clause and the second part the Protection Clause.[14] It was explained in the Constituent Assembly that, in principle, the Guarantee Clause conforms to the latter part of the Draft Article 277A (now Article 355) of our Constitution which is designed to maintain in every State the form of responsible Government as contemplated by the Constitution. The Protection Clause of Article IV(4) corresponds to the first part of Article 355, with this difference that, instead of the expressions "invasion" and "domestic violence", the framers of our Constitution preferred to use the terms "external aggression", and "internal disturbance", respectively, which are of relatively wider amplitude.

6.2.08 To understand the full significance of the duty imposed on the Union by the Article referred to above to ensure that the Government of every State is carried on in accordance with the Constitution, it will be useful to examine in some depth the Guarantee Clause in Article IV(4) of the United States Constitution.

6.2.09 A vast potential is rooted in the sweeping and unqualified language of the Guarantee Clause. Indeed, in the course of American history, it has assumed protean forms. President Lincoln in 1861 sought in this clause an authorisation for extraordinary national authority to put down rebellion, to strike down slavery, to assume certain basic civil and potential rights for freed 'blacks' and to effectuate programmes to deal with problems during the Reconstruction (1861-1877).

6.2.10 The guarantee is considered as "a tremendous store-house of power to reshape the American federal system". An American author[15] who has made an exhaustive survey of the past uses of the Guarantee Clause, sums up his views about the nature, the potential uses and dangers of this power, as follow :

> "This Clause is, in Sumner's *simile,* a giant, and should be watched carefully, since its tremendous power can be dangerous as well as protective to republican liberty..... The Guarantee is prophylactic; the federal government is to 'protect as well as restors' republican government in the States. It imposes affirmative obligations on both nation and states; it 'still exists as an independent and untapped source of federal power. by which the Central government can assume the fuller realisation of our society's democratic goals'... ..... The characteristics of republicanism must be dictated by contemporary values. Those values will not only include the present spirit of the national government, but also the current expectations of the American peoples, such as access to the ballot and equal access for all to housing, employment, education, transportation and numerous other things, when sufficiently touched with a public interest".

6.2.11 Article IV(4) of the American Constitution does not prescribe the manner in which the guarantee as to the republican form of government may be enforced against a State. It has no provision analogous to Articles 356 and 357, authorising the Union Government or the President to *suspend* or *supersede* the Constitutional machinery in a State.

6.2.12 The Constitution-framers recognised that the provisions of Articles 355 and 356 were necessary to meet an exceptional situation where break-down of the Constitutional machinery occurs in a State. At the same time, they hoped for the growth of healthy conventions which would help ensure that these extraordinary powers were used most sparingly, in

12. Constituent Assembly Debates (Revised Edition), Volume IX, Page 133.

13. Constituent Assembly Debates (Revised Edition); Volume IX, Pages 133, 175 and 176.

14. For the true import and uses of these twin clauses in the U.S.A. please see Annexure VI. 1.

15. Wiecek ; —'The Guarantee Clause of the United States Constitution;

extreme cases, for the legitimate purposes for which they were intended. An important point made[16] during debates in the Assembly, was, that mere maladministration by a duly constituted Government in a State, was not a good ground for invoking Article 356. It was emphasised that, if responsible government in a State is to be maintained, the electors must be made to feel that the power to apply the proper remedy, when misgovernment occurs, rests with them. It was felt that, in many cases of political break-down, the proper course would be to dissolve the Legislative Assembly and go back to the people to seek through a fresh election, the right answers.

6.2.13 Dr. B.R. Ambedkar, Chairman of the Drafting Committee, explained the purpose and nature of these provisions. Emphasising the need for caution and restraint in their application, he observed :—

> "I do not altogether deny that there is a posibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments.....that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article[17]".

6.2.14 In sum, the Constitution-framers conceived these provisions as more than a mere grant of overriding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years, Article 356 has been brought into action no less than 75 times.

3. *CONSTITUTIONAL PROVISIONS*

6.3.01 The full text of Articles 355, 356 and 357 has been set out in Annexure V I.2.

Article 355—Scope and effect

6.3.02 The obligations of the Union under Article 355 arise with respect to three situations existing in a State, namely :—

(i) external aggression,

(ii) internal disturbance, and

(iii) where the government of the State cannot be carried on in accordance with the Constitution.

The framers of the Constitution have used the word "and" to cannect all the three segments of the Article specifying these situations. The word "and", as explained[18] by the Chairman of the Drafting Committee in the Constituent Assembly, can be interpreted both conjunctively and disjunctively, as the occasion may require. This implies that, on some occasions, these situations may arise severally, while, on others, in combination with one another. It is not possible to define precisely the expression 'external aggression'. This expression has also been used in Article 352 in the context of 'grave emergency'. Hence it is necessary to distinguish the contextual connotation and scope of this expression in Article 352 from its use in Article 355. 'External aggression' is a valid ground for action under Article 352(1), only if, in a *grave* emergency, it *threatens the security* of India or any part thereof. If the 'external aggression' is not of a gravity calling for action under Article 352, or does not involve a situation of failure of the Constitution, then the Union will be competent to take all appropriate steps, other than action under Articles 352 and 356, that it may consider necessary in fulfilment of its duty under Article 355.

6.3.03 The Forty-fourth Constitutional Amendment substituted "armed rebellion" for "internal disturbance" in Article 352. "Internal disturbance" is, therefore, no longer a ground for taking action under that Article. Further, it cannot, by itself, be a ground for imposing President's rule under Article 356(1), if it is not intertwined with a situation where the government of a State cannot be carried on in accordance with the provisions of the Constitution.

6.3.04 It is difficult to define precisely the concept of 'internal disturbance'. Similar provisions, however, occur in the Constitutions of other countries. Article 16 of the Federal Constitution of Switzerland uses the expression "internal disorder". The Constitutions of the United States of America and Australia use[19] the expression 'domestic violence'. The framers of the Indian Constitution have, in place of this term, used the expression 'internal disturbance'. Obviously, they have done so as they intended to cover not only domestic violence, but something more. The scope of the term 'internal disturbance' is wider than 'domestic violence'. It conveys the sense of 'domestic chaos', which takes the colour of a security threat from its associate expression, 'external aggression'. Such a chaos could be due to various ceauses. Large-scale public disorder which throws out of gear the even tempo of administration and endangers the security of the State, is ordinarily, one such cause. Such an internal disturbance is normally man-made. But it can be Nature-made, also. Natural calamities of unprecedented magnitude, such as flood, cyclone, earth quake, epidemic, etc. may paralyse the government of the State and put its security in jeopardy.

---

16. Constituent Assembly Debates (Revised Edition), Vol. IX, Pages 176-177.

17. Constituent Assembly Debates (Revised Edition), Vol. IX—Page 177.

18. Constituent Assembly Debates (Revised Edition), Vol. IX—Page 175.

19. Commonwealth of Australia Constitution Act 1900 Section 119.

6.3.05 Deployment of the Union armed forces for quelling public disorder, or internal disturbance, or for protecting Central Government property or installations, has generated controversy between some States and the Union. One State Government is of the view that Article 355 does not in any way add to the powers of the Union and may well be omitted, as the President may legitimately take over the administration of a State under Article 356, if, for some reason, the State Government does not make a request or does not give its concurrence to deployment of para-military forces of the Union in aid of civil power. In their view, such an action would clear the way for deployment of Union's forces at the request of or with the concurrence of the Governor's administration. In this context, several questions arise for consideration. Is Article 355 necessary and, if so, what is its scope? Does it—apart from imposing a duty—confer a power on the Union Executive to deploy, *suo motu* its forces, armed or unarmed, to suppress an internal disturbance, in a situation not amounting to break-down of the constitutional machinery in the State ? If so, what are the parameters of that power ? What is the inter-relationship of Article 355, Entries 2 and 2A of the Union List, Entries 1 and 2 of the State List and Entries 1 and 2 of the Concurrent List?

6.3.06 Before we attempt to answer these questions, it is necessary to take note of the powers of the Federal Government to deal with public disorders, under the Constitutions of the older Federations, viz. Australia, Switzerland and the United States of America and under the more recent Constitution of West Germany. In Australia, Section 119 of the Commonwealth Constitution provides that "the Commonwealth shall protect every State against invasion and on the application of the Executive Government of the State, against domestic violence". The implications of the second part of this Section are as follows. In so far as the State Governments, through their police forces, are primarily responsible for law and order, Commonwealth military or police action can only be taken on matters affecting the "peace, order and good Government" of a State at the request of the State Government. However, where the violence is directed against Commonwealth institutions or affects matters falling within Commonwealth power, then the Commonwealth can intervene without a request from the State in which the violence occurs or is imminent[20].

6.3.07 Article 16 of the Constitution of Switzerland (1874) gives unlimited powers to the Federal Council to intervene, on its own initiative, in case of internal disorder where the Government of the threatened Canton is not in a position to summon assistance from the other Cantonal Governments, or if the disorder endangers the safety of Switzerland. The expression "internal disorder" covers not only armed rebellion but also disturbances resulting from, for instance, a general strike.

6.3.08 In the Chapter on 'Administrative Relations', we have discussed the power of the Federal Government in the United States of America to employ force if necessary to secure enforcement of Federal laws and of Supreme Court decisions and protection of Federal property. As pointed out there, the United States Supreme Court affirmed in the case of *Re Eugene Debs* (158 US 564), that "the entire strength of the nation may be used to enforce in any part of the land, the full and free exercise of all national powers and security of all rights entrusted by the Constitution to its care". After this judgement, the requirement of an application from the affected State for aid under the Protection Clause in Article IV(4), *vide* para 6.2.07 above, for suppression of domestic violence in the State, has, in practice, lost its importance. The result is that "to-day we have to go further and recognise that the line, which Article IV impliedly draws between the "general peace" and the "domestic peace" of the individual States has become an extremely tenuous one" [21].

6.3.09 In West Germany, in order to avert an imminent danger to the existence or to the very democratic basic order of the Federation or a State, the State Government may ask for the assistance of police forces of other States or of the Federal Border Guard. However, if the State Government is either not willing or not able to combat the danger, the Federal Government may take under its control the police of that State and the police forces of other States also and, in addition, deploy units of the Federal Border Guard. If the danger extends to more than one State, the Federal Government may, to combat the danger, issue instructions to the State Governments (Article 91 of the West German Constitution).

6.3.10 We have discussed in Chapter II : "Legislative Relations", the main aspects of the question posed in para 6.3.05 above. To recapitulate, Article 355 not only imposes a duty on the Union but also grants it, by necessary implication, the power of doing all such acts and employing such means as are essentially and reasonably necessary for the effective performance of that duty. However, it may be noted that the Constitution does not, under Article 355, permit suspension of fundamental rights or change in the scheme of distribution of mutually exclusive powers with respect to matters in List I and List II. Except to the extent of the use of the forces of the Union in a situation of violent upheaval or disturbance in a State, the other constitutional provisions governing Union-State relationships continue as before. Unless a National Emergency is proclaimed under Article 352 or powers of the State Government are suspended under Article 356, the Union Government cannot assume sole responsibility for quelling such an internal disturbance in a State to the exclusion of the State authorities charged with the maintenance of public order.

6.3.11 Where, in a situation of internal disturbance in a State, action under Article 356(1) is considered unnecessary or inexpedient, the Union Government has the power to deploy its forces, *suo motu*, under its control, to put it down and restore peace. Exclusive control of the Union over its armed forces and their deployment in aid of the civil power in a State, even before the insertion of Entry 2A in List I by the Forty-second Amendment, was relatable to Entry 2 of List I read with Article 73. Maintenance of public order, by the use of the armed forces of the Union, has always been outside the purview of Entry I of List II.

20. Lumb R.D. & Ryan K.W. : The Constitution of the Commonwealth of Australia : Para 731.

21. Corwin, Edward : The President; Office and Powers (2nd Edition) : Page 164.

6.3.12. The phrase "in aid of the civil power" in Entry 2A of List I is of wide import. In the context of public disorder or violent internal disturbances, these words mean 'in aid of the instrumentalities of the State charged with the maintenance of public order'. In such a case, the Union may use its armed forces to help the law-enforcing authorities of the State. These words do not *necessarily* imply that the Union can deploy its forces only at the request of the State. It may happen that a State is unwilling or unable to suppress a serious break-down of law and order or refuses to seek the aid of the armed forces of the Union. In such a situation, fast drifting towards anarchy or physical break-down of the State administration, the Union may, of its own motion, deploy its forces under its control and take whatever other steps are considered reasonably necessary for suppressing the disturbance in discharge of its duty under Article 355. This will also be consistent with its power under Entries 2 and 2A of the Union List read with Article 73.

6.3.13 It is important to distinguish 'internal disturbance' from ordinary problems relating to law and order. Maintenance of public order, excepting where it requires the use of the armed forces of the Union, is a responsibility of the States (Entry 1, List II). That being the case, 'internal disturbance' within the contemplation of Article 355 cannot be eqauted with mere breaches of public peace. In terms of gravity and magnitude, it is intended to connote a far more serious situation. The difference between a situation of public disorder and 'internal disturbance' is not only one of degree but also of kind. While the latter is an aggravated form of public disorder which *endangers the security* of the State, the former involves relatively minor breaches of the peace of purely local significance. When does a situation of public disorder aggravate into an 'internal disturbance' justifying Union intervention, is a matter that has been left by the Constitution to the judgement and good sense of the Union Government.

6.3.14 Under Article 355, a whole range of action on the part of the Union is possible depending on the circumstances of the case, the nature, the timing and the gravity of the internal disturbance. In some cases, advisory assistance by the Union to the State for the most appropriate deployment of its resources may suffice. In more serious situations, augmentation of the State's own efforts by rendering Union assistance in men, material and finance may be necessary. If it is a violent upheaval or a situation of external aggression (not amounting to a grave emergency under Article 352), deployment of the Union forces in aid of the police and magistracy of the State may be sufficient to deal with the problem.

6.3.15 Normally, a State would actively seek assistance of the Union to meet such a crisis. However, as already noted above, the scope of Article 355 is wide enough to enable the Union to render all assistance including deployment of its armed forces, notwithstanding the fact that the State Government has made no specific request. The Union will be entitled to do so, on its own motion, in discharge of its paramount responsibility under Article 355. Action to be taken by the Union may include measures to prevent recurrence of such a crisis.

6.3.16 This, in short, is the legal position. Nevertheless, it must be remembered that what is legally permissible may not be politically proper. Situations of internal disturbance can effectively be tackled only through concerted and coordinated action of the Union Forces and the State instrumentalities concerned. In practice, before deploying its Forces in a State, the Union should sound the State Government and seek its cooperation. We have dealt with these aspects in detail in Chapter VII.

6.3.17 We are of the view that, when an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential break-down of the constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation.

6.3.18 The third limb of Article 355 casts a duty on the Union to ensure that the Government of the State is carried on in accordance with the Constitution. The remedy for break-down of constitutional machinery has been provided in Article 356. Our Constitution provides a constitution both for the Union and for the States and demarcates their powers and responsibilities, executive and legislative. An important federal principle underlying this scheme is the right of every State to function undisturbed within its demarcated sphere in accordance with the Constitution. At the same time, States are also under a liability not to carry on the Government in a manner which will bring about a failure of the Constitutional machinery[22].

Article 356—Scope and Effect

6.3.19 Article 356 provides for a Proclamation by the President if he is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. This satisfaction of the President is a condition precedent to the exercise of this power. Such a Proclamation may declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. By virtue of Article 357, Parliament may confer that legislative power on the President and authorise him to further delegate it to any other authority. By the Proclamation, the President may assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State. In the result, the executive power of the State which is normally exercisable by the Governor with the aid and advice of his Council of Ministers, becomes exercisable by the Union Government, and the legislative power of the State by or under the authority of *Parliament*. The Proclamation may make consequential provisions including suspension of the operation of Constitutional provisions relating to any body or authority of the State. The administration of the State, for all practical purposes, is taken over by the Union Government.

6.3.20 Clause (3) of the Article requires the Proclamation to be laid before each House of Parliament, and unless approved by them, it ceases to operate at

22. Seervai, H.M., Constitutional Law of India (Third Edition), Volume II, Page 2629.

the expiration of two months. If the Proclamation is approved by resolutions of both the Houses, it will remain operative for a period of six months from the date of its issue. This period can be extended for another six months if it is further approved by both the Houses. But, no such approval may be given continuing the operation of a Proclamation beyond one year from the date of its issue, except as provided in clause (5) of the Article. If, however, both the conditions laid down in clause (5) of the Article are satisfied, the Proclamation can be continued for a further period not exceeding three years in all. These conditions are : (i) a Proclamation of Emergency is in operation in the State, and (ii) the Election Commission has certified that the continuance in force of the Proclamation is necessary on account of difficulties in holding general elections.

6.3.21 There is, however, no provision in Article 356 similar to that in clauses (7) and (8) of Article 352, which enables the House of the People to disapprove by resolution the continuance in force of such a Proclamation.

6.3.22 Imposition of President's Rule thus brings to an end, for the time being, a government in the State responsible to the State Legislature. Indeed, this is a very drastic power. Exercised correctly, it may operate as a safety mechanism for the system. Abused or misused, it can destroy the constitutional equilibrium between the Union and the States.

6.3.23 In Article 356, the expression, "the government of the State cannot be carried on in accordance with the provisions of the Constitution", is couched in wide terms. It is, therefore, necessary to understand its true import and ambit. In the day-to-day administration of the State, its various functionaries in the discharge of their multiparious responsibilities take decisions or actions which may not, in some particular or the other, be strictly in accord with all the provisions of the Constitution. Should every such breach or infraction of a constitutional provision. irrespective of its significance, extent and effect, be taken to constitute a "failure of the constitutional machinery" within the contemplation of Article 356 In our opinion, the answer to the question must be in the negative. We have already noted that by virtue of Article 355 it is the duty of the Union to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. Article 356, on the other hand, provides the remedy when there has been an actual break-down of the constitutional machinery of the State. Any abuse or misuse of this drastic power damages the fabric of the Constitution, whereas the object of this Article is to enable the Union to take remedial action consequent upon break-down of the constitutional machinery, so that that governance of the State in accordance with the provisions of the Constitution, is restored. A wide literal construction of Article 356 (1), will reduce the constitutional distribution of the powers between the Union and the States to a licence dependent on the pleasure of the Union Executive [23]. Further, it will enable the Union Executive to cut at the root of the democratic Parliamentary form of government in the State [24]. It must, therefore, be rejected in favour of a construction which will preserve that form of government. Hence, the exercise of the power under Article 356 must be limited to rectifying a 'failure of the constitutional machinery in the State'. The marginal heading of Article 356 also points to the same construction.

6.3.24 Another point for consideration is, whether 'external aggression' or 'internal disturbance' is to be read as an indispensable element of the situation of failure of the constitutional machinery in a State, the existence of which is a pre-requisite for the exercise of the power under Article 356. We are clear in our mind that the answer to this question should be in the negative. On the one hand, 'external aggression' or 'internal disturbance' may not necessarily create a situation where govenment of the State cannot be carried on in accordance with the Constitution. On the other, a failure of the constitutional machinery in the State may occur, without there being a situation of 'external aggression' or 'internal disturbance'.

4. *FAILURE OF CONSTITUTIONAL MACHINERY*

6.4.01 A failure of constitutional machinery may occur in a number of ways. Factors which contribute to such a situation are diverse and imponderable. It is, therefore, difficult to give an exhaustive catalogue of all situations which would fall within the sweep of the phrase, "the government of the State cannot be carried on in accordance with the provisions of this Constitution". Even so, some instances of what does and what does not constitute a constitutional failure within the contemplation of this Article, may be grouped and discussed under the following heads :

(a) Political crisis.

(b) Internal subversion.

(c) Physical break-down.

(d) Non-compliance with constitutional directions of the Union Executive.

It is not claimed that this categorisation is comprehensive or perfect. There can be no water-tight compartmentalisation, as many situations of constitutional failure will have elements of more than one type. Nonetheless, it will help determine whether or not, in a given situation it will be proper to invoke this last-resort power under Article 356.

Political Crisis

6.4.02 A constitutional break-down may be the outcome of a political crisis or dead-lock. This may occur where—

(i) after a General Election no party or coalition of parties or groups is able to secure an absolute majority in the Legislative Assembly, and, despite exploration of all possible alternatives by the Governor, a situation emerges in which there is complete demonstrated inability to form a government commanding confidence of the Legislative Assembly ;

23. Basu D.D., Shorter Constitution of India, 9th Edn. p. 822.

24. Seervai H.M., Vol. II (3rd Edn.) Page 2625 referring to Punjab V. Dr. Baldev Prakash (1969) SCR at p. 491 AIR 1969 SC p. 913.

(ii) a Ministry resigns or is dismissed on loss of its majority support in the Assembly and no alternative government commending the confidence of the Assembly can be formed ;

(iii) the party having a majority in the Assembly refuses to form or continue the Ministry and all possible alternatives explored by the Governor to find a coalition Ministry commending a majority in the Assembly, have failed.

6.4.03 In all the above situations, one or more alternatives may be available to the Governor before he recommends Proclamation of President's rule under Article 356. He may dissolve the Assembly so that fresh elections may be held, thereby leaving the political deadlock to be resolved by the electorate. In the situation described at (ii) of para 6.4.02 above, the Governor may, in addition, continue the outgoing Ministry for a short period as a caretaker government until elections are held and a new Ministry takes over. But the legality of these alternative courses is one thing and their propriety or feasibility another.

6.4.04 Normally, the power of dissolution of the Assembly is to be exercised by the Governor on the advice of his Ministry. But such advice ceases to be binding on him as soon as the Ministry loses majority support and the requirement of Article 164(2) that the Ministry shall be collectively responsible to the Legislative Assembly is no longer fulfilled. Some State Governments have suggested that, even when President's rule is proclaimed on account of a political crisis, fresh elections should invariably be held as early as possible, say, within 3 to 6 months. The question whether the Assembly should be dissolved has to be examined from a number of angles.

6.4.05 If the Assembly has continued for more than, say, half its normal duration, dissolution may be a preferred course of action. The political views of the electorate and their support to the different political parties in the State may have got substantially transformed since the elections were last held. There may be strong reasons to presume that the relative strength of the political parties in the Assembly will very likely undergo a radical alteration if fresh elections are held. Circumstances such as these will clearly indicate that fresh elections should not be postponed.

6.4.06 In any situation other than those described in the preceding paragraph, the question whether fresh elections should be held, will have to be decided by the Governor after carefully weighing all relevant considerations. Frequent elections disturb the continuity of administration and put a brake on the pace of developmental activities. They also stir up emotions of the people and tend to distract their attention for prolonged periods from their normal business. Also, holding of elections at short intervals is a luxury which the nation's exchequer can ill-afford. At the same time, the people of a State should not be denied the earliest opportunity to elect an Assembly and Government of their choice.

6.4.07 In deciding the question of having fresh elections, the Governor should consult the leaders of the political parties involved and the Chief Election Commissioner. The Governor should also consider whether, in the law and order situation obtaining in the State, free and fair elections can be held, without avoidable delay.

6.4.08 We recommend that, in a situation of potential political break-down, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is aggreeable to continue. The continuance, in these circumstances, of the outgoing Ministry as a caretaker government would be unexceptionable and indeed proper. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker goernment should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.

6.4.09 If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker-government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

Internal Subversion

6.4.10 As a corollary of Article 355, it follows that correlated to the duty of the Union to preserve the democratic 'Parliamentary' form of government in the States contemplated by the Constitution, the States are also under a liability not to carry on the government in a manner contrary to or subversive of the provisions of the Constitution. In the light of these principles, the following are some instances of a situation of constitutional break-down due to internal subversion :

(i) Where the government of a State, although carried on by a Ministry enjoying majority support in the Assembly, has been deliberately conducted for a period of time in disregard of the Constitution and the law;

(ii) Where the Government of the State deliberately creates a dead-lock, or pursues a policy to bring the system of responsible government envisaged by the Constitution, to a stand till;

(iii) Where the State Government, although ostensibly acting within the constitutional forms, designedly flouts principles and conventions of responsible Government to substitute for them some form of dictatorship ;

And in each of the situations (i), (ii) and (iii) the alternative steps, including other correctives and warnings, fail to remedy the distortion or bring back the errant State Government to the Constitutional path ;

(iv) Where a Ministry, although properly constituted, violates the provisions of the Constitution or seeks to use its constitutional powers for purposes not authorised by the Constitution and other correctives and warnings fail;

(v) Where the State Government is fomenting a violent revolution or revolt with or without the connivance of a foreign power.

Physical break-down

6.4.11 The following are some instances of physical break-down :

(i) Where a Ministry, although properly constituted, either refuses to discharge its responsibilities to deal with a situation of 'internal disturbance', or is unable to deal with such a situation which paralyses the adminstration, and *endangers the security* of the State.

(ii) Where a natural calamity such as an earthquake, cyclone, epidemic, flood, etc. of unprecedented magnitude and severity, completely paralyses the administration and *endangers the security* of the State and the State Government is unwilling or unable to exercise its governmental power to relieve it.

Non-compliacne with constitutional Directions of the Union Government

6.4.12 The following are illustrations of a break-down due to non-compliance by a State Government with the directions of the Union Government :—

(i) Where a direction issued by the Union in the exercise of its executive power under any provision of the Constitution, such as, Articles 256, 257 and 339(2) or, during an Emergency under Article 353, is not complied with by the State Government inspite of adequate warning and opportunity, and the President thereupon holds under Article 365 that a situation, such as that contemplated in Article 356, has arisen;

(ii) If public disorder of any magnitude endangering the security of the State, takes place, it is the duty of the State Government to keep the Union Government informed of such disorder, and if the State fails to do so, such failure may amount to impeding the exercise of the executive power of the Union Government and justify the latter giving approprite directions under Article 257(1). If such a direction given to the State by the Union Executive under Article 257(1) is not complied with inspite of adequate warning, the President thereupon may hold that a situation such as contemplated in Article 356, has arisen.

5. *ILLUSTRATIONS OF IMPROPER INVOKING OF ARTICLE* 356

6.5.01 In the preceding paragraphs we have noticed some instances of situations involving failure of the constitutional machinery where the power under Article 356 could be properly invoked. Some examples are given below of situations in which it may be improper, if not illegal, to invoke the provisions of Article 356 :

(i) A situation of maladministration in a State where a duly constituted Ministry enjoying majority support in the Assembly, is in office. Imposition of President's rule in such a situation will be extraneous to the purpose for which the power under Article 356 has been conferred. It was made indubitably clear by the Constitution-framers that this power is not meant to be exercised for the purpose of securing good government.

(ii) Where a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative government enjoying such support or ordering fresh elections.

(iii) Where, despite the advice of a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and without giving the Ministry an opportunity to demonstrate its majority support through the 'floor test', recommends its supersession and imposition of President's rule merely on his subjective assesment that the Ministry no longer commands the confidence of the Assembly.

(iv) Where Article 356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the State Legislative Assembly on the sole ground that, in the General Elections to the Lok Sabha, the ruling party in the State, has suffered a massive defeat.

(v) Where in a situation of 'internal disturbance', not amounting to or verging on abdication of its governmental powers by the State Government, all possible measures to contain the situation by the Union in the discharge of its duty, under Article 355, have not been exhausted.

(vi) The use of the power under Article 356 will be improper if, in the illustrations given in the preceding pargraphs 6.4.10, 6.4.11 and 6.4.12, the President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action, under Article 356, will lead to disastrous consequences.

(vii) Where in response to the prior warning or notice or to an informal or formal direction under Articles 256, 257, etc. the State Government either applies the corrective and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that "a situation has arisen in which the Government of the State cannot be carried on in accordance

with the provisions of this Constitution". Hence, in such a situation, also, Article 356 cannot be properly invoked.

(viii) The use of this power to sort out internal differences or intra-party problems of the ruling party would not be constitutionally correct.

(ix) This power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

(x) This power cannot be invoked, merely on the ground that there are serious *allegations* of corruption against the Ministry.

(xi) The exercise of this power, for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution, would be vitiated by legal *mala fides.*

6. *APPLICATION OF ARTICLE* 356

6.6.01 The main point of the criticism in regard to the use of Article 356 is that, more often than not, it has been interpreted and applied differently in similar situations to suit the political interests of the party in power in the Union. It has been alleged that, motivated by such extraneous consideratons.—

(i) Opposition parties or groups had not been given a chance to form alternate government.

(ii) Legislative Assemblies were dissolved or kept in a state of suspended animation.

(iii) President's rule was used for partisan purposes like buying time to realign party strengths of sorting out intra-party differences or for resolving leadership crisis, etc.

(iv) President's rule was used to dislodge State Governments run by parties or coalitions other than the party in power at the Union, on plea of corruption, political instability, maladministration, unhappy state of law and order, etc. even though they commended the confidence of their respective Assemblies.

6.6.02 Thus, the principal issue that calls for consideration is, how far there is substance in this criticism? For this purpose, basic information relevant to the numerous cases of imposition of president's rule use collected from various sources. Efforts were also made as far as possible to get the factual information, thus collected, varified from the original sources. Annexure VI, 3 gives a chronological list of all the instances wherein proclamations under Article 356 were made. Annexure VI, 4 contains the gist of circumstances of the situation of each case in which this provision was invoked. Factual information relating to these cases was studied and analysed in the light of the criteria indicated in the foregoing pargraphs 6.4.02 to 6.4.12. A synopsis of the study thus made, is given in the following paragraphs.

Wholesale use of article 356 in 1977 and 1980 for political purpose

6.6.03 The cases which are considered under this marginal sub-head are : instances furnished by the proclamation of President's rule by Janata Government on April 31, 1977, in nine States and simultaneous dissolution of their Assemblies, and the repetitition of the same in nine States on similar grounds by the Congress (I) Government in 1980. The facts of the first group of cases were as follows.

6.6.04 In the 1977 Elections to the Lok Sabha the ruling Congress (I) lost its majority in nine states, namely, Haryana, Punjab, Himachal Pradesh, Uttar Pradesh , Bihar, Orissa, West Bengal, Madhya Pradesh and Rajasthan, securing only 153 seats as against 350 in the 1971 Elections. On March 24, 1977, the Janata Party which had obtained an overwhelming majority of seats in the Elections formed the new Government in the Union. On that date, Congress (I) Governments were functioning in these nine States enjoying majority support in their respective Assemblies. The Union Home Minister on April 18, 1977 addressed a letter[25] to the Chief Ministers of these States stating that "the most unprecedented political situation arising out of the virtual rejection, in the recent Lok Sabha electons, of candidate's belonging to the ruling party in various States", with "the resultant climate of uncertainty.....causing grave concern to use", "has already given rise to serious threats to law and order". On these premises, he "earnestly commended" for their consideration that they may advise the Governors of their respective States "to dissolve the State Assemblies in exercise of powers under Article 174(2)(b) and seek a fresh mandate from the electorate". Thereafter, on April 22, 1977, in an interview,[26] reported in the Press, the Union Minister of Law said that "a clear case has been made out for the dissolution of the Assemblies in nine Congress ruled States and holding of fresh elections" since a "serious doubt has been cast on their enjoying the people's confidence, their party having been rejected in the recent Lok Sabha elections".

Rajasthan and others Vs Union of India, AIR 1977 SC 1361

6.6.05 Six of these States filed suits[27] under Article 131 of the Constitution in the Supreme Courpraying for a declaration that the letterof the Home Minister was illegal, and *ultra vires* of the Constitution and prayed for an interim injunction restraining the Union Government from resorting to Article 356, and for a permanent injuction restraining the Union Government from taking any step to dissolve their Assemblies before the expiry of their term fixed by the Constitution. Three Members of the Legislative Assembly of the Punjab also field a Writ Petitition in the Supreme Court impugning the same matter and praying substantially for the same relief.

Preliminary objections of the Union

6.6.06 The Union raised three preliminary objections :

(a) That the suit was not maintainable under Article 131;

25. State of Rajasthan V. Union of India AIR 1977 (SC 1361), Para 22.

26. ibid, Para 23.

27. Ibd, Para 1.

(b) that the questions which arise for gauging the existence of a situation calling for action under Article 356 are, by their very nature, non-justiciable and they are also expressely made non-justiciable by Clause (5) of the Article ;

(c) that the suit and the writ petitition were premature as the process which was being challenged might or might not actually produce the apprehended result or action.

On Preliminary Grounds Court held the question non-Justiciable

6.6.07 Although the learned Judges constituting the Bench gave separate reasons, they were agreed that the suit/petition was liable to dismissal on any one or more of the preliminary grounds. Goswami, Fazal Ali and Untwalia, JJ, were of the view that the plaintiffs had no *locus standi* to maintain the suit. Untwalia J. did not want to rest his judgement on this technical ground alone. Beg CJ. and Fazal Ali J. held that the suit was premature. There was general agreement among all the judges that the matter in question was beyond the range of judicial review either because it was of a political nature, regarding which the President's subjective satisfaction was conclusive, or was otherwise non-justiciable in view of the bar to the Court's jurisdiction in Clause (5) of the Article. The Court, however, made it clear that the President's 'satisfaction' would be open to judicial review only in those exceptional cases where on facts admitted or disclosed, it is manifest that it is *mala fide* or is based on wholly extreneous or irrelevant grounds. After an elaborate discussion, the court held that the case before it did not fall within this exception.

6.6.08 Although all the learned Judges did not refer to clause (5), expressely or in detail, they were very much conscious of this formidable hurdle in their way. Clause (5) as it then stood, was as under :

"Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in Clause (1) shall be final and conclusive and shall not be questioned in any Court on any ground".

The Forty-Fourth Amendment has removed this impediment to the Court's jurisdiction.

6.6.09 All said and done, it will not be correct to read the judgement in *Rajasthan case* as settling the question of the constitutional propriety of the use of Article 356, for the purpose of dismissing the Ministry and dissolving the Legislative Assembly of a State on the sole ground that, in Elections to the Lok Sabha, the ruling party in the State has suffered an overwhelming defeat. The court guarded against the possibility of drawing from its judgement any such inference, when, speaking through Bhagwati J., it observed: ".....merely because the ruling party in a State suffers defeat in the elections to the Lok Sabha .....by itself can be no ground for saying that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The Federal Structure under our Constitution clearly postulates that there may be one party in power in the State and another at the Centre"[28]. At the state when the case was heard and decided, the matter was premature. No action under Article 356(1)had yet been taken. The court therefore observed. "It would be hazardous in the extreme to proceed on the assumption that this would be the only ground before the Council of Ministers when it considers whether or not to take action under Article 356 clause (1), and that "new grounds may emerge".[29]

6.6.10 An overwhelming majority, including former Governors, Ministers, statesmen, parliamentarians and political scientists, of those who were interviewed by us, were unanimous in expressing the view that the use of Article 356(1) in 1977 by the then Union Government and dissolution of the Assemblies in the 9 States and the repetition of the same experiment on the same grounds by the successor Government in 1980, was clearly improper. In our opinion, these 18 cases are typical instaness of wholesale misuse of Article 356 for political purposes, extraneous to the one for which the power has been conferred by the Constitution.

Rajasthan case highlighted in efficacy of constitutional Checks

6.6.11 Be that as it may, *Rajasthan case* is important in as much as it highlighted the inadequacy of the two checks explicitly or implicitly recognised by the Constitution against the capricious use of this extraordinary power. Firstly, it exposed the utter inefficacy of the control of each House of Parliament as a safeguard provided in clause (3) of Article 356. The Court found that, for two months from its issue, a proclamation under clause (1) of the Article remains in full force and effect, irrespective of any approval or no-approval of parliament. If, within these two months, on the basis of that Proclamation an irrevocable order, such as dissolution of the State Legislative Assembly, is passed, either House of Parliament cannot, when the proclamation is laid before them as enjoined by clause (3), undo the same. In our opinion, it is high time that this loophole is plugged and the control of parliament over the exercise of the drastic power in Article 356(1) made more effective.

6.6.12 One State Government has suggested that Article 356(3) may be amended so that a Proclamation which is not placed before Parliament or is not approved by it becomes inoperative from the time of its issue and all action taken in pursuance of such a proclamation becomes void *ab initio*.

6.6.13 Proclamations have necessarily to be placed before each House of Parliament under Article 356(3). We, therefore, need consider only two situations a Proclamation may not be approved or may be specifically disapproved by Parliament.

6.6.14 As noticed in para 6.6.11 *ante*, a proclamation under Article 356(1), notwithstanding that it has not been approved or has been disapproved by Parliament, remains in full force and effect for a period of two months from the date of its issue, unless revoked earlier under clause (2) of the Article. A law made

28. State of Rajasthan V. Union of India, AIR 1977 (SC 1361), Para 147.

29. Ibid Para 146.

during this period by the appropriate authority in accordnace with Article 357(1)(a) continues—by virtue of clause (2) of this Article—in force even after the proclamation has ceased to operate, till the law is altered or repealed or amended. As executive power is generally co-extensive with legislative power, this principle of continuity applies also to administrative action duly taken by the State and the Union Governments in pursuance of a proclamation.

6.6.15 The Constitution does not, therefore, contemplate that actions duly taken, the rights acquired or liabilities incurred during the operation of the proclamation, should get affected by reason of the proclamation ceasing to be in force. This is in conformity with the general principle underlying section 6 of the General Clauses Act, 1897.

6.6.16 Another noteworthy feature is that it is for the Union Executive to determine in its subjective judgement whether a situation in a state is such as to warrant its intervention and action under Article 356. Thus, a proclamation under Article 356(1) carries a strong presumption of its validity which cannot be questioned in court except on the limited ground of *mala fides*.

6.6.17 If the sections duly taken by the Union Executive on the strength of a proclamation issued under Article 356(1) are to be deemed void *ab initio* in the event of Parliament not approving the proclamation, it will not only be repugnant to the basic principles underlying these provisions, but also lead to undesirable and anomalous consequences. All actions taken, rights acquired, liabilities incurred, obligations undertaken, and penalties suffered thereunder, will *ipso facto* stand vacated and become *non est* in law. Such a 'no-government' interregnum or vacuum is anti-thetical to the scheme of the Constitution. In fact, the confusion and chaos resulting from the regression might precipitate a situation necessitating imposition of the President's rule once again. Moreover, it will not be a workable proposition because all actions taken by the Union Executive under the proclamation, may not be inherently revocable. Many of them may be of the nature of a *fait accompli*, or a matter settled and closed, and therefore, irreversible.

6.6.18 For the above reasons, we cannot support the suggestion referred to in para 6.6.12 above.

6.6.19 Two divergent suggestions have been received by us in regard to the dissolution of the Legislative Assembly. One suggestion is that the President should not, immediately on, or simultaneously with, the imposition of President's Rule, dissolve the State Assembly till the proclamation is approved by Parliament. This implies that the Legislative Assembly should be kept in a State of suspended animation till the proclamation is laid before Parliament for approval. As against this, it has been argued that, to prevent defection and horse treading during the President's Rule, it is necessary to dissolve the Assembly immediately. We have considered carefully both the points of view. We agree that the Union Executive should not be allowed to make the control of Parliament provided in Clause (3) of the Article wholly ineffective by an irreversible decision before Parliament has had an opportunity to consider the Proclamation. In regard to the other suggestion that the Assembly should be dissolved immediately to curb the possibility of defection, We note that Parliament has passed the Constitution (Fifty-second Amendment) Act, 1985 to check this evil.

6.6.20 We recommend that the State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

6.6.21 It has been further suggested by some eminent persons that safeguards analogous to those in clauses (3), (6), (7) and (8) of Article 352 should be drafted on Article 356, also. Article 352, in terms, deals with a situation of grave emergency; while Article 356(1) does not use the word 'emergency' in the context of the situation contemplated by it. The consequences of a proclamation of emergency issued under Article 352 are far more drastic and far-reaching than of the one issued under Article 356. The safeguards provided in clauses (3) and (6) of Article 352 are far more stringent than those contained in its clauses (7) and (8).

6.6.22 We are, therefore, not in favour of suggesting in corporation in Article 356 provisions similar to those of clauses (3) and (6) of Article 352.

6.6.23 We recommend that, in principle, safeguards corresponding to clauses (7) and (8) of Article which are less stringent—should be provided through an amendment in Article 356. Such an amendment will make the control of Parliament over the exercise of this extraordinary power under Article 356 more effective. This will also be consistent with an complementary to our recommendations in the preceding paragraphs.

6.6.24 Secondly, the *Rajasthan case* has highlighted the limitations and difficulties of judicial review. Though the bar to the Court's jurisdiction in clause (5) of Article 356 has since been removed by the Forty-fourth Amendment, the judicial remedy of seeking relief, even against a *mala fide* exercise of the power, will remain more or less illusory, if the basic facts on which the President, in effect, the Union Council of Ministers, reaches the satisfaction requisite for taking action under Article 356(1), are not made known. Clause (2) of Article 74 bars the jurisdiction of the Courts to enquire into the question whether any, and if so what, advice was tendered by the Ministers to the President for taking action under Article 356(1). If in a given case, the Union Government taking shelter behind this clause, refuses to disclose all such basic facts and grounds, it can effectively defeat even this tenuous remedy of judicial review. It is another matter that, by withholding such information, it may run the risk of court censure and public opprobrium.

6.6.25 We recommend that to make the remedy of judicial review on the ground of *mala fides* a little more meaningful, it should be provided, through an appropriate amendment, that "notwithstanding anything in clause (2) of Article 74 of the Constitution,

the material facts and grounds on which Article 356(1) is invoked should be made an integral part of the proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective.

6.6.26 The power under Article 356 can be invoked if the President is satisfied about the existence of a situation "in which the Government of a State cannot be carried on in accordance with the provisions of this Constitution". Most often, the President is moved to action on the report of the Governor although he can also act on information received "otherwise". We note that the report of the Governor is being placed before each House of Parliament. We would emphasise that such a report of the Governor should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

6.6.27 Likewise, the information received "otherwise" by the President must contain all the important facts to enable the President to form the requisite opinion. If the report or the information is vague or contains facts which are wholly irrelevant or extraneous to the purpose for which the power has been conferred, President's proclamation, based on such a report or information, will be vulnerable to the charge of legal *mala fides*. Statement of all the basic facts in the Governor's report and its publication has become all the more necessary after the Forty-fourth Amendment of the Constitution which has removed the bar to the jurisdiction of the Courts from the Article.

6.6.28 Indeed, we understand, that the Union Government are not averse to the practice of publishing the Governor's report on the basis of which a Proclamation under Article 356(1) is issued. Recently, the Governor's report on which the President's Rule was imposed in Punjab with effect from May 11, 1987, was published promptly and in full, in all the important newspapers in India. This is a very healthy practice. We recommend that its observance with firm consistency shuuld continue in future also.

6.6.29 We further recommend that normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under Article 356(1). This practice will operate not only as a check against arbitrary or hasty exercise of this extraordinary power but also save the Union Government from embarrasement in case of an error. It will also protect them against an unwarranted accusation of malicious dismissal or suspension of the State Government. The Union Government is accountable for its action to Parliament. If the promulgation of the President's Rule is questioned in Parliament on the ground of *mala fides* or otherwise, the Union Government can dispel that charge on the ground that it had acted in good faith on the basis of the Governor's Report.

Use of Article 356

A—When Ministry Commanded Majority

6.6.30 President's Rule was imposed in 13 cases even though the Ministry enjoyed a majority support in the Legislative Assembly. These cover instances where provisions of Article 356 were invoked to deal with intra-party problems or for considerations not relevant for the purpose of that Article. The proclamation of President's Rule in Punjab in June, 1951 and in Andhra Pradesh in January, 1973 are instances of the use of Article 356 for sorting out intra-party disputes. The imposition of President's rule in Tamil Nadu in 1976 and in Manipur in 1979, were on the consideration that there was maladministration in these States.

B—Chance not given to form alternative Government

6.6.31 In as many as 15 cases, where the Ministry resigned, other claimants were not given a chance to form an alternative government and have their majority support tested in the Legislative Assembly. Proclamation of President's rule in Kerala in March, 1965 and in Uttar Pradesh in October, 1970 are examples of denial of an opportunity to other claimants to form a Government.

C—No caretaker Government formed

6.6.32 In 3 cases, where it was found not possible to form a viable government and fresh elections were necessary, no care-taker Ministry was formed.

D—President's rule inevitable

6.6.33 In as many as 26 cases (including 3 arising out of States Reorganisation) it would appear that President's rule was inevitable.

6.6.34 Situations arising out of non-compliance with directions of the type contemplated in Article 365 have not occurred so far.

7. *SUGGESTIONS BEFORE THE COMMISSION*

6.7.01 We have received valuable suggestions from the State Governments and many eminent persons. These cover a wide range dealing with the scope of Article 356 and the safeguards to be built into the system, to prevent misuse of the same. However, at the outset, it is necessary to deal with the drastic suggestion made by some that this Article may be deleted. As noted in Chapter I on "Perspective", there has been a growth in sub-nationalism which has tended to strengthen divisive forces and weaken the unity and integrity of the country. Linguistic chauvinism has also added a new dimension in keeping people apart. Dim memories of the historical past are being actively revived, to whip up animosities. Unity and integrity of the country is of paramount importance. Unless there is a will and commitment to work for a united country, there are real dangers that regionalism, linguistic, chauvinism, communalism, casteism, etc. may foul the atmosphere to a point where secessionist thoughts start pervading the body politic. It is, therefore, necessary to preserve the overriding powers of the Union to enable it to deal with such situations and ensure that the government in the State is carried on in accordance with the provisions of the Constitution. We are firmly of the view that Article 356 should remain as ultimate Constitutional weapon to cope with such extreme situations.

6.7.02 Among the suggestions received, some seek to restrict the scope of Article 356 only to a serious breakdown of law and order paralysing the State administration and where the State Government lacks the will and capability to meet the situation. Some others are of the view that action under Article 356 may also be taken where there is a complete failure to induct a government which can command a majority in the State Legislature. One State Government has stated that the provisions of this Article may also be invoked in a situation "where the State Government undoubtedly engages in connivance at sabotage of national defence in case of actual or impending war".

6.7.03 We have already explained that failure of constitutional machinery may occur in several ways due to various causes, all of which cannot be foreseen or put in the strait jacket of a statute and it is difficult to give an exhaustive catalogue of all situations or combinations of situations, though, for convenience, four broad heads have been mentioned in paragraph 6.4.01. Government connivance at sabotage is very serious matter. We have already pointed out in para 6.4.10 that States are under a liability not to carry on the government in a manner contrary to, or subversive of, the provisions of the Constitution. It would be a dangerously narrow view of cognizance of a situ tion of connivance at sabotage should be taken only in the context of national defence and only in the case of actual or impending war. We are, therefore, of the view that it would not be possible to limit the scope of action under Article 356 to specific situations.

6.7.04 Having considered these suggestions carefully we recommend that article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify the break-down of the constitutional machinery. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes, and exigencies of the situation. Since these factors are variable, any enumeration of such alternatives can, at best, be illustrative. Nor can the exhaustion of these alternative courses, before invoking Article 356, be insisted upon as an absolute rule. These can be dispensed with in a case of extreme urgency, where failure on the part of the Union to take immediate action under Article 356 may lead to disastrous consequences.

6.7.05 A number of safeguards have been suggested to prevent possible misuse of the provision of this Article. Some State Governments and others have suggested that the Inter-State Council should be consulted before a proclamation under Article 356 is issued. One State Government has suggested that Article 356 should be amended to provide for prior approval of the Inter-State Council or its Standing Committees. They have also suggested that, in case elections cannot be held within six months after proclamation of President's rule, the Inter-State Council should be consulted again and its opinion placed before Parliament. It has been noticed earlier that the power under Article 356 is drastic precisely because it is required to deal with an extraordinary situation. Although it is a power of last resort, yet, once it is invoked and the proclamation issued, the consequences follow immediately. The exigencies of a situation of constitutional break-down often require swift and effective action. Prior consultation with any other body or authority will hamper the speedy and efficacious exercise of this power in such urgent situations. Further, this will dilute the responsibility of the Union Executive for the action taken under Article 356, to Parliament.

6.7.06 It has been suggested to us that principles of natural justice should be followed before a State Government is dismissed and President's rule imposed. It is suggested that, before sending his report, the Governor should communicate it to the State Government and obtain its comments. Again, before issue of a proclamation, the President should convey the reasons for the action contemplated and take into consideration the clarifications of the State Government before taking a final decision to impose President's rule. Yet another suggestion is that, in keeping with the principles of fair-play and justice, warning should be given.

6.7.07 We have carefully considered the above suggestions. We have emphasised the need to exhaust all possible alternative courses of action to resolve the crisis before resorting to the provisions of Article 356. It is apparent that the Governor, as the constitutional head of the State, and the President, in fulfilment of the duties cast upon the Union Executive under Article 355, would have exhausted all possible steps including consultation with the State Council of Ministers, where necessary, to prevent a situation of breakdown of the constitutional machinery of the State, before resorting to action under Article 356. Therefore, there is no need for any show-cause notice to be issued by the Governor before sending his report or by the President before issue of proclamation.

6.7.08 However, we fully endorse the suggestion for issue of a warning before taking action under Article 356. The Chairman of the Drafting Committee of the Constituent Assembly had made similar observations at the time of framing the Constitution. The warning to the errant State should be in specific terms to indicate that it is not carrying on the Government of the State in accordance with the Constitution. Before taking action under Article 356, the explanation, if any, received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.

6.7.09 Article 356 was amended by the Constitution (Forty-fourth Amendment) Act. Clause (5) of Article 356 so amended, provides that a resolution with respect to the continuance in force of a proclamation for any period beyond one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless two conditions are satisfied. Firstly, a Proclamation of Emergency is in operation in the whole of India or as the case may be, in the whole or any part of the State, and secondly,

the Election Commission certifies that the continuance in force of the proclamation during the extended period is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned. It has been urged before us by some that the new clause (5) has made for rigidity. The case of Punjab has been cited, where, in order to continue the President's rule beyond the period of one year, a constitutional amendment became necessary. On the other hand, it has been argued that keeping in view the alleged misuse of the provisions of Article 356 in the past, there is need for severe restrictions in respect of any extension beyond one year. While several State Governments consider that the existing provisions or appropriate, two have suggested that the position as was obtaining prior to the Forty-Fourth Amendment should be restored. Two other State Governments have suggested that a little more flexibility could be introduced without detracting from the present limitations by substituting the word 'or' for the word 'and' between Sub-Clauses (a) and (b) of Clause (5) of Article 356.

6.7.10 We have given careful consideration to both points of view. We do appreciate that it may become necessary to extend the period of the Proclamation further if there is an 'Emergency' covering the whole of India or that State or any part of that State. Again, it may be necessary in case general elections cannot be held to the Legislative Assembly of the State. However, it is not clear why the *co-existence* of these two conditions should be a prerequisite to enable the continuance of the President's rule in a State beyond one year as there is no apparent causal relation between the two. We are of the view that it is not desirable to amend the Constitution from time to time merely for this purpose. We note that, after the Forty-fourth Amendment, while instances of Proclamation of 'Emergency' under Article 352 may be rare, situations where it is difficult to hold general elections to the State Assembly may occur from time to time. In such a situation continuance of President's Rule may become necessary. The balance of advantage would seem to lie in delinking the two conditions so that, whenever either condition is satisfied, president's rule could be continued even beyond one year with the approval of Parliament and repeated amendments of the Constitution avoided. The crux of the whole issue is that the situation obtaining in the State at the time when the continuance of the President's rule is sought, should be such that the Government of the State cannot yet be carried on in accordance with the provisions of the Constitution.

6.7.11 We recommend that in clause (5) of Article 356, the word 'and' occurring between sub-clauses (a) and (b) should be substituted by 'or' so that, if either condition is satisfied, the proclamation can be continued in force beyond one year.

6.7.12 We note that in certain cases, President's Rule was continued beyond two months by issuing a fresh Proclamation on the expiry of the first one. Approval of Parliament is necessary if the proclamation is to be continued beyond two months (Clause (3), Article 356). The provisions of Clause (3) are circumvented and the control of Parliament diluted if technically a 'fresh' proclamation is issued substantially on the same facts, on the expiry of the first one. This will not be a desirable practice.

6.7.13 We recommend that every Proclamation should be placed before each House of Parliament at the earliest and in any case before the expiry of the period of two months from its issue.

8. RECOMMENDATIONS

6.8.01 Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action Under Article 356 will lead to disastrous consequences.

(Paragraph 6.7.04)

6.8.02 A warning should be issued to the errant State, in specific terms, that it is not carrying on the Government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.

(Paragraph 6.7.08)

6.8.03 When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential breakdown of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation.

(Paragraph 6.3.17)

6.8.04 (a) In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.

(Paragraph 6.4.08)

(b) If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

(Paragraph 6.4.09)

6.8.05 Every Proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two month period contemplated in clause (3) of Article 356.

(Paragraph 6.7.13)

6.8.06 The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356 (1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

(Paragraph 6.6.20)

6.8.07 Safeguards corresponding, in principle, to clauses (7) and (8) of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a Proclamation.

(Paragraph 6.6.23)

6.8.08 To make the remedy of judicial review on the ground of *mala fides* a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of Article 74 of the Constitution, the material facts and grounds on which Article 356(1) is invoked should be made an integral part of the Proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective.

(Paragraph 6.6.25)

6.8.09 Normally, the President is moved to action under Article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

(Paragraph 6.6.26)

6.8.10 The Governor's report, on the basis of which a Proclamation under Article 356(1) is issued, should be given wide publicity in all the media and in full.

(Paragraph 6.6.28)

6.8.11 Normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under Article 356(1).

(Paragraph 6.6.29)

6.8.12 In clause (5) of Article 356, the word 'and' occurring between sub-clauses (a) and (b) should be substituted by 'or'.

(Paragraph 6.7.11)

Federal Supremacy in the U.S.A.

1. The American Constitution, in the language of Article VI (2), ordains :

> "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

The import of the Supremacy Clause has been considerably amplified through judicial interpretation. As early as 1819, in *MacCulloch* v. *Maryland*, Chief Justice John Marshall of the United States, enunciated that the acts of the Federal Government done in pursuance of the Constitution are operative as Supreme Law throughout the Union and, as a basic consequence of this supremacy, the States have no power to impede, burden or in any manner control the operation of the laws enacted by the Government of the nation. This is also the principle underlying Articles 256 and 257 of the Constitution of India. Marshall further elaborated the implications of the Supremacy Clause in *Gibbons* v. *Ogden* (1824). These have been neatly summed up by Schwartz, to mean that "federal action (whether in the form of a statute, a treaty, a court decision, or an administrative act), if itself Constitutional, must prevail over State action inconsistent therewith".[30]

2. The legislative facets of this principle are embodied in Articles 246 and 254 of the Indian Constitution.

3. There is another provision of the American Constitution which gives paramount power to the Federal Government to interfere with the functioning of the State Governments. This is contained in Article IV (4), which runs as follows :

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence".

The first part of this provision is known as the Guarantee Clause. Its second part is called the Protection Clause. The principles involved in these Clauses are analogous to those which underlie Article 355 of our Constitution.

4. A vast potential is rooted in the sweeping and unqualified language of the Guarantee Clause. Indeed, in the course of American history, it has assumed protean forms. President Lincoln in 1861 sought in this clause an authorisation for extraordinary national action to put down rebellion, to strike down slavery, to assume certain basic civil and potential rights for freed 'blacks' and to effectuate programmes to deal with problems during the Reconstruction (1861-1877).

5. The Guarantee Clause is considered as "a treamendous store-house of power to reshape the American federal system". An American author who has made an exhaustive survey of the past uses of the[31] Guarantee Clasue, sums up his views about the nature, the potential uses and dangers of this power, as follows :

> "This Clause is, in Summer's simile, a giant, and should be watched carefully, since its tremendous power can be dangerous as well as protective to republican liberty..... The guarantee is prophylactic; the federal government is to 'protect as well as restore' republican government in the States. It imposes affirmative obligations on both nation and states; it 'still exists as an independent and untapped source of federal power, by which the Central Government can assume the fuller realisation of our society's democratic goals'.....the characteristics of republicanism must be 'dictated by contemporary values. Those values will not only include the present spirit of the national government, but also the current expectations of the American peoples, such as access to the ballot and equal access for all to housing, employment, education, transportation and numerous other things, when sufficiently touched with a public interest".

6. Article IV(4) of the American Constitution does not prescribe the manner in which the guarantee as to the republican form of government may be enforced against a State. It has no provision analogous to Articles 356 and 357, authorising the Union Government or the President to *suspend* or *supersede* the Constitutional machinery in a State.

7. Article 1, Section 8(18) of the American Constitution empowers the Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof". Article 1, Section 8(15) of that Constitution authorises the Congress to make laws "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions". The consent or request of a State is not a condition precedent to the exercise of this power. By virtue of these provisions, the Congress enacted the Enforcement Act, 1795, delegating this power to the President, The Act was supplemented by a 1807 statute which authorises the President to use the regular armed forces to supplement the federalised Militia, for law enforcement purposes.

8. Article II, Section 3 of the American Constitution confers on the President the duty and power 'to take care that the Laws of the United States be faithfully executed.'

9. In discharge of their obligations under the Constitution, buttressed by statutes, the Presidents of United States have, on occassions, deployed the Fdederal Forces in the States for suppressing domestic violence and resistence to the enforcement of the Union and State Laws, even without there being any application from th e affected State for such aid.

10. In course of time the President's power to employ the military forces in the enforcement of laws of the United States, has undergone enlargement, due in part to the President's initiative and in part to Congresional legislation.[32] During the great railway strikes of 1877 there was violence in 10 States. President Hayes without waiting for any formal application from those States, sent Federal Forces and ammunition to the scenes of trouble for the purpose of aiding "in the enforcement of the laws of the Union" and "to protect property of the United States".

11. The practice initiated by Hayes was extended by President Cleveland. In the Pullman strike of 1894, the President, acting against the vehement protests of the State's Governor, deployed the military forces in Chicago to protect the property of the United States and "to remove obstructions to United States mails".[32]

12. In *Re Eugene Debs* (158 US 564), the Supreme Court of United States not only justified the course adopted by President Cleveland but further amplified the basis for such action. Delivering the unanimous opinion of the Court, Justice Brewer affirmed that "the entire strength of the nation may be used to enforce in any part of land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care".

13. In April, 1871, the Congress passed an Act, which enlarged the scope of Presidential authority. Its object was to ensure that "the due course of justice" is not obstructed, and no class is denied the equal protection of its Constitutional rights. The Act conferred on the President the right and the

[30]. Schwartz Bernard, Constitutional Law-A Text book, (1979), Page 48.

[31] Wiecek in his book—'The Guarantee Clause of the U.S. Constitution'.

[32]Edward Corwin's, "The President : Office and Powers" page 164, 3rd Edn.

duty to take such measures by the employment of the militia or the and of naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of any insurrection, domestic violence or combinations in a State which hinder the execution of the laws, state or national.

14. After *re Debs'* case, the requirement of an application for aid under the Protection Clause in Article IV, from the affected State, for suppressing domestic violence in the State, has, in practice, lost its importance. The result is that "today we have to go further and recognize that the line, which Article IV impliedly draws between the 'general peace' and the domestic peace of the individual states has become an extremely tenuous one".[33]

15. The paramountcy of the duty and power of the Federal Government to put down serious disorders and unconstitutional refusal of a State or States to enforce constitutional guarantees, Federal Laws and decisions of the Federal Courts on racial de-segregation, was again demonstrated on two occasions, recently.

16. The facts giving rise to the first occasion were as follows :

The Supreme Court in *Brown* v. *Board of Education* (1954) and *Bolling* v. *Sharpe* (1954) decided that school segregation, both in the States and in the District of Columbia, violated the Fourteenth Amendment of the Constitution. By the same decision they over-ruled the old doctrine of 'separate but equal', that had been enunciated in *Plessy* v. *Ferguson*. In May, 1955, the Court after rearguments in *Brown* v. *Board* (second case) remanded the cases to the lower courts concerned to work out equitable solutions to eliminate 'the variety of obstacles' in the way of admissions "to public schools on a racially non-discriminatory basis with all deliberate speed." The second Brown decision triggered a protracted legal and political battle over school desegregation throughout the South. There was a calculated move and "massive resistance" in an effort to block implementation of the Brown decision in several Southern States. The National Association For Advancement of Coloured People (NAACP) countered by equally massive program of litigation in courts. The litigation sparked off political manoeuvering, rioting and violence necessitating the imposition of martial law. In September 1957, Governor Orval Faubus called out the Arkansas National Guards and by proclaiming the necessity of maintaining law and order, effectively barred prospective Negro students from entering the white High School building at Little Rock. He disregarded a series of court's orders commanding immediate compliance with the integration plan. A conference between Faubus and President Eisenhower failed to produce any result. On the President's instructions, the Attorney General obtained an injunction against the Governor ordering him and the National Guards to cease forthwith from blocking enforcement of the Federal Courts' orders. The Governor thereupon withdrew the National Guards. However, when Negro students again attempted to enter the high-school they were prevented from doing so by a large and unruly mob. Thereupon, President Eisenhower on September 25, 1957 despatched several companies of United States Army to Little Rock, in effect putting the city under martial law. This action was taken by him under the aforesaid Federal Act of 1871 which authorised the President to suppress insurrection and unlawful combination that hinder execution of any State or Federal law. As a result, mob resistance immediately disappeared and several Negro students thereupon entered the school without further interference.[34]

17. On September 12, in a unanimous decision in *Cooper* v. *Aaron* (1958), the Supreme Court formally reiterated the *ratio* of the decision in *Brown* v *Board of Education* and affirmed the judgement of the Court of Appeals, refusing to suspend the integration plan of the School Board. It was pointed out that the constitutional right not to be discriminated against in schools maintained by or with the aid of a State cannot be nullified openly and directly by state legislators or state executive or judicial officers, nor indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously; and that the ruling of the *Brown Case* was the supreme law of the land and Article VI of the Federal Constitution makes it of binding effect on the States, "anything in the Constitution or laws of any state to the Contrary notwithstanding".

18. This decision "constituted a solemn admonition to the State of Arkansas on the folly and futility of attempting to frustrate the sovereign will of the Supreme Court and the national government".[35]

19. The next occasion on which the President had to call out the Army to enforce the constitutional guarantees, and rights of the United States arose in September, 1962. Following a protracted litigation, the Supreme Court directed the officials of the University of Mississippi to admit one James Meredith, a Negro student. The Governor virtually took charge of the University and using state and local police blocked repeated attempts of Meredith, now escorted by United States marshals, to register. The Court of Appeals thereupon convicted the Governor for contempt When attempts to persuade the Governor to recede failed, President Kennedy on September 29, 1962 issued a proclamation addressed to the officials and people of the State of Mississippi, warning them to cease their resistence to federal authority. On the following day, the University officials capitulated and agreed to allow Meredith to register. When Meredith accompanied by several hundred United States marshals, went to the University to get registered, massive riots approaching the proportions of an insurrection broke out in and around the college campus. President Kennedy then sent several thousand regular U.S. Army troops, as well as several units of the Mississippi Nation l Guards, to put down the disorder and resistance to the federal law and the Constitution. Resistance collapsed and Meredith registered and began attending classes.

20. Yet another instance of such intervenion by the President in a State, arose early in 1965, when President Lyndon Johnson mobilised the Alabama National Guard to protect persons participating in a massive Civil Rights "March" in Montgomery.

[34] Kelly and Harbinson : American Constitution (4th Edition) : Page 930.

[35] *Ibid.*

[33] Edward Corwins', "The President office and powers." page 164, 3rd Edn.

ANNEXURE VI.2

Test of Articles 355, 356 and 357 of the Constitution of India, as Originally Enacted, and Modifications made therein by constitution Amendment Acts

Text of the Articles, as Originally enacted, (Portions which have been affected by subsequent amending acts have been underlined)	Omissions	Additions/substitutions made by amending Acts
1		2
355. Duty of the Union to protect states against external aggression and Internal disturbance. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.	No Change	

ANNEXURE VI.2—*Contd.*

1	2
356. Provisions in case of failure of constitutional machinery in states	
(1) If the President, on receipts of a report from the Governor *or Rajpramukh* of a State or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—	*Clause* (1)
	The words "or Rajpramukh" omitted by C.A. 7, Section 29 and Schedule w.e.f. 1-11-1956.
(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor *or Rajpramukh, as the case may be*, or any body or authority in the State other than the Legislature of the State;	The Words "or Rajpramukh, as the case may be", omitted by C.A. 7, Section 29 and Schedule w.e.f. 1-11-1956.
(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;	
(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :	
Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.	
(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.	
(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :	
Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.	
(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of *a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under Clause* (3) :	*Clause* (4) *and the first and second provisos thereunder:*
	(i) The words "one year" substituted for the words, "six months" by C.A. 42, Section 50 w.e.f. 3-1-1977.
Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of *six months* from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :	(ii) (A) In Clause (4), for the words "one year from the date of passing.....clause (3)", the following words substituted by C. A. 44, Section 38 (a) (i) with effect from 20-6-79. "Six months *from the date of issue of the Proclamation*".
	(B) In the first and the second provisos, the words "six months" (which were earlier replaced by the words "one year" by .C.A. 42), re-substituted for "one year" by C.A. 44, Section 38(1)(ii) & (iii) w.e.f. 20-6-1979.
Provided further that if the dissolution of the House of the People takes place during any such period of *six months* and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.	*Clause* (5) (NEW)
	(i) The following new clause (5) inserted by C.A. 38, Section 6 (retrospectively) : "(5) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground".
	(ii) for classe (5) inserted earlier by C. A. 38, the following clause was substituted by CA 44, Section 38(b) with effect from 20-5-79 : "(5) Notwithstanding anything contained in clause (4) a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless—
	(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

ANNEXURE VI.2—*Contd.*

1	2
	(b) the Election Commission certified that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned".
	(iii) The following proviso was inserted at the end by CA 48, Section 2, w.e.f. 26-8-84. "Provided that in the case of the Proclamation issued under Clause (1) on the 6th day of October, 1983 with respect to the State of Punjab, the reference in this clause to "any period beyond the expiration of one Year" shall be construed as a reference to "any period beyond the expiration of two Years".
357. Exercise of Legislative powers under Proclamations issued under Article 356. (1) Where by a proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent— (a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf; (b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof; (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.	
(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, *to the extent of the incompetency, cease to have effect on the expiration of a period of a one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease, to have effect are sooner repealed or re-enacted with or without modification by Act of the apppropriate Legislature.*	*Clause* (2) The existing clause replaced by new clause (2) by CA 42, Section 51(1), with effect from 3-1-77. The net effect was that the following was substituted for the expression underlined in column (1) : .....*after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.*

ANNEXURE VI.3

President's rule in States under Article 356 of the Constitution of India.

Sl. No.	State	Date of Proclamation	Date of revocation	Duration of President's Rule			Whether Assembly dissolved/suspended
				Years	Months	Days	
1	2	3	4	5	6	7	8
1.	Punjab	20-6-1951	17-4-1952	0	9	28	Assembly suspended
2.	Pepsu	4-3-1953	7-3-1954	1	0	3	Assembly dissolved
3.	Andhra	15-11-1954	28-3-1955	0	4	13	Do.
4.	Travancore-Cochin	23-3-1956	1-11-1956	0	7	9	Do.
5.	Kerala	1-11-1956	5-4-1957	0	5	4	On reorganisation of States, Kerala came into being.
6.	Kerala	31-7-1959	22-2-1960	0	6	22	Assembly dissolved
7.	Orissa	25-2-1961	23-6-1961	0	3	29	Do.
8.	Kerala	10-9-1964	24-3-1965	0	6	14	Do.
9.	Kerala	24-3-1965	6-3-1967	1	11	10	Do.
10.	Punjab	5-7-1966	1-11-1966	0	3	27	State reorganised
11.	Rajasthan	13-3-1967	26-4-1967	0	1	13	Assembly suspended
12.	Haryana	21-11-1967	21-5-1968	0	6	0	Assembly dissolved.
13.	West Bengal	20-2-1968	25-2-1969	1	0	5	Assembly dissolved.
14.	Uttar Pradesh	25-2-1968	26-2-1969	1	0	1	Assembly suspended and subsequently dissolved on 15-4-1968.

ANNEXURE VI. 3—*Contd.*

Sl. No.	State	Date of Proclamation	Date of revocation	Duration of President's Rule			Whether Assembly dissolved/suspended
				Years	Months	Days	
1	2	3	4	5	6	7	8
15.	Bihar	29-6-1968	26-2-1969	0	7	28	Assembly dissolved.
16.	Punjab	23-8-1968	17-2-1969	0	5	25	Do.
17.	Bihar	4-7-1969	16-2-1970	0	7	12	Assembly suspended.
18.	West Bengal	19-3-1970	2-4-1971	1	0	14	Assembly suspended and subsequently dissolved on 30-7-1970.
19.	Kerala	4-8-1970	3-10-1970	0	2	0	Assembly dissolved on 26-6-70 by the Governor.
20.	Uttar Pradesh	1-10-1970	18-10-1970	0	0	17	Assembly suspended
21.	Orissa	11-1-1971	23-1-1971	0	0	12	Do.
22.	Orissa	23-1-1971	22-2-1971	0	2	0	Assembly dissolved.
23.	Orissa	23-3-1971	3-4-1971	0	0	11	Assembly suspended.
24.	Mysore	27-3-1971	20-3-1972	0	11	22	Assembly suspended but subsequently dissolved on 14-4-1971.
25.	Gujarat	13-5-1971	17-3-1972	0	10	4	Assembly dissolved
26.	Punjab	15-6-1971	17-3-1972	0	9	2	Assembly dissolved by the Governor on 13-6-1971.
27.	West Bengal	29-6-1971	20-3-1972	0	8	22	Assembly dissolved on 25-6-1971 by the Governor.
28.	Bihar	9-1-1972	8-3-1972	0	1	29	Assembly dissolved on 29-12-71 by the Governor.
29.	Bihar	9-3-1972	19-3-1972	0	0	10	Fresh Proclamation was issued as the earlier one ceased to operate on 8-3-1972.
30.	Manipur	21-1-1972	20-3-1972	0	2	0	New State formed on re-organisation.
31.	Tripura	21-1-1972	20-3-1972	0	2	0	New State formed on re-organisation.
	Andhra Pradesh	18-1-1973	10-12-1973	0	10	22	Assembly suspended
33.	Orissa	3-3-1973	6-3-1974	1	0	3	Assembly dissolved.
34.	Manipur	28-3-1973	4-3-1974	0	11	4	Do.
35.	Uttar Pradesh	13-6-1973	8-11-1973	0	4	26	Assembly suspended
36.	Gujarat	9-2-1974	18-6-1975	1	4	9	Assembly suspended but subsequently dissolved on 15-3-1974.
37.	Nagaland	22-3-1975	25-11-1977	2	8	3	Assembly suspended but subsequently dissolved on 20-5-1975.
38.	Uttar Pradesh	30-11-1975	21-1-1976	0	1	22	Assembly suspended.
39.	Tamil Nadu	31-1-1976	30-6-1977	1	4	29	Assembly dissolved
40.	Gujarat	12-3-1976	24-12-1976	0	9	12	Assembly suspended
41.	Orissa	16-12-1976	29-12-1976	0	0	13	Do.
42.	Punjab	30-4-1977	20-6-1977	0	1	21	Assembly dissolved.
43.	Rajasthan	30-4-1977	22-6-1977	0	1	23	Do.
44.	Orissa	30-4-1977	26-6-1977	0	1	27	Do.
45.	Haryana	30-4-1977	21-6-1977	0	1	22	Do.
46.	Himachal Pradesh	30-4-1977	22-6-1977	0	1	23	Do.
47.	Madhya Pradesh	30-4-1977	23-6-1977	0	1	24	Do.
48.	Uttar Pradesh	30-4-1977	23-6-1977	0	1	24	Do.
49.	West Bengal	30-4-1977	21-6-1977	0	1	22	Do.
50.	Bihar	30-4-1977	24-6-1977	0	1	25	Do.
51.	Manipur	16-5-1977	29-6-1977	0	1	13	Assembly suspended
52.	Tripura	5-11-1977	4-1-1978	0	2	0	Assembly dissolved
53.	Karnataka	31-12-1977	27-2-1978	0	1	27	Do.
54.	Sikkim	18-8-1979	17-10-1979	0	2	0	Assembly dissolved by the Governor on 13-8-1979.
55.	Manipur	14-11-1979	13-1-1980	0	1	29	Assembly dissolved.
56.	Kerala	5-12-1979	25-1-1980	0	1	21	Assembly dissolved by the Governor on 30-11-1979.

ANNEXURE VI-3—(*Concld.*)

Sl. No.	State	Date of Proclamation	Date of revocation	Duration of President's Rule			Whether Assembly dissolved/Suspended
				Years	Months	Days	
1	2	3	4	5	6	7	8
57.	Assam	12-12-1979	6-12-1980	0	11	24	Assembly suspended
58.	Rajasthan	17-2-1980	6-6-1980	0	3	18	Assembly dissolved
59.	Gujarat	17-2-1980	7-6-1980	0	3	19	Do.
60.	Punjab	17-2-1980	7-6-1980	0	3	19	Do.
61.	Bihar	17-2-1980	8-6-1980	0	3	20	Do.
62.	Tamil Nadu . . .	17-2-1980	9-6-1980	0	3	21	Do.
63.	Orissa	17-2-1980	9-6-1980	0	3	21	Do.
64.	Madhya Pradesh . .	17-2-1980	9-6-1980	0	3	21	Do.
65.	Maharashtra . . .	17-2-1980	9-6-1980	0	3	21	Do.
66.	*Uttar* Pradesh . . .	17-2-1980	9-6-1980	0	3	21	Do.
67.	Manipur	28-2-1981	19-6-1981	0	3	21	Assembly suspended.
68.	Assam	30-6-1981	13-1-1982	0	6	13	Do.
69.	Kerala	21-10-1981	28-12-1981	0	2	7	Do.
70.	Kerala	17-3-1982	24-5-1982	0	2	7	Assembly dissolved.
71.	Assam	19-3-1982	27-2-1983	0	11	9	Do.
72.	Punjab	6-10-1983	29-9-1985	1	11	24	Assembly kept in suspended animation and dissolved on 26-6-1985.
73.	Sikkim	25-5-1984	8-3-1985	0	9	14	Assembly dissolved.
74.	Jammu & Kashmir . .	7-9-1986	6-11-1986	0	2	0	Assembly suspended.
75.	Punjab	11-5-1987	President's rule is continuing.				Do.

ANNEXURE VI.4

Cases of President's Rule—Categorywise

Category (A)—18 *Cases of special category.*

The general elections to the Lok Sabha held in March, 1977 led to land-slide victory of the Janata Party which formed the government at the Centre. The Union Home Minister wrote to the Chief Ministers of the Congress ruled States of Punjab, Rajasthan, Orissa, Haryana, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, West Bengal and Bihar suggesting that they should seek a fresh mandate from the people as the rout of the Congress party indicated that they had lost the peoples' support. Six of these States (Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa) filed suits against the Union of India under Article 131 of the Constitution seeking a declaration that the letter of the Union Home Minister which was described by them as a "directive" was unconstitutional, illegal and *ultra vires*. The Court held that the letter neither constituted a threat nor was unconstitutional and therefore dismissed the suits. President's rule was thereafter proclaimed in these 9 States on April 30, 1977.

In a similar situation when the Congress gained a thumping majority in the Lok Sabha elections in 1980 and replaced the Janata Government at the Union level, President's rule was imposed on February 17, 1980 in the non-Congress ruled States of Punjab, Rajasthan, Orissa, Madhya Pradesh, Uttar Pradesh, Maharashtra, Bihar, Tamil Nadu and Gujarat.

The proclamations issued by the Janata Government and the Congress Government were not based on any report from the Government of the States.

Category (B)—*President's rule when Ministry Commanded 'majority'.*

(i) *Punjab.*—(20-6-1951) The Congress Parliamentary Board decided that the Chief Minister, Dr. Bhargava, should resign. The Congress enjoyed absolute majority in the State legislature at that time. Alternate leader was not immediately elected by the Congress party. In these circumstances, President's rule was imposed following the Chief Minister's resignation. The Assembly was kept in a state of suspended animation.

(ii) *Kerala.*—(31-7-1959) There was a mass upsurge against the State Government on various issues. The ruling party headed by the Chief Minister, Shri E.M.S. Namboodripad, however, continued to enjoy majority support in the Assembly. President's rule was imposed following the mass upsurge.

(iii) *Punjab.*—(5-7-1966) There was a split in the ruling party—some were for the partition of the State while others were totally opposed to it. As soon as a decision for reorganising Punjab on a linguistic basis was announced, the Chief Minister Shri Ramkishan tendered his resignation. The Governor consulted other Ministers and ex-Ministers of the Congress party to explore the possibility of an alternative Ministry and, as none were ready to form a government, President's rule was proclaimed following the Chief Minister's resignation despite the Congress party continuing to enjoy a majority in the Assembly.

(iv) *Haryana.*—(21-11-1967) A week after the formation of a Congress government in Haryana on March 10, 1967, the official Congress nominee for Speakership was defeated by Rao Birendra Singh (Congress) supported by the opposition. 12 other Congressmen who has also voted against the official nominee resigned. This resulted in the resignation of Congress Ministry on March 22, 1967. Rao Birendra Singh who was elected as Leader of the Haryana Samyukt Vidhayak Dal claimed 'majority' and was sworn in as Chief Minister. There were large numbers of defections. About 20 members had defected once, 6 members twice, 2 members thrice and 2 members four times. One member of the opposition who had crossed the floor and was made a Minister, defected back within 4 days. Thereafter, the Ministry managed to continue in power by offering constant lure of office to cope with defections. The Government was thus all the time pre-occupied with the problem of survival which had an adverse effect on the administration. In this circumstances, when defections had become endemic in Haryana politics, the Governor felt that defections "had made a mockery of the constitution and had brought democracy to ridicule".

(v) *Andhra Pradesh.*—(18-1-1973) Even though the Ministry enjoyed absolute majority, President's rule was proclaimed in order to deal with the split within the party on the question of separation of Andhra and Telangana regions of the State.

(vi) *Uttar Pradesh.*—(13-6-1973) Shri Kamalapati Tripathi, Chief Minister of Uttar Pradesh, took the unusual step of tendering resignation, even though his Ministry enjoyed an absolute majority in the State Legislature, because the disturbances arising out of indiscipline in the PAC had affected the morale and performance of the State administration. The Chief Minister felt that the efforts of the State Government to meet situations of drought and scarcity conditions, shortage of power and students' unrest would be hindered because of the indiscipline in the Civil Police and PAC. In his view, direct involvement of the Union Government would help in restoring peace and safe-guarding the security of the State. President's rule was therefore proclaimed on the recommendation of the Governor.

(vii) *Gujarat.*—(9-2-1974) The anti-price-rise agitation in Gujarat turned into a mass movement with demands for removal of the Ministry and dissolution of the Assembly. Army had to be called in at some places to deal with violence. Ultimately, the Government had to resign despite having a 'majority'. The Chief Minister also recommended suspension of the Assembly. President's rule was proclaimed consequent to the resignation of the Council of Ministers and the Assembly was kept suspended. The agitators also started requesting or coercing legislators to resign. The Union Government passed the Thirty-third amendment to the Constitution empowering the speaker or Chairman not to accept letters of resignation if he was satisfied that they were not voluntary and genuine. On March 11, 1974 Shri Morarji Desai went on an indefinite fast demanding the dissolution of the Assembly which was conceded on March 15,1974.

(viii) *Uttar pradesh.*—(30-11-1975) Shri Bahuguna the Chief Minister resigned. The Governor's recommendation for President's rule for a short period to give time to the Congress Legislature Party to elect a new leader was accepted.

(ix) *Tamil Nadu.*—(31-1-1976) President's rule was proclaimed on the basis of allegations of corrupt practices, non-implementation of Union's instructions during 'Emergency' regarding censorship, misuse of powers under DISIR etc. despite the DMK Ministry enjoying a majority in the Assembly.

(x) *Orissa.*—(16-12-1976) President's Rule was proclaimed because the Council of Ministers had lost faith in the leadership of the Chief Minister, despite the Congress party continuing to enjoy a majority in the Assembly.

(xi) *Karnataka.*—(31-12-1977) The Congress Party had an absolute majority in the Assembly. In December, 1977, the President of Karnataka Provincial Congress informed the Governor that Shri Devraj Urs, the Chief Minister, had been suspended from the membership of the Indian National Congress and was therefore no longer the leader of the Congress Legislature Party. The Chief Minister took the stand that he still had a majority and that it should be tested on the floor of the House. The Governor also received memoranda from other political parties to the effect that Shri Urs had forfeited his right to continue. A joint session of both houses had been summoned on 3-1-78. A section of the legislators was of the view that such a session would be illegal and unconstitutional and that an address by the Governor prepared by a cabinet which had lost its majority would be unwholesome. The President of the Karnataka Provincial Congress claimed the right to form a Government with a new leader but no efforts had been made to convene a meeting of the legislature party to elect a new leader. In view of the special features of the situation the Governor recommended President's rule and dissolution of the legislative assembly. President's Rule was proclaimed notwithstanding the fact that the Congress continued to have a majority in the Assembly.

(xii) *Manipur.*—(14-11-1979) President's rule was imposed on grounds of corruption and demoralised administration even though the Ministry continued to enjoy a 'majority' in the Assembly.

(xiii) *Punjab.*—(6-10-1983) The Chief Minister informed the Government in his letter of resignation that the developments in the State (the Akali agitation) had acquired a very large dimension not confined to the State alone but with serious implications for the whole country. He therefore suggested direct intervention of the Union for a temporary period even though he continued to have an absolute majority in the assembly. This recommendation was accepted and President's rule proclaimed.

Category (C)—*Proclamation of President's Rule without giving a chance to claimants.*

(i) *PEPSU.*—(4-3-1953) Shri Gian Singh Rarewala who headed the United Front Ministry was unseated through an election petition. Despite his request for continuing for a period of six months before getting re-elected and a request from the United Front party for continuing the government with another leader, President's rule was proclaimed and the Assembly was dissolved. For a long period, after May 1952, no serious business had been transacted in the House. It met on 19th November and was adjourned on November 25, 1952 amidst disturbances and confusion. It was reconvened on December 22, 1952, but no worthwhile business was transacted. President's Rule was imposed in view of the instability of the Ministry, the fact that the budget session was to commence and the possibility of further unseating of a number of members against whom election petitions were still pending. There were also some law and order problems in the State. Dr. Ambedkar who participated in the Lok Sabha debate on the extension of this President's rule in September, 1953, was highly critical of the Government's action.

(ii) *Andhra.*—(15-11-1954) After the creation of Andhra as a separate State on linguistic basis, a Government headed by Shri T. Prakasam (Congress) was sworn in on October, 6 1953. This Government resigned on November, 6, 1954 as a result of a no-confidence motion. The Governor, on his assessment, concluded that there was no possibility of a stable government and recommended president's rule which was proclaimed on November 15, 1954. The opposition (PSP and Communist parties) was not given a chance to try to form a Government.

(iii) *Travancore-Cochin.*—(23-3-1956) On the fall of the Ministry due to defections, the Praja Socialist Party was not given a chance.

(iv) *Kerala.*—(24-3-1965) While the elections did not result in a conclusive majority to any party, the largest majority party was not given a chance to form the Government.

(v) *Rajasthan.*—(13-3-1967) While there was no clear majority after elections, the United Front, which claimed support for a viable majority, was not given a chance as some of the legislators who had broken away from Congress and joined Janata Party after the elections, were not recognised as belonging to that Party. This led to an agitation and the leader of the Congress Party refused to form a Government in the situation.

(vi) *Uttar Pradesh.*—(25-2-1968) Upon resignation of the Samyukta Vidhayak Dal Government, the opposition was not given an opportunity to form a Government. In a secret vote in the Assembly, the Congress Party was able to defeat the Samyukta Vidhayak Dal. Notwithstanding this, the opposition was not called upon to form a Government on the plea that they should have a substantial majority for forming a viable government.

(vii) *Bihar.*—(4-7-1969) The ruling Government resigned on July 1, 1969 after 9 days in office. Against a background of 6 ministries and a period of President's rule during June 29, 1968 to February 28, 1969, the Governor did not recognise the claim of the opposition (Congress) as their numerical strength included 'unpredictables'.

(viii) *West Bengal.*—(19-3-1970) Upon resignation of Sri Ajay Kumar Mukherjee, Shri Jyoti Basu CPI (M) asked for time to explore possibility of forming a Ministry. Later, he refused to disclose the names of his supporters on the plea that his party had rejected the Governor's request for revealing of such names. Meanwhile, 10 other parties had represented to the Governor against the formation of a CPI(M) led Ministry. The Congress also declined the Governor's invitation to try to form a Ministry. Taking into account these factors and the deteriorating law and order situation, President's rule was proclaimed. CPI(M)'s claim could have been tested on the floor of the House.

(ix) *Uttar Pradesh.*—(1-10-1970) Congress was the major partner in a Congress-BKD coalition though the Chief Ministry belonged to BKD. Upon failure of the talks of merger of the

two parties. serious differences arose and the Chief Minister demanded resignation of 14 Ministers belonging to the Congress. As he belonged to a minority party, the Governor sought the opinion of the Attorney General in the matter. The Attorney General held that the Chief Minister did not have a constitutional right to dismiss the 14 ministers and, as he did not command the confidence of the Legislative Assembly, the Governor could call for his resignation and, if he failed to resign, dismiss the Chief Minister.

The Chief Minister insisted that he may be permitted to face the Assembly on September 30, 1970 or October 1, 1970 as he had the requisite support from others. The Governor however took the view that the Chief Minister "cannot be permitted to construct a new edifice on the debris of the old one." The leader of the Congress Party wrote to the Governor of the State that he would be in a position to form a Government. However, President's rule was proclaimed.

(x) *Orissa.*—(23-3-1971) Following elections, while the State was under President's rule, the leader of the Congress (R) Legislative Party (with 51 members in a House of 139) claimed a majority with support from 20 Utkal Congress and Swatantra members in addition to 2 independents and 1 Congress(O) member. The Utkal Congress had not made any announcement supporting Congress(R) nor had the Governor any final list from Dr. Mahatab till March 22, 1971. President's rule was proclaimed after revoking the earlier proclamation, even though Dr. Mahatab had issued a statement that the Governor should ask him to form a Government.

(xi) *Orissa.*—(3-3-1973) Upon resignation of the Chief Minister on 3-3-73, during the budget session because of defections resulting in loss of majority, the Governor did not give an opportunity to the leader of the Orissa Pragati Legislature Party who claimed the support of 72 out of 139 members. In his view, a combination of differing political ideologies would not be able to form a stable government.

(xii) *Kerala.*—(5-12-1979) In November, 1979 the Kerala Congress (Mani Group) withdrew their support to the Mohammad Koya coalition Ministry. This was followed by the Janata Party withdrawing its support. On November 28, 1979, the Chief Minister suggested dissolution of the State Assembly to the Governor in the interest of a stable Government even though he still had a majority. The opposition claimed a majority to enable formation of a Government and opposed dissolution of the Assembly, even though, earlier, they had suggested such a course of action. After discussions with leaders of various political parties, the Governor concluded that even if the Left Democratic Front was allowed to form a Government it was unlikely to be stable. In the circumstances, President's Rule was proclaimed.

(xiii) *Manipur.*—(28-2-1981) Upon resignation of the Ministry due to defections, the Governor did not consider a People's Democratic Front claim with a slender majority, in view of the background of 8 years of political instability in a situation of insurgent activity.

(xiv) *Assam.* (30-6-1981) Upon resignation of the Ministry headed by Smt. Syeda Anwara Taimur, the opposition staked their claim for forming a government with their combined strength and support of other groups. The Communist Party of India and Socialist Unity Centre did not support the formation of any Ministry. Some Political parties appear to have been in favour of President's rule without dissolving the Assembly. The large number of defections amongst the members of the Assembly since 1978 elections reflected the extent of political instability. Considering the changes in party loyalties and the multiplicity of parties when no party had adequate majority to ensure a stable ministry with a coherent policy, the Governor recommended President's rule which was proclaimed on 30-6-1981.

(xv) *Jammu and Kashmir.*—(7-9-1986) As the Congress (I) Legislators of the State withdrew their support, the government of Shri G. M. Shah lost its majority in the Assembly. As no Alternative government was feasible, Governor's rule was proclaimed under Section 92 of the Jammu and Kashmir Constitution on March, 7, 1986. Under Section 92, the proclamation was operative only upto September 6, 1986 and not beyond that date. Early in September 1986, the Governor reported to the President that the security of the State was under threat and that the composition and strength of the political parties and groups in the Legislative Assembly were such that political instability continued. On the basis of his report, President's rule was proclaimed on September 7, 1986.

Category (D)—*Cases where no caretaker Ministry was constituted.*

(i & ii) *Bihar.*—(9-1-1972 & 9-3-1972) The Chief Minister though claiming a majority resigned 3 days before the Assembly session which was to consider a no-confidence motion, because of ill-effects of the Government being formed at short intervals which has an impact on the activities of the States Governments. The State policies could not remain valid for long. This situation during a state of 'Emergency' was considered unsatisfactory. Bihar had remained under President's rule for 529 days during the period 1968-72. No attempt was made to keep a caretaker Government in position pending elections.

(iii) *Sikkim.*—(18-8-1979) The Chief Minister resigned because the life of the Assembly would have expired after 4 years but for the 42nd Amendment which extended its life by one more year. 44th The Amendment restored the original position but the relevant provision was not brought into force in respect of Sikkim. Therefore the Chief Minister could have continued. In any case, perhaps the proper course would have been to continue a caretaker government and have elections.

Category (E)—*President's rule proclaimed in the context of Reorganisation of States.*

(i) *Kerala.*—(1-11-56) When the new State of Kerala was created by uniting parts of Travancore-Cochin and Madras, Travancore-Cochin was already under President's rule. A fresh proclamation was issued on November 1, 1956 to continue the President's rule with reference to the new State, till the legislature was formed.

(ii) *Manipur.*—(21-1-72) It was already under direct administration of the President by virtue of his order dated October 16, 1969 under Section 51 of the Government of Union Territories Act, 1963, when it was made into a full-fledged State on January 21, 1972 by the North Eastern Areas (Re-organisation) Act, 1971. A fresh proclamation was issued under Article 356 on that date for continuance of President's rule till a new legislature was formed.

(iii) *Tripura.*—(21-1-72) It was under direct administration of the President by virtue of an order dated November 1, 1971 under Section 51 of the Government of Union Territories Act, 1963, when it was made a full-fledged State with effect from January 21, 1972 by the North Eastern Areas (Re-organisation) Act, 1971. A proclamation under Article 356 was issued on that date pending completion of general elections and formation of a legislature in the State.

Category (F).—*President's rule inevitable.*

In the following cases, it appears that there was no alternative to President's rule :—

(i) *Orissa.*—(25-2-1961) No one came forward to form an alternative ministry upon resignation of the Ministry during budget session.

((ii) *Kerala.*—(10-9-64) On September 8, 1964 a no-confidence motion was passed against the Congress Ministry headed by R. Sankar. Other political parties expressed their inability to form a Ministry either singly or jointly.

(iii) *West Bengal.*—(20-2-68) The Speaker created a deadlock and prevented the Legislative Assembly from functioning. The Strength of the Ministry could not be tested.

(iv) *Bihar.*—(29-6-68) In the background of failure of 3 successive ministries, the Governor did not agree to give 4 days to Mahesh Prasad Sinha (Leader of the Congress which was numerically the largest group) to form a Ministry as the Appropriation Bill had to be passed before June 30, 1968.

(v) *Punjab.*—(23-8-1968) Upon break up of the People's United Front coalition Ministry, Sardar Lachman Singh Gill formed a Ministry on November 25, 1967 with the support of some defections from the Akali Dal and a few independents. The Congress Legislature Party which initially supported the Gill Ministry split into ministerialist and anti-ministerialist factions. In this situation Shri Gill as well as the leaders of the People's United Front and the Congress Legislature Party advised the Governor to recommend President's Rule. As no

single party or combination of parties could provide a stable Government, President's rule was proclaimed.

(vi) *Kerala.*—(4-8-1970) On the recommendation of the Chief Minister of the coalition Government, the Governor dissolved the Legislative Assembly on June, 1970. The Chief Minister Achute Menon continued as head of a caretaker government till August 1, 1970 when he resigned. President's Rule was, therefore, proclaimed.

(vii) *Orissa.*—(11-1-1971) On the break up of the Singh Deo coalition Ministry, the Chief Minister declined to continue as head of a caretaker government, unless his conditions for dissolution of the Assembly and a commitment to mid-term poll were accepted. As the Governor was yet to explore possibilities of an alternative government, the conditions could not be accepted and President's Rule was imposed.

(viii) *Orissa.*—(23-1-1971) On January 20, 1971, the Governor reported that no party had come up with any concrete proposal with demonstrable majority. The earlier proclamation was revoked and a fresh proclamation was issued on January 23, 1971 dissolving the Legislative Assembly.

(ix) *Mysore*—(27-3-71) Upon the resignation of the Government, the Governor could not accept the Samyukta Socialist Party's claim to prove the majority in a 'day or two' because the budget had to be passed before April 1, 1971.

(x) *Gujarat*—(13-3-71) The Chief Minister resigned due to defections. The State Legislative Assembly had passed an appropriation Bill for 4 months. In view of the fluid situation and the need for passing the budget before July 31, 1971 and difficulties in holding elections before that date President's rule was imposed.

(xi) *Punjab*—(15-6-71) The withdrawal of support by Jana Sangh to the Badal Ministry led to instability. It however, survived a no confidence motion in July 1970, but its strength was adversely affected by further defections when one of its Ministers resigned and demanded enquiry into charges of corruption against some Ministers. The Chief Minister alleged that the Congress (R) was trying to encourage defections, he recommended dissolution of the assembly which was accepted by the Governor. The Government had obtained a vote on account for only 3 months upto June, 71 and the budget was yet to be passed. This situation necessitated proclamation of President's rule.

(xii) *West Bengal*—(29-6-71) The Chief Minister resigned following the fluid situation due to split in Bangla Congress. The budget had to be passed by the end of June and there was also an abnormal Situation due to influx of refugees from Bangladesh. President's rule was imposed in these circumstances.

(xiii) *Manipur*—(28-3-73) Upon the resignation of the Government on a motion of no-confidence, the Governor did not invite the opposition which had a claim to a tenuous majority because the budget had to be passed before March 31, 1973. Therefore, President's rule was proclaimed.

(xiv) *Nagaland*—(22-3-75) Upon the fall of the Jasokie Ministry (NNO) due to defections, the United Democratic Front claimed a majority. It was contended that this claim was not vitiated, because 10 members of the Naga National Organisation were held under duress, while actually they were said to be present in the House and had informed the Speaker of their joining the United Democratic Front. The Speaker adjourned the House on March 20, 1975 after heated discussions. The fall of Jasokie Ministry had been preceded by frequent defections. The budget had to be passed. In these circumstances President's rule was imposed which however lasted for more than 2 years.

(xv) *Gujarat*—(12-3-76) Upon the defeat of the Ministry in the vote for grants of one of the departments, President's rule was proclaimed in view of the urgency of passing the budget.

(xvi) *Manipur*—(16-5-77) 26 Congress legislators defected and joined the Janata party. As a result, the Government, having only a minority support in the legislature, resigned on May 13, 1977. No other party was prepared to form a Government. President's rule was imposed but the Legislative Assembly was kept suspended even though the Chief Minister had recommended its dissolution.

(xvii) *Tripura*—(5-11-77) The Janata—CPI(M) Coalition Government broke down when the latter withdrew support on October 26, 1977. Leaders of CPI(M), Congress, CFD and the CPI were opposed to a Janata Caretaker Government. President's rule was, therefore, proclaimed.

(xviii) *Assam*—(12-12-79) The Asom Janata Vidhayani Dal Coalition Government lost support when Congress (U) and the CPI group withdrew their support. The leaders of CPM, the RCPI, the PTCA and the Janata (S) were in favour of a short period of President's rule. Shri Hazarika, the chief Minister, who was no longer the leader of the Asom Janata Vidhayini Dal, was unwilling to resign. President's rule was, therefore, imposed.

(xix) *Kerala*—(21-10-81) The Nayanar Coalition Ministry resigned on October 20, 1981 after two of the constituents—Congress (S) and the Kerala Congress (Mani Group) withdrew their support. As no viable alternative Ministry could be formed, President's rule was imposed.

(xx) *Kerala*—(17-3-82) The UDF Ministry resigned on March 17, 1982 when it lost majority with the withdrawal of support by the Kerala Congress (Mani Group). As there was no possibility of forming an alternate viable Ministry, the Governor dissolved the Assembly and recommended President's rule.

(xxi) *Assam*—(19-3-82) The Gogoi Ministry resigned on March 18, 1982. With a history of large scale defections during the past 4 years when 4 Ministries had changed, the Governor did not consider stable Ministry feasible. President's rule was, therefore, proclaimed.

(xxii) *Sikkim*—(25-5-84) The majority of the Gurung Ministry fell in jeopardy with "frequent shift in loyalties of the legislators due to various tactics including intimidation, kidnapping, blackmail and monetary inducements". Attempts to form an alternative Government were considered futile. The life of the Assembly was also to expire in a few months. President's rule was therefore, proclaimed.

(xxiii) *Punjab*—(11-5-87) The Akali Dal (L) Ministry was unable to combat the fundamentalist movement and the terrorist and the extremist forces within the State. As a result murders, lootings and other acts of lawlessness had sharply increased leading to total chaos and anarchy, particularly in the rural areas. The Ministry found itself helpless in the matter of restoring even a semblance of order anywhere. Accordings to the Governor's report, the situation was further aggravated by the fact that some of the Ministers were deeply involved with terrorists and extremists.

CHAPTER VII

DEPLOYMENT OF UNION ARMED FORCES IN A STATE FOR PUBLIC ORDER DUTIES

CONTENTS

LIST OF ANNEXURES

CHAPTER VII

DEPLOYMENT OF UNION ARMED FORCES IN A STATE FOR PUBLIC ORDER DUTIES

1. *INTRODUCTION*

7.1.01 Public order, which connotes public peace, safety and tranquillity, is primarily the responsibility of a State Government (Entry 1 of List II), which has the necessary infrastructure for the purpose, *viz.*, the police, the magistracy, the judiciary, etc. However, when there is a serious public disorder which threatens the security of the State or of the country itself, the situation becomes a matter of concern for the Union Government also. The role of the Union Government *vis-a-vis* that of the State Government in dealing with such a situation has been discussed in detail in the Chapters on "Legislative Relations"[1] and "Emergency Provisions".[2]

7.1.02 As will be seen from these Chapters, the Union Government and a State Government have well-defined jurisdictions under the Constitution in the matter of dealing with a public disorder or internal disturbance which calls for the deployment of the armed or other forces of the Union in aid of the civil power in the State. It is obvious that, to restore public order quickly, the Union and the State Governments must act in concert. It is the purpose of this chapter to explore the possibility of improving Union-State co-ordination in this vital area and to remove some prevailing misconceptions.

2. *THE PROBLEM*

Views of State Governments

7.2.01 In our Questionnaire[3], we invited comments on the conclusion arrived at by the Administrative Reforms Commission in its report on "Centre-State Relationships"[4], that the Union is competent by virtue of Article 355 to locate and use its Central Reserve Police and other armed forces in aid of civil power in any State, even *suo motu*. The Questionnaire pointed out that some States had controverted this view and opposed such Central intervention. Among the State Governments which have replied to this Question, a majority agree with the Administrative Reforms Commission. The other observations made by some of them in this connection are given below :

(i) The Articles in Part XVIII "Emergency Provisions" of the Constitution arm the Union with powers to ensure the unity and integrity of the country. These are meant to be used in a spirit of mutual trust. In particular, Article 355, which comes under this part, should be interpreted not as enabling the Union Government to assume direct control over law and order in a State but as imposing a duty on it to make available the assistance of its armed forces in aid of the civil power in the State.

As a mttter of general policy, armed forces of the Union should be deployed in a State with the consent of the State Government concerned. It is only when national security or integrity is threatened and the State Government adopts an intransigent attitude, that the Union Government should deploy its armed forces *suo motu*. This power should be used sparingly.

(iii) State Governments cannot afford to build their police forces to a strength that would meet all contingencies. They have necessarily to draw upon the assistance of Union armed forces when the situation so demands.

7.2.02 A few State Governments do not agree with the Administrative Reforms Commission for reasons which are summarised below :

(i) Article 355 does not confer any powers or responsibilities on the Union other than those implied in Articles 352 and 356. As neither of these Articles provides sanction for *suo motu* deployment of armed forces of the Union in a State, Article 355 cannot be deemed to confer this power on the Union.

(ii) The word "aid" in the expression "in aid of the civil power" in Entry 2A of List I connotes that the armed forces of the Union can be deployed in a State only at the request or with the concurrence of the State Government. 'Aid' cannot be forced on its recipient.

(iii) The proposition that the Union Government can deploy *suo motu* its armed forces in a State goes against the scheme of the Constitution. As 'public order' and 'police' fall entirely in the State sphere, the responsibility of a State Government in regard to these two subjects should be fully respected.

7.2.03 According to two State Governments, the constitutional responsibility of a State and its limited autonomy in regard to 'public order' and 'police' have been eroded by the Union through the creation and expansion of its police forces. One of them feels that the insertion of Entry 2A in List I and the simultaneous amendments of Entries 1 and 2 of List II in 1976 have also led to encroachment by the Union on the jurisdiction of the States in regard to these matters.

7.2.04 Another State Government is of the view that it has the *right* to requisition the Central Reserve Police whenever its own police force has to be supplemented for dealing with a serious disturbance. It is only the State Government which may requisition this force.

---

1 Chapter II
2 Chapter VI
3 Question No. 4.9
4 Chapter VI, Page 36 of Report.

7.2.05 The different types of suggestions made by these State Governments to correct the anomalies, as perceived by them, are :—

(i) Entry 2A of List I and Entry 1 of List II should be amended so as to make it clear that Union forces can be deployed in a State only at the request or with the concurrence of the State Government.

(ii) Entry 2A of List I may be amended so that the Union is empowered to determine, with the concurrence of the Inter-State Council, the terms and conditions of deployment of its armed and other forces in a State. However, the Union need not have the power, which that Entry, at present, confers on it, of prescribing the powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

(iii) Entry 2A of List I, which was incorporated in the Constitution in order to empower the Union to control forces like Central Reserve Police, Border Security Force, etc. when they are deployed in a State, should be deleted. Entry 1 of List II should be so amended that public order situations requiring the use of the para-military forces of the Union are brought within the jurisdiction of a State.

(iv) While deployed in aid of the civil power in a State, there should be no restriction, as at present, requiring the Union forces to take orders only from the Union Government.

(v) Legislations like the Disturbed Areas Act should not be extended to a State without the prior consent of the State Government.

(vi) State Governments should build up their own police forces and cease to be dependent on the para-military forces, the intelligence services and grants provided by the Union Government for dealing with law and order problems.

(vii) The undue expansion of the para-military forces of the Union should cease.

Views of the Union Government

7.2.06 The Union Ministry of Home Affairs have expressed the view that the Union Government has a duty and, therefore, the responsibility expressly imposed on it to protect every State against external aggression and internal disturbance *vide* Article 355. In substance, this duty is to maintain the unity and integrity of India. The Union Government is expected to use its armed forces for the discharge of this responsibility and, if the situation so demands, may do so *suo motu*, even if there is no request from the State Government concerned. According to the Ministry, it is clear from Entry 2A of List I that deployment of Union's armed forces in aid of the civil power is a matter entirely for the Union Government. If the consent of the State Government for such deployment were to be made a pre-condition, the Union Government would not be able to discharge its duty under Article 355.

7.2.07 A State Government has the sole responsibility for maintaining public order. However, Article 355 does not comprehend ordinary problems of public order but the more serious aspects of external aggression and internal disturbance. Thus the States' powers can co-exist in harmony with those of the Union.

7.2.08 In practice, the Union forces are deployed in aid of the civil power at the request of the State Government. But this practice cannot be construed as a legal requirement, nor can it detract in any way from the Union's responsibility under Article 355 and powers to discharge the same.

Views of the Administrative Reforms Commission

7.2.09 In its report[5] on Centre-State Relationships, the Administrative Reforms Commission observed that the Central Reserve Police and Border Security Force are armed forces raised by the Union to meet the security needs of the country, both external and internal. The use of armed forces in aid of the civil power of a State is a Union function under Entry 2 of List I and hence perfectly constitutional. Such aid could be provided at the request of the State Government or *suo motu*. The question whether such aid was needed was a matter of judgement by the Union. This was consistent with Article 355.

7.2.10 The Commission went on to recommend[6] as follows :

(i) The use of the naval, military or air force or any other armed forces of the Union in aid of civil power can be made either at the instance of the State Government or *suo motu* by the Centre.

(ii) The Centre may exercise its discretion to locate such forces in the States and to deploy them for maintaining public order for purposes of the Centre, such as protection of Central property, Central Staff, and works in which the Centre has an interest.

7.2.11 The Union Government stated in regard to the above recommendations that these had been noted and would be borne in mind when the situations envisaged arose.

3. *CONSTITUTIONAL JURISDICTIONS OF UNION AND STATES*

7.3.01 Such of the issues raised by the State Governments (*vide* paras 7.2.01 and 7.2.02) as relate to the constitutional jurisdictions of the Union and the States in the matter of putting down public disorder, particularly internal disturbance, have already been dealt with in Chapter II "Legislative Relations" and Chapter VI "Emergency Provisions". There, we have discussed in detail the scope of Article 355, Entry 2A of List I, Entry 1 of List II and Entry 2 of List III. In the light of the discussions and conclusions there, we have considered in the

5. Page 36 of report on "Centre-State Relation ships".

6. Pages 36 & 37 of report on "Centre-State Relationships".

succeeding paragraphs their practical implications in regard to deployment of Union armed forces in aid of the civil power in a State.

7.3.02 A State Government has the sole responsibility for maintaining public order except where the use of the armed forces of the Union is called for (Entry 1 of List II). The Criminal Procedure Code contemplates that an unlawful assembly should normally be dispersed by an Executive Magistrate or, in his absence, a Police officer by commanding the persons forming the assembly to disperse. If this fails, he should disperse them by use of civil force, *i.e.*, by using the State police with the assistance, if required, of other male persons who do not belong to an armed force of the Union. If these efforts too do not succeed, the Executive Magistrate of the highest rank who is present, may require an officer of the armed forces of the Union to disperse the assembly with the help of the forces under his command and to arrest and confine members of the assembly. The officer of the armed forces so called upon has to obey the requisition "in such manner as he thinks fit". (Sections 129 & 130 of the Cr. P.C.).

7.3.03 In a situation where the measures described above are neither feasible nor appropriate, the State Government may request the Union Government to make available Union armed forces to help restore public order. Even where the public disorder is not so serious as to fall in the category of an "internal disturbance" as contemplated in Article 355 of the Constitution, the Union Government may accede to the request, unless it finds that the State Government's police force should, on its own, be able to deal with the disorder and restore normalcy.

7.3.04. An "internal disturbance", however, is far more serious than "public disorder" and differs from it in degree as well as kind. The former has the characteristics of domestic chaos and *inter alia* endangers the security of the State. It may be man-made (*e.g.* a wide-spread and violent agitation or a communal flare-up) or Nature-made (*e.g.* a natural calamity that paralyses administration in a large area of a State). Article 355 imposes a duty on the Union Government to protect a State against such an internal disturbance. By implication, the Article grants to the Union Government such powers as may be essential for effectively discharging the duty cast on it.

7.3.05 In the event of an internal disturbance, the Union Government may dicharge its obligation by providing assistance to a State Government in a number of ways. It may advise the State Government on how best the situation might be brought under control. It may provide assistance to it in the shape of men materials and finance. It may deploy its armed forces in aid of the State police and magistracy (Entry 2A of List I). The Union Government may also suggest or initiate measures to prevent the recurrence of the disturbance.

7.3.06 It is conceivable that a State Government is unable or unwilling to suppress an internal disturbance and may even refuse to seek the aid of the armed forces of the Union in the matter. However, the Union Government, in view of its constitutional obligation, cannot be a silent spectator when it finds the situation fast drifting towards anarchy or a physical breakdown of the State administration. In such an unusal, yet not entirely an improbable event, the Union Government may deploy its armed forces *suo motu* to deal with the disturbance and restore public order. The phrase "in aid of the civil power" in Entry 2A of List I and Entry 1 in List II signifies that the deployment is in aid of the instrumentalities of the State charged with the maintenance of public order. It does not necessarily imply that such deployment should take place only at the request of the State Government.

7.3.07 While the Union Government has, under Article 355, all the powers that it may need to deal with an internal disturbance, it cannot assume the sole responsibility for dealing with an internal disturbance by superseding or excluding the State police and other authorities responsible for maintaining public order. Neither can the Union Government deploy, in contravention of the wishes of a State Government, its armed forces to deal with a relatively less serious public order problem which is unlikely to escalate and which the State Government is confident of tackling. It would not be constitutionally proper for the Union Government to take such measures except when a national emergency under Article 352 or President's rule under Article 356 has been proclaimed.

7.3.08 The use of the armed forces of the Union in the maintenance of public order (Entry 1 of List II) has always been outside the purview of the States. Even before the insertion of Entry 2A in List I by the 42nd Amendment, the Union Government did have, by virtue of Entry 2 in List I, exclusive control over its armed forces and had the power to deploy them in aid of the civil power whether for maintaining public order or quelling an internal disturbance. What was implicit in Entry 2 was later made explicit by Entry 2A. The only difference is that, under the latter entry, not only an armed force of the Union but also a force which is not an armed force (*e.g.*, a force of technical experts), and which is subject to the control of the Union, may be deployed in a State in aid of the civil power.

7.3.09 Except for the limited purpose of dispersing an unlawful assembly and arresting and confining its members, for which Section 130 of the Code of Criminal Procedure empowers the Executive Magistrate of the highest rank to requisition the aid of the armed forces, of the Union, neither the State Government nor any authority under it has been conferred by the Constitution any legal right to requisition and utilise in the manner it consides best the armed forces of the Union while dealing with a public disorder or internal disturbance in the State. It is entirely for the Union Government to decide whether its armed forces should be deployed, and the strength and manner of such deployment. Even under Section 130 of the Cr. P.C., the officer of a Union armed force who must comply with a requisition made to him by an Executive Magistrate, will decide, on his own, the manner in which the unlawful assembly has to be dispersed by forces under his command.

7.3.10 Another type of situation wherein the Union Government may deploy its armed forces, even *suo motu*, would be when Union property (*e.g.* installations, factories, office buildings etc.) situated in a State needs special protection which the State Government is not able to provide. Protection of property is a function which is ancillary and incidental to the relevant subjects in the Union list to which the ownership of the property pertains. Such subjects could be Railways (Entry 22), Ports (Entry 27), Airways (Entry 29), Posts and Telegraphs (Entry 31), etc. of Property of the Union (Entry 32). Besides, the Union Government is not precluded from conferring on the members of the armed forces so deployed, such powers of a police officer as would be essential for the purpose of carrying out the function. The members of the armed force can then exercise these powers not only for the protection of Union property but also for dealing with the public disorder in the proximity of the property if it directly or imminently endangers the safety of that property or the employees working there. It has to be noted that conferment of such powers is only incidental to the implementation of this main purpose, in this case, the protection of Union property. Also, as pointed out in para 7.3.07 above, exercise of such powers does not mean superseding or excluding the jurisdiction of the State police.

7.3.11 When Union armed forces are deployed in a State, the State authorities concerned have to act in concert with the forces. It is implied in Article 355 that the Union Government has the overriding power to ensure such coordination. If a State Government or its authorities choose to withhold their cooperation while dealing with an internal disturbance, the Union Government is empowered to issue a formal direction under Article 257 or even Article 355. This will however, be as a last resort and only after efforts to persuade the State Government as also a warning to it, fail to secure the necessary cooperation. Failure to comply with such a direction may attract the sanction of Article 365 and action under Article 356 to proclaim President's rule.

7.3.12 Since the commencement of the Constitution, the Union Government deployed the Central Reserve Police Force *suo motu* only on three occasions, viz. once in Kerala in September, 1968 for the protection of Union Government offices in Trivandrum during the strike of Union Government employees, and twice in West Bengal in 1969, for the protection of Farakka Barrage and in connection with clashes between the workers of the Durgapur Steel Plant and the Uttar Pradesh Provincial Armed Constabulary stationed by the Union Government at the Plant. The Union Government, in the first two cases, did not agree with the demand of the State Government for the withdrawal of the Central Reserve Police Force but in the third case agreed to do so. In all these cases, it seems that care was taken by the Union Government not to provoke confrontation with the State Governments concerned and precipitate a constitutional crisis.

7.3.13 The foregoing analysis should help remove the misconceptions (*vide* paras 7.2.01 and 7.2.02 above) about the role and responsibility of the Union Government in regard to public order in a State and the circumstances in which it may deploy its armed forces in aid of the civil power in the State, *suo moto* or otherwise.

4. *DECLARING AN AREA AS DISTURBED*

7.4.01 We now consider the suggestion that the Union Government should not declare a particular area within a State as "disturbed", without obtaining the prior consent of the State Government [*Vide* para 7.2.02 (iii) above].

7.4.02 The Armed Forces (Special Powers) Act, 1958 and the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983 are Union enactments which primarily relate to Entries 2 and 2A of List I, and incidentally to Entry 2, List III also. The former Act applies in the seven States in the north-eastern region and the latter in Punjab and Chandigarh. The Acts confer on certain authorities, *viz.*, the Governor or the Administrator, within the respective State or, as the case may be, the Union Territory and also on the President, the power to declare an area in any of these States or Union Territory as a "disturbed area" if, in the opinion of that authority, the area is in such a disturbed or dangerous condition that it is necessary to use the armed forces of the union in aid of the civil power. Specified categories of officers in the Union armed forces who are deployed in an area declared as 'disturbed area' can exercise, by virtue of the provisions of these Acts, certain enhanced powers, *e.g.*, to fire upon or otherwise use force even to the extent of causing death, to destroy arms dumps, etc.

7.4.03 The power to declare an area as "disturbed area" has been used by the Union Government in a State troubled by insurgency or violent public disturbances. Because of its responsibility to protect a State against such internal disturbance, the Union Government is competent to assess the situation and decide what special measures including powers for its armed forces are necessary for dealing with it. As pointed out above, the State Government also has been given this power.

5. *COOPERATION BETWEEN UNION AND STATE GOVERNMENTS ESSENTIAL*

7.5.01 Maintenance of public order involves a whole range of functions starting with cognizance of offences, search, seizure and arrest, and followed by registration of reports of offences (FIRs), investigation, prosecution, trial and, in the event of conviction, execution of sentences. The Union's armed forces, where their members have been invested with powers under the Criminal Procedure Code, are responsible broadly for only the first four operations. The remaining have to be attended to by the State criminal justice machinery, *viz.* the police, the magistrates, the prosecuting agency, the courts, the jails, etc. Clearly, the purpose of deployment which is to restore public order and ensure that effective follow-up action is taken in order to prevent recurrence of disturbances, cannot be achieved without the active assistance and cooperation of the entire law enforcing machinery of the State Government. If the Union Government chooses to take unilateral steps to quell an internal

disturbance without the assistance of the State Government, these can at best provide temporary relief to the affected area and none at all where such disturbances are chronic.

7.5.02 Thus, practical considerations, as indicated above, make it imperative that the Union Government should invariably consult and seek the cooperation of the State Government, if it proposes either to deploy *suo motu* its armed forces in that State or to declare an area as "disturbed", the constitutional position notwithstanding. It need hardly be emphasized that without the State Government's cooperation, the mere assertion of the Union Government's right to deploy its armed forces cannot solve public order problems.

7.5.03 We recommend that, before deploying Union armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or before declaring an area within a State as a "disturbed area", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought by the Union Government. However, prior consultation with the State Government is not obligatory.

6. *OTHER ISSUES*

7.6.01 To facilitate discussion, the remaining issues raised by State Governments may be re-formulated as follows :

(i) (a) Whether the Constitution permits an armed force of the Union, when deployed in a State in aid of the civil power, to take over completely the role of the State Police forces.

(b) Whether the Union, using its power to deploy its armed forces, has in any way been encroaching on the jurisdiction and powers of the States in the fields of "Public Order" and "Police".

(c) What should be the relationship between and Union armed force and the State Police when the former is deployed in the State in aid of the civil power.

(ii) Whether State Governments are in fact becoming increasingly dependent on the Union para-military forces in the matter of dealing with public order, excluding however abnormal situations caused by State-wide violance, insurgency, terrorism, etc.

(iii) How should State Governments strengthen their police forces in order that they may become fairly self-sufficient and their demands on the Union Government for its armed forces get reduced?

(iv) How should the Union Government's assistance to State Governments in dealing with public order problems be made more meaningful and effective?

We consider that the question of undue expansion of Union armed forces, which has been raised by one of the State Governments, is strictly nor relevant to the subject under discussion. So long as Union-State relations in this field are worked on constitutional basis and all legitimate assistance is received by State Governments from the Union Government in dealing with public order problems, it should be left to the Union Government to decide as to what the strength of its armed forces should be. The suggestion made by another State Government regarding amendment of Entry 1 of List II and deletion of Entry 2A of List 1 has been dealt with in the Chapter on "Legislative Relations".[7]

7. *ARRANGEMENTS FOR ASSISTING STATE POLICE IN REGARD TO PUBLIC ORDER*

General Considerations

7.7.01 The Union Government can meet the request of a State Government in need of assistance by detailing one or more units from (a) Union paramilitary forces (b) Armed Police Battalions belonging to other States, if available, or (c) the Army. For reasons explained below. the Army is not deployed except as a last resort when the para-military forces cannot by themselves handle an acute internal disturbance situation.

Need for Para-Military Forces

7.7.02 It has been recognised for the past three-quarters of a century and more that, in the day-to-day administration of law and order, resort to military force should be avoided. The Army is maintained, trained and equipped exclusively for the defence of the country, though it could be called in aid of the civil power for very short periods and subject to clearly defined restrictions. Frequent use of the Army undermines the prestige and authority of the State Police. The deterrent effect of the Army on anti-social and criminal elements fomenting trouble tends to diminish rapidly when it is deployed time and again. Also, too frequent and too long a use of Army troops adversely affects their operational training and undermines their morale.

7.7.03 Keeping the above considerations in view, the Government of India, soon after Independence, decided that the Provincial Police should be asked to have their own armed units. This led to the creation of an "Armed Wing" for every State Police force. Every State Government has now, as part of its Armed Police Wing, a District Armed Reserve and Armed Police Battalions. According to the National Police Commission, the District Armed Police Reserves have remained more or less static. But there has been a gradual growth in the number of Armed Police Battalions in many States. (*Vide* para 51.3 of Seventh Report, May 1981).

7.7.04 The composition of a State Armed Police Battalion follows the infantry pattern in the Army. An armed police unit detailed for a specific task has to be accompanied by a local police officer or a magistrate and receive directions from him in regard to the action to be taken. An Armed Police Battalion is intended to be a strike force which makes its appearance at a psychological moment and creates awe among the troublemakers.

7.7.05 Mention may be made here of the India Reserve Battalions. Eleven armed police Battalions were raised in 1971 as a temporary measure by four

7. Chapter II, paras 2.10.03 to 2.10.27.

State Governments at the instance of the Union Government. These were meant to be deployed in States mainly for tackling problems created by the massive influx of refugees, and the naxalite problem. As the problems gradually receded, the number of battalions was progressively reduced. Two State Governments now maintain four Reserve battalions. The Union Government initially met most of the cost of raising and training the battalions. At present, it reimburses a proportion of their recurring costs. The battalions, though maintained and controlled by the States, remain at the disposal of the Union Government for being deployed in such of the States as require assistance in dealing with law and order situations.

7.7.06. The armed police battalions (including the India Reserve Battalions) belonging to one State can operate outside the State on the following basis. The extension of the powers and jurisdiction of members of a police force belonging to one State to an area in another State, with the consent of the latter State, is a Union subject *vide* Entry 80 of List I. in exercise of the powers conferred by Sections 3 and 4 of the Police Act, 1888 (an " existing law"), the Union Government has notified with the consent of all the State Governments, except Nagaland, that a Police Officer of any one of the consenting States may exercise in another among them, the powers and jurisdiction of a Police Officer of the latter state.

UNION PARAMILITARY FORCES ORIGIN

7.7.07. The Crown Representative's Police Force was raised in 1939 as a reserve force to aid the former Princely States in maintaining law and order in times of emergency. After independence, the Force was brought under a fresh Central Act and renamed as the Central Reserve Police Force (CRPF). At the time of its enactment, the Central Reserve Police Force Act, 1949, was relatable to " any other armed forces raised or maintained by the Dominion" mentioned in paragraph 1 of the Federal Legislative List of the Seventh Schedule to the Government of India Act, 1935, as adapted. We shall discuss presently the functions of this Force.

7.7.08. Though originally a police force, the character of Assam Rifles changed and it became and armed force when the Assam Rifles Act, 1941, a Central Act, came into force. This Act, which is an" existing law", has undergone amendments from time to time, and continues to regulate matters like appointments to the force, privileges of its members, etc. The Force has been assigned certain special functions in the north-eastern region, viz. security of international borders in certain sectors, counter-insurgency operations and assistance to civil authorities in maintaining law and order in sensitive areas.

7.7.09. Three other para-military forces were raised subsequently, viz. the Indo-Tibetan Border Police (ITBP) in 1962, the Border Security Force (BSF) in 1965, and the Central Industrial Security Force (CISF) in 1969. The Railway Protection Force was made an armed force in 1985. Like the Central Reserve Police Force and the Assam Rifles, these too are armed forces of the Union. Their names broadly describe their functions.

Role of CRPF

7.7.10. We shall first consider the role of the Central Reserve Police Force, which is normally deployed in aid of civil power in a State. The Central Reserve Police Force Rules, 1955 framed under section 18 of the Central Reserve Police Force Act, 1949, regulate *inter alia* the powers and duties of the members of the Force. A member of the Central Reserve Police Force may be employed in any part of the country for the restoration and maintenance of law and order and for any other purpose as directed by the Central Government (Rule 25 of CRPF Rule). "Active duty" for such a member means the duty to restore and preserve order in any local area in the event of any disturbance therein [section 2 of (1) CRPF Act]. It is the duty of every such member to obey and execute the orders and warrants lawfully issued to him by any competent authority, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend (Section 7 of CRPF Act).

7.7.11. Though the organisation is designated as the Central Reserve Police, a member thereof is appointed under the Central Reserve Police Force Act and not under the Police Act, 1861. The latter Act invests the persons, who on appointment is issued a certificate under Section 8 of the Act, with all the powers, functions and privileges of a police officer, Consequently, the Central Reserve Police Force is not "Police" within the meaning of Entry 2 of List II. It is an armed force of the Union meant to be deployed in a State only in aid of the civil power for the purpose of restoring and preserving public order. Section 16(1) of the Central Reserve Police Force Act accordingly empowers the Central Government to confer and impose on a member of the Force limited powers and duties which he necessarily must exercise perform in the course of discharging his functions under the Act.

7.7.12. The only powers and duties that have been conferred and imposed on members of the Central Reserve Police Force are those under the Criminal Procedure Code (*vide* Annexure VII. 1). It will be observed that a member of the force has the powers of a police officer to arrest, in certain circumstances, without warrant; search a place where the persons to be arrested may have entered; pursue such a person; search him; seize offensive weapons; and seize property connected with the commission of an offence. A member of the Force has also the responsibility and the necessary powers of a police officer to take preventive action, e.g. arrest a person to prevent the commission of a congizable offence and prevent damage to public property. A member of the Force not lower in rank than a Sub-Inspector has the power of a police officer to command an unlawful assembly to disperse; if the assembly does not disperse, to disperse it by use of civil force; and, if necessary, to arrest and confine the persons forming the assembly.

7.7.13. It is important to note that a member of the Central Reserve Police Force has only those powers which are necessary to assist the State Police and none other, e.g. the power to conduct investigation of a crime, summon persons for that purpose,

forward a report on the investigation to a Magistrate, etc. Although "the duty to detect and bring offenders to justice" is common to a police officer (*vide* Section 23 of the Police Act, 1861) and a member of the Central Reserve Police Force (*vide* Section 7 of the Central Reserve Police Force Act, 1949), the actual powers and duties of the latter are much fewer and more restricted than those of a police officer.

7.7.14. Like the State Armed Police Battalion, the Central Reserve Police Force is organised on the infantry pattern of the Army. There is also a broad similarity in the functioning of the Central Reserve Police Force and State Armed Police Battalions, in that both these forces are meant to be utilised for certain specified tasks for a limited duration at a time. They ought not to be deployed on routine civil police duties or in a manner which deprives ag Unit of the opportunity to operate as a well-knit group with a leader to guide and control them. However, there are some features which distinguish the two forces, viz. :

(i) The Commander of a Central Reserve Police Force unit, during the period of its deployment in a State, functions under the general control and directions of the State civil authorities concerned. He is informed by them of the specific tasks to be performed by the force under his charge. But once the tasks have been allotted, the Commander of the Central Reserve Police Force unit is responsible for determining the manner in which the tasks will be performed and for the distribution and deployment of the men under his command. He continues to be accountable to his superiors in the Central Reserve Police Force for the due completion of the tasks assigned to him.

(ii) The Central Reserve Police Force unit obtains (a) information about local conditions from the civil authorities; and (b) local intelligence from the State Police.

(iii) In the locality or area where the Central Reserve Police Force unit is deployed and is carrying out its assigned tasks, it does not in any way supplant the jurisdiction of the local civil authorities, including that of the State Police.

(iv) The Central Reserve Police Force may arrest and hand over the offenders to the State Police. It is not responsible for registration of offences or investigation of cases.

7.7.15. It will be observed that the arrangements conform to the division of functions between the Union and the State described in para 7.5.01, above. These also provide for dialogue and coordination between them while carrying out their respective tasks. State civil authorities are throughout responsible for public order while the Central Reserve Police Force is an instrumentality placed at their disposal to restore and maintain public order. The danger of overlapping jurisdiction, which would have resulted if the Central Reserve Police Force too had been made responsible for public order in the area of its deployment, is avoided. (Cf. Dr. B.R. Ambedkar, page 1186 CAD Volume IX).

Role of BSF

7.7.16. The Border Security Force has been set up for ensuring the security of the borders of India and for matters connected therewith. Under Section 139 of the Border Security Force Act, 1968, members of the Force have been empowered, when they function within the local limits of specified areas adjoining the borders, to exercise powers and discharge duties under Union Acts like the Passport (Entry into India) Act, 1920, Registration of Foreigners Act, 1939, etc. as also the Criminal Procedure Code. The purpose of their being so empowered is to prevent cognizable offences under these Acts being committed and to apprehend offences.

7.7.17. When a request is received from a State Government for the assistance of armed forces, the Union Government, after reviewing the availability of the State Government's own Armed Police, tries to meet the balance requirement by deploying Central Reserve Police Force units and, if these are insufficient, Border Security Force units.

7.7.18. However, the powers conferred on members of the Border Security Force under the Criminal Procedure Code cannot be exercised by them outside their specified areas, except the powers and duties under Sections 130-131 of Cr. P. C. which they have by virtue of their being members of an armed force of the Union. It is to be noted that Section 131 of Cr. P. C. provides for initiative being taken by armed forces of the Union, including the defence forces and the Border Security Force. In a public disorder situation, when a gazetted officer of the Force finds that he is unable to communicate with an Executive Magistrate, he may, with the help of the men under his command, disperse an unlawful assembly in the interest of public security and arrest and confine persons forming part of it. He should then communicate with an Executive Magistrate, if it becomes practicable to do so, and thereafter obey his instruction, (Section 131 of Cr. P.C.)

7.7.19. Consequently, the Border Security Force, when deployed ni aid of civil power, has to function in the same manner as the Army does while on such duty. Neither of them exercises police powers. While carrying out the task assigned to them by State civil authorities for restoring normalcy in an areas affected by public disorder, they act on the principle that the measures taken are the minimum necessary to prevent serious crime and that all care and skill is exercised. The various connected police functions are performed by the members of the State police who coordinate with the Border Security Force or the Army unit deployed. It will be seen that the role of the Border Security Force or the Army when deployed in aid of the civil power, has none of the substantive characteristics of a police force. The State police continues to be responsible for maintaining public order and there can be no question of the Border Security Force or the Army encroaching on the jurisdiction and powers of the State Government either in the field of "Police" or "Public Order".

7.7.20. State Governments have all these years frequently requested for and obtained the assistance of the armed forces of the Union (including the Army,

etc.) for the maintenace of publid order. There is no State Goverment which has not at some time or the other made use of the Union forces. With the exception of the three occasions when the Union forces were deployed in States tor the protection of Union property, personnel ect. (*vide* para 7.3.12 above). there has been no instance so far, since the inception of the Constitution, of any friction having been generated between the Union and a State Government in regard to the use of these forces for restoring public order.

7.7.21. We have been informed by the Union Ministry of Home Affairs that there have been no complaints either from the Central Reserve Police Force or the Border Security Force about any State authority not cooperating with them in dealing with public disturbances. Further, no complaints have been received from any State Government alleging misbehaviour on the part of the members of the Central Reserve Police Force or the Border Security Force. (The remaining paramilitary forces like the Indo-Tibetan Border Police, the Assam Rifles, the Central Industrial Security Force and the Railway Protection Force are seldom deloyed outside their prescribed area of functioning).

7.7.22. We are, therefore, of the opinion that the existing relationship between the Union armed forces and the State civil authorities, and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change, They fully conform to the division of powers in the Constitution between the Union and the States.

8. *POWERS, JURISDICTION, PRIVILEGES AND LIABILITIES OF MEMBERS OF CRPF, BSF AND OTHER UNION FORCES WHILE DEPLOYED IN STATES*

7.8.01. As mentioned in para 7.2.05 above, it has been suggested to us that Entry 2A of List I should be amended so that (a) it specifically provides that an armed or other force of the Union can be deployed in a State in aid of the civil power only at the request or with the concurrence of the State Government, and (b) the expression "powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment" occurring in the Entry is replaced by the expression "determination of terms and conditions of such deployment applicable to all States with the concurrence of the Inter-State Council". The point at (a) has been dealt with in paras 7.3.06 to 7.3.08 and 7.5.01 to 7.5.03 above. We now propose to deal with the point at (b).

7.8.02. The superintendence, control and administration of a force (whether armed or otherwise) of the Union ha necessarily to vest in the Union Government. While on deploymast in a State in aid of the civil power, the force is subject to the command, supervision, control and direction of such authorities and officers as may be appointed by the Union Government. As such, the powers, jurisdiction, privileges and liabilities of the members of the force while on such deployment can be prescribed by the Union alone. These provide the requisite statutory cover to the various actions that the members of the force have to take while carrying out their specified duties and responsibilities. Deletion of the expression "powers, juridiction, privileges and liabilities of the members of such forces while on such deployment" from Entry 2A of List I will create an operational vacuum.

7.8.03. The terms and conditions on which a force of the Union is deployed in a State in aid of the civil power have also to be determined by the Union. The existing terms and conditions of deployment are the same for all the States, except that some States like Jammu and Kashmir, Manipur, Tripura and Sikkim have been exempted from payment of charges of deployment of Union armed froces in those States. No, State Government has pointed out to us any lacuna these terms and conditions. Therefore, it seems pointless to involve the Inter-State Council in the matter of determining them. The Council, which in intended to be the highest constitutional forum for Union State and inter-State coordination, should not be burdened with a comparatively routine administrative task like concurring in the terms and conditions of deployment of Union forces in a State.

9. *LEVEL OF DEPLOYMENT OF CRPF & BSF IN STATES/UNION TERRITORIES*

7.9.01. On the basis of the data obained from the Ministry of Home Affars in regard to the strength of Central Reserve Police Force and Border Security Force contingents which were deployed in States and Union territories during the period from 1-1-1974 to 31-12-1985, the average strength deployed in each the five Zones, the North-Eastern region and for the whole of India (excluding the two island territories) were calculated for each of the 12 years. While working out the figures of average deployment, the large increases in deployment in certain parts of the country (e.g. Punjab, Asssam, Gujarat, etc.) in recent years, nacessitated by acute internal disturbance, were ignored, considering the fact that such deployment was of an *ad hoc* character. Since the aim was to arrive at the normal demand of the States for the use of the Union armed forces, inclusion of the deployment to meet unusual situations of an *ad hoc* character would have distorted the picture in respect of the extent of demand of the States for the Union armed forces for the usual public order purposes. The annual average deployments have been depicted graphically at Annexure VII.2.

7.9.02. It is seen that the average deployment in the Northern and the Central Zones and in the north-eastern region has been fluctuating. But it shows a downward trend in the Eastern, Western and the Southern Zones. So does the average deployment for the country as a whole. However, as mentioned above the heavy deployments during the past few years in certain border States have not been taken into account in preparing the graphas. The trends shown by our analysis thus represent normal requirements.

7.9.03. These trends do not corroborate the view expressed by one of the State Governmets that States are becoming increasingly dependent on the paramilitary forces. Further, no other State Government has expressed the view that deployment of the Union armed forces in the State has impaired its responsibility for maintaining public order.

10. *MEASURES TO STRENGTHEN STATE ARMED POLICE*

7.10.01. An analysis of the extent of deployment of the Union para-military forces in individual States during the years 1974—85 shows that internal disturbances which are not of an unusually serious nature (e.g. those extending over large areas of a State and for prolonged periods) can be dealt with by a majority of the States on their own if they augment their respective Armed Police Battalions. On the other hand, even the normal requirements of certain other States are much higher.

7.10.02. We recommend that each State Government may work out, in consultation with the Union Government, short-term and long-term arrangements for strengthening its own Armed Police. The objective will be to make each State largely self-reliant in the matter of Armed Police so that the assistance of the Union armed forces will be necessary only in cases of very severe disturbances.

7.10.03. It has come to our notice that there are often allegations against police in certain States that they display partisan attitudes when dealing with public disorders, particularly communal clashes. The State Governments concerned find it useful to requisition the Union armed forces or Armed Police Battalion from other States rather than deploy their own Armed Police. We also find that, in communal distrubances, the Union forces often inspire greater confidence in the local people, especially minorities, than the State Police.

7.10.04. We recommend that the Union Government, while advising and, if necessary, assisting a State Government in strengthening its Armed Police Force, may take into account the following factors :

(i) the degree of confidence that the people of the State (particularly those living in disorder-prone areas) have in the State Police, armed and unarmed;

(ii) if large-scale public disorders are frequent, the causes therefor and the steps which the State Government should take on the social, economic and other fronts to prevent disorders. (Mere strengthening of Armed Police may not achieve the objective);

(iii) the inadvisability of a State (particularly if it is a small State) expanding its Armed Police, if it cannot be fully utilised throughout the year; and

(iv) the feasibility of more efficient utilisation of the State Armed Police.

Better Utilisation of State Armed Police Through Regional Grouping

7.10.05. It should be possible for a group of neighbouring States to have, by consensus, a standing arrangement for the use of the Armed Police of any of the States in another State within the group in case of need. The Zonal Council would be the best forum for achieving the consensus or mutual consent of the States within a zone for devising such an arrangement. The Union Government may devise, by consensus, the regional groupings, keeping in view continuity and logistics and encourage States to participate fully in the arrangement. This will ensure that the Armed Police Force reserves within a group are put to optimal use, by taking advantage of the fact that varying strengths of Armed Police will be required at varying times by States within the group. Under this arrangement, the Union Government will monitor, co-ordinate and control all such inter-State movements of State Armed Police. It is only when it is not possible to meet the requirements of a State within the group that the Union Government will decide whether to draw from any of its own para-military forces or from Armed Police Battalions belonging to one or more States outside the group.

7.10.06. Although, it will take some time to evolve a system for integrating the operations within a State of the Armed Police with the demands placed for them by another State in the group, we recommend that a beginning should be made immediately to plan use of Armed Police forces inter-State within a region. This arrangement will only be for meeting special demands for short periods from the States in a group. Their Armed Police will not merge or get integrated but will remain distinct as hitherto.

Improving Effectiveness & Morale of State Armed Police

7.10.07. From a long-term point of view, it is important that State Governments should develop their capability to deal with public order problems on their own and they should seek the assistance of the Union armed forces only in exceptional circumstances and as a last resort. In this connection, we would commend for the consideration of State Governments the various measures recommended by the National Police Commission in their Seventh Report for improving the effectiveness and morale of State Armed Police.

Problems in Management of Police Personnel

7.10.08. We also recommend that the problems of cadre management, mobility, promotion prospects, etc. of police personnel in small States, especially in the north-eastern region, may be carefully examined by State Governments in consultation with the Union Governments.

Interchange of Armed police officers with officers of Union Paramilitary Forces and Training

7.10.09. We further recommend that there should be a system of interchange of the officers of the State Armed Police forces with those of the Central Reserve Police Force, Border Security Force and other Union armed forces. Common regional training centres for the State Armed Police and the Central Reserve Police Force, Border Security Force, etc. may be set up in order to bring about better exchange of techniques and information between the two categories of armed forces and to facilitate a more integrated system of operations when the Union's armed forces are deployed in aid of the civil power in a State.

Financial Assistance to states for strengthening armed Police

7.10.10. Adequate finance would be needed by State Governments for augmenting and strengthening (by way of better equipment, more vehicles, etc.)

their Armed Police Battalions. We suggest that, immediately, the quesion of financial assistance should be examined in relation to the grants that are already being made available by the Union Government for the modernisation of State police forces. The extent of such assistance for the next Plan period may be specifically referred to the next Finance Commission.

11. *COORDINATION BETWEEN THE UNION AND THE STATES*

7.11.01. When a request for the assistance of a Union armed force is received from a State Government, the Union Government checks up the availability of its para-military forces. If the demand is very large and urgent, as for example, when elections are to be held or there are prolonged disturbances, it may not be possible to meet it by the Union para-military forces alone. Armed police units of other States may have to be deployed by requesting the concerned State Governments to release them.

7.11.02. For this purpose, the Union Government receives up-to-date information about the status of deployment, including logistics, of the various battalions of its armed forces. But similar information in regard to availability and logistics of the State Armed Police Battalions for deployment outside their respective State is not available to the Union Government. This appears to be a major shortcoming in the system.

7.11.03. The State Police in every State has acquired computers for the processing, storage and retrieval of large quantities of data connected with the activities of the police. It should not be difficult for the States to communicate on a daily basis the latest position regarding the availability of State Armed Police Battalions for deployment.

7.11.04. In any case, we feel that it is essential that there should be advance planning of deployment including logistics, of the Union armed forces and State Armed Police Battalions. For this purpose, we suggest that the Union Government may get an expert study carried out for evolving such a system of planning.

12. *RECOMMENDATIONS*

7.12.01. The existing relationship between the Union armed forces and the State civil authorities and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change. However, before the Union Government deploys its armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or declares an area within a State as "disturbed", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought, even though prior consultation with the State Government is not obligatory.

(Paras 7.5.03 & 7.7.22)

7.12.02 (a) Each State Government may work out, in consultation with the Union Government, short-term and long-term arrangements for strengthening its Armed Police. The objective will be to become largely self-reliant in the matter of Armed Police so that the assistance of the Union armed forces will be necessary only in cases of very severe disturbances.

(Para 7.10.02)

(b) While advising and, if necessary, assisting a a State Government in strengthening its Armed Police force, the Union Government may take into account the following factors :

(i) the degree of confidence that the people of the State (particularly those living in disorder prone areas) have in the State police, armed and unarmed;

(ii) If large-scale public disorders are frequent, the causes therefor and the steps which the State Government should take on the social, economic and other fronts to prevent disorder. (Mere strengthening of Armed police may not achieve the objective);

(iii) the inadvisability of a State (particularly if it is a small State) expanding its Armed Police, if it cannot be fully utilised throughout the year; and

(iv) the feasibility of more efficient utilisation of the State Police.

(Para 7.10.04)

7.12.03 (a) A group of neighbouring States may, by consensus, have a standing arrangement for the use of the Armed Police of one another in case of need. The Union Government may devise by consensus the regional groupings, keeping in view contiguity and logistics and encourage States to participate fully.

(b) The Zonal Council would be the best forum for achieving consensus of the States within a zone for devising such an arrangement.

(c) The Union Government will under this arrangement, monitor, coordinate and control any inter-State movements of State Armed Police. It is only when it is not possible to meet the requirements of a State from within its group that the Union Government will decide whether to draw from any of its own para-military forces or from Armed Police Battalions belonging to one or more States outside the group.

(d) A beginning may be made immediately to plan the use of Armed Police inter-State within a region.

(e) This arrangement will be only for meeting special demands for short periods from the State in a group. Thier Armed Police will not merge or get integrated but will remain distinct as hitherto.

(Paras 7.10.05 & 7.10.06)

7.12.04. The various measures recommended by the National Police Commission in their Seventh Report for improving the effectiveness and morals of State Armed Police are commended for the consideration of State Governments.

(Para 7.10.07)

7.12.05. The problems of cadre management, mobility, promotion prospects, etc. of police personnel in small States, especially in the north-eastern region, need to be carefully examined by the State Governments in consultation with the Union Government.

(Para 7.10.08)

7.12.06. There should be a system of interchange of the officers of the State Armed Police Forces with those of the Central Reserve Police Force, the Border Security Force and other Union armed forces. They should also have common regional training centres, so as to facilitate better exchange of techniques and information and a more integrated system of operations when the Union armed forces are deployed in aid of the civil power in a State.

(Para 7.10.09)

7.12.07. (a) Adequate finance will be needed by State Governments for augmenting and strengthening (by way of better equipment, more vehicles, etc.) their Armed Police Battalions. The Union Government may, therefore, examine immediately the question of financial assistance to State Governments for this purpose, after taking into account the grants that are already being made available to them for the modernisation of their police forces.

(b) The extent of Central assistance to be made available to State Governments for the above purpose during the next Plan period may be specifically referred to the next Finance Commission.

(Para 7.10.10)

7.12.08. It is essential that there should be advance planning of deployment including logistics, of the Union armed forces and State Armed Police Battalions. For this purpose, the Union Government may get an expert study carried out for evolving such a system of planning.

(Para 7.11.04)

ANNEXURE VII.1

Powers and Duties under the Criminal Procedure Code Conferred and imposed on Members of the CRPF by the Central Government under Section 16 of the CRPF Act, 1949

(Note : Powers marked with an asterisk are exercisable by a member above the rank of Sub-Inspector of the CRPF.)

Sl. No.	Section of Cr.P.C.	Broad nuture of power/duty
1	2	3
		CHAPTER V—ARREST OF PERSONS
1.	41(1)	Arrest without warrant.
2.	46	Arrest how made.
3.	47	Search of place entered by person sought to be arrested.
4.	48	Pursuit of offenders into other jurisdictions.
5.	49	Person arrested not to be subjected to unnecessary restraint.
6.	51(1)	Search of arrested person.
7.	52	Powers to seize offensive weapons.
8.	*53	*Examination of accused by medical practitioner at the request of the police officer.
		CHAPTER VI—PROCESSES TO COMPEL APPEARANCE
		B—Warrant of Arrest
9.	74	Execution of warrant directed to another police officer.
1	2	3
		CHAPTER VII—PROCESSES TO COMPEL THE PRODUCTION OF THINGS
		C—General Provisions relating to searches
10.	*100	*Search or inspection (while executing a search-warrant) of a place which is closed.
11.	102	Power to seize property which is alleged or suspected to have been stolen or which creates suspicion of the commission of an offence.
		CHAPTER X—MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY
		A—Unlawful Assemblies
12.	*129	Dispersal of unlawful assembly by use of civil force.
		CHAPTER XI—PREVENTIVE ACTION OF THE POLICE
13.	149	Prevention of cognizable offences.
14.	150	Communication to senior officer of information received on design to commit cognizable offences.
15.	151	Arrest to prevent the commission of cognizable offences.
16.	152	Prevention of injury to public property.

ANNEXURE VII.2

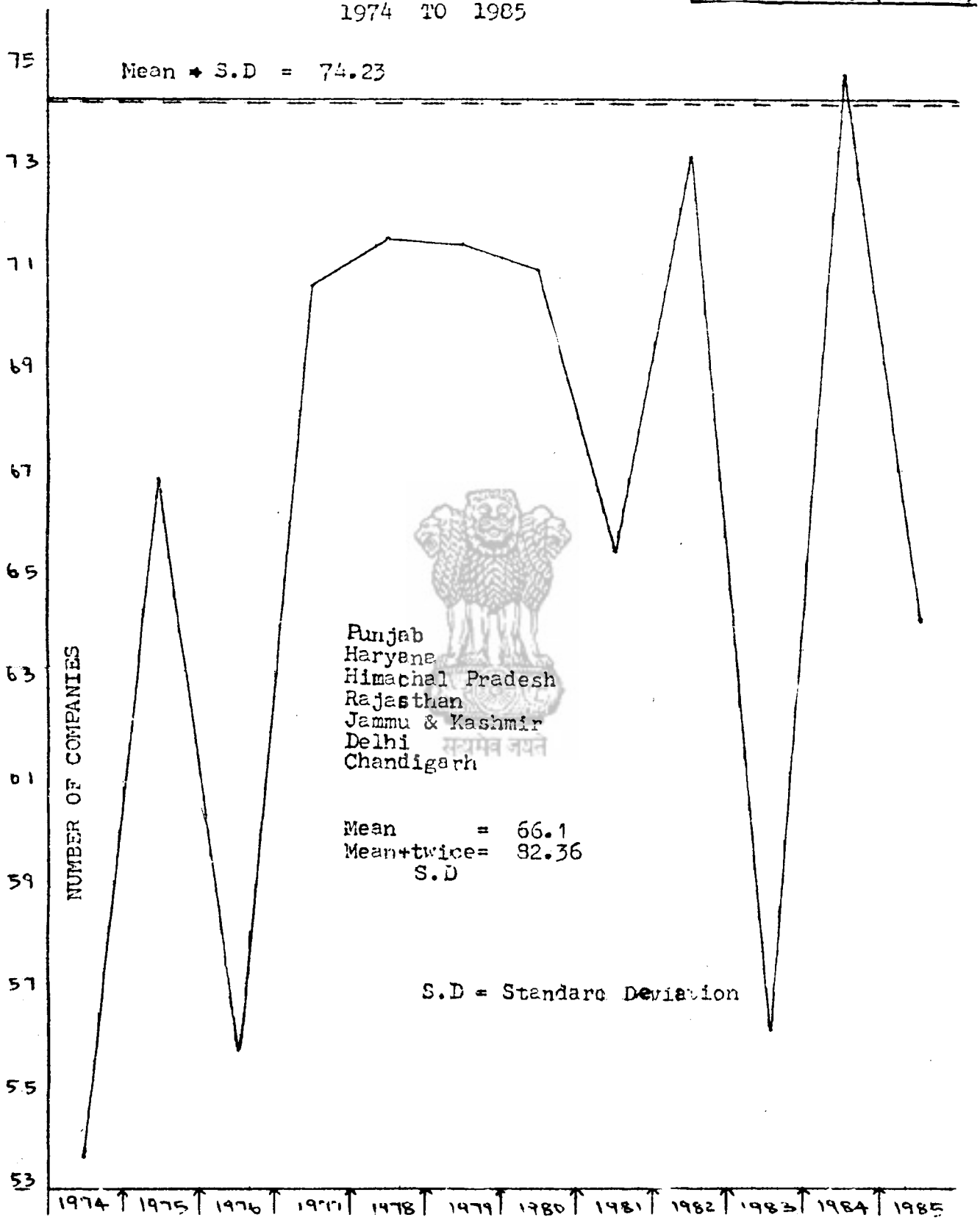
Graphs showing Average Strength of BSF and CRPF Deployed in various Zones

GRAPH	ZONE
1.	NORTHERN ZONE
2.	NORTH-EASTERN REGION
3.	EASTERN ZONE
4.	CENTRAL ZONE
5.	WESTERN ZONE
6.	SOUTHERN ZONE
7.	ALL INDIA

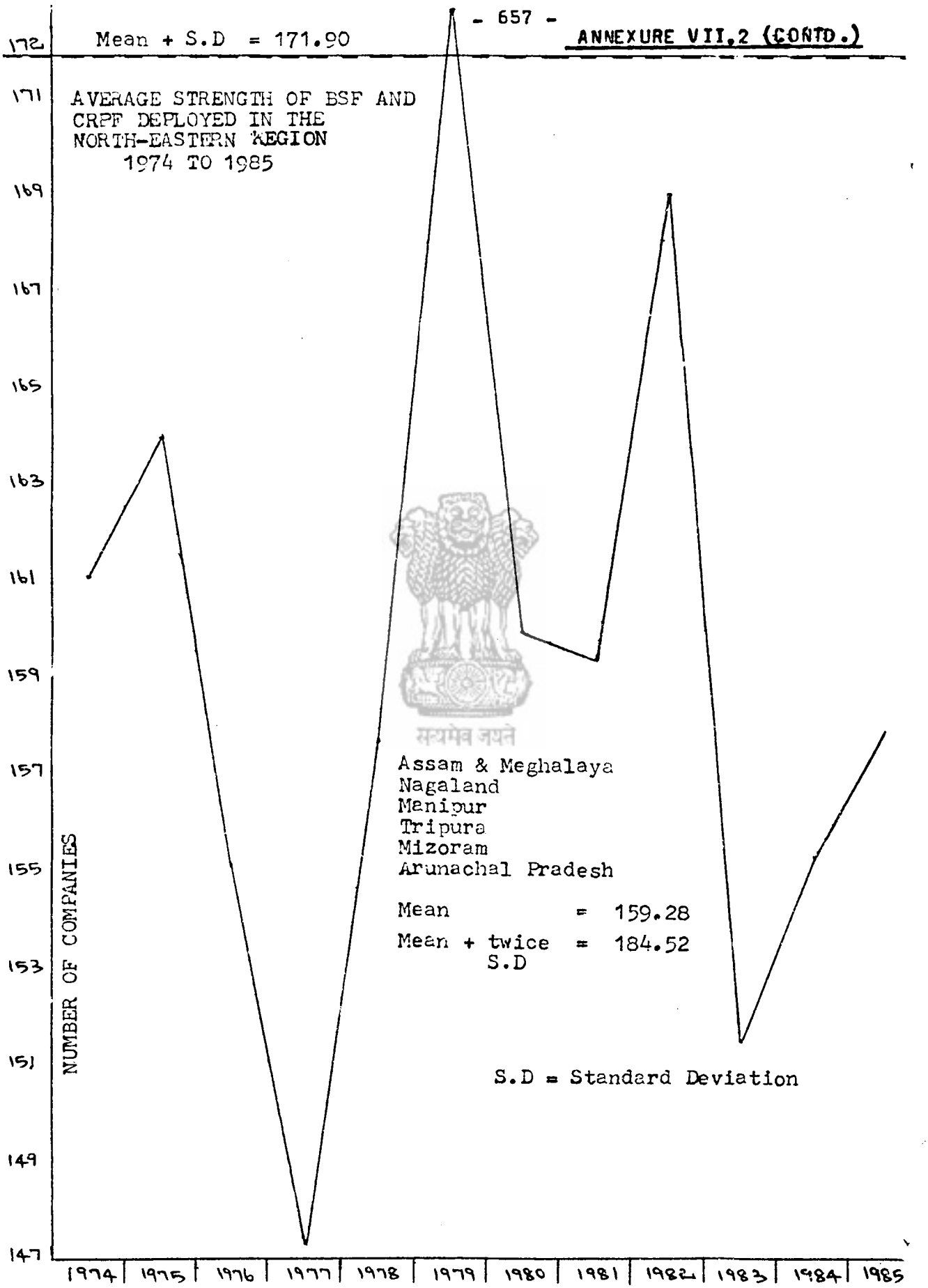
- 656 -

AVERAGE STRENGTH OF BSF AND CRPF DEPLOYED IN THE NORTHERN ZONE 1974 TO 1985

ANNEXURE VII.2(CONTD.)



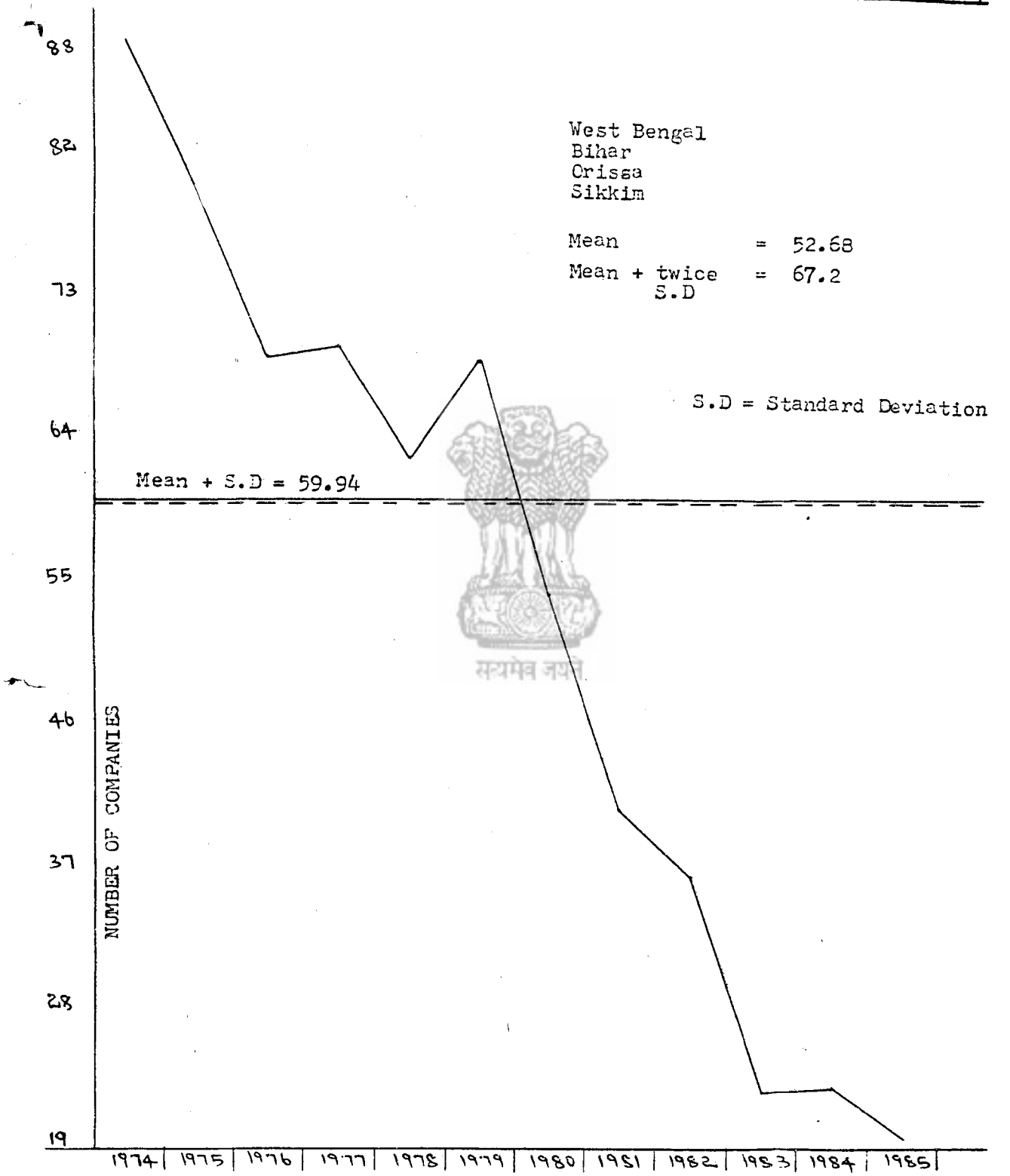
ANNEXURE VII,2 (CONTD.)



- 658 -

AVERAGE STRENGTH OF BSF AND CRPF DEPLOYED IN THE EASTERN ZONE - 1974 TO 1985

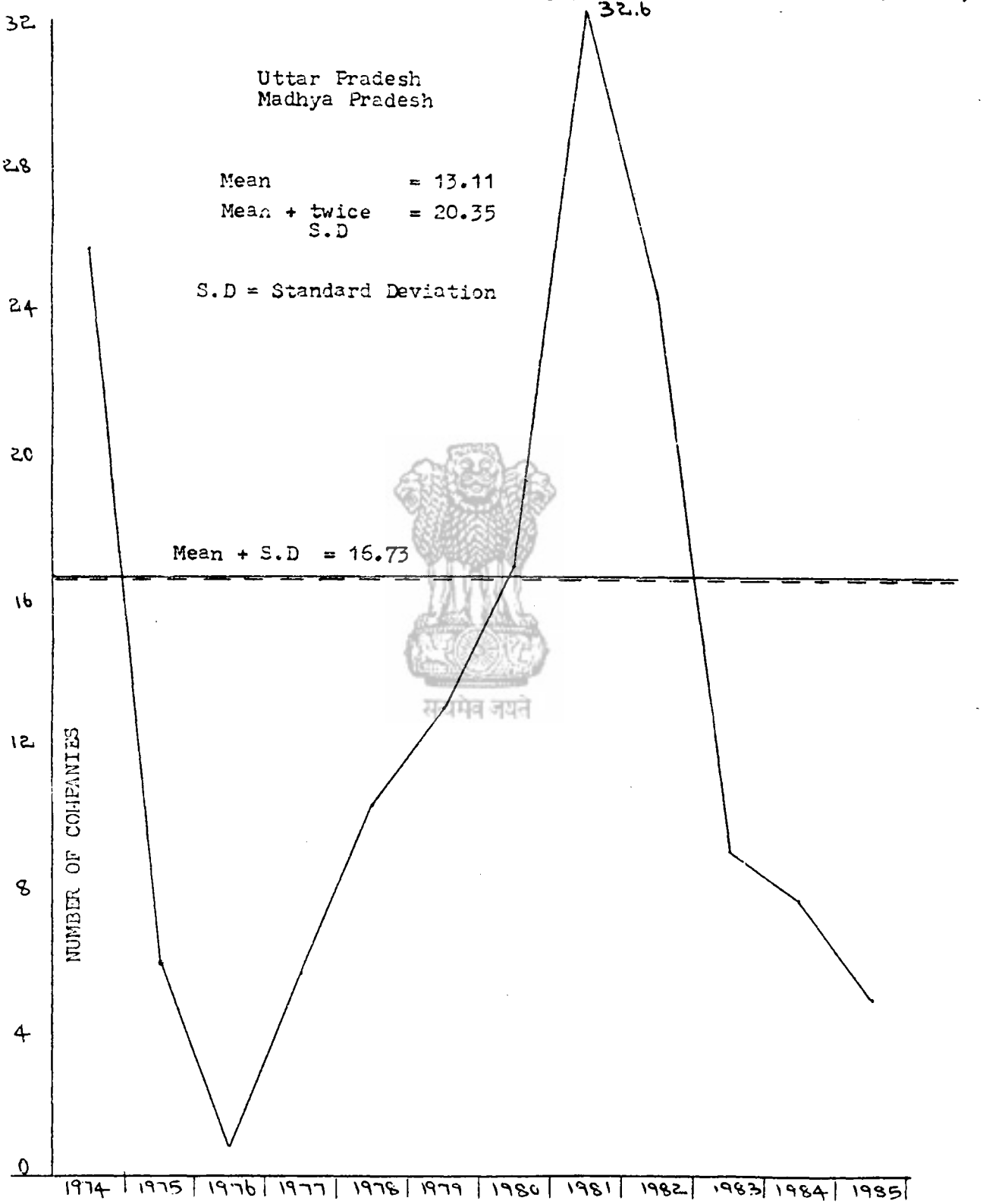
ANNEXURE VII.2 (CONTD.)



- 659 -

AVERAGE STRENGTH OF BSF AND CRPF DEPLOYED IN THE CENTRAL ZONE - 1974 TO 1985

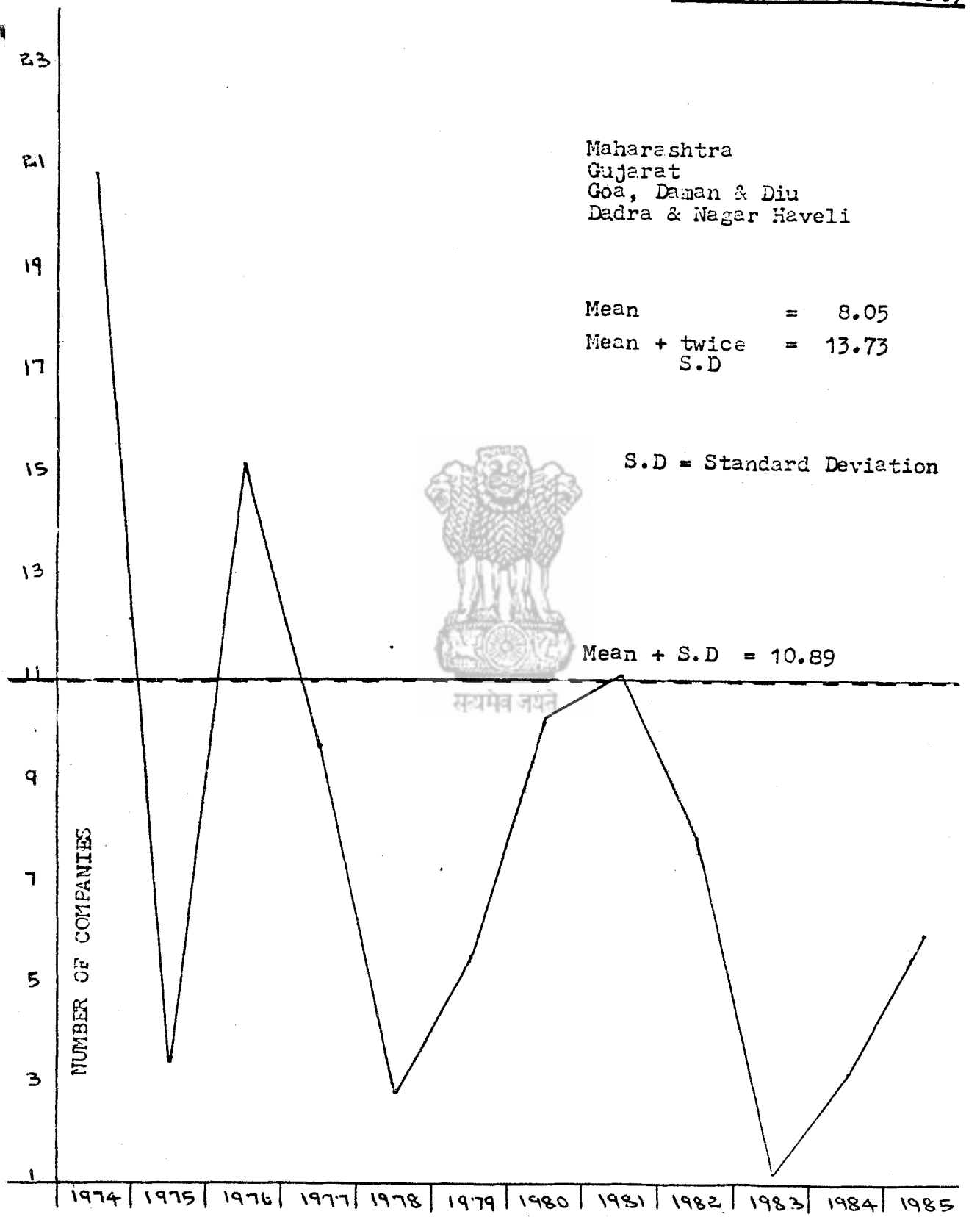
ANNEXURE VII.2 (CONTD.)



- 660 -

AVERAGE STRENGTH OF BSF AND CRPF DEPLOYED IN THE WESTERN ZONE - 1974 TO 1985

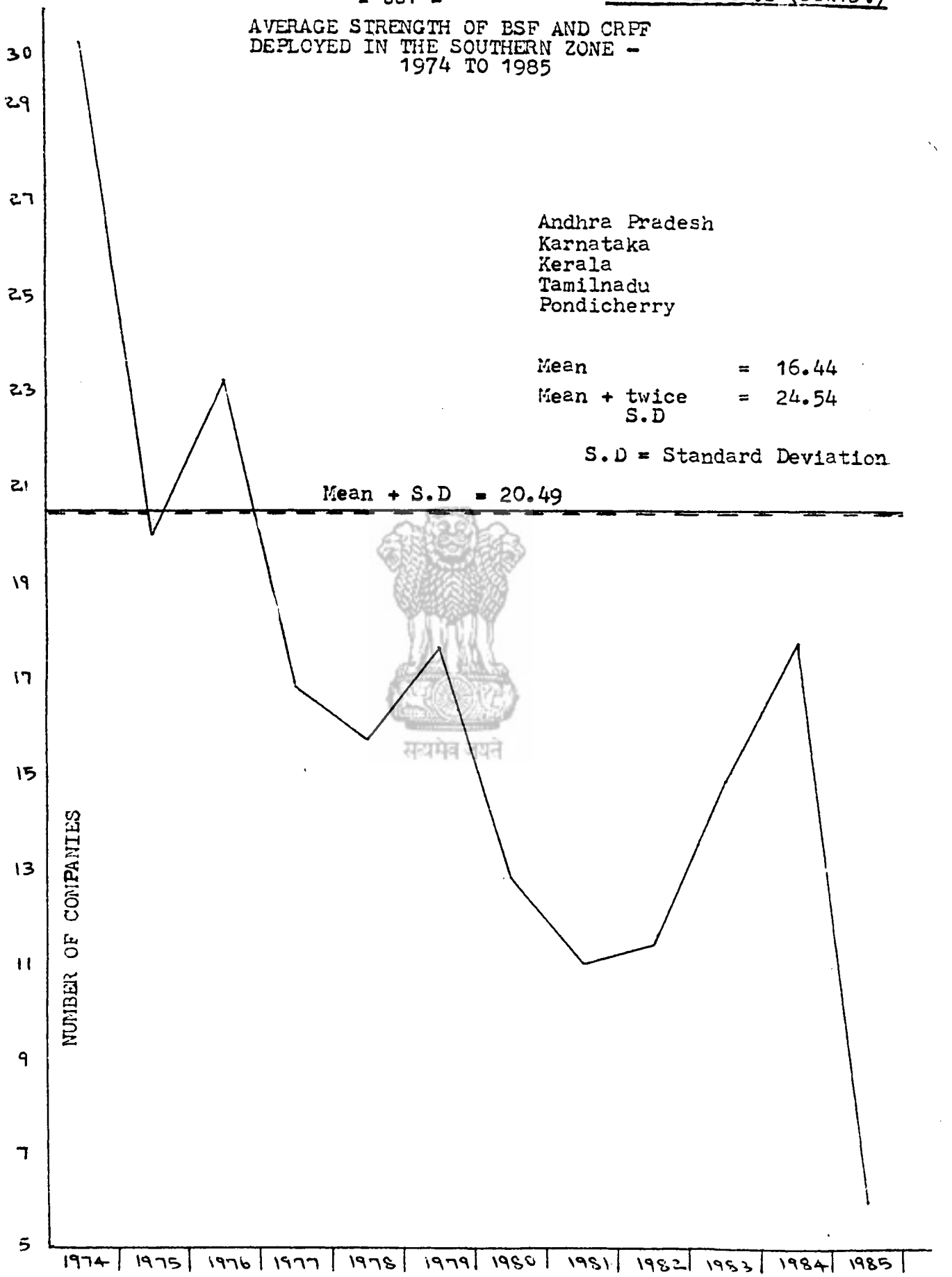
ANNEXURE VII.2 (CONTD.)



- 661 -

ANNEXURE VII.2 (CONTD.)

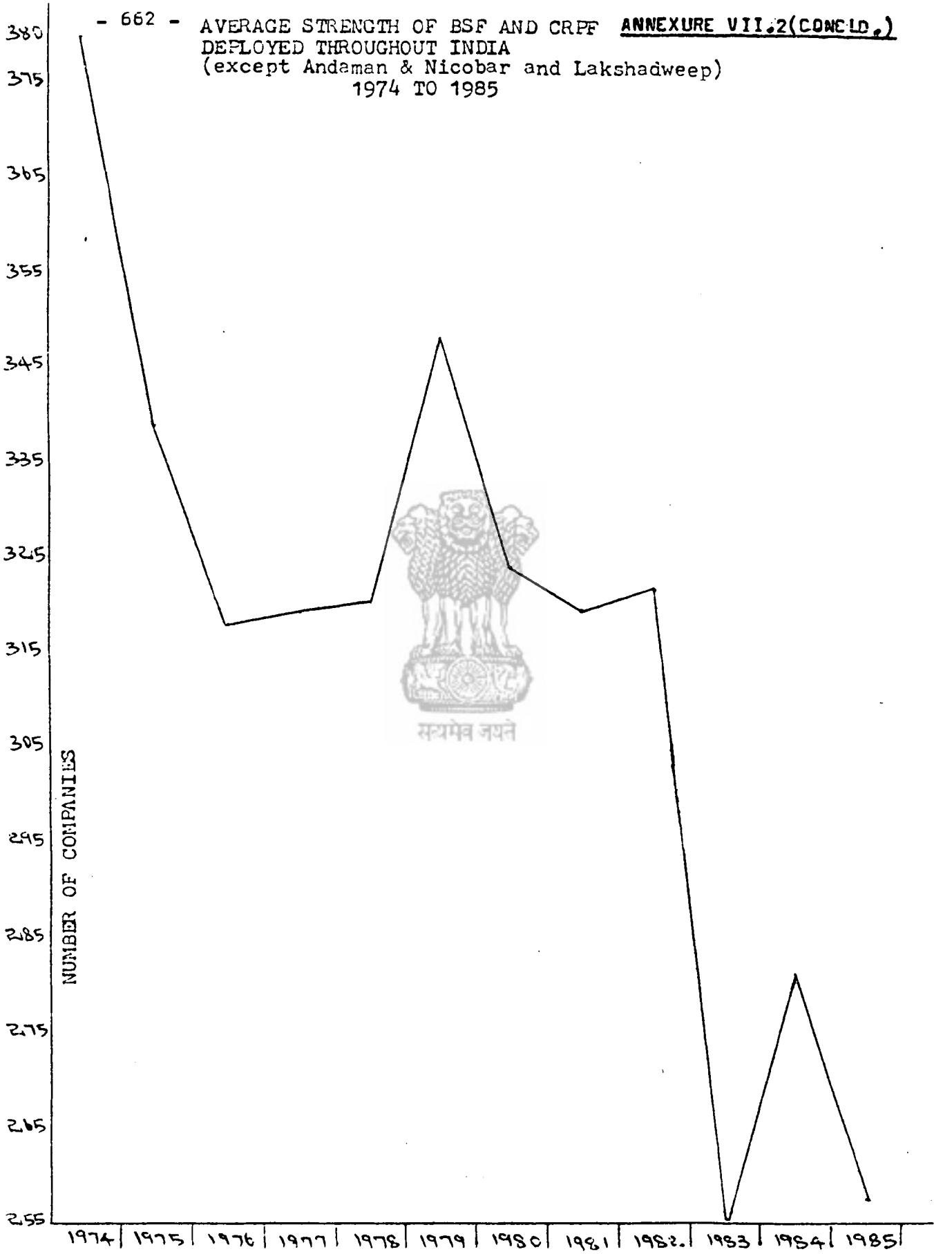
AVERAGE STRENGTH OF BSF AND CRPF DEPLOYED IN THE SOUTHERN ZONE - 1974 TO 1985



- 662 -

AVERAGE STRENGTH OF BSF AND CRPF DEPLOYED THROUGHOUT INDIA
(except Andaman & Nicobar and Lakshadweep)
1974 TO 1985

ANNEXURE VII.2(CONCLD.)



CHAPTER-VIII

ALL INDIA SERVICES

CONTENTS

CHAPTER VIII

ALL INDIA SERVICES

1. *INTRODUCTION*

8.1.01. In the various aspects of Union-States relations dealt with by us so far, one cannot fail to perceive the importance of continued coordination and clear understanding as between the Union and the State Governments at all relevant levels in formulating and implementing policies and programmes, particularly those which have nation-wide or inter-State implications. In regard to these matters, an administration accountable to the legislature through the elected Government plays a crucial role.

8.1.02 Administration comprises civil servants who have to assist the elected government in policy formulation and implementation. There has to be close rapport and mutual trust between the Ministers and civil servants. Ministers have to defend in the legislature the *bona fide* decisions and actions of civil servants. The latter are expected to implement faithfully the policies of the government in power whatever its political complexion and policies, and to remain faceless and nameless in the legislature.

8.1.03 Employees of government ought to be described as "public servants" and not "civil servants". ** The former expression emphasises the point that they are servants of the people and not of the members of the government. This consideration seems important in view of the instances of the misuse of grovernment servants by their superiors for personal or political purposes. We would further classify government servants as "selected or appointed public servants" to distinguish them from Ministers who are "elected public servants".

8.1.04 The need for well orchestrated administrative efforts on the part of the Union and the State level administrations in achieving national goals and targets was met by the Constitution-framers in a way which was unique in the sense that it has no parallel in any other country except Pakistan and Malaysia. The framers retained the Indian Civil Service and the Indian Police which, before the Constitution came into force, were common to the Centre and the Provinces, and these were renamed as the Indian Administrative Service (IAS) and the Indian Police Service (IPS). Subsequently, Parliament passed the All India Services Act, 1951, empowering the Union Government in consultation with the State Governments to make rules for the regulation of recruitment and conditions of service of persons appointed to these All India Services.

8.1.05.The framers of the Constitution also provided for the creation of All India Services (AIS) in other spheres, if the Rajya Sabha declared, by resolution supported by not less than two-thirds of the members present and voting, that it was necessary and expedient in the national interest so to do. In 1955, the States Reorganisation Commission observed that "the Central and the State Governments have to work in very close cooperation in executing important development projects which necessitates that technical personnel should be recruited and trained on a common basis and that they should have uniform standards of efficiency and the feeling of belonging to common and important cadres". The Commission, therefore, recommended that the Indian Service of Engineers, the Indian Forest Service and the Indian Medical and Health Service should be constituted.[1]

8.1.06 In pursuance of a decision taken at the Chief Ministers' conference held in August, 1961, a resolution was adopted by the Rajya Sabha on Decembr 6, 1961 for the creation of the Indian Service of Engineers (Irrigation, Power, Buildings and Roads), the Indian Forest Service and the Indian Medical and Health Service. In 1963, the All India Services Act, 1951 was amended enabling these services to be constituted. Accordingly, the Indian Forest Service was constituted on July 1, 1966. All the State Governments participate in this Service. The Union Government has been making efforts to secure the agreement of the State Govenments for the constitution of the other two All India Services.

8.1.07. The following were the broad objectives[2] of the Constitution-framers in providing for the scheme of All India Services, common to the Union and the States :

(i) facilitating liaison between the Union and the States;

(ii) ensuring a certain uniformity in standards of administration;

(iii) enabling the administrative machinery at the Union level to keep in touch with realities at the field in the States;

(iv) helping State administrative machinery to acquire a wider outlook and obtain the best possible talent for its senior posts; and

(v) ensuring that political considerations either in recruitment or in discipline and control are reduced to the minimum, if not eliminated altogether.

**Of course, where the expression 'public servant' is to be used in contradistinction to the members of the Union Armed Forces, the word 'Civil' may be suffixed to it.

1. Report of the States Reorganisation Commission: Paragraphs 856 & 857.

2. Rao B. Shiva : "The framing of India's Constitution", Volume IV, Pages 332-333; Proceedings of the Premiers' Conference, October 1946: Para 2.

2. *VIEWS OF STATE GOVERNMENTS AND THE UNION GOVERNMENT*

State Governments

8.2.01 In question 4.8 of our Questionnaire, we sought the views of the State Governments and others on—

(i) whether the All India Services have fulfilled the expectations of the Constitution-makers; and

(ii) whether the State Governments should have greater control over them.

8.2.02 Most of the State Governments are agreed that the All India Services have by and large fulfilled the expectations in question. By recruiting the best talent to the All India Services and allocating a certain percentage of them to States other than those to which they belong, national integration has been promoted and a broad national outlook fostered in the civil services. The ability of the members of these services to resist political pressures has been a major factor in preventing arbitrary and rash decisions at the State level. Many of these State Governments are of the view that no change is necessary in the present arrangments by which All India Service officers allocated to a State come under the disciplinary control of its Government in all matters except when the major penalties of compulsory retirement, removal and dismissal are to be imposed. These major penalties fall within the jurisdiction of the Union Government. This limitation on the powers of the State Government is essential for maintaining the all India character of the services.

8.2.03 However, some State Governments have expressed different views. According to one State Government, its experience of the All India Services is of a mixed nature, implying that there are shortcomings. Another State Government has given reasons why it considers that the expectations of the Constitution-framers have not been fulfilled. Firstly, members of these services belong to the services of the respective States to which they are allocated. Not having a right to serve under the Union or any other State Government, they cannot be considered as belonging to an All India Service. Secondly, AIS officers in the same batch of recruitment do not have indentical prospects of promotion, which fortuitously vary with the State to which an officer is allocated.

8.2.04 According to one State Government, the framers of the Constitution provided for the All India Services because of the serious problems of politico-administrative management and instability then faced by the Country. However, the Union and the State Governments have since acquired adequate political, administrative and managerial experience.

8.2.05 The All India Services are under the joint control and discipline of the Union and the States. However, the former makes recruitment to the services and regulates the recruitment and the conditions of service of their members. It is alleged that this type of arrangment is not found in any other country with a federal system of government.

8.2.06 The State Government has been specially critical of the Indian Police Service. It is of the view that, as all key positions in the State Police are held by members of this service, the State Government's responsibility in regard to public order has got whittled down. However, the State Government has not indentified the shortcomings, either in the functioning of the system of Indian Police Service or in the performance of its members, which may have led to this unfortunate outcome.

8.2.07 According to this State Government, as also a few other State Governments, the All India Services should be wound up and the Union and the State Governments should have their separate civil services. It is argued that this would bring the working of these Governments closer to a federal system. The unity and intergity of the country and national integration which the All India Services are designed to strengthen and promote, should rest on more durable factors like economic prosperity, strong elective institutions, etc. and not on an administrative apparatus like the All India Services. Another State Government has suggested that a State should be free to opt out of the AIS scheme.

8.2.08 According to one State Government, the main feature of the AIS scheme is the exercise of joint control over the AIS by the Union and the State Governments. Section 3 of the All India Services Act, 1951 provides that the Central Government may, after consultation with the Government of the State concerned, make rules for the regulation of recruitment and the conditions of service of persons appointed to an All India Service. This Section, it is contended, may be amended so as to replace "consultation" by "concurrence" of two-thirds of the State Governments.

8.2.09 Also, under the respective cadre rules, any disagreement between the Union Government and the State Government in regard to deputation of an IAS officer to a post outside his cadre, can be settled by the Union Government. This provision introduced in March 1984 has fundamentally altered the basic concept of joint control by the Union and the State Governments. Here, one State Government has suggested that AIS officers posted to the Union Government should not be on deputation but treated as holding cadre posts under the Union Government. Also, AIS officers should have a legal right to such a posting.

8.2.10 One of the State Governments has observed that AIS officers tend to think that they are under the disciplinary control of the Union Government and not the State Government. A few State Governments have emphasised that an AIS officer should be under the full disciplinary control of the State Government under which he is serving. One of these State Governments has suggested that appeals against disciplinary action taken by a State Government, should be dealt with by an administrative tribunal which should be independent of both the Union and the State Governments. Another State Government is of the view that an officer's appeal against his suspension should be decided by the President on the advice of an independent body like the Union Public Service Commission and not by the Union Executive. The advice of the Union

Ministry of Home Affairs (now Ministry of Personnel, Public Grievances and Pensions) on such matters does not have the stamp of impartiality and objectivity.

8.2.11 Certain other suggstions received are:

(i) A State Government should have full powers to create a temporary cadre post instead of the power at present to create such a post for a period not exceeding one year.

(ii) AIS officers on deputation to the Union Government should revert to their parent cadres at the end of the prescribed deputation period.

(iii) A larger number of officers of the State Governments than now should be taken on deputation by the Union Government and there should be adequate representation of such officers at the various levels of the hierarchy in the Union Government. State Governments have a right to be represented in the Union bureaucracy.

(iv) The recent policy of the Union to induct at least 50 percent outsiders in each State cadre of an All India Service implies that these outsiders are more amenable to the control of the Union Government than the insiders. This approach will accentuate hostility between the All India Services and the State Services as well as between the former and the political leadership in a State.

(v) All matters relating to policy and rules affecting All India Services should have the approval of the Inter-State Council.

Union Government

8.2.12 The Union Government has pointed out that it has the sole responsibility for all matters relating to the All India Services. All India Services is a Union list subject *vide* Entry 70. Also, Article 312 of the Constitution confers power on Parliament to regulate recruitment and conditions of service of persons appointed to All India Services. However, the States are not completely removed from the picture. The All India Services Act, 1951 provides that the rules for the regulation of recruitment and the conditions of service of members of the All India Services shall be made by the Union Government after consultation with the State Governments (*vide* Section 3). In practice, the Union endeavours to accommodate the view-points of the States in the matter of framing rules, as members of these services have actually to work in the States for the better part of their carrier. The suggestions that all policies and rules affecting All India Services should be placed before the Inter-State Council or that rules should be made with the concurrence of State Governments are not practical and will considerably delay finalisation of rules. The suggestions are un-likely to serve any useful purpose as the effort of the Union Government has been to carry a majority of the State Governments with it while amending rules, except when national interest dictates otherwise.

8.2.13 The powers, functions and responsibilities with regard to these services are shared between the Union and the States. To ensure equal treatment to members borne on different cadres (*i.e.*, individual States cadres and joint cadres), the powers in regard to matters like recruitment promotion from State Services to All India Services, probation, training, confirmation and determining the strength and composition of cadres vest in the Union. Also, the power to impose penalties of compulsory retirement, removal and dismissal is with the Union, after consultation with the Union Public Service Commission. This is in accordance with the provisions of Articles 311 and 320.

8.2.14 The State Governments are associated in the preparation of Select lists for the promotion of State Services Officers to the All India Services. The State Government and the Union Government have a member each on the Select Committee, which is presided over by the Chairman or a Member of the U.P.S.C., and thus have equal say in the drawing up of the lists. Also, the cadre strengths of the All India Services are reviewed periodically by a High Powered Committee presided over by the Union Cabinet Secretary on which the State Government is represented by its Chief Secretary. The powers for postings and transfers of officers within a State are with the State Government. Similarly, the State Government has the power to place under suspension an officer working under it and to impose penalties other than compulsory retirement, removal and dismissal.

8.2.15 Prior to March, 18, 1984, an officer could be deputed to the Union Government or to another State Government only with the concurrence of the State Government. However, as deputation to the Union Government includes deputation to international organisations and autonomous bodies controlled by the Union Government, the cadre rules were amended to provide that, in the event of any disagreement between the Union Government and the State Government in regard to the deputation of a particular cadre officer, the decision of the Union Government would be final. In practice, the Union Government gives due weightage to the actual requirements of the State Government concerned and to the need to maintain the All-India character of these services by ensuring that the insiders and the outsiders in a cadre are in the prescribed ratio. The Union Government takes decisions in such cases only on the over-riding consideration of national interest.

3. *VIEWS OF ARC STUDY TEAM ON CENTRE-STATE RELATIONSHIPS*

8.3.01 The Administrative Reforms Commission Study Team on Centre-State Relationships was of the view[3] that the main objectives underlying the All India Services remain valid. These objectives briefly are :

(i) All India recruitment makes possible a minimum and uniform standard of administration throughout the country. It enables the induction of the best available talent into these services.

[3]. Paras 17.4 and 17.9 of the report.

(ii) With personnel drawn from different States, each State cadre gets a leavening of senior officers from outside whose vision and outlook transcend local horizons.

(iii) Systematic deputations from the States to the Union broadens the vision of the officers so deputed and brings to the Union and experience close to actual realities.

(iv) The joint control of these officers by the States and the Union Government, with the latter having ultimate authority over them, provides a measure of remote control which, being more objective, enables officers to withstand local influence and to provide independent advice.

Further, the States should accept these services as their own. The Union on its part should keep a vigilant eye on the health and vigour of these services.

8.3.02 The objectives underlying the All India Services indicated by the Study Team of ARC are broadly the same which the Constitution-framers had in view. We have no hesitation in endorsing the same.

4. *VIEWS OF THE ADMINISTRATIVES REFORMS COMMISSION*

8.4.01 In its report[4] on "Personnel Administration", the Administrative Reforms Commission observed that the intention of having All India Services was mainly to ensure uniformly high standards of administration in all States in key activities, to provide for interchange of experience between the States and the Centre, and to obtain, where needed, the experience of State Administration at the decision-making levels at the Centre. As common areas of administration in the States are expanding, it would be in the public interest to establish more All India Services.

8.4.02 In regard to the Indian Administrative Service, the ARC recommended [5] that a functional field should be carved out for it. This field could consist of land revenue administration, exercise of magisterial functions and regulatory work in the States in fields other than those looked after by other functional services. The Commission went on to recommend a functional classification of posts in the field, the field headquarters and the secretariat to be manned by members of the corresponding functional services.

8.4.03 The Union Government did not accept the above recommendation on the ground that limiting the role of the IAS to a narrow area of district administration would defeat the purpose for which the service was constituted as an All India Service, *viz.*, the forging of a link between the Centre and the States. The Union Government decided that the existing role and functions of the IAS should continue.

4. Chapter II; Paragraphs 11 & 13.

5. Chapter III : Paragraphs 7 to 9.

5. *RECOMMENDATIONS OF THE ESTIMATES COMMITTEE OF PARLIAMENT*

8.5.01 The Estimates Committee of the Seventh Lok Sabha submitted a report on All India Services in April, 1984. The action taken by the Union Government on the recommendations contained in this report were examined by the Estimates Committee of the Eighth Lok Sabha in its 13th report presented in November, 1985. The important recommendations of the Committee which have a bearing on Union-State relations are discussed below.

8.5.02 According to the Estimates Committee, the All India Services would contribute in vital spheres to the modernisation of administration for rapid socio-economic development of the country and strengthen national integration. They recommended that the Union Government should persuade State Governments to agree to the constitution of the Indian Service of Engineers and the Indian Medical and Health Service. If possible, these services could be constituted straightaway and initially cover those State Governments which have already given their consent. The Committee also recommended that the Union Government may examine the question of creating an All India Service in the field of education, after considering the recommendations of the National Commission on Teachers.

8.5.03 The Estimates Committee observed that there were no clear criteria for determining the cadre strength of IAS officers for each State and the strength of senior duty posts had registered large increases which did not seem to be rational. Similarly, the deputation reserves in the various State cadres had undergone significant *ad hoc* increases without any check being exercised by the Union Government. Also, the time taken by the State Civil Services officers for getting included in the Select List for promotion to the IAS varied widely from State to State. It was necessary to ensure uniform opportunities to State Service officers for promotion to the IAS, IPS, and the Indian Forest Service. Further, the Committee observed that the promotion prospects of officers in the various State cadres in all the three All India Services were far from being uniform and recommended that the imbalances in promotion prospects in the different cadres should be corrected.

8.5.04 In response to the above recommendations, the Union Government has set up a Committee consisting of four Secretaries to the Government of India and four Cheif Secretaries of States to examine the problems in question. The Union Government has indicated to us some of the allied problems for which no ideal solutions are practicable and which the Committee should attempt to resolve as best as it can :

(i) In arriving at the cadre strength for a State, the factors like population, area, budget. etc. referred to by the Estimates Committee vary so widely as between one State and another that it would be difficult to arrive at any formula based on all these factors. It seems that the Committee can at best devise corrective measures to check the increasingly continued growth of IAS State cadres.

(ii) There are very large differences among the States in the constitution and strength of State Civil Services. A number of States have recruitment procedures for manning posts in blocks and tahsils. In other States, officers of the State Civil Services man these posts. Consequently, the strengths of the different State Civil Services vary widely, leading to different waiting periods for officers of these services before promotion to the IAS. The problem is one of States adopting uniform organisational pattern for such posts.

(iii) As regards promotion prospects for IAS officers within a State, State Governments resort to the device of creating ex-cadre posts for appointing cadre officers due for promotion. The political executive at the State level would seem to regard this as a functional necessity, notwithstanding that the Union Government is not in favour of this method of increasing the cadre strengths.

8.5.05 The Estimates Committee found that the Union deputation quotas for officers of the All India Services in the various State cadres are being underutilised. To correct this situation, the Union Government informed the Committee that it continuously attempts to ensure equity in the matter of utilising the Union deputation reserve by different State cadres.

8.5.06 However, there are difficulties. Most of the State Civil Services officers promoted to the IAS do not offer themselves for deputation to the Union. Being advanced in age with only a few years left for superannuation, they prefer, for domestic reasons, to continue in the State. Officers directly recruited are reluctant to be posted to Delhi on account of the paucity of residences for officers in the tenure pool. A third difficulty is that the Union Government has its own process of selection/empanelment of AIS officers offered by State Governments for deputation to the Union. Consequently, the deputation reserve in each cadre (40 per cent of the senior duty posts) is not always fully utilised by the Union Government.

8.5.07 The Committee observed that the guidelines issued by the Union Government in Janurary, 1976 in regard to the number of years to be put in by IAS direct recruits as SDOs, ADMs and District Collectors were not being followed by the State Governments. According to the Committee, a young IAS officer posted as a Sub-Divisional Officer gains multi-functional experience. Therefore, the Union Government should persuade the State Governments to observe the guidelines in question which would provide an IAS officer a stretch of field experience at the initial stage of his career.

8.5.08 In response to the above recommendations, the Union Government decided to write to Chief Ministers again to ensure proper career development of IAS officers in accordance with the guidelines.

8.5.09 The Union Government has informed us in this connection that, during the cadre management review meetings held with a State Government, one of the points examined is whether eligible officers have been given charge of districts. An officer is not brought to the Union on deputation as Deputy Secretary, unless he has 3 years of field experience. In selecting officers for training abroad, preference is given to those who have held districtcharges, except where other types of experience have been stipulated.

8.5.10 The Committee saw merit in a gradual increase in the percentage of outsiders in the State cadres. This would enable the cadre officers to withstand local pressures. It would also lead to national integration. In pursuance of this recommendation, the Union Government decided that the "outsider-insider" ratio in the allocation of direct recruits to the All India Services to different State cadres should be raised form 1:1 to 2:1. As on January 1, 1984, 73 per cent of direct recruits to the IAS in all the cadres were "outsiders". The number of "outsiders" constituted 49 per cent of the total of the cadre strengths of the IAS.

8.5.11 Based on a recommendation of the Estimates Committee, the Union Goverment has asked the Union Public Service Commission to undertake a review of the system of Civil Services examination introduced in 1979.

8.5.12 The Committee emphasised the need for creating conditions in which the larger masses of the people particularly those in the rural areas, can have an equal opportunity to compete in the Civil Services examination with the candidates belonging to the urban elite. They also suggested that the scheme for coaching SC/ST candidates to take the Civil Services examination should be extended to other backward classes.

8.5.13 As recommended by the Estimates Committee, the Union Government has circulated to State Governments, a set of guidelines for career development of direct recruits to the Indian Forest Service.

6. *ISSUES*

8.6.01 The views expressed by State Governments (*vide* paras 8.2.01 to 8.2.11 above) and the observations of the Estimates Committee of Parliament (*vide* paras 8.5.0 to 8.5.13 above) serve to highlight the following issues in the field of Union-State relations :

(i) As against a few State Governments who have suggested scrapping of the institution of all India Services, most are in favour of its continuance. The question is whether this institution should continue in the light of the role played by the All India Services in modernising government administration, shaping the bureaucracy into an efficient instrument for achieving the goals and targets of Government, and fostering a national outlook while dealing with major problems.

(ii) If the answer to the question posed in (i) above is broadly that the institution of All India Services should continue, the question arises whether any changes are required in:

(a) the type of overall control exercised by the Union Government over the management of these services;

(b) the present rules governing the deputation of All India Service Officers from their respective State Governments to the Union Government; and

(c) the scheme for disciplinary control over members of these services.

(iii) A number of problems have come up in the management of cadres of the All India Services. Almost all these require close consultation between the Union and the State Governments. As settling issues through correspondence is the least efficient method, a better method has to be devised.

(iv) One of the State Governments has suggested that a larger number of State Government officers than now should be given opportunities of serving in the Union Government on deputation basis. This suggestion, being basic to the scheme of the All India Services, requires to be examined alongwith the question of constituting more such services.

We have dealt with the above issues seriatim.

7. *NEED FOR ALL INDIA SERVICES*

8.7.01 Considering the totality of the views presented to us on the subject of All India Services, we observe that there is near unanimity in regard to the vital need for these services. It is significant that most of the State Governments have expressed in positive terms that the services have, by and large, fulfilled the expectations of the Constitution-framers.

8.7.02 To understand this view-point of the State Governments, it is necessary to take note of the environment in which the higher bureaucracy and especially the members of the All India Services, have to work. The tremendous increase in the development activities of Government and the growing emphasis on the welfare aspects have placed Government administration at both the Union and the State levels under severe strain. The performance by the public services in general has, from the point of view of the public, fallen much short of expectations. The common man has thus become sceptical of the ability of government's administrative machinery to solve his problems. Also, interference in the day-to-day working of administration has become a fairly common style of functioning among political executives.

8.7.03 The above factors have made it difficult for the public servant to function in the manner expected of him (*vide* para 8.1.02 above). In this context, the senior public servant has the vital role of inculcating, by personal example, the traditions of high standards of performance, impartiality, and correct behaviour in the persons working under him. Replies from the State Governments to our questionnaire lead us to believe that members of the All India Services have to a large extent succeeded in this leadership role.

8.7.04 Studies of the Indian bureaucracy carried out by some scholars[6] during the first two decades after Independence provide some insight into the working of the All India Services. They concluded that Indian bureaucracy, which during British rule had remained almost unchecked by any political or other countervailing forces, adapted itself well to parliamentary democracy. This, according to them, happened mainly because the members of the All India Services displayed a quick understanding of the new political system and the art of handling it, combined with a zeal for development work. The stable, effective and democratic government in India during this period rested to a large extent on this institutional inheritance.

8.7.05 We too are of the view that the existing system of All India Services is unique as well as the most appropriate method of securing the best available talent from universities and other centres of learning, and shaping such talent into cadres of intelligent, highly skilled and dedicated officers, with a national outlook and experience in a variety of challenging administrative and management tasks. More importantly, the All India Services provide a valuable link between the Union and the State Governments, enabling the numerous day-to-day problems in Union-State relations to be sorted out with comparative ease. Another important feature of the system is the ready availability at the senior levels in the Union and the State Governments of officers of proved ability and experience at both levels of government. But for the system, the smaller or the less developed States would not have been able to attract such persons to their individual Civil Service cadres.

8.7.06 Here, the views expressed by Sardar Patel[7] in the Constituent Assembly on the vital role of the All India Services are pertinent :—

> "The Union will go—you will not have a united India, if you have not a good all-India service which has the independence to speak out its mind, which has a sense of security that you will stand by your word and that after all there is the Parliament, of which we can be proud where the rights and privileges are secure .... This Constitution is meant to be worked by a ring of Service which will keep the country intact".

8.7.07 We are convinced that these services are as much necessary today as they were when the Constitution was framed and continue to be one of the premier institutions for maintaining the unity of the country. Undoubtedly, the members of the All India Services have shown themselves capable of discharging the roles that the framers of the Constitution envisaged for them.

8.7.08 The criticism levelled by one of the State Governments against the Indian Police Service (*vide* para 8.2.06 *ante*) that the manning of key positions in the State Police by the officers of this service has led to the State administration losing its grip on public order, is not based on any empirical study

6. "The Government and Politics of India" by W.H. Morris Jones (1964) ;—

"Political order in changing societies" by Samuel P. Huntington (1968).

7. Constituent Assembly Debates (Revised Edition) Volume X; Page 51.

and therefore lacks validity. The National Police Commission on the basis of an in-depth study has expressed a different view, with which we are in agreement. The Commission recommended that "as the functions of the IPS officers have not only multiplied manifold, but are becoming more complex, hard and hazardous, calling for higher professional and technical skills and competence, special measures to attract some of the ablest officers from the lower echelons and also from the outside world are required."[8]

8.7.09 Any move to disband the All India Services, under some mistaken notion e.g. that they have outlived their utility or that they cause dysfunction, or to permit a State Government to opt out of the scheme must be regarded as retrograde and harmful to the larger interest of the country. Such a step is sure to encourage parochial tendencies and undermine the integrity, cohesion, efficiency and coordination in administration of the country as a whole.

8.7.10 We recommend that the All India Services should be further strengthened and greater emphasis given on the role expected to be played by them. This can be achieved through well-planned improvements in selection, training, deployment, development and promotion policies and methods. The present accent on generalism should yield place to greater specialisation in one or more areas of public administration. Training and career development policies should be geared to this objective. Disciplinary control should aim at nurturing the best service traditions and relentless weeding out of those who fail to make the grade. Finally there should be greater coordination and periodical dialogue between the authorities in the Union and the State Governments who are responsible for the management of these services.

8. *CONCEPT OF JOINT CONTROL*

8.8.01 We now take up the major criticism by one of the State Governments that joint control over the All India Services by the Union and the State Governments, though intended to be the main feature of the scheme, does not exist in reality. The State Government has pointed out that rules for the regulation of recruitment and conditions of service of persons appointed to an All India Service are made, not with the concurrence of the State Governments, but merely in consultation with them. Also, the question of deputation of an All India Service officer to a post outside his cadre is settled not by the State Government, which is his cadre authority, but by the Union Government.

8.8.02 The above argument overlooks the basic principle that a pool of resources meant for a number of users ceases to be a "common" pool if individual users get the power to veto the decisions of the authority which manages the pool. We are, therefore, unable to visualise any arrangement as workable if it gives over-riding authority to the State Governments on matters concerning officers of the All India Services and yet expects the Union Government to be responsible for their training, career management and other crucial aspects of personnel administration relating to All India Services. The Union Government, therefore, should have the final say in these matters. The steps that are being taken by the Union Government in pursuance of the recommendations of the Estimates Committee (vide paras 8.5.02 to 8.5.13 above), should go a long way in meeting the shortcomings presently being experienced by the State Governments in the working of the All India Services scheme. We have also been assured by the Union Government that, when a new rule relating to the All India Services is to be framed or an existing one amended, it secures the concurrence of a majority of State Governments, if not of all of them, before notifying the rule or the amendment.

9. *STRICT ADHERENCE TO TENURE RULES IMPORTANT*

8.9.01 If the policy of deputing to the Union 40 per cent of the officers eligible to hold senior posts is strictly followed, every one of them would have to serve at the Union for 2 to 3 spells, each of 5 years, if he is a direct recruit and for 1 or 2 such spells if he is an officer promoted from one of the State Service. Because of the reluctance of promoted officers to go on deputation to the Union (*vide* para 8.5.06 above), State Governments offer only direct recruits to the Union Government. Even among the latter, the "outsiders" predominate, as many State Governments, e.g. some of those in the north-east and the south, are unwilling to release "insiders". As a result, when a count is taken of those holding senior posts in any of these State Governments, the "insiders" out-number the "outsiders". This is a serious deviation from the All-India character of these services. Evidently, the caution[9] sounded by the States Reorganisation Commission that the proportion of members of the All India Services recruited from outside the State should not be reduced in practice by such devices as the deputation of officers to the Union, is being ignored by many State Governments.

8.9.02 The predominance of "outsiders" among those sent on deputation to the Union leads to dubious practices. Many among the "outsiders" on offer to the Union from a State have already had spells of deputation to the Union and develop a preference for postings in Ministries which have plum posts, e.g. those with prospects of joining delegations sent abroad or foreign assignments.

8.9.03 We suggest that there should be an element of compulsion in the matter of deputation to the Union. The informal practice followed by the State Governments of obtaining the consent of the officers who are to be sent on deputation should be given up. Every All India Service officer, whether he is a direct recruit or a promoted officer, should be required to put in a minimum period under the Union Government and, for this purpose, the minimum number of spells of deputation to the Union should be laid down for direct recruits and promoted officers, separately. Secondly, State Governments should offer officers for deputation to the Union only after screening them. The Union Government may

8. Sixth Report : Para 49.2

9. Para 855 of the report.

lay down a screening mechanism and the criteria to be followed for the purpose by every State Government. An officer so offered should not be rejected by the Union Government, except on grounds to be communicated to the State Government concerned. Thirdly, in order to maintain the all-India character of these services, it should be ensured that both among those on deputation to the Union from a State and among those who are serving in the State, the number of "insiders" and "outsiders" is almost equal.

8.9.04 We have been informed by the Union Government that the rules governing the tenure of All India Service officers on deputation to the Union Government are rigidly applied and relaxations are made only in exceptional cases whether in the public interest or to avoid undue hardship to the officer concerned. In this connection, we wish to emphasise that, through strict observance of the tenure principle, it should be ensured that the services of the best among these officers are not monopolised by the Union Government but are also readily available to the State Governments to whose cadres they belong.

8.9.05 One of the State Governments has observed that, although an All India Service is supposed to be common to the Union and the States under Article 312 of the Constitution, a member of such a service does not have a right to be posted under the Union Government. It has suggested that posts in Union Government establishments to be held by officers of an All India Service should be shown as "cadre posts" (vide paras 8.2.03 & 8.2.09 above). We fell that such earmarking of posts is not really necessary and that the measures outlined in paragraphs 8.9.03 & 8.9.04 above can achieve the purpose in view, viz. to enable the Union Government to utilise the All India Services to a much greater extent and more fully than now.

10. *DISCIPLINARY CONTROL*

8.10.01 Another major criticism is that the power to impose the penalties of compulsory retirement, removal and dismissal are with the Union Government and not with the State Governments. This, according to a few State Governments, vitiates their control over the All India Service officers. The latter, it is alleged, tend to think that they are under the disciplinary control of the Union Government and nott he State Government. In particular, appeals by All India Service officers against suspension by the State Governments should be decided by the President, not on the advice of the Union Executive which, it is alleged, is unable to ensure impartiality and objectivity, but on the advice of an independent body like the Union Public Service Commission.

8.10.02 In this connection, it is necessary to take note of certain unhealthy trends in the matter of discipline and control that have made their appearance in some States. An officer of an All India Service who is uncompromising in the matter of maintaining the probity and impartiality of administration not unoften finds himself on a path of collision with his political superiors. The latter, unable to discover any ground for disciplinary action against such an officer, adopt certain stock methods of "disciplining" such an officer and making him more pliable. One such method is to keep transferring an officer frequently so that he is forced to shift his residence from one station to another in rapid succession and with all the attendant inconvenience. Another method is to place him under suspension on some unsubstantiated or flimsy ground. Suspension, though not a penalty under the disciplinary rules, has a shattering effect on the morale of the officer suspended, as his reputation in Government and in his social circle at once gets sullied. Superseding an officer in the matter of promotion, and "punishment" posting to a difficult area are the other "disciplining" devices.

8.10.03 Further, instances have been observed of an All India Service officer being placed under suspension by a State Government and, on the officer, appealing against such action, the Union Government, after an examination of the circumstances involved, revoking the suspension orders. Such revocation has been resented by the political authorities in the State Government.

8.10.04 A writ petition filed recently in the Supreme Court and the Court's order thereon illustrate the conflict that could ensue if decisions taken in the public interest by an officer are unpalatable to some politically powerful lobby. In this case, a State Government transferred an Indian Administrative Service officer from a particular district charge. This officer, it appears, was instrumental in rescuing certain workmen from private companies which had employed them as bonded labour. On a writ petition being filed, the Supreme Court ordered that the officer should be re-instated in his original charge and that he should look after the interests of the workmen and see that they were provided with food, clothing, shelter and medical help.

8.10.05 The evidence presented to us by many witnesses shows that there are numerous instances of such gross misuse of the powers of transfer, promotion and posting and of placing an officer under suspension in the case of officers belonging to the All India Services. We have considered whether an independent tribunal should be set up to look into such cases. However, we find that this is not necessary, as officers belonging to the All India Services can present their complaints and grievances in these matters to the Central Administrative Tribunal established recently, and receive speedy redress.

8.10.06 We would suggest that the Union Government may try to dissuade State Governments from resorting to such undesirable practices. Specifically, we recommend that while examining an appeal against the suspension of an All India Service officer, the Union Government should invariably consult the UPSC and accept its advice unless palpably wrong. Such a provision may be included in the All India Services (Discipline and Appeal) Rules, *1969.*

8.10.07 The present procedures by which the Union Government consults the UPSC and, in cases relating to corruption, also the Central Vigilance Commission in all disciplinary cases and appeals of All India Service officers which fall within its purview, constitute, in our view, indispensable safeguard against their victimisation on political or per-

grounds. It has to be noted that the advice given by the UPSC or the Central Vigilance Commission are normally accepted by the Union Government. Such a system of ensuring justice and fairplay to officers is absent in many State Governments.

8.10.08 We do not recommend any change in the present disciplinary procedures relating to All India Service officers, except that the UPSC should be consulted in the matter of appeals against suspension.

8.10.09 It may be pointed out that officers of the All India Services, by reasons of their background, their academic qualifications, the tough selection process through which they pass and their aspirations for rising to the senior-most levels in the government, would regard even a threat of censure, the least minor penalty, as calamitous. On the other hand, the calibre of these officers is such that it is known that they do not generally succumb to undue pressures whether in giving advice or in taking decisions. As most State Governments have by now realised, the only way to get the best out of these officers is to have a forward looking programme of career management and training and not through such negative measures as compulsory retirement, removal and dismissal.

8.10.10 We would urge the State Governments to evolve, with the assistance of the Union Government, modern and more enlightened systems of incentives for the officers of the All India Service cadre. In particular, the political authorities should strive to create an atmosphere of mutual trust and cooperation *vis-a-vis* the civil servants by ensuring fair and just treatment to them and encouraging the qualities of honesty, fearlessness, independence of judgement and dedication to duty.

As emphasised by Sardar Patel in his letter dated April 27, 1948[10] addressed to Prime Minister Nehru on the subject of All India Services, ".. an efficient, disciplined and contented service, assured of its prospects as a result of diligent and honest work, is a *sine qua non* of sound administration under a democratic regime...."

8.10.11 The foregoing discussion illustrates a a point that we have sought to emphasise more than once in this report. It is unwise for a State Government to aim at complete control in an area like the All India Services where concerted action in accordance with well-formulated and well-directed policies are vital. Joint control cannot mean total control. Leadership and direction by the Union Government are indispensable.

8.10.12 We recommend that there ought to be regular consultations on the management of All India Services between the Union and the State Governments.

11. *ADVISORY COUNCIL FOR PERSONNEL ADMINISTRATION OF ALL INDIA SERVICES*

8.11.01 In its report on the "Machinery of the Government of India and its procedure of work", the Administrative Reforms Commission recommended that an Advisory Council on Personnel Administration may be set up to act as a feederline of new ideas and thinking on personnel administration. It should be composed of official and non-official experts in different aspects of personnel management, drawn from all over the country[11]. Such an Advisory Council was set up in September 1972 under the chairmanship of the Union Minister of State for Personnel with 15 members drawn from the fields of administration, training and management. The Council met twice and was wound up in 1974.

8.11.02 In April, 1985, a Working Group on Administrative Reforms and Personnel Policies was set up under the chairmanship of the Union Minister of State for Personnel to advise the Government of administrative reforms and personnel policies. The Working Group, besides the Chairman, had 15 members comprising the Union Minister of State for Defence, Union Cabinet Secretary, Union Secretaries for Home Affairs and Personnel, Chief Secretaries of a few State Governments, some senior heads of departments in the Union Government and a State Government, chairman of a public undertaking, an industrialist and two non-officials. The Working Group held a number of meetings and *inter alia* considered aspects like tenure, specialisation and mid-career planning for officers of the All India Servics. This Working Group too has been wound up.

8.11.03 We recommend that an Advisory Council for Personnel Administration of the All India Services may be set up, comprising entirely of the seniormost officers directly concerned with the issues to be deliberated. The Council may have the Union Cabinet Secretary as its Chairman and Union Secretaries in charge of individual All India Services and Chief Secretaries of State Governments as members. The Council may be serviced by the Union Department of Personnel & Training (Ministry of Personnel, Public Grievances & Pensions).

8.11.04 The Council will advise the Union and the State Governments. It should meet periodically and regularly and suggest solutions to the problems referred to it by the Union and the State Governments. It will be the responsibility of the Union Department of Personnel & Training to take follow-up action on the recommendations of the Council and secure the decisions of the Union Government.

8.11.05 The Council may also set up Study Teams of experts comprising officials drawn from the Union and the State Governments and some eminent non-officials to assist it in examining problems in the field of All India Services and suggest measures for overcoming them. Matters which the Advisory Council is unable to resolve could be placed before the Inter-Governmental Council recommended by us in Chapter IX.

8.11.06 Every cadre has the right to have its cadre management problems duly examined and sorted out by the cadre controlling authority without delay. In recognition of this principle, we suggest that the

10. Rao, B. Shiva; The Framing of India's Constitution; Volume IV : Pages 332-333.

11. Recommendation 17(6).

Advisory Council may address itself to the problems of the type raised by the Estimates Committee and which recently have been referred by the Union Government to a special Committee *vide* para 8.5.04 above. Certain other special cadre management problems which, we feel, should also be examined by the Advisory Council on a priority basis are outlined in the succeeding paragraphs.

12. *ENCADRING POSTS UNDER STATE GOVERNMENTS*

8.12.01 Certain broad criteria have been laid down for deciding whether a post under a State Government should be included in an All India Service or not. For example, in the case of the Indian Administrative Service, a post is encadred if its management content is more than its technical content. However, a number of posts like Director of Industries, Director of School Education, etc. which could more appropriately be held by technical officers are declared as senior duty posts for the IAS. This causes considerable dissatisfaction among the technical and other services in a State.

8.12.02 It is necessary to evolve more precise criteria for the encadrement of posts which will ensure fair promotional prospects for the other State services and at the same time prevent undue expansion and consequent dilution of quality of the All India Services.

8.12.03 At present, a State Government may add to the State cadre of an All India Service, for a period not exceeding one year, one or more posts carrying duties or responsibilities of a like nature to cadre posts. Such a post can be continued for a further period not exceeding two years with the approval of the Union Government. It has been suggested (*vide* para 8.2.11 above) that a State Government should have full powers to create such temporary cadre posts.

8.12.04 As superfluous posts can be excluded from a cadre during the triennial reviews of cadre strengths of All India Services, there is some force in the demand for full power to a State Government to make temporary additions to a cadre. This suggestion may be examined by the Advisory Council.

13. *FIELD EXPERIENCE*

8.13.01 The emphasis given at present on field experience *vide* paras 8.5.07 to 8.5.09 above seems inadequate. It has to be noted that officers engaged in desk work like policy-making and advising ministers should have had first-hand and uptodate experience of field work. However, this important aspect is not always kept in view in posting All India Service officers. Posts involving mere desk work are generally easier to manage than field posts and are therefore preferred. This tendency has been accentuated by the large increase in the States as well as at the Union level in the number of desk posts as against field posts.

8.13.02 In the circumstances, a system of postings and transfers needs to be evolved for All India Service officers so that field work keeps alternating with policy-making and advice till such time as the officers reach the seniormost levels in the State and the Union Governments. Further, it may be laid down that an officer appointed to a field post should continue in that post for a minimum period to be prescribed. Any deviation from the prescribed period should have the approval of a Committee of the Council of Ministers.

14. *PROBLEMS OF OFFICERS POSTED IN DIFFICULT AREAS*

8.14.01 Officers posted to remote and inaccessible areas find it difficult to maintain a proper standard of living because of the high costs in those areas. They also face problems in the matter of education of their children because of lack of facilities. Travel to their home towns is both time-consuming and expensive. Similarly, "outsiders" working in certain border States are discouraged by the State Governments from seeking permanent residence in those States.

8.14.02 It seems necessary that uniform and rational policies should be drawn up to adequately compensate officers working in difficult areas and for assisting such of them as wish to settle down permanently in the States to whose cadres they belong.

15. *PROMOTION*

8.15.01 For appointment to posts in the Union Government which are of the level of Joint Secretary and above, a procedure of empanelment is adopted. Among officers on offer from State Governments, only those who are empanelled are considered for posting. On the other hand, each State Government has its own procedures for promotion of AIS officers belonging to the State's cadres to supertime scales. This sometimes leads to an anomalous situation. An officer deemed fit by the State Government for holding a supertime scale post may not get empanelled by the Union Government for holding such a post and *vice versa*. It is understood that State Governments have not agreed to have a joint selection procedure along with the Union Government.

8.15.02 It seems essential that promotions at the State and the Union levels of All India Service officers should be coordinated and conflicting situations avoided. The Advisory Council may evolve measures to ensure this.

16. *OTHER CADRE-MANAGEMENT ASPECTS*

8.16.01 The Advisory Council may *inter alia* examine the following aspects :

(i) In order to maintain the all-India character of these services, State-wise reviews of "outsider-insider" ratios and of the steps to be taken to keep the ratios at a desirable level needs to be undertaken.

(ii) State-wise career development plans for the members of the All India Service cadres which *inter alia* offer scope for greater professionalisation need to be evolved.

(iii) Problems of inadequate promotion and deployment opportunities in small States and formation of multi-State or Zonal cadres to meet these problems need to be examined.

(iv) Periodical reviews of the system of performance appraisal of members of All India Services should be evolved.

17. *CREATION OF NEW ALL INDIA SERVICES*

8.17.01 We agree with the recommendations of the Estimates Committee, *vide* para 8.5.02 above, in regard to the constitution of the Indian Service of Engineers, the Indian Medical and Health Service and an All India Service for Education. As regards constituting All India Services in other sectors like agriculture, cooperation, industry, etc. we would suggest as follows.

8.17.02 To begin with, a pool of officers drawn from the Union and the Various State Governments should be created in a sector. These officers should be available for posting for fixed tenures and with attractive special pays in Governments other than their own. After the pool system is worked successfully for a few years, steps could be taken to constitute an All India Service in that sector. As already pointed out, the officers belonging to a pool will gain in experience, broaden their outlook and facilitate cooperation between the Union and the State.

18. *AGE OF RETIREMENT*

8.18.01 Under the All India Services Act, 1951, the Union Government has laid down the age of superannuation for members of All India Services as 58 years [12]. This is also the age of superannuation of employees of the Union Government and those of State Governments excluding, however, the Governments of Kerala and Nagaland. The Union Government requested us to examine, as part of administrative relations between the Union and the States, the implications of having a higher age of superannuation for members of All India Service officers than that prescribed for employees of some of the State Governments. This reference to us was made in the context of the discussion in Parliament in March 1985 in regard to the need to evolve a national policy on retirement age.

8.18.02 The Governments of Kerala and Nagaland have adopted the age of superannuation as 55 years. Neither Government has informed us of any problem arising from the fact that the age of superannuation for the State services varies from that for the members of the All India Services serving in the State. In our view, this variation in the ages of superannuation of State and All India Service Officers in the two States does not, by itself, call for a review of the age of superannuation of All India Service officers. It would be for the two State Governments to consider whether or not they should fall in line with the other State Governments by removing the disparity.

[12]. Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

8.18.03 The question whether there should be a uniform age of superannuation for the employees of the Union and the State Governments may be considered, after appropriate studies, by the Inter-Governmental Council recommended in Chapter IX.

19. *RECOMMENDATIONS*

8.19.01 (i) The All India Services are as much necessary today as they were when the Constitution was framed and continue to be one of the premier institutions for maintaining the unity of the country. Undoubtedly, the members of the All India Services have shown themselves capable of discharging the roles that the framers of the Constitution envisaged for them.

(ii) Any move to disband the All India Services or to permit a State Government to opt out of the scheme must be regarded as retrograde and harmful to the larger interest of the country. Such a step is sure to encourage parochial tendencies and undermine the integrity, cohesion, efficiency and coordination in administration of the country as a whole.

(iii) The All India Services should be further strengthened and greater emphasis given on the role expected to be played by them. This can be achieved through well-planned improvements in selection, training, deployment, development and promotion policies and methods. The present accent on generalism should yield place to greater specialisation in one or more areas of public administration. Training and career development policies should be geared to this objective. Disciplinary control should aim at nurturing the best service traditions and relentless weeding out of those who fail to make the grade. Finally, there should be greater coordination and periodical dialogue between the authorities in the Union and the State Government who are responsible for the management of these services.

(Paras 8.7.07 to 8.7.10)

8.19.02 (i) There should be an element of compulsion in the matter of deputation of officers of All India Services to the Union. The informal practice followed by the State Governments of obtaining the consent of the officers who are to be sent on deputation should be given up.

(ii) Every All India Service officer, whether he is a direct recruit or a promoted officer, should be required to put in a minimum period under the Union Government and, for this purpose, the minimum number of spells of Union deputation should be laid down for direct recruits and promoted officers, separately.

(iii) State Governments should offer officers for Union deputation only after screening them. The Union Government may lay down a screening mechanism and the criteria to be followed for the purpose by every State Government. An officer so offered should not be rejected by the Union Government, except on grounds to be communicated to the State Government concerned.

(iv) Among those on deputation to the Union from a State and among those serving in the State,

the number of 'insiders' and 'outsiders' should be almost equal.

(Para 8.9.03)

8.19.03 It should be ensured, through strict observance of the tenure principle, that the services of the best among All India Service officers are not monopolised by the Union Government but are also readily available to the State Governments to whose cadres they belong.

(Para 8.9.04)

8.19.04 The Union Government may dissuade State Governments from using the powers of transfer, promotion, posting and suspension of All India Service officers in order to 'discipline' them.

(Para 8.10.06)

8.19.05 While examining an appeal against the suspension of an All India Service officer, the Union Government should invariably consult the Union Public Service Commission and accept its advice unless palpably wrong. Such a provision may be included in the All India Services (Discipline and Appeal) Rules, 1969.

(Para 8.10.06)

8.19.06 No change is necessary in the present disciplinary procedures relating to All India Service officers, except in the matter of suspension as recommended in para 8.19.05 above.

(Para 8.10.08)

8.19.07 (i) State Governments, with the assistance of the Union Government, may evolve modern and more enlightened systems of incentives for the officers of the All India Service cadres.

(ii) The political authorities in each State should strive to create an atmosphere of mutual trust and cooperation *vis-a-vis* the civil servants by ensuring fair and just treatment to them and encouraging the qualities of honesty, fearlessness, independence of judgement and dedication to duty.

An efficient, disciplined and contented service, assured of its prospects as a result of diligent and honest work is a *sine qua non* of sound administration under a democratic regime.

(Para 8.10.10)

8.19.08 (i) There should be regular consultations on the management of All India Services between the Union and the State Governments. For this purpose, an Advisory Council for Personnel Administration of the All India Services may be set up.

(ii) The Council may have the Union Cabinet Secretary as its Chairman and Union Secretaries in charge of individual All India Services and Chief Secretaries of State Governments as members.

(iii) The Council may be serviced by the Union Department of Personnel & Training.

(Paras 8-10-12 and 8-11-03)

8.19.09 (i) The Advisory Council recommended in para 8.19.08 will advise the Union and the State Governments. It should meet periodically and regularly and suggest solutions to the problems referred to it by the Union and the State Governments.

(ii) The Union Department of Personnel & Training may take follow-up action on the recommendations of the Council and secure the decisions of the Union Government.

(iii) The Council may set up study teams of experts for examining specific problems.

(iv) Matters which the Advisory Council is unable to resolve may be placed before the Inter-Governmental Council.

(Paras 8.11.04 to 8.11.05)

8.19.10 The Advisory Council may address itself to the problems of the type raised by the Estimates Committee and which recently have been referred by the Union Government to a Special Committee.

(Para 8.11.06)

8.19.11 The following cadre management problems should be specially examined by the Advisory Council on a priority basis. :

(i) More precise criteria have to be evolved for the encadrement of posts which will ensure fair promotional prospects for the other State services and at the same time prevent undue expansion and consequent dilution of quality of the All India Services.

(Para 8.12.02)

(ii) Whether a State Government may be given full power to make temporary additions to an All India Service cadre.

(Para 8.12.04)

(iii) A system of postings and transfers has to be evolved for All India Service officers so that field work keeps alternating with policy-making and advice, till such time as the officers reach the seniormost levels in the State and the Union Governments. Also, an officer appointed to a field post should continue in that post for a minimum period to be prescribed. Any deviation from the prescribed period should have the approval of a Committee of the Council of Ministers.

(Para 8.13.02)

(iv) Uniform and rational policies have to be drawn up to adequately compensate officers working in difficult areas and for assisting such of them as wish to settle down permanently in the States to whose cadres they belong.

(Para 8.14.02)

(v) Promotions at the State and the Union levels of All India Service officers have to be coordinated and conflicting situations avoided.

(Para 8.15.02)

(vi) To ensure the all-India character of these services, State-wise reviews have to be prescribed so that "outsider-insider" ratios are maintained at a desirable level.

(Para 8.16.01)

(vii) State-wise career development plans for the members of the All India Service cadres which *inter alia* offer scope for greater professionalisation have to be evolved.

(Para 8.16.01)

(viii) Problems of inadequate promotion and deployment opportunities in small States and formation of multi-State or Zonal cadres to meet these problems need to be examined.

(Para 8.16.01)

(ix) Periodical review of the system of performance appraisal of members of All India Services should be evolved.

(Para 8.16.01)

8.19.12 As recommended by the Estimates Committee, the Union Government may persuade the State Governments to agree to the constitution of the Indian Service of Engineers, the Indian Medical and Health Service and an All India Service for Education.

(Para 8.17.01)

8.19.13 To constitute All India Services in sectors like agriculture, cooperation, industry, etc.

(i) to begin with, a pool of officers drawn from the Union and the various State Governments may be created in a sector;

(ii) these officers may be made available for posting for fixed tenures and with attractive special pays in Governments other than their own; and

(iii) after the pool system is worked successfully for a few years, steps may be taken to constitute an All India Service in that sector.

(Para 8.17.02)

8.19.14 The question whether there should be a uniform age of superannuation for the employees of the Union and the State Governments may be considered, after appropriate studies, by the Inter-Governmental Council recommended in Chapter IX.

(Para 8.18.03)

CHAPTER IX

INTER-GOVERNMENTAL COUNCIL— ARTICLE 263

CONTENTS

CHAPTER IX

INTER-GOVERNMENTAL COUNCIL—ARTICLE 263

1. *INTRODUCTION*

9.1.01 Framing of policies and their implementation are two of the most important functions of government. If policy and its implementation are discordant, governance gets distorted.

9.1.02 In a dual polity, coordination of policies and their implementation become extremely important, specially in view of large areas of common interest and shared action. This can only be done through a sustained process of contact, consultation and interaction, for which a proper forum is necessary.

9.1.03 The executive powers of the Union and States are normally co-extensive with their legislative powers. In regard to matters in the Concurrent List, a Union law prevails over a State law to the extent of repugnancy. However, the fact remains that matters in the "Concurrent List" are of 'common interest' to the Union and the States. Even the division of powers between the Union and States in relation to matters in List I and List II is not absolute. Several Entries in the Union List expressly overlap or control certain Entries in the State List. From a functional aspect, basic issues of national policy in all spheres of overlapping jurisdiction are of common Union-State concern.

9.1.04 Another unique feature of our system is that, for securing implementation of many of its laws and policies, the Union depends on the machinery of the States, particularly in the concurrent sphere. The Union can entrust its executive functions in the manner laid down in Article 258 to the State Governments or their agencies. The States may also entrust their executive functions, with the consent of the Union, to the Government or agencies of the Union (Article 258A). The States too, are dependent on the Union for fiscal resources, administrative assistance and in several other ways to enable them to discharge their responsibilities. Such inter-dependence is inevitable, more so in a large, diverse and developing society as ours.

9.1.05 The Constitution gives overriding powers to the Union to secure compliance with its laws and to remove any impediment or prejudice to the exercise of the executive power of the Union by any executive action of a State (Articles 256 and 257). These are, however, extreme steps which should not be contemplated in the ordinary course of inter-governmental affairs. The normal way of resolving such problems and coordinating policy and action in a democratic two-tier polity, is through collective thinking, discussion and persuasion between the political executives of the Union and States. For that purpose, proper institutional arrangements are essential. There is no high-level coordinating forum other than the Inter-State Council envisaged in Article 263 of the Constitution where such problems can be sorted out.

9.1.06 The provisions of Article 263 are almost similar to those of Section 135 of the Government of India Act, 1935. The latter provided for the establishment of an Inter-Provincial Council with duties identical with those of the Inter-State Council under Article 263. At the time of framing of Section 135, it was felt that "if departments or institutions of coordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education and public health and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-governmental consultation". It was also intended that an Inter-Provincial Council should be set up as soon as the provincial autonomy provisions of the Government of India Act, 1935, came into operation. The Council was a device for facilitating inter-Provincial cooperation.

9.1.07 There is another historical factor which underscores the urgency of setting up an all-embracing Inter-State Council. Before 1967, it was easier to resolve differences or problems that arose between the Union and States, at the party level, because the same party was in power in the Union and the States. Since 1967, parties or coalitions of parties other than the one running the government at the Union, have been in power in several States. These State Governments of diverse hues have different views on regional and inter-State problems. In such a situation, the setting up of a standing Inter-State Council with a comprehensive charter under Article 263 has become an imperative necessity.

9.1.08 New areas of national concern are emerging with economic growth, technological development and socio-political changes. The rapidly expanding governmental functions have brought in their wake increasing inter-dependence. Routine problems, which arise in the day-to-day working, are sorted out through discussions and inter-action at various levels of bureaucracy. More important problems which cannot be resolved at the bureaucratic level, are settled through discussions between the concerned Ministers of the Union and of the States. However, there are problems of still greater importance involving basic issues of national policy. For resolution of such problems and ensuring coordination of policy and action on matters of common interest, through a process of collective consideration, discussion and persuasion by the political heads of the Union and States, the Constitution gives to the President power to establish an inter-governmental forum called the Inter-State Council.

2. *ARTICLE* 263

9.2.01 Article 263 provides—

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

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure".

9.2.02 Under clause (a), the duty that can be assigned to the Council is only of 'inquiring' into and 'advising' upon inter-State disputes. The implication is that the Council cannot be authorised under this Article to adjudicate such disputes.

9.2.03 Under clause (b), all subjects in which the States *inter se* or the Union and one or more States have a common interest, can be investigated and discussed by the Council. Under clause (c), the function of the Council would be to make recommendations upon any subject of common interest referred to in the preceding clause, and in particular, it can recommend for better coordination of policy and action with respect to that subject. Clauses (b) and (c) read together, make it clear that the Council to be established by the President, is not merely to be a deliberative body but also one competent to investigate, enquire and make recommendations. It is noteworthy that the investigative, deliberative and recommendatory duties, which can be conferred on the Council under clauses (b) and (c), are restricted to "subjects in which some or all of the States or the Union and one or more of the States have common interest". The Council formed under this Article is basically an advisory and consensus-seeking body.

9.2.04 The imperatives of planned development led to early recognition of the need for suitable institutional arrangements. The National Development Council was constituted under an executive order, instead of Article 263, to meet this felt need.

3. *NATURE OF THE PROBLEM*

9.3.01 The general complaint is that the President has not adequately used the powers given to him by the Constitution to establish a permanent forum having comprehensive jurisdiction for mutual consultation and coordination of policy and action on all matters of common interest falling within the purview of clauses (b) and (c) of Article 263.

9.3.02 It is true that a few bodies have been set up under Article 263 with respect to limited issues such as Health[1], Local-self Government[2] and Sales Tax[3]. Such sectoral bodies can hardly serve the purpose of overall coordination of policy and action on all issues of national importance. They do not provide a structure for investigating and resolving multi sectoral inter-governmental problems.

9.3.03 Sporadic meetings at the Ministerial and official levels, also, do not provide an effective forum. These arrangements, being *ad hoc* in nature, have no means of ensuring follow-up action or its continuity.

9.3.04 The Administrative Reforms Commission recommended the setting up of an Inter-State Council, to begin with for a period of two years. They recommended that the Inter-State and Union-State differences should be settled through mutual discussions and, to the extent possible, these discussions should be held in camera. While agreeing that the Inter-State Council should deal with problems relating to or arising out of the Constitution, legislative enactments, administration and finance, it did not want the Inter-State Council to deal with matters in the purview of the National Development Council.[4]

9.3.05 We recommend that an Inter-State Council charged with duties set out in clauses (b) and (c) of Article 263 should be formed. In order to reflect its true character and differentiate it from other sectoral bodies that have been set up under this Article, it may be called the Inter-Governmental Council (IGC).

9.3.06 The Administrative Reforms Commission submitted its report in 1969. Since then events have moved fast and tremendous socio-economic and political changes have taken place in the country. In the present context we are convinced that a permanent body is an imperative necessity and its constitution is overdue. However, we agree with the Administrative Reforms Commission that the proposed Inter-State Council should not concern itself with matters relating to socio-economic planning and development for which we have recommended a separate body (vide paragraph 9.4.07 below).

4. *SCOPE OF THE COUNCIL*

9.4.01 Most of the State Governments, some political parties and eminent persons are of the view that the proposed Council should have only such investigative, deliberative and recommendatory functions as would fall within the ambit of clauses (b) and (c) of Article 263. Only two State Governments and some others have suggested that Article 263 be amended and reformulated so as to ensure—

1. Ministry of Health, Notification No. F-6-1/51-P, dated August 9, 1982.

2. By order dated September 6, 1954, the President of India invoked Article 263 for establishing the Central Council of Local-Self Government to consider and recommend broad lines of policy in regard to matters concerning local-self government in all its aspects throughout the country.

3. Ministry of Finance (Dept. of Revenue) Order No. GSR 238, dated February 1, 1968 as amended by Order Nos GSR 431 (A), dated October 9, 1972, GSR 324 (E), dated June 6, 1975.

4. Administrative Reforms Commission Report on Centre State Relationships : Chapter V. Recommendations 15 and 16 and Paragraph 5.

(i) that it is obligatory for the President to establish an inter-State Council on a permanent basis;

(ii) that the Council has a wider role including that of an appellate forum against the decisions of the Union affecting one or more States; and

(iii) that the Council is consulted with respect to several other matters such as appointment of Governors and other constitutional functionaries, imposition of President's rule etc.

A few have suggested that Inter-State and Union-State disputes should also be considered by the Council.

9.4.02 It is an accepted maxim that responsibility and authority should go together. In making appointments of constitutional functionaries such as Governors, Comptroller and Auditor General, Chief Election Commissioner, Chairman of the Union Public Service Commission, the President abides by the advice of the Union Council of Ministers, who, in turn, are accountable for the same to Parliament. If, for making of these appointments, it is provided that the Inter-State Council, consisting of the political executives of the States should also be consulted, it will politicise these appointments. Eminent persons for fear of their names being debated in such a Council, where there may be political pulls and pressures, will be deterred from accepting these offices. If the Council is involved in the process of making these appointments, it is sure to dilute the accountability of the Union Executive to Parliament.

9.4.03 In the Chapter on Emergency Provisions we have dealt with the suggestion that the Inter-State Council should be consulted before proclaiming President's Rule under Article 356(1). For reasons given therein, we are unable to support this suggestion[5].

9.4.04 We are of the view that the Council which we are recommending should be charged with duties in broad terms embracing the entire gamut of clauses (b) and (c) of Article 263. This is essential to avoid repeated references to the President for piecemeal orders under Article 263 authorising the Council to deal with specific issues as and when they crop up.

9.4.05 The Council will be a recommendatory body. It will not therefore in any way erode or encroach upon the responsibilities and powers which, under the Constitution, are the exclusive concern of the Union and the States, respectively.

9.4.06 Some States have asked for abolition of the National Development Council. One State has suggested that, in addition to the Inter-State Council, there should be a separate body called the National Development and Planning Council. We have considered in detail the various issues relating to Economic and Social Planning in Chapter XI. After carefully considering the various suggestions and pros and cons of the issue, we are of the view that the Inter-Governmental Council which we are proposing in this Chapter will deal with matters other than socio-economic planning and development.

5. Chapter VI; Paragraph 6.7.05.

9.4.07 We reiterate the recommendations made in Chapter XI that the separate identity of the National Development Council should be maintained. However, we recommend that its status should be formalised and duties re-affirmed through a Presidential Order passed under Article 263 and it be renamed as National Economic and Development Council (NEDC). This issue has been cnonsidered in detail in the Chapter on "Economic and Social Planning".

5. *PROCEDURES*

9.5.01 The Inter-Governmental Council should evolve guidelines to identify and select issues to be brought up before it. The Council should take care to ensure by a process of screening and selection that only such matters of national importance relating to subjects of common interest are brought before it as would fall within the ambit of clauses (b) and (c) of Article 263; otherwise, there is every possibility of its being swamped with a large number of references which might stultify its working. Bilateral or regional issues may be considered by the Zonal Councils.

9.5.02 Voting in any form should be avoided. All advisory decisions should be taken on the basis of consensus. No rigid procedure, e.g. approval by at least two-thirds of the members need be laid down for determining whether a consensus has been reached. The discussions in the Council should be conducted in a spirit of mutual accommodation, comity and compromise.

9.5.03 The meetings, proceedings and deliberations of the Council should be held in camera, away from the publicity normally associated with the meetings at this level. We reiterate the caution sounded by the Administrative Reforms Commission that a "word uttered in public is not capable of recall, but the one uttered in discussion it is possible to review and reconsider. The matter then does not become one of prestige, but remains one which it is possible to settle by mutual discussion."[6]

9.5.04 It is expected that this Council, working within such an environment, will be able to build up mutual trust and confidence and will soon emerge as the major instrument for discussing at the national level policies and actions affecting inter-governmental relations.

9.5.05 The Council should have independent and adequate secretariat support which will enable various issues to be considered in depth. It will also devise procedures to regulate the conduct of its business. However, it will be advantageous if the procedures to be followed are modelled on the lines of cabinet meetings, ensuring that all points of view, after analysis by the secretariat, are placed before the Council for consideration. It would also ensure necessary confidentiality.

6. *ORGANISATION*

9.6.01 Almost all the suggestions are in favour of a Council with Prime Minister as the Chairman and Chief Ministers as Members. The Administrative Reforms Commission also made similar recommendations. We share this view.

6. Administrative Reforms Commission Report on Centre State Relationships : Chapter V, Paragraph 1.

9.6.02 The Council should consist of a General Body assisted by a smaller Standing Committee. The General Body itself need not go into all the matters referred to it. Normally, all references should, in the first instance, go before the Standing Commitee. If a matter is considered sufficiently important for consideration by the General Body, the Standing Committee may refer it to them.

9.6.03 The General Body should consist of :—

(a) Prime Minister —Chairman

(b) All Chief Ministers —Members

(c) All Union Cabinet Ministers (or Union Ministers dealing with subjects of common interest to the Union and States). —Members

This Council shall meet at least twice a year. All its meetings will be held in camera.

9.6.04 The composition of the Standing Committee should be as under :—

(a) Prime Minister —Chairman

(b) Six Chief Ministers, one from each Zone selected annually —Members

(c) Six Union Cabinet Ministers to be nominated by Prime Minister. —Members

9.6.05 Prime Minister may nominate a Cabinet Minister to preside over the meetings of the Standing Committee when he is unable to attend himself. But there is merit in making it a rare contingency. The Committee should meet *at least* four times a year. All its meetings should be held in camera. If any member of the General Body wants to participate in any of meetings of the Standing Committee, he may do so with the permission of the Chairman.

9.6.06 The Inter-Governmental Council and its Standing Committee should be able to set up *ad hoc* Sub-Committees to investigate special matters. For instance, a Sub-Committee of legal experts could be set up by the Inter-Governmental Council to suggest a model Bill for regulating elections to local self-governing bodies, panchayats, etc. While considering such a suggestion in the Inter-Governmental Council, the States could agree to get legislations based on the model "Bill" enacted by their State Legislatures or agree to get the requisite resolutions passed by their legislatures to enable Parliament to enact it under Article 252(1) of the Constitution.

7. *COUNCIL SECRETARIAT*

9.7.01 The pre-requisites for the smooth and proper functioning of the Council are :—

(a) an independent permanent secretariat;

(b) meetings in camera;

(c) adequate documentation; and

(d) preparation of papers for consideration of the General Body and the Committee.

9.7.02 Without an independent permanent secretariat, the Council will not be able to establish its credibility. Considering the nature of meetings and the level of participants, the Council's secretariat should be suitably staffed and modelled on the Union Cabinet Secretariat. It will have a difficult role to play. Besides deciding on the issues for consideration of the Committee and for the General Body, the Secretariat will be required to maintain constant liaison with the Union and States.

9.7.03 One of the important tasks of the Council Secretariat will be to prepare detailed documentation on various issues for discussion before the Council or its Standing Committee. Some of the cases may go into complex inter-Governmental matters, where opinions from different places may have to be sought. The Secretariat should, therefore, have adequate time for preparing the relevant documents. These documents should be prepared in the same manner as papers for consideration of the Union Cabinet. Practices and procedures laid down for Cabinet meetings may be followed by the General Body of the Inter-Governmental Council. The Standing Committee of the Inter-Governmental Council may follow the procedures of the Cabinet Sub-Committee meetings.

8. *ZONAL COUNCILS*

9.8.01 Majority of the replies to the Commission's questionnaire have pointed out that the Zonal Councils have not been able to achieve the objectives for which they were set up. We also agree that most of the Zonal Councils have not been able to fulfil their aims and objectives. It may be useful to consider briefly the reasons for this failure.

9.8.02 Five Zonal Councils were set up under the States Reorganisation Act, 1956.[7] In the northeast, the the North Eastern Council (NEC) was set up under the North Eastern Council Act, 1971.[8] Immediately after the setting up of Zonal Councils, there were many residuary problems arising out of the reorganisation of States, which required to be sorted out. The initial enthusiasm after the formation of the Zonal Councils subsided gradually. Moreover, as one party was in power both in the Union and the States for nearly a decade after the setting up of the Zonal Councils, it was considered more convenient for the Union and the States to sort out their problems through party channels instead of the Zonal Councils.

9.8.03 One of the main reasons for failure of Zonal Councils is the absence of their own competent, independent secretariat (except that of the NEC). From

7. A. Northern Zonal Council consisting of Harayana, Punjab, Himachal Pradesh, Rajasthan and Jammu & Kashmir and the Union Territories of Chandigarh and Delhi.

B. Central Zonal Council consisting of Uttar Pradesh and Madhya Pradesh.

C. Southern Zonal Council consisting of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala and the Union Territory of Pondicherry.

D. Western Zonal Council consisting of Gujarat, Maharashtra, Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli.

E. Eastern Zonal Council consisting of Bihar, West Bengal, Orissa and Sikkim.

8. North Eastern Council consisting of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram.

1957 to 1963 the five Zonal Councils were functioning with the help of five separate secretariats as intended by the Act (Section 19 of the States Reorganisation Act). From 1963, the Secretariat staff, other than the Secretary, of all five Zonal Councils has been centralised at Delhi. During the seven year period from 1957-63, 33 meetings of different Zonal Councils were held (average being 4.7 meetings per year). During the period from 1963 to 1985 about 51 meetings were held (average 2.2 per year). With centralisation of the Secretariat staff of the Zonal Councils, the Secretariat of the Zonal Councils has virtually become a part[9] of the Ministry of Home Affairs.

9.8.04 The agenda papers for the Zonal Councils are prepared on the basis of suggestions received from different Union Ministries and from the concerned State Governments, only after they are scrutinised and approved by the Ministry of Home Affairs. Under the States Reorganisation Act, one of the Chief Secretaries in each Zone is the *ex-officio* Secretary of the Zonal Council by rotation. The Secretariat having virtually become part of the Ministry of Home Affairs, the Secretaries of the Zonal Councils have ceased to play an effective role.

9.8.05 Over the years, a tendency has developed to exclude controversial and sensitive subjects from the agenda of the Zonal Councils. Too many items in the agenda and meetings at infrequent intervals have also diluted the effectiveness of the meetings. On an average, 20 items had been discussed in different meetings, held usually for a day. As a result, points discussed in Zonal Councils mainly relate to vague assertions on which States rarely disagree. The Union Home Minister who is the Chairman of all the Zonal Councils finds it extremely difficult to devote time to all of them.

9.8.06 Section 21 of the States Reorganisation Act, 1956, spells out the functions of the Zonal Councils. Broadly, it covers discussions and recommendations with regard to matters of common interest in the field of economic and social planning matters concerning water disputes, linguistic minorities or inter-State transport and any matters connected with or arising out of reorganisation of States under the States Reorganisation Act.

9.8.07 The functions of Zonal Councils cover mostly the functions envisaged in Article 263(c) of the Constitution. It is our considered view that the Zonal Councils should be reactivated so as to work in the respective Zones in the same manner as the IGC. The ambit of clauses (a), (b) and (c) of Article 263 is wide enough to cover the functions laid down in Sub-Sections (1) and (2) of Section 21 of the States Reorganisation Act. In fact the scope of Article 263 is wider as it includes provisions for investigation and enquiry in matters of common interest. The Zonal Councils should, therefore, be constituted afresh under Article 263 by the same order by which the IGC is established. The North Eastern Council (NEC) has been set up under a separate statute. It has its own secretariat. It can function as the Zonal Council for the North Eastern States in addition to its existing functions. Necessary amendments may be carried out in the States Reorganisation Act and the North Eastern Council Act for this purpose.

9. Joint Secretary of the Zonal Council is *ex-officio* Deputy Secretary in the Ministry of Home Affairs.

9.8.08 The Zonal Councils, after they are reconstituted under Article 263, will be constitutional bodies functioning in their own right. In order that the Councils may function without any inhibition or restrictions, they should not be declared, or even regarded notionally, as committees of the Inter-Governmental Council or as in any way subordinate to it.

9.8.09 The meetings of Zonal Councils, like those of the IGC, should be held in camera and at regular intervals, in any case not less than twice a year. The same procedure as in the case of IGC meetings may, as far as possible, be adopted for Zonal Council meetings.

9.8.10 It has been suggested in the succeeding paragraph that a Chief Minister for the Zone may become the Chairman of the Zonal Council by yearly rotation. It is, therefore, appropriate that the Secretariat of each of the Zonal Councils is located in the State capital of one of the States constituting the Zone. It will however be inconvenient to shift the Secretariat from State to State every year. It is, therefore, suggested that the Secretariat may be located in such State Capital as may be decided upon by the Inter-Governmental Council, in consultation with the State Governments of the Zone. For purposes of coordination and consultation in respect of matters which should come up before the Inter-Governmental Council, the Secretary of the Zonal Council should be in close touch with the Secretary of the Inter-Governmental Council. With these measures, it should be possible to rejuvenate the Zonal Councils as supplements to the IGC, for sorting out bilateral and regional issues.

9.8.11 The Zonal Councils should provide the first level of discussion of most, if not all, of the regional and inter-State issues. Every endeavour should be made to sort out as many as possible of these issues in the Zonal Councils, thereby reducing the burden of the Inter-Governmental Council. The Inter-Governmental Council may also refer some of the issues directly raised before it to the Zonal Councils. Instead of the Union Home Minister, a Chief Minister from the Zone may become the Chairman of the concerned Zonal Council by rotation on a yearly basis, except in the case of the NEC. Meetings of the Zonal Councils (at least twice a year) may be held in the State of which the Chief Minister is the Chairman.

9. *CONCLUSION*

9.9.01 The spirit of cooperative federalism requires proper understanding and mutual confidence between the Chief Executives of the Union and State Governments. The IGC and the Zonal Councils can provide suitable opportunities for discussing many of the problems of common interest. This type of working relationship should be considered desirable and essential for the successful working of a dual polity with such large areas of inter-dependence.

9.9.02 A group of senior statesmen, meeting in camera free from the pressures of public glare, will presumably be able to see problems from a national perspective, which does not necessarily mean foregoing the interests of one's own State and region. Such a body, while being a formal institution, will also

retain the flexibility of a body working on mutual faith and trust, born out of the requirement of being kept informed and consulted on matters of national importance.

10. *RECOMMENDATIONS*

9.10.01 (a) A permanent Inter-State Council called the Inter-Governmental Council (IGC) should be set up under Article 263.

(b) The IGC should be charged with the duties set out in clauses (b) and (c) of Article 263, other than socio-economic planning and development.

(Paragraphs 9.3.05, 9.3.06 & 9.4.06)

9.10.02 The separate identity of the National Development Council should be maintained. However, its status should be formalised and duties reaffirmed through a Presidential order passed under Article 263 and it should be renamed as the National Economic and Development Council.

(Paragraph 9.4.07)

9.10.03 The Inter-Governmental Council will evolve guidelines for identification and selection of issues to be brought before it and will take care to ensure that only such matters of national importance relating to subjects of common interest are brought up before it as would fall within the ambit of clauses (b) and (c) of Article 263.

(Paragraph 9.5.01)

9.10.04 (a) The Council will consist of a General Body assisted by a smaller Standing Committee.

(Paragraph 9.6.02)

(b) The General Body will consist of :

1. Prime Minister	— Chairman
2. All Chief Ministers	— Members
3. All Union Cabinet Ministers (or Union Ministers dealing with subjects of common interest to the Union and States).	— Members

(Paragraph 9.6.03)

(c) The Standing Committee will consist of :—

1. Prime Minister	— Chairman
2. Six Chief Ministers, one from each zone selected annually.	— Members
3. Six Union Cabinet Ministers to be nominated by the Prime Minister.	— Members

(Paragraph 9.6.04)

(d) The General Body of the IGC will meet at least twice a year.

(Paragraph 9.6.03)

(e) The Standing Committee should meet at least four times a year.

(Paragraph 9.6.05)

9.10.05 Every meeting of the General Body will be held in camera and its proceedings will be conducted as in Union Cabinet meetings. Practices and procedures laid down for Cabinet meetings may be followed by the General Body.

(Paragraphs 9.5.03, 9.5.05, 9.6.03 & 9.7.03)

9.10.06 (a) Matters proposed to be referred to the General Body will first be discussed in the Standing Committee. Normally, such matters only as are referred by the Standing Committee will be taken up for discussion in the General Body. All other matters will normally be considered and disposed of at the level of Standing Committee.

(b) Meetings of the Standing Committee will be held in camera.

(c) Any member of the General Body may attend a Standing Committee meeting with permission of the Chairman of the Committee.

(d) The Prime Minister may nominate any other Union Cabinet Minister to preside over the Standing Committee meetings when he (i.e. the Prime Minister) is not present.

(Paragraphs 9.6.02. & 9.6.05)

9.10.07 The Inter-Governmental Council and its Standing Committee should be able to set up *ad hoc* Sub-Committees to investigate special matters.

(Paragraph 9.6.06)

9.10.08 Procedure adopted for the Standing Committee meetings will, as nearly as may be, be the same as for Cabinet Sub-Committee meetings.

(Paragraph 9.7.03)

9.10.09 There should be a permanent Secretariat to the Council.

(Paragraph 9.7.02)

9.10.10 (a) The five Zonal Councils which were constituted under the States Reorganisation Act, 1956 should be constituted afresh under Article 263.

(b) The North Eastern Council set up under the North Eastern Council Act should function as the Zonal Council for the North-Eastern States, in addition to its existing functions.

(Paragraph 9.8.07

9.10.11 In the case of the five Zonal Councils a Chief Minister may be elected Chairman annuall by rotation. In the case of the North Eastern Counci the existing arrangements should continue.

(Paragraph 9.8.

9.10.12(a) The Secretariat of each Zonal Council may be located in such State capital of one of the States constituting the Zone as may be decided upon by the IGC in consultation with those State Governments.

(b) The Secretary of the Zonal Council should be in close touch with the Secretary of the IGC for purposes of coordination and consultation in respect of matters which should come up before the IGC.

(Paragraph 9.8.10)

9.10.13 The Zonal Councils should provide the first level of discussion of most, if not all, of the regional and inter-State issues. Every endeavour should be made to sort out as many as possible of these issues in the Zonal Councils, thereby reducing the burden of the Inter-Governmental Council. The Inter-Governmental Council may also refer some of the issues directly raised before it to the Zonal Councils.

(Paragraph 9.8.11)

9.10.14(a) The same procedure as in the case of IGC meetings may, as far as possbile, be adopted for Zonal Council meetings.

(b) The Zonal Council, may meet at least twice a year, in the State of which the Chief Minister is the Chairman.

(Paragraphs 9.8.09 & 9.8.11)

CHAPTER X

FINANCIAL RELATIONS

CONTENTS

CHAPTER X

FINANCIAL RELATIONS

1. *INTRODUCTION*

10.1.01 Mobilisation, sharing and utilisation of financial resources play a very crucial role in all systems of multi-tier government and can give rise to difficult problems of inter-governmental relations unless handled in a spirit of mutual understanding and accommodation.

10.1.02 In some of these systems, the national and lower tiers of government have concurrent powers in regard to certain taxes, borrowings and outlays. This concurrency of jurisdiction often results in serious economic and administrative problems which have to be sorted out through difficult negotiations, compacts or resort to courts.

10.1.03 In other bifurcated systems, there is clear-cut division of the powers of taxation and borrowings between the national and lower levels of government which, by its very nature, can rarely match their resources and needs. It requires a mechanism for adjusting the surpluses and deficits, and reducing unavoidable vertical or horizontal imbalances of different constituent units, through resource transfers.

10.1.04 India falls in the latter category. The Constitution allots separate legislative heads of taxation to the Union and the States. There are no taxes in the sphere of their concurrent jurisdiction. Borrowing and foreign exchange entitlements are controlled by the Union.

10.1.05 The Constitution envisages an institution of a quasi-judicial character, the Finance Commission, which is set up periodically, for advising the President, among other things, on the division of certain tax-revenues raised by the Union, between the Union and the States. The recommendations of the Finance Commission are based on certain norms evolved by it in respect of growth rates of taxes, levels of expenditure, returns on investment, etc. Since the Finance Commission is constituted only periodically, the assumptions made by it remain broadly 'static' during the period covered.

10.1.06 There is a second institution, the Planning Commission, set up by an executive order of the Union Government, which advises the Union Government regarding the desirable transfer of resources to the States over and above those recommended by the Finance Commission. Its recommendations cover, among other things, feasible changes in tax rates and efforts by both, quantum and allocation of borrowings between the Union and the States. Since the Planning Commission is a continuing body, its recommendations are based on 'dynamic' assumptions which take into account the changes in the economic structure.

10.1.07 Bulk of the transfer of revenue and capital resources from the Union to the States is determined largely on the advice of these two Commissions. During the Sixth Five-Year Plan (1980-85), about 41 per cent of total resources transferred from the Union to the States was done on the advice of the Finance Commission and over 43 per cent was done on the advice of the Planning Commission.

10.1.08 Apart from the above, the Union Government also makes certain other transfers to the States. These comprised 15 to 16 per cent of the total resources transferred from the Union to the States during the Sixth Plan period. Of the total revenue and capital resources raised by the Union and the States, the share of the two was roughly equal after these transfers.

10.1.09 A number of issues have been raised before us, some of which belong appropriately to the domain of the Finance Commission. It has to be recognised that, given our terms of reference, we have to examine basically the Constitutional arrangements between the Union and the States and their working. In the realm of financial relations, therefore, it is not expected of us to determine to what extent the sharing of revenues should be altered and in what manner the *inter se* allocations among the States made.

10.1.10 This Chapter has been divided into ten Sections, including the Introduction (Section 1). Section 2 of this Chapter gives a broad account of the historical evolution of Union-State financial relations and an outline of Union-State financial arrangements provided in the Constitution. Section 3 enumerates the various issues and problems raised in the Union-State financial relations. Section 4 contains a factual review of the trends in respect of growth in revenues and sharing of resources between the Union and the States. Section 5 deals with the suggestions for enlargement of States' resources by transferring more taxation powers to them. Section 6 deals with the issues in the enlargement of the shareable or divisible pool. In Section 7, the complaints regarding the pattern of devolution have been considered. Section 8 examines the various issues relating to the working of the Finance Commission mechanism. Sections 9 and 10 are devoted to the examination of the remaining issues, e.g., allegations regarding Union Government's decisions adversely affecting States' finances, indebtedness of States, overdrafts, sharing of capital resources and some operational irritants.

2. *HISTORICAL BACKGROUND*

10.2.01 A highly centralised system came into being with the take-over by the British Crown from the East India Company in 1858. The Governor-General-in-Council retained complete control over

Provincial resources as well as expenditure. The Provincial Governments remained entirely dependent on annual allotments by the Central Government for the maintenance of their administration. It was soon realised that decentralisation was necessary for governing a country of sub-continental dimensions like India and the first step in this direction was taken in 1870. The fiscal history of the next sixty years is very largely a process of gradual devolution of powers to the Provinces from the Central Government.

Montagu-Chelmsford Reforms

10.2.02 The Montagu-Chelmsford Report, which led to the passing of the Government of India Act, 1919, recognised the necessity of separating the resources of the Central and Provincial Governments to support Provincial enfranchisement. Under the Devolution Rules framed under the Act, customs, non-alcoholic excises including salt, general stamp duties, income tax and receipts from railways and posts and telegraphs, were assigned to the Government of India. Land revenue, irrigation charges, alcoholic excises, forest receipts, court fees, stamp duties, registration fee and certain minor sources of revenue were allotted to the Provinces.

10.2.03 Even then, this devolution of resources was criticised on the ground that the resources assigned to the Provinces did not have adequate growth potential and were insufficient for their rapidly increasing needs, whereas the Central revenues were capable of substantial expansion although its needs were relatively stationary. The working of the financial relations was, therefore, reviewed by a number of expert committees, particularly in early 1930's The provisions incorporated in the Government of India Act, 1935 were based on these expert studies.

The Government of India Act, 1935

10.2.04 The Government of India Act, 1935 constitutes the nex land-mark. It divided the revenue sources into three categories :

(i) Exclusively Federal.

(ii) Exclusively Provincial.

(iii) (a) Taxes levied by the Federal Government, but shared with the Provinces or assigned to them.

(b) Taxes levied by the Federal Government but collected and retained by the Provinces.

The scheme also envisaged grants-in-aid from the Centre to the Provinces in need of assistance as approved by the former. The Government of India Act, 1935 laid foundations for a system of elaborate but flexible financial arrangements between the Centre and the Provinces.

Basic Maxims

10.2.05 The long history of evolution of public finance in India shows very complex factors at work. However, one clearly discernible trend is that while it is wholly possible to divide the taxation powers and allocate resources, it is extremely difficult to establish a balance between needs and resources. The various stages of evolution helped confirm the basic maxims (i) that no decentralised government can be established without allocating to it sufficient financial powers, and (ii) that the Central Government is the appropriate authority to levy a tax where uniformity of rates was important and locale is not a guide to its true incidence.

Framing of the Constitutional Provisions

10.2.06 The period of Second World War was one of great strain on the Central finances. This was followed by the partition of the country. The Constituent Assembly commenced its work against a background of surpluses with the Provinces and financial stringency at the Centre. However, it was realised that once developmental activities were resorted to, the Provinces would not have adequate resources at their disposal.

10.2.07 Financial Relations between the Union and the States were considered by the Constituent Assembly in depth. The Union Powers Committee of the Assembly evolved a scheme which followed by and large the provisions of the Government of India Act, 1935. Fields of taxation were enumerated distinctly and placed in either the Union List or the State List. There was to be no concurrent field of taxation. Residuary powers of taxation were left with the Union. Recognising that most major sources of tax revenues were in the Union List, it recommended sharing of certain taxes with the States and assignment of certain taxes to them. After consideration in a joint sitting of the Union Powers Committee and the Union Constitution Committee, the scheme was incorporated in the report of the Union Constitution Committee

10.2.08 During the consideration of this report in this Constituent Assembly, it was suggested that the matter be referred to an Expert Committee on the Financial Provisions of the Union Constitution o go into the various issues relating to the distribution of available resources between the Union and State Governments. This Committee (Chairman : Nalini Ranjan Sarkar) was required to examine the existing provisions in the Government of India Act, 1935 relating to taxation and borrowing powers and their working during the preceding 10 years and to make recommendations. The Committee came to the conclusion that it was necessary to provide adequate resources to the States which, while not placing too great a strain on the Union, would enable them to take up useful schemes of welfare and development. The Committee recommended that total resources available should be distributed in adequate relation to the functions of the Union and the States so that the arrangements were not only equitable and in the general interest of the country, but also administratively feasible. The Committee felt that there should be no violent departure from the *status quo* and that while providing for as much uniformity as possible, the weaker units should be helped to maintain certain minimum services.

10.2.09 A major recommendation of the Expert Committee was to provide for the appointment of a Finance Commission, an independent expert body, to recommend allocation of proceeds of shareable

taxes between the Union and the States and among the States and to consider and make recommendations on other matters referred to it"

10.2.10 The Expert Committee's recommendation in regard to the Finance Commission was accepted, in substance, by the Drafting Committee.

10.2.11 The Drafting Committee's proposals, revised in the light of the conclusions arrived at in the Premiers' Conference, were discussed by the Constituent Assembly in October, 1949.

Constitutional Provisions in outline

10.2.12 Chapters I and II of Part XII of the Constitution contain the main provisions governing the Union-State financial arrangements. Of these, Articles 268 to 270 and 272 deal with taxes levied by the Union, the proceeds of which are either assignable to the States, or compulsorily or optionally sharable with the States. Article 275 provides for grants-in-aid of revenues made under a law by Parliament to States in need of assistance. Article 282 contains a provision for grants by the Union or a State for any public purpose. Articles 276 and 285 to 288 put certain limitations on the taxation powers of the States. Article 274 requires prior recommendation of the President to Bills affecting taxation in which the States are interested. Article 289 exempts the property and income of the States from Union taxation. Article 280 requires the constitution of a Finance Commission every five years or earlier. Clause (3) of this Article sets out the duties of the Finance Commission. Article 281 requires the recommendations of the Finance Commission together with an explanatory memorandum about the action taken thereon, to be placed before Parliament. Articles 292 and 293 define the borrowing powers of the Union and the States.

10.2.13 Financial arrangements under the Constitution have two main aspects. One relates to distribution of taxation heads, and the other to distribution of revenues and sharing of resources between the Union and the States. Articles 246, 248 and 265, read with the Legislative Lists I and II, constitute the core of the first aspect, while the main provisions relating to the second aspect are contained in Chapters I and II of Part XII of the Constitution.

Distribution of taxation powers

10.2.14 Legislative Lists I and II of the Seventh Schedule to the Constitution enumerate the general subjects of legislation separately from the heads of taxation. The distinction construed in the light of Articles 246 and 265 implies that no tax can be levied unless it is related to a specific head of taxation in List I or List II. The Constitution provides in Lists I and II, separate heads of taxation for the Union and the States. There is no head of taxation in the Concurrent List. This means, the Union and the States have no concurrent power of taxation. The residuary power of taxation vests in the Union. There are thirteen taxation heads comprised in Entries 82 to 92B in the Union List and nineteen taxation items comprised in Entries 45 to 63 of the State List. The detailed particulars of these Entries in List I and List II are given in Annexure X.1.

10.2.15 Allocation of the heads of taxation between the Union and the States is based on the broad principle that taxes which are location-specific and relate to subjects of local consumption have been assigned to the States. Those taxes which are of inter-State significance and where the tax-payer can gain or evade tax by shifting his habitat, or where the place of residence is not a correct guide to the true incidence of tax, have been vested in the Union. This clear-cut division of heads of taxation between the Union and the States has minimised the scope for conflict and litigation between them.

Distribution of Revenues

10.2.16 The taxation powers allocated to the Union and the States are mutually exclusive. But the scheme of accrual of revenues envisages total assignment to the States of the net proceeds of specified taxes and sharing of some others by them. This scheme contemplates :

(a) Certain stamp duties and duties of excise on medicinal and toilet preparations mentioned in the Union List are to be levied by the Union but collected by the States and the proceeds shall not form part of the Consolidated Fund of India but assigned to the States in which collected. (Article 268).

(b) Taxes mentioned in Article 269(1)[1] shall be levied and collected by the Union but assigned to the States, within which they are levied, as laid down in Article 269(2).

(c) Taxes levied and collected by the Union but shared with the States, viz., tax on non-agricultural income. (Article 270).[2]

(d) Taxes which are levied and collected by the Union but may be shared with the States, if Parliament by law so provides, viz., Union Excise Duties.[3] (Article 272).

(e) Taxes in the Union List levied, collected and retained by the Union subject to the exceptions mentioned above.

(f) Taxes in the State List, levied, collected and retained by the States.

---

1. (a) duties in respect of succession to property other than agricultural land; (b) estate duty in respect of property other than agricultural land; (c) terminal taxes on goods or passengers carried by railway, sea or air; (d) taxes on railway fares and freights; (e) taxes other than stamp duties on transactions in stock exchanges and futures markets; (f) taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce; (g) taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

2. Taxes mentioned in Articles 269 and 270 do not form part of the Consolidated Fund of India, but a surcharge levied on these taxes under Article 271, does so.

3. The proceeds of these duties form part of the Consolidated Fund of India. Article 266(3) mandates that no money out of this Fund shall be appropriated except in accordance with law. Consistently with this principle, the sharing of these duties has been made dependent upon Parliamentary legislation.

Grants

10.2.17 The Constitution provides for payment by the Union of such sums as Parliament may by law provide each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance. Besides, the Union Government is required to give grants-in-aid to the States for the welfare of the Scheduled Tribes and for raising the level of administration in the Scheduled Areas and separately for Assam. (Article 275).

10.2.18 Apart from the above provisions, under the heading 'Miscellaneous Financial Provisions' Article 282 provides that the Union or a State *may* make any grants for any public purpose notwithstanding that it is not one with respect to which Parliament or a State Legislature may make laws. Thus, a distinction has been made in the Constitution between grants under Article 275 and those under Article 282. The former (except those covered by the proviso to Article 275) are made in accordance with the recommendations of the Finance Commission. However, under Article 282 the Union as well as the States may make grants for any public purpose. The use of the word 'may' in this article has been taken to signify the discretionary nature of these grants.

Finance Commission

10.2.19 Article 280 provides for the constitution of Finance Commission by the President. The role and functioning of this Commission, which is a key institution, is discussed at length in Section 8. A duty has been cast on the President to cause every recommendation made by the Finance Commission together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Borrowing Powers

10.2.20 The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed. Similarly, the executive power of a State extends to borrowing upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be so fixed. However, the executive power of the States extends to borrowing within the territory of India only. Further, the Government of India *may*, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under Article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India. But a State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government. A consent under Article 293(4) may be granted by the Government of India subject to such conditions, if any, as the Government of India may think fit to impose.

10.2.21 Flexibility and objectivity in revenue-sharing between the Union and the States are important features of the Constitutional scheme. Sources of revenue with the Union are not entirely meant for its exclusive use but are to be shared with the States, mandatorily in the case of Income Tax other than on agricultural income, and optionally, with the approval of Parliament, in the case of Union Excise Duties. Proceeds of duties and taxes levied by the Union under Articles 268 and 269 are wholly assignable to the States.

10.2.22 In all the federations of the world, the revenues of the federal governments have grown enormously during the past half a century. Concurrent taxation powers, as in the case of United States of America, had led to much litigation and difficulties which are inherent in any overlapping tax system. Similarly, as in Australia and Canada, negotiations and agreements played an important role in determining the shares in the proceeds of taxes. Even in West Germany, the evolution of tax sharing arrangements took many years after the introduction of the Basic Law. Yet, when political expediency holds sway conventions have the uncanny habit of going underground.

10.2.23 In our country, the determination of shares of the States in the aforesaid taxes and duties and their *inter se* allocation as also of grants-in-aid of revenues, follows the recommendations of the Finance Commission. Unlike the Commonwealth Grants Commission of Australia, the Indian Finance Commission is a Costitutional body and the objectivity in its role has been facilitated by keeping it outside the Union executive. Compared with its Australian counterpart, the Indian Finance Commission has a greater scope inasmuch as it recommends sharing of tax proceeds also, besides the grants-in-aid, and advises on other matters referred to it in the interests of sound finance. The absence of clear Constitutional provisions for revenue sharing created many problems in other federations and they had to evolve a variety of arrangmements to overcome them. For example, in Canada, tax-rental arrangements were resorted to. In Australia, the Australian Commonwealth Grants Commission was set up to consider allocation of grants among the claimant States. Specific-purpose grants, with strict enforcement conditions, came into existence in countries like U.S.A.

3. *THE COMPLAINTS AND ISSUES*

Needs and Resources

10.3.01 In the evidence of the State Governments, some political parties and several experts before us a common thread is seen, viz., the resources allocated to the States are not adequate to enable them to discharge their responsibilities. The State Governments, as well as some all-India political parties have claimed that not only the States' resources are relatively inelastic but also that their tax-base is narrow. Of the various taxes levied by them, Sales Tax alone and, to a lesser extent, the State Excise Duties, have exhibited a significant degree of elasticity. However, some of the other resources like Land Revenue have today lost importance. The yield from Land Revenue including cesses, etc. for all States in 1951-52 was

about Rs. 49 crores comprising 21.3 per cent of their own tax revenue and in 1984-85 it was about Rs. 318 crores constituting only 2·6 per cent of their own tax revenue.[4]

10.3.02 The States have pointed out that the Constitution has assigned to them the responsibility for building up vital social and industrial infrastructure, which is an essential pre-requisite for rapid socio-economic development. They are responsible for rural development, education, medical and public health facilities, welfare of Scheduled Castes and Scheduled Tribes, etc. Further, they have to spend large sums on the development of roads, generation and distribution of power, etc. which are essential for industrial development. These responsibilities, particularly the creation of social infrastructure, involve large investments which do not yield immediate or direct returns. The maintenance cost of the social and economic infrastructure has also increased by leaps and bounds. Apart from the above, the expenditure on non-developmental activities like maintenance of law and order, has also shown large increases, particularly in the wake of emergence of fissiparous tendencies and divisive forces. Over the years, the general administrative costs have risen steadily and today they form a large part of the States' expenditure. Inflation has made the situation worse. Faced with high cost of administration and inflation, the States complain of ever-widening gap (often referred to as the vertical fiscal gap) between their own resources and needs. Some studies in the field of federal finance have compared the levels of expenditure of the States with their 'own' resources and pointed out the existence of significant gaps between them. It has been argued that these gaps are a measure of the large dependence of the States on the Union for resources and indicate a weakness in the existing arrangements.

10.3.03 States argue that in order to enable them to discharge their responsibilities properly, there is need for ensuring correspondence between their obligations and resources. It has been suggested that for this purpose, more rational system of savings and credit allocation should be evolved and the powers and scope of various institutions—Finance Commission, Planning Commission and the National Development Council—Should be suitably redefined.

10.3.04 It has been pointed out by a State Government that the heavy dependence of the States on the Union for financial resources has resulted in progressive erosion of the jurisdiction, authority and initiative of the States in their own constitutionally defined spheres. Further, it has manifested in a gradual decline in the relative share of States' Plan outlay in the total, growing outlay of the Union on State subjects, proliferation of Centrally Sponsored Schemes and Union's tight control over planning in the States.

10.3.05 Some political parties have also emphasised that the States' resources should be commensurate with their expenditure needs. Indeed, an all-India political party has observed : "If States suffer from inadequacy of financial resources and powers, the autonomy of States faces severe constraints and the federal character of the Constitution is also jeopardised".

10.3.06 On the other hand, the Union Ministry of Finance has argued that the Union also is facing a widening gap between resources and needs. It has also pointed out that its own resources are no more elastic than those of the States. Further, defence, interest payments and subsidies take away the bulk of Union revenues. It has aruged that there is need for the States to make greater efforts to increase resources within their existing powers before seeking more powers or larger Central assistance. It has pointed out : "Though agriculture contributes nearly 40 per cent of the GDP, States have made no attempts to tap this source. Another disturbing feature is that the power and irrigation projects which are executed at enormous costs are not providing, sufficient returns to the State Governments."

10.3.07 An all-India political party has argued along the same lines and concluded : ".....the complaint of the States regarding an inadequate and inelastic tax-base appears to be unfounded. The potential tax base available for the States is quite large and relatively more elastic. If effectively managed, the tax-base of the States can yield much larger revenues and this alone would solve the present problems. In a situation of over-all resource constraint, maximum effort at mobilisation of resources is required on all fronts and mere transfer of additional resources from the Centre can only be a temporary measure at the cost of wider national interests."

The Basic Schemes

10.3.08 The criticism of the existing arrangements of allocation of resources should be considered in the light of the Constitutional scheme and the manner in which it has worked over the years. Most of the States are of the view that the existing Constitutional arrangements are basically sound and no radical changes are called for. A few States have, however, observed that the existing arrangements have not worked well and substantial changes are necessary. Some State Governments have pointed out that the scheme of the Constitution is marked by a trend towards over-centralisation in regard to both policy and administration. Further, the States should be able to command means of meeting their wants in the same way as the Union Government possesses the means in respect of its wants.

10.3.09 We have already noted that the Constitution envisages clearly demarcated areas of taxation for the Union and the States. These have been enumerated in List I and List II of the Seventh Schedule. Generally, the States have stated that there is no need to make any changes in the division of the areas of taxation envisaged in the Constitution. In fact, one State has pointed out that any transfer of taxation fields now with the Union to the States would make the rich States richer and the poor States poorer. The Union Ministry of Finance also holds that the "Present system has a sound rational basis and may not require any alteration."

10.3.10 On the other hand, some State Governments are of the view that their fiscal powers should be enlarged. Some specific suggestions have been made

(4). Government of India, Ministry of Finance—*Indian Economic Statistics, Vol. II, Public Finance*, 1964 and 1986.

to empower the States to levy taxes and duties including those enumerated in Articles 268 and 269 as well as to remove some of the restrictions on States' taxation powers. It has also been suggested that States may be enabled to levy any taxes not mentioned in List I and List II of the Seventh Schedule. It has been further suggested that the Union Government should voluntarily withdraw from excise duties on certain commodities and give up additional excise duties now imposed on certain commodities in lieu of Sales Tax. It has also been suggested by a State Government that the Union should voluntarily abstain from levying Excise Duties on certain commodities leaving the State Governments free to levy Additional Sales-Tax on these commodities to an equivalent extent. Another State Government has suggested that the States should be given the powers to levy excise duty on medicinal and toilet preparations containing alcohol, tax on futures markets, etc. Yet another State Government has propsoed that the proceeds of Income Tax and Union Excise Duties should be made mandatorily assignable to the States in full although, for the sake of uniformity, they may continue to be collected by the Union.

10.3.11 A State Government has suggested that the States may also be permitted to levy Corporation Tax on companies whose factories are situated in the respective States, which would imply concurrent taxation in this field.

Issues in operation of the Scheme—Corporation tax

10.3.12 State Governments have criticised the policy of the Union Government to keep out of the divisible pool certain resources which, according to them, should have been shared with them. An important instance of this, the States allege, is the exclusion of Corporation Tax from the divisible pool by an amendment of Income Tax Act in 1959. A number of State Governments and some political parties have suggested that the proceeds of Corporation Tax should be made sharable with the States.

Surcharge on Income Tax

10.3.13 The States have complained that the long continuance of Surcharge on Income Tax (given up only in 1985-86) deprived them of considerable revenue which would have been sharable with the States if only Government of India had, instead, adjusted the basic rates of Income Tax. Some States, an all-India political party and several others have suggested that the proceeds from Surcharge on Income Tax should be made sharable with the States.

Other Basic Excise Duties

10.3.14 Revenues from Union Excise Duties (Basic duties), levied under Article 272, are being shared on the recommendations of the Finance Commission. It is alleged that the Union Government has levied separate excise duties on commodities (e.g., special, regulatory and auxiliary excise duties on some commodities) thus keeping these revenues outside the purview of sharing.

Concessions/Rebates on Income Tax

10.3.15 Some of the States have alleged that the Union Government has not been showing sufficient interest in raising revenues from Income Tax, 85 per cent of which is now sharable with the States. On the other hand, through the Special Bearer Bonds Scheme, the Union Government mobilised resources for its exclusive use which would have been otherwise shared by the States, if better compliance of Income Tax Act had been enforced.

Administered Prices

10.3.16 Many States have complained against the increases in administered prices, e.g., of petroleum and coal, unilaterally made by the Union instead of increasing excise duties, which would have been sharable with them.

Curbs on States' Sales Tax

10.3.17 Several State Governments have drawn attention to the changes introduced by the Constitution (Sixth Amendment) Act, 1956 in Articles 269 and 286 and by the enactment of the Central Sales Tax Act, 1956. They allege that these amendments have adversely affected the yield from States' Sales Tax which is the most important source of revenue to them. The modified Article 269 read with the new Entry 92A, empowers Parliament to levy tax on sale or purchase of goods in the course of inter-State trade but makes its proceeds assignable to the States. Article 286 as modified by the Sixth and Forty-Sixth Amendment Acts takes away the power of the States to levy tax on essential goods by authorising Parliament to impose restrictions by law on the States to impose tax on sale or purchase of goods declared by Parliament to be of special importance in inter-State trade and commerce.

10.3.18 One political party has asked for deletion of Entries 92A and 92B from List I and their transfer to the State List. It has also suggested modification of clauses (3)(a) and (b) of Article 286 and removal of limitations imposed on the power of the States to levy tax on the sale or purchase of goods imposed under Article 286 read with Article 269 and Entry 92A of List I.

Property Taxation

10.3.19 Some of the States have pointed out that in view of the provisions of Article 285(2), read along with Section 154 of the Government of India Act, 1935, the municipal bodies in the States cannot levy tax on properties of the Union Government which came into being after 1-4-1937, nor are the States' local bodies allowed to enhance the old rates. Similarly, the Railway properties are protected by Section 135 of the Indian Railways Act, 1890 read with Section 4 of the Railways (Local Authorities Taxation) Act, 1941, which permit only such taxation as is allowed by the Government of India. Because of these provisions the local bodies of the States are losing revenue whereas they are required to provide services to the Union Government and Railway establishments.

Scheme oi Additional Excise Duty

10.3.20 Some of the States have complained that replacement of Sales Tax by Additional Duties of Excise (Goods of Speical Importance) Act, 1957 which covered sugar, tobacco and textiles, resulted in loss

of revenue to them. Although the yield from the Additional Excise Duties is assigned to the States, the revenue raised from them is allegedly not as high as what could have been realised had the Sales Tax on them continued. A few State Governments have suggested withdrawal of this scheme to enable the States to levy Sales Tax on these commodities.

Grant in lieu of Railway Passenger Fares Tax

10.3.21 Most of the State Governments have drawn attention to the fact that the grant in lieu of the Tax on Railway Passegner Fares, which was abolished in 1961, has been far less than what they would have realised had the tax measure been continued, owing to the growth in revenue from Railway Fares. A few States and an all-India political party have demanded re-imposition of the tax on the Railway Passenger Fares.

Royalty Rates

10.3.22 Two States which have resources of petroleum and natural gas, have demanded revision of royalty corresponding to the increase in the prices of these items. Similar demands have been made in respect of minerals by other States.

Pay/D.A. Revisions

10.3.23 Union Government's decisions on pay revision, terminal benefits, granting instalments of dearness allowance, etc., are said to cast a corresponding burden on the States. This is cited as an instance where actions of the Union result in additional expenditure to the States. A few State Governments have stated that this additional burden should be shared by the Union.

Articles 268 and 269

10.3.24 Some States have pointed out that the failure of the Union Government to mobilise sufficient revenue under Articles 268 and 269 has adversely affected their interests. A few States have suggested that the powers to levy some taxes and duties included in these Articles may be transferred to the States. An all-India political party has suggested that through a Constitutional amendment levying of taxes and duties included in Article 269 should be made compulsory.

Transfers under Finance Commission vis-a-vis other Transfers

10.3.25 Closely related to the issue of vertical imbalances is the alleged inadequacy of the mechanisms provided in the Constitution to rectify the same. Almost all the State Governments have pointed out that resource transfers outside the channel of the Finance Commission, have increased year after year and now overshadow the statutory transfers.

Finance Commission

10.3.26 Another complaint is that in determining the composition of the Finance Commission and laying down its terms of reference, the States are not taken into confidence. Further, by listing certain considerations which the Finance Commission might, *inter alia*, keep in view in recommending grants-in-aid of revenue to the States, the Finance Commission has been 'shackled'.

10.3.27 Some State Governments are of the view that the recommendations of the Finance Commission should be implemented *in toto*. The non-implementation of the final recommendations of the Eighth Finance Commission in full, has added yet another dimension to the problems in financial relations between the Union and the States.

10.3.28 Several State Governments have criticised the so-called 'gap-filling' approach of the Finance Commission in determining the quantum of Central transfers.

Capital Transfers and Market Borrowings

10.3.29 Several States have pointed out that their capital receipts are meagre in relation to their large and growing requirements of capital funds for investment in development activities. They are, it is argued, very heavily dependent on the discretion of the Union for their capital receipts. A suggestion has been made by some that the States should have access to the capital resources "as a matter of right".

10.3.30 Among the important sources of funds for development are market borrowings and capital transfers from the Union. Of the total market borrowings of the Union and the States, the share of the States has declined over the years. Further, as a proportion of the total capital receipts of the Union, loans to the States have also gone down.

10.3.31 The limitations imposed on the States in this regard under Article 293 are also objected to by many State Governments as restricting their freedom to borrow.

Bond Floatation by Central undertakhings

10.3.32 Bond floatation allowed to some of the under takings of the Union Government, (e.g., National Thermal Power Corporation, National Hydro-Electric Power Corporation and Indian Telephone Industries) has been cited as placing substantial additional resources at the disposal of these undertakings, whereas similar facilities are not available to the State Public Sector Entrerprises.

Small Savings and Special Deposits Scheme

10.3.33 Several States have pointed out that the States' share of two-thirds (since raised to three-fourth from April, 1987) in the additional small savings collection should be enhanced and that such loans should be treated as 'loans in perpetuity'. A specific suggestion made by a State Government is that the repayment period and moratorium allowed on small savings loans should be doubled. It has also been alleged that through the Special Deposits Scheme the Union Government has acquired access to substantial investible funds of the Provident Fund Organisations and has thus reinforced its budgetary position at the expense of the States.

Indebtedness

10.3.34 Some States have complained that the present pattern of Union transfers, with preponderance

of loans, is completely out of line with their pattern of expenditure and repayment capacity, and have demanded a review.

Channelling of External Assistance

10.3.35 Another grievance of the States is that the Union Government obtains external assistance on concessional terms, but the benefit of the same is not correspondingly passed on to the States.

Overdrafts and Deficit Financing

10.3.36 Some of the States have argued that persistent large overdrafts reflect a fundamental disequilibrium in their finances. Further, more often than not, large overdrafts result from situations beyond their control, including delays in releasing of Central transfers and genuine unforeseen expenditures. They point out that while the Union Government has an easy and regular access to deficit financing, the overdrafts of the State Governments need not be grudged. The significant difference in the rates of interest between the two is often cited as an instance of discrimination.

Natural Calamities

10.3.37 There are complaints of delay, inadequacy and even discrimination in providing relief for major calamities which need to be dealt with as a matter of national concern.

Union Expenditure on States' Subjects

10.3.38 It has been pointed out by some of the States that the Union Government incurs substantial expenditure on several subjects, belonging to the sphere of the States (e.g., agriculture, rural development, cooperation, health and irrigation) through the Centrally Sponsored Schemes and by maintanining large establishments. These have, on the one hand, allegedly deprived the States of substantial transferable revenues and, on the other, distorted their priorities by requiring them to find matching funds for the schemes sponsored by the Union Government.

Expenditure Control

10.3.39 Most of the State Governments feel that the functioning of the existing institutions—Comptroller and Auditor General and the Public Accounts Committees of the Parliament and State Legislatures—should be strengthend for improving expenditure control. A State Government has, however, complained that the present centralisation of audit results in procedural delays. It is pointed out that accounts are finalised with gaps of three to four years. In this connection, it has drawn attention to Section 167 of the Government of India Act, 1935 which empowered a Provincial Legislature to create the office of an Auditor-General. Another State Government has stated that considering the desirability of evaluation audit, it should be entrusted to an agency constituted by the State Government itself.

Expenditure Commission

10.3.40 Many States have emphasised that there is need for a through examination of the Union Government's expenditure since this has implications for resources available for transfer to the States. Some have suggested that this should be done by an Expenditure Commission as the existing mechanisms are inadequate for this purpose.

Institutional Finance

10.3.41 Union Governments' exclusive control over the policies and resources of the Banks and the Public Sector financial institutions is also one of the irritants in Union-State financial relations, although these are Union subjects. The fact that more than half of the loans from the public sector financial institutions have gone only to two States, has been adversely commented upon. In this connection, some suggestions have been made for setting up a National Credit Council having representatives of the State Government on its panel.

Financial Indiscipline

10.3.42 The Union Government has, on the other hand, drawn attention to the considerable increase in transfer of resources to the States over the years, particularly during the last three Plan periods. The demand of the States for financial assistance to deal with natural calamities has expanded 3 to 4 times in recent years, showing inadequate financial control and discipline.

10.3.43 The issues in Union-State financial relations revolve round the States' case for having access to more resources in a situation of overall resource shortage. Interlinked are the problems regarding the patterns and modes of Central transfers, relative revenue mobilisation efforts, prudence in incurring expenditure, sharing of the community's savings, deficit financing, etc. There is a demand for greater objectivity and automaticity in resource transfers and allocations.

4. *FACTUAL REVIEW*

10.4.01 We have in the preceding Section noted the criticism and the main issues. In order to examine them, it is necessary to look into the broad trends in respect of the major areas of resource mobilisation and transfers. This has been attempted in this Section.

Growth in Resources

10.4.02 The basic data in regard to growth of revenues of the Union and the States and trends in actual sharing or resources by them is set out in Annexure X.2. The trend rates of growth[5] in revenues

[5]. Obtained by fitting the function, $y=a.b^t$ where, y=revenue; a constant; b=1+(r/100); t=time; and r=growth rate.

of the Union and State Governments covering the period 1951-52 to 1984-85 are given in the following table :

Annual percentage trend rates of growth in the combined resources of the Union and the States, 1951-52 *to* 1984-85

Item	Revenue Account	Capital Account	Total
I. *Resources :*			
Combined Union	13·43	11·49	12·80
(i) Before transfers to the States	13·76	11·51	12·89
(ii) After transfers to the States	13·05	12·03	12·58
States			
(i) 'Own' revenues	12·86	11·76	12·67
(ii) Total revenues (including transfers)	13·74	10·77	13·04
II. *Transfers to States*	15·60	10·30	13·67

10.4.03 During the 34 years, 1951-52 to 1984-85, the resources of the Union and State Governments registered a very significant increase. It is seen from the above table that the resources of the States are not less elastic than those of the Union.

10.4.04 The Union Government has been raising bulk of the financial resources. Of the combined aggregate resources during the period 1951-85, Union Government raised 71.5 per cent and States 28.5 per cent resources. Before transfers, during the First Plan period, the resources raised by the Union were Rs. 4,495 crores. They increased to Rs. 1,74,756 crores in the Sixth Plan period. Correspondingly, the aggregate resources of the States, before transfers from the Union, were Rs. 2,241 crores in the First Five Year-Plan period and they increased to Rs. 69,640 crores during the Sixth Plan period. The resources raised by the States as a percentage of the combined resources has shown a decline from 33·3 per cent in the First Plan period to 28·5 per cent in the Sixth Plan period (Annexure X.2).

10.4.05 Yields from individual taxes of both the Union and the States, have shown large variations in growth during the period 1951-85. Their relative importance in some cases has also changed significantly as would be evident from the following table :

	1951-52		1984-85	
	Rs. in Crores	Percentage share in total tax revenue of Union/States	Rs. in Crores	Percentage share in total tax revenue of Union/States
1	2	3	4	5
I. *Union Taxes :*				
1. Income tax*	145·99	28·5	1,927·66	8·2
2. Corporation Tax	41·41	8·1	2,555·90	10·9
3. Union Excise Duties*	85·78	16·7	11,150·84	47·5
4. Customs Duty	231·69	45·2	7,040·52	30·0
All Union Taxes	**512·65**	**100.0**	**23,470·59**	**100.00**
II. *State Taxes :*				
1. Land Revenue, etc.	48·87	21·3	318·41	2·6
2. Sales Taxes	59·04	25·8	7,028·94	56·9
3. State Excise Duties	50·14	21·9	1,857·36	15·0
4. Motor Vehicles' Tax	9·89	4·3	704·55	5·7
5. Entertainment Tax	8·94	3·9	360·07	2·9
All States' Taxes	**229·05**	**100·0**	**12,342·81**	**100·0**

* Before transfer of States' share.

SOURCE : Ministry of Finance : *Indian Economic Statistics—Public Finance,* 1959 and 1986.

10.4.06 It is pertinent to note that at the time of framing of the Constitution, when Income Tax was made compulsorily sharable, it was, apart from Customs Duty, the most important source of revenue to the Union. Its share in the aggregate tax revenue of Government of India stood at 28·5 per cent in 1951-52 but has come down to 8·2 per cent in 1984-85. Excise and Customs Duties, having 47·5 per cent share and 30 per cent share respectively in 1984-85, are now the most important taxes of the Union.

10.4.07 The structure of tax receipts of the States has also undergone significant changes during this period. Land Revenue (21·3 per cent share in 1951-52 in States' own tax revenues) has now become insignificant (2·6 per cent share) as compared to the receipts from Sales Tax and State Excise Duties (56·9 per cent and 15·0 per cent shares, respectively).

10.4.08 State taxes have shown widely different growth rates. Some, like land Revenue, have hardly grown. But the important taxes like Sales Tax, State Excise Duties and Entertainment Tax, have shown considerable buoyancy. The growth rate in States' own tax revenue has been significant and, indeed, somewhat higher than that of the Union. This discounts the general impression that the sources of revenue allotted to them are less elastic compared to those of the Union. This is also in conformity with the findings of some studies which have observed that the States' resources have grown in tandem with those of the Union.[6] This is evident from the following table giving compound annual growth rates in all-tax revenues and in those of selected taxes of the Union and the States, before any transfers from the Union to the States, for the period 1974-75 to 1984-85 :

Union Taxes	Percentage compound annual growth rate, 1974-75 to 1984-85	States' Taxes	Percentage compound annual growth rate, 1974-75 to 1984-85
All Taxes	**14·0**	*All Taxes*	**15·5**
Income Tax	8·2	Land Revenue, etc.	7·9
Corporation Tax	13·7	Sales Taxes	16·6
Customs Duty	18·1	Motor Vehicles Tax	14·8
Union Excise Duties	13·2	State Excise Duties	16·8
		Entertainment Tax	12·2

6. See, for example, Wallich, Christine—*State Finances in India, Vol. I—Revenue Sharing,* World Bank Staff Working Papers, No. 523 (1982), p.22, Econometric studies by the National Institute of Public Finance and Policy and others have also estimated high elasticity and buoyancy in State Taxes.

10.4.09 It is noteworthy that a State Government has also highlighted the fact that the States' aggregate tax revenue is fairly elastic to prices and incomes. According to it any disadvantage that the States might have, relatively to the Union, in this respect, is of only minor and not crucial significance.

Transfers from the Union and their Growth

10.4.10 An analysis of data relating to resource transfers to the States from the Union reveals certain interesting facts. On revenue account, prior to transfers to States, the Union Government's share has been stable around two-thirds of the combined revenue resources of the Union and the States. On capital account, its share was 85·4 per cent during the period 1951-85 and that of States 'own' resources 14·6 per cent[7] (Annexure X.2).

10.4.11 Transfer of total resources during the period 1951-85 from the Union to the States has been substantial, being 22·6 per cent of the combined aggregate resources. As a percentage of the total resources raised by the Union, the transfers to the States accounted for 31·6 per cent. As a result of these transfers the resources of the States became a little over half of the combined resources of the Union and the States. Transfers to the States during the period 1951-85 have increased from Rs. 1,307 crores during the First Plan period (1951-56) to Rs. 56,031 crores during Sixth Plan period (1980-85) showing an annual trend growth rate of 13·67 per cent. This brings out the significant role of the resource transfers to the States (Annexure X.2).

Revenue and Capital Transfers

10.4.12 Further break-up of the transfers in terms of revenue and capital shows that on revenue account, the transfers to the States have been approximately three-fourths of the total transfers (Annexure X.2). In the initial years (1951-56) the transfers on revenue account were about 46 per cent. Thus, the revenue account transfers have not only shown volume growth but also as a percentage of the total transfers they have risen steadily from 46 per cent to 73 per cent. The trend growth rate of transfers on revenue account works out to 15·60 per cent per annum (Annexure X.3).

States' Share in Combined Resources of the Union and the States

10.4.13 After taking into account the transfer of resources from the Union to the States, the percentage share of the States in combined aggregate resources has remained around 50 per cent. Their shares since the First Five Year Plan in the combined aggregate resources and separately on revenue and capital accounts, have been as under :

(Percentages)

	Revenue	Capital	Total
1951-56 . .	54·0	50·0	52·7
1956-61 . .	57·3	31·2	46·3
1961-66 . .	49·3	38·8	45·7
1966-69 . .	54·2	37·1	48·7
1969-74 . .	56·1	46·2	53·8
1974-78 . .	54·0	35·9	50·0
1978-80 . .	58·2	41·2	53·9
1980-85 . .	59·3	32·7	51·4
1951-85 . .	**57·2**	**35·9**	**51·2**

This is in so far as the direct sharing of resources is concerned. In addition, the Union Government incurs considerable expenditure through subsidies, Central plan investment and on other items which benefit the States and indirectly reduce pressure on their expenditure.

Pattern of Transfers

10.4.14 It will also be pertinent to consider the pattern of transfers. Resources are transferred partly on the recommendations of the Finance Commission, partly through the Planning Commission and also directly from the various Ministries of the Union Government. We have considered in detail the pattern of devolution in Section 7 and the salient features are noted below.

10.4.15 The transfers on account of the Finance Commission have gone up from 31·2 per cent in the First Five-Year Plan period to 41·3 per cent in the Sixth Plan period (Annexure X.4). Transfers on the recommendations of the Planning Commission show considerable fluctuations during this period. During the last two Five-Year Plan periods, they were around 42 to 43 per cent. These transfers include those on account of Central and Centrally Sponsored Schemes. These were only 2·8 per cent during the period 1966-69 (i.e., after the Third Plan) and have gone up to over 11 per cent in the Sixth Plan Period. During the last two plans, 'other transfers' were 15·0 and 15·3 per cent respectively.

10.4.16 Another interesting aspect of these transfers is seen in the split between Revenue and Capital components. Transfers through the Finance Commission have been almost wholly on revenue account. Out of these revenue transfers, 85·1 per cent were by way of tax-sharing and the remaining 14·9 per cent were in the nature of grants or sharing of other resources for the period 1952-84 (see Annexure X.5). On the other hand Plan transfers carry a large loan component.

Trends in Union Finances

10.4.17 Looking at the pattern of non-plan expenditure of the Union, it is seen that a large part of it is on defence, interest payments and subsidies. These

[7]. This is on the basis of net sharing of resources, i.e., as they are actually available for financing respective expenditures. However, if the amounts of repayment by the States on Central loans are added back to them, as has been done by some studies, their share will be a little over one-fifth.

three items which constituted 65·1 per cent of the total non-plan expenditure in 1970-71 have risen steadily to 73·3 per cent in 1987-88 (B.E.).

10.4.18 Since 1979-80 the Budgets of the Union Government have persistently shown deficits on the revenue account. The Balance from Current Revenues became negative for the first time in 1985-86. We have dealt with these matters in greater detail in Section 7 subsequently.

Need for improving resource mobilisation and management

10.4.19 There is still considerable scope for both the Union and the States to step up revenue mobilisation. The Long Term Fiscal Policy document of the Union Government clearly recognises the need to increase the Balance from Current Revenues so as to reduce the dependence on substantial internal borrowing for financing the Plan. Internal borrowings have of late gone up sharply, resulting in large interest payments. Further, as many as 90 non-departmental undertakings of the Union Government incurred a loss of Rs. 1,656·34 crores in 1985-86.[8] The funding of the Seventh Five-Year (Central Sector) Plan crucially depends on the generation of sufficient surpluses by the Union Public Sector Undertakings.

10.4.20 Similarly, over the years most of the States have given exemptions on Land Revenue, etc., whereas the gross value and volume of agricultural production have increased manifold during this period. Only a few States are at present levying Agricultural Income Tax and that too, to an insignificant extent (total receipts Rs. 91·33 crores in 1984-85). Wide State-wise variation in the effective rates of taxation in relation to the relevant bases is also indicative of the considerable potential yet to be tapped for revenue mobilisation.[9] Agricultural income taxation is not easy to administer and not amenable to easy solution in respect of its assessment and collection. Further, large commercial losses are reported to have been incurred by States' public sector enterprises—State Electricity Boards (Rs. 1,123 crores in 1984-85), State Road Transport Corporations (Rs. 150-200 crores in each year of the Sixth Plan period) and commercial irrigation systems (Rs. 592 crores in 1984-85).[10] With these losses in the Centre and in the States, the regimen laid down by the Finance Commission for the Public Sector has been frequently voilated and the hopes expressed by the Planning Commission in the Five-Year Plan have been belied, notwithstanding the approval of the National Development Council. It has been observed by one State Government that "policies and measures to improve the financial performance of States' departmental and non-departmental undertakings must be an important element of the required many-sided efforts towards establishing more even financial balance between the Centre and the States. The resulting improvement in the return on investment and enterprise secured by the States would make a sizeable contribution to reducing the gap between their revenue expenditure and own tax and non-tax revenues". We are in full agreement with this observation.

10.4.21 One State Government has complained that the Union-State financial relations "grievously violate the basic principle of federal finance that each level of government must be substantially, if not wholly, self-reliant with regard to financial resources required for the due discharge of its responsibilities". On an analysis and comparison of the aggregate figures of expenditure and the revenues of all the States relating to the financial years 1983-84, 1984-85 and 1985-86, it maintains that the States' dependence on resource transfers from the Union for financing their revenue expenditure is now close to 40%, and for financing their capital expenditure is much greater than this percentage.

10.4.22 On the basis of a study of the growth in the respective revenues of the Union and the States over the period 1975-76 to 1985-86, it holds that the indirect taxes of the States in comparison with those of the Union, are equally, if not more, elastic, to prices and income. It rejects the oft-trotted argument that this dependence of the States on the Union for financing their revenue expenditure, is due to the overall inelasticity of the States' own taxes. After further discussion, it propounds the thesis that the "crucial factor for States' financial dependence on the Centre is their very narrow tax base in relation to their revenue expenditure as well as the Centre's tax base". This State Government has also noted 'that the States' non-tax revenue contributed by their departmental and non-departmental undertakings has deteriorated over the years'.

10.4.23 The difference between States' own revenues and their revenue expenditures over a period of years, is not an infallible measure of the extent of their dependence on the resource transfers from the Union. The main snag is that the quantum of the revenue expenditure of a State carries a substantial component relatable to revenue received by transfer from the Union. This component is a variable factor which has an incremental effect on the level of the States' revenue expenditure. The alleged 'narrow tax-base of the States', therefore, cannot be related quantitatively to the level of their revenue expenditure as the latter itself depends upon their to tal revenue resources including revenue transfers from the Union. Nor can it be appropriately related to the Union. Governments' tax-base as the Union expenditure obligations as well as transfer of revenues to the States, are on a different footing. For analysing the issues in question, it will be pertinent to distinguish between States' indirect and direct taxes. The State Government mentioned above, has candidly conceded after a quantitative analysis, that the States' indirect taxes (Sales Tax, State Excise Duties, Taxes on Motor Vehicles, Entertainment Tax, Taxes on Passengers and Goods, Electricity Duty and Stamp Duties and Registration Fees) are fairly elastic to prices and income, but their direct taxes, such as Land Revenu and Profession tax, are highly inelastic.

10.4.24 The indirect tax structure of the States is quite board-based. The States' financial performance in respect of direct taxes relating to the agricultural

(8) Government of India, Bureau of Public Enterprises—*Public Enterprises Survey*, 1985-86, p. 10.

(9) Please refer to Chelliah, Raja J. and Sinha, Narain—*State Finances in India, Vol. 3—The Measurement of Tax Effort of State Governments*, 1973-76, World Bank Staff Working Papers, No. 523, (1982).

(10) Government of India, Ministry of Finance—*Economic Survey*, 1985-86, p. 75.

sector, viz., Land Revenue, Agricultural Income Tax, returns on commercial irrigation, etc., however, is poor. Most of the States have partially given up Land Revenue. The Agricultural Income Tax, as discussed subsequently in paragraphs 10.5.67 to 10.5.72 is beset with complicated problems.

10.4.25 In line with this analysis, it would be advantageous at this stage to take note of the broad trends in other federations. Due to great diversity of political systems and lack of full information, it is not possible to make accurate international comparisons of revenue centralisation and expenditure decentralisation. Nonetheless, it can be said without fear of contradiction that generally all over the world the federal governments have a large and increasing control over revenues. This is particularly true of Australia and to a large extent of United States of America. A more balanced situation exists in Canada and West Germany. A comparative study held under the auspices of National Institute of Public Finance and Policy has observed :

> "We may conclude that there is slightly higher degree of centralisation of revenues in India than is generally found in the economically developed federations. But the expenditure decentralisation in India is greater than in those federations. As a result, the degree of dependence on the Centre, in terms of the share of federal transfers in States' revenue, is higher. However, in so far as the transfers take place in the form of constitutionally assigned taxes, the high share of federal transfers cannot be said to be an indicator of dependence."[11]

Our studies show that the increasing quantum of the Constitutionally assured revenue transfers to the States substantially reduces their initial dependence on the Union for revenue expenditure.

10.4.26 The factual review carried out in the preceding paragraphs brings out three important conclusions. They are:

(1) The Union has been raising the major part of the combined resources;

(2) The growth-rate in States' own revenues, given the initial small base, has kept pace with that of the Union; and

(3) Transfers to the States have grown significantly over the years.

10.4.27 At this stage it would be advantageous to deal with the general issue noticed in para 10.3.02 that the large dependence of the States on the Union is indicative of a weakness in the existing arrangements. We have earlier noted that the division of the heads of taxation between the Union and the States envisaged in the Constitution follows certain basic principles according to which those taxes which require a uniform treatment and/or have inter-State significance are with the Union. As a result, the major and expanding sources of revenue are with the Union. In recognition of this situation, the Constitutional scheme has provided for sharing of revenues raised by the Union and mechanisms for their transfer from the Union to the States. Therefore the mere fact that a considerable gap exists between the requirements and 'own' resources of the States need not *per se* be regarded as a short-coming in the present system. The real issues for consideration are:

(i) whether it is possible to enlarge the 'own' resources of the States by transferring more powers of taxation to them;

(ii) should the size of the sharable pool be increased; and

(iii) whether the existing mechanisms for transfer of resources from the Union to the States are adequate.

We have considered these issues in the ensuing Sections.

10.4.28 Before concluding, it is necessary to take note that a part from the above, on the methodological plane, a difference between expenditure incurred by the States and their 'own' resources is not an infallible indicator of a genuine gap between them. The problem is not so simple and bristles with serveral complications. It involves an objective assessment of the fiscal needs, tax efforts, tax potential of the States and efficiency of fiscal management. Quantification of all these factors is extremely difficult, if not impossible. Further, the level of expenditure of the States is itself determined by transfers from the Union, besides their own resources. It cannot, therefore, be taken as a sure measure of their needs. The determination of gaps in resources vis-a-vis the fiscal needs of the States is thus not amenable to any simple analysis.

5. *ENLARGEMENT OF STATES' RESOURCES*

Alternatives

10.5.01 In our Questionnaire, we had invited suggestions on how the States' resources could be augmented. The possible alternatives put forth to elicit replies comprised any one or a combination of the following :

(a) Complete separation of the fiscal relations of the Union and the States, abolition of the scheme of transfer of resources and instead, transferring more taxing heads to List II, Seventh Schedule.

(b) Transfer of a few more elastic taxation heads to List II.

(c) All the taxing heads/taxing powers be transferred to the Union List to form a shareable pool, the respective shares of the Union and the States as a whole being specified in the Constitution itself, the amounts and the principles on which the States' share would be distributed amongst the various States, be determined by the Finance Commission.

(d) More Central taxes such as Corporation Tax, Customs Duty, Surcharge on Income Tax, etc., be brought into the shareable pool.

(e) Financial resources, other than tax-revenues of the Union, be also distributed between the Centre and the States.

(11) *Trends and Issues in Indian Federal Finance* (1982), p. 6.

10.5.02. None of the State Governments or experts has favoured alternatives (a) and (c). As regards transfer of a few more elastic taxation heads to the States, most State Governments have not suggested any change in the division of taxation subjects as enumerated in the Seventh Schedule of the Constitution. As stated in Section 3, some of the States have suggested enlargement of States' tax-base by transferring more taxation powers to them, if necessary, by amending the Constitution. Even they do not suggest transfer of any of the more important heads of taxation, like Union Excise Duties and Customs Duties, from the Union List to the State List.

10.5.03 However, one State Government has suggested that with a view to widening substantially the States' tax-base, the Union should abstain from levying Excise Duty on certain products (present yield roughly 40 per cent of the total Union Excise revenue) and allow the States to levy Additional Sales Tax for an equivalent amount on them in lieu thereof. Further, States may also be allowed to levy Surcharge on the Additional Sales Tax, if needed. It has been suggested that such selected commodities should be the industrial products on which Sales Tax cannot be easily avoided, viz., petroleum products, tyres, processed vegetable oils, vanaspati, cement, iron and steel and products thereof, sheet glass, T.V. sets and motor vehicles and tractors.

10.5.04 At the outset, we will consider the suggestion regarding levy of Additional Sales Tax in lieu of Union Excise Duty on certain commodities. At present, 40 per cent of the net proceeds from Union Excise Duty is already being transferred to all the States and another five per cent to the revenue-deficit States as per recommendations of the Eighth Finance Commission. The above-mentioned proposal will put the poorer States with low levels of consumption and corresponding lower capacity to raise revenue in this manner, to serious disadvantage. Further, the implications of the proposal involve a very substantial revenue loss to the Union in addition to the present scale of transfers, and will thus drastically cut into Union's resources. Moreover, inasmuch as some of the products mentioned in the proposal are either essential commodities and/or important industrial inputs, significant inter-State differentials in their prices may create serious problems.

In view of the above considerations, we are unable to agree to this proposal.

Enlargement of States' Taxation Powers

10.5.05 These suggestions fall broadly into three groups. Firstly, those relating to the taxes and duties included in Articles 268 and 269; secondly, those relating to transfer of residuary powers of taxation to the States, and thirdly, those which aim at removing or relaxing the limitations on the powers of the States to raise resources including transfer of powers of taxation in regard to certain commodities to them.

10.5.06 We have considered the above-mentioned suggestions in the Chapter on Legislative Relations mainly from the view-point of Constitutional implications. Here, the focus would be on the functional implications of these suggestions.

Duties Under Article 268

10.5.07. Article 268 lays down that such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Union but collected and appropriated by the States. These duties are referable to Entries 84[12] and 91[13] of the Union List with corresponding qualification of Entry 51[14] of State List. The Medicinal and Toilet Preparations (Excise Duties) Act, 1899 governs the levy of these duties.

10.5.08 It has been suggested by a State Government that the power to levy the duties mentioned in Article 268 may be transferred to the States and for that purpose, Entries 84 and 91 may be transposed to the State List and corresponding changes made in the provisions of Article 268. It is argued that these duties do not form part of inter-State transactions 'to any large extent'. Further, the differential rates which might arise if States are given powers to levy these duties will not affect the optimum utilisation of resources in any way. A general principle enunciated by this State Government in support of its suggestion is that the efficiency in taxation is highest when the tax is administered and collected by the same authority which has the power to appropriate it. The thrust of the argument is that for augmenting the inadequate resources of the States, it would be desirable to empower them to levy these duties.

10.5.09. Entry 84 comprehends, among other things, a range of medicinal items which are important from the view-point of public health policy. In the Government of India Act, 1935, the subject was, however, included in the Provincial List (item 40). The framers of the Constitution, while transferring this head to the Union List, noted that it was not then being significantly exploited for raising revenue by the Provinces. Moreover, they felt the necessity of an all-India Drugs Policy.[15]

10.5.10. In furtherance of the Constitutional Directive Principles of State Policy in Article 47, the primary objective of the tax-laws should be to regulate and control the production of these intoxicants and preparations on a uniform basis, and revenue earning

12. "84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol of any substance included in sub-paragraph (b) of this entry".

13. "91. Rates of stamp duty in respect of bills of exchange, cheques, promisory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts".

14. "51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquor for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

15. *See Constituent Assembly Debates (New Series) Book 5, September, 1, 1949, page 839 (Statement by Dr. B. R. Ambedkar).*

should be a secondary purpose. The Union Ministry of Finance has also emphasised this aspect in the information supplied to us. The items covered by this Entry have inter-State aspects. uniformity even in regard to the principles of their taxation is desirable in the larger national interest.

10.5.11. So far as stamp duties under Entry 91 (List I) are concerned, the desirability of uniform rates throughout the country in commercial and related transactions (involving bills of exchange, cheques, promissory notes, bills of lading, letters of credit, life insurance policies, general insurance policies, transfers of shares, debentures, proxies and receipts) is self-evident. Inter-State disparities in their rates and tax-regulations can play havoc with commercial activity and free flow of trade. We are, therefore, of the view that no change in the present position and content of Entries 84 and 91 of List I is called for.

10.5.12. Some State Governments have pointed out that all the duties mentioned in Article 268 should be better exploited. The scope for raising revenue from these duties was examined for the first time recently by the Eighth Finance Commission. It noted that inasmuch as the duties of excise on medicinal and toilet preparations were raised only in 1982, there was not much scope for a further increase then. Some scope or raising stamp duties on bills of lading (excluding those in respect of inland navigation), letters of credit and policies of general insurance was considered feasible, but in the absence of adequate data, the amounts could not be quantified. The Finance Commission, therefore, left the matter to the Union Government for appropriate revisions in rates of duties. We have been informed by the Union Ministry of Finance that the Government "has already implemented most of these recommendations". The Ministry has further commented : "Since the Finance Commission is being asked to comment on the manner in which these duties could be exploited in the best interests of the States without affecting the national economy, the interests of the States are sufficiently safeguarded by the present procedure."

10.5.13 Under the present circumstances, duties on all the items covered by Article 268 do not appear to be a buoyant source of revenue amenable to frequent revisions. Since basic circumstances do not always remain constant, we recommend that the Union Government should, in consultation with the State Governments, periodically consider and explore the revisions of these duties. We further recommend that the revenues raised from these duties should be separately specified in the budget and other relevant publications.

Taxes and Duties under Article 269

10.5.14 Article 269 refers to taxes levied and collected by the Union but assigned to the States. It enlists eight taxes and duties (mentioned in the footnote to para 10.2.16(b) above). These are referable to Entries 87, 88, 89, 90, 92A and 92B of the Union List. Of these, at present, only under Entry 92A, a tax on sale or purchase of goods in the course of inter-State trade and commerce is being levied.

10.5.15 Some State Governments have pointed out that the Union Government has not raised adequate revenues from these heads of taxation. They have suggested that the relevant Entries (specially Entries 87, 88, 89 and 90 of the Union List) may be transferred to the State List.

10.5.16 **Entries 87 and 88 of List I :**

"87. Estate duty in respect of property other than agricultural land".

"88. Duties in respect of succession to property other than agricultural land."

For reasons abstracted in paragraph 10.5.06 above, the same State Government has suggested that "duties in respect of succession to property other than agricultural land" and "estate duties in respect of property other than agricultural land", mentioned in Article 269(1) (a) and (b) respectively, "be delegated to the States for levy". Somewhat inconsistently with this plea for "delegation", the State Government has also asked for transfer of the corresponding Entries 87 and 88 of the Union List to the State List.

10.5.17. The incidence of both the taxes, viz., Estate Duty and Succession Duty, is on the same object viz., property passing on the death of the owner to his successors. But while in the case of the former, value of the whole estate (movable and immovable even if situated in more than one State) would be the base, the succession duty is relatable to the value of individual shares passing on to the successors. In view of this commonality of incidence, the Fifth and the Eighth Finance Commissions, which had a term of reference to examine the scope for raising revenue from taxes in Article 269, took the position that as Estate Duty was then being levied, it was not worthwhile to levy Succession Duty also. The Economic Administration Reforms Commission, 1981-83 (Chairman: L. K. Jha) had recommended abolition of Estate Duty on the consideration that it had failed in both its objectives, namely, to mitigate the building up of dynastic wealth and raising reasonable resources. It had noted that 96.8 per cent of the assessees in 1980-81 related to the estates whose 'principal value' was less than Rs. 3 lakhs. [16] In the financial year 1985-86, Estate Duty was abolished in view of its meagre yield (gross collections Rs. 22.50 crores in 1984-85).

10.5.18. Although apparently Estate Duty has local-base significance, there are several reasons for which it would be desirable to retain it in the Union List if it is re-imposed. An individual may have properties located in more than one State and a total view of his assets can be better taken by the Union Government. Further, if the tax is levied by the States the persons inheriting properties in different States will have to deal with several tax codes and regulations. It is necessary to recognise that taxes like estate/succession duties are not expected to be buoyant sources of revenue. If they are levied by the State Governments there is a possibility of unhealthy competition among the States, and consequent bewilderment and embarrassment to the assessees. Uniformity in the main principles of law with respect to these duties is essential in

(16) Government of India, Economic Administration Reforms Commission—*Reports on Tax Administration*, 1981-83 (p. 33).

the national interest. Administratively also, it will be far more convenient if this tax is levied and administered by the Union in view of better access to information. Moreover, the net proceeds of Estate Duty till it was abolished were being allocated to and distributed among the States on the basis of formulae recommended by Finance Commission. In view of these considerations we are unable to support the plea that Entries 87 and 88 be shifted from List I to List II.

10.5.19. One State Government has suggested that "terminal taxes on goods or passengers, carried by railway, sea or air, taxes on sale or purchase of goods which take place in the course of inter-State trade, etc., be brought under the purview of Article 268." It has argued that it will be in the interest of tax administration to progressively allow the State Governments to levy and administer these taxes which have now been included in Article 269. One State Government has asked for the transposition of the taxation heads comprised in Entries 89 and 92 of List I to List II. We have dealt with these aspects in detail in the Chapter of Legislative Relations.

10.5.20 **Entry 89 of List I :**

"**89.** Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights."

The above Entry covers taxes listed at (c) and (d) of Article 269(1). While by virtue of this Entry Parliament is empowered to levy 'terminal' taxes on goods and passengers carried by railway, sea or air, the State Legislatures by virtue of Entry 52, [17] List II are competent to impose Octroi (terminal tax) on *entry* of goods into a local area for *consumption, use or sale.* Similarly, under Entry 56 [18] of List II, the State Legislatures are competent to levy taxes on goods and passengers carried by road or on inland waterways. A State Government has suggested that the States may be empowered to levy the taxes mentioned in Entry 89 of List I.

10.5.21. One of the most important developments in post-Independence period is the emergence of a vast common market. Transport sector constitutes an important element in the basic infrastructure and its development is vital for the growth of the economy. Uniform rate-structure and policies with respect to them are desirable to ensure that free flow of inter-State trade is not hampered by discriminatory and differential trade barriers raised by the States. Further, the suggestion under consideration carries greater scope for raising revenue by the advanced States with well-organised transport services and would discourage already under-utilised transport in less-developed areas. Finally, inspite of these taxes being within the competence of the Union, in agreement with the Eighth Finance Commission, we do not think that there is much scope for raising revenue from the terminal taxes on goods and passengers.[19] In view of the above considerations, we are of the view that the power to levy terminal taxes on goods and passengers carried by railway, sea or air should remain with the Union Government.

10.5.22. **Entry 90, List I :**

"**90.** Taxes other than stamp duty transactions in stock exchanges and futures markets."

Two State Governments have pointed out that 'futures markets' are essentially intra-State in character dealing with local mercantile and commercial subjects and have suggested transfer of 'futures markets' to the State List. In line with the above argument, they have also suggested that Entry 90, List I (along with Entry 48 [20] of List I) be suitably modified by transferring taxes other than stamp duties on transactions in 'futures markets' to the State List.

10.5.23 Futures transactions comprise contracts for sale and purchase of goods at a future date primarily with a view to guarding against adverse price fluctuations. By its very nature futures trading has an organised character and is, in practice, conducted through Commodity Exchanges which frame rules and regulations concerning the contracts. At present, futures trading is allowed at specific centres in respect of four commodities, viz., jute products (sacking bags), paper, turmeric and gur. No tax is currently being levied by Government of India on futures transactions. Indeed, the Fifth and the Eighth Finance Commissions, which considered the scope for raising revenue from taxes included in Article 269, did not find much scope in this tax commensurate with the administrative costs and the difficulties involved.

10.5.24. The futures transactions generally involve operations affecting interests of traders, manufacturers, etc., in more than one State. For example, in the case of 'gur', there are nine major centres where futures trading takes place. If power to tax these transactions is transferred to the States, it may lead to problems in regard to availability of the commodities and prices in other areas of the country. Entry 90 is functionally linked to Entry 48 of List I. We have noted in the Chapter on Legislative Relations that stock exchanges and futures markets have an inter-State character. The latter also entails overseeing development of a broadbased capital market which can be done effectively and uniformly by the Union Government only. In view of these considerations read alongwith the discussion in the chapter on Legislative Relations, we cannot support the suggestion for transfer of Entry 90 of List I to List II.

10.5.25. **Entry 92, List I ;**

"**92.** Taxes on the sale or purchase of newspapers and on advertisements published therein."

The State Governments which have suggested the transfer of this Entry to List II, have not given cogent and specific reasons, apart from saying in general terms that such transfer will augment the fiscal resources of the States.

(17) "52. Taxes on the entry of goods into a local area for consumption, use or sale therein".

(18) "56. Taxes on goods and passengers carried by road or inland waterways".

(19) At present a terminal tax is, however, being levied on passengers carried by railway to certain places of pilgrimage or where fairs, *melas*, exhibitions, etc., are held.

(20) "48. Stock exchanges and futures markets."

10.5.26. The Union Ministry of Finance has informed us that this tax was placed in the Union List "to ensure the freedom of the Press, promote the newspaper reading habit and increase the circulation of regional language newspapers." The scope for raising revenue from this tax was found to be very limited by the Taxation Enquiry Commission (1953) and the Fifth and the Eighth Finance Commissions in view of the still narrow base of newspaper readership and the need to encourage the Newspaper-reading habit. We have also been given to understand by the Union Ministry of Finance that to encourage the newspaper readership the Union Government "has even been canvassing the exemption of newsprint from State Sales Taxes."

10.5.27. A well-informed public opinion is a *sine qua non* of a healthy democratic system. Newspapers play a crucial role in disseminating information, mobilising and focussing public opinion on major issues or concerns of the day. No less significant are the services which newspapers with a large India-wide clientele, render in fostering national outlook and integration. As it is, there is a paucity of newspapers having an India-wide circulation and a sound financial Position. If the power to impose this tax is assigned to the States, such newspapers may face cost-differential among States, adversely affecting their circulation and financial viability.

10.5..28 Moreover, under the present arrangements envisaged in Article 269, the net proceeds of this tax, if levied, are to be distributed on the recommendations of the Finance Commission among the States within which it is levied. If the power to levy or collect this tax is transferred to the States, it will be disadvantageous to the less-developed States with low urbanisation and nascent readership.

10.5.29. Since the power to tax has also a potential to destroy, the adoption of a uniform policy which balances the claims of a free viable Press with the need for raising revenue for the States from this meagre albeit dubious source, is essential in the larger interest of the nation as a whole. Only the Union is to do so.

10.5.30. In view of the above considerations, we are unable to support the demand for transfer of Entry 92 of List I to List II.

10.5.31 **Entries 92A and 92B, List I:**

"**92A.** Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

"**92B.** Taxes on the consignment of goods (whether the consignment is to the person making it or any other person), where such consignment takes place in the course of inter-State trade or commerce."

A regional political party has suggested that these Entries be omitted from List I, and from Entry 54[21] of List II, the words "subject to provisions of entry 92A of List I," be deleted.

(21) "54. Taxes on the sale and purchase of goods, other than newspapers, subject to the provisions of entry 92A of List I."

10.5.32 We have dealt with this matter in the Chapter on Legislative Relations under the Section "Issues regarding Article 286 and related provisions." We may reiterate here that the broad purpose of the system encompassing Article 286, Entries 92A and 92B of List I and Entry 54 of List II, is to check multiple taxation of the same transaction by different States in the course of inter-State trade and commerce and ensure uniformity in taxation at a relatively lower rate on sale and purchase of certain goods declared to be of special importance. Union Government's overall control in such spheres of taxation to subserve this national purpose is essential. It is also pertinent to note that net proceeds of taxes included in Entries 92A and 92B are entirely for the benefit of the States and are not retained by the Union In planning the Consignment Tax (Entry 92B) a series of consultations with the State Governments have already taken place. It would, indeed, be desirable that from time to time the Union Government takes the State Governments into confidence in organising all the taxes coming under Article 269. In view of the above-mentioned position, no change in respect of Entries 92A and 92B is called for.

Taxation of Properties

10.5.33. **Entry 32, List I :**

"32 Property of the Union and the revenue therefrom, but as regards property situated in a State, subject to legislation by the State, save in so far as Parliament by law otherwise provides."

Articles 285 and 289 provide immunity from taxation of the properties of the Union and the State Governments by the other. A State Government has suggested deletion of the provision 'save in so far as Parliament by law otherwise provides' in Entry 32 of List I as well as in Article 285. It has pointed out that on account of this limitation local bodies in the States are foregoing substantial revenues. Another State Government has suggested omission of clauses (2) and (3) of Article 289 as they allegedly discriminate against the States inasmuch as Article 285 does not have clauses analogous to these. On the other hand, it has been represented by a Union Government's Corporation that it should also be exempted from taxation under Article 285.

10.5.34 We have examined at length the rationale of the relevant provisions of Articles 285 and 289 in the Chapter on Legislative Relations. Briefly, we have noted therein that the immunities apply to direct taxes on property of the Union in a case falling under Article 285 and to direct taxes on income and property of the States under Article 289. There is no immunity in regard to taxes, such as Customs Duties, in relation to property. Similarly, the Union Government also has to pay Sales Tax. A necessary precondition for the harmonious working of a two-tier polity is that neither the national nor the regional government should have powers to make laws which are directed against each other. Properties of the Union Government's Corporations are not on the same footing as the properties of the Union Government. Tax immunities cannot be extended to them. In view of the above, and the detailed reasons given in the Chapter on

Legislative Relations, we do not suggest any changes in Articles 285 and 289 and Entry 32 of List I. We may, however, reiterate our recommendation made in para 2.35.13 of the Chapter on Legislative Relations that a comprehensive law [under Clause (1) of Article 285 read with the saving clause in Entry 32 of List I] analogous to Section 135 of the Indian Railways Act, 1890 and Sections 3 and 4 of the Railways (Local Authorities' Taxation) Act, 1941 be passed making liable to taxation the properties of the departmental commercial undertakings of the Union Government at such fair and reasonable rates as may be notified from timt to time by the Union Government after taking into consideration the recommendations of a person, who is or has been a Judge of a High Court or a District Judge.

10.5.35. So far as the issue of service charges is concerned, since April 1, 1954, on the recommendations of the Taxation Enquiry Commission, 1953, the Government of India has agreed to pay charges in lieu of property tax for the services rendered in respect of its properties by the local bodies. The services provided by the local bodies vary considerably and may include conservancy, water supply, drainage and sewerage, roads and lighting, etc. Large and compact Union Government's establishments, like the Railways and public sector undertakings, usually provide their own internal services and share the construction and maintenance costs on link services like roads, sewerage and drainage, with the local bodies.

10.5.36. The norms in regard to the service charges were determined by Government of India in 1962 and subsequently revised in 1967 and 1968.[22] The procedure has been systematised.

10.5.37 Problems like inadequate service charges paid for Government property or accumulation of their arrears are administrative issues and should be settled by mutual discussion between the Union and the State Governments. It is only fair that reasonable service charges should be paid by all beneficiaries.

10.5.38 We recommend that an official level committee may be set up to review the problems and evolve mutually agreeable solutions. This committee may have on its panel representatives of the Union Ministries of Finance, Home, Urban Development, Railways and from some State Governments.

10.5.39. **Entry 40, List I :**

"40, Lotteries organised by the Government of India or the Government of a State."

A State Government has suggested that a new Entry may be added to the State List, reading "Lotteries organised by the Government of a State" with suitable change in Entry 40 of List I. The import of the suggestion is that the State Governments be empowered in matters relating to lotteries organised by them and by implication, the jurisdiction of the Union should be restricted to lotteries organised by the Government of India. A similar suggestion has been made by another State Government and also by a State level political party.

10.5.40. We have dealt with this issue in detail in the Chapter on Legislative Relations. State lotteries cannot remain confined within the boundaries of the State and the distributors are scattered all over the country. Problems of inter-State character have, indeed, arisen in this regard.[23] It would not be possible for any particular State Government, being territorially limited in jurisdiction to legislate, if and when necessary, for regulating matters in regard to other States' lotteries. As observed in Chapter II, only Parliament can have the legislative competence to regulate such inter-State matters. We reiterate our finding that the changes proposed in respect of Entry 40, List I and addition of a corresponding Entry in the List II cannot be supported.

10.5.41. **Entry 45, List I :**

"45. Banking".

A State Government has pointed out that in other federal countries like United States and Australia, the States have also established banks and, therefore, banking should not be an exclusively Union subject. It has suggested that in Entry 45, List I, "Banking" should be replaced by "Central Bank or Reserve Bank". Further, the entry "Banking" must be transferred to the Concurrent List. Another State Government also has suggsted such a change arguing that banking represents too big a concentration of economic power and that there is no reason why it should be the monopoly of a particular level of Government.

10.5.42. We have dealt with the issue in the Chapter on Legislative Relations also. As mentioned there, banking operations transcend beyond territorial limits of the States. Functionally, banking has close links with matters like 'Currency' coinage and legal tender; foreign exchange' (Entry 36), 'Foreign loans' (Entry 37), 'Bills of exchange, cheques, promissory notes and other like instruments' (Entry 46), 'Insurance' (Entry 47) and 'Stock exchanges and futures markets' (Entry 48) which all belong to the Union List. Banking is also basic to trade and, indeed, to all aspects of socio-economic development and planning. Centralised control is essential for proper credit management and implementation of monetary policy. Banks have a crucial role in the economy and there is need to regulate their activities so as to ensure that they are in consonance with the economic and development policies and are fully integrated with them. We are of the view that the subject 'Banking' should continue in the Union List and the transfer of Entry 45 'Banking' to the Concurrent List would not be desirable in our special situation.

10.5.43. **Entry 84, List I :** A State Government has suggested that the States should be allowed to levy excise duties on items like sugar, molasses, and

22. Government of India, Ministry of Works, Housing and Supply O.M. No. 23(8)-v-Cont. dated 25-8-62; Ministry of Finance, Department of Coordination letter No. 4(7)-P/65 dated 29-3-67, and Ministry of Works, Housing and Supply, Directorate of Estates O.M. No. 20011(8)/67-Pol. dated 3-4-68 and 5-4-68.

23. See, for example, H. Anrai and others v. State of Maharashtra, AIR 1984 (SC) 78.

Khandsari. This suggestion implies transfer of taxation powers from the Union to the States with respect to the items cited.

10.5.44 The items under reference are classified in Chapter 17 of the Central Excise Tariff Act. At present, no Central Excise Duty on *Khandsari* is being levied. Sale of sugar is one of the items covered by the Central Sales Tax Act, 1956 and the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Sugar industry also finds a place in the First Schedule of the Industries (Development and Regulation) Act, 1951 since its inception. The importance of sugar and related items in the context of industry as well as an item of mass consumption is obvious. Sugar has foreign trade implications also. An integrated and uniform policy with respect to production, pricing, distribution, storage, trade, taxation, etc. in regard to items like sugar is called for and it has to be a part of national economic policy. Transferring power of excise taxation to States in respect of these items may create difficulties in the implementation of national policies. Moreover, the proceeds of Union Excise Duty (the basic duty) on sugar, are already being shared with the States (at present 45 per cent) on approval by Parliament.[24]

10.5.45. We are, therefore, not persuaded to recommend that the States be given the power to levy excise duty on sugar, molasses and *Khandsari*.

10.5.46. A State Government has suggested that excise duty on industrial units, defined by Parliament by law as small-scale units, may be excluded from the jurisdiction of the Union and shifted to the States." It has been argued by this State that as the burden of excise duties ultimately falls on the consumers of excisable items in the form of higher prices, the higher per capital-income States, because of their larger consumption of such items, contribute a relatively higher proportion of the excise revenue, but the distribution criteria adopted by the Finance Commission affect redistribution of such revenues in favour of the less-developed States. The State Government has pleaded that an alternate arrangement which would be fair to all the States and also provide them a strong incentive to develop industrial production should be evolved. According to it, if the excise duty on small scale unit is made leviable by the States and if the definition of small-scale industries is liberalised by Parliament, this could become a growing source of revenue to the States and provide them incentive to develop the small-scale sector.

10.5.47 Several products in the small-scale sector have wide inter-industrial and inter-State linkages and it will create problems if they are subjected to differential rates of excise. Moreover, the present efforts towards rationalisation of commodity taxation in the form of MODVAT will face serious administrative difficulties if levy of excise duties is bifurcated between the Union and the State Governments corresponding to scale of production. Administrative problems will also be encountered in plugging evasion of excise by the entrepreneurs who often exhibit some of the stages of production as taking place in the small-scale sector. At prsent, excise duties, including those on production in small industries, are sharable with the States as per provisions of Article 272. All the States benefit under this sharing arrangement. The Finance Commissions' formulae for allocation of the divisible portion of Union's tax-revenue among the States are based on a number of considerations, including the re-assessed revenue and expenditure forecasts of the States, the desisred extent of re-distribution, amounts of grants-in-aid of revenues, etc. Such re-distribution of revenues effected on the recommendations of the Finance Commissions is an essential ingredient of inter-governmental sharing of resources. Mere consideration of the 'collection' factor in permitting the States to levy excise on small-scale industries individually, which is implied in the above-mentioned proposal of a State Government, would run counter to this spirit and place the less-developed States in particular, at a disadvantage. However, the manner of allocation of the divisible tax-revenues and the relative weights to be given to the various components of the formulae are matters to be considered by the Finance Commissions from time to time. It is best to leave these matters to their expert judgement. So far as the argument for giving the States incentive to promote small-scale industries is concerned, it may be pointed out that the Union Government also is providing significant support to this sector.

10.5.48 In view of the above considerations, it is not possible to support the suggestion that the power to levy excise duty on small-scale sector be shifted from the Union List to the State List.

10.5.49. **Entry 85, List I :** A state Government has suggested that the States may be authorised to levy their own Corporation Tax on companies whose factories are located in their areas. The suggestion has been made in the contest of augmenting the States' resources.

10.5.50. By virtue of Entry 85 of List I read with Article 270(4)(a), the reeceipts from Corporation Tax belong exclusively to the Union Government. Historically, the power to impose this tax in India has always been with the Union. The main reasons for reserving this power for the Union have been two-fold. Firstly, it ensures uniformity of approach to the taxation of corporate incomes and profits. Secondly, this arrangement secures greater efficiency in the administration of this tax. It obviates problems which arise in determining the locale of income accruals where units and offices of the same company or undertaking are located in different States and, incidentally makes evasion of tax more difficult.

10.5.51. This State Government has, however, not indicated how such an authorisation can be made. It this suggestion of the State Government implies conferring of concurrent jurisdiction on the Union and the States to levy this tax *or* delegation of the legislative power of imposing this tax by the Union to the States, it will run counter to the basic scheme of division of taxation powers between the Union and the States envisaged by the Constitution. The principles on which the taxation powers have been divided by the Constitution between the Union and the States, and none of them has been included in the sphere of their concurrent jurisdiction, have been explained in

24. Sugar is also subject to Additional Excise Duty in lieu of Sales Tax and the net proceeds of the duty, except the portion attributable to Union Territories, are distributed to the States.

paragraph 10.2.15 *ante*. The alternative aspect as to delegation by the Union of its legislative power of taxation has also been considered in the Chapter of Legislative Relations (paragraph 2.34.02). Suffice it to say here that neither aspect of this suggestion is based on *terra firma*.

10.5.52. For all the foregoning reasons, we do not gree with the suggestion that the States should also ɐe authorised to levy this tax on companies located vithin their territories.

10.5.53 **Entry 97, List I:**

"97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of these Lists."

A suggestion has been made that the above Entry may be transferred to List II.

10.5.54 In the Chapter on Legislative Relations, we have already dealt with this issue in some detail in the context of Article 248. Here we are basically concerned with the residuary power of taxation. On five occasions, so far, these provisions have been invoked for enacting taxation laws which include tax on gifts of movable and immovable property, including land [25]; wealth tax [26]; a tax on building contracts, and a cess upon the entry of sugarcane into premises of a factory [27]. In our Constitution, the heads of taxation have been enumerated specifically in the Union and the State Lists but no such head has been placed in the Concurrent List. We have already noted in Chapter II that the power to tax may be invoked not only to raise resources but also to regulate economic action. New subjects of taxation may involve matters with inter-State or national implications, requiring uniformity in approach. For these and other reasons indicated in Chapter II, we do not agree with the suggestion that residual taxation powers under Entry 97, List I be transferred either to the State List or the Concurrent List.

10.5.55 **Entry 57, List II :**

"57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III."

A State Government has suggested that the expression "subject to the provisions of Entry 35 of List III" in the above Entry may be deleted and a new Entry [28] in the List II may be added, as under :

"**Entry 57-A**—Taxes on mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

Another State Government has also made a similar proposal.

10.5.56 The above proposal amounts to fully empowering the States not only to levy a tax on such vehicles but also lay down the principles on which such taxes are to be levied. Under the present arrangements, the restriction on States' power in respect of Entry 57 (List II) arises only in case of repugnancy from any Union legislation under Entry 35 (List III). According to our information, no law has yet been enacted by Parliament under Entry 35 of List III. The issue raised is, therefore, at present premature and mainly academic.

10.5.57 We have been informed by the Union Ministry of Finance that there had been a wide disparity of motor vehicular taxes in different States and the vehicle operators have been representing against the resultant problems, specially in inter-State vehicular movements. Distortions have also been observed in the rates and policy on vehicle-registration followed by different States. One of the measures evolved is the scheme of national permits and composite fee.

10.5.58 Development of the transport sector is vital for the growth of the economy and development of inter-State trade and social inter-course. It is desirable to evolve uniform principles of taxation in this sector, so that free transport of goods through various States is not impeded. This is possible only if the Union has necessary powers to ensure uniformity in the main principles of the laws of the States with respect to tax on such vehicles, throughout the Country. This is the rationale for including Entry 35 the Concurrnt List. We are, therefore, unable to support the suggestion for change in the Constitutional arrangemens in this regard.

10.5.59 **Entry 60, List II :**

"**60.** Taxes on professions, trades, callings and employments."

The scope of these taxes has been spelt out in Article 276. According to clause (2) of that Article, the total amount payable by a persons on account of these taxes "shall not exceed two hundred and fifty rupees per annum." Because of this limit, it has been alleged, the yields from such taxes, wherever levied, have been a minor source of revenue to the concerned States. It has been suggested by several States that this limit should be suitably raised in view of several-fold increase in income levels. If this is to be done, amendment of clause (2) of Article 276 will be necessary.

10.5.60 We are of the view that there is a strong case for upward revision of the monetary limit fixed 37 years ago on taxes leviable under Entry 60, List II and for periodic review of this limit in view of persistent inflation. The linkage between its incidence and that of Income Tax will also have to be considered simultaneously. We have been given to understand by the Union Ministry of Finance that it is already considering the revision of the monetary limit on professions tax, etc. In view of the same, we do not wish to make any specific recommendation in regard to a higher limit to be fixed in Article 276, except that such limit should be revised at frequent intervals in consultation with the States.

Taxation by States under Articles 287 and 288

10.5.61 A State Government has suggested that the States should be allowed to levy tax on power sold to the railways as the railways are a commercial

25. Second Gift Tax Officer v. Hazareth, A. 1970 (SC 999).

26. Union of India v. Dhillon, A. 1972 (SC 1061).

27. Mithan Lal v. State of Delhi, 1959 (SC 445).

28. This subject at present is covered by Entry 35 of List III which reads :

"35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

organisation. Article 287 lays down, among other things, that save in so far as Parliament may by law otherwise provide, no law of a State shall impose or authorise the imposition of a tax on consumption or sale of electricity consumed or sold to Government of India or consumed by the railways.

10.5.62 Indian railways constitute a basic infrastructure. With the gradual shift from coal and diesel to electric traction, the consumption of power by railways is likely to increase. In the construction and maintenance of railways works, the consumption of electricity by railways may significantly add to its costs. In our opinion this may have serious repercussions on the extension and operation of railways. We, therefore, do not agree with the suggestion that the States should be given unrestricted power to levy a tax on electricity sold by the States to the railways by effecting an amendment to Article 287 of the Constitution.

10.5.63 Further, a suggestion has been made that Article 288(2) may be suitably amended to enable the State Legislature to impose a tax in respect of water or electricity stored, generated, consumed, distributed or sold by any authority whether subservient to the Union or a State Government. The proposal seems to imply removal of preconditions under Clause (1) of that Article requiring President's prior approval for effecting such a legislation by a State.

10.5.64 We have considered the above issue in the Chapter on Legislative Relations. In the present context, we may reiterate that the provision under Clause (2) of the Article 288 is a corollary to the principle of 'inter-governmental tax immunities'. Further, in as much as subject of taxation under this clause functionally involves inter-State aspects, the same becomes a matter of national concern, given the crucial significance of the items of water and electricity for the economy. Hence, the justification of the provision for the President's prior approval to a Bill seeking to impose such taxation. We are, therefore, of the view that Article 288(2) needs no change.

10.5.65 An all-India political party has suggested that the States should be permitted to tax generation of electricity within their areas as distinguished from mere sale of electricity. The basic principle followed in the Constitution in the division of taxation powers between the Union and the States is that tax on production, with a few exceptions is levied by the Union and on sale by the State Governments. In our opinion, this principle is germane to taxation of electricity also. Electricity is an important ingredient of infrastructure. While its generation has to be location-specific in most cases, its consumption may be of inter-State significance. Even on taxation of inter-State sale of electricity, limitations have been put on States' powers, *vide* Article 288. A tax on generation of electricity by the States, if allowed, might operate as an additional barrier to inter-State flow of this strategic input. In view of these considerations, we do not agree with the suggestion that the States may be allowed to levy tax on generation of electricity.

Taxation of Agricultural Income

10.5.66 We have noted in paragraphs 10.3.06 and 10.3.07 that a criticism levelled against the States is that they have not sufficiently made use of the taxation powers allotted to them. In particular, the example of not levying or withdrawing the levy of Agricutulral Income Tax is often cited. An all-India political party has submitted to us as follows :

> "Under Entry 46 of the State List, the State can levy tax on agricultural income. Because of the efforts as to the enormous expansion of irrigation facility, hybrid seeds, chemical fertilisers and research in soil fertility, a very large number of agriculturalists have come to occupy the upper bracket of elite group in the society. Green Revolution to the extent of burgeoning stocks of Food Corporation of India, search of export market of wheat and rice and ever-rising support prices for agricutural products have combined to bring into existence an affluent class of agriculturists. yet, save Kerala no State has levied agricultural income tax.....It is a truism that State Governments in order to keep intact their vote banks do not levy taxes and shed crocodile tears of shortage of resources."

A suggestion often made is that in order to overcome the resistance by interested groups and in the interest of uniformity in taxation, the Union may levy a tax on agricutural income and its net proceeds be assigned to the States.

10.5.67 The Government of India Act, 1935 empowered the Provinces to levy tax on agricultural incomes while the income tax on other incomes was allotted to the Federal Government. This division was retained in the Constitution. At present, about half a dozan States are levying Agricultural Income Tax. In three of them, it is confined to plantation crops. Several States, which had been earlier levying taxes on agricultural incomes, gave them up or are collecting only nominal amounts following various exemptions.

10.5.68 In order to ascertain the factual position and views of the State Governments on the type of criticisms mentioned in para 10.5.66 above, we had issued a Supplementary Questionnaire. Several States have high lighted serious problems in the assessment of agricultural incomes; shrinkage of the tax bases due to land reforms (ceiling on holdings); widely dispersed potential assessees; fluctuations in production and incomes due to vagaries of nature; problems in maintaining systematic accounts of income and expenditure in agriculture, etc. A few State Governments are of the view that a direct tax on agricultural incomes will act as a disincentive to the spread of improved technology and high productivity.

10.5.69 The State Governments have generally expressed reservations and have opposed the suggestion that the Union Government may levy a tax on agricultural incomes and assign the net proceeds to the States. They have given different reasons for the same. Those already levying the tax on agricultural incomes are of the view that there will be no additional advantage if the tax is levied by the Union Government. Others have highlighted the difficulties in levying

Agricutural Income Tax and pointed out that the Union Government will face similar problems. Indeed, according to them there is not much scope for such a tax. Some of them have also expressed apprehensions about the alternative of the Union levying the tax and have cited the 'unhappy' experience of the scheme of Additional Excise Duties in lieu of Sales Tax. Yet another State Government has argued that it was not so much a question of raising revenue as of a State's discretion to levy or not to levy a tax. Another State Government has pointed out that fixation of agricultural prices at levels much lower than those recommended by the States is already a tax in disguise on the agricultural sector. Only one State Government has suggested that in the interests of raising revenue and a uniform tax on agricultural sector, the Union Government might levy this tax as per arrangements under Article 268.

10.5.70 The Union Ministry of Finance has observed :

"..the Central Government has no intention of seeking a transfer of power to tax agricultural incomes on behalf of the States for the following reasons:

While there may be justification for imposition of agricultural income tax in view of increased income due to the Green Revolution, substantial investment in the agricultural sector, low revenues raised from the agricultural sector, and greater need for raising additional resources for development, there would, however, be serious difficulties in the implementation of this policy at the Central level due to conceptual difficulties regarding the definition of agricultural income. No uniform difinition of agricultural income can be precisely formulated due to diversity of the quality and productivity of land. Moreover, due to the illiteracy of the agricultural population, agriculturists would not be able to maintain accounts for taxation purposes and may not be able to follow the rules and regulations prescribed. Besides, some sort of agricultural income tax is already being levied by a few States and others could follow suit."

10.5.71 In the Long Term Fiscal Policy announced by the Government of India in December 1985 also it was recognised that taxation of agricultural income presented 'many 'conceptual and administrative problems. It categorically stated :

"Land revenue and taxation of agricultural income are States' subjects under the Constitution. The Centre has no intention of seeking any change in this position." [29].

10.5.72 Taxation of agricultural income is, indeed, a sensitive matter requiring simultaneous consideration of an appropriate base, administrative convenience and costs, reasonable yield from the tax, parity with tax burden on non-agricultural sector; peculiar nature of agriculture as an enterprise, impact of the tax on productivity-improvements in agriculture, and the like. Both the Union and the State Governments do not also at present seem to be inclined for a change in the Constitutional provision in regard to Entry 46 of List II. We have also taken note of the findings of a number of expert studies [30] in this regard. In view of the problems highlighted by the Union and the State Governments as well as the expert studies, the question of raising resources from this and other related aspects would require an indepth and comprehensive consideration in the National Economic and Development Council.

Rationale of Constitutional Scheme

10.5.73 The present division of fields of taxation between the Union and the States is based on economic and administrative rationale. Levying of taxes with inter-State base and where uniformity in rates is desirable are with the Union Government. Taxes that are location-specific are with the States. Canons of efficiency and equity in administration of taxes and the imperative need for the Union to have adequate resources, *inter alia*, to help the States with lower level of socio-economic development and tax-potential, leave hardly any scope for shifting any major sources of revenue of the States from the present allocation of areas of taxation to the Union. We may note here the views of the Administrative Reforms Commission Study Team that, if at all, a review of taxation powers is carried out, economic considerations would most probably compel a shift in favour of the union and not the other way. Some experts have also expressed similar views during their evidence before us.

10.5.74 A well balanced distribution of heads of taxation based on economic and administrative rationale between the Union and the States and adequate arrangements for sharing of resources is vital for the proper functioning of the two-tier polity. We are of the firm view that the basic scheme of the Constitution dividing the field of taxation between the Union and the States and incorporating adequate arrangements for sharing of resources between them, is sound and no major modification in it are called for.

10.5.75 We have, in the Chapter on Legislative Relations (paragraph 2.4.04), referred to the memorandum submitted by a Regional Party in which it has referred to the draft resolution of its Working Committee demanding that the interference of the Union should be restricted to Defence, Foreign Relations, Currency and General Communications only and all other governmental powers (including residuary powers) should be assigned to the States. Further, the States would contribute for the expenditure of the Union in respect of the above mentioned subjects. We have pointed out therein that the resolution of the "Whole House" of the same party had substantially amended that in the final resolution. The State Government supported by this Regional Party has not made such an extreme demand and while suggesting various changes in the Seventh Schedule to the Constitution, it has not asked for any major change with respect to the heads of taxation enumerated in the Union List.

29. Government of India, Ministry of Finance—*Long Term Fiscal Policy*, 1985, para 5.36, p. 35.

30. See, for example, the reports of *Direct Taxes Enquiry Committee*, 1971 (Chairman : Justice K. N. Wanchoo); *Committee on Taxation on Agricultural Wealth and Income*, 1972 (Chairman : Dr. K. N. Raj), and *Direct Tax Laws Committee*, 1978 (Chairman : G. C. Chokshi).

10.5.76 As explained in paragraphs 2.9.12 to 2.9.15 of the Chapter on Legislative Relations, no Union or federation can survive if it has no financial resources of its own and is entirely dependent on contributions from the constituent units. Indeed, this proposal cuts at the very root of the basic postulate that both the Union and State Governments should each have independent financial resources of its own to meet bulk of the expenses for its exclusive functions.

10.5.77 It is pertinent to note here that approximately 85 per cent of the Union's tax revenues are collected from offices located in eight port and metropolitan cities situated in seven maritime States and one Union Territory.

10.5.78 Owing to different levels of development obtaining in the country, the tax potentials of States vary widely. If the financial arrangement as suggested by the regional party is adopted, a few States would be able to collect for themselves most of the revenues and all the less-developed States would be in perpetual financial crisis. All the advantages of efficiency in tax collection, uniformity in rates, economy in tax administration, etc. will be lost. Trade barriers will come up and the Union will collapse.

10.5.79 In view of the above considerations, we are unable to support the scheme of financial arrangements implicit in the suggestion referred to in para 10.5.75 above.

6. *ENLARGEMENT OF THE DIVISIBLE POOL*

10.6.01 We now consider the suggestions made by many State Governments and experts for the enlargement of the States' resources within the existing Constitutional scheme of division of taxation powers. All the State Governments and many experts have emphasised the need for extending the present divisible pool which at present mainly consists of the mandatorily sharable Income Tax and permissively sharable Union Excise Duties. We have already noted in Section 4 the substantial increase in resources transferred to the States over the period 1951—85. Considering the transfers through the mechanism of the Finance Commission it is seen that overall devolution effected has gone up from Rs. 476 crores (Annexures X.5 and X·6) during the period of the First Finance Commission (1952—57) to an estimated Rs. 39,452 crores during the Eighth Finance Commission period (1984—89). Since the First Finance Commission, the devolution of revenues on account of Union taxes which are sharable, has increased significantly in relation to the total revenue realised from these taxes as well as to the total tax receipts and total revenue resources of the Union. This is evident from the following table :

	1952—57	1979—84	1984—89 (estimated)
1. Income tax transferred as percentage of total Income Tax receipts of the Union .	42·3	68·3	*
2. Union Excise Duties transferred as a percentage of total receipts from Union Excise Duties.	13·1	42·1	*
3. Combined Income Tax and Union Excise Duties transferred as a percentage of the total receipts from these taxes	28·3	46·6	47·6
4. Tax devolution as percentage of total tax receipts . .	15·7	26·8	27·6
5. Total devolution (taxes+grants as percentage of total receipts on revenue account	17·1	23·6	24·1

*Not available separately.

Sources : (1) Ministry of Finance—*Indian Economic Statistics, Vol. II—Public Finance,* various issues.

(2) *Report of the Eighth Finance Commission,* 1984.

10.6.02 The various suggestions requiring changes in the arrangements regarding the divisible pool, i.e., proceeds of the taxes levied by the Union but sharable with the States, may be grouped into three categories :

(i) All tax receipts of the Union be made sharable with the States.

(ii) Fix the collective share of all the States in the Constitution and leave its allocation among the States *inter se* to be done on the recommendations of the Finance Commission.

(iii) Enlargement of the present sharable pool by including the proceeds from any or all of the following :

(a) Corporation Tax.

(b) Surcharge on Income Tax.

(c) Some other Union Taxes, e.g., Customs Duty, and

(d) Revenue from increase in administered prices of items like petroleum and steel, yields from schemes like Special Bearer Bonds, and Compulsory Deposits (Income Tax Payers) Scheme, 1974.

Total Revenues of Union as divisible pool

10.6.03 A few States, some political parties and other knowledgeable persons have urged that the States may be given a share out of the total tax revenues of the Union on the ground that so long as the total quantum of transfers remains the same, it is immaterial whether the share comes out of specified taxes or out of the total tax receipts. It is argued that in this scheme the base will be larger and the States will be insulated to a greater extent from the effects of fluctuations of individual sharable taxes and would thus be given a more predictable and assured share. The proponents of this view point out that as the share of the States in Income Tax has already reached a high level (85 per cent), the Union Government may lose interest in maximising revenues from this source. They also allege that in order to reserve some resources for its exclusive use, the Union Government has been resorting to increasing administered prices on certain items rather than the sharable Union Excise Duties. So, in order to get over the disincentive in raising revenue from the two taxes (with very high percentage of shares for States) and absolving the Union Government of the criticism of manipulating resources out of the divisible pool, it would be advantageous to make the entire receipts of the Union divisible.

10.6.04 We have considered these suggestions carefully. At the time of the framing of the Constitution also this matter came up for consideration. The Sarkar (Expert) Committee made a specific recommendation that certain taxes like duties of Customs (including those on exports) should be for the exclusive use of the Union. Such duties are subject to frequent adjustments keeping in view the terms of external trade and, therefore, are not suitable for sharing. Further, the scheme of the Constitution earmarking certain taxes for the exclusive use of the Union is sound in view of the very onerous responsibilities cast on it. We are of the view that while there is no particular advantage in bringing all tax receipts into the divisible pool, it may, on the other hand, place the Union at a disadvantage.

Fixed shares in Constitution

10.6.05 Yet another aspect of division of resources for consideration is the suggestion that the percentage shares of States should be built into the Constitution and the Finance Commission then need concern itself only with the division of such resources among the States. A State Government and a political party have suggested that at least 75 per cent of the revenue of the Union should be made sharable with the States as a Constitutional obligation. They have, however, not spelt out the basis for the same.

10.6.06 We have already noted that at the time of the framing of the Constitution Income Tax was the most important source of revenue. Revenue from Union Excise Duties was small and from Corporation Tax insignificant. Today, Union Excise Duties and Corporation Tax have by far overtaken the Income Tax. A moment's reflection would show that the States will be put to great disadvantage if percentage shares were fixed in the Constitution itself. The situation is dynamic, both in regard to availability of resources and in regard to needs of the Union and the States. It is the hallmark of the mechanism of the Finance Commission provided in our Constitution that it takes into account such factors in recommending a reasonable sharing of resources. We are not in favour of changing this system in view of its obvious merits. Further, a transfer of as high as 75 per cent of Union's revenue resources to the States is most impracticable inasmuch as such priority items as defence, interest payments and subsidies at present absorb about two-thirds of the Union's revenue resources.

Selective Enlargement of divisible Pool

Corporation Tax

10.6.07 We now consider the suggestion that the divisible pool may be enlarged by adding to it proceeds of some specified taxes, e.g., Corporation Tax, Surcharge on Income Tax, etc. A number of State Governments and others have suggested that the proceeds from the Corporation Tax should be included in the divisible pool. This demand stems from the fact that in 1959, Income Tax paid by companies, which was earlier included in Income Tax and was, therefore, mandatorily sharable with the States, was concerted into Corporation Tax which as per provision of Article 270, ceased to be sharable. In due course, it proved to be a buoyant source of revenue to the Union Government. Article 366(6) defines Corporation Tax as "any tax on income so far as that tax is payable by companies" subject to the qualifications that it is not chargeable in respect of agricultural income, that no deductions in tax are made with respect to the authorised dividends and that the tax so paid is not taken into account in computing the income for purposes of Income Tax, etc., thereon.

10.6.08 A simplification in the scheme of company taxation was introduced in 1959. Prior to it, out of the Income Tax paid by a company before declaring the dividends, a portion of such tax was 'deemed' to have been paid by the shareholders. When the shareholders' income was subsequently assessed for purposes of Income Tax the dividends were included in it, after being "grossed" (i.e., portion of 'deemed' tax paid added to it). The slab for their Income tax and the amount was then determined and out of the Income Tax liability the amount of 'deemed' tax-paid deducted. As this process of grossing was found "somewhat complicated"[31], the entire Income Tax Paid by Companies was defined as Corporation tax.

10.6.09 This change, however, created a problem in Union-State financial relations inasmuch as, according to the Constitution, the proceeds of the Corporation Tax are not sharable with the States. Before 1959, the Corporation Tax was small compared to Income Tax, but later the receipts from it had overtaken those from Income Tax (Annexure X·7). As this change came about at a time when the report of the Second Finance Commission was under implementation and the Third Finance Commission was yet to be 'constituted', compensatory *ad-hoc* grants were given to the States to make good their loss in the share of Income Tax. Since the reclassification of Income Tax on companies as Corporation Tax, most of the States have been asking for restoration of *status quo ante*. In view of the explicit Constitutional provision precluding the revenues from the Corporation Tax being sharable with the States, the first five Finance Commissions did not consider this demand. The Third Finance Commission, however, recommended increase in States' share in the Income Tax in view of the reduction of the divisible pool consequent to the reclassification of Income-Tax on companies as Corporation Tax. The Sixth Finance Commission suggested that the matter should be reviewed by the National Development Council and, at the same time, highlighted that inclusion of Corporation Tax in the divisible pool would not *ipso facto* upset the balance of the Union-State resources as it would depend upon the percentage of resources that would be allocated to the States. The Seventh Finance Commission also suggested that the Union Government should hold consultations with the State Governments to settle the issue of Corporation Tax.

10.6.10 The Eighth Finance Commission took the view that the States should have access to such highly elastic source of revenue as the Corporation

(31) See, Budget (1959-60) Speech of the then Union Finance Minister (Paragraphs 67 to 71). It was explained that the complications arose (a) as the rate of grossing depended on the rate at which company's profits were initially taxed, (b) there were problems and litigation when dividends were paid out of accumulated reserves, and (c) assessment of shareholders was delayed.

Tax. It, however, did not favour the suggestion for making a grant to them in lieu of a share in the Corporation Tax as it would amount to "circumventing" the Constitution.

10.6.11 The Union Ministry of Finance, whose comments were sought on this issue, has opposed the inclusion of Corporation Tax in the divisible pool on several grounds, viz., it is not provided for in the Constitution; the disadvantage to the States due to definitional change in 1959 has been compensated by the Finance Commissions by raising their share of Income Tax; the devolution to the States should be considered as a 'package'; a number of States are already having surpluses on revenue account consequent to devolutions from other sources whereas the Union Government is experieneing revenue deficits since 1979 and that the very fact of a tax being elastic should not be treated as a justification for its sharing. It has also been argued that the Finance Commission has several other ways of effecting transfer of revenues to the States.

10.6.12 We have given careful consideration to the views of the Union Government as well as those of the States and the observations of the various Finance Commissions. We have already noted that at present 85 per cent of the net proceeds of Income Tax are distributed among the States. As a result, there may be a risk of the Union Government losing in future its interest in increasing the receipts from this tax. There is also very little scope for any further increase in the States' share of Income Tax.

10.6.13 Further, as a consequence of the Eighth Finance Commission's recommendations, as much as 45 per cent of the net proceeds of Union Excise Duties constitute the share of the States. Here again, a significant increase in this share, if resorted to in future, might act as a disincentive to the Union to increase the receipts from the Union Excise Duties and look more towards non-sharable revenues.

10.6.14 We have presented in the Table below the Additional Resource Mobilisation (ARM) efforts of the Union Government conveniently divided into three periods :

(Rs. crores)

Period	Income Tax	Union Excise Duties	Customs Duties	Corporation Tax	Others	Total
1974-75	9·90	1004·04	99·09	95·50	-95·48	1113·05
to 1978-79	(0·9)	(90·2)	(8·9)	(8·6)	-(8·6)	(100·0)
1979-80	-111·30	1153·14	1242·68	108·50	3·55	2396·57
to 1983-84	-(4·6)	(48·1)	(51·9)	(4·5)	(0·1)	(100·0)
1984-85	-244·00	130·21	1152·27	244·00	-169·76	1112·72
to 1986-87	-(21·9)	(11·7)	(103·6)	(21·9)	-(15·3)	(100·0)

Note : Figures in parantheses are percentages to total additional resource mobilisation. The data is as shown in the relevant year's budget documents presented to Parliament. The negative sign indicates taxes given up or concessions given.

The above figures do not include additional resources raised by the Union through revision in administered prices, railway fares and freight and in items of posts and telecommunications, which are not shared with the States. The Table above shows that while there has been a negative ARM in the case of Income Tax, Corporation Tax has been found to be a good source for additional resource mobilisation. Union Excise Duties contributed 90.2 per cent of the ARM in the seventies with Customs giving only 8.9 per cent. In the latest period it is the reverse with Customs Duties contributing 103·6 per cent and Union Excise Duties only 11·7 per cent. There may be many reasons for these changes in the pattern of ARM but the trend is significant.

10.6.15 It is a fundamental principle of taxation that the taxing authority should have interest in its proceeds. In order to maintain this principle and giving a more meaningful choice to the Union among fiscal alternatives, it is necessary to enlarge the base of devolution to the States but with a lower percentage share in individual taxes. This can be done by bringing into the divisible pool a major Union tax but still keeping a sizeable revenue source for exclusive utilisation by the Union. It is, therefore, necessary to enlarge the base of devolution. Corporation Tax is the largest source of tax revenue after the Union Excise Duties and Customs Duties.

10.6.16 We recommend that by an appropriate amendment of the Constitution, the net proceeds of Corporation Tax may be made permissibly sharable with the States, if and as Parliament may by law so provide. This would have the advantage of enlarging the base of devolution so that in the revenues of the States there would be greater stability and predictability in future. Further, being an elastic resource, the States would also benefit from its growth.

10.6.17 The justification for enlarging the divisible pool also emanates from the fact that in an inflationary situation the gap between the expenditure and revenues widens, particularly in case of poorer States. Inclusion of Corporation Tax in the divisible pool would enable the States to cover partly this gap, since this tax responds well in an inflationary situation.

10.6.18 However, it is necessary to recognise that consequent upon inclusion of Corporation Tax in the divisible pool, adjustments will have to be carried out by suitably bringing down the shares of States in Income Tax and Union Excise Duties. If this recommendation is implemented in the middle of a period dealt with by a Finance Commission it may create serious complications. It would be for the Finance Commissions constituted in future to determine the quantum of transfers as well as the allocation among the States.

10.6.19 Keeping in view the constraints on the Union's finances, we suggest that the net proceeds of Corporation Tax, while continuing to form part of the Consolidated Fund of India, should be permissively sharable with the States and distributed among them on the authority of law passed by Parliament. This arrangement would impart the needed flexibility in revenue-sharing between the Union and the States.

10.6.20 A State Government has suggested that while the proceeds of Customs Duty may remain exclusively available to the Union, which at present

fully cover the defence expenditure—its "foremost Constitutional responsibility"—50 per cent of the revenue from Income Tax, Corporation Tax and the Union Excise Duties may go to the States as their share in Central taxes. This proposition has been made along with the proposals by this State Government that the Union should give up excise revenue on selected commodities to enable the States to raise an equivalent amount through additional Sales Tax on them and that the power to levy excise duty on small-scale industries should be transferred to the States. We have dealt with these proposals in paragraphs 10.5.03—10.5.04 and 10.5.46—10.5.48 respectively. Further, this State Government has suggested that the divisible portion of the Central taxes be allocated among the States on the basis of specific objective criteria with given rates.

10.6.21 States' share in the divisible pool and the principles of its inter-State allocation are to be determined on the recommendations of the Finance Commission which pays attention to the changing situations and needs of the Union and the individual States. As has already been discussed in paragraph 10.6.06, the present system has considerable merit and it would not be advantageous to proceed on the basis of fixed shares. Further, if a certain set of objective criteria were to be laid down before-hand, it will take away the needed flexibility in the revenue-sharing arrangement. The argument linking specific needs (viz., defence expenditure in this case) to the proceeds of a particular tax is not in accordance with the established principles of public finance. In view of the above reasons, it is not possible to agree with the scheme proposed by the State Government in the previous paragraph.

Surcharge on Income Tax

10.6.22. The Constitution provides for the levy of a Surcharge on Income Tax, the proceeds of which are not sharable with the States. The Expert Committee on the Financial Provisions of the Union Constitution (1947) had treated Surcharge for the exclusive use of the Union Government but had simultaneously warned that it should be levied "whenever conditions require such a levy; obviously such occassions should be rare and not last for long periods". Surcharge was levied in 1951-52 and continued upto 1985. It has been used in many forms (e.g., surcharge, special surcharge, additional surcharge, etc.) and has in the past been distinguished between earned and unearned incomes (1957-58 to 1963-64) and salaried income (in 1960s). Since 1975, it was being levied in a uniform manner till March, 1985.

10.6.23 It may be seen from Annexure X·7 that not only the revenue from Surcharge on Income Tax has increased sharply, its relative importance, gauged as percentage to Income Tax and Union's tax revenue, has also increased considerably and it has been continued for 34 years without interruption. This has given rise to the criticism that instead of meeting any special expenditure requirement, the Surcharge was being used by the Union Government as a regular source of revenue.

10.6.24 The States have also been raising the issue of bringing the Surcharge on Income Tax in the divisible pool before successive Finance Commissions. The first six Finance Commissions did not consider this demand in view of the explicit Constitutional provisions. The Seventh Finance Commission, however, observed significantly that "surcharge continued indefinitely could well be called an additional Income Tax, sharable with the rest of the proceeds of the Income Tax."[32] The Eighth Finance Commission not only endorsed the views of the Seven-the Commission but went further when it observed" .....for the sake of amicable Centre-State relations it (Union Government) should reconsider the indefinite continuance of the surcharge..... Therefore, we suggest that with the commencement of the financial year 1985-86, the Surcharge be withdrawn and the basic rates of Income Tax suitably adjusted." [33]

10.6.25 We cannot but describe the continuous levying of Surcharge on Income Tax, in one form or the other, for thirty four years ending March, 1985*, as substituting a special privilege for performing routine tasks. We have considered the various alternatives suggested like merging Surcharge with the basic rates thus making it sharable with the States, putting a ceiling on the period beyond which it should not be allowed in normal times, etc.

10.6.26 We are firmly of the view that the Surcharge on Income Tax should not be levied by the Union Government except for a specified purpose and for a strictly limited period only.

Administered prices

10.6.27 Revisions in the prices of items like petroleum, steel, cement, etc., which are produced mostly in the Public Sector by the Union Government, have implications for Union-State financial relations. It is argued by the States that an increase in prices of these commodities results in placing substantial additional resources at the disposal of the Union Government. On the other hand, inasmuch as most of these items are essential for building up the basic infrastructure by the States, the costs of these projects go up for which they are not only not compensated, but available resources get spread thinly, thereby leading to a vicious circle of delay in completion causing further cost-escalations. It has been suggested by the States that instead of raising the administered prices, the Union Government should raise the Union Excise Duties which are sharable, or otherwise agree to share the increased net receipts on account of increase in prices. Some of the States have suggested that such sharing should be applicable only in cases where the Central Public Sector enterprises are making profits.

10.6.28 There seems to be an insufficient appreciation of the role of prices of Public Sector products in such proposals. The Union Government has invested very large amounts in building up various Public Sector units mostly in such core sectors as steel, heavy engineering, etc. These units have not been generating the surpluses as expected of them for new investment.

(32) *Report of the Finance Commission*, 1978, para 22, p. 82.

(33) *Report of the Eighth Finance Commission*, 1984, para 5.10, p. 41.

*Reimposed for the accounting year 1987-88 on selected incomes as part of package measures to meet drought expenditure.

Moreover, in the Seventh Five-Year Plan, one of the important functions of the Public Sector enterprises is to generate surpluses for financing of further economic development. Another important function of pricing is to give appropriate signals to the products to utilise resources efficiently and to penalise inefficiency. Increase in prices could be due to a variety of factors and it would be nearly impossible to determine whether a part of it could be regarded as a substitute for increase in Excise Duty. Therefore, increases in administered prices do not easily lend themselves to sharing. The difficulty gets enhanced when other objectives of Public Sector, e.g., regional development, import-substitution, conserving a scarce product, etc. are simultaneously considered.

10.6.29 We are, therefore, of the view that it would not be advisable to make the proceeds of increase in administered prices sharable with the States.

Special bearer bonds and compulsory deposits scheme

10.6.30 With a view to improving the Government's financial position and reducing the budgetary deficit and also bringing out black money, the Government of India introduced the Special Bearer Bonds Scheme, 1981, effective from 2nd February, 1981. The Scheme provided certain immunities to the holders of these bonds in order to encourage sales of these Bonds. According to the Ministry of Finance, an amount of Rs. 964.59 crores (Rs. 88.67 crores in 1980-81 and Rs. 875.92 crores in 1981-82) was collected.

10.6.31 The Union Government introduced the Compulsory Deposit Scheme in July, 1974 as a part of its measures to contain inflation. The scheme had two parts. The first part provided for compulsory deposit of whole of the additional dearness allowance given to Government servants. This was expected to immobilise about Rs. 600 crores in a year. The second part of the scheme covered all Income Tax payers whose aggregate net annual income exceeded Rs. 15,000. There were different slabs of deposit rates for different income groups. It was expected to bring in a sum of Rs. 50 to Rs. 55 crores in a year. Both categories of deposits were to be repaid in five annual instalments together with interest.

10.6.32 The States have criticised the two schemes as measures to circumvent increases in Income Tax or as directly resulting from the inability of the Union Government to administer the same efficiently. They have, therefore, argued that the receipts of these two measures should also be shared with them as they have the same tax-base as the mandatorily shareable Income Tax. It has also been argued that as they represent savings they could be shared like the Small Savings collections. On the other hand, it has been countered that Union Government's access to these rescources is in the nature of loans which are not sharable with the States.

10.6.33 Demand for sharing of the proceeds from schemes like the Special Bearer Bonds and Compulsory Deposit (Income Tax payers) Scheme, 1974, are only of academic and illustrative significance today as these are not in force now. We are of the view that the Union Government should adopt such measures only under special circumstances when considered necessary as part of its fiscal and monetary policies. Sharing of such capital receipts with States will be beset with a host of problems in regard to allocation, terms of repayment, etc. However, nothing prevents the Union Government from providing special purpose assistance to the States keeping in view its overall financial position and the receipts from these sources, if found necessary.

Fiscal potential and resource mobilisation

10.6.34 The above consideration of issues and suggestions in revenue-sharing between the Union and the States has been in the context of the realised revenue mobilisation. The pressures felt on resources is a typical feature of a developing economy. The problems in their sharing by the different levels of government are bound to be less acute if the overall availability of resources is considerably larger. Economy in expenditure and prudence in fiscal management, i.e., greater efficeincy in tax-assessment, tax-collection, better returns on investments on public enterprises, irrigation and power projects—at all levels of Government, are equally important factors which augment the totality of resources at the disposal of the nation as a whole. Further, the organic linkage in policies and measures adopted by different levels of Government in resource mobilisation and expenditure must be duly recognised. This, indeed, is the crux of the problem in Union-State financial relations.

In this regard, a State Government has urged: "A proper development perspective for the country calls for greater and not less tax efforts by both the Centre and the States, as well as greater efficiency in public expenditure". We fully agree with this perception.

10.6.35 A thorough examination of the potential and directions of revenue-raising both by the Union and the States is desirable. In our tax structure, the receipts from indirect taxes now contribute well over threefourths of the total tax proceeds. In the resource mobilisation effort in future also, substantial reliance will have to be placed on indirect taxes. The Long Term Fiscal Policy announced by Government of India in December, 1985 seeks to introduce reforms both in regard to direct and indirect taxes. It contains directions for rationalising and simplifying tax laws and securing uniformity in procedures for direct taxes. It also aims at simplification of Central Excise Duties, introduction of MODVAT, reduction in arrears, and periodic upgradation of specific duties. Although in the Constitution, the taxation powers of the Union and the States are not concurrent, functionally (e.g., in terms of impact on prices and elasticity of taxes), the Union taxes like Excise Duties/MODVAT, Central Sales Tax, etc. interact with the States' Sales Tax. This has implications for actual use of taxation power by the States. The States complain that the Union Government's policies have restricted their scope to raise revenues from Sales Tax. There have been consultations between the Union and the States to levy the Consignment Tax. A comprehensive and expert consideration of reforms in taxation will be necessary to place consideration of Union-State fiscal relations by the concerned institutions in a proper perspective.

10.6.36 We recommend that an Expert Committee, with suitable representation on its penal from the States, may be appointed by the Union Government

to recommend desirable directions of reforms in taxation and, *inter alia*, consider the potential for resource mobilisation by the Union and the States. The report of this Committee should be placed before the Standing Finance Sub-Committee of the National Economic and Development Council, the establishment of which has been recommended in Section 9.

7. *PATTERN OF DEVOLUTION*

Issues

10.7.01 We have noted that the devolution of resources from the Union to the States has been very significant. These transfers are crucial in effecting a balance in the sharing of over-all resources between the Union and the States and their distribution among the States *inter se*. Following are the important issues that have been raised in respect of the pattern and efficacy of devolution of resources from the Union to the States :

(i) The devolutions effected on the recommendations of the Finance Commission —a body which has its origin in the Constitution—constitute only a part of the total transfers. Bulk of the transfers made for the Plan and other purposes under Articles 282 and 293 are 'discretionary', and by implication allow free-play to the Union Government's choice in respect of their magnitude and allocation. It is alleged that the expectations of the Constitution-makers that the devolution of resources from the Union to the States through the mechanism devised by them, in an impartial and 'automatic' manner free from 'interference', has suffered change.

(ii) Some expert studies have highlighted the iniquitous nature of the Central transfers with respect to allocations among the States. A few less-developed States have suggested special dispensation to them in Central transfers. Apart from the above issues, another aspect is whether the Union Government is transferring sufficient resources to the States. Before considering the above-mentioned issues, we may briefly review the factual position on the pattern of devolution of resources from the Union to the States.

Pattern of Transfers

10.7.02 Devolution of resources from the Union to States may be placed under three categories :

(i) transfers based on the recommendations of the Finance Commission;

(ii) transfers by way of assistance for execution of the Plan recommended by Planning Commission, including Centrally Sponsored Schemes; and

(iii) Others consisting of small savings loans, assistance for natural calamities, etc. canalised through the Union Finance Ministry.

Annexure X. 4 summarises the pattern of over-all transfers of resources from the Union to the States.

Statutory transfers

10.7.03 Transfers effected on the recommendation of the Finance Commission (called by some as 'statutory transfers') are normally determined for a period of five years. Bulk of these transfers are unconditional and have a built-in buoyancy with respect to the growth of the concerned tax receipts. In the totality of resource-transfers, those on the recommendations of the Finance Commissions accounted for 40 per cent during the period 1951—85.

Central Plan Assistance

10.7.04 A substantial part of the transfers in the second category are by way of assistance for the execution of the State plans. These accounted for 31 per cent of the total resource transfers from the Union to the States during the period 1951-85. If to these transfers are added those on account of Central and Centrally Sponsored plan-schemes, the totality of plan transfers during the period 1951-85 works out to about 41 per cent of the total transfers. The Central assistance for the plan is based on the recommendations of the Planning Commission. It includes both loans and grants. During the Sixth Plan period the grant component in the total plan transfers was about 56 per cent. A large part of the Central assistance for the State plans is allocated on the basis of the Modified Gadgil Formula [34] and other pre-determined considerations. We have discussed and commented on this aspect in detail in the Chapter on Economic and Social Planning.

Other Transfers

10.7.05 Besides the transfers effected on the recommendations of the Finance Commission and on plan account, the Union Government gives grants and loans for various other purposes, like relief of natural calamities, improvement of roads, upgrading the salaries of teachers, relief and rehabilitation of displaced persons, etc. These comprise the third category. During the period 1951—85 such transfers accounted for about 19 per cent of the total transfers.

34. The formula (popularly known as Gadgil Formula) for allocating Central assistance for State Plans was originally evolved in 1968 and modified in 1980. After keeping aside provisions for the special-category States and some other specific purposes, the amount of Central assistance allocated among the States in the original and modified formulae has been on the following criteria :

Criteria	Weights (per cent)	
	In the original Formula	As modified by NDC in 1980 (Modified Gadgil Formula)
1. Population	60	60
2. Per capita income below the national average	10	20
3. Per capita tax-effort	10	10
4. Outlay on continuing irrigation and power projects	10	..
5. Special problems	10	10
TOTAL	100	100

Transfers on Revenue Account

10.7.06 The pattern of Central transfers on revenue account (Annexure X·8) shows that the transfers on the recommendations of the Finance Commission, comprising tax-shares, grants-in-aid under Article 275(1) and grants in lieu of other taxes, in the various Plan periods have generally been well over 60 per cent of the total transfers on revenue account. The 'shares in taxes' and grants-in-aid under Article 275(1) have reinforced each other to maintain a fairly stable share of such transfers taken together. The share of 'other grants' under Article 282, which are given as part of the Plan assistance for the various schemes of the Union Ministries, natural calamities, etc., outside the purview of the Finance Commission, has been significant and, on the average, a little over 37 per cent.

Transfers on Capital Account

10.7.07 The position of the States is significantly different on capital account as their borrowings other than the Central loans—reckoned as their 'own' resources are also to be allowed by the Union Government in accordance with Article 293 of the Constitution. Transfers to the States for financing rapidly increasing Plan outlays have been largely in the form of Central loans (gross). The trends in the pattern of States' indebtedness as given in Annexure X·9, signify more than 70 per cent share of the Central loans in States' indebtedness and also a declining share of their internal debt—from the market and financial institutions.

Transfers and financing of States' Expenditure

10.7.08 Financing of revenue expenditure of the States by different sources individually (Annexure X·10) and Cumulatively (Annexure X.11) throws further light on the respective roles of States' own resources, Central transfers, the pattern of Central transfers and trends in States' finances. The 'own' resources of the States on the average have had 62 per cent share in financing their revenue expenditure. However, the 'share in taxes', which is the category most preferred by the States in view of its statutory and condition-free status and buoyancy, has been significant (23 per cent during 1951—85) and rising over the period. The two together, constitute 85 per cent of the States' revenue expenditure during 1951—85. If to this are added, 'grants-in-aid of revenues under Article 275(1)' and 'grants in lieu of other taxes, etc., also given on the basis of the Finance Commissions' recommendations, the total accounts for the financing of about 89 per cent revenue expenditure of the States. The scheme of financing of States' revenue expenditure resulted in an over-all surplus of 4·4 per cent during 1951—85, and has been quite substantial since 1974-75. The Statewise position would, however, show significant variations.

'Statutory' Vs. 'Discretionary' Transfers

10.7.09 It is often alleged that inasmuch as only 40 per cent of the total transfers from the Union have been effected on the recommendations of the Finance Commission envisaged in the Constitution, the balance of transfers has been discretionary in character. It is contended that Article 282 was intended to be a sort of residuary Article to take care of unexpected kind of things, *inter alia*, for making marginal adjustments; but the Plan grants made by the Union in exercise of its power under Article 282 by assuming a dominant role in devolving resources to the States, have distorted the Constitutional scheme. We have noted that although the financial assistance given to the States on the recommendations of the Finance Commission has substantially increased since the period of the First Five-Year Plan the bulk of the transfers (close to 60 per cent during the period 1951—85) have been in the form of Plan and 'other transfers'.

10.7.10 This criticism has two aspects—One technical and academic, the other oblique and imputative. As regards the first, these transfers under Article 282 are discretionary only in a technical sense, as opposed to mandatory. Whereas sharing with or assignment to the States by the Union of the net proceeds of certain taxes mentioned in Article 270 and 269 (on the advice of the Finance Commission) is mandatory, there is no such Constitutional obligation on the Union for making grants to the States under Article 282. The oblique aspect of this criticism, however, raises the question whether in substance and practice, the transfers made for Plan purposes under Article 282 on revenue account to the States are discretionary in the sense that they allow free-play to the Union Government's choice in respect of their magnitude and relative allocation.

10.7.11 So far as the Plan transfers are concerned the size of Central assistance for the Plan is determined as part of the exercise for the financing of the Five-Year Plan, which is approved by the National Development Council on which all the States are represented. Any increase in the actual devolutions to the States over the Five-Year Plan estimate corresponds to the assessed needs for the Plan on annual basis. This is effected on the advice of the Planning Commission. Indeed, there has not been any criticism from the States on increasing the **flow** of Central Plan assistance to them as compared to the Five-Year Plan estimate or on its inter-State allocation. So far as the allocation of Central assistance for the State Plans is concerned, as has been discussed in detail in the Chapter on Economic and Social Planning, bulk of it is decided in terms of the Modified Gadgil Formula and other objective determinants and special investments (including Tribal and Hill Areas Sub-plans) which are also approved by the National Development Council and are subject to review by that body. These do not leave any significant discretion to the Planning Commission which is confined to only 10 per cent allocation of Central assistance under the Modified Gadgil Formula. In the case of the Centrally Sponsored Schemes also, the pattern of financing, viz., Central assistance *vis-a-vis* States' own contribution, for the various schemes is determined and known well in advance. The States have also not objected to the flow of Central assistance as such in this respect. The thrust of their complaint is on the system of matching contribution and their allegedly inadequate involvement in the formulation of these schemes. These aspects, though otherwise very important, should not confuse the issue in question. We have dealt with them in detail in the Chapter on Economic and Social Planning.

10.7.12 So far as the category of 'other transfers' (for natural calamaties, etc.) is concerned, the variety of purposes for which they are made by their very nature cannot be sufficiently anticipated by either the Finance Commission or the Planning Commission. Such transfers are purpose-specific and have to cater to the contingent problems which arise from time to time. These transfers being mostly on revenue account, do not carry much repayment liability on the part of the States. The States have not voiced any serious complaints against these transfers. The Study Team of the Administrative Reforms Commission, which examined in detail the use of Article 282 for such grants observed that 'a Constitutional amendment defining or restricting the scope of the Article is, therefore, not necessary, specially because to meet unforeseen situations, the Centre should have a degree of flexibility in the use of The Article.' [35] We fully endorse this observation.

10.7.13 In view of the above, the Plan and other transfers which are labelled 'discretionary' do not amount to subversion of the Constitutional scheme. They cannot be considered either unreasonable or discretionary in a literal sense as their allocation follows predetermined criteria, or is tied to meet specific requirements of the States. The large magnitude of Plan transfers should not pose any controversy in this regard as the framers of the Constitution could not anticipate the extent of development resource-needs under the Plans of the States. The significant growth of Central assistance to States for planned development is, indeed, a natural response to such needs. The crux of the matter is that the States' participation in the planning process should be such that the Plan transfers are treated by them as part of a commonly agreed programme for the deployment of the nation's resources. We have discussed at length this aspect in the Chapter on Economic and Social Planning. In addition, in Section 8 we have dealt in detail with the controversy whether the Finance Commission could also attend to the assessment of financial requirements for the Plan.

10.7.14 We are of the view that the controversy between statutory *vs.* discretionary transfers to the States is based more on theoretical than realistic considerations. It is not humanly possible to devise fool-proof formulae which would make the totality of Central transfers conform fully to the ideal of 'automatic and free-from-interference' devolutions. Some amount of flexibility and room for subjective judgement will have to be left to the concerned institutions to deal with the specific situations as they arise. What is really important is that the institutions involved should function in a fair and non-partisan manner and take decisions with due discernment and expertise, which are implicitly acceptable to the States.

Equity in Transfers

10.7.15 An important direction of enquiry in the Union-State financial relations is whether the transfers from the Union to the States have satisfied the basic principle of equity. The Directive Principles of State Policy enshrined in the Constitution require that the 'State' should strive to minimise *inequalities* amongst groups of people residing in different areas. In our country, both inter-State and intra-State disparities are glaring and persistent in the backdrop of overall under-development. Lack of adequate financial resources has been recognised to be one of the basic constraints in the development of the backward areas. Provision for necessary administrative services, social and industrial infra-structural facilities is crucial for mitigating regional disparities.

10.7.16 A number of empirical studies have been made to ascertain how far the transfers effected have been progressive. In Annexure X.12 we have summarised the data indicating per capita transfers through channels of the Finance Commission, Planning Commission and the Union Finance Ministry. It will be observed that for several States, which are economically backward, the per capita transfers are lower than the all-States' average. The findings of the various studies indicate broadly that the transfers on the recommendations of the Finance Commissions and the Planning Commission have not been significantly progressive in earlier years. However, during the last three Five-Year Plan periods there has been considerable improvement in this regard. Transfers falling in the category of 'other transfers', which are mostly purpose-specific, have been found to be generally regressive, tending to dilute the progressivity of overall transfers to the States. Similar has been the pattern of allocation of the institutional finance from the commercial banks, term-lending financial institutions, etc. On the whole, several of the less-developed States have been getting less that the average per capita devolution and share in institutional finance. This has contributed to the persistence of regional disparities in the country.

10.7.17 Finance Commissions carry out a reassessment of forecasts of revenue receipts and expenditure (on non-plan account) of the States before determining the devolutions necessary. Their formulae of tax devolutions have generally resulted in leaving substantial surpluses with about half the number of States. In the case of States still remaining in deficit, grants-in-aid under Article 275(1) have been given to make good the assessed gaps and needs. Resources of different States differ considerably owing to widely varying levels of development. Five or six States which have a better resource-base have surpluses from their own resources. Any further devolution only adds to their surpluses. Some other States, though not as well-off in respect of their own resources, reach the stage of surpluses consequent upon devolution of resources by the Finance Commission.

10.7.18 The weightage given to population size, which is essentially a scale factor, as a major criterion in the formulae of devolutions, when combined with other criteria, has resulted in lower per capita transfers to the less-developed States. The last two Finance Commissions, however, sought to evolve formulae with greater progressivity, by further emphasising the poverty criteria.

35. Government of India—Administrative Reforms Commission—*Report of the Study Team on Centre-State Relationships* (1967), Vol. 1, para 4.23, p. 28.

10.7.19 However, during the five-year period, on account of inflation, States' expenditure has gone up. To some extent it is compensated by increase in revenues on account of buoyancy in tax receipts. The States with revenue surpluses are better equipped to meet the adverse impact of inflation. On the other hand, grants-in-aid being fixed for most part, the effect of inflation is felt much more by the States in receipt of a larger proportion of grants. These States are precisely those which are less developed and lack the essential infra-structure which alone can enable them to develop quickly. The Seventh Finance Commission had observed as under :

> '..... a Finance Commission's scheme of transfers which leaves a few States with substantial surpluses on revenue account which can be ploughed back into fresh investments, and the rest of the States with a zero surplus, could contribute to widening of the economic disparities.'[36]

10.7.20 The application of the Modified Gadgil Formula (increasing the weightage of the 'States having per capita income below the national average' from 10 to 20 per cent in lieu of the 'expenditure on continuing irrigation and power projects') and provision of special Central assistance for the Tribal and Hill Areas Sub-Plans, North Eastern Council and Special Component Plans, has made the allocation of Central Plan assistance more progressive.

10.7.21 Many suggestions have been placed before us in regard to the basis for inter-State allocations. The less-developed States have argued strongly in favour of formulae which would place more resources at their disposal. On the other hand, the States with revenue surpluses have pointed out that they have their own peculiar problems, *e.g.*, management of large metropolitan cities which, while generating resources, also require very large investments for providing essential services.

Backward Areas

10.7.22 Provision for the special needs and basic requirements of the backward areas, particularly in the backward States, would necessitate increasing attention to them in the allocation of funds by way of special provisions on soft terms over and above the general formula devolutions. The Union Government has a crucial role in helping the backward areas to get over the initial hadicap of poor basic infra-structure. This would involve investments which may not produce returns for long years and, for the gestation period, need subsidisation by the Union Government. It is, indeed, in the long-run interests of the backward regions, and the country also, that by creating stimuli for development, they are helped to generate their own resources, rather than remain dependent indefinitely on the largesse of the Union, or the State Government, as the case might be. At the same time the overall resources being scarce, there is need for caution to ensure that the incentives given to the backward regions for accelerating their development do not, in the reverse, jeopardise for want of resources, the tempo and levels of development achieved in the relatively developed areas.

10.7.23 The financial problems of backward areas are, indeed, challenging and involve both availability of sufficient financial resources and their effective utilisation. It will be necessary to ensure that the less-developed or backward areas and States get adequate resources to meet their special requirements and bring their standards of administration at par with the advanced States. Both the Finance Commission and the Planning Commission will have to take coordinated and concerted action in devolving adequate resources to the less developed States and those having large backward areas. The Planning Commission will have to take a comprehensive view of the flow of Central investment and other institutional finance to the less-developed areas. Suitable institutional mechanisms need to be devised to ensure financial support and tying-up of the funds to the specific projects in such areas.

Union's Finances and Transfers

10.7.24 Another issue which is important in the context of Union-State financial relations is whethter the Union Government has been making reasonable transfers to the States and, further, whether these could be significantly enchanced. It may be seen from Annexure X.13 that, of late, the Union Government has been transferring about one-third of gross resources raised by it to the States—the revenue account transfers showing an upward trend. Transfers from the Union continue to play an important role in meeting the expenditure of the States.

10.7.25 It is significant that since 1979-80 the Union Government has been running a deficit on revenue account. (Annexure X-14). The Balance from Current revenues became negative in 1985-86. During the Seventh Plan period, the Balance from Current Revenues has been estimated at (—) Rs. 12,011 crores. Thus, over the last several years the Union Government has been finding it increasingly difficult to meet its obligations on revenue account from its current budgetary resources and has had to take recourse to meeting them from borrowed funds.

10.7.26 As noted earlier in para 10.4.17, approximately three-fourths of the non-Plan expenditure of the Union now consists of defence, interest payments and subsidies. In recent years, massive anti-poverty programmes have been taken up and these have added substantially to the revenue expenditure. Of the total receipts (gross) in 1986-87, defence interest payments and subsidies absorb 36 per cent, transfers to States and Union Territories 29 per cent, leaving 22 per cent for Central Plan and 13 per cent for Union's non-Plan expenditure.

10.7.27 The broad analysis of the pattern of Union Government's expenditure on revenue account beings out that while on development side expenditure on high priority items has been provided, in the non-developmental component, because of compulsions of defence, interest payments, subsidies, etc., not much manoeuvrability exists. Further, in addition to transfers of resources in the form of tax-shares and statutory and Plan grants substantial expenditure on subsidies and Central Sector and Centrally sponsored Schemes goes to benefit the States. The Union

36. *Report of the Finance Commission,* 1978, Chapter 9, Para 17, p. 81.

Government is thus already transferring substantial resources to the States. Under the present circumstances, there is need to pay attention to structural changes in transfers for which there is apparently greater scope.

10.7.28 However, the resource needs of the States also are not to be understated. The over-all situtation, therefore, calls for all-out efforts to raise resources, increased rationality in their allocation at the two levels of Government, a judicious priority-ordering and improved efficiency in resource-management.

Pattern of expenditure of Union and States

10.7.29 The over-all expenditure of the Union and the States has grown rapidly, especially in the wake of the fast-rising Plan expenditure. The annual trend-rates of growth work out to be 14,30 per cent in case of the Union and 13,52 per cent in case of the States for the period 1951-85. The proportion of developmental expenditure on revenue account has been rising in the case of the Union as well as the States. (Annexure X.15). On capital account, an overwhelming part of the expenditure is incurred for developmental purposes. Net disbursements of loans account for about half of the Union's capital expenditure and more than one-third of that of the States. Development loans constitute about three-fourths of the loans disbursed.

10.7.30 Several experts have pointed out that substantial expenditure is incurred by both the Union and the State Governments on schemes which have come to be known as populist measures. These are often uneconomic but are supposed to earn popularity for the sponsoring Government. It will be in the best interests of the concerned Governments to take explicitly into account the high opportunity-cost of such schemes and to examine whether any important programmes of development are compromised due to such diversion of scarce resources.

10.7.31 The Union Government provides directly large subsidies for a number of items of which fertilisers subsidy, food subsidy and subsidy for promotion of exports, constitute the bulk. The State Governments also give subsidies on schemes of food and nutrition, interest payments and on certain schemes for the benefit of the weaker sections. Apart from subsidies which can be directly seen as such, subsidisation is also inherent in a variety of measures, *e.g.*, exemption fully or partially from a tax or duty; allowance to channelise investments into particular sectors; refund of certain taxes to exporters, etc. Cross-subsidies are given by public corporations to particular groups of clients at the expense of others.

10.7.32 The total amount of (i) direct, (ii) indirect and (iii) cross-subsidies is thus very large. The share of direct subsidies has been substantial since 1977-78. Unfortunately, no reliable estimate, especially of indirect and cross-subsidies, is available. The need for keeping down the expendirure on account of these subsidies has been emphasised time and again. The essential point to recognise is that subsidies introduce a distortion in the economy. Flow of resources is directed away from sectors to which they would have normally been applied. It is not to suggest that all subsidies are *per se* wrong. But it is very important to scrutinise to whom the benefits are realy flowing. Each type of subsidy needs to be carefully reviewed from the point of view of overall impact on the economy and consideration of growth with social justice.

10.7.33 It is necessary that a comprehensive paper on direct, indirect and cross-subsidies, covering both Union and State Governments, is prepared by the Planning Commission every year and brought up before NEDC for discussion since the increasing burden of subsidies has a direct relevance to the availability of resources for the execution of the Plan.

Union's Expenditure on State Subject

10.7.34 It has been pointed out that the Union Government incurs a lot of expenditure on maintaining establishments and on schemes relating to subjects which fall in the State list or the Concurrent List of the Seventh Schedule, *e.g.*, Agriculture, rural Development, Cooperation, Education, Health, etc. Bulk of such expenditure is channelised through the Centrally Sponsored Schemes either as grants or loans. In case of many schemes, the Union and the States share the expenditures. We have taken note of a study[37] which has tried to project the issue empirically by showing that very high expenditure is being incurred by the Union Government, directly or through Cental institutions, on Centrally Sponsored Schemes in violation of directives of the NDC in this regard, on subjects which belong to the States. We have dealth with various aspects of Centrally Sponsored Schemes in the Chapters on Economic and Social Planning and Agriculture.

8. *ROLE OF THE FINANCE COMMISSION*

Constitutional Provisions and Evolution

10.8.01 We have earlier noted the inevitablilty of substantial transfer of resources from the Union to the States. Another important aspect is the allocation of the resources so transferred among the States with wide differentials in fiscal capabilities and needs. The Constitution provides for the setting up of a Finance Commission periodically for this purpose. Article 280(1) enjoins on the President to constitute a Finance Commission, within two years of the commencement of the Constitution and thereafter at the expiration of every fifth year or before, if it is considered necessary. Clause (2) of that Article impowers Parliament to determine by law the requisite qualifications of its members and the manner of their selection. Clause (3) of the same Article enumerates the duties of the Finance Commission. It reads as under :

"(3) It shall be the duty of the Commission to make recommendations to the President as to —

(a) the distribution betweent the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them

37. George, K. K. and Gulati, I.S.—'Central Inroads into State Subjects : An Analysis of Economic Service's, *Economic and Political Weekly*, Vol. II, No. 14, April 6, 1985, pp. 592-603.

under this Chapter and the allocation between the States of respective shares of such proceeds ;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India ;

(c) any other matter referred to the Commission by the President in the interests of sound finance."

10.8.02 It would be pertinent to consider broadly the position in this regard in some of the other federations in the world. In USA and Canada the idea of an independent or regular agency for this purpose did not find acceptance. The Australian Commonwealth Grants Commission is an advisory body established by an Act of Parliament and recommends on special grants to the claimant States or on any other issue referred to it by the federal government.

10.8.03 In the absence of a well laid down and Constitutionally recognised institutional mechanism for revenue-sharing between the federal and unit Governments, in some of the countries numerous adjustments had to be resorted to. In the first place, because of concurrent taxation, in countries like USA, Canada and Australia, "which level uses what kind of tax and to what extent has been decided more by custom and negotiation, embodied in statute or agreement, than by constitutional provision".[38] In USA, the tax system which came to be developed over the years is described to be 'uncoordinated and over-lapping, [39]. In Canada, recourse had to be taken to elaborate tax-rental arrangements. In Australia, at least in the initial years, the interests of the poorer states suffered. Even in West Germany, the Constitutional provision specifying the shares of the Laender (State) and Local governments, came to be incorporated between 1955 and 1967 after facing serious problems.

10.8.04 The processes of inter-governmental transfers in other federations, besides other problems, are often intricately linked with political understanding and have given rise to controversies. For example, in USA, federal grants are based on agreements enforcing strict conditionality on the State and Local governments. The shift towards general grants in 1982, accompanied by substantial overall cuts is understood to have created serious problems for the States to implement social programmes. In Canada, the policy of revenue equalisation grants has always been politically controversial. The trend towards 'provincialisation' of federal funds is said to have reduced the ability of federal government to redistribute financial resources and has brought up the question of national standards. In Australia, the Commonwealth Grants Commission recommends special purpose grants to the claimant States, but the general grants are determined largely on the basis of discussions at the political level. In West Germany, the problem of matching the revenues and needs of the poorer States is sought to be solved through vertical and horizontal equalisation payments and inter-governmental grants and subsidies for special and joint projects.

10.8.05 The Finance Commission in India, in contrast, because of its Constitutional status, constitutes as unique arrangement. The framers of the Constitution by building it into the Constitution and by making it an expert body, removed the devolution of resources from the arena of political bargaining. The role assigned by the Constitution to the Commission has been deliberately given an advisory character. In a technical sense its recommendations are not definitive or self-executing. Parliament has been given the supreme authority to oversee the action taken by the Union Executive on the recommendations of the Commission. This has been ensured by requiring the Union Government to place before each house of Parliament every recommendation made by the Finance Commission, together with an explanatory memorandum as to the action taken thereon.

Issues

10.8.06 The Constitutional status accorded to it and its functioning as a semi-judicial expert body has earned for the Finance Commission high regard of the Union and State Governments. However, some aspects of the working of the arrangements have attracted criticism. This criticism may be classified into four categories :

(i) Deficiencies in the institutional arrangements envisaged in the Constitution.

(ii) Constrainst imposed by the Union on the Finance Commission by prescribing certain terms of reference.

(iii) Non-implementation of important recommendations of the Finance Commission by the Union Government.

(iv) Problems arising out of the methodologies followed by the Finance Commissions.

10.8.07 While many State Governments are of the view that the existing institutional arrangements are adequate, some of them desire that its functions should be enlarged. Some of them have drawn attention to the fact that since Finance Commissions are established periodically, their approach has been inevitably somewhat *ad hoc* and there has been lack of continuity from one Comimission to another. They have suggested a more permanent set-up. The various suggestions could be broadly classified as under :

(a) The functions of the Finance Commission be enlarged. It should also consider Plan and other transfers and/or undertake comprehensive annual/periodical reviews of the financial performance of the Union and State governments.

(b) The Finance Commission should be made a permanent or standing body to cope with enlarged responsibilities.

38. Advisory Commission on Inter-governmental Relations, USA—*Studies in Comparative Federalism : Australia, Canada, the United States and West Germany* (1981), p. 43.

39. *Ibid.* p. 42.

(c) The coordination between the Finance Commission and Planning Commission is very important and should be improved, so that an integrated view on the flow of Central assistance to the States becomes possible.

(d) It should be provided with a permanent and well-equipped secretariat to carry on studies and maintain operational continuity for the benefit of the subsequent Finance Commission.

10.8.08 The Finance Commission's recommendations generally remain effective for a period of five years. Many changes take place during the period in the estimates made by the Finance Commission at the beginning. Some of the State Governments have drawn attention to the fact that their financial position is adversely affected by inflation and various actions of the Union during this period. There is at present no mechanism to take care of the impact of these changes and provide relief.

10.8.09 It is argued that only one agency should deal with all the transfers, as the present dichotomy between plan and non-plan transfers is unnecessary and creates avoidable problems arising from differences in estimates and norms. Since the Finance Commission is the only institutional mechanism envisaged by the Constitution to recommend devolutions in all aspects it would be but appropriate that it should deal with the problems in their entirety. Another suggestion is that the two bodies should be merged.

Enlargement of Functions

10.8.10 There has been some divergence of opinion as to whether the jurisdiction of the Finance Commission under Article 275(1) is limited to grants on revenue account, and capital grants needed to meet expenditure on Plan schemes are outside its purview. The First Finance Commission was of the opinion that this problem has to be considered "in the larger perspective of ensuring an equitable allocation of resources among the units". On this broad premise, the Commission recommended special grants-in-aid to eight States for development of primary education. The Second Finance Commission took a different view. In its opinion, there was no scope under Article 275(1) for special purpose grants for removal of inequalities in the standards of basic social services in States and that this function in a planned economy belonged to the Planning Commission and the National Development Council. The Third Finance Commission took a view similar to that of the First regarding the broad scope of Article 275 and recommended 'special grants' to ten States for development of communications.

10.8.11 The issue was clinched by the Fourth Finance Commission when it obeserved :

"The Constitution does not make any distinction between plan and non-plan expenditure, and it is not unconstitutional for the Finance Commission to go into the whole question of the total revenue expenditure of the States. It has been pointed out to us that the reference to "Capital and recurring sums" in the first proviso to article 275(1) of the Constitution suggests that even capital expenditure need not necessarily be outside the scope of the Finance Commission. It is, however, necessary to note that the importance of planned economic development is so great and its implementation so essential that there should not be any division of responsibility in regard to any element of plan expenditure. The Planning Commission has been specially constituted for advising the Government of India and the State Governments in this regard. It would not be appropriate for the Finance Commission to take upon itself the task of dealing with the States' new plan expenditure."[40].

10.8.12 The Fifth Finance Commission also held that in the language of Article 275, "there is nothing to exclude from its purview grants for meeting revenue expenditure on Plan schemes, nor is there any explicit bar against grants for capital purposes." However, its terms of reference required it not to take into account the Plan for purposes of recommending grants-in-aid under Article 275. It did not even agree to recommend grants for higher expenditure outside the Plan on specific social services for improving their levels "as it would blur the entire division of functions between this Commission and the Planning Commission."[41]

10.8.13 One of the terms of reference of the Sixth Finance Commission enjoined it to assess the non-Plan capital gap of the States for the period 1974-75 to 1978-79. Adopting a pragmatic approach, the Commission described "the separation of revenue from capital expenditure and of non-plan from plan expenditure" in re-assessment of States' forecasts as one of the "ground rules."[42]

10.8.14 The approaches of the Seventh and the Eighth Finance Commission marked a significant departure from the earlier one. They recommended some capital grants for the upgradation of levels of administration. The Eighth Finance Commission, recommended capital grants in Health and Education sectors, which are included among developmental sectors, treating them as sessential non-plan earmarked capital requirements of the less-developed States. These recommendations were accepted by the Government of India. The observations of the Seventh Finance Commission on the issue need mention :

"We have given careful consideration to the scope for grants-in-aid under Article 275 for meeting capital expenditure. The operative part of this Article speaks of "sums". There is no restriction or bar in the Article for capital expenditure. The first proviso of the Article expressly speaks of grants of capital sums. This goes to show that the expression grants-in-aid of revenues does not limit grants for revenue expenditure only. We are fortified in this view by the note of the Chairman of the Fourth Finance Commission appended to its

40. *Report of the Finance Commission*, 1965, para 16, p. 9.

41. *Report of the Finance Commission*, 1969, para 2.9, p. 12.

42. *Report of the Finance Commission*, 1973, Chapter IX, para 1, p. 29.

report on the interpretation of Article 275. Further, it seems unreasonable to hold that the operative part of the Article enables the Commission to make grants for revenue expenditure only, while the proviso enables grants being made of revenues as well as capital nature. It is quite clear therefrom that it is open to us to recommend grants for capital expenditure also, apart from grants for revenue expenditure under Article 275."[43]

10.8.15 The Union Ministry of Finance in response to a query on this issue, has provided the following clarification :

> "It is settled policy of the Commission to cover the capital requirements of the States under the upgradation grants. In case the Commission on Centre-State Relations is alluding to the entire range of the capital requirements of the States during the forecast period, the roles of the Finance Commission and the Planning Commission in that case will overlap. The Planning Commission which is primarily concerned with asset-creation is given the near-exclusive responsibility for catering to the capital requirements of the States by the mechanism of Plan assistance for the 5-year plans. The Finance Commission takes care of the capital requirements of States in non-developmental sectors by way of upgradation grants ..... It may thus be seen that even in recent years the Finance Commission have imaginatively and progressively made use of Article 275 grants both for capital and revenue and both for developmental and non-developmental purposes. This is notwithstanding the fact that the Presidential Order of the Eighth Finance Commission refers to upgradation requirements of non-developmental sectors only".

10.8.16 Finance Commission is constituted periodically and works for a short period. Planning is a dynamic process and as such continuous appraisal and adjustments are essential. A static five-year frame would not meet the requirements of planning. The Planning Commission reviews annually the resources and plan needs of the States and recommends plan assistance. In a dynamic situation, net resources available for transfer from the Union to the States towards Plan assistance will also be known only on a yearly basis. The necessary expertise, support and competence for dealing with such a situation has been developed by the Planning Commission. For obvious reasons, it would not be possible for the Finance Commission to perform such a role. Therefore, practical difficulties would arise if Plan transfers are also entrusted to the Finance Commission. The present division of labour which has developed over the years is that the Finance Commission advises on the non-Plan revenue requirements and non-Plan capital gap. In certain sectors, where the problem is clear and the numbers are reasonably sure, the Finance Commission has recommended capital resource devolution also only to a limited extent.

10.8.17 We are of the view that the present division of responsibilities between the two bodies, which has come to be evolved with mutual understanding of their comparative advantage in dealing with various matters in their respective spheres, should continue. The present arrangements have also not given rise to any serious problems to necessitate any change.

43. *Report of the Finance Commission*, 1978, Chapter 10, para 8, pp. 93-94.

Coordination between Finance Commission and Planning Commission

10.8.18 Need for greater coordination between the Finance Commission and the Planning Commission has been emphasised by many State Governments and experts. The Administrative Reforms Commission had recommended that in order to ensure greater coordination between the two bodies, one Member of the Planning Commission should also be nominated as Member of the Finance Commission. Since the Sixth Finance Commission, one Member is common to both the Commissions. It is, however, a matter of concern that only two of the four common Members so far appointed were in charge of the Financial Resources Division in the Planning Commission. As this defeats the very purpose of having a common Member, we would suggest that the Member incharge of financial resources in the Planning Commission should automatically be the common Member and remain in this charge even after the report of the Finance Commission is submitted. This arrangement would enable the adoption of an integrated approach in the assessment of financial resources and needs of the States by the two Commissions.

10.8.19 A precondition for smooth coordination between the two bodies is the synchronisation of Five-Year Plan period with the reference period of the Finance Commission. There is an impression that once the Finance Commission's report is submitted, it is not of much consequence beyond determining major parameters like tax shares, grants-in-aid, etc. A planned economy presupposes utmost financial discipline. The entire system of resource transfer built up on the basis of the recommendations of a semi-judicial body of experts would crumble in case there is scant regard for the norms evolved by it.

10.8.20 We have already noted that Finance Commissions reassess the receipts and expenditure of the States on a normative basis. A perusal of the reports of the various Finance Commissions shows that practically all the Finance Commissions have had occasion to note that on the receipts side the norms determined by the preceding Finance Commission were seldom reached, particularly in regard to returns from irrigation and power projects and from State Road Transport Corporations. On the other hand, on the expenditure side, the norms have been invariably exceeded. In many cases, large expenditure on new non-Plan items has been incurred. Sometimes schemes which could not be accommodated in the Plan have been included as non-Plan items and large sums spent on them. Fiannce Commissions build into their forecasts of expenditure certain amounts for maintenance of assets already created, e.g., irrigation schemes, buildings, roads, etc. Often the amounts intended for maintenace of these assets have been diverted for other uses with very adverse impact on the upkeep of assets already created.

10.8.21 Finance Commissions have determined norms of returns from the irrigation schemes, State Electricity Boards and Road Transport Corporations.

One of the terms of reference to the Sixth Finance Commission was to have regard, while determining the grants-in-aid, to "the scope for better fiscal management and economy consistent with efficiency which may be effected by the States in their administrative, maintenance, developmental and other expenditure". It observed that "with the increasing investments in irrigation and power projects and road transport undertakings, non-tax revenues in the form of interest receipts and dividends should be expected to become increasingly important in State finances."[44] After detailed consideration of irrigation schemes it reached the conclusion that in the case of multipurpose river valley projects and commercial irrigation, the receipts should cover the working expenses. However, this was not achieved. The Seventh Finance Commission, while reviewing the same, observed that working expenses continued to exceed the receipts and that "complacency in this regard would be harmful and unjustified".[45] The Eighth Finance Commission also observed that the norms evolved by the Seventh Finance Commission had not been met by the State Governments.[46] The position is similar in the case of State Electricity Boards and Road Transport Corporations.

10.8.22 We are of the view that these raise very serious questions in regard to fiscal management and financial discipline. In a situation of severe overall financial constraint, it is imperative that in-efficiency and imprudence in fiscal management is discouraged by evolving suitable procedures and systems of reward and punishment. We would emphasise that each Finance Commission should view with greater concern the violation of the regimen given by the preceding Commission and thus try to enforce a stricter discipline in checking wasteful expenditure.

10.8.23 The Finance Commission Cell/Division in the Planning Commission should continuously monitor the behaviour of the States' finances. It should also estimate annually the deviations from the norms evolved by the Finance Commission. The Planning Commission would then be able to bring up before the National Economic and Development Council such annual reviews indicating, among other things, the deviations from the forecasts of Finance Commission and the reasons for the same. This would afford an opportunity to the National Economic and Development Council to monitor effectively and evolve consensus on the mobilisation of resources and contain the non-developmental expenditure.

10.8.24 The Sixth Finance Commission observed "Fiscal management is a multi-dimensional concept. In the application of this concept to concrete situations, both qualitative and quantitative aspects deserve attention. Briefly stated, in assessing sound fiscal management one should have regard both to the manner in which the State has endeavoured to raise the resources needed for meeting its commitments and also the manner in which it has deployed the resources so raised so as to get the best possible results for the expenditure incurred. A review of fiscal management in this broad sense will call for a comprehensive and critical survey of the fiscal policies and administration of State Governments over a period of time. This is a task which is too difficult to undertake within the limited time at our disposal." [47]

10.8.25 During the interregnum between one Finance Commission and the appointment of the next Commission, the Finance Commission Division (reinforced as suggested in paragraph 10.8.30), should in cooperation with the States, organise comprehensive studies in trends in growth of public expenditure in the States in the light of the findings of the previous Finance Commission. It shall also collect, study and analyse the data with reference to the relevant parameters which would help a more critical appraisal of the achievements and failings of the States in the fiscal sphere. The studies conducted by the Finance Commission Division should be available well in time for the use of the next Finance Commission. This Division can also, with the cooperation of the Union Ministries and agencies under their control, arrange similar review of the expenditure of the Union Government. Professional institutes, organisations and Universities aided by Union Government funds, can also be involved in such studies.

Permanent Finance Commission, its Secretariat/ Division

10.8.26 Finance Commission has to deal with complex issues and the time available to it for the same is barely sufficient. Much of its time now spent on gathering data could be saved, if data collection is carried out on a continuing basis. Studies which may take time could also be organised in advance so that these are available to the subsequent Commissions and consideration of important matters would not be constrained for want of time. Two considerations are pertinent in this connection. Firstly, the Finance Commission is essentially an expert recommendatory body and cannot be expected to participate in active determination of the transfers on annual basis corresponding to changes in the economic situation. Indeed, the very scheduling of such exercises in an annual setting may be quite cumbersome and reopen a whole host of issues for consideration every year. Secondly, a measure of stability is desirable in the transfers and frequent changes may be very unsettling and counter-productive, giving rise to avoidable friction in Union-State financial relations. We are, therefore, of the view that there is no need for a permanent Finance Commission.

10.8.27 The next question for consideration is whether it is possible to mitigate the difficulties and handicaps of a Finance Commission resulting from its periodic constitution with new members, in assessing the fiscal needs of the States, projected over the next five-year period. The Seventh Finance Commission had observed : "The position which prevails now is that once a Commission completes its work, a small and ineffective cell comes into being in the Union Ministry of Finance, and this cell is merged in the Secretariat of the next Commission. This arrangement, in our view, is inadequate. We do, however,

44. *Report of the Finance Commission*, 1973, Chapter XII, para 4, p. 53.

45. *Report of the Finance Commission*, 1978, Chapter 2, para 44, p. 23.

46. *Report of the Eighth Finance Commission*, 1984, para 3.17 (v), p. 14.

47. *Report of the Finance Commission*, 1973, Chapter XIII, para 1, p. 52.

feel that it will be extremely useful to future Finance Commissions and greatly facilitate their work, if an expert non-political agency were to be established by the Central Government and were to perform such functions as the Secretariat of the Commission is expected to perform. In addition, it would be expected to play a watching and advisory role with regard to Centre-State financial relations generally. As and when a full-fledged Finance Commission is appointed, this agency could get merged into the Commission and its Secretariat. It should have the authority to call for whatever information may be required from the Central and State Governments and their institutions and should analyse and prepare the data based upon which a Finance Commission when appointed can act without further loss of time. It should carefully oversee the implementation of the recommendations of a Finance Commission as accepted by the Central Government and its advice should be sought by the various Ministries of the Central Government on matters which may require follow-up action". [48]

10.8.28 The Eighth Finance Commission also observed :

"..... we do think that there should be a permanent Secretariat which should continue to function during the interregnum between one Commission and the next. Such a Secretariat should be headed by a senior officer, and may function as a Division in the Ministry of Finance. We are not satisfied by the present arrangement under which a small Cell consisting of a few officials functions as a part of the Ministry of Finance."[49]

10.8.29 We have been informed that in pursuance of the recommendations of the Eighth Finance Commission a Finance Commission Division has since been created in the Union Ministry of Finance with the following functions :

(i) Continuously update the data, both in financial and physical terms relating to performance of Union and each of the State Governments in fields which have been or could be of interest to the work ordinarily assigned to the Finance Commission;

(ii) Compilation of data and analysis of the working of the State undertakings including irrigation schemes to see whether the prescribed norms are being achieved and to suggest remedial measures;

(iii) To prepare analytical studies on the basis of the data collected from the State Governments regarding revenues, expenditure and prepare comprehensive reviews;

(iv) Rescheduling and consolidation of loans on the basis of the Finance Commission's recommendations;

(v) Allocation of additional grants to States for meeting interest liability in respect of fresh loans advanced;

(vi) Allocation of additional grants in respect of committed liability for the new schemes taken up in 1984-85;

(vii) To monitor and evaluate the utilisation of the upgradation grants provided by the Finance Commission to States;

(viii) Collection of data about non-developmental sectors for preparation of comprehensive proposals for achieving equalisation of the standards of administration and social services in States within a definite period;

(ix) Organisation of suitable training workshops for the benefit of States which may be in need of such assistance.

10.8.30 We are of the opinion that there is need to further strengthen the Finance Commission Division. It would result in much closer coordination between the Planning Commission and the Finance Commission if this Division were to work under the general supervision of the Member in-charge of financial resources in the Planning Commission. Such an arrangement will also make available to the Planning Commission data and analysis on various parameters relevant for resources discussion for the Plan and reviewing of the finances of the Union and the States.

Composition of Finance Commission

10.8.31 Article 280(1) requires the President to constitute by order a Finance Commission within specified time-frame, comprising a Chairman and four other members. Clause (2) of Article leaves it to Parliament to determine by law the requisite qualifications of the Members and the manner of their selection Parliament enacted the 'Finance Commission (Miscellaneous Provisions) Act, 1951'.

10.8.32 No serious objection has come to our notice regarding the composition of the various Finance Commissions. A review of the composition of the nine Finance Commissions confirms that the prescribed strength, requisite specialisations and background of their Members and time-limit in their constitution were duly adhered to.

10.8.33 A suggestion has, however, been made that the State Governments should have representatives on the Finance Commission. One of the suggestions (not recommendation) of the Expert Committee on Financial Provisions of the Constitution (1947) was that two of the members of the Finance Commission be selected out of a panel of names from the States. Further, the appointment of the Chairman and Members of the Commission should be made by the President in his discretion as the Committee anticipated that the Commission would be required to deal with points of conflict between the Union and the State Governments. This was not accepted by the framers of the Constitution. This suggestion arises out of an apprehension that the States' case may go by default unless they are represented on the Finance Commission. The record of the Finance Commissions, which have been known to be non-partisan, clearly shows that there is no basis for any anxiety on this score. We are, therefore, of the view that there is no need for any changes in the present arrangements in regard to the constitution of the Finance Commission.

10.8.34 Finance Commissions should draw from all over the country experts for assisting them in their work. Considerable amount of talent and experties

48. *Report of the Finance Commission*, 1978, Chapter 12, para 4, p. 119.

49. *Report of the Eighth Finance Commission*, 1984, para 16.11, p. 123.

in regard to Union-State financial relations is in the States. It would be advantageous if suitable experts are drawn from the States also for staffing the Secretariat of the Finance Commission.

10.8.35 The broad duties of Finance Commission have been enumerated in Article 280 of the Constitution. Over the years, a number of special terms under sub-clause (3)(c) of Article 280 and some 'special considerations" came to be included in the Presidential Order. Although the Presidential Order appointing the Finance Commission and specifying its terms of reference is drafted by the Union Government, some of the States in the past are understood to have voluntarily suggested to the Union Government important matters which the Finance Commission should look into. In the context of the Seventh and the Eighth Finance Commissions a more systematic consultation with the States on their terms of reference took place. The then Union Finance Minister invited suggestions from all the Chief Ministers in regard to the terms of reference for the Seventh Finance Commission. An official-level Committee formed in the Union Ministry of Finance to formulate the terms of reference considered, among other things, the replies received from the States. In the case of the Eighth Finance Commission, while no suggestions were invited from the State Chief Ministers on 'terms of reference', an official-level Committee under the Union Expenditure Secretary was set up on which some State Governments were represented. The same procedure was followed in the case of the Ninth Finance Commission.

10.8.36 The step taken by the Union Government to initiate a process of consultation with the States in finalising the terms of reference of the Finance Commission is in the right direction. Any consultation to be meaningful should be adequate. However, we do not see any advantage in formalising the same through change in the Constitutional provisions which would introduce undue rigidity. Nonetheless, it is desirable that this healthy practice of informal consultation with the States in this matter should continue.

Special Considerations

10.8.37 Another criticism relates to the 'considerations' which the Finance Commissions are asked to have regard to, among other things, in recommending grants-in-aid under Article 275. These are in addition to the special terms of reference as per sub-clause (3)(c) of Article 280. These 'considerations', it is alleged, have conditioned the methodology of the Finance Commissions.

10.8.38 In making recommendations, the Finance Commissions have been asked to have due regard, among other things, to certain 'considerations'. To illustrate, the Sixth Finance Commission was required to consider the requirements of States' backwardness in general administration with a view to raising the levels to those of the advanced States over a period of ten years. Similarly, some of the 'considerations' listed for the Seventh Finance Commission were :

(i) the resources of the Central Government and the demands thereon on account of expenditure on civil administration, defence, border security, debt-servicing and other committed expenditure or liabilities;

(ii) adequate maintenance and upkeep of capital assets and of completed plan schemes as on a specified year and monitoring of such expenditure, and

(iii) the need for ensuring reasonable returns on investments in irrigation and power projects, transport undertakings, industrial and commercial enterprises and the like.[50]

In the Presidential Orders constituting both the Seventh and Eighth Finance Commissions it was stated that "the Commission shall adopt the population figures of 1971 census in all cases where population is regarded as a factor for determination of devolution of taxes and duties and grants-in-aid".

10.8.39 On this issue, the Union Government has communicated to us that the Finance Commissions are free to make recommendations on matters covered by Article 280, in any manner they deem fit. The Presidential Order in all these cases states that the Finance Commissions shall 'among other things' have regard to the listed considerations. These considerations are, therefore, to be viewed as "an illustrative list of the factors considered germane by the Government to the task of the Finance Commissions". The Union Government has observed that the stipulation that the population figures of 1971 census should be adopted wherever population is used as a factor in making recommentations for either devolution of taxes or grants-in-aid is in keeping with the Family Welfare Policy approved by Parliament on June 29, 1977.

10.8.40 Finance Commissions have enunciated from the very beginning considerations to be kept in view by them while determining the grants-in-aid, e.g., fiscal needs, considerations of equity in resource allocation among the States, etc. They have also taken into account, while assessing the fiscal needs, the considerations listed in the Presidential Order. But these conditions, have not by themselves restricted their approach. In fact, the Seventh Finance Commission observed : "The Commission's freedom to take into account other factors is not inhibited". [51] We note that a controversy has arisen in regard to the terms of reference of the recently constituted Ninth Finance Commission, particularly on para 4 of the Presidential Order which, it is alleged, binds it to follow a 'normative approach' and to take into account certain other aspects. In view of the reasons already stated by us in the preceding paragraphs, we are not convinced that any reference to Finance Commission unless constituting a term of reference vide Article 280(3) of the Constitution, can bind or delimit its approach. However, it will only be appropriate and befitting the statutory and high status of the Finance Commission that any considerations suggested to it, besides its terms of reference under Article 280(3), are put in a language which does not give an impression of formally binding it to adhere to a given approach or methodology.

50. *Report of the Finance Commission,* 1978, Introduction, para 5, p. 2.

51. *Report of the Finance Commission,* 1978, Chapter 9, para 4, p. 76.

10.8.41 The review made above clearly shows that from the practical angle the listing of various terms of reference and 'considerations' only facilitate the work of the Finance Commissions. They are, indeed, found to be reasonable, in the interests of equity and social justice. We have noted that the Finance Commissions have made recommendations in regard to various matters enumerated in the terms of reference as well as some others. It would thus appear that the objections are more on the theoretical plane. We are, therefore, of the view that the existing procedure has considerable merit in focussing the attention of the Commission on important problems faced by the States, and may continue.

Effectiveness of the mechanism

10.8.42 Several of the less-developed and middle income group States have drawn our attention to what is called the "gap-filling approach" of the Finance Commission. This approach implies that the revenue deficits which remain after determining and setting off the tax-shares of individual States are covered by the Commission through grants-in-aid. It is argued that the adoption of such an approach, in essence, has led to the phenomenon of huge surpluses with some of the more-developed States after devolutions and slender or zero surpluses with the others. On the other hand, according to one of the advanced States, the highly "progressive" formulae of distribution of tax-shares followed by the Finance Commissions, entirely benefit the Union by minimising its total burden of devolution at the cost of revenue-surplus States. Further, such formulae also do not benefit the deficit States fully as their deficits persist even after tax devolutions, though at a somewhat reduced scale. Moreover, the norms adopted by the Finance Commissions in reassessing revenue and expenditure forecasts do not obtain in reality, *inter alia*, on account of inflation and emergence of unforeseen situations. It is argued that in such a situation, with expenditures building up faster, the States receiving Article 275 grants to make up revenue account deficits are the first to be adversely affected followed by other less-developed States.

10.8.43 It is for the future Finance Commissions to go into the details and merits and demerits of the methodlogies followed by the previous Finance Commissions and to suggest improvements therein. There has been a discernible trend towards refinement in the methodologies of the successive Finance Commissions. However, it may be necessary to go into the broad causes of dissatisfaction so far as the role of the Finance Commission is concerned.

10.8.44 The most important parameter estimated by the Finance Commissions is the non-Plan revenue gap/surplus of the States. It is arrived at by reassessing tax and non-tax revenue forecasts of the States and deducting from them the non-developmental and non-Plan developmental expenditures. In 'projecting' the revenues, the rates of taxes and tariffs as obtaining in the base-year immediately prior to the period of the Finance Commission are taken into account, as specified in the Presidential Order setting out the terms of reference. By implication, additional resource mobilisation effected in the subsequent period through revision in rates of taxes and tariffs, better collection, etc. is deemed as resource available for financing the plan.

10.8.45 This approach adopted by the various Finance Commissions has been criticised on the following grounds :

(i) The more-developed States have a surplus on non-Plan revenue account on their own resources, before taking into account devolution of taxes. Given the heavy reliance on tax-shares, any devolutions from the Finance Commission only adds further to their surpluses. These surpluses enable them to finance higher levels of expenditure, both Plan and non-Plan. In the case of the weaker States, they are heavily in deficit on their own resources. In the case of some of them the deficit persists even after devolutions by the Finance Commissions through tax-shares. This deficit is made up by giving grants-in-aid to them leaving them in a situtation of zero surplus. It has been argued that such a system is totally opposed to principles of equity which would, in fact, require that they be left with large surpluses. It has been observed that since revenue account has been balanced with the help of grants-in-aid, and grants-in-aid are fixed, the effect of inflation is to convert the zero surplus into a deficit.

(ii) The Finance Commissions have necessarily to adopt a normative approach. The norms of receipts and expenditure adopted are stated to be unrealistic, particularly in the case of returns assumed from past investments on irrigation and power projects.

(iii) Specific grants have been given to States irrespective of whether they are in deficit, or are enjoying a revenue surplus.

(iv) The "gap-filling" approach of the Finance Commissions has induced financial indiscipline in the States. The critics suggest incorporation of some system of incentive and penalty corresponding to the quality of fiscal effort and management, in the absence of which the mechanism tends to become anomalous and iniquitous.

10.8.46 The Constitution provides that grants-in-aid of revenues charged on the Consolidated Fund of India in each year may be given to such States as are in need of assistance [Article 275(1)]. The question as to which States are in such need, is determined by Parliament after considering the recommendations of the Finance Commission. The gap between the estimated expenditure on current administration and the revenues of a State after including the devolutions by way of tax-sharing, is taken by the Finance Commission as the "need" of that State. This may not be a fool-proof method of assessing the need of a State, but there is no alternative except to improve upon it. Several imponderables complicate this process. The Finance Commissions have themselves been conscious of the infirmities of this method, that, *inter alia*, it tends to encourage unsound fiscal

policies and wasteful expenditure on the part of a State. In his key-note address at a symposium in August, 1974, Dr. Brahmananda Reddy, an experienced statesman and Chairman of the Sixth Finance Commission, emphasised the difficulty of evolving infallible formulae for assessing the fiscal needs of the States, as follows :

> ".....a fool-proof scheme of grants-in-aid can be worked out only if Finance Commission are able to evolve suitable yardsticks for adjudging the reasonableness of levels of public expenditure attained in several States. Finance Commissions have not been able to find satisfactory answers to such questions as whether there is evidence of over-staffing or other forms of wasteful and unproductive expenditure? It is not merely lack of time that inhibits a Finance Commission from embarking on such enquiries. Finance Commission also possibly apprehend that they may be called upon to pronounce value judgements on issues of policy once they attempt a detailed analysis in qualitative terms of expenditure in different areas of administration. Finance Commissions are handicapped in probing public expenditure in depth in the absence of sufficient details on such matters as strength and disposition of staff and norms for assessing productivity of public expenditure. Audit reports highlight major irregularities, but they do not enable us to quantify the extent of economies consistent with efficiency that are possible".

According to the Seventh Finance Commission : "Grants-in-aid may, in the first place, be given to States to enable them to cover fiscal gaps, if any, left after devolution of taxes and duties so as to enable them to maintain the levels of existing services in the manner considered desirable by us and built into their revenue forecasts".[52]

10.8.47 No doubt various Finance Commissions have taken pains to enunciate rational principles taking into account fiscal needs, tax-efforts, equity, efficiency, etc. But much work remains to be done in regard to defining principles for determining relative fiscal needs, quantifying relative tax-potential, etc. In the absence of this, the importance of revenue gaps has stayed. We are of the view that serious attention should be given by future Finance Commissions to these aspects also.

10.8.48 The various Finance Commissions have been effecting refinements in the methodology, keeping in view the emerging situations and terms of reference. Some notable developments in this regard have been : the increase in the tax-shares of the States in the divisible pool, progressivity introduced in the criteria of allocation, consideration of States' non-Plan capital gaps, provision of grants for upgradation of levels of administration along with their monitoring, standardisation of arrangements regarding grants for natural calamities, and building 5 per cent annual increase in revenue gap grants and linking distribution of 5 per cent of the divisible proceeds of the Union Excise Duties with the assessed revenue-deficits of the States. We note that the terms of reference of the recently constituted Ninth Finance Commission require it, *inter alia*, to adopt a normative approach in assessing the receipts and expenditure on the revenue account of the States and the Centre; have due regard to the need for providing adequate incentives for better resource mobilisation and financial discipline as well as closer linking of expenditure and revenue-raising decisions; take into account the need for speed, efficiency and effectiveness of Government functioning and of delivery systems for Government programmes, and keep in view the objective of not only balancing the receipts and expenditure on revenue account of both the States and the Centre, but also generating surpluses for capital investments. We hope that these terms of reference of the Ninth Finance Commission will help in evolving a more comprehensive and integrated approach and will ultimately result in providing the much needed financial discipline both in the States and at the Centre.

10.8.49 State Governments and experts have made various suggestions in regard to methodological improvements, e.g., regarding changes in criteria of devolution, incorporation of fiscal-needs approach in place of the alleged gap-filling approach, special provisions for the hill States in the devolution, etc. These are also the issues raised before successive Finance Commissions. We feel that such matters should appropriately be considered by the future Finance Commissions.

10.8.50 We cannot but emphasise two matters in this regard. Firstly, there is need to recognise that the less developed areas, would require greater attention than hitherto in the over-all interests of the nation. Even within a more advanced State, there are backward regions, which call for special attention. Secondly, it is imperative that the system of devolution encourages resource mobilisation, efficiency and cost-effectiveness in the application of the same. This aspect has assumed greater importance today than at any time before, owing to the emergence of a substantial resource crunch both in the Union and in the States.

State Planning and Finance Boards

10.8.51 Consideration of adequate flow of funds to the backward regions in the States would necessitate creation of expert bodies like the Finance Commission at State level also. Without such an organisation at the State level to effect regional distribution, skewness will persist in large pockets even in an advanced State. In the Chapter on Economic and Social Planning we have stated that the State Planning and Finance Boards suggested by us can, with advantage, take an objective view of resources to be devolved to the districts,

Support to Administrative Capacities and Infrastructure

10.8.52 Another point which we would like to emphasise is the desirability of continuing the provisions for upgradation of administrative standards and maintenance of infra-structure and capital assets in the States. Since the Sixth Finance Commission a process has been initiated to give grants for upgradation of levels of administrative / organisational support

[52]. *Report of the Finance Commission*, 1978, Chapter 9, para 5, page 76.

in backward areas is a *sine qua non* for making the investment effective in consonance with the accepted policy of reducing regional disparities. As has been observed by the National Committee on the Development of Backward Areas, the present capacity of such States to absorb investment is a limiting factor for their long-run development. It may even be desirable to provide in the special terms of reference of the Finance Commission to make available finances, with effective monitoring arrangements, to fill up the inter-State gap in administrative capabilities. Otherwise also, we hope that the Finance Commissions will continue paying attention to this vital aspect.

Treatment of the Finance Commission's Recommendations

10.8.53 An important aspect connected with the role of the Finance Commission is the treatment accorded to its recommendations by the Union Government. By and large, the recommendations made by the Finance Commissions have been accepted by the Union Government. However, there have been three instances when the recommendations of the Finance Commissions were not accepted :

(i) The Third Finance Commission's recommendation for devolution as part of Article 275 grants, towards 75 per cent of the revenue-component of the Third Five-Year Plan was not accepted. The reason given by the Government was that no real advantage was seen in channelising grants for the same purpose from two different sources.

(ii) Two recommendations made by the Seventh Finance Commission were not accepted. They were :

(a) The loss equal to the difference between the amount of excise revenue realised on sale of potable liquor and that assumed by the Commission may be compensated by the Centre to the full extent.

(b) The small savings loan should be treated as 'loans in perpetuity'.

The former recommendation was not accepted on the ground that as prohibition was among the Directive Principles of State Policy, the State should also bear the loss. The Union Government's contribution was fixed at 50 per cent. In the case of the latter recommendation, the Government was not convinced of the logic given by the Commission and did not accept the recommendation. However, a decision was subsequently taken to postpone the recovery of these loans from the States for the period of the Finance Commission (1979-1984).

(iii) Recently, the final reecommendations of the Eighth Finance Commission were not implemented during 1984-85, i.e., the first year of the Commission's period of reference, during which its Interim Recommendations remained in force.

10.8.54 It is this last instance which has been strongly protested against by several States, experts and others. It is alleged that, besides causing serious hardship to several States as their expectations for higher devolutions in that year were belied, this has also adversely affected the prestige of the Finance Commission. In view of the latter aspect, in particular, this case requires a review here.

10.8.55 The Union Government stated in the Explanatory Memorandum placed before Parliament that as four months of the financial year 1984-85 had already passed by which time the budget and annual plans were already finalised and were in operation, the implementation of the final recommendations would have caused 'undue disruption in the economy' if the budgets and the annual plans were then changed. In particular, it was stated that changes in the shares of taxes and duties, if effected at that stage, would have caused problems resulting in lower shares to some of the States.

10.8.56 Subsequently, in reply to a quary on this issue, the Ministry of Finance gave following additional reasons for non-implementation of the final recommendations of the Eighth Finance Commission in 1984-85 :

(i) If the Union Government had received the report of the Finance Commission in time, it would not have agreed to give to the States Central assistance towards the Annual Plan of the order made. The Central assistance was stepped up for the Annual Plan, involving additional transfers of about Rs. 790 crores over the balance left for the last year of the Sixth Plan. Further, a decision was taken to provide an extra assistance of Rs. 499 crores to the States as medium-term loan to clear their overdrafts at the end of the financial year.

(ii) The recommendations of the Finance Commission, according to Constitutional provisions "do not constitute an award". These are "recommendations" to the President. Finance Commission is "an aid to the administrative machinery". The executive may or may not accept its recommendations considering their feasibility and desirability of implementation on objective considerations.

(iii) Finding additional resources to implement the final recommendations would have required unpleasant measures like additional taxation or deficit financing.

10.8.57 The above-mentioned reasons are to be evaluated in the light of the following facts :

(i) Presentation of the final report of a Finance Commission in the course of the financial year of its period of reference is not an unusual phenomenon. The Fifth Finance Commission presented its report on July 31, 1969; yet it was implemented from that very year.

(ii) The argument that the Union Government would not have released substantially high order of Central Plan assistance to the States if the final report had been available in time, cannot be a justification for non-implementation of the recommendations as the nature

of the two transfers is different. Central plan assistance carries a heavy loan component whereas the devolutions through the Finance Commission are in the nature of tax-shares and grants.

(iii) While some of the States might have lost in the mid-year implementation of the report in terms of tax-shares, etc., corresponding loss to other States due to non-implementation was much larger.

(iv) The final report of the Commission was submitted on April 30, 1984 but was presented to Parliament only on July 24, 1984. The Budgets and Annual Plans for 1984-85 were prepared on the basis of the recommendations contained in the Interim Report of the Commission which were provisional in character. Nonetheless, there existed an expectation of more funds becoming available to the States during the course of the year.

(v) Assistance given on the basis of the Interim Report could be adjusted against dues based on the Final Report.

10.8.58 It is, indeed, unfortunate that the Eighth Finance Commission's final recommendations were not implemented in 1984-85 which caused serious financial problems to some States. Several State Governments have voiced protest in this connection before us. It has to be appreciated that non-implementation of Finance Commission's recommendations not only causes damage to its prestige but may give rise to serious friction in Union-State relations in future. We cannot but stress that while the recommendations of the Finance Commission are not binding on the Union Government in a technical sense, the expectation is that, as far as possible, these would not be departed from without compelling reasons. We hope that in future there would be no occasion for such departure. It is necessary that the time-schedule for the completion of the Finance Commission's work is so drawn up that it can reasonably submit its final report 4 to 5 months before the beginning of its period of operation. Such a step would also give the Union Government sufficient time to get the recommendations examined, place the Explanatory Memorandum before Parliament and make necessary budgetary provisions.

Finance Commissions' Data and Other Observations

10.8.59 We would like to mention two more aspects regarding the Finance Commissions which have been brought to our notice :

(i) During the course of its work the Finance Commission collects and processes massive statistical data and other information. This does not become available for research and analysis by the experts and research institutions and even to the Government departments generally. This indeed, is not a happy state of affairs. We understand that the Australian Commonwealth Grants Commission publishes the details of its calculations and the intermediate data for scrutiny of public and use by researchers. As much of the information gathered by the Finance Commission, as well as the detailed methodology followed by it is of public interest, we recommend that it should be got published, say within six months of the submission of the Report, to enable informed discussion and responsible research in the relevant spheres and better appreciation by the State Governments.

(ii) In addition to the matter specified in the terms of reference, the Finance Commissions make a number of other observations and suggestions which they deem important. Some of these suggestions are taken note of by the Government. We are of the view that it will be a healthy practice if these observations and suggestions are also considered expeditiously by the Union Government and a comprehensive statement placed before Parliament subsequently indicating its views and action taken.

9. *SPECIFIC PROBLEMS AND INSTITUTIONS*

10.9.01 We have already considered the general issues, trends and the arrangements in Union-State financial relations. We now consider a variety of specific problems which have been raised by the State Governments in the working of the arrangements. Firstly, there are allegations regarding restrictions on States' powers of sales taxation, inadequate exploitation by the Union Government of the revenue heads under Articles 268 and 269, insufficient royalty on minerals and pressures on States' resources following revisions in pay-scales, rates of dearness allowance, etc. Secondly, some suggestions have been made for setting up institutions for consultations between the Union and the States on financial matters and for expenditure control. Finally are those problems arising in the day-to-day financial management, viz., regarding release of instalments of Central Plan assistance, natural calamities relief assistance, grants for upgradation of levels of administration, etc. The issues relating to indebtedness, market borrowings, rationalisation in the allocation of capital resources, the problem of overdrafts and flow of institutional finance have been discussed in Section 10.

Constraints on Resource Mobilisation—Sales Taxation

10.9.02 The enactment of Central Sales Tax Act, 1956, while declaring a number of goods to be of special importance in inter-State trade or commerce, has also put restrictions on States' powers to impose any tax on the sale and purchase of such goods inside the State to 4 per cent (which is the current rate) of the price, and that too only at one stage of its transaction. This followed amendment of Articles 269 and 286. A State Government has suggested that the power of Parliament under Clause (3) of Article 286 should not be exercised without consulting the states. A regional party also has suggested omission of Entries 92A and 92B from the Union List with corresponding modification of Entry 54 of the State List.

10.9.03 We have already noted that Sales Tax is the single most important and elastic source of

revenue to the States. Its share in States' own tax-revenue has increased from about one-fourth in 1951-52 to 56.9 per cent in 1984-85. Arbitrary abridgement, if any, of States' powers in this regard, therefore, has to be viewed seriously.

10.9.04 In the Government of India Act, 1935, vide Entry 48 of List II, the Provincial Legislatures had powers to levy "taxes on the sale of goods and advertisements". By the time the Constitution came to be framed, a tendency on the part of the States was observed to tax goods in inter-State sale as internal sale leading to unregulated and multiple taxes on such goods which was burdensome both to the consumer and the trader. In the Constitution, therefore, certain restrictions were incorporated to meet this situation.

10.9.05 Article 286, prior to the Constitution (Sixth Amendment) Act, 1956, read as under :

"**286**. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place---

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India."

10.9.06 Parliament had declared a number of goods as "essential goods" *vide* Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, thus prohibiting the States from taxing them. The Taxation Enquiry Commission, 1953-54 which, among other things, also looked into the inter-State sales taxation and anomalies in the approach to sales-taxation, made recommendations which led to the Constitution (Sixth Amendment) Act, 1956. Union List (Entry 92A) and the State List (Entry 54) of the Seventh Schedule, Articles 286 and 269 were amended with the following effect :

(i) The States cannot impose, or authorise imposition of any tax on sale and purchase of goods outside the State or in the course of imports and exports of goods across the territory of India (Clause (1) Article 286).

(ii) Parliament acquired the power to levy taxes on inter-State sale or purchase of goods (vide Entry 92A, List I, Seventh Schedule).

(iii) The proceeds of inter-State taxation became assignable to the States (Article 269).

(iv) Parliament was empowered to formulate, by law, principles determining inter-State sale and purchase of goods and their import and export across the territory of the country (vide Clause (2), Article 286).

(v) Parliament was also given powers to declare goods which are of special importance in inter-State trade or commerce and subject to the States' powers of taxation in this respect to such restrictions and conditions in regard to the system of levy, rates and other incidence of the tax as Parliament may by law specify (vide Clause (3) Article 286).

10.9.07 On the recommendations of that Commission, the Central Sales Tax Act was passed in 1956, essentially to achieve a degree of uniformity in taxation of goods of special importance by the States. It enabled the Union Government to regulate taxation of goods of special importance by the States. The original limit of 1 per cent of States' Sales Tax, that too at single point, was raised to 2 per cent in 1958, 3 per cent in 1966 and 4 per cent in 1975. The list of the 'goods of special importance' was revised in 1976, and at present includes fifteen items (List of goods is given in Annexure X.16).

10.9.08 As observed in the Chapter on Legislative Relations, the Constitutional amendments referred to above were necessitated due to noticed ambiguity as it stood originally in clause (2) of Article 286 which had given rise to litigation. The arrangements as they stand today have several advantages. They are intended to prevent multiple taxation of the same transaction and thus keep the burden of taxes low on both consumers and producers of subsequent items. They facilitate maintaining of uniform rates of taxation of items declared as 'goods of special importance' with respect to which the powers of Parliament under Article 269 (Entry 33 of List III) were enhanced by the Essential Commodities Act, 1955. They have also sought to plug loopholes in the law and are in consonance with the spirit of Article 19(g). A more or less uniform rate of taxation of such items throughout the country and exercise of check in their taxation becoming too heavy on consumers and other users, are abundantly justified in terms of principles of equity and efficiency in the system. It is a matter of choice which the community as a whole has to make regarding the extent to which the essential goods need to be taxed but the need for uniformity cannot be disputed. Indeed, one of the objects of the 1956 Act was also to enable the State Governments to raise additional revenue from items then immune from taxation. Thus, while the Union Government levies sales tax on goods in inter-State trade, the proceeds are collected and retained by the States.

10.9.09 In view of the above considerations, we are of the view that the restrictions on the powers of the States to tax sales of specified goods cannot be regarded as arbitrary. Any other problems arising in this regard can be resolved by discussion in the proposed National Economic and Development Council or the Sub-Committee on Finance of its Standing Committee recommended by us later in paragraph 10.9.50. These could also be referred for expert advice to the Authority recommended by us to be set up under Article 307 (see para 8.4.05).

Consignment Tax

10.9.10 A regional Party has suggested that Entry 92B should be deleted. We have considered in the Chapter on Legislative Relations this demand. Any tax levied by the Union under Entry 92B is assignable to the States and apart from augmenting States' resources it will also help plug loopholes. We haved, the refore, not supported the proposal for deletion of this Entry. Entry 92B of List I was inserted by the Forty-Sixth Amendment to the Constitution in 1982. Even though five years have elapsed, no legislation has been undertaken to give effect to the intent of the Constitutional amendment. This has given rise

to serious apprehensions. According to an estimate, the revenue realised from Consignment Tax during this period would have been in the range of rupees 2,000 to 4,000 crores per annum. The States have a legitimate grievence that they are losing substantial revenues on account of inaction or delay by the Union. Indeed, one State Government as strongly represented that due to delay in the levy of the Consignment Tax, it has lost substantial revenues—around rupees 100 crores every year. Inasmuch as the entire amount is assignable to the States, the Union is also laying itself open to the charge that precisely for this reason it is not showing sufficient interest in the lavy of this tax.

10.9.11 The Union Government has pointed out that the basic decisions about levying the tax and the manner of allocation of its proceeds were taken by consensus in a Conference of Chief Ministers convened by the then Finance Minister as early as on May 28, 1984. When asked out the reasons for the delay in the imposition of the Consignment Tax, the Union Ministry of Finance has informed us in July 1986, as under :

> "It was decided by the Conference, among other things, that power of exemption might vest only in the State Governments. Subsequently, suggestions were received from various Ministries that it was essential that power of exemption might also vest concurrently with the Central Government along with the States. It was felt that the concurrent power of exemption would enable the Centre to have uniformity of taxation on goods and transaction of All India importance throughout the country and also to avoid any marked fluctuations of the prices of the commodities of national importance and those which are subject to the scheme of administered prices. Accordingly, Finance Minister wrote to the Chief Ministers in this regard. Some States agreed to this suggestion while others opposed it. The matter is proposed to be placed before the Chief Ministers' Conference to be convened shortly by the Finance Minister."

10.9.12 There are two aspects which should be kept in view. Firstly, the levy of Consignment Tax will help to plug loopholes and enable a better check on evasion of inter-State Sales Tax. Here, the rate of tax is not the important aspect, but the fact that even a low rate of tax will help in detecting the evasion. The other aspect is that this tax is a potential source for raising substantial revenues for the States. It is a matter of serious concern that even after a lapse of about five years no legislation has been brought in for giving effect to the intent of the Constitutional amendment. By any reckoning, five years is long enough period sufficient for consultations with States and experts for formulating a Bill laying down the broad substantive guidelines, spelling out the methodology of levying the tax, delegating to the Union Executive authority to work out the details in regard to rate, etc. in accordance with the guidelines. We are of the firm view that the Union Government should bring in suitable legislation in this regard without further loss of time.

Additional Excise Duties in Lieu of Sales Tax

10.9.13 Another area where allegations of Union Government's inroads into States' sphere of raising revenue are made is the replacement of States' Sales Tax by Additional Duties of Excise on selected commodities. This arrangement came into being after the concensus arrived at in the meeting of the National Development Council in 1956. Additional duties of excise in lieu of States' Sales Tax have since been implemented through the 'Additiona Duties' of Excise (Goods of Special Importance) Act, 1957 covering millmade textiles, sugar and tobacco including un-manufactured tobacco. The receipts on this account are distributed among the States on the recommendations of the Finance Commission. The major considerations which weighed in evolving such 'tax-rental' arrangement as described by the Fourth Finance Commission, consisted of removal of administrative complexities and simplification of the structure of commodity taxation; preference indicated by trade, industry and consumer for excise taxation vis-a-vis sales tax; reduction in cost of collection and opportunities of evasion, and better collection and coordination keeping in view the total incidence of commodity taxation.

10.9.14 In their memoranda submitted to the Fourth and Fifth Finance Commissions, the State Governments complained that the receipts from additional excise duties were much lower than what they would have got if they had imposed sales tax on them. In pursuance of the recommendations made by the Fifth Finance Commission, the National Development Council in its meeting held on December 28, 1970, reviewed the arrangements and approved continuation of the scheme subject to :

(i) conversion of specific duties into *ad valorem* duties except in respect of unmanufactured tobacco ;

(ii) the raising of the incidence of additional excise duties as a percentage value of clearance to 10.8 per cent 'in a period of two to three years'; and

(iii) achieving and maintenance of ratio of 2:1 between the yields of basic excise duties and the additional excise duties on these commodities.

10.9.15 A Standing Review Committee consisting of Central and State Government representatives was also constituted for reviewing the scheme. The committee suggested that the rate of 10.8 per cent be reached in phases, viz., 8.5 per cent by 1984-85, 9.75 per cent by 1987-88 and 10.8 per cent, by 1989-90. It also suggested that the States should not insist on 2:1 ratio of basic to additional excise duties till the incidence of additional excise duties of 10.8 per cent (with a total incidence of 32.4 per cent) was reached. Further, it was recommended by the Review Committee that the level of incidence should not be allowed to go below 7.4 per cent in future years. The Eighth Finance Commission expressed the hope that the above recommendations of the Standing Review Committee would be implemented by the Union Government within the time schedule contemplated. In 1984-85, the assurance regarding achievement of the incidence of 8.5 per cent of the value of clearnces in respect of the additional excise duties was reached. The incidence of additional excise duties for 1987-88 is estimated at 9.90 per cent as

against 9.75 per cent recommended by the Standing Review Committee. We hope that the level of 10.8 per cent of the net value of clearance will also be realised as per schedule indicated by the Standing Review Committee.

10.9.16 On the recommendations of the Report of the Indirect Taxation Enquiry Committee, 1978 (Chairman : L.K. Jha), a proposal has already met with general approval of the Chief Ministers in their meeting in September, 1980 to extend the scheme of additional excise duties to five more commodities; (i) Vanaspati; (ii) Drugs and Medicines; (iii) Cement; (iv) Paper and Paper Boards; and (v) Petroleum products. Some of the State Governments have, however, expressed reservations about the proposed extension of the scheme.

10.9.17 This scheme of extension of Additional Duties of Excise was examined by an Expert Committee (Chairman : Kamlapati Tripathi) 1983, which, among other things, suggested formulae for distributing the revenue realisable by additional excise duties from the five commodities under the proposed scheme.

10.9.18 On a consideration of the arguments given by the State Governments against the arrangement of additional excise duties in lieu of sales-tax, it has been observed that the problem is not so much with the rationale or principles involved as for not raising the tax to the level accepted by the National Development Council, The State Governments, in view of the past experience, do not feel assured with the formulae suggested and that the recommendations made by the Tripathi Committee would be duly honoured. One State Government has mentioned that this has happened because the decisions of the National Development Council have no statutory backing and that the recommendations of the Tripathi Committee might meet with the same fate resulting in considerable loss to the State Governments. Another State Government has challenged in the Supreme Court the provisions of the Constitution (Sixth Amendment) Act, 1957, Sections 10 and 11 of the Central Sales Tax (Second Amendment) Act, 1958 and Additional Duties of Excise (Goods of Special Importance) Act, 1957.

10.9.19 We note that whatever be the theoretical arguments in favour of levy of additional excise duties in lieu of Sales Tax, in practice, many problems have arisen. The experience of the States during the past decade and more, in regard to Additional Duties of Excise on mill-made textiles, sugar and tobacco has given room for genuine apprehensions. Unless these misgivings are removed by devising a suitable formulae acceptable to the State, any extension of the scheme to additional commodities is likely to create quite an amount of Union-State friction. In view of the advantages of the scheme of Additional Excise Duties cited in para 10.9.13, we do not favour withdrawal of the present scheme as has been suggested by a State Government. We also note that the document on long Term Fiscal Policy has stated :

> "Merger of additional excise in lieu of sales tax with basic excise duties, though desirable, is not feasible for the present as it would require evolving a suitable formula for allocating a part of the excise duties on textiles, tobacco and sugar for distribution among the States. The matter will be referred to the next Finance Commission for determination of a suitable formula."[53]

We note that this matter has since been referred to the Ninth Finance Commision for examination.

Special Cesses/Duties in Excise Taxation

10.9.20 There have also been areas of inadequate understanding in the sphere of excise-taxation and sharing of its proceeds. State Governments have viewed with dissatisfaction the various types of special regulatory and auxiliary duties which were imposed by the Union Government to raise exclusive and additional revenues. These have gradually become sharable with the States. However, the yield from certain cesses levied through special Acts of Parliament have remained outside the sharable pool of resources. Such cesses and duties earmarked for special purpose constitute about 10 per cent of the gross proceeds of the Union Excise Duties. The Finance Commissions, including the last one, have treated them on a different footing from the other variants of Excise duties and have not considered it desirable to suggest their sharing with the States. In the Long Term Fiscal Policy (1985), it has been recognised that although the revenue from these cesses is earmarked for specific purposes, they contribute to the multiplicity of taxes and that the "Government will endeavour to reduce the number of these cesses to the extent feasible."

10.9.21 We recommend that while it may become necessary for the Union Government to levy cesses in view of the special needs, their application should be for limited durations and for specific purposes only.

Articles 268 and 269

10.9.22 Some State Governments have pointed out that the fields of taxation mentioned in Articles 268 and 269, particularly of the latter, should be better exploited. In Section 5 we have already dealt with the suggestions made by some of the State Governments and political parties involving Constitutional changes with respect to powers to impose taxes enumerated in these Articles. Here we are concerned only with the allegation made regarding their inadequate exploitation by the Union Government thus depriving the States of the revenues assignable to them on their account.

Article 268

10.9.23 Article 268 relates to Stamp duties that are to be levied by the Union Government but collected and retained by the States. The scope for further mobilising revenues from various types of duties was examined by the Eighth Finance Commission in consultation with the Reserve Bank of India, Department of Banking, the Life Insurance Corporation and other concerned institutions. Some scope for raising stamp duty on bills of lading, letters of credit

53. Government of India, Ministry of Finance—*Long Term Fiscal Policy, December 1985*, para 6.5, pp. 36—37.

and policies of insurance and proxies was considered feasible but in the absence of adequate data the Reserve Bank of India could not quantify the amounts. This matter has to be further pursued by Government of India.

Article 269

10.9.24 Some State Governments have pointed out that the Union has not been taking steps to levy taxes covered by Article 269 and has thus deprived them of potential revenue. The Eighth Finance Commission considered the scope for raising revenues from the taxes and duties under Article 269 in pursuance of one of its terms of reference. A variety of problems in levying taxes and duties under Article 269 have been highlighted by the Commission. For example, although a majority of States favour levying of terminal taxes on goods or passengers carried by railway, sea or air, there are complex problems of detailed accounting, concurrent taxation by States on road transport, the need for maintaining a balance among the various modes, etc. Besides, meagre yields are estimated from these taxes and duties. Similarly, levying of a tax on railway freights of any considerable magnitude has to be considered against the odds of fuelling of inflation and the fact that the revenue yields may not be much in case the essential goods and raw materials are reasonably exempted from such a tax. The nascent stage of development of stock exchanges in the country was reckoned as a weighty consideration by the Eighth Finance Commission for not favouring a tax on transactions in stock-exchanges; the expected yield from a tax on transactions in 'futures market' was also considered to be insignificant. Further, a tax on the sale of news-papers, it is feared, will severely hit their circulation and not be in the larger interests of the country. The Eighth Finance Commission, however, did find some scope in levying tax on advertisements published in news papers and journals which according to the estimates of Ministry of Finance, may fetch a revenue of Rs. 400 to 500 crores. Several States, however, favour exempting small newspapers from such a tax.

10.9.25 The scope for raising additional resources to any considerable extent on items covered by Article 269 would thus appear to have serious limitations. In fact, the opinions of the State Governments themselves are divided on the scope for levying these taxes and duties. It is necessary that the social and economic implications and administrative complexities are carefully gone into before any decisions are taken in this regard.

10.9.26 We are of the view that an expert committee should be constituted to enquire into, and review from time to time, in consultation with the States, the operational feasibility of the scope of levying such (Article 269) taxes and the complementary measures the State Governments would be required to take.

Tax on advertisements broadcast by Radio or Television

10.9.27 A State Government has made the following suggestions :

> "A tax on advertisements should be imposed and the scope of Article 269(1)(f) may be widened to include, besides newspaper advertisements, advertisements broadcast by radio or telecast by television".

10.9.28 In paragraphs 10.9.24 and 10.9.25 above we have, *inter alia*, dealt with the scope for tax on advertisements published in the newspapers. States' power to levy tax on 'advertisements broadcast by radio or television' was precluded in Entry 55, List II by the Constitution (Forty-second Amendment) Act, 1976 in addition to the already existing exception in that Entry of tax on 'advertisements published in the newspapers'. But, whereas the latter had a corresponding mention in Entry 92, List I and Article 269(1)(f), the subject of tax on 'advertisements broadcast by radio or television' was not provided in the above-mentioned Amendment Act. We have not been able to get a satisfactory explanation for the same. The Union Ministries of Information and Broadcasting and Law and Justice have expressed the view that the rationale of amending Entry 55, List II was that the revenue from advertisements broadcast/telecast by radio/television should be fully available for the development of these services. Further, a tax on such advertisements might seriously erode accrual of revenue from them. We are not able to agree with these views as a tax on advertisements would have to be additionally borne by the advertisers without cutting into the revenues accruing to the Union. In view of the fast-growing commercialisation and competition, any adverse indirect effect of such a tax on revenue from advertisements on television and radio shall not be serious. For example, a steep hike in rates of advertisements on television effected in February, 1987 did not result in reduced demand for advertisement time.

10.9.29 As such, the implications of the amendment under reference amount to taking away the States' power in respect of taxation of advertisements broadcast on radio or television and, in addition, to denying them a share in the net proceeds, should the Union Government levy this tax (presumably under Entry 97 as it does not find a mention elsewhere in List I). This position appears quite anomalous to us. Such a tax, in principle, is on the same footing as the one on advertisements published in newspapers (Entry 92, List I)—only the media differ. It is, therefore, only logical that it should have found a place in Entry 92. List I and also been included in Article 269. As the television/telecasting network gets extended to large parts of this country, the revenue from this source is bound to increase fast. It will then be for the Union Government and Parliament to consider and exercise this power of taxation under this newly added head.

10.9.30 For all these reasons, we recommend that the Constitution should be suitably amended to add the subject of taxation of 'advertisements broadcast on radio or television' to the present Entry 92, List I and Article 269(1)(f).

Grant in Lieu of Railway passenger fare Tax

10.9.31 The State Governments have expressed serious dissatisfaction with the inadequate grant given in compensation of the repealed Railway Passenger Fare Tax. Such a tax was initiated in 1957 in

accordance with the Railway Passenger Fares Act, 1957. It was repealed from 1st April, 1961 in prusuance of a recommendation by the Railway Convention Committee on the ground that the tax had reduced the scope for raising railway passenger fares. The States have since been paid grant in lieu of the tax which was initially fixed at Rs. 12·5 crores per annum and raised to Rs. 16.25 crores from 1966-67 and again to Rs. 23·12 crores for the period 1980-81 to 1983-84. The Eighth Finance Commission has raised the grant to Rs. 95 crores per annum. The States have in the past felt dissatisfied about the fixed nature of this grant whereas the yield from railway passenger fares has increased manifold since 1961. Following this, a suggestion has also been made for reimposition of the tax. The successive Finance Commissions, while generally sympathising with the States' viewpoint, did not find reimposition of the tax advisable. The Eighth Finance Commission, however, found scope for levying the tax but observed that no such tax should be levied so long as the present arrangement of grants to States in lieu of the tax continues.[54]

10.9.32 By raising the lumpsum grant in lieu of the Railway Passenger Fare Tax, the Eighth Finance Commission has assuaged the feelings of the State Governments. While the matter, for the present, seems to have been settled amicably, for future we would only suggest periodical review and suitable adjustment of such lumpsum grant on the recommendations of the Finance Commission.

10.9.33 We have also noted that the implementation of the above-mentioned recommendation by the Eighth Finance Commission was somewhat delayed. In the Explanatory Memorandum laid before Parliament the procedure of its consideration by the Railway Convention Committee was mentioned.

10.9.34 The Finance Commission makes recommendations to the President. It would be unfortunate if the recommendations of the Finance Commission are again subjected to detailed scrutiny by yet another body, only because of likely impact on a department of the Union Government. Such matters should be treated as internal matters calling for inter-departmental adjustments in the functioning of the Union Government. We recommend that the Union Government should signify its acceptance of the Finance Commission's recommendation in regard to this item also along with the other items while placing the Explanatory Memorandum before Parliament.

Impact of Dearness Allowance, etc.

10.9.35 A major complaint of the State Governments is that periodical upward revisions of pay, dearness allowance, terminal benefits, etc., of the Union Government's employees cast considerable burden on their finances as there is pressure on them to raise the benefits to their own employees covering not only Government servants but also employees of local bodies, teachers, etc. Due to bunching of such expenditure-obligations, the burden on the States' budgets often becomes unbearable, particularly for the less-developed States, thus wiping out the availability of surpluses from current revenues for development. On the other hand, during the last few years, revisions in the rates of salaries and emoluments in many States have been frequent and substantial, and in some cases have overtaken the pay-scales and benefits of the Union Government's employees.

10.9.36 The Finance Commissions have shown increasing concern with the States' expenditure requirements in this regard. The Eighth Finance Commission allowed dearness allowance upto an average of 520 points (All India Consumer Price Index Number with base 1960=100). However, the experience in this regard has been that the rate of inflation has been significantly higher than the original estimates on which such provisions were based. The burden and uncertainty in financial deployment due to dearness allowance, pay revisions, etc. has been faced by both the Union and the State Governments.

10.9.37 We note that the Finance Commissions take into account the expenditure liability of the States with respect to dearness allowance, etc. and make a provision for the same. According to some States, this provision has proved inadequate due to the actual rate of inflation being substantially higher than the projected rate. But if inflation increases outlay, it increases revenue also. The permanent secretariat of the Finance Commission recommended by us should make an annual review of the situation. We recommend that, if in any year the net burden of the State seems unduly heavy, the Planning Commission and the Union Ministry of Finance should jointly evolve appropriate relief measures.

Royalty on Minerals, Crude Petroleum, etc.

10.9.38 Some State Governments have alleged payment of inadequate royalty on minerals, petroleum, etc. extracted from their territories. The rates of royalty on minerals were to be fixed by the Union Government once in four years under Section 9(3) of the Mines and Minerals (Regulation and Development) Act, 1957. Following an amendment of the Act in 1986, this period has been reduced to three years. Similarly, in case of crude oil, the rates of royalty are fixed under the Oil Fields (Regulation and Development) Act, 1948. Section 6(A)(4) of this Act restricts the Union Government to fix the rate of royalty in case of any mineral oil not to exceed 20 per cent of the sale price of that oil at the field or well. The provision for considering the revision of the rates of royalty in the case of crude oil, etc. has been modified on persistent demand by the States to three years recently, vide Section 2 of the Oil Fields (Regulation and Development) Amendment Act, 1984.

10.9.39 A major demand of the State Governments has been payment of royalty on an *ad valorem* basis and not on the basis of a specific amount per tonne, specially in view of frequent and sharp increases in the prices of many minerals and crude oil. A State Government has cited the Nehru Award of 1962 and Indira Gandhi Award of 1968 in support of its demand that the royalty on crude petroleum should be based on "full-posted price" rather than on an artificial selling price of indigenous crude. On the other hand, the State Governments have levied cesses, mineral rights tax and surcharge which are

54. *Report of the Eighth Finance Commission*, 1984, Para 15.61, Page 117.

not uniform among the States. This is alleged to have imposed a discriminatory burden on the price of minerals over and above the rate of royalty.

10.9.40 The question of royalty on mineral products is an area where, besides providing adequate rates to the States, the principles of pricing policy, the real factors behind movement of international price of crude-petroleum, the implications of increase in the price of basic inputs, etc., are to be considered. We have dealt with these issues in our Chapter on Mines and Minerals. If there are administrative considerations against making royalties *ad valorem*, there are equity considerations against not revising them for 3 or more years in times of persistent inflation. As recommended therein, the review of the royalty rates on minerals should be made every two years and well in time, as and when they fall due. The same procedure should also apply to royalty on petroleum and natural gas.

Suggestions for new institutions

10.9.41 While suggesting solutions to the problems in Union-State financial relations some State Governments, as also others, have suggested creation of new institutions. Such suggestions are made for two categories of institutions : (a) a machinery for consultation and discussion on issues on mutual economic interest between the Union and the States, and (b) institutions, with adequate representation of the States, also for specific purposes such as a Loans or Credit Council and an Expenditure Commission. The suggestions for the new institutions thus emanate from both a positive urge for a larger measure of consultation between the Union and the State Governments on financial and economic issues and from a feeling of arbitrariness in the approach of the Union Government to some matters.

10.9.42 One State Government has observed : "A large part of the inadequacy in the functioning of Union-State financial relations as reflected in persistent grievances seemingly harboured by the States and the concern expressed by them before different forums could have been taken care of by providing effective means of consultation, on a regular basis, between the Centre and the States on all matters pertaining to financial relationship between them". Another State Government has suggested that consultation between the Union and the States on financial matters could be ensured by a Committee of Finance Ministers of the States presided over by the Union Finance Minister. Some others have suggested that it would be desirable if the views of the State Governments are ascertained before moving a bill to levy or vary rate-structure or abolish any of the duties enumerated in Articles 268 and 269. Granting of exemptions and lowering of rates of Income Tax, net proceeds of which are now sharable with the States to the tune of 85 per cent, by the Union Government is often cited as another area where the State Governments should be taken into confidence.

10.9.43 The Forth Finance Commission had observed that there should be provision for inter-Governmental consultation as there was a wide-spread misunderstanding about the Union Government's policy arising from its alleged tendency to neglect shared revenues and inadequate exploitation of taxes under Article 269. The Sixth Finance Commission was also of the view that a significant improvement in the financial relations between the Union and the States would be achieved if decisions affecting revenues of States were taken after the widest possible measure of consultation as underlying the spirit of Article 274 of the Constitution. A State Government has also suggested that Article 274 be amended to include 'States' besides the 'President' for introducing or moving any Bill or amendment in which States are interested.

10.9.44 The Srinagar conclave of Opposition Parties (October, 1983) had also suggested an institutional forum for consultation between the Union and the State Governments on fiscal issues of mutual concern. However, neither the State Governments nor the Finance Commissions have dwelt on the organisational details of a forum for regular and formal consultations on financial matters.

10.9.45 In the context of planning relationship, one State Government has suggested a National Planning and Development Council. An eminent economist has suggested setting up of a similar Council, with representation from the States, to take care also of their wider interests, for example, in the field of industrial licensing, export and import licensing, subsidies, incentives, employment, etc.

10.9.46 Evolution of healthy Union-State relations in respect of all financial matters is basic to the proper functioning of a two-tier polity. We have noted that in the Constitution the thorny problem of division of resources between the Union and the States and among the States has been removed from the political arena by providing for a Finance Commission. Transfer of resources for Plan purposes also, to a very large extent, is based on accepted formulae and objective criteria. However, apart from the question of devolution of resources, there is a large area having interface between the Union and the States in respect of financial and economic relations. There is imperative need for organic linkage and coordination between the two levels of Government in raising resources and controlling of expenditure.

10.9.47 The major areas or matters requiring coordinated action may be classified broadly into four groups :

(i) actions of the Union Government which could result in higher resources for the States and also prevent loss of revenues to them;

(ii) restrictions resulting from Union action on taxation by the States;

(iii) actions of Union Government causing increase in States' expenditure obligations; and

(iv) fiscal and monetary policies having a bearing on States' finances.

Group I

(a) Raising resources from heads of taxation covered by Articles 268 and 269 : We have already noted in paragraphs 10.5.13, 10.5.32 and 10.9.26 that the question of raising more revenues from taxes mentioned in these Articles, requires periodic review in consultation with the States.

(b) Revision of rates of royalty : We have considered this matter in detail in the Chapter on Mines and Minerals. We have noted therein the complaint of the States that not only the rates of royalty are low but they are also not revised frequently. The Union Government has pointed out that the States have been imposing large cesses and varying them frequently. This is causing serious problems in ensuring the availability of these basic inputs for economic development at uniform prices throughout the country. Clearly, there is need here for consultation and coordinated action between the Union and the States in this matter.

(c) Policies and administration of Additional Duties of Excise on specified commodities in lieu of Sales Tax : States complain that the Union Government has for long followed a policy of adjusting the basic and Additional Excise Duties in a manner that deprived the States of revenues which they would have realised had the Sales Tax on these items been continued. Recently steps have been taken by the Union Government to enhance these Additional Excise Duties.

(d) Rebates/concessions in Income Tax, Union Excise Duties, etc., where the proceeds are sharable with the States : Much of the misunderstanding that exists in these matters could be cleared if only a measure of prior consultation is resorted to.

Group II

Many measures adopted by the Union Government amount to curbs on States' powers of taxation of purchases or sales. We have noted in paragraph 10.9.02 the complaints of the States in this regard arising from control of the Union over taxation of inter-State trade and commerce and taxation of transactions in respect of essential commodities. Levy of Consignment Tax has been made possible by the Forty-sixth Amendment to the Constitution and this tax is expected to yield substantial additional revenues to the States. We have noted that this power has been vested in the Union to ensure that the free flow of inter-State trade, commerce and intercourse throughout the country is not thwarted and the economic unity of the nation is not endangered by the States by erecting discriminatory or oppressive tax-barriers. Taxation of essential commodities has also to be kept low and reasonably uniform throughout the country.

Group III

(a) Actions of the Union in the field of administered prices of steel, coal, oil, etc., have large implications for the States. These increases affect significantly the costs of various projects undertaken by the States. While in the case of irrigation projects the capital costs go up, in power projects the capital as well as operational costs both escalate.

(b) Upgradation of pay, dearness allowance, pensionary benefits and the like of Union Government employees by its inexorable impact, often leaves the States with no choice but to provide similar benefits to their own employees.

Group IV

One of the most important areas requiring coordination of policies is the field of indirect taxation. The Taxation Enquiry Commission, 1953-54, had observed :

> "It is in the field of commodity taxation, however, that the need for understanding and coordination is greatest between the Central Government and the States. The sales taxes, as they have evolved in India, do not consist merely of a tax on the generality of sales, but also include special rates on specific commodities, many of which are subject to taxation by the Central Government in the form of excise duties. There are, besides, questions regarding the use of State sales tax system for purposes of economic policy that may have repercussions on areas and interests outside State jurisdiction"[55].

10.9.48 We have attempted above to illustrate through certain examples the existence of a vast area requiring inter-governmental coordination of economic policies. As observed by the Taxation Enquiry Commission, with growing importance of public finance in the national economy, and with increasing linking of the Union and the States in the fiscal system, it has become important to develop an integrated, national approach to the problems of mobilisation of resources including taxation and expenditure.

10.9.49 We are of the view that consideration of various financial matters, in the setting of a national perspective is essential to remove any misunderstanding with respect to fiscal measures adopted by the Union and the States as also to evolve mutually accepted policies. Keeping in view the importance of financial relations, it is necessary to provide a fourm which will adequatley respond to these needs. It is essential that various issues are examined by expert groups from time to time before the same can be brought up for consideration at a political level. This will facilitate crystallisation of issues and indicate possible solutions and remedial actions. We have recommended in the Chapter on Economic and Social Planning that National Economic and Development Council should be constituted under Article 263 as the apex institution for Inter-Governmental consultations on all economic and social developmental policies. Therefore, any forum for discussing financial aspects should be integrated fully into this arrangement.

10.9.50 We recommend that a Sub-Committee on Finance of the Standing Committee of the NEDC may be constituted constisting of the Union Finance Secretary and the Finance Secretaries of various States and Union Territories. It will consider all such matters calling for coordination of economic policies, as may be entrusted to it by the NEDC or its Standing Committee. This body will report to the Standing Committee of the NEDC. Since Planning Commission would be providing the secretarial support to the NEDC, the same may be extended for this body also. This will ensure expert consideration of various aspects of the problems and adequate consideration of the views of the Union and the State/Union Territories. The role of this Sub-Committee will be deliberative and advisory and helpful in forging a consensus on financial matters.

55. *Report of the Taxation Enquiry Commission*, 1953-54, *Vol. I, p.* 167.

Expenditure Commission

10.9.51 Given the overall resource shortage and growing responsibilities of both the Union and the State Governments, increasing concern has been shown about their pattern of expenditure. Criticism has been levelled against both the tiers of Government with respect to their priorities in spending, coupled with allegations of wastage and fiscal inefficiency. There is also a specific allegation that the Union Government incurs substantial expenditure on State-subjects all of which cannot be justified in terms of its role specified in the Constitution. It has been pointed out by many in response to our Questionnaire that the present agencies concerned with expenditure control, namely, the Comptroller and Auditor General of India and Public Accounts Committees of Legislatures have not been very effective in this regard. For quite some time there has been a suggestion that a National Commission on Expenditure should be created to examine the patterns of expenditure of the Union and the State Governments. The idea of an Expenditure Commission was also endorsed in a Seminar on Centre-State Relations held in Bangalore in 1983. However, none of the State Governments, except one, has favoured the proposal for such a Commission. This particular State Government has suggested a National Expenditure Commission as an *ad hoc* body, to "go into the expenditure of the Central and State Governments thoroughly and rationalise the basis for assessment of revenue surpluses for the guidance of future Finance Commission".

10.9.52 Indeed, a Commission on Public Expenditure was set up in India by a Resolution of the Union Government on May 29, 1979, as a result of the stress laid by the then Deputy Prime Minister-*cum*-Finance Minister on the need for containing the growth in public expenditure, while presenting the budget for 1979-80. Among other things, the Commission was required to look into the areas in which economy could be effected, identify non-essential activities or overlapping functions between the various departments of Government of India and State Governments, review the creation of new posts and suggest measures for containing expenditure on staff. It was also required to review the existing arrangements for planning, execution, monitoring and evaluation of major projects and programmes. The Commission was wound up on January 31, 1980. *i.e.*, after about eight months of its becoming operational, but before it could submit its report to the Government.

10.9.53 Before considering the need for an Expenditure Commission it is necessary to go into the adequacy of the existing machinery for expenditure control. The basic control on budget rests with the legislature. After passing the budget, the legislative control continues with the object of ensuring that the funds appropriated are properly used for the purposes specified and in an efficient manner.

10.9.54 The important instruments of Parliamentary control are the Committees of Parliament, *viz.*, the Public Accounts Committee and the Estimates Committee. The latter is also required to keep an eye on securing economy and efficiency in expenditure and to suggest necessary modifications. The Committee on Public Undertakings also seeks to ensure prudence in the management of finance by the public undertakings.

10.9.55 In a Parliamentary system, the role and authority of the legislature in determining priorities are supreme and cannot be questioned. However, for ensuring adherence to the priorities evolved, the legislature has to pay utmost attention to the budgetary proposals. Pre-vote scrutiny of the estimates is a very crucial stage. It may not be possible for Parliament or a State Legislature to go into the details of all the estimates. A practical way may be to constitute small Sub-Committees which could consider the estimates. However, it is for Parliament and State Legislatures to evolve suitable procedures in this regard.

10.9.56 A significant feature of the Constitutional provisions is that the Comptroller and Auditor General of India has the authority to audit all expenditure from the revenues of the Centre and the State Governments. He has to ascertain that the amounts shown in the accounts are duly disbursed and the expenditure conforms to the authority which governs it. The reports of the Comptroller and Auditor General are placed in Parliament and the State Legislatures and form the basis for further discussion by the Public Accounts Committee with the concerned departments.

10.9.57 While the system of audit and expenditure control is quite elaborate, some problems in its working have been highlighted. For example, it has been pointed out that there are delays in the preparation and submission of audit reports. The maintenance of accounts in the Treasuries and their reconciliation leaves much to be desired. There has to be a greater emphasis on evaluation audit. We are given to understand that processes are afoot to bring about qualitative improvements in these respects. However, the need for an efficient system of audit and accounts to serve as basis for expenditure control cannot be over-emphasised.

10.9.58 It has to be appreciated that there are processes subsequent to audit which are important for effective expenditure control. Indeed, the Comptroller and Auditor General of India can do little to reshape priorities and norms in spending. We have been informed that in several States, audit reports do not got the importance they deserve. They are often submitted to the Legislatures towards the fag end of their sessions, leaving little time for a fruitful discussion. Otherwise also, the discussions, it is alleged, are often insufficient and done in a routine manner. It has also been emphasised that the Public Accounts Committee, the Committee on Public Undertakings and the Estimates Committee need pay greater attention to the Audit Reports and it should be ensured that the executive responds to them well in time. Backlog of arrears in the consideration of the Audit Reports has been observed. In the case of a particular State, as in September, 1986 the last report on which discussion had been completed related to 1971-72.[56] Such delays as also non-regularisation of excess expenditure in relation to amounts granted, create a slackening tendency in expenditure-control, which is incompatible with the spirit of the Constitution. The post-audit process, indeed, needs to be further strengthened.

56. Observation made by the Comptroller and Auditor General of India in his address to the Seventh Conference of Chairman of Public Accounts Committees on September 9, 1986.

10.9.59 We are of the view that the establishment of an Expenditure Commission as a permanent or an *ad hoc* body for 'one-shot operation' is not necessary. A better alternative is to strengthen the existing system itself. For this purpose, it will have to be ensured that the existing institutions themselves play the role expected of them. This is indeed, an area where further institutional mechanisms and safeguards cannot be expected to substitute the conscience, will and responsibility of those on whom a duty in this regard has been appropriately devolved by the system.

10.9.60 The Constitution has done away with the multiplicity of audit authorities and has made the Comptroller and Auditor General of India as the sentinel of the country's finances. The merits of the present system of terms of uniformity and economy in the cost of audit are obvious. There is functionally a close interaction between the Union and the State Governments in fiscal and financial matters. Application of uniform principles and procedures in the maintenance of accounts at the two levels of Government. their supervision by a common and independent Constitutional authority, early detection of any irregularities and initiation of timely remedial action are the hallmarks of our audit system. It will, indeed, create complications, both in administration and understanding, if multiplicity of authorities come into being and prescribe their own systems of accounting and procedures. There is also advantage in the present uniform authority in terms of economy in cost and audit services. We are, therefore, unable to support the suggestion that Entry 76 of List I be modified to provide for separate Auditors General at the State level. We are further unable to agree with the view-point of a State Government that the present centralisation of audit is the root-cause of the procedural delays. Scope for reducing delay in the finalisation of accounts has to be considered by the Comptroller and Auditor General himself, who, indeed is seized of the problem and has over time brought about improvements.

10.9.61 It is also not possible to support the suggestion made by another State Government, that evaluation audit should be entrusted to an agency constituted by the State Government itself as a qualitative improvement in the procedures of audit has to be intrinsic to the sysem. In our view, there is no pressing necessity at present to have separate Federal and State audit services.

Operational Irritants

10.9.62 The last thirty-seven years have witnessed progressive enlargement in the scale of fiscal operations and proliferation in the activities of both the Union and the State Governments. This has obviously increased the area of interaction between the two levels of Government. A few State Governments have brought to our notice some 'irritants" in the day-to-day working of the financial arrangements. By their very nature these do not call for Constitutional remedies, or farreaching institutional changes, but merit mention for consideration of procedural improvements. Some of these problems have been noticed in the context of the issues discussed earlier. The other irritants relate to the arrangements and procedures governing release of funds to relieve natural calamities, grants for upgradation of administrative standards and Central assistance for State plans and Centrally Sponsored Schemes.

Relief for natural calamities

10.9.63 The system regarding financing of relief expenditure in the present form was standardised by the Seventh Finance Commission and modified with respect to the provision of margin-money by the Eighth Finance Commission. The salient features of the present scheme are :

(i) Margin-moneys towards expenditure on natural calamities have been fixed by the Eighth Finance Commission taking into consideration the average of non-plan expenditure on the relevant items during 1978-83 (aggregate for all States Rs. 240.75 cores in contrast to Rs. 100.55 crores recommended by the Seventh Finance Commission).

(ii) Half of the margin-money for each State was built into its reassessed expenditure forecast by the Finance Commission and the remaining half left to be provided by the Union Government.

(iii) On the occurrence of a natural calamity, if the order of expenditure is estimated to be in excess of the margin-money, the concerned State sends a memorandum to the Union Government. After examination of the memorandum in the Union Ministry of Agriculture, a Central Team visits the State for on-the spot assessment of the damage.

(iv) The report of the Central Team is considered by the High Level Committee on Relief, which recommends ceilings for different items. After considering the recommendations of the Committee, the Finance Ministry fixes the ceiling of expenditure and communicates the same to the State Government. The amount in excess of the margin-money qualifies for Central assistance.

(v) The pattern of Central assistance distinguishes between drought as one category and 'floods, cyclones, earthquakes, etc.', as another. In case of drought, the expenditure is to be treated as part of the Plan for which, subject to approval by the Central Team/High Level Committee, advance Central assistance is released upto five per cent of the outlay of that year's annual plan. If the relief expenditure cannot be contained within this limit, the extra amount is provided by the Union Government as 50 per cent loan and 50 per cent grant. In case of floods, cyclones, and other natural calamities, of the excess of expenditure over the margin-money, 75 per cent is given as grant against which a matching expenditure of 25 per cent is made by the State Government.

(vi) The unspent amount of margin-money is carried forward to the next year.

10.9.64 The State Governments have highlighted the following problems with respect to the arrangements for financing natural calamities relief :

(i) A few States have suggested that relief on natural calamities should be treated as a national obligation.

(ii) Central assistance towards drought should be put on the same footing as for floods and cyclones and should preferably be given outside the Plan.

(iii) The procedure for deciding Central assistance is time-consuming and does not ensure an objective assessment.

(iv) Because of the delay in receiving Union Government's decision, the State Governments have often to incur expenditure covering the former's portion of margin-money, at the cost of burdening their own finances. Besides, there is uncertainty that the pattern of expenditure might not find approval. States should have freedom to incur expenditure on any item subject to an overall ceiling.

(v) The assistance should continue even beyond the financial year, say upto the month of September.

10.9.65 Successive Finance Commissions have considered the question of providing relief to the States in the event of natural calamities. They have recognised that the State Governments are primarily responsible for organising such relief. The Seventh Finance Commission had observed that with a view to minimising any tendency for wasteful expenditure on the part of the States, they should bear a significant share of total relief expenditure burden. The Union Government is expected to supplement their efforts through the provision of Central assistance. This is as it should be. There is no doubt that natural calamities are to be viewed as a national problem, but this cannot be interpreted to mean that the Union Government should bear the entire expenditure on their account.

10.9.66 The Seventh Finance Commission, for the first time, brought out the distinction between a situation arising out of drought and that due to floods, cyclones, etc. This distinction has been continued by the Eighth Finance Commission also. The Seventh Finance Commission had provided for a more favourable flow of Central assistance for floods, cyclones, etc. *vis-a-vis* a drought situation, on the grounds that the serious damage caused to the assets by the former category of natural calamities "cannot be properly or adequately taken care of in the present scheme of Central assistance. A clear indication of this is the inclusion in recent years .....of expenditure on non-Plan nature in items taken into account for advance Plan assistance which, by definition should be available only for expenditure which creates new assets". [57] We are in agreement with the above views.

10.9.67 There cannot be two opinions that in the event of a natural calamity, relief must be given immediately. State Governments should be able to utilise their margin-money as well as the share of the Union Government as intended. We do not see any insuperable difficulty in sending a Central Team to the affected State immediately after the receipt of the State's request supported by adequate details of the damage incurred and the nature and extent of the assistance needed. We note that the Central Teams visit the affected areas and hold detailed discussions with the State Government. We see no better alternative for arriving at an objective assessment keeping in view the urgency of the situation. It is for the State Governments to assess and convince the Central Team in making such assessment of the damages caused by the natural calamity. In a situation of drought, it should be possible for the State Government to prepare a detailed memorandum and for the Union Government to assess the extent and nature of assistance to be given well in time. The drought situation gets built-up over a priod of time. In the event of a cyclone or floods, immediate need is for providing relief to the victims by way of clothing and shelter. Emergency repairs to roads for restoring communication, irrigation and drinking water sources, etc., are also to be taken up immediately. If appropriate norms are formulated by the Union Government, in consultation with the States, there should be no difficulty for the State governments in taking up relief operations immediately without waiting for formal approval from the Government of India. The Central Team to assess the damage caused by natural calamities should invariably be headed by the Adviser in charge of that State in the Planning Commission, as was the practice in the past. It would be his responsibility to help the Commission in assessing the States' performance over time in this regard.

10.9.68 We recommend that a procedure which enables States to expeditiously provide necessary succour and relief to the affected people should be evolved in consultation with the States along with suitable norms in regard to the scale of relief. This calls for a time-bound programme. Formulation of standard formats for submission of memoranda by the States will greatly help the Union in dealing with the requests of various States urgently and on a uniform basis.

10.9.69 As regards the suggestion to give the States freedom to incur expenditure on any item within the ceiling, it may be observed that the Central assistance is computed on the basis of requirements of various individual sectors. In our view it is not possible to give the States blanket permission to incur expenditure on any item whatsoever within the ceiling. Nevertheless, it is necessary to recognise that it is the State afflicted by the calamity which is better conversant with the local needs. The State visited by such a *vis majore* must form the focal point itself—rather than placed in a strait-jacket—with better scope for necessary adjustments. In a calamitous situation, the State should have a reasonable discretion to make inter-district or inter-sectoral adjustments. To allay the apprehensions that the expenditure pattern adopted under the stress of urgency may not find approval, we would suggest that norms in regard to items of expenditure which are to be incurred immediately, *e.g.*, relief by way of free issue of foodgrains, clothing and rebuilding of shelters in the event of floods may be evolved by the Union and communicated to all State Governments.

10.9.70 We find considerable merit in the suggestion that relief assistance would extend beyond the financial year. The main working season in most parts

57. *Report of the Finance Commission*, 1978, Chapter IV, Para 13, p. 52.

of the country is from December to June-July. The rainy season begins in June or July. Thus, if restoration works are to be carried out in the event of floods, or if employment is to be provided in case of drought, the financial year loses its importance. We would suggest that assistance required till the next June/July should be decided in the beginning itself so that relief works can be properly planned and executed.

10.9.71 The Union Ministry of Finance has drawn our attention to certain disturbing trends. It has been pointed out that the demands made by State Governments are rising sharply and the ultimate relief found necessary is only a fraction of this demand. Even with this order of relief, the total burden on the Union has been going up steadily year after year and in 1985-86 it was well over Rs. 1200 crores. It is suspected that there is a connection between the very large demands for relief and increasing deficits emerging in the States' budgets. This is most unfortunate. Such a situation needs to be effectively tackled. Persistent irresponsibility in this regard by a State should be taken into account by the Finance and Planning Commissions in recommending future assistance.

10.9.72 We have pointed out in the preceding paragraphs, the need for leaving with the States considerable discretion in the financing of natural calamities relief. While this is necessary, it is equally important that wasteful expenditure is avoided and the intended benefits are really achieved. The present arrangements for monitoring of expenditure appear to be grossly inadequate. It is necessary that the responsibility for proper monitoring rests on agencies concerned with the administration of relief. Repeated demands for large relief assistance in the case of drought clearly underscore the need to evaluate the effectiveness of schemes undertaken in the previous years both under relief and as part of States' development plans. There should be a system of strict penalties for diversion and misapplication of funds. We would like to lay the greatest stress on setting up of an adequate machinery urgently for this purpose.

10.9.73 A few State Governments and some others have suggested that a National Fund should be created out of which relief should be provided to the States whenever natural calamities occur. The details of the size, operation and management of such a Fund have not been spelt out. One of the State Governments has suggested that this should be a State Relief Fund and its funding should be on a statutory basis. The rationale behind this demand for creating a National Fund appears to be that such a Fund will ensure more expeditious flow of assistance to the States in need, unhindered by political considerations, do away with limitations of margin money and cast a smaller burden on the States facing natural calamities. It may be pertinent to point out that the Sixth Finance Commission (1973) was specifically required to go into this question. The Commission weighed the pros and cons of creating a National Fund towards natural calamities relief. It was the advantage in the proposal in terms of a single focal point at the Centre for coordination, promotion of purposeful inter-Ministerial cooperation if the Fund had an administrative arm of its own, development of technical expertise in analysing natural calamities and creating a sense of common concern among the Centre and the States. On the other hand, that Commission took note of complex administrative problems, the danger of the National Fund arrangement degenerating into a creditor-debtor relationship with the States, introduction of an additional complication in the federal financial structure and the difficulty in covering the requirements in case of natural calamities of very large magnitude. The Finance Commission also noted that most of the State Governments were against the creation of a National Fund. It reached the conclusion that creation of a National Fund for meeting natural calamities funded by both Central and State Governments, was 'neither feasible nor desirable'.

10.9.74 It is important to mention that the existing arrangements for natural calamities relief assistance were evolved subsequent to the consideration of a National Fund by the Sixth Finance Commission. If any switch-over to an alternative arrangement is to be made, it must constitute a distinct improvement over the present system and also take into account other relevant matters like recent introductin of crop insurance schemes, inter-State differences in capacity to make contribution to the Fund, relative proneness of the region to natural calamities, etc. An advantage of the Fund, however, could be to further insulate provision of relief assistance from political considerations. All these require expert examination along with an assessment of overall expenditure commitments of the States. We note that one of the terms of reference of the Ninth Finance Commission is to examine, along with other aspects of natural calamities relief arrangements, "the feasibility of establishing a national insurance fund to which the State Governments may contribute a percentage of their revenue receipts." As the matter has already been referred to this expert statutory body, we refrain from making any recommendation in this regard.

Release of grants for upgradation of standards of administration

10.9.75 Since the Sixth Finance Commission, special purpose grants are being provided to the States for upgradation of standards of administration in specified spheres. The present arrangements for the release of these grants have been spelt out by the Eighth Finance Commission. These have been accepted by the Government of India, and are under implementation. These are briefly as under :

(i) Initially, the Ministry of Fnance would release a grant of 10 per cent on an 'on account' basis to a State, with a request for necessary institutional arrangements, *i.e.*, setting up of State level Empowered Committee to determine various aspects of the schemes, including specification of physical norms and costs, and a plan of action.

(ii) On receipt of the information about the constitution of the institutional arrangements and plan of action in the State, the Ministry of Finance would release another 15 per cent of the grant.

(iii) Subsequent releases of grants are determined on the basis of implementation and physical progress achieved.

10.9.76 The Finance Commission has specified he amounts of such instalments of grants to be relea-ed for each of the selected sectors. A Central-Level nter-Ministerial Empowered Committee has been .et up to monitor the progress of the projects and utilisation of grants. It was hoped that this institutional set-up would reduce the delays, and difficulties hitherto experienced in the release of such grants.

10.9.77 A few State Governments have brought to our notice that the Central-Level Inter-Ministerial Empowered Committee had been laying down conditions which made it difficult for them to implement the schemes. It has been argued by them that as the implementation of these schemes casts a burden on the States concerned due to cost-escalation or fluctuations in cost-norms, they should be allowed greater flexibility in incurring expenditure, including changes in year-wise phasing.

10.9.78 As the system has recently come into being, such teething troubles cannot be ruled out. The Central and State-Level Empowered Committees were set up with a view to streamlining the various operational problems, including the types mentioned above, by developing proper rapport between them. The Eighth Finance Commission has recommended that the Central-Level Empowered Committee should be authorised to alter physical targets within the amounts specified by the Finance Commission and also to transfer grants from one scheme to another in the same sector. We are confident that with the flexibility provided in the scheme, it should be possible to implement the same without any serious difficulty. No doubt, these arrangements would be reviewed by the subsequent Finance Commissions in the light of the experience gained and necessary procedural changes recommended by them. In view of this, we do not make any recommendation in this regard.

Release of Central plan assistance

10.9.79 Central assistance for the Plan for all the categories of schemes now constitutes over two-fifths of the total transfers by the Union to the States. The details of the mechanism and the problems in this regard have been dealt with in the Chapter on Economic and Social Planning. Over the years, some streamlining of the procedures has taken place with respect to its allocation, pattern and release. So far as the State-plan sector is concerned, ten instalments, each representing 1/12th of the amount of allocation for a State, are released every month from April to January and the balance is released during February-March after ascertaining the progress of Plan expenditure as a whole and on the earmarked sectors. The additional Central assistance towards the externally-aided projects is released on a quarterly basis, in the months of June, September, December and March. Advance Plan assistance towards natural calamities is released on the basis of the recommendations of the Central Study Team and the High Level Committee on Relief in suitable instalments keeping in view the progress of expenditure.

10.9.80 For the schemes in Central Sector Plan being implemented in the States, the Ministries concerned sanction and release the amounts algng with monitoring of the schemes. So far as the Centrally Sponsored Schemes are concerned, since 1977, the Union Ministries have themselves been releasing the amounts. Although no set schedule is followed they have been advised to maintain regularity in the releases.

10.9.81 Some operational problems highlighted by the State Governments in regard to release of Central assistance for the Plan are :

(i) The delay in the auditing of the figures for which the States are dependent on the Comptroller and Auditor General of India, in turn, causes delay in the settlement of assistance.

(ii) In case of Centrally Sponsored Schemes, the conditions imposed by the Union Ministries compel the State Governments to make special efforts to get the Central assistance released.

(iii) Often the Central component of financial allocations for the Centrally Sponsored Schemes are communicated late in the financial year. As the States continue incurring expenditure on the basis of previous year's amount, serious pressure on finances is felt by them.

10.9.82 The above-mentioned problems are procedural in nature. We are given to understand by the Union Ministry of Finance that over the years there has been an improvement in the release of Central assistance to States. So far as the Centrally Sponsored Schemes are concerned, as has been pointed out by us in the Chapter on Economic and Social Planning, their modalities should be discussed along with the Annual Plans of the States and monthly releases of Central assistance on their account made on that basis.

10. *INDEBTEDNESS, MARKET BORROWINGS AND SHARING OF CAPITAL RESOURCES*

10.10.01 We have so far dealt with the arrangements and mechanisms in regard to revenue resources and their transfers to the State. In this Section, we consider the issues raised in respect of availability of capital resources. In a developing economy, with a large component of Public Sector Plan, the significance of capital resources cannot be over-emphasised. Indeed, much of the resource-shortage felt by the States, as well as by the Union Government, has reportedly been on this account. The manner of deployment and management of capital resources have, at the same time, resulted in increasing indebtedness of the States. On the other hand, the debt burden of the Union Government is also mounting. The flow of capital resources to the States are in the form of Central loans as part of Plan assistance, market borrowings, small savings loans and negotiated loans from the financial institutions, etc.

Issues

10.10.02 Several State Governments are of the view that the present arrangements for the allocation of community's savings are unsatisfactory. It is

alleged by them that the Union Government is appropriating for itself a lion's share of the available capital resources. States' heavy indebtedness and recourse to overdrafts are generally projected as manifestations of basic disequilibrium in their finances. Growing budgetary deficits of the States are said to reflect lack of correspondence between their responsibilities and resources.

10.10.03 Most State Governmnets have drawn attention to the increasing indebtedness of the States and its deleterious effects on their economies. Further, it is argued that the mounting burden of debts servicing has led to serious erosion in resources for development, as debt servicing itself absorbs a large part of avilable resources. In evidence it has been pointed out that in some years there has been a reverse flow of capital resources, since the burden of debt service exceeded the gross flow of Central loans to some of the States.

10.10.04 The major cause of States' indebtedness is stated to be high proportion of loans in the Central assistance for the Plans. Investments made by the States in their enterprises yield low returns. They, therefore, encounter serious difficulties in servicing the loans. Debt relief provided on the recommendations of the last three Finance Commissions in the form of debt-rescheduling and or writing off, is alleged to have provided only part temporary relief. According to them, a lasting solution would require a significant enlargement of their resources, drastic reduction in the loan component in Central transfers, converting small savings loans into loans in perpetuity, allowing the States a share in deficit financing incurred by the Union Government, accommodation of States' overdrafts in genuine cases etc.

Factual Position

10.10.05 Before dealing with these issues, we briefly review the factual postition regarding indebtedness of States and also of the Union Government. It will be seen from Annexure X.9 that between 1951 and 1984 the States' outstanding debt inscreased by about hundred times and between 1961 and 1984 by about fourteen times. The pattern of States' indebtedness shows a very high proportion of Central loans, ranging between 70 and 75 per cent since 1955-56. In the literature on the subject, the States' indebtedness has often been referred to as being synonomous with the burden of Central loans on them. The Study team of the Administrative Reforms Commission (1967) had ascribed the heavy liability of the States towards Union Government mainly to fast increasing Plan loans. It has termed the Union-State relationship in this respect as that of 'creditor and debtor'. It was found by the Eighth Finance Commission that between 1978-89 and 1983-84 the States, indebtedness has doubled and that this rate of increase has been faster than the growth in their own resources or total revenue receipts. The data presented for the Sixth Plan period in Annexure X. 18 shows that in many cases the ratio of net to gross Central loans is very low and in certain cases such flow has been negative. This has been commented upon by some experts as indicating a heavy debt-burden on the States and a situation of a 'debt-trap' where fresh loans are necessary to service old debts.

10.10.06 On the other hand, the burden of debt on the Union Government is also very heavy and growing. The proportion of repayment of principal on market loans and external borrowings and interest charges in the aggregate expenditure of the Union Government was about 15 per cent during the Sixth Plan period, and of repayment in the capital exapenditure about 6 per cent. The outstanding external debt stood at Rs. 18.342 crores in the end of March 1986 and constituted 7.7 per cent of the Gross Domestic Product [58] at current prices. There has been a perceptible increase in the commercial external borrowings in recent years. With the gradual saturation of option of soft external borrowings and increasing pressure of both defence and development requirements the burden of Union Governments indebtedness is likely to go up in foreseable future.

10.10.07 We first consider the criticism and suggestions relating to the growing burden of indebtedness of the States. In a growing economy, it is but natural that a significant part of the developmental expenditure is financed out of borrowed funds. In India, the combined debt of the Union and the State Governments (excluding loans and advances from Union to the States) increased from Rs. 22,248 crores in 1970-71 to Rs. 76, 324 croes in 1981-82,or by more than three times, and was about 50 per cent of the Gross Domestic Product. Over a period of time, in absolute terms an increase in indebtedness is but to be expected and is, indeed,common place. For purposes of analysis, it would be meaningful to gauge the incidence of indebedness in relation to growth in income and aggregate expenditure to be able to form an opinion whether it has become too heavy. This, indeed, was also the approach of the Eighth Finance Commission which had a special term of reference to examine the State' non-plan capital gaps. It may be pointed out that whereas States' indebtedness is a serious problem requiring a careful probe into its causes and corresponding remedial measures, it may not be conceptually correct to compare debt-servicing of past loans with fresh inflow of Central loans. It has to be viewed in the perspective of overall development which was facilitated by past loans enabling higher levels of investment. Fresh loans, in this sense, are a function of current levels of investment. The increase in outstanding debt only illustrates the compulsions of a growing economy having to depend to a substantial extent on borrowed funds to finance current investments.

10.10.08 Annexures X.19 and X.20 relate to Statewise burden of debt repayment and servicing to their aggregate expenditure (revenue + capital) and the State Domestic Product (SDP) at current prices, respectively, in 1973-74, 1978-79 and 1983-84. These points relate to the base years of the last three Finance Commissions which were asked to recommend debt-relief in relation to the Central loans. It may be observed that, so viewed, the burdern of debt-repayment and servicing has not increased over the levels in 1973-74, except in case of one State. But compared to the average of all States the burden of debt-repayment and servicing has been higher for the less-developed States. SDP is taken as a broad

58. Reserve Bank of India—*Report on Currency and Finance.* 1984-85 and 1985-86.

indicator of the capacity of the economy to bear taxation and also to give credit. The present range (2 to 3 per cent) of debt-repayment (after rescheduling) to SDP cannot as such be considered too heavy a burden on the economy. As percentage of aggregate expenditure also, the debt servicing has come down appreciably from 18.5 per cent in 1973-74 to 12.2 per cent in 1983-84 (and from 12 per cent to 9.2 per cent in case of Central loans).

10.10.09 It is pertinent to note here that while the State Government have received perceptible relief on their debt liability towards Union Government, the latter has been carrying a heavy burden of indebtedness. The proportion of repayment of principal and interest-charges in the aggregate non-developmental expenditure of the Union Government has been close to one-fourth. The public debt of Government of India—both internal and external—as percentage of GDP has increased very sharply in recent years, from 52.5 per cent in 1980-81 to 56.5 in 1985-86 and 60.5 per cent in 1986-87. This, seen alongwith the sizeable deficit on revenue account (Rs. 5,565 crores in 1985-86, Rs. 7,233 crores in 1986-87 (R.E.) and Rs. 6,742 crores in 1987-88 (B.E.), presents a grim picture of the Union Government's finances.

10.10.10 Annexure X.21 analyses the relative importance of net capital transfers to the States over the successive Five-Year Plan periods. It may be seen that while the capital transfers have remained about 60 per cent of the States' total capital receipts, their share in relation to total Central transfers, Union Government's gross capital receipts and the Union Government's aggregate budgetary resources, have significantly comedown over the years. Two conclusions can be drawn:

(a) The Union Government has increasingly utilised capital resources for its own purposes; and

(b) over time, more of revenue transfers and less of capital transfers are being made to the State Governments.

Inasmuch as the proportion of over-all transfers (revenue and capital) in the Union Government's aggregate resouces has not come down, a substitution of capital transfers by revenue transfer, particularly since 1976-79, is indicated. This is in consonance with the substantial increase in revenue transfers recommended by the Seventh Finance Commission and maintained by Eighth Finance Commission. Although some of the State Governments have complained about the declining importance of Central capital transfers to them, larger revenue transfers are advantageous to the States particularly in a situation where many States have complained of their growing indebtedness.

10.10.11 We now consider the broad pattern of capital transfers bifurcated between Plan and others. The Statewise data since the Fourth Five-Year Plan is presented in Annexure X.22. 'Other transfers' include State's share in small savings, relief for natural calamities, ways and means advances, etc. It is obvious that not only the proportion of capital transfers is low in case of the special category States (with the exception of Jammu and Kashmir), the relative importance of capital transfers on Plan account is also significantly small, thanks to the liberal pattern (90 per cent grant and 10 per cent loans) of Central Plan assistance applicable to them. In case of other backward States like Assam, Bihar, Madhya Pradesh, Orissa and Rajasthan, the proportion of both capital transfers, and, therein of Plan transfers in total transfers, is significantly high. Such States along with some in the middle-income group, carry a high burden of servicing Central loans.

Approaches of ARC, and Finance Commissions

10.10.12 The Study Team of the ARC considered the debt burden of the States and recommended that loans to States (Plan and non-Plan) intended for relending as also the share of small savings and ways and means advances, may be continued on the existing terms and conditions. But it recommended that a financially productive scheme, Plan or non-Plan, should be eligible for an interest-bearing, non-repayable loan. It was also of the view that productive schemes should not be eligible for grant assistance. Financially non-productive schemes should be eligible for capital grants.

10.10.13. The debt-servicing burden of the States, which shows considerable variations among them, has to be dealt with on its merits. Since the Sixth Finance Commission, assessment of non-plan capital gaps of States and provision of relief thereon, has been a special term of reference of the successive Finance Commissions. It is pertinent to point out that the approaches of the three Finance Commissions on the issue of debt-relief differ. The Sixth Finance Commission took into consideration outstanding loans in relation to State Domestic Product (SDP) and States were categorised accordingly and grouped into convenient ranges. The Sixth Finance Commission gave uniform relief to States through debt-rescheduling on certain categories of Central loans, e. g., for police, anti-decoity operations, displaced persons, welfare on backward ares and loans for clearing overdrafts. outstanding at the end of 1974-75. On the other types of Central loans, however, uniform relief was not given.

10.10.14 The Seventh Finance Commission divided capital funds available to the States in terms of unproductive, semi-productive and productive purposes arriving at criteria for debt rescheduling. Significantly, it stated : "It is not as if the States had the choice to use Central loans only for purposes other than unproductive ones.[59]"

10.10.15 The Eighth Finance Commission took the view that there is nothing basically wrong in the growth of public debt as the governmental functions are growing and certain social and economic goals are sought to be achieved. Therefore, larger investments than that which can be sustained on the basis of rrent savings are found necessary. The Commission observed that in a growing economy, normally loan receipts would exceed the repayments in any year and hence, a situation should not arise in which the

59. *Report of the Finance Commission*, 1978, Chapter 11, para 30, p. 114.

capacity of the States to discharge their debts is impaired. So long as the liability for repayments to the third parties is fully provided for, the indebtedness of the Staes to the Union could continue to grow without any detrimental effect on the national economy[60]. on the issue of Union-State relationship, the Commission held the view that a creditor-debtor relation did not operate as most of the loans given by the Union to the States were used to create capital assets. "Returns, if any, from these assets are also required by the States for further development. In these circumstances, the States have no option but to seek assistance from the Union for their developmental requirements. The Centre, in turn, has to view each State's requirements in the prespective of total national needs and provide for them. In fact, this is precisely what has been happening and the growing volume of Central assistance for the Plan is an indication of the partnership between the Union and the States in the common endeavour for further economic development.[61]" The Eighth Finance Commission also found a good index of the capacity of a State to meet its repayment obligation to the Centre in its level of development as measured by State Domestic Product. The Seventh and the Eighth Finance Commissions did not take into account Central loans for clearing overdrafts of States for purposes of debt-relief. The debt-relief provided by the Sixth, Seventh and the Eighth Finance Commissions (Annexure X.23 and X.24) checked the deterioration in indebtedness of the States. But for this, many States with low ratios of net to gross Central loans would have crossed over to the situation of negative flow of loan funds.

10.10.16. An analysis made by Seventh Finance Commission shows that less than 10 per cent of the loans outstanding with the States were for non-productive schemes and programmes. There appears to be a tendency to bring in such programmes under the capital head in order to expand the Plan size. This is not sound finance and ultimately it reacts adversely on the availability of resources for the Plans themselves. In future Plans, for reasons of financial propriety, this sector, though small, has to be weeded out of the capital budget and put under the revenue budget. It is better to tackle the situation at this stage whilst the problem is marginal.

10.10.17 The Seventh Finance Commission has also classified certain programmes as semi-productive and a few as fully productive. The loans outstanding against semi-productive programmes were to be repaid in 30 years whereas those classified as productive were to be repaid in 15 years. It is pertinent to note here that while the Union Government provides capital funds to the States with periods for repayment extending to 15 or 30 years, the monies borrowed by it are to be repaid at much shorter intervals. This casts additional burden on the Union. The Eighth Finance Commission has further lengthened out the terms of certain items of repayment. In fact, the Sixth, Seventh and Eighth Finance Commissions have thrown a fairly large burden on the Union in bailing out the States for inclusion of non-productive schemes in the capital sector and also not planning sufficient returns to meet the capital amortisation charges due on other loans by suitable management of programmes. It has to be realised that this process of bailing out cannot be carried on endlessly. The overall availability of capital resources is severely limited. It is a matter of serious concern that the investments made by the States do not yield sufficient returns to service the debt, thus further eroding the availability of capital resources. It is high time that due attention is paid by the Sttes to these aspects rather than merely complaining about non-availability of resources for development due to high indebtedness.

Pattern of Central Assistance

10.10.18. Bulk of Central loans to the States being on Plan account, the pattern of Central assistance (viz., proportion of loans and grants) has been projected by them as a major factor contributing to their indebtedness. The retionalisation in the pattern of Central Plan assistance had been introduced in 1969 by shifting to the concept of block loans and block grants. The normal Pattern (70 per cent loan and 30 per cent grant) of assistance was then devised keeping in view the overall schematic patterns of Central Plan assistance and the broad composition of outlays into revenue and capital components, the logic being to establish correspondence between the revenue component of Plan outlay and grants in Central assistance. The State Governments have generally argued, as is also the opinion of the experts, that the proportion of economically remunerative sectors in the State Plan outlays would not justify the present normal pattern of 70 per cent loan and 30 per cent grant in Central assistance. In the Sixth Five-Year Plan, outlays on sectors like 'forests', 'irrigation', 'power', 'large and medium industry' and 'road transport' constituted about 54 per cent of the total State Plan outlays. Even among these sectors, commercial returns are very small.

10.10.19 The argument of the present pattern of Central assistance contributing to Sates' indebtedness takes into account only the normal pattern (30 per cent grant and 70 per cent loan) of Central assistance given under the Modified Gadgil Formula for the State Plans. This component accounts for a little over half (50.2 per cent in Sixth Five-Year Plan and 55.6 per cent in Seventh Five-Year Plan) of the Central assistance for State Plan. Even out of this, for six Special Category States namely, Himachal Pradesh, Manipur, Meghalaya, Nagaland, Sikkim and Tripura, the Central assistance carries 90 per cent grant and 10 per cent loan. Special Central assistance for the Sub-Plans and for some other special programmes, forming part of the State Plans, similar liberal patterns are applicable. Central assistance for the externally aided projects carries the normal pattern of 70:30 of loan and grant. For the State Plan as a whole, the actual pattern of Central assistance during the Sixth Plan works out to 40 per cent grant and 60 per cent loan. Central assistance for the Centrally Sponsored and Central Sector Schemes has a high grant component (92.3 per cent in the Sixth Plan period). In the totality of Plan transfers during this period, the proportion of grant was 56.1 per cent and of loan 43.9 per cent. This is a significant fact which

60. *Report of the Eighth Finance Commission*, 1984, para 14.17 p. 101.

61. *Ibid*, para 14.18, p. 101.

should be kept in view in any discussion on the pattern of Central assistance both from the viewpoint of States' repayment liability and Union Government's ability to transfer more capital resources to the States.

Debt Relief

10.10.20 We have noted earlier that the debt-relief on Central loans provided by the Sixth, Seventh and the Eighth Finance Commissions has perceptibly reduced the debt-burden of the States. The relative position of the Special Category States has generally been favourable though the same cannot be said of some of the other backward States. Some developed States also got more-than-average debt-relief by the Sixth and the Seventh Finance Commissions. The crux of the matter is that while the Finance Commissions have provided a measure of debt-relief to the States based on sound principles, following a systematic methodology, they have also made certain assumptions regarding States revenue sources, both tax-revenue and non-tax revenue, the latter also including returns on their Public Sector enterprises. The recommendations of Finance Commissions on debt-relief are consistent with these assumptions. Therefore, so long as the principles stated by Finance Commissions are approximated in observance, the indebtedness of the States will remain manageable.

10.10.21 Coming to the complaint of greater grant component in the Plan transfers it has to be noticed that the Five-Year Plan and the Annual Plan exercises fix the amount of revenue and capital that can be transferred from the Union to the States for the Plans. The quantum may vary from year to year, but over-all there is a limitation in the economy in providing revenue and capital to the Union and the States for planned development. We cannot wish away this basic constraint. Whilst it is true that a strict interpretation of financial propriety may show that in a State, for the five years or in a year, the Plan programmes require more than 30 per cent content of revenue, the question is whether this burden should be borne by the Union. It should not be forgotten that a State's Plan comprises not only the Union transfers but the State's own resources whose revenue and capital component may be quite different from the 30:70 proportion of Central transfer. The relief mechanism provides that any imbalance in the loan component from the Central sector to the States is corrected by the Finance Commission. From the Sixth Plan onwards the overall position is now more manageable. If better financial management and canons of fiscal propriety are followed, the situation is likely to improve further. In view of the above, should be change this?

10.10.22 Assuming for a moment that in an Annual Plan, the Planning Commission assesses the programmes of each State into its revenue and capital components and finds that the States require more revenue than 30 per cent, it is to further consider what revenue and capital is available to the States from its own resources and then make the marginal adjustment for grant from the Union to the States for its Plan transfers. This may vary from State to State for the five years of the Plan and from year to year. These will give rise to endless controversies. A once-in-five-year experiment can be possible. But if this exercise leads to an over-all transfer of more than 30 per cent to the States, certain problems would arise. The over-all revenue transfer possible under the Plan to the States being limited, if the percentage of revenue and capital is changed from 30:70 to something more in favour of grants, then wherefrom will the extra revenue come? We have already noted that of late the Union is financing part of its revenue expenditure from the borrowings. It is, therefore, clear that since the possibility of increasing the revenue component is not much, there is danger of a net reduction in the overall size of transfer if the capital component in Central assistance is reduced. The States will certainly not appreciate this. The problem of the less-developed States on account of high loan component, however, calls for an urgent solution, keeping in view the over-all financial constraints. The gap-filling approach of the Finance Commission leaves several States with revenue surpluses on the non-Plan side. As discussed in the Chapter on Economic and Social Planning, we are of the view that the two-fold pattern of Central assistance of 30:70 and 90:10 grant and loans needs to be reviewed by the Planning Commission in view of the latest developments. If the new formula leads to a need for greater revenue transfers to the poorer, average and the special category States, this amount can be deducted from the transfers to the advanced and medium States, on the principle that these States having substantial revenue surpluses must be able to look after their revenue requirements by suitable adjustments. Our advice would be not to do away with the present methodology. There are correctives in the system which seem to work. If, on the other hand, the States want to experiment with the new idea, it is for them to raise the issues when the Plan is under consideration. It will be for the Planning Commission and the National Economic and Development Council to take decision on any revision of methodology that they may think wise and proper.

10.10.23 Strictly speaking, bank loans should be available only for projects or programmes which have capacity to service the debt. Even where there is no direct return, the indirect benefits should be assessed reasonably as also the ability to service the debt. If these principles are followed it would only be the States which are already administratively and economically advanced that can fulfil the conditions. Incidentally, the richer States also do not appear to observe the basic principles of proper return from projects financed from capital. Some marginal deviation towards the backward States may be possible but not much. It is this limitation of viability that limits over-all bank loans to the State Plan Sector.

10.10.24 The States have, on the other hand, raised the issue that the Plan transfers to the States should have a larger grant component than the 30 per cent now provided as, given the pattern of outlays, the strict financial propriety stated earlier cannot be held within the 30 per cent grant component. On the other hand, the States also want that they should have more access to market loans. The two submissions appear to be at cross-purposes. Market loans should generally be taken for programmes which can provide for due amortisation of the loans in time. Given the States' own assertion about their programmes

not being able to fulfil this basic criterion, they should not reasonably expect the banks to flout the basic financial principles. Not surprisingly, over time the relative flow of bank-finances to the Union has increased. It has to be appreciated that this is, in fact, to the advantage of the States. We do not propose that there should be any change in this trend.

Market Borrowings

10.10.25 The complaints of State Governments in regard to market borrowings are as follows:

(i) States' share in market borrowings has come down drastically over the years and should be raised in view of their pressing capital needs. Simultaneously, rational and objective principles for their allocations among the States should be evolved. Some State Governments and experts have suggested the setting up of a Loan Council having representatives on its panel from the States to attend to such matters.

(ii) At present the Union Government is having exclusive control over the vast resources and policies of the banking and financial institutions. There should be a better and participative understanding with the State Governments in their utilisation.

10.10.26. It is clear from the data presented in Annexure X.25 that the States' share in market borrowings has come down drastically since the 1960s. It may be also seen from this Annexure that corresponding to the buoyancy in capital market, the volume of total net market borrowings between 1961-62 and 1982-83 has increased over 30 times. The implication is that this resource is being increasingly used by the Union Government. In this contest, it should not be forgotten that Central loans to the States are increasing and accumulating and the Union has to find this capital resource.

10.10.27 The determination of the respective shares of the Union and the States in total market borrowings does not follow any predetermined or definite criteria. These shares are evolved on a year-to-year basis through consultations between the Planning Commission, Ministry of Finance and the Reserve Bank of India. The major considerations kept in view apparently are the current financial position of the Union and the States and the requirements of Plan programmes. Prior to 1969, the Reserve Bank of India used to determine the share of individual States on the basis of its accessibility to capital market and the assessment of response of the capital market to the bond floatations by that State. This had obviously put the industrialised and advanced States in an advantageous position, vis-a-vis the others. The nationalisation of banks enabled the Reserve Bank of India to centralise the operations and channelise investment.

10.10.28 On a demand from several less-developed States during the period of the Fourth Five-Year Plan itself, some rationalistion in the allocation of market borrowings was effected, which reduced the inter-State disparities. In the meetings of the National Development Council held in 1978-79 and in August 1980, demands were made for evolving objective criteria for the allocation of market borrowing also on the pattern of Central assistance. However, no formula has been evolved so far. In the context of the Sixth Five-Year Plan, a 10 per cent annual step-up in market borrowings of the States over the base-year level of 1979-80 was allowed (indeed, this practice had been in vogue since 1975-76) with provision of additional market borrwoings for the less-developed States having per capita income below the national average. It has been argued that as a result of this approach, the per capita disparities in market borrowing among the States have been further reduced.

10.10.29 Even after the approach adopted for the Sixth Five-Year Plan, discontent has been voiced by several States regarding the basis of allocation of market borrowings. Several approaches have been suggested by them which will be advantageous in their respective cases. Among the important suggestions given are that, the market borrowings should be linked to the Plan outlays of the States; their distribution should be based on the same criteria as followed for Central Plan assistance; special treatment should be given to the less-developed States; the credit-deposit ratio of commercial banks and funds mobilised by the other concerned financial institutions in the various States should be given due weightage, and the totality of market borrowings and the Central Plan assistance on per capita basis should be more or less equal among the States. We have also taken note of the report of the Resource Committee appointed by the Government of Gujarat (1981) which recommended that the share of States in total borrowings should be raised to 50 per cent and that the share of each State be determined taking into account its relative weightage in State Plan outlays and the funds raised by the nationalised banks. Provident Funds and Insurance Corporations. While a set of objective criteria has not yet been evolved for allocation of market borrowings among the States, the argument given in that the present system offers considerable flexibility to adjust according to the financial position of the States and their need for development funds.

10.10.30 Market borrowings have constituted a major component of Plan-finance of the Government of India. Judgement of the relative needs of the Union and the States and the level of total resources of the States from various sources are crucial matters in this regard. In our opinion, the determination of the respective shares of the Union and the States in market borrowings should continue to be done in consultation among the Ministry of Finance, Planning Commission and the Reserve Bank of India. But its tying up with the medium-term resource-exercise will make it more purposive. Regarding *inter se* allocations to the States of market borrowings, broad principles will have to be evolved by the Planning Commission and got approved by the National Economic and Development Council.

Our Approach

10.10.31 The various issues regarding States' indebtedness and their share in capital resources are only different facets of the fundamental question of adequacy of States' resources in relation to their responsibilities, in the present contest especially,

in terms of their development needs. The Constitutional provisions, besides specifying respective legistlative and revenue-raising spheres, the mechanisms of transfer and the institution of Finance Commission, do not elaborately spell out how this should be done and what principles should be followed. Clearly, sharing of resources between the Union and the State Governments has to be considered in a spirit of partnership and in a comprehensive manner, keeping in view the relative needs and capabilities and rational utilisation of resources.

10.10.32 In suggesting solutions to the problems of indebtedness, market borrowings, etc., a tendency towards a segmented approach has been discerned. For example, a State Government has suggested equal shares for the Union and the States in market borrowings and other sources of capital receipts as also specific criteria for thier allocation among the States. In view of the overall shortage and competing claims on the use of capital resources, an overall assessment of their availability and deployment is pre-eminently desirable. The sharing of capital resources in its individual segments must not be effected on the basis of rigid formulae. In our opinion mechanisms of financial flows and roles of institutions in respect of them should follow an over-all rationality. Earlier in this Chapter, the trends in financial flows and the role of Finance Commission in balancing the resources towards their revenue requirements were discussed. The budgetary resource flows from the Union to the States on capital account, as also sharing of the large institutional finance—partly through indicative planning in case of the private secotor—are extremely important from the viewpoint of development and resource-generation in future and reduction of regional economic disparities.

10.10.33 Keeping in view the fact that the overall resources of the community are limited, the initial crucial decisions to be made are : (a) how much of the current incomes should be allowed to be consumed and how much saved, (b) how the community's savings should be utilised in the public sector and what should be the modes, *e.g.*, taxation, borrowings etc. of their mobilisation, (c) how the resources in the public sector should be allocated between the Union and the State Governments, and (d) how the Central transfers should be allocated among the States. An important decision to be made is what should be the pattern, *viz.*, loans or grants of transfer or resources among the States. A broad analysis of the behaviour of consumption and savings and resources available in the public and private sectors is made by the Planning Commission in the context of the Five-Year Plans.

10.10.34 We are of the view that the rationality of transfers from the Union to the States would involve more of revenue transfers to the less-developed States with lower repayment capacity and weak financial base. In contrast, keeping in view the needs of development in the advanced States, a suitable mix of budgetary and non-budgetary access to captial resources may be allowed to them. The logic is that such States are in a better position to service commercial borrowings.

10.10.35 Broad estimates of capital availability for the Union and the States from the banks and the financial institutions are made by the Planning Commission in consultation with the Union Ministry of Finance and the Reserve Bank of India. These overall estimates for the five years are part of the financial exercise for estimation of the resources in every Plan. As was explained earlier, the division of the market loans between the Union's requirements and the States' requirements is carried out annually. The division of the available funds between the States *inter se* is made according to the methodology approved by the National Development Council. The Planning Commission assesses the Union funds, both revenue and capital, available for transfer to the States on Plan account. Incidentally, the Finance Commission has already dealt with the non-Plan capital gap by suggesting relief in various forms.

10.10.36 We recommend that the flow of capital funds from various sources to the States and their allocation among them should form part of an integrated plan. This may be attended to by the Planning Commission in consultation with the Ministry of Finance and the Reserve Bank of India and got approved by the National Economic and Development Council as part of Plan financing. A comprehensive examination of the allocation of capital resources for the Plan by the NEDC will improve understanding between the Union and the States in the overall sharing and utilisation of capital resources. To facilitate such comprehensive examination by the NEDC, the Sub-Committee on Finance of its Standing Committee, proposed by us in para 10.9.50 can play a useful role.

States' Borrowing powers

10.10.37 Some State Governments as well as experts have complained that the borrowing powers of the States have been unduly restricted by the Constitution. The Constitution does not permit States to borrow outside India. Even internally, the borrowing is subject to two limitations : (a) as may be imposed by the State Legislature under Article 293(1), and (b) if the Union Government has guaranteed an outstanding loan of the State without the consent of the Union Government as per Article 293(3). It is argued that such restrictions do not obtain in a federation like the USA. If it is felt that in a planned economy like India there is need for some such restriction, it should apply only to long and medium-term borrowing from the open market and not to borrowing from financial institutions or to short-terms loans for less than one year.

10.10.38 We feel that there is a case for some flexibility in this matter. Undue rigidity is often economically counter-productive and politically inexpedient. In our view, a solution lies in making a distinction between short-term loans under one year and medium and long-term loans. Credit estimates included in financial provisions of the National and State Plans comprise basically of long and medium term loans. Considering this fact, as well as the large margin of conjecture inherent in most credit estimates, neither the Plans should be seriously affected nor undue risk taken if the Union Government permits the States to borrow freely

from the commercial banks for periods of less than one year. It can do this under Article 293 (4) and no amendment of the Constitution is needed. As loans from commercial banks are costlier than those from the Reserve Bank of India, and have to be individually negotiated, it will help tone up finnancial discipline in the States and defuse their grievance against the Reserve Bank.

10.10.39 We recommend that the Union Government should give its consent freely to States for borrowing from banks and financial institutions for periods less than one year under Clause (4) of Article 293. Since most of these are now nationalised, no irremediable risk would be involved.

10.10.40 The Union Government has been permitting some of its public sector undertakings (e.g., National Thermal Power Corporation, Indian Telephone Industries, National Hydro-Electric Power Corporation, Railways, Coal and Petro-Chemical Undertakings) to issue bonds which are exempt from Wealth-Tax and/or Income Tax. Following a demand from the States that their public sector undertakings and local bodies should also have this facility, it has been recently decided by the Union Government to allow their public sector units 'on merit' to raise funds by floating bonds. We hope that, in practice, the considerations relating to 'merit' of a State's enterprise will not put them to any disadvantage vis-a-vis the Union Government's undertakings. So far as local bodies are concerned, tax-free Municipal bonds have greatly helped urban development works in U.S.A. and some other countries by providing flexibility and encouraging local initiative and competence.

10.10.41 We recommend that the system of tax-free municipal bonds should be introduced in this country. This may also help induce local governments to raise more revenue to service the bonds, if suitable conditions are created for the purpose. We may point out that Municipal bodies which are now constrained in raising loans from the market, can increase their capacity to service loans if their tax-collections increase and/or economy in their expenditure is effected. Their capacity to borrow and spend for development will correspondingly improve.

Small Savings Loans

10.10.42 Share in small savings collection constitutes an important source of financing the Plan. Under the present arrangements, a two-third share of the net receipts collected in a State is allowed to be retained by that State as loan. Very recently the Union Government has decided to raise the States' share in the not small savings collections from two-thirds to three-fourths, effective from 1987-88. These loans carry an initial moratorium of five years and are repayable in 25 years. In 1984, about Rs. 7,000 crores of small savings loans were outstanding against which repayment obligation of Rs. 960 crores was estimated by the Eighth Finance Commission for the period 1984-89. Several of the State Governments have argued that the small savings loans may be treated as 'loans in perpetuity' as they are given in net to them after taking into consideration fresh mobilisation. The Seventh Finance Commission had agreed to this demand but the Union Government did not accept its recommendation in this regard. However, the Union Government did not insist on collection of repayment of those loans during the Sixth Plan period. In the Eights Finance Commission, there was a difference of opinion among the Members but the majority view supported continuation of repayment of these loans as it thought that sufficient moratorium on them was granted.

10.10.43 Several State Governments have demanded that their share in the additional small savings collections should be increased from the present two-thirds share, and that such loans should be treated as loans in perpetuity. A specific suggestion made by a State Government is that the share of the developed States in the net small savings collections should be increased to 80 per cent and that of other States having per capita income below the national average to 90 per cent. Further, the maturity period of such loans may be increased from 25 years to 50 years and the grace period from 5 years to 10 years.

10.10.44 Treatment of small savings loan is a matter of judgement by the Finance Commission in relation to the over-all debt burden of the States. As long as small savings keep increasing and there is a surplus every year after repayment of due loans, the Union is not called upon to repay any loan not already covered by the net transfer principle. If and when the position changes in any year, when the outgo is greater than the inflow, the States would be responsible for their share of the net small savings collections. If formula is adopted for such recoupment of revenue from the States, the recommendations of the Finance Commission will be workable. This aspect will have to be examined by the National Economic and Development Council.

Institutional Finance for State Plan Schemes

10.10.45 We now consider the flow of institutional finance to the States. While some broad basis is followad in the allocation of market borrowing, in the case of institutional finance the flows correspond to the projects and to State-wise allocation determined beforehand. Over the years, the resources at the disposal of the banking and term-lending financial institutions have grown very considerably.

10.10.46 During the Sixth and Seventh Five-Year Plans, the share of negotiated loans in the States' total Plan outlay was 5.2 per cent and 5.7 per cent respectively. The allocation of negotiated loans to States from the financial institutions, in our opinion, should continue to be a part of Planning Commission's over-all exercise for deployment of capital recources for the Plan.

10.10.47 A State Government has suggested that a full complement of financial institutions to provide development finance to the Central and State enterprises, as well as to the private sector, should be established. Further, it would be desirable to have an apex term financing institution to pool together the country's investible funds-both in public and private sector in accordance with national development priorities. Such an institution may be called

Investment Bank of India (IBI). The National Development Council, according to this State Government, should also undertake annual, or as often as necessary, reviews of the working of the term financing structure.

10.10.48 At present, with the efforts of the Union and the State Governments, a network of financial institutions has already come into existence. At apex level, term financing institutions, corresponding to specialised investment demands of various sectors, like IDBI, NABARD and EXIM Bank exist. At State level, the coordination is done by Industrial Deveolpment Corporations, Finance Corporations and Cooperative Banks. Along with this network of institutions, a system of coordination of their activities has also come into being. Apart from the Standing Coordination Committee set up by the Reserve Bank, many issues involving coordination are discussed at the State-level Inter-institutional Committees and State-level Banker's Committees. In July 1986, in order to further the objective of raising mobilisation of financial savings and channelisation of resources in accordance with national priorities, the Reserve Bank has set up a National Finance and Credit Council. This Council, besides taking an overall view of the flow of finance and credit, both short-term and long-term, for industry, agriculture and trade, considers developments in capital and money markets with a view to improving their financial efficiency. The Governor of the Reserve Bank is the Chairman of the Council and its members include Deputy Governors of the Reserve Bank; Finance Sercretary, Government of India; Secretary, Banking, Government of India; Chairman of Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India, Life Insurance Corporation, General Insurance Corporation, Unit Trust of India, Export Import Bank, Industrial Reconstruction Bank of India, State Bank of India, Indian Bank's Association and Chairmen of two other commercial banks by rotation once in two years. Besides, selected representatives/officials of stock exchanges, cooperative institutions, financial experts and senior officials of State-level financial institutions may attend the meetings of the Council by special invitation.

10.10.49 In the setting up of the National Finance and Credit Council, the suggestion made by a State Government in the previous paragraph has been met substantially. However, planning for investment allocation is done by the Planning Commission and overseen by the National Development Council. We do not see the necessity for any change in these arrangements. If any problems in the working of the arrangements concerning flow of development finance arise, the Sub-Committee on Finance of the Standing Committee of the NEDC proposed by us earlier, should be able to take care of the same.

Central Assistance for Externally Aided Projects

10.10.50 Several State Governments have represented to us that the terms of channelling external assistance for the projects included in their Plans are more unfavourable than those on which the Union Government is provided assistance by the external agencies. It is also complained by them that the full amount of assistance is not transferred to them.

10.10.51 The assistance for externally aided projects is channelised to the States on the same terms as rest of the Central assistance for State Plans. External aid is obtained by Government of India from various agencies at different terms. We have been informed by the Ministry of Finance that the weighted rate of interest on external borrowings is about 2.3 per cent. In this connection, the Ministry of Finance has explained the position to use as follows :

"The question of transferring external assistance to respective State Governments on the same terms and conditions on which it is received from external agencies has been considered in the past and it was decided to maintain the existing uniformity in terms and conditions in the background of following considerations :

(i) The States should not be subjected to frequent fluctuations in terms and conditions of the external assistance as it would create difficulties in terms of accounting and introduce uncertainty in estimating over-all financial burdens on the States.

(ii) The over-all mix of external assistance may carry higher interest burden particularly in the contest of declining IDA share.

(iii) It would not be possible to distribute equitably amongst the States the repayment burden of external assistance as different credits and loans carry different terms of interest and repayment, and

(iv) The States should not be subjected to any fluctuations in foreign exchange rates.

"It is relevant to note that out of Rs. 6157 crores of Central assistance provided in the Budget for 1986-87, only Rs 738 crores relate to externally aided projects.

"Interest rate charged on Central loans to States for Plan schemes is periodically revised taking into account the increase in over-all cost of borrowing by the Centre. It is, at the same time, ensured that the interest burden on the States is not excessive the other forms of direct and indirect assistance provided to States are also kept in view. Leaving out small savings on which Centre pays interest of about 12 per cent and the States are also charged the same rate, there is substantial concession in the interest on Central assistance to States for Plan schemes."

10.10.52 We have earlier mentioned that there should be an over-all rationality and consideration of terms and implications of capital transfers to States. Segmented approaches lead to misunderstanding and avoidable controversies. In the case of externally aided projects, the benefits to the country as a whole are to be weighted in relation to the costs involved. It has also to be borne in mind that whereas aid becomes available to the country, the projects are being implemented only in some of the States. In so far as these projects are fully funded as part of

Plan financing, it no more remains a relevant question whether the same terms are being applied to this part of Plan finance, on which the external aid was obtained. We have been given to understand that these considerations have also been germane to determining the flow of only 70 per cent of the external project assistance to the States. This, indeed, has to be treated as a matter of internal accounting done by the Government of India. In this connection, it may be necessary to point out that whereas the weighted rate of interest on Union Government's borrowings—both internal and external—is 9.9 per cent, the rate of interest on which Central loans are given to the States is 8.75 per cent only. Besides, the Union Government also provides a substantial part of Plan funds in the form of capital grants which, it also included, would give a weighted rate of interest of only 5.1 per cent for the States.

10.10.53 We do not suggest any change in the existing procedure of channelling external aid for projects to States. However, much misunderstanding would be avoided if at the time of consideration of the Five-Year Plan, all relevant factors taken into consideration in this regard are placed before the National Economic and Development Council.

National DEBT Commission

10.10.54 There is a suggestion that a thorough examination of the States' indebtedness should be carried out by a National Debt Commission as an "one-shot operation". From the very nature of the situation, a one-shot operation cannot solve the problem. In the fast changing situation and political and economic compulsions which obtain, the results from such an operation will soon become out of date. It is the successive Finance Commissions which would be in a better position to deal with this problem from time to time.

10.10.55 There has been a view-point that an institution like a Loan Council, with representation from the States also, be established to determine the allocations of market borrowings and attend to other problems in borrowing. The example of the Australian Loan Council is often cited in this regard.

10.10.56 Several of the State Governments have opined against the setting up of an additional institution such as a loan Council. They have preferred instead spelling out objective criteria with the approval of the National Development Council for allocation of market borrowings among the States. It is argued that with the nationalisation of banks in 1969 and subsequent evolution of a captive capital market in the public financial institutions, the problems of competition among the States and of credit-worthiness of those with weak financial base, have largely been taken care of.

10.10.57 It may be mentioned that the circumstances in which the Loan Council was created in Australia were very different from those in India. The Australian Loan Council owes its genesis to independent and excessive borrowings by the States in the London money market and internally, absence of funds for repayment, etc., and the accumulation of debt-burden during the period of the First World War. A new institution of this kind does not seem necessary in India in view of the fact that we have quite an effective arrangement of the Planning Commission, Ministry of Finance, and the Reserve Bank of India working together. The working of the Australian Loan Council is criticised on the ground that it has not been able to work independently of the control of the Federal Government, that loans are still being channelised to States outside the purview of the Loan Council and that it has not been able to exercise control over the utilisation of loans.

Overdrafts

10.10.58 Many State Governments have drawn our attention to the problem of overdrafts and have justified the same attributing it to basic imbalances in the resource allocation, etc. The issues are as under :

(i) The overdrafts of the States are symptomatic of a deeper malaise in their finances. The immediate need for them may arise out of unforeseen expenditure on natural calamities, payment of D.A. instalments, delays in the release of instalments of assistance for Centrally Sponsored Schemes, etc.

(ii) The Ways and Means limits need to be determined rationally, in relation to the scale of States' budgetary operations and their seasonal variations. These is also a view that the interest charged by the Reserve Bank on States' overdrafs and Ways and Means Advances should not be higher than that on the deficit financing incurred by the Union Government.

10.10.59 The phenomenon of States' overdrafts has been one of the vexatious problems in Union-State financial relations. Unauthorised overdrafts arise when either the limits of Ways and Means Advances, as per agreements between the Reserve Bank of India and the State Governments, are exceeded and/or the overdrafs are not paid within the stipulated period. The overall Ways and Means limits, expressed as multiples of the cash balances, as revised from time to time, are given in Annexure X.26. The Ways and Means Advances are to be repaid within 90 days and the overdrawals over them within 7 days.

10.10.60 In 1950, for the first time the Government of Orissa incurred overdraft of an appreciable size followed by the then Government of Madras. Since then, for a variety of reasons, a number of State Governments incurred overdrafs which, at times, for exceeded the prescribed Ways and Means limits. In 1960s itself the problem had become serious enough and was included as a special term of reference of the Fifth Finance Commission in 1968. The overdrafts have since persisted after reaching large amounts necessitating corresponding provision of assistance from the Union Government. (Annexures X.27 and X.28).

10.10.61 A change in the attitude of some of the State Governments with respect to the problem of overdrafts has also come about over the years. When

the Fifth Finance Commission went into the question of overdrafts, there was a near-unanimity among the States to end the "extremely undesirable state of affairs" of the routine clearance of overdrafts by the Union Government. Now, some State Govrnments argue that if the Union Government and have access to deficit financing, they should also be provided a share in the same.

10.10.62 Several causes for the emergence of overdrafts have been identified. One of the reasons for a transient overdraft is the existing accounting and Treasury procedures. The transactions of the State Government take place in a large number of Treasuries, Sub-Treasuries and branches of the State Banks. It takes time to report the net result of these transactions. In this process the account with the Reserve Bank of India may show a negative balance. The Report of the Administrative Reforms Commission on Financial Administration had termed this a 'chronic situation' needing more elaborate remedies. The State Governments typically complain of inadequacy of their resources in relation to their responsibilities as the fundamental structural problem which often compels them to resort to overdrafts. Ambitious Plan expenditure, erosion of resources due to inflation, revenues estimated by the Finance Commission on stringent assumptions, sudden and unforeseen expenditure towards natural calamities and payment of bunched-up instalments of DA and emoluments of employees, financial indiscipline, allegedly aggrevate the structural disequilibrium in their resources. Temporary problems and delays in the release of instalments of Central assistance and other transfers to the States are also among causes of overdrafts. Inadequacy of Ways and Means limits has been cited as an operational problem.

10.10.63 There are several serious and undesirable consequences of overdrafs. They are in contravention of Article 293(3) of the Constitution and of the States' agreements with the Reserve Bank of India. The Sixth Finance Commission termed them as 'compulsory loan on Central Government'. As has been happening, the Union Government has to accommodate the outstanding overdrafts of the State Governments at the end of the financial year, by extending advance assistance and loans, to uphold the credit of such State Governments on a discretionary basis. This has been a persistent source of misunderstanding and irritation in Union-State relations.

10.10.64 Many remedial measures have been attempted since 1950s to check overdrafts. As may be seen from Annexure X.26, minimum balances with the Reserve Bank and the Ways and Means limits have been revised several times to provide greater operational facilities to the States. Overdrafts Regulation Schemes have been implemented from time to time, the latest one being to phase out in four years the overdrafts aggregating Rs. 1928 crores on 28th of January, 1685. Over the years, the procedures of releasing of Central funds to the States have also been streamlined by the Union Government.

10.10.65 We are of the firm view that overdraft basically a Ways and Means probelm and it should not be reckoned as a regular resource for any purpose whatsoever. The overdrafts cannot be compared with deficit financing. We would, however, emphasise that recourse to deficit financing by the Union Government should carry ample economic justification and that it should be kept within reasonable limits. The problem of overdrafts cannot be tackled on a permanent basis unless the fundamental causes underlying the basis imbalance between resources and needs are dealt with imaginatively. The ban imposed since 28th January, 1985 seems to have worked successfully so far. But it was substantially assisted by the unusual spurt in Income Tax collections which have, for the time being, improved the finances of the States. It remains to be seen whether under conditions of tighter financial situation, overdrafts will not recur.

10.10.66 Persistence of sizeable overdrafts in the past, in view of their serious implications, raised the problem of sifting genuine from artificial reasons. This has two types of implications. Firstly, it may not be possible to do away with the problem of overdrafts altogether although one would so wish. Secondly, from the view-point of solution, a multi-pronged approach will have to be followed. In other respects also, it is necessary that more careful and purposive sharing of the resources between the Union Government and the State Governments should be evolved. The Planning Commission, the Finance Commission and the institutions concerned with expenditure regulation and control will have to perform their tasks more rigorously. Estimation of revenues will have to be more realistic making due allowance for seasonal weekly variations and the determination of Plan size of the States based on firm estimates of resources. Simultaneously, the State Governments will have to exercise greater discipline in financial management and modernise the operations and reporting of their Treasuries. While these are general and basic matters, to allow manoeuvrability in financial operations, the Ways and Means limits of States will have to be determined in relation to the volume of their budgetary operations. These will also have to be subjected to periodic review.

10.10.67 Inspite of the type of general reforms mentioned above, some overdrafts may still occur owing to unforeseen expenditure or some other genuine problems. Some of the suggestions received by us consist of making provisions for allowing overdrafts within limits. For example, an expert has suggested that a limit of 5 per cent on the basis of overall revenue expenditure, both in case of the Union Government and the States, should be put for deficit financing and overdraft, respectively. In case of States, any overdraft in excess of such a limit of another 5 per cent should attract a steeply graduated penal rate of interest. Beyond this, it should not be allowed. Another suggestion is for a prior review of overdrafts by a high-level body. Yet another view-point is that the loans given towards clearance of overdrafts should be recoverable within the next year.

10.10.68 We recommed that seasonal range of weekly Ways and Means "demand" compared to the prescribed limit should be carefully studied every year for the preceding triennium in the light of price trends separately for each State by the Reserve

Bank and taken into account in refixing quarterly Ways and Means limits for the State. This will help meet more realistically the diverse situations in different States and seasons. The period for overdrafts should be extended from 7 days to 14 days in view of the prevailing time lag in collecting relevant information from various Treasuries. Simultaneously, steps should be taken to modernise the Treasury system.

10.10.69 We are of the view that if adequate attention is paid to fundamental matters, mentioned in the previous paragraph, there should not be any need to provide for arrangements for accommodating overdrafts. The present ban on unauthorised overdrafts has lasted several months. We are of the view that with due attention to the basic problems and the political will for not allowing overdrafts the problem may be contained. If the recommendation made by us in paragraph 10.10.39 is implemented, it will also help.

Foreign Exchange Allocation to States

10.10.70 Some States and experts have complained that the complete centralisation of foreign exchange under Entry 36 of list I of Seventh Schedule has created special difficulty for both State Governments and the public, especially when they are situated several hundred kilometers away from Delhi, the administrative centre, and Bombay, the financial centre of the country. Treatment received by the State Governments is said to compare unfavourably in practice, if not in theory, not only with the Union Ministries but even with some of the private sector corporations. Small and medium industrialists in outlaying States feel handicapped for want of expeditious release of even small amounts of foreign exchange they need for projects which have been cleared by Government in all other aspects. No useful purose will be served by our going into the details of these complaints. It should be a matter of concern that such feelings at all exist. These can be substantially assuaged if more flexibility and decentralisation are introduced in the matter.

10.10.71 We recommend that the following two proposals should be considered by the Union Government :

(a) Free foreign exchange to the extent of a small fraction of a States annual budget should be placed at its disposal. This will introduce a flexibility which will help reduce much of the present irritation.

(b) In each State capital and in the headquarters of remote but important districts of the bigger States, a designated officer of the State Bank of India (or some other nationalised bank) should be given powers of Deputy Controller of Foreign Exchange of the Reserve Bank of India, in case an officer of the Reserve Bank itself is not located there. This will go a long way to help the local public, especially small and medium businessmen.

10.10.72 It will be useful if the Union Government appoints an Expert Team to look into the special difficulties of the people in remote States and districts in matters like the issue of shares, bonds, licences, permits, etc. for which they have now to come to New Delhi and suggest measures for delegating the powers to some officer or agency under its control at the headquarters of each State and remote but important districts of the bigger States.

Flow of Institutional Finance to Private Sector

10.10.73 Flow of direct assistance and re-finance through cooperatives and other institutions to agriculture and private enterprises in other sectors does not generally fall within the ambit of Union-State financial relations. However, given the over-all development and equity considerations, it is too important to be ignored. Over the years, the Union Government and the Reserve Bank of India have evolved policies of preferential/soft treatment to beneficiaries in rural areas, priority sectors and to those located in specified backward areas. This policy orientation has resulted in remarkable spurt in advances from cooperative, banking and other financial institutions. Statewise flow of institutional credit to private sector for different purposes is given in Annexures X.29 to X.36.

10.10.74 The cooperative system has developed over the years as the main institutional mechanism for channelling short-term, medium and long-term credit to the rural areas. However, the performance of the system varies considerably from State to State. The CRAFICARD Report has brought out how the cooperative system has been rendered ineffective through politicisation and tardy collection of dues by States' administration.[62] Thus substantial institutional finance available for development to private sector in the States has remained untapped. In this regard, some inbuilt deficiencies in the organisational structure in the States have been noticed by expert studies. The backward States do not possess adequate administrative capacity to formulate viable programmes for absorbing institutional credit. The advanced States are also observed to be not able to run the cooperative system smoothly and huge outstanding overdues therein are common place. This is by and large also true of institutional finance provided by non-cooperative institutions to the private sector. This is evident from Annexure X.32 to X.36 which show that both their spread and utilisation are patchy. All this brings out the inherent weaknesses in the system resulting in sub-optimal utilisation of institutional credit.

10.10.75 In the context of availability of institutional finance to the private sector, two aspects become pertinent. One is that scarce capital resources in our country carry a high opportunity cost. Therefore, their optimum use is a must. This becomes particularly important in the context of the trade-off involved between growth and equity objectives. The second aspect is that notwithstanding the preferential and concessional finance facility offered, people in the less-developed States have not been able to avail of the institutional finance to the desired extent. We are of the view that it is necessary to develop organisational capabilities and enterprise

(62). Reserve Bank of India—*Report of the Committee to Review Arrangements for Institutional Credit for Agriculture and Rural Development* (1981), pp. 316-318.

urgently in such States. The primary responsibility for these rests with the concerned State Governments. However, the less developed States must be helped to develop infra-structure and provided technical support by the concerned Union and State agencies in overcoming their organisational handicap. This involves tying-up of flow of institutional finance with comprehensive planning for their development.

11. *RECOMMENDATIONS*

10.11.01 Under the present circumstances, duties on *all* the items covered by Article 268 do not appear to be a buoyant source of revenue amenable to frequent revisions. Since basic circumstances do not always remain constant, the Union Government should, in consultation with the State Governments, periodically consider and explore the revision or imposition of these duties. The revenue raised from these duties should be separately specified in the budget and other relevant publications.

(Para 10.5.13)

10.11.02 The monetary limit of "Rupees two hundred fifty per annum" fixed 37 years ago on taxes that can be levied on professions, trades, callings and employments (Entry 60 of List II) should be, in consultation with the States, revised upwards immediately and reviewed periodically.

(Para 10.5.60)

10.11.03 Taxation of agricultural income is a sensitive matter. Both the Union and the State Governments are not inclined at present for a change in the Constitutional provision in regard to Entry 46 of List II. Many problems have been highlighted by the Union and the State Governments in connection with the levy of such a tax. Nonetheless, in view of its potential, the question of raising resources from this source by forging political consensus and the modalities of levying the tax and collection of proceeds, etc., would require an indepth and comprehensive consideration in the National Economic and Development Council.

(Para 10.5.72)

10.11.04 By an appropriate amendment of the Constitution, the net proceeds of Corporation Tax may be made permissibly sharable with the States, if and as Parliament may by law so provide. This would have the advantage of enlarging the base of devolution so that in the revenues of the States there would be greater stability and 'redictability, in future. Further, being an elastic resource, the States would benefit from its growth.

(Para 10.6.16)

10.11.05 Consequent on inclusion of Corporation Tax in the divisible pool, adjustments will have to be carried out by suitably bringing down the shares of States in Income Tax and Union Excise Duties.

(Para 10.6.18)

10.11.06 The Surcharge on Income Tax should not be levied by the Union Government except for a specific purpose and for a strictly limited period only.

(Para 10.6.26)

10.11.07 The organic linkage in policies and measures adopted by different levels of government in resource mobilisation and expenditure must be duly recognised. This, indeed, is the crux of Union-State financial relations. An expert Committee, with suitable representation from the States, may be appointed by the Union Government to recommend desirable directions of reforms in taxation and *inter alia*, consider the potential for resource mobilisation by the Union and the States. The report of this Committee should be placed before the Standing Finance Committee of the National Economic and Development Council for consideration.

(Para 10.6.34 and 10.6.36)

10.11.08 Substantial expenditure is incurred by both the Union and the State Governments on schemes which have come to be known as populist measures. It will be in the best interests of the concerned Governments to take explicitly into account the high opportunity-cost of such schemes and to examine whether any important programmes of development are compromised due to such diversion of scarce resources.

(Para 10.7.30)

10.11.09 It is necessary that a comprehensive paper on direct, indirect and cross-subsidies, covering both Union and State Governments, is prepared by the Planning Commission every year and brought up before NEDC for discussion, since the increasing burden of subsidies has a direct relevance to the availability of resources for the execution of the Plan.

(Para 10.7.33)

10.11.10 The present division of labour which has developed over the years between the Finance Commission and the Planning Commission is that the former advises on the non-Plan revenue requirements and non-Plan capital gap. In certain sectors, where the problem is clear and the numbers are reasonably sure, the Finance Commission has recommended capital resource devolution also only to a limited extent. The present division of responsibilities between the two bodies, which has come to be evolved with mutual understanding of their comparative advantage in dealing with various matters in their respective spheres, may continue.

(Para 10.8.16 and 10.8.17)

10.11.11 The Finance Commission Cell/Division, proposed to be located in the Planning Commission, should continuously monitor the behaviour of States' finances. It should also estimate annually the deviations from the norms evolved by the Finance Commission. The Planning Commission would then be able to bring before the National Economic and Development Council annual reviews indicating, among other things, the deviations from the forecasts of Finance Commission and the reasons for the same. This would afford an opportunity to the National Economic and Development Council to monitor effectively and evolve consensus on the mobilisation of resources and contain the nondevelopmental expenditure.

(Para 10.8.23)

10.11.12 The Finance Commission Division should, in cooperation with the States, organise comprehensive studies on trends in growth of public expenditure in the States in the light of the findings of the previous Finance Commission. The studies conducted by the Finance Commission Division should be available well in time for the use of the next Finance Commission.

(Para 10.8.25)

10.11.13 There is need to further strengthen the Finance Commission Division. It would result in much closer coordination between the Planning Commission and the Finance Commission if this Division were to work under the general supervision of the Member incharge of financial resources in the Planning Commission. Such an arrangement will also make available to the Planning Commission data and analysis on various parameters relevant for resource discussions for the Plan and reviewing of the finances of the Union and the States.

(Para 10.8.30)

10.11.14 Finance Commissions should draw experts for assisting them in their work from various parts of the country. It would be advantageous if suitable experts are drawn from the States also for staffing the Secretariat of the Finance Commission.

(Para 10.8.34)

10.11.15 The step taken by the Union Government to initiate a process of consultation with the States in finalising the terms of reference of the Finance Commission is in the right direction. Any consultation to be meaningful should be adequate. However, there is no advantage in formalising the same through a change in the Constitutional provisions which would introduce undue rigidity. Nonetheless, it is desirable that this healthy practice of informal consultation with the States in this matter should continue

(Para 10.8.36)

10.11.16 Consideration of adequate flow of funds to the backward regions in the States would necessitate creation of expert bodies, like the Finance Commission, at State level also. Without such an organisation at the State level to effect regional distribution, skewness will persist in large pockets even in advanced States. State Planning and Finance Boards may be set up at State level to take an objective view of resources to be devolved to the districts.

(Para 10.8.51)

10.11.17 Since the Sixth Finance Commission, grants for upgradation of levels of administration in the States are being provided The crucial role of administrative/organisational support in the backward areas is a *sine qua non* for making the investment effective in consonance with the accepted policy of reducing regional disparities. It may even be desirable to provide in the special terms of reference of the Finance Commission to make available finances, with effective monitoring arrangements, to fill up the inter-State gap in administrative capabilities. This vital aspect should continue to receive due consideration of the Finance Commissions.

(Para 10.8.52)

10.11.18 It is, indeed, unfortunate that the Eight Finance Commission's final recommendations were not implemented in 1984-85 which caused serious financial problems in some States. While the recommendations of the Finance Commission are not binding on the Union Government in a technical sense, the expectation is that, as far as possible, these would not be departed from without compelling reasons. It is to be hoped that in future there would be no occasion for such departure. It is necessary that the time-schedule for the completion of the Finance Commission's work is so drawn up that it can reasonably submit its final report 4 to 5 months before the beginning of its period of operation.

(Para 10.8.58)

10.11.19 (i) As much of the information gathered by the Finance Commission, as well as the detailed methodology followed by it, is of public interest, it should be got published, say within six months of the publication of the Report, to enable informed discussion and responsible research in the relevant spheres and better appreciation by the State Governments.

(ii) In addition, it will be a healthy practice if the observations and suggestions made by the Finance Commission on matters other than the terms of reference of the Finance Commission, are also considered expeditiously by the Government and a comprehensive statement placed before Parliament subsequently indicating its views and action taken.

(Para 10.8.59)

10.11.20 It is a matter of serious concern that even after a lapse of about five years no legislation has been brought in for giving effect to the intent of the Constitutional amendment enabling levying of the Consignment Tax. The Union Government should bring in suitable legislation in this regard without further loss of time.

(Para 10.9.12)

10.11.21 There are complaints that the yield from certain cesses levied along with Union Excise Duties under special Acts of Parliament have remained outside the divisible pool of resources. While it may become necessary for the Union Government to levy such cesses in view of the special needs, their application should be for limited durations and for specific purposes only.

(Para 10.9.20 and 10.9.21)

10.11.22 The scope for raising additional resources to any considerable extent on items covered by Article 269 appears to be limited. An Expert Committee should be constituted to enquire into and review from time to time, in consultation with the States, the operational feasibility of the scope for levying taxes and duties included in Article 269 and the complementary measures the State Governments would be required to take.

(Para 10.9.25 and 10.9.26)

10.11.23 The Constitution should be suitably amended to add the subject of taxation of 'advertisement broadcast by radio or television' to the present Entry 92, List I and Article 269(1)(f).

(Para 10.9.30)

10.11.24 The Union Government should signify its acceptance of the Finance Commission's recommendation in regard to the grant in lieu of the Railway Passenger Fare Tax also, alongwith other items, while placing the Explanatory Memorandum before Parliament.

(Para 10.9.34)

10.11.25 The Finance Commissions take into account the expenditure liability of the States with respect to dearness allowance, etc., and make a provision for the same. But inflation increases both outlays and revenues. The permanent secretariat of the Finance Commission should make an annual review of the situation. If in any year the net burden of the States seems unduly heavy, the Planning Commission and the Union Ministry of Finance should jointly evolve appropriate relief measures.

(Para 10.9.37)

10.11.26 The reviews of royalty rates on minerals, petroleum and natural gas should be made every two years and well in time, as and when they fall due.

(Para 10.9.40)

10.11.27 A Sub-Committee of Finance of the Standing Committee of the NEDC may be constituted consisting of Union Finance Secretary and the Finance Secretaries of various States and Union Territories. It will consider all such matters calling for coordination of economic policies as may be entrusted to it by the NEDC or its Standing Committee. This body will report to the Standing Committee of the NEDC. Since Planning Commission would be providing the secretariat support to the NEDC, the same may be extended for this body also. This will ensure expert consideration of various aspects of the problems and adequate consideration of the views of the Union and the States/Union Territories. The role of this Committee will be deliberative and advisory and helpful in forging a consensus of financial matters.

(Para 10.9.56)

10.11.28 The distinction made by the Seventh and the Eighth Finance Commissions in providing a more favourable flow of Central assistance for floods, cyclones, etc., vis-a-vis a drought situation, may continue.

(Para 10.9.66)

10.11.29 (i) The Central Team to assess the damage caused by natural calamities should invariably be headed by the Advisor incharge of that State in the Planning Commission, as was the practice in the past.

(ii) In the event of a natural calamity, relief must be given immediately. A procedure which enables States to expeditiously provide necessary succour and relief to the affected people should be evolved, in consultation with the States, along with suitable norms in regard to the scale of relief. Formulation of standard formats for submission of memoranda by the States will greatly help the Union in dealing with requests of various States urgently and on a uniform basis.

(Para 10.9.67 and 10.9.68)

10.11.30 In a calamitous situation, the States should have a reasonable discretion to make inter-district or inter-sectoral adjustments. To allay the apprehension that the expenditure pattern adopted under the stress of urgency may not find approval, norms in regard to items of expenditure which are to be incurred immediately, e.g., relief by way of issue of foodgrains, clothing and rebuilding of shelters in the event of floods may be evolved by the Union and communicated to all State Governments.

(Para 10.9.69)

10.11.31 Relief assistance should extend beyond the financial year. The assistance required till the next June/July should be decided in the beginning itself so that relief works can be properly planned and executed.

(Para 10.9.70)

10.11.32 There appears to be a tendency to bring in non-productive schemes and programmes under the capital head in order to expand the Plan size. In future Plans, for reasons of financial propriety this sector, though small, has to be weeded out of the capital-budget and put under the revenue budget. It is better to tackle the situation at this stage whilst the problem is marginal.

(Para 10.10.16)

10.11.33 The rationality of transfers from the Union to the States would involve more of revenue transfers to the less-developed States with lower repayment capacity and weak financial base. In contrast, keeping in view the needs of development in the advanced States, a suitable mix of budgetary and non-budgetary access to capital resources may be allowed to them. The logic is that such States are in a better position to service commercial borrowings.

(Para 10.10.34)

10.11.34 The flow of capital fund from various sources to the States and their allocation among them should form part of an integrated plan. This task may be attended to by the Planning Commission in consultation with the Ministry of Finance and the Reserve Bank of India and got approved by the National Economic and Development Council as part of Plan financing.

(Para 10.10.36)

10.11.35 The Union Government should give its consent freely to States for borrowing from banks and financial institutions for periods less than one year under Clause (4) of Article 293.

(Para 10.10.39)

10.11.36 The Union Government has now allowed the States' public sector units to raise funds 'on merit' by floating bonds. In practice, the considerations relating to 'merit' of a State's enterprise should not put them to any disadvantage vis-a-vis the Union Government's Undertakings.

(Para 10.10.40)

10.11.37 The system of tax-free municipal bonds should be introduced in this country.

(Para 10.10.41)

10.11.38 Treatment of small savings loan is a matter of judgement by the Finance Commission in relation to the over-all debt burden of the States. As long as small savings keep increasing and there is a surplus every year after repayment of due loans, the Union is not called upon to repay any loan not already covered by the net transfer principle. If and when the position changes in any year, when the outgo is greater than the inflow, the States would be responsible for their share of the net small savings collections. If a formula is adopted for such recoupment of revenue from the States, the recommendations of the Finance Commission will be workable. This aspect will have to be examined by the National Economic and Development Council.

(Para 10.10.44)

10.11.39 Any problems in the working of the arrangements concerning flow of development finance from the financial institutions should be looked into by the Sub-Committee on Finance of the Standing Committee of the NEDC.

(Para 10.10.49)

10.11.40 No change in the existing procedure of channelling external aid for projects is suggested. However, much misunderstanding would be avoided if at the time of consideration of the Five-Year Plan, all relevant factors taken into consideration in this regard are placed before the National Economic and Development Council.

(Para 10.10.53)

10.11.41 The seasonal range of weekly Ways and Means "demand" compared to the prescribed limits should be carefully studied every year for the preceding triennium in the light of price-trends, separately for each State, by the Reserve Bank and taken into account in re-fixing quarterly Ways and Means Limits for the State. The period for overdrafts should be extended from 7 to 14 days in view of the prevailing timelag in collecting relevant information from various Treasuries. Simultaneously, steps should be taken to modernise the treasury system.

(Para 10.10.68)

10.11.42 The following two proposals may be considered by the Union Government :

(a) Free foreign exchange to the extent of a small fraction of a State's annual budget should be placed at its disposal. This will introduce flexibility which will help reduce much of the present irritation.

(b) In each State capital and in the headquarters of remote but important districts of the bigger State, a designated officer of the State Bank of India (or some other nationalised bank) should be given powers of Deputy Controller of Foreign Exchange of the Reserve Bank of India, in case an officer of the Reserve Bank itself is not located there. This will go a long way to help the local public, especially small and medium businessmen.

(Para 10.10.71)

10.11.43 It will be useful if the Union Government appoints an Expert Team to look into the special difficulties of the people in remote States and districts in matters like the issue of shares, bonds, licences, permits, etc. for which they have now to come to New Delhi, and suggest measures for delegating the powers to some officer or agency under its control at the headquarters of each State and remote but important districts of the bigger States.

(Para 10.10.72)

10.11.44 Flow of direct assistance and re-finance through cooperatives and other institutions to agriculture and private enterprises in other sectors does not generally fall within the ambit of Union-State financial relations. However, given the overall development and equity considerations, it is too important to be ignored. Undesirable politicisation of the cooperative system, thus leaving untapped substantial institutional finance which could be available for development has been noted by expert studies. In the context of consideration of institutional finance to the private sector, two aspects become pertinent. One is that scarce capital resources in our country carry a high opportunity-cost. Therefore, their optimum use is a must. The second aspect is that notwithstanding the preferential and concessional finance facility offered, people in the less-developed States have not been able to avail of the institutional finance to the desired extent. It is necessary to develop organisational capabilities and enterprise urgently in such States.

(Paras 10.10.73 and 10.10.74)

LIST OF ANNEXURES

42—325/87

ANNEXURE X.1

TAXATION HEADS ASSIGNED TO THE UNION AND THE STATES IN THE CONSTITUTION (AS LISTED IN THE SEVENTH SCHEDULE OF THE CONSTITUTION)

UNION

Entry in List I of the Seventh Schedule	Head
82	Taxes on income other than agricultural income.
83	Duties of customs including export duties.
84	Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
85	Corporation tax.
86	Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
87	Estate duty in respect of property other than agricultural land.
88	Duties in respect of succession to property other than agricultural land.
89	Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
90	Taxes other than stamp duties on transactions in stock exchanges and futures markets.
91	Rates of stamp duty in respect of bills of exchange cheques promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
92	Taxes on the sale or purchase of newspapers and on advertisements published therein.
*92A	Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
**92B	Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
97	Any other matter not enumerated in List II or List III including any tax not mentioned in either or those Lists.

STATES

Entry in List II of the Seventh Schedule	Head
45	Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
46	Taxes on agricultural income.
47	Duties in respect of succession to agricultural land.
48	Estate duty in respect of agricultural land.
49	Taxes on lands and buildings.
50	Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
51	Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :— (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
52	Taxes on the entry of goods into a local area for consumption, use or sale therein.
53	Taxes on the consumption or sale or electricity.
†54	Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.
55	Taxes on advertisements other than advertisements published in the newspapers†† and advertisements broadcast by radio or television.
56	Taxes on goods and passengers carried by road or on inland waterways.

* Ins. by the Constitution (Sixth Amendment) Act, 1956 s. 2

** Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, s. 5

† Subs. by the Constitution (Sixth Amendment) Act 1956, s. 2, for entry 54.

†† Ins. by the Constitution (Forty-second Amendment) Act, 1976, s.57 (w.e.f. 3-1-1977).

57 Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars, subject to the provisions of entry 35 of List III.

58 Taxes on animals and boats.

59 Tolls.

60 Taxes on professions, trades, callings and employments.

61 Capitation taxes.

62 Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

63 Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

ANNEXURE X.2 .

SHARING OF RESOURCES BETWEEN THE UNION AND THE STATES 1951-52 to 1984-85

REVENUE ACCOUNT

(Rs. Crores)

Plan Periods	UNION Before Transfers to States (Gross Collections) (3+4)	After Transfers to States (Net Receipts)	Transfers to States	STATES Own Resources	Total (including Transfers) (4+5)	Union and States combined (3+6)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
First Plan (1951—56)	2,691 (59.3)	2,089 (46.0)	602 (13.3)	1,846 (40.7)	2,448 (54.0)	4,537 (100.0)
Second Plan (1956—61) . . .	4,526 (63.0)	3,067 (42.7)	1,459 (20.3)	2,657 (37.0)	4,116 (57.3)	7,183 (100.0)
Third Plan (1961—66). . . .	10,147 (68.1)	7,553 (50.7)	2,594 (17.4)	4,763 (31.9)	7,357 (49.3)	14,910 (100.0)
Three Annual Plans (1966—69) . .	9,130 (66.5)	6,289 (45.8)	2,841 (20.7)	4,603 (33.5)	7,444 (54.2)	13,733 (100.0)
Fourth Plan (1969—74) . . .	24,486 (67.3)	15,959 (43.9)	8,527 (23.4)	11,899 (32.7)	20,426 (56.1)	36,385 (100.0)
Fifth Plan (1974—78)	38,959 (66.8)	26,810 (46.0)	12,149 (20.8)	19,382 (33.2)	21,531 (54.0)	58,341 (100.0)
Two Annual Plans (1978—80) .	27,425 (66.3)	17,296 (41.8)	10,129 (24.5)	13,939 (33.7)	24,068 (58.2)	41,364 (100.0)
Sixth Plan (1980—85)	1,11,937 (65.2)	69,871 (40.7)	42,066 (24.5)	59,845 (34.8)	1,01,911 (59.3)	1,71,782 (100.0)
TOTAL (1951-85)	2,29,301 (65.8)	1,48,934 (42.8)	80,367 (23.1)	1,18,934 (34.2)	1,99,301 (57.2)	3,48,235 (100.0)

CAPITAL ACCOUNT

(Rs. Crores)

Plan Period	UNION Before Transfers to States (Gross Collections) (9+10)	After Transfers to States (Net Receipts)	Transfers to States	STATES Own Resources	Total (including Transfers (10+11)	Union and States combined (9+12)
(1)	(8)	(9)	(10)	(11)	(12)	(13)
First Plan (1951—56)	1,804 (82.0)	1,099 (50.0)	705 (32.0)	395 (18.0)	1,100 (50.0)	2,199 (100.0)
Second Plan (1956—61) . . .	4,655 (89.3)	3,585 (68.8)	1,070 (20.5)	557 (10.7)	1,627 (31.2)	5,212 (100.0)
Third Plan (1961—66)	6,957 (88.1)	4,834 (61.2)	2,123 (26.9)	940 (11.9)	3,063 (38.8)	7,897 (100.0)
Three Annual Plans (1966—69) . .	5,530 (86.2)	4,036 (62.9)	1,494 (23.3)	882 (13.8)	2,376 (37.1)	6,412 (100.0)
Fourth Plan (1969—74) . . .	8,804 (77.8)	6,087 (53.8)	2,717 (24.0)	2,505 (22.2)	5,222 (46.2)	11,309 (100.0)
Fifth Plan (1974—78)	13,700 (82.5)	10,644 (64.1)	3,056 (18.4)	2,914 (17.5)	5,970 (35.9)	16,614 (100.0)
Two Annual Plans (1978—80) . .	11,957 (86.1)	8,169 (58.8)	3,788 (27.3)	1,931 (13.9)	5,719 (41.2)	13,888 (100.0)
Sixth Plan (1980—85)	62,819 (86.5)	48,854 (67.3)	13,965 (19.2)	9,795 (13.5)	23,760 (32.7)	72,614 (100.0)
TOTAL (1951—85)	1,16,226 (85.4)	87,308 (64.1)	28,918 (21.2)	19,919 (14.6)	48,837 (35.9)	1,36,145 (100.0)

AGGREGATE RESOURCES

(Rs. Crores)

Plan Period	UNION Before Transfers to States (Gross collections) (15+16)	After Transfers to States (Net Receipts)	Transfers to States	STATES Own Resources	Total (including Transfers) (16+17))	Union and States combined (15+18)
(1)	(14)	(15)	(16)	(17)	(18)	(19)
First Plan (1951—56)	4,495 (67.7)	3,188 (47.3)	1,307 (19.4)	2,241 (33.3)	3,548 (52.7)	6,736 (100.0)
Second Plan (1956—61)	9,181 (74.1)	6,652 (53.7)	2,529 (20.4)	3,214 (25.9)	5,743 (46.3)	12,395 (100.0)
Third Plan (1961—66)	17,104 (75.0)	12,387 (54.3)	4,717 (20.7)	5,703 (25.0)	10,420 (45.7)	22,807 (100.0)
Three Annual Plans (1966—69)	14,660 (72.8)	10,325 (51.3)	4,335 (21.5)	5,485 (27.2)	9,820 (48.7)	20,145 (100.0)
Fourth Plan (1969 –74)	33,290 (69.8)	22,046 (46.2)	11,244 (23.6)	14,404 (30.2)	25,648 (53.8)	47,694 (100.0)
Fifth Plan (1974—78)	52,659 (70.3)	37,454 (50.0)	15,205 (20.3)	22,296 (29.7)	37,501 (50.0)	74,955 (100.0)
Two Annual Plans (1978—80)	39,382 (71.3)	25,465 (46.1)	13,917 (25.2)	15,870 (18.7)	29.787 (53.9)	55,252 (100.0)
Sixth Plan (1980—85)	1,74,756 (71.5)	1,18,725 (48.6)	56,031 (22.9)	69,640 (28.5)	1,25,671 (51.4)	2,44,396 (100.0)
TOTAL (1951—85)	3,45,527 (71.3)	2,36,242 (48.8)	1,09,285 (22.6)	1,38,853 (28.7)	2,48,138 (51.2)	4,84,380 (100.0)

SOURCE : Ministry of Finance —*Indian Economic Statistics—(Part II—Public Finance)*, various issues.

NOTES : 1. Figures in parentheses are percentages to the combined revenues.

2. Date for States includes that of Union Territories with legislature and of the Union the remaining Union Territories.

3. Transfers to States include tax shares, grants (both statutory and others). The Union's revenues 'before transfers to the States' are arrived at by adding the transfers to its net receipts.

4. Broad details of transfers to States (col. 4) on Revenue Account are given in Annexure X.2A and on col. 10 on Capital Account are given in Annexure X.2B.

5. Transfers in col. (4) do not include payment of interest by States on Central loans. Likewise, figures in col. 10 relate only to net loans, i.e., gross loans minus repayments.

ANNEXURE X.2A

TRANSFERS FROM THE UNION TO THE STATES, 1951-52 To 1984-85
REVENUE ACCOUNT

(Rs. Crores)

Plan Period	Share in Taxes	Grants under Art. 275(1)	Grants in lieu of other taxes	Other Grants	Total (2+3+4+5)
(1)	(2)	(3)	(4)	(5)	(6)
I Plan (1951—56)	348	24	64	166	602
II Plan (1956—61)	670	153	78	558	1,459
III Plan (1961—66)	1,195	292	84	1,023	2,594
Three Annual Plans (1966—69)	1,271	422	48	1,100	2,841
IV Plan (1969—74)	4,547	737	77	3,166	8,527
V Plan (1974—78)	6,313	2,068	65	3,703	12,149
Two Annual Plans (1978—80)	5,361	927	33	3,808	10,129
VI Plan (1980—85)	23,522	2,020	116	16,408	42,066
TOTAL (1951—85)	43,227	6,643	565	29,932	80,367

SOURCE : As in ANNEXURE X.2.

NOTES : 1. Grants in lieu of other taxes include (i) Art. 278 grants upto 1955-56, (ii) Art. 273 grants upto 1959-60 and (iii) Grants in lieu of tax on railway passenger fares from 1961-62 onwards. They also include the share proceeds of the tax for the four years 1957—61.

2. Does not include Interest payments by States on Central Loans.

ANNEXURE X.2B

TRANSFERS BETWEEN THE UNION AND THE STATES, 1951-52 TO 1984-85—UNION'S GROSS LOANS & NET LOANS AND INTEREST PAYMENTS BY STATES

(Rs. Crores)

Plan Period	Gross Loans from the Centre	Repayment by States to Centre	Net Loans by Centre to States (2-3)	Interest payments by States on Central Loans
(1)	(2)	(3)	(4)	(5)
I Plan (1951—56)	777	72	705	58
II Plan (1956—61)	1,416	346	1,070	215
III Plan (1961—66)	3,137	1,014	2,123	522
Three Annual Plans (1966—69)	2,715	1,221	1,494	625
IV Plan (1969—74)	6,379	3,662	2,717	1,635
V Plan (1974—78)	5,853	2,797	3,056	1,817
Two Annual Plans (1978—80) . . .	5,476	1,688	3,788	1,101
VI Plan (1980—85)	21,621	7,656	13,965	5,706
TOTAL (1951—85)	47,374	18,456	28,918	11,679

SOURCE : (i) As in ANNEXURE X.2.

(ii) For the I Plan and II Plan in Col. 5—Comptroller and Auditor General of India—Combined Finance and Revenue Accounts of the Union & State Governments, various issues.

NOTE : Figures given in Col. 5 have not been taken in the total/net transfers from the Union to States.

ANNEXURE X.3

ANNUAL TREND RATES OF GROWTH IN THE RESOURCES OF THE UNION AND THE STATES, 1951-52 TO 1984-85

(Percentages)

		Revenue Account	Capital Account	Total
I. **Resources :** *Union and States combined.*		13.43	11.49	12.80
Union :	(i) Before transfers to the States . .	13.76	11.51	12.83
	(ii) After transfers to the States . .	13.05	12.03	12.58
States :				
	(i) 'Own' resources	12.86	11.76	12.67
	(ii) Total resources (including transfers) .	13.74	10.77	13.04
II. **Transfers to States :**		15.60	10.30	13.67

SOURCE : As in ANNEXURE X.2.

NOTE : The growth rates are obtained by fitting the function.

$Y = a.b^t$, Where

y=Resources/Transfers

a=Constant

b=1 +(r/100)

r=growth rate

t—time

ANNEXURE X.4

PATTERN OF CENTRAL RESOURCE TRANSFERS TO STATES, 1951-52 to 1984-85

(Percentages)

Category	1951—56	1956—61	1961—66	1966—69	1969—74	1974—79	1980—85	Total @ (1951—85)
1	2	3	4	5	6	7	8	9
I. On Finance Commissions' Recommendations :	**31.2**	**32.0**	**28.4**	**33.3**	**35.9**	**43.5**	**41.3**	**40.1**
(i) Share in taxes	24.0	23.3	21.4	24.0	30.2	33.1	38.9	34.9
(ii) Grants under Article 275(1) . .	1.9	5.3	5.2	7.9	4.7	10.1	2.2	4.6
(iii) Other grants in lieu of taxes, etc. .	5.3	3.4	1.8	1.4	1.0	0.3	0.2	0.6
II. Plan Transfers :	**61.5**	**36.0**	**48.9**	**35.9**	**31.3**	**41.5**	**43.4**	**41.1**
(i) State Plan Scheme	24.5	36.9	44.9	33.1	23.4	31.4	32.0	31.2
(ii) Central/Centrally Sponsored Schemes	37.0	*	4.0	2.8	7.9	10.1	11.4	9.9
III. Other Transfers :	**7.3**	**31.3**	**22.7**	**30.8**	**32.8**	**15.0**	**15.3**	**18.8**
Total (I to III)	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

SOURCE : (i) *Reports of the Finance Commission, 1978.*
(ii) *Reserve Bank of India—Bulletins,* various issues.

* Included under 'State Plan Schemes'.

@ Also includes the data for the Annual Plan 1979-80 not shown here separately.

NOTE : 'Plan Transfers' and 'Other Transfers' include both loans as well as grants.

ANNEXURE X.5

BROAD PATTERN OF DEVOLUTION ON FINANCE COMMISSIONS' RECOMMENDATIONS

(Rs. Crore

Finance Commission	Total Devolution (Share of Taxes and grants) (Col. 3+4)	Tax Shares	Statutory and other Grants		Art. 275 grants as percent of total devolution (Col. (5) as percent of Col. (2))
			Total	Of which Art. 275 grants	
(1)	(2)	(3)	(4)	(5)	(6)
I (1952—57)	476	370	106	34	7.14
II (1957—62)	1,054	768	286	185	17.55
III (1962—66)	1,355	1,017	338	252	18.60
IV (1966—69)	1,782	1,282	500	423	23.74
V (1969—74)	5,421	4,562	859	713	13.15
VI (1974—79)	11,048	8,275	2,773	2,683	24.28
VII (1979—84)	22,888	21,177	1,711	1,627	7.11
VIII* (1984—89)	39,452	35,208	4,244	3,769	9.55

*Estimated.

SOURCE : Report of the *Eighth Finance Commission,* 1984, pages 156-7 and 96.

ANNEXURE X.6

TAX SHARES OF STATES RECOMMENDED BY THE SUCCESSIVE FINANCE COMMISSIONS AND THE PERCENTAGE OF THE STATES' SHARE IN DIVISIBLE TAXES TO GROSS RECEIPTS OF INCOME TAX AND UNION EXCISE DUTIES, TOTAL TAX REVENUES OF THE UNION AND TOTAL REVENUE RECEIPTS OF THE UNION

Finance Commissions (Period)	Recommended percentage share in		Percentage of the States's share in		
	Income Tax	Union Excise Duties (Basic)	Total Gross receipts of Income Tax and Union Excise Duties	Total tax revenue of the Union (Gross)	Total revenue receipts of the Union (Gross)
(1)	(2)	(3)	(4)	(5)	(6)
First (1952—57)	55	40*	28.47	15.45	12.32
Second (1957—62)	60	25*	28.25	17.70	14.57
Third (1962—66)	66 2/3	20*	30.28	15.02	13.83
Fourth (1966—69)	75	20	27.96	17.61	13.82
Fifth (1969—74)	75	20	34.67	23.17	18.43
Sixth (1974—79)	80	20	30.93	19.77	15.83
Seventh (1979—84)	85	40	46.47	26.82	21.90
Eighth (1984—89)	85	45@	47.62@@	27.59@@	21.50@@

* The percentage share relates to selected commodities.

@ 40 percent to all States and 5 percent to those States having assessed dificits on their revenue account.

@@ As estimated by the Eighth Finance Commission.

SOURCE : 1. Cols. 2 and 3—Reports of the Finance Commissions.

2. Cols. 4, 5 & 6 — Worked out on the basis of the data contained in Ministry of Finance — *Indian Economic Statistics (Part II—Public Finance)*, various issues.

ANNEXURE X.7

REVENUE FROM INCOME TAX, CORPORATION TAX AND SURCHARGE ON INCOME TAX AND THEIR RELATIVE IMPORTANCE

(Rs. Crores)

Year	Revenue from Income Tax (including Surcharge)	Amount of Surcharge	Share of States in Income Tax (included in Col. 2)	Revenue from corporation tax	Centre's Total Tax Revenue		Total statutory transfers to States (including grants)
					Including States Share (Gross)	Excluding States Share (Net)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1951—52	147	4	53	41	568	515	70
1956—57	151	6	58	50	570	492	99
1959—60	149	8	79	107	799	642	219
1961—62	161	5	94	157	1,054	875	235
1966—67	306	8	137	331	2,307	1,782	526
1969—70	448	18	293	353	2,823	2,201	794
1974—75	874	48	512	709	6,322	5,097	1,722
1975—76	1,214 (1,015)	63	734	862	7,609	6,010	2,118
1976—77	1,194(1,161)	68	652	984	8,271	6,581	2,207
1977—78	1,002	102	675	1,221	8,858	7,060	2,397
1978—79	1,177	102	707	1,251	10,525	8,568	2,642
1980—81	1,506	120	1,002	1,311	13,179	9,388	4,127
1984—85	1,928	218	1,231	2,556	23,471	19,694	6,317
Percentage Annual rate of growth							
(i) 1984—85 over 1951—52	36.79	147.11	67.57	184.00	122.14	101.01	270.48
(ii) 1984—85 over 1969—70	22.00	73.19	21.34	41.55	48.76	46.92	46.42
iii) 1984—85 over 1974—75	12.05	35.80	14.04	26.00	27.13	24.71	26.68

ANNEXURE X.7 (*Concld.*)

Year	Percentage of revenue from Income Tax (Col. 2) to Centre's gross revenue (Col. 6)	Percentage of surcharge on Income Tax (Col. 3) to revenue from Income Tax (Col. 2)	Percentage of Surcharge on Income Tax (Col. 3) to Centre's net tax revenue (Col. 7)	Percentage of States' share in Income Tax(Col.4) to total Statutory transfers (Col. 8)	Percentage of revenue from Corporation Tax (Col. 5) to Centre's net tax revenue (Col. 7)
(1)	(9)	(10)	(11)	(12)	(13)
1951—52	25.82	3.00	0.85	75.51	8.03
1956—57	15.13	3.70	1.14	58.48	10.23
1959—60	18.67	5.50	1.29	33.68	16.58
1961—62	15.28	3.16	0.58	39.93	17.87
1966—67	13.28	2.68	0.46	26.06	18.57
1969—70	15.88	4.06	0.83	36.95	16.05
1974—75	13.89	5.42	0.93	29.75	13.92
1975—76	15.96 (13a34)*	5.16 (6.18)*	1.04	34.65	14.34
1976—77	14.44 (14.04)*	5.65 (5.81)*	1.02	29.56	14.96
1977—78	11.31	10.20	1.45	28.17	17.29
1978—79	11.19	8.66	1.19	26.74	14.61
1980—81	11.43	7.97	1.28	24.28	13.96
1984—85	8.21	11.31	1.23	19.49	14.45

*Excluding collections under Voluntary Disclosure Scheme.

SOURCE : (i) Ministry of Finance—*Indian Economic Statistics, (Part II- Public Finance)*, Various Issues.

(ii) Union Government's Budgets, various issues.

(iii) Reports of the Finance Commissions.

ANNEXURE X.8

PATTERN OF UNION TRANSFERS TO STATES ON REVENUE ACCOUNT, 1951-52 to 1984-85

(Percentages)

Plan Period	Share in Taxes	Grants under Art. 275(1)	Total (2+3)	Grants in lieu of other taxes	Other Grants	Total Transfers (4+5+6)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
First Plan (1951—56) .	57.7	4.0	61.7	10.7	27.6	100.0
Second Plan (1956—61) .	46.0	10.5	56.5	5.3	38.2	100.0
Third Plan (1961—66) .	46.1	11.2	57.3	3.3	39.4	100.0
Three Annual Plans (1966—59)	44.7	14.9	59.6	1.7	38·7	100.0
Fourth Plan (1969—74) .	53.3	8.7	62.0	0.9	37.1	100.0
Fifth Plan (1974—78) .	52.0	17.0	69.0	0.5	30.5	100.0
Two Annual Plans (1978—80)	52.9	9.2	62.1	0.3	37.6	100.0
Sixth Plan (1980—85) .	55.9	4.8	60.7	0.3	39.0	100.0
Total : (1951—85) .	53.8	8.3	62.1	0.7	37.2	100.0

SOURCE : Ministry of Finance, *Indian Economic Statistics (Part II- Public Finance)*, Various Issues.

ANNEXURE X.9

PATTERN OF STATES' INDEBTEDNESS

(Rs. Crores)

	(As on 31st March) 1951	1956	1961	1966	1969	1974	1979	1984
I. Internal Debt								
(a) Market Loans	111	222	410	720	950	1,543	2,572	4,236
	(29.6)	(17.1)	(15.0)	(13.1)	(12.8)	(13.3)	(13.7)	(11.3)
(b) Others	12	45	182	458	5.39)	612	776	1,724
	(3.2)	(3.5)	(6.6)	(8.3)	(7.3)	(5.3)	(4.1)	(4.6)
Total I	123	267	592	1,178	1,489	2,155	3,348	5,960
	(32.8)	(20.6)	(21.6)	(21.4)	(20.1)	(18.6)	(17.8)	(15.9)
II. Loans from the Centre	196	943	2,014	4,103	5,569	8,578	13,463	27,059
	(52.3)	(72.8)	(73.5)	(74.4)	(75.0)	(74.0)	(71.7)	(72.4)
III. Unfunded Debt	56	86	133	231	367	857	1,974	4,387
	(14.9)	(6.6)	(4.9)	(4.2)	(4.9)	(7.4)	(10.5)	(11.7)
Total (I+II+III)	375	1,296	2,739	5,512	7,425	11,590	18,785	37,406
	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

SOURCE : (i) Report of the *Finance Commission*, 1978, p. 110.

(ii) Report of the *Eighth Finance Commission*, 1984, p. 265 & P. 98.

NOTE : Figures in parantheses are percentages to the total.

ANNEXURE X.10

FINANCING OF REVENUE EXPENDITURE OF THE STATES, 1951-52 to 1984-85

(Rs. Crores)

Plan Period	Own Resources	Share in taxes	275 (1) grants-in-aid	Grants in lieu of other taxes etc.	Other Grants	Total revenue receipts (cols. 2 to 6)	Surplus(+) Deficit (—) (cols. 7 to 9)	Total expenditure
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
First Plan (1951—56)	1845.96	347.47	24.20	64.11	166.25	2447.99 (—)	42.41	2490.40
	(74.1)	(14.0)	(1.0)	(2.5)	(6.7)	(98.3) (—)	(1.7)	(100.0)
Second Plan (1956—61)	2657.17	670.39	152.99	78.12	557.33	4116.00 (+)	118.09	3997.91
	(66.5)	(16.8)	(3.8)	(2.0)	(13.9)	(103.00) (+)	(3.0)	(100.0)
Third Plan (1961—66)	4762.67	1195.04	291.72	84.22	1022.87	7356.52 (+)	73.78	7282.74
	(65.4)	(16.4)	(4.0)	(1.2)	(14.0)	(101.0) (+)	(1.0)	(100.0)
Three Annual Plans (1966—69)	4603.36	1271.48	422.23	48.48	1099.81	7445.36 (—)	34.28	7479.64
	(61.5)	(17.0)	(5.7)	(0.6)	(14.7)	(99.5) (—)	(0.5)	(100.0)
Fourth Plan (1969—74)	11898.87	4546.90	736.70	77.06	3166.35	20425.88 (—)	261.37	20687.25
	(57.5)	(22.0)	(3.6)	(0.3)	(15.3)	(98.7) (—)	(1.3)	(100.0)
Fifth Plan (1974—78)	19381.90	6313.06	2068.24	65.00	3702.64	31530.84 (+)	3470.53	28060.31
	(69.1)	(22.5)	(7.4)	(0.2)	(13.2)	(112.4) (+)	(12.4)	(100.0)
Two Annual Plans (1978—80)	13939.15	5360.51	926.97	32.50	3808.67	24067.80 (+)	2683.65	21384.15
	(65.2)	(25.0)	(4.3)	(0.2)	(17.8)	(112.5) (+)	(12.5)	(100.0)
Sixth Plan (1980—85)	59845.44	23522.30	2019.30	115.60	16408.11	101910.75 (+)	2419.03	99491.72
	(60.2)	(23.6)	(2.0)	(0.1)	(16.5)	(102.4) (+)	(2.4)	(100.0)
Total (1951—85)	118977.05	43227.17	6642.35	565.09	29932.09	199343.75 (+)	8469.63	190874.12
	(62.3)	(22.6)	(3.5)	(0.3)	(15.7)	(104 .4) (+)	(4.4)	(100.0)

SOURCE : Ministry of Finance : *Indian Economic Statistics (Part II - Public Finance)*, Various issues.

NOTE : Figures in parantheses are percentages to Total Expenditure.

ANNEXURE X.11

CUMULATIVE FINANCING OF REVENUE EXPENDITURE OF STATES, 1951-52 to 1984-85.

(Rs. Crores)

Plan Period	Cumulative resources					Surplus (+) Deficit (—) (Col. 6-8)	Total Expenditure
	Own Resources	Share in taxes	275 (1) grants-in aid	Grants in lieu of other taxes etc.	Total resources including other grants		
2	2	3	4	5	6	7	8
First Plan (1951—56)	1845.95 (74.1)	2193.43 (88.1)	2217.63 (89.0)	2281.74 (91.6)	2447.99 (98.3)	(—) 42.41 (—) (1.7)	2490.40 (100.0)
Second Plan (1956—61)	2657.17 (66.5)	3370.09 (84.3)	3523.08 (88.1)	3601.20 (90.1)	4116.00 (103.0)	(+) 118.09 (+) (3.0)	3997.91 (100.0)
Third Plan (1961—66)	4762.67 (65.4)	5957.71 (81.8)	6249.43 (85.8)	6333.65 (87.0)	7536.52 (101.0)	(+) 73.78 (+) (1.0)	7282.74 (100.0)
Three Annual Plans (1966—69)	4603.36 (61.5)	5874.84 (78.5)	6297.07 (84.2)	6345.55 (84.8)	7445.36 (99.5)	(—) 34.28 (—) (0.5)	7479.64 (100.0)
Fourth Plan (1969—74)	11898.87 (57.5)	16445.77 (79.5)	17182.47 (83.1)	17259.53 (83.4)	20425.88 (98.7)	(—) 261.37 (—) (1.3)	20687.25 (100.0)
Fifth Plan (1974—78)	19381.90 (69.1)	25694.98 (91.6)	27763.22 (98.9)	27828.22 (99.2)	31530.86 (112.4)	(+) 3470.55 (+) (12.4)	28060.31 (100.0)
Two Annual Plans (1978—80)	13939.15 (65.2)	19299.66 (90.3)	20226.63 (94.6)	20259.13 (94.7)	24067.80 (112.5)	(+) 2683.65 (+) (12.5)	21384.15 (100.0)
Sixth Plan (1980—85)	59845.44 (60.2)	83367.74 (83.8)	85387.04 (85.8)	85502.64 (85.9)	101910.75 (102.4)	(+) 2419.03 (+) (2.4)	99491.72 (100.0)
Total (1951—85)	118934.52 (62.3)	162204.22 (85.0)	168846.57 (88.5)	169411.66 (88.8)	199301.16 (104.4)	(+) 8427.04 (+) (4.4)	190874.12 (100.0)

SOURCE : Ministry of Finance —*Indian Economic Statistics (Part II - Public Finance)*—Various issues.

NOTE : Figures in parantheses are percentages to Total Expenditure.

ANNEXURE X.12

PER-CAPITA TRANSFERS UNDER THE AEGIS OF FINANCE COMMISSION, PLAN TRANSFERS, OTHER TRANSFERS AND AGGREGATE TRANSFERS DURING PLAN PERIODS.

(In Rupees)

State	Fourth Plan (1969—74)						
	Statutory transfers	Plan Transfers				Other transfers	Aggregate transfers (2+3+7)
		Total (4+5+6)	State Plan	Central Plan	Centrally Sponsored Schemes		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1. Andhra Pradesh	104	83	61	4	18	88	275
2. Assam	135	222	207	6	9	115	472
3. Bihar	88	100	47	..	53	17	205
4. Gujarat	87	123	54	2	67	40	250
5. Haryana	84	165	129	1	35	106	355
6. Himachal Pradesh	141	286	196	..	90	129	556
7. Jammu & Kashmir	258	484	315	6	163	380	1,122
8. Karnataka	84	130	62	9	59	58	272
9. Kerala	109	101	81	7	13	93	303
10. Madhya Pradesh	83	82	59	7	16	25	190
11. Maharashtra	99	46	32	7	7	116	261
12. Manipur	322	157	134	..	23	336	815
13. Meghalaya	202	334	299	2	33	282	818
14. Nagaland	1,568	760	643	..	117	752	3,080
15. Orissa	124	94	85	1	8	123	341
16. Punjab	81	93	59	33	1	78	252
17. Rajasthan	102	84	53	..	31	412	598
18. Sikkim	..	..	..	..	..	..	..
19. Tamil Nadu	88	42	36	..	6	90	220
20. Tripura	157	164	70	..	94	160	481
21. Uttar Pradesh	86	70	58	..	12	46	202
22. West Bengal	101	97	48	11	38	100	298
Total (All States)	98	95	64	4	27	91	248

ANNEXURE X.12 *(Contd.)*

(In Rupees)

State	Fifth Plan (1974—78)						
	Statutory transfers	Plan Transfers				Other transfers	Aggregate Transfers (9+10+14)
		Total (11+12+13)	State Plan	Central Plan	Centrally Sponsored Schemes		
(1)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1. Andhra Pradesh	156	123	94	12	17	31	310
2. Assam	255	191	146	30	15	37	483
3. Bihar	133	83	69	8	6	42	258
4. Gujarat	131	127	88	13	26	40	298
5. Haryana	104	132	93	19	20	64	300
6. Himachal Pradesh	483	429	418	..	11	46	958
7. Jammu & Kashmir	429	762	710	22	30	103	1,294
8. Karnataka	117	122	79	22	21	29	268
9. Kerala	274	125	95	11	19	25	424
10. Madhya Pradesh	115	108	71	12	25	22	245
11. Maharashtra	126	83	52	15	16	36	245
12. Manipur	1,037	376	292	57	27	311	1,724
13. Meghalaya	698	609	531	39	39	43	1,350
14. Nagaland	2,061	1,199	1,020	..	179	286	3,546
15. Orissa	225	142	109	14	19	28	395
16. Punjab	110	140	103	19	18	70	320
17. Rajasthan	191	121	82	12	27	38	350
18. Sikkim	78	1,603	1,359	..	244	231	1,912
19. Tamil Nadu	118	108	83	12	13	27	253
20. Tripura	682	335	232	83	20	22	1,039
21. Uttar Pradesh	133	108	90	7	11	35	276
22. West Bengal	164	74	55	6	13	70	308
Total All (States)	158	121	92	12	17	39	318

State	Annual Plans (1978—80)						
	Statutory Transfers	Plan Transfers				Other Transfers	Aggregate Transfers (16+17+21)
		Total (18+19+20)	State Plan	Central Plan	Centrally Sponsored Schemes		
(1)	(16)	(17)	(18)	(19)	(20)	(21)	(22)
1. Andhra Pradesh	108	139	109	15	15	29	276
2. Assam	99	295	243	26	26	14	408
3. Bihar	113	108	83	9	16	39	260
4. Gujarat	118	118	86	9	23	44	280
5. Haryana	87	149	118	7	24	31	267
6. Himachal Pradesh	294	503	411	..	92	46	843
7. Jammu & Kashmir	284	540	270	13	257	143	967
8. Karnataka	97	100	67	20	13	18	215
9. Kerala	122	111	90	7	14	18	251
10. Madhya Pradesh	101	109	85	13	11	33	243
11. Maharashtra	98	93	71	10	12	47	238
12. Manipur	590	612	512	46	54	149	1,351
13. Meghalaya	443	563	507	13	43	28	1,034
14. Nagaland	1,402	1,402	1,166	..	236	316	3,120
15. Orissa	119	171	128	25	18	59	349
16. Punjab	88	108	79	17	12	97	293
17. Rajasthan	120	57	3	34	20	134	311
18. Sikkim	527	1,770	1,561	..	209	295	2,592
19. Tamil Nadu	100	85	67	8	10	23	208
20. Tripura	427	359	299	37	23	28	814
21. Uttar Pradesh	110	121	98	11	12	55	286
22. West Bengal	114	94	81	3	10	77	285
Total All (States)	114	125	95	13	17	49	288

ANNEXURE X.12 (*Contd.*)

(In Rupees)

State	Sixth Plan (1980—85)						
	Statutory Transfers	Plan Transfers				Other Transfers	Aggregate Transfers (23+24+28)
		Total (25+26+27)	State Plan	Central Plan	Centrally Sponsored Schemes		
(1)	(23)	(24)	(25)	(26)	(27)	(28)	(29)
1. Andhra Pradesh	347	344	229	42	73	83	774
2. Assam	336	854	647	179	28	97	1,287
3. Bihar	384	296	218	37	41	128	808
4. Gujarat	335	301	200	31	70	233	869
5. Haryana	298	372	243	27	102	180	850
6. Himachal Pradesh	931	1,525	1,210	5	310	231	2,687
7. Jammu & Kashmir	789	1,572	1,188	14	370	715	3,076
8. Karnataka	331	281	175	41	65	104	716
9. Kerala	375	315	214	32	69	76	766
10. Madhya Pradesh	371	318	235	27	56	73	762
11. Maharashtra	336	365	278	32	55	197	898
12. Manipur	335	2,721	2,683	18	20	1,582	4,638
13. Meghalaya	1,256	2,159	1,926	32	201	1,885	5,300
14. Nagaland	3,779	4,405	3,770*	..	635	68	8,252
15. Orissa	432	490	329	67	94	193	1,115
16. Punjab	302	533	472	27	34	282	1,117
17. Rajasthan	324	417	273	24	120	143	884
18. Sikkim	365	6,345	6,282@	..	63	99	6,809
19. Tamil Nadu	379	277	170	41	66	125	781
20. Tripura	1,233	1,537	1,285	122	130	123	2,893
21. Uttar Pradesh	347	332	229	45	58	117	796
22. West Bengal	360	255	203	10	42	229	844
Total (All States)	**370**	**386**	**280**	**39**	**67**	**155**	**911**

* Includes Loans for Central/Centrally Sponsored Schemes also.

@ Break-up not available.

Source : *Reserve Bank of India - Bulletins*, various issues.

Notes : (i) Statutoty Transfers — Include share in taxes and statutory grants.

(ii) Plan Transfers — Information has been compiled under three heads i.e. Plan transfers under State Plan, Central Plan and Centrally Sponsored Schemes. All the three categories include transfers in the form of loans as well as grants.

(iii) Other Transfers — Include both loans and grants given to states for relief of natural calamities, other loans and grants and share in small savings.

ANNEXURE X.13

TRANSFERS TO THE STATES AS PERCENTAGE OF TOTAL RESOURCES OF THE UNION, STATES AND THE COMBINED RESOURCES SEPARATELY ON REVENUE ACCOUNT, CAPITAL ACCOUNT AND AGGREGATE RESOURCES, 1951—85.

(Percentages)

Plan Period	Revenue Account			Capital Account			Aggregate Resources		
	Union	States	Union and States combined	Union	States	Union & States combined	Union	States	Union & States comined
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
First Plan (1951—56)	22.4	24.6	13.3	39.1	64.1	32.0	29.1	36.8	19.4
Second Plan (1956—61)	32.2	35.4	20.3	23.0	65.8	20.5	27.5	44.0	20.4
Third Plan (1961—66)	25.6	35.3	17.4	30.5	69.3	26.9	27.6	45.2	20.7
Three Annual Plans (1966—69)	31.1	38.2	20.7	27.0	62.9	23.3	29.6	44.2	21.5
Fourth Plan (1969—74)	34.8	41.7	23.4	30.9	52.0	24.0	33.8	43.8	23.6
Fifth Plan (1974—78)	31.2	38.5	20.8	22.3	51.2	18.4	28.9	40.6	20.3
Two Annual Plans (1978—80)	36.9	42.1	24.5	31.7	66.2	27.3	35.3	46.7	25.2
Sixth Plan (1980—85)	37.6	41.3	24.5	22.2	58.8	19.2	32.0	44.6	22.9
Total (1951—85)	35.0	40.3	23.1	24.9	59.2	21.2	31.6	44.0	22.6

Source : Ministry of Finance —*Indian Economic Statistics* (*Part II—Public Finance*), various issues.

Notes : 1. Transfers include all transfers — Statutory, Plan and others.

2. In working out the percentages gross resources (before transfers) were taken for the Union and total revenues (own resources *plus* the transfers from the Union) for the States.

ANNEXURE X.14

STATEMENT SHOWING THE OVERALL BUDGETARY POSITION OF THE UNION

(Rs. Crores)

Year	Surplus (+) Deficit (—) on Revenue Account	Surplus (+) Deficit (—) on Capital Account	Overall Budgetary Surplus (+) Deficit (—)
(1)	(2)	(3)	(4)
1969—70	125.17	(—) 170.70	(—) 45.53
1970—71	163.02	(—) 447.78	(—) 284.76
1971—72	(—) 99.95	(—) 419.37	(—) 519.32
1972—73	17.72	(—) 889.27**	(—) 871.55
1973—74	236.79	(—) 565.11	(—) 328.32
1974—75	764.29	(—) 1485.08	(—) 720.79
1975—76	886.88	(—) 1252.92	(—) 366.04
1976—77	298.45	(—) 429.14	(—) 130.69
1977—78	429.80	(—) 1362.81	(—) 933.01
1978—79	292.30	(—) 1243.04£	(—) 950.74
1979—80	(—) 694.09	(—) 1732.71	(—) 2426.80
1980—81	(—) 776.76	(—) 1799.57	(—) 2576.33
1981—82	(—) 293.44	(—) 1098.46	(—) 1391.90
1982—83	(—) 1254.33	(—) 401.13*	(—) 1655.46
1983—84	(—) 2397.67	980.51	(—) 1417.16
1984—85	(—) 3479.58	(—) 247.57	(—) 3745.15
1985—86 (RE)	(—) 5939.96	(+) 1449.63	(—) 4490.33

Source : Ministry of Finance — *Indian Economic Statistics, (Part II —Public Finance).*

Notes : *Excludes assistance of Rs. 1743.46 crores given to the States for clearing their deficits as on 31-3-1982.

£Excludes assistance of Rs. 555 crores given to the States for clearing their over-drafts.

** Excludes the assistance of Rs. 421.13 crores given to the States for clearing their over-drafts.

ANNEXURE X.15

PATTERN OF EXPENDITURE OF UNION AND STATES

(Percentages)

Period	Union				
	Revenue Account		Capital Account		
	Developmental	Non-Developmental	Developmental	Non-Developmental	Net Disbursements of loans
(1)	(2)	(3)	(4)	(5)	(6)
First Plan (1951—56)	15.6	84.4	32.2	7.4	60.4
Second Plan (1956—61)	29.4	70.6	44.0	8.8	47.2
Third Plan (1961—66)	24.0	76.0	37.4	9.8	52.8
Three Annual Plans (1966—69)	24.2	75.8	23.9	15.5	60.6
Fourth Plan (1969—74)	27.0	73.0	40.5	13.7	45.8
Fifth Plan (1974—78)	30.3	69.7	44.3	8.2	47.5
Two Annual Plans (1978—80)	36.8	63.2	36.4	7.2	56.4
Sixth Plan (1980—85)	35.8	64.2	43.8	9.2	47.0
Total (1951—85)	33.0	67.0	41.3	9.5	49.2

Period	States				
	Revenue Account		Capital Account		
	Developmental	Non-Developmental	Developmental	Non-Developmental	Net Disbursements of Loans
(1)	(7)	(8)	(9)	(10)	(11)
First Plan (1951—56)	54.4	45.6	86.5	—7.1 (a)	20.6
Second Plan (1956—61)	57.9	42.1	75.0	2.9	22.1
Third Plan (1961—66)	57.7	42.3	58.1	4.6	37.3
Three Annual Plan (1966—69)	55.7	44.3	59.5	2.3	38.2
Fourth Plan (1969—74)	55.3	44.7	67.3	—0.5(a)	33.2
Fifth Plan (1974—78)	62.3	37.7	64.0	0.6	35.4
Two Annual Plans (1978—80)	65.9	34.1	61.0	Negl. (b)	39.0
Sixth Plan (1980—85)	64.9	35.1	65.1	0.1	34.8
Total (1951—85)	62.6	37.4	64.6	0.4	35.0

Source : Ministry of Finance —*Indian Economic Statistics, Part II—Public Finance*, various issues.

Notes : 1. Percentages are in relation to respective total expenditure on revenue and capital accounts. However, on revenue accounts, 'transfers to funds' in the case of States and 'Statutory grants to States' and 'Self-balancing' amounts in the case of Union have been deducted from total expenditure while working out the percentages.

2. On Capital Account of the Centre 'Transfers of developmental assistance from USA' during 1960-61 to 1967-68 has not been included.

(a) Mainly State Trading.

(b) Mainly Compensation payments to Land holders.

ANNEXURE X.16

LIST OF GOODS OF SPECIAL IMPORTANCE

(i) Cereals;
(ii) Cotton;
(iii) Cotton yarn (excluding cotton yarn waste);
(iv) Cotton fabrics;
(v) Rayon or art silk fabrics;
(vi) Woolen fabrics;
(vii) Sugar;
(viii) Tobacco;
(ix) Coal;
(x) Crude Oil;
(xi) Hides and skins ;
(xii) Iron and steel;
(xiii) Jute;
(xiv) Oil seeds; and
(xv) Pulses.

SOURCE : Ministry of Finance — *Report of the Expert Committee on Replacement of Sales Tax*, 1983, p.3

ANNEXURE X.17.

DEBT POSITION OF UNION GOVERNMENT

(AMOUNTS OUTSTANDING AT THE END OF FINANCIAL YEAR)

(Rs. Crores)

Category	1950—51	1955—56	1960—61	1965—66	1968—69	1973—74	1978—79	1979—80	1980—81	1981—82	1982—83	1983—84	1984—85
I. Internal debt	2,022	2,330	3,978	5,415	6,803	11,107	19,855	24,319	30,864	35,653	46,939	50,263	58,537
II. External Debt..	32	113	1,001	3,152	6,520	5,824	9,373	9,964	11,298	12,328	13,682	15,120	16,637
III. Other Liabilities *of Which* ;	811	1,068	1,575	2,758	3,526	7,336	14,254	15,932	17,587	20,205	24,251	29,521	38,267
(i) Small savings;	337	575	970	1,538	1,904	3,271	5,750	6,855	7,976	9,375	11,098	13,506	17,157
(ii) Provident funds	95	166	289	527	697	1,135	2,174	2,402	2,645	2,924	3,420	3,747	4,158
Total (I + II + III)	2,865	3,511	6,554	11,325	16,849	24,267	43,482	50,215	59,749	68,186	84,872	94,904	1,13,441

SOURCE : Ministry of Finance —*Indian Economic Statistics, Part II —Public Finance*, Dec. 1983 & Dec. 1985.

ANNEXURE X.18

STATEWISE GROSS CENTRAL LOANS, DEBT-SERVICING AND PERCENTAGE OF NET TO GROSS-LOANS DURING THE SIXTH PLAN PERIOD
1980—81

(Rs. Crores)

CATEGORY/STATE	Gross Loans from Centre	DEBT SERVICING		Total (3+4)	Net Loans (2—5)	Percentage of Net to Gross Loans
		Repayment	Interest payment			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A—ADVANCED						
1. Gujarat	163·50	45·37	36·58	81·95	81·55	49·88
2. Haryana	64·67	21·77	22·67	44·44	20·23	31·28
3. Maharashtra	312·00	46·27	61·85	108·12	203·88	65·35
4. Punjab	92·81	48·73	23·63	72·36	20·45	22·03
5. Tamil Nadu	154·58	40·17	55·57	95·74	58·84	38·06
6. West Bengal	263·74	134·68	73·81	208·49	55·25	20·95
TOTAL	**1,051·30**	**336·99**	**274·11**	**611.10**	**440·20**	**41·87**

(ANNEXURE X.18—contd.)

1980—81

(Rs. Crores)

CATEGORY/STATE	Gross Loans from Centre	DEBT SERVICING		Total (3+4)	Net Loans (2—5)	Percentage of Net to Gross Loans
		Repayment	Interest Payment			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
B—MIDDLE LEVEL						
7. Andhra Pradesh	213·54	68·73	55·83	124·56	88·98	41·67
8. Karnataka	147·50	76·01	39·34	115·35	32·15	21·80
9. Kerala	74·82	18·74	21·99	49·73	34·09	45·56
TOTAL	**435·86**	**163·48**	**171·16**	**280·64**	**155·22**	**35·61**
C—BACKWARD						
10. Bihar	259·86	63·53	105·23	168·76	91·10	35·05
11. Madhya Pradesh	211·15	55·41	41·27	96·68	114·47	54·21
12. Orissa	138·16	89·31	32·42	121·73	16·43	11·89
13. Rajasthan	172·56	128·44	46·06	174·50	(—)1·94	(—)1·12
14. Uttar Pradesh	381·35	118·35	108·46	226·81	154·54	40·52
TOTAL	**1,163·08**	**455·04**	**333·44**	**788·48**	**374·60**	**32·21**
D—SPECIAL CATEGORY						
15. Assam	157·62	254·95	21·94	276·89	(—)119·27	(—)75·67
16. Himachal Pradesh	20·54	79·09	4·64	83·73	(—)63·19	(—)307·64
17. Jammu & Kashmir	124·14	21·26	30·71	51·97	72·17	58·13
18. Manipur	42·07	54·05	2·89	56·94	(—)14·87	(—)35·34
19. Meghalaya	4·05	19·00	0·41	19·41	(—)15·36	(—)379·26
20. Nagaland	12·03	46·42	0·20	46·62	(—)34·59	(—)287·53
21. Sikkim	2·86	0·29	0·32	0·61	2·25	78·67
22. Tripura	5·60	27·59	1·06	28·65	(—)23·05	(—)411·61
TOTAL	**368·91**	**502·65**	**62·17**	**564·82**	**(—)195·91**	**(—)53·10**
ALL STATES	**3,019·15**	**1,458·16**	**786·88**	**2,2 ·04**	**774·11**	**25·64**
		1981—82				
A—ADVANCED						
1. Gujarat	219·86	76·03	41·46	117·49	102·37	46·56
2. Haryana	90·18	31·37	19·67	51·04	39·14	43·40
3. Maharashtra	358·27	93·59	81·02	174·61	183·66	51·26
4. Punjab	136·38	63·36	26·42	113·05	23·33	17·10
5. Tamil Nadu	154·62	47·57	49·78	97·35	57·27	37 04
6. West Bengal	385·87	183·42	86·85	270·27	115·60	29·96
TOTAL	**1,345·18**	**518·61**	**305·20**	**823 81**	**521·37**	**38·76**
B—MIDDLE LEVEL						
7. Andhra Pradesh	189·90	79·46	67·34	146·80	43·10	22·70
8. Karnataka	134·30	55·28	42·55	97·83	36·47	27·15
9. Kerala	93·48	147·71	26·52	174·23	(—)80·75	(—)86·38
TOTAL	**417·68**	**282·45**	**136·41**	**418·86**	**(—)1·18**	**0·28**
C—BACKWARD						
10. Bihar	258·57	77·59	85·89	163·48	95·09	36·77
11. Madhya Pradesh	180·89	53·48	50·91	104·39	76·50	42·29
12. Orissa	123·33	36·22	43·88	80·10	43·23	35·05
13. Rajasthan	253·04	139·26	57·31	196·57	56·47	22·31
14. Uttar Pradesh	420·26	142·73	129·21	271·94	148·32	35·29
TOTAL	**1,236·09**	**449·28**	**367·20**	**816·48**	**419·61**	**33·95**

ANNEXURE X.18—*Contd.*

1981—82

(Rs. Crores)

CATEGORY/STATE	Gross Loans from Centre	DEBT SERVICING		Total (3—4)	Net Loans (2+5)	Percentage of net to Gross Loans
		Repayment	Interest payment			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
D—SPECIAL CATEGORY						
15. Assam	171·23	64·73	28·96	93·69	77·54	45·28
16. Himachal Pradesh	21·87	3·48	5·79	9·27	12·60	57·61
17. Jammu & Kashmir	140·31	26·84	28·21	55·05	85·26	60·76
18. Manipur	21·99	22·48	1·68	24·16	(—)2·17	(—)9·87
19. Meghalaya	5·06	0·86	0·66	1·52	3·54	69·96
20. Nagaland	4·35	2·52	0·87	3·39	0·96	22·07
21. Sikkim	2·64	0·55	..	0·55	2·09	79·17
22. Tripura	6·07	0·86	1·06	1·92	4·15	68·36
TOTAL	**373·52**	**122·32**	**67·23**	**189·55**	**183·97**	**49·25**
ALL STATES	**3,372·47**	**1,372·66**	**876·04**	**2,248·70**	**1,123·77**	**33·32**
		1982—83				
A—ADVANCED						
1. Gujarat	356·97	79·39	52·96	132·35	224·62	62·92
2. Haryana	119·39	112·06	23·77	135·83	(—)16·44	(—)13·77
3. Maharashtra	453·95	112·89	98·66	211·55	242·40	55·40
4. Punjab	162·99	113·69	29·97	143·66	19·33	11·86
5. Tamil Nadu	208·57	87·85	57·04	144·89	63·68	30·53
6. West Bengal	550·62	155·34	103·03	258·37	292·25	53·08
TOTAL	**1,825·49**	**661·22**	**365·43**	**1,026·65**	**825·84**	**44·58**
B—MIDDLE LEVEL						
7. Andhra Pradesh	229·75	80·58	74·52	155·10	74·65	32·49
8. Karnataka	175·41	89·05	47·93	136·98	38·43	21·91
9. Kerala	108·47	39·32	22·60	61·92	46·55	42·91
TOTAL	**513·63**	**208·95**	**145·00**	**354·00**	**159·63**	**31·08**
C—BACKWARD						
10. Bihar	347·84	115·31	96·62	211·93	135·91	39·07
11. Madhya Pradesh	230·45	74·72	59·45	134·17	96·28	41·78
12. Orissa	156·05	49·08	47·84	96·92	59·13	37·89
13. Rajasthan	241·42	92·91	61·29	154·20	87·22	36·12
14. Uttar Pradesh	483·63	179·96	149·71	329·67	153·96	31·83
TOTAL	**1,459·39**	**511·98**	**414·91**	**926·89**	**532·50**	**36·49**
D—SPECIAL CATEGORY						
15. Assam	198·51	35·77	40·02	75·79	122·72	61·82
16. Himachal Pradesh	30·11	3·94	7·09	11·03	19·08	63·37
17. Jammu & Kashmir	144·07	32·48	35·47	67·95	76·12	52·83
18. Manipur	15·56	6·03	1·83	7·86	7·70	49·48
19. Meghalaya	8·26	2·14	0·85	2·99	5·27	63·80
20. Nagaland	6·33	1·21	0·99	2·20	4·13	65·24
21. Sikkim	3·83	..	..	..	3·83	100·00
22. Tripura	7·82	2·26	1·34	3·60	4·22	53·96
TOTAL	**414·49**	**83·83**	**87·59**	**171·42**	**143·07**	**58·64**
ALL STATES	**4,240·00**	**1,465·98**	**1,012·98**	**2,478·96**	**1,761·04**	**41·53**

(ANNEXURE X.18—*Contd.*)

1983—84

(Rs. Crores)

CATEGORY/STATE	Gross Loans from Centre	DEBT SERVICING		Total (3+4)	Net Loans (2—5)	Percentage of net to Gross Loans
		Repayment	Interest payment			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A—ADVANCED						
1. Gujarat	290·23	69·24	64·41	133·65	156·58	53·95
2. Haryana	180·25	96·14	27·08	123·22	57·03	31·64
3. Maharashtra	569·17	146·89	125·07	271·96	297·21	52·22
4. Punjab	304·93	235·77	36·57	272·34	32·59	10·68
5. Tamil Nadu	313·91	121·42	67·71	189·13	124·78	39·75
6. West Bengal	492·68	141·13	130·80	271·93	220·75	44·80
TOTAL	**2,152·17**	**810·59**	**451·64**	**1,262·23**	**888·94**	**41·30**
B—MIDDLE LEVEL						
7. Andhra Pradesh	246·42	91·91	85·41	177·32	69·10	28·04
8. Karnataka	225·68	120·56	56·37	176·93	48·75	21·60
9. Kerala	199·68	54·71	45·15	99·86	99·82	49·98
TOTAL	**671·78**	**267·18**	**186·93**	**454·11**	**217·67**	**32·40**
C—BACKWARD						
10. Bihar	514·92	140·57	111·70	252·27	262·65	51·00
11. Madhya Pradesh	265·59	87·99	32·86	120·85	144·74	54·49
12. Orissa	214·42	60·25	55·44	115·69	98·73	46·05
13. Rajasthan	243·82	91·32	72·64	163·96	79·86	32·75
14. Uttar Pradesh	680·06	291·62	173·37	464·99	215·07	31·62
TOTAL	**1,918·81**	**671·45**	**446·01**	**1,117·76**	**801·05**	**41·75**
D—SPECIAL CATEGORY						
15. Assam	295·63	47·61	49·28	96·89	198·74	67·22
16. Himachal Pradesh	31·73	5·72	8·99	14·71	17·02	53·64
17. Jammu & Kashmir	177·90	43·23	46·08	89·31	88·59	49·79
18. Manipur	9·77	4·31	2·72	7·03	2·74	28·04
19. Meghalaya	9·88	2·97	1·27	4·24	5·64	57·08
20. Nagaland	17·94	11·12	1·32	12·44	5·50	30·65
21. Sikkim	7·66	3·88	0·00	3·88	3·78	49·34
22. Tripura	10·30	9·94	1·89	11·83	(—)1·53	(—)14·85
TOTAL	**560·81**	**128·78**	**111·55**	**240·33**	**320·48**	**57·14**
ALL STATES	**5,302·57**	**1,878·30**	**1,196·13**	**3,074·43**	**2,228·14**	**42·02**
		1984—85				
A—ADVANCED						
1. Gujarat	319·97	75·05	88·16	165·21	154·76	48·37
2. Haryana	120·12	51·75	40·55	92·30	31·39	26·13
3. Maharashtra	741·74	176·27	166·77	343·04	398·70	53·75
4. Punjab	629·86	260·94	48·70	309·64	320·22	50·84
5. Tamil Nadu	257·42	89·12	76·18	165·30	92·12	35·78
6. West Bengal	434·24	278·94	181·45	460·39	(—)26·15	(—)6·02
TOTAL	**2,503·35**	**932·07**	**601·81**	**1,533·88**	**969·47**	**38·73**
B—MIDDLE LEVEL						
7. Andhra Pradesh	309·62	103·23	99·38	202·61	107·01	34·56
8. Karnataka	371·76	190·28	64·70	254·98	116·78	31·41
9. Kerala	212·98	172·11	53·83	225·94	(—)12·96	(—)6·09
TOTAL	**894·36**	**465·62**	**217·91**	**683·53**	**210·83**	**23·57**

(ANNEXURE X.18—*Contd.*)

1984-85

(Rs. Crores)

CATEGORY/STATE	Gross Loans from Centre	DEBT SERVICING			Net Loans (2—5)	Percentage of Net to Gross Loans
		Repayment	Interest payment	Total (3+4)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
C—BACKWARD						
10. Bihar	486·40	183·33	142·93	326·26	160·14	32·92
11. Madhya Pradesh	287·29	137·15	93·97	231·12	56·17	19·55
12. Orissa	157·75	72·94	65·30	138·24	19·51	12·24
13. Rajasthan	290·35	148·83	169·44	318·27	(—)27·92	(—)9·62
14. Uttar Pradesh	681·96	223·50	204·06	427·56	254·40	37·30
TOTAL (10—14)	**1,903·75**	**765·75**	**675·70**	**1,441·45**	**462·30**	**24·28**
D—SPECIAL CATEGORY						
15. Assam	308·37	77·75	75·87	153·62	154·75	50·18
16. Himachal Pradesh	44·17	9·78	13·62	23·40	20·77	47·02
17. Jammu & Kashmir	205·75	52·90	58·80	111·70	94·05	45·71
18. Manipur	10·17	10·97	7·64	18·61	(—)8·44	(—)82·99
19. Meghalaya	10·82	3·98	2·93	6·91	3·91	36·14
20. Nagaland	9·62	4·38	3·27	7·65	1·97	20·48
21. Sikkim	4·49	1·56	1·80	3·36	1·13	29·62
22. Tripura	14·83	4·72	2·69	7·41	7·42	50·03
TOTAL (15—22)	**608·22**	**166·04**	**166·62**	**332·66**	**275·56**	**45·31**
ALL STATES	**5,909·68**	**2,329·48**	**1,662·04**	**3,991·52**	**1,918·15**	**32·45**
A—ADVANCED						
1. Gujarat	1,350·53	345·08	283·57	628·65	721·88	53·45
2. Haryana	574·61	313·09	133·84	446·93	127·68	22·22
3. Maharashtra	2,435·13	575·91	533·10	1,109·01	1,326·12	54·46
4. Punjab	1,326·97	745·76	165·29	911·05	415·92	31·34
5. Tamil Nadu	1,089·10	386·13	306·28	692·41	396·69	32·42
6. West Bengal	2,127·15	893·51	575·94	1,469·45	657·70	30·92
TOTAL (1—6)	**8,903·49**	**3,259·48**	**1,998·02**	**5,257·50**	**3,645·99**	**40·95**
B—MIDDLE LEVEL						
7. Andhra Pradesh	1,189·23	423·91	382·48	806·39	382·84	32·19
8. Karnataka	1,054·65	531·18	250·89	782·07	272·58	25·84
9. Kerala	689·43	432·59	170·09	602·68	86·75	12·58
TOTAL (7—9)	**2,933·31**	**1,387·68**	**803·46**	**2,191·14**	**742·17**	**25·30**
C—BACKWARD						
10. Bihar	1,867·59	580·33	542·37	1,122·70	744·89	39·88
11. Madhya Pradesh	1,175·34	408·75	278·26	687·01	488·33	41·55
12. Orissa	789·71	307·80	244·68	552·48	237·23	30·04
13. Rajasthan	1,201·19	600·76	406·74	1,007·50	193·69	16·12
14. Uttar Pradesh	2,647·26	956·18	764·81	1,720·99	926·29	34·99
TOTAL (10—14)	**7,681·09**	**2,853·82**	**2,236·86**	**5,090·68**	**2,590·41**	**33·72**
D—SPECIAL CATEGORY						
15. Assam	1,131·36	480·81	216·07	696·88	434·48	38·40
16. Himachal Pradesh	148·42	102·01	40·13	142·14	6·28	4·23
17. Jammu & Kashmir	792·17	176·21	199·27	365·98	416·19	52·54
18. Manipur	99·56	97·84	16·78	114·62	(—)15·06	(—)15·67
19. Meghalaya	38·07	28·95	6·12	35·07	3·00	7·88
20. Nagaland	50·27	65·65	6·65	72·30	(—)22·03	(—)43·82
21. Sikkim	21·48	6·28	2·12	8·40	13·08	61·82
22. Tripura	44·62	45·37	8·04	53·41	(—)8·79	(—)19·70
TOTAL (15—22)	**2,325·95**	**1,003·62**	**495·18**	**1,498·80**	**827·15**	**35·56**
ALL STATES	**21,843·84**	**8,504·60**	**5.533·52**	**14,038·12**	**7,805·72**	**35·73**

Source : Reserve Bank of India—Bulletins, various issues.

ANNEXURE X.19

PROPORTION OF DEBT SERVICING TO AGGREGATE EXPENDITURE IN STATES DURING 1973-74, 1978-79 AND 1983-84

(Rs. Crores)

Year / State	1973-74				
	Aggregate Expenditure	Repayment + interest (Total)	Repayment + Interest (To Centre)	Col. 3 as percentage of Col. 2	Col. 4 as percentage of Col. 2
(1)	(2)	(3)	(4)	(5)	(6)
1. Andhra Pradesh	562·74	122·87	109·93	21·8	19·5
2. Assam	215·19	66·50	62·70	30·9	29·1
3. Bihar	550·88	128·32	114·88	23·3	20·9
4. Gujarat	467·31	63·10	51·94	13·5	11·1
5. Haryana	231·73	35·29	31·57	15·2	13·6
6. Himachal Pradesh	99·08	14·13	13·09	14·3	13·2
7. Jammu & Kashmir	168·68	35·36	34·56	21·0	20·4
8. Karnataka	555·55	118·06	106·12	21·2	19·1
9. Kerala	335·95	68·06	60·13	20·3	17·9
10. Madhya Pradesh	494·86	87·34	75·14	17·6	15·2
11. Maharashtra	1,126·40	151·75	129·10	13·5	11·5
12. Manipur	32·67	4·19	4·08	12·8	12·5
13. Meghalaya	24·48	1·82	1·72	7·4	7·0
14. Nagaland	41·16	3·72	2·25	9·0	5·5
15. Orissa	298·70	68·68	60·22	23·0	20·2
16. Punjab	308·89	35·20	26·75	11·4	8·7
17. Rajasthan	439·11	120·98	109·68	27·5	25·0
18. Sikkim	..	..	..	..	..
19. Tamil Nadu	605·52	89·48	69·42	14·8	11·5
20. Tripura	41·81	3·96	3·74	9·5	8·9
21. Uttar Pradesh	1,037·96	159·66	137·93	15·4	13·3
22. West Bengal	588·89	140·79	129·72	23·9	22·0
TOTAL	**8,227·63**	**1,519·26**	**1,334·87**	**18·5**	**16·2**

Year / State	1978-79				
	Aggregate Expenditure	Repayment + interest (Total)	Repayment + interest (To centre)	Col. 8 as percentage of Col. 7	Col. 9 as Percentage of Col 7
(1)	(7)	(8)	(9)	(10)	(11)
1. Andhra Pradesh	1,246·79	136·70	153·15	11·0	12·3
2. Assam	412·30	54·79	45·25	13·3	11·0
3. Bihar	929·27	140·14	116·55	15·1	12·5
4. Gujarat	900·58	106·96	75·09	11·9	8·3
5. Haryana	466·09	60·86	37·42	13·1	8·0
6. Himachal Pradesh	187·48	18·35	14·25	9·8	7·6
7. Jammu & Kashmir	376·19	76·18	62·66	20·3	19·3
8. Karnataka	919·83	109·90	84·78	11·9	9·2
9. Kerala	626·72	76·73	54·66	12·2	8·7
10. Madhya Pradesh	997·82	102·08	67·09	10·2	6·7
11. Maharashtra	2,080·66	191·69	134·15	9·2	6·4
12. Manipur	79·74	5·93	4·46	7·4	5·6
13. Meghalaya	55·18	2·80	1·92	5·1	3·5
14. Nagaland	96·10	4·92	3·22	5·1	3·4
15. Orissa	577·32	78·97	56·52	13·7	9·8
16. Punjab	589·77	113·85	82·58	19·3	14·0
17. Rajasthan	792·16	110·16	83·37	13·9	10·5
18. Sikkim	30·37	0·47	0·44	1·5	1·4
19. Tamil Nadu	1,070·65	121·97	75·71	11·4	7·1
20. Tripura	71·64	5·66	4·07	7·9	5·7
21. Uttar Pradesh	1,922·24	242·04	180·55	12·6	9·4
22. West Bengal	1,260·85	192·73	159·26	15·3	12·6
TOTAL	**15,689·85**	**1,953·88**	**1,507·15**	**12·5**	**9·6**

ANNEXURE X.19—*Concld.*

Year / State	1983-84				
	Aggregate Expenditure	Repayment + Interest Total)	Repayment + Interest (to Centre)	Col. 13 as percentage of Col. 12	Col. 14 as percentage of Col. 12
(1)	(12)	(13)	(14)	(15)	(16)
1. Andhra Pradesh	2,587·35	235·65	177·32	9·1	6·9
2. Assam	942·18	115·78	96·89	12·3	10·3
3. Bihar	2,143·64	298·97	252·27	13·9	11·8
4. Gujarat	2,178·20	203·57	133·65	9·3	6·1
5. Haryana	960·28	164·50	123·22	17·1	12·8
6. Himachal Pradesh	384·78	24·69	14·71	6·4	3·8
7. Jammu & Kashmir	619·93	100·39	89·31	16·2	14·4
8. Karnataka	2,002·11	236·18	176·93	11·8	8·8
9. Kerala	1,321·83	158·04	99·86	12·0	7·6
10. Madhya Pradesh	2,323·92	190·31	120·85	8·2	5·2
11. Maharashtra	4,243·97	369·73	271·96	8·7	6·4
12. Manipur	158·23	7·76	7·03	4·9	4·4
13. Meghalaya	139·05	6·50	4·24	4·7	3·0
14. Nagaland	215·00	21·27	12·44	9·9	5·8
15. Orissa	996·85	170·06	115·69	17·1	11·6
16. Punjab	1,434·26	335·53	272·34	23·4	19·0
17. Rajasthan	1,585·07	230·03	163·96	14·5	10·3
18. Sikkim	67·13	5·15	3·88	7·7	5·8
19. Tamil Nadu	2,572·10	277·34	189·13	10·8	7·3
20. Tripura	187·53	13·36	11·83	7·1	6·3
21. Uttar Pradesh	4,116·12	570·58	464·99	13·9	11·3
22. West Bengal	2,180·55	345·98	271·93	15·9	12·5
TOTAL	**33360.08**	**4081.37**	**3074.43**	**12.2**	**9.2**

Source : Reserve Bank of India—Bulletins, various issues.

Note : Debt Servicing includes Repayment of Market Loans, Central Loans, Negotiated Loans, etc. plus interest thereon.

ANNEXURE X.20

STATEWISE PERCENTAGE OF DEBT-SERVICING TO STATE DOMESTIC PRODUCT 1973-74, 1978-79 AND 1983-84.

(Rs. Crores)

Year / State	1973—74				
	SDP at current prices (1973-74)	Repayment + Interest (Centre only)	Repayment + Interest (Total)	Col. 3 as percentage of Col. 2	Col. 4 as percentage of Col. 2
(1)	(2)	(3)	(4)	(5)	(6)
1. Andhra Pradesh	3,926·00	109·93	122·87	2·8	3·1
2. Assam	1,023·10	62·70	66·50	6·1	6·5
3. Bihar	3,400·10	114·88	128·32	3·4	3·8
4. Gujarat	3,169·10	51·94	63·10	1·6	2·0
5. Haryana	1,303·80	31·57	35·29	2·4	2·7
6. Himachal Pradesh	341·60	13·09	14·13	3·8	4·1
7. Jammu & Kashmir	352·00	34·56	35·56	9·8	10·8
8. Karnataka	3,002·00	106·12	118·06	3·5	3·9
9. Kerala	1,823·00	60·13	68·06	3·3	3·7
10. Madhya Pradesh	3,244·70	75·14	87·34	2·3	2·7
11. Maharashtra	5,757·90	129·10	151·75	2·2	2·6
12. Manipur	46·40	4·08	4·19	5·3	5·5
13. Meghalaya	N.A.	1·72	1·82	N.A.	..
14. Nagaland	N.A.	2·25	3·72	N.A.	..
15. Orissa	1,607·20	60·22	68·68	3·7	4·3
16. Punjab	2,155·70	26·75	35·20	1·2	1·6
17. Rajasthan	2,285·10	109·68	120·98	4·8	5·3
18. Sikkim	N.A.	..	..	N.A.	..
19. Tamil Nadu	3,432·30	69·62	89·48	2·0	2·6
20. Tripura	110·40	3·74	3·96	3·4	3·6
21. Uttar Pradesh	6,220·00	137·93	159·66	2·2	2·6
22. West Bengal	4,366·30	129·72	140·79	3·0	3·2
TOTAL	**47,596.70***	**1,334.87** **(1330.90)***	**1,519.26**	**2.8**	**3.2**

ANNEXURE X.20—*Contd.*

STATEWISE PERCENTAGE OF DEBT-SERVICING TO STATE DOMESTIC PRODUCT 1973-74, 1978-79 AND 1983-84.

(Rs. Crores)

Year / State	1978—79				
	SDP at current prices (1976-79)	Repayment + Interest (Centre-only)	Repayment + Interest (Total)	Col. 8 as percentage of Col. 7	Col. 9 as percentage of Col. 7
(1)	(7)	(8)	(9)	(10)	(11)
1. Andhra Pradesh	5,530·28	153·15	136·70	2·8	2·5
2. Assam	1,824·97	45·25	54·79	2·5	3·0
3. Bihar	5,225·13	116·55	140·14	2·2	2·7
4. Gujarat	5,272·30	75·09	106·96	1·4	2·0
5. Haryana	2,415·41	37·42	60·86	1·5	2·5
6. Himachal Pradesh	548·89	14·25	18·35	2·6	3·3
7. Jammu & Kashmir	684·51	72·66	76·18	10·6	11·1
8. Karnataka	4,377·65	84·78	109·90	1·9	2·5
9. Kerala	3,052·95	54·66	76·73	1·8	2·5
10. Madhya Pradesh	4,597·12	67·09	102·08	1·5	2·2
11. Maharashtra	10,734·43	134·15	191·69	1·2	1·8
12. Manipur	118·12	4·46	5·93	3·8	5·0
13. Meghalaya	143·96	1·92	2·80	1·3	1·9
14. Nagaland	85·89	3·22	4·92	3·7	5·7
15. Orissa	2,650·58	56·52	78·97	2·1	3·0
16. Punjab	3,767·04	82·58	113·85	2·2	3·0
17. Rajasthan	3,767·30	83·37	110·16	2·2	2·9
18. Sikkim	26·73@	0·44	0·47	1·6	0·0
19. Tamil Nadu	5,751·32	75·21	121·97	1·3	2·1
20. Tripura	211·87	4·07	5·66	1·9	2·7
21. Uttar Pradesh	9,330·47	180·55	242·04	1·9	2·6
22. West Bengal	6,805·68	159·26	192·73	2·3	2·8
TOTAL	**76,895·28**	**1,507·15**	**1,953·88**	**2.0**	**2.5**

Year / State	1983—84				
	S.D.P at current prices (1982-83)	Repayment + Interest (Centre only)	Repayment + Interest (Total)	Col. 13 as percentage of Col. 12	Col. 14 as percentage of Col. 12
(1)	(12)	(13)	(14)	(15)	(16)
1. Andhra Pradesh	9,430·00	177·32	235·65	1·0	2·5
2. Assam	3,342·00	96·89	115·78	2·9	3·5
3. Bihar	7,424·70	252·27	298·97	3·4	4·0
4. Gujarat	8,361·10	133·65	203·57	1·6	2·4
5. Haryana	3,834·40	123·22	164·50	3·2	4·3
6. Himachal Pradesh	846·20	14·71	24·69	1·7	2·9
7. Jammu & Kashmir	1,057·60	89·31	100·39	8·4	9·5
8. Karnataka	6,489·10	176·93	236·18	2·7	3·6
9. Kerala	4,214·00	99·86	158·04	2·4	3·8
10. Madhya Pradesh	7,296·00	120·85	190·31	1·7	2·6
11. Maharashtra	1,697·48	271·96	369·73	16·0	21·8
12. Manipur	223·20	7·03	7·76	3·1	3·5
13. Meghalaya	182·40	4·24	6·50	2·3	3·6
14. Nagaland	N.A.	12·44	21·27	N.A.	..
15. Orissa	3,650·30	115·69	170·06	3·2	4·7
16. Punjab	6,081·80	272·34	335·53	4·5	5·5
17. Rajasthan	5,630·90	153·96	230·03	2·9	4·1
18. Sikkim	35·90	3·88	5·15	10·8	14·3
19. Tamil Nadu	99·00	189·13	277·34	191·0	280·1
20. Tripura	N.A.	11·83	13·36	N.A.	..
21. Uttar Pradesh	16,687·40	464·99	570·58	2·8	3·4
22. West Bengal	9,975·30	271·93	345·98	2·7	3·5
TOTAL	**1,19,548.10***	**3,074.43** **(3,056·61)***	**4,081.37**	**2.6***	**3.4**

* Relates to the States for which the data for SDP is available.

@ Estimated as average for 1976-79 by the Eighth Finance Commission.

Source : for SDP : (i) *Ministry of Finance, Indian Economic Statistics, Part II—Public Finance*, December, 1984.

(ii) For 1978-79, *Report of the Eighth Finance Commission*, 1984. p. 158.

ANNEXURE X.21

RELATIVE IMPORTANCE OF NET CAPITAL TRANSFERS TO STATES

Plan Periods	As percentage of			
	Total transfers to States (NET)	States total capital Receipts (NET)	Union Govt's Gross capital Receipts	Union Govt's Gross budgetary Resources
(1)	(2)	(3)	(4)	(5)
FIRST PLAN (1951-56)	53·9	64·1	39·0	15·0
SECOND PLAN (1956-61)	43·0	65·8	23·0	11·7
THIRD PLAN (1961-66)	45·0	69·3	30·5	12·4
THREE ANNUAL PLANS (1966-69)	34·5	62·9	27·0	10·2
FOURTH PLAN (1969-74)	24·2	52·0	30·9	8·2
FIFTH PLAN (1974-78)	20·1	51·2	22·3	5·8
TWO ANNUAL PLANS (1978-80)	27·2	66·2	31·7	9·6
SIXTH PLAN (1980-85)	24·9	58·8	22·2	8·0
TOTAL (1951-85)	**26.5**	**59.2**	**24.9**	**8.4**

NOTE : Please see notes below ANNEXURE X.2

SOURCE : Ministry of Finance—*Indian Economic Statistics* (*Part II—Public Finance*), various issues.

ANNEXURE X.22

PATTERN OF CAPITAL RECEIPTS OF THE STATES

(Percentages)

State	Fourth Plan (1969-74)								
	Internal Debt	Loans from the Centre				Recovery of Loans	Small savings, Provident Funds, etc.	Others	Total
		Plan	Non-Plan	Ways & Means Advance	Total				
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	10·5	8·3	40·3	1·3	71·3*	6·7	2·2	9·3	100·0
2. Assam	6·2	16·6	24·3	..	85·8*	2·0	2·3	3·7	100·0
3. Bihar	7·5	14·0	8·8	2·5	65·1*	8·0	6·3	13·1	100·0
4. Gujarat	16·8	12·3	12·6	..	50·3*	13·3	3·6	16·0	100·0
5. Haryana	11·5	9·0	16·8	..	57·0*	7·2	4·3	20·0	100·0
6. Himachal Pradesh	3·5	58·9	29·8	..	88·7	2·4	8·1	—2·7	100·0
7. Jammu & Kashmir	0·6	7·2	10·8	..	92·6*	2·6	4·2	..	100·0
8. Karnataka	8·7	9·8	1·6	3·2	59·4*	12·0	1·8	18·1	100·0
9. Kerala	8·9	28·3	37·8	1·1	67·2	7·8	7·6	8·5	100·0
10. Madhya Pradesh	10·8	40·0	14·9	..	54·9	12·9	16·0	5·4	100·0
11. Maharashtra	8·4	19·2	18·6	3·9	47·2*	7·1	5·6	31·7	100·0
12. Manipur	7·9	19·6	14·9	..	89·4*	1·0	—3·2	4·9	100·0
13. Meghalaya	14·3	20·1	65·0	..	85·1*	1·9	3·8	—5·1	100·0
14. Nagaland	25·2	24·6	47·0	..	71·6	3·0	7·1	—6·9	100·0
15. Orissa	10·7	29·5	27·3	..	69·2*	4·0	4·0	12·1	100·0
16. Punjab	12·0	11·9	8·5	..	37·9*	6·7	7·1	36·3	100·0
17. Rajasthan	7·2	14·2	52·7	..	80·6*	2·1	2·0	8·1	100·0
18. Sikkim	..	..	..	..	..	..	..	..	..
19. Tamil Nadu	15·2	16·4	19·1	..	52·6*	14·5	3·2	14·5	100·0
20. Tripura	0·3	90·6	2·1	..	143·1*	7·0	9·0	—59·4	100·0
21. Uttar Pradesh	7·9	26·3	24·0	..	50·3	6·5	3·6	31·8	100·0
22. West Bengal	9·3	24·3	49·0	3·5	76·8	4·1	2·8	7·0	100·0
TOTAL (ALL STATES)	**9.4**	**19.0**	**26.1**	**1.2**	**62.7***	**7.3**	**4.4**	**16.2**	**100.0**

(ANNEXURE X.22—*Contd.*)

State	Fifth Plan (1974-78)								
		Loans from the Centre							
	Internal Debt	Plan	Non-Plan	Ways & Means Advance	Total	Recovery of Loans	Small Savings, Provident Funds, etc.	Others	Total
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	18·3	42·5	14·4	..	56·9	10·7	3·4	10·7	100·0
2. Assam	14·7	59·7	16·6	..	76·3	5·1	4·3	—0·5	100·0
3. Bihar	9·6	33·5	26·1	15·7	75·3	11·8	3·8	—0·5	100·0
4. Gujarat	14·0	26·4	14·0	5·9	46·3	15·2	7·9	16·6	100·0
5. Haryana	16·4	38·6	9·2	1·8	49·6	7·9	9·5	16·6	100·0
6. Himachal Pradesh	17·7	29·3	28·1	..	57·4	8·5	22.2	—5·8	100·0
7. Jammu & Kashmir	2·5	61·6	11·7	..	86·2*	2·5	4·5	4·3	100·0
8. Karnataka	19·3	33·6	11·9	0·9	46·4	12·6	4·7	17·0	100·0
9. Kerala	11·9	37·1	10·5	4·6	52·2	12·0	16·3	7·6	100·0
10. Madhya Pradesh	9·6	34·9	12·5	..	47·4	17·5	17·7	7·8	100·0
11. Maharashtra	10·7	18·5	12·1	2·3	32·9	19·8	7·6	29·0	100·0
12. Manipur	30·7	35·8	0·8	..	71·3*	4·6	4·4	—11·0	100·0
13. Meghalaya	49·0	28·6	11·4	..	40·0	5·4	20·3	—14·7	100·0
14. Nagaland	43·7	22·5	1·8	32·6	56·9	8·4	13·0	—22·0	100·0
15. Orissa	17·7	41·1	12·9	..	54·0	11·8	9·6	6·9	100·0
16. Punjab	26·2	23·3	4·1	20·5	47·9	8·7	5·2	12·0	100·0
17. Rajasthan	21·1	37·5	12·2	18·8	51·5	18·6	5·9	2·9	100·0
18. Sikkim	30·3	624·2	..	..	624·2	103·0	66·7	—924·2	—100·0
19. Tamil Nadu	15·9	32·6	11·3	..	43·9	20·7	3·6	15·9	100·0
20. Tripura	43·0	17·7	5·3	..	23·0	15·2	21·2	—2·4	100·0
21. Uttar Pradesh	12·0	34·7	15·1	4·7	54·5	6·8	4·5	22·2	100·0
22. West Bengal	9·8	22·7	32·1	6·4	61·2	7·0	3·9	18·1	100·0
TOTAL (ALL STATES)	**14.1**	**32.9**	**15.1**	**4.4**	**52.8**	**12.4**	**6.6**	**14.1**	**100.0**

State	Annual Plans (1978-80)								
		Lons from the Centre							
	Internal Debt	Plan	Non-Plan	Ways & Means Advance	Total	Recovery of Loans	Small Savings, Provident Funds, etc.	Others	Total
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	10·9	58·5	10·8	0·1	69·4	6·9	4·2	8·6	100·0
2. Assam	6·5	33·6	6·5	..	76·8*	3·5	2·0	11·2	100·0
3. Bihar	6·2	50·1	31·0	..	81·1	4·4	6·8	1·5	100·0
4. Gujarat	10·5	22·5	18·2	1·8	42·5	11·8	6·0	29·2	100·0
5. Haryana	15·0	32·5	14·0	4·2	50·7	5·8	14·1	14·4	100·0
6. Himachal Pradesh	10·1	31·0	23·3	..	54·3	5·4	21·3	8·9	100·0
7. Jammu & Kashmir	2·1	28·2	15·6	..	88·3*	1·5	5·6	2·5	100·0
8. Karnataka	9·9	36·8	10·3	7·3	54·4	10·1	6·2	19·4	100·0
9. Kerala	14·1	47·8	11·4	..	59·2	6·5	22·6	—2·4	100·0
10. Madhya Pradesh	6·0	41·7	23·6	..	65·3	9·3	16·4	3·0	100·0
11. Maharashtra	6·0	24·6	19·3	2·8	46·7	11·2	8·5	27·6	100·0
12. Manipur	16·0	27·1	38·5	..	65·6	2·0	2·9	13·5	100·0
13. Meghalaya	20·2	31·5	11·3	..	42·8	11·0	4·0	22·0	100·0
14. Nagaland	18·4	29·6	20·9	11·6	62·1	3·1	24·2	—7·8	100·0
15. Orissa	10·7	57·0	13·4	..	70·4	7·4	8·3	3·2	100·0
16. Punjab	15·2	22·3	36·3	9·5	68·1	8·8	4·5	3·4	100·0
17. Rajasthan	10·8	—15·0	61.5	15·0	61·5	8·9	5·9	12·9	100·0
18. Sikkim	19·9	140·5	..	..	140·5	10·3	10·6	—81·3	100·0
19. Tamil Nadu	(12·1)	38·0	13·1	5·3	56·4	27·5	0·3	3·7	100·0
20. Tripura	(39·2)	14·8	16·5	..	31·3	11·7	15·0	2·8	100·0
21. Uttar Pradesh	6·0	35·4	25·0	..	60·4	2·8	3·3	27·5	100·0
22. West Bengal	5·3	28·5	36·0	13·3	77·8	5·7	3·0	8·2	100·0
TOTAL (ALL STATES)	**(8.5)**	**(33.4)**	**(23.5)**	**(3.7)**	**(62.6)**	**(8.1)**	**(6.5)**	**(14.3)**	**(100.0)**

ANNEXURE X. 22—*Concld.*

State	Sixth Plan (1980-85)								
		Loans from the Centre							
	Internal Debt	Plan	Non-Plan	Ways & Means Advance	Total	Recovery of Loans	Small Savings, Provident Funds, etc.	Others	Total
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	19·3	39·7	14·8	..	54·5	6·5	5·2	14·5	100·0
2. Assam	6·3	64·1	10·9	..	87·3*	3·9	2·8	(—) 0·3	100·0
3. Bihar	6·9	31·4	23·9	1·9	57·2	2·0	12·3	21·6	100·0
4. Gujarat	8·4	21·3	24·8	4·7	50·8	10·0	5·3	25·5	100·0
5. Haryana	13·6	23·7	21·0	11·6	56·3	10·5	13·4	6·2	100·0
6. Himachal Pradesh	10·1	28·1	29·7	..	57·8	5·3	25·7	1·1	100·0
7. Jammu & Kashmir	13·5	47·3	24·2	..	71·5	1·2	8·9	4.9	100·0
8. Karnataka	11·0	21·6	16·3	10·3	48·2	12·5	6·8	21·5	100·0
9. Kerala	16·5	31·2	12·0	11·1	54·3	6·1	20·0	3·1	100·0
10. Madhya Pradesh	8·4	35·7	14·3	1·4	51·4	9·1	19·4	11·7	100·0
11. Maharashtra	7·4	32·3	21·5	2·4	56·2	7·4	5·2	23·8	100·0
12. Manipur	22·8	10·5	..	..	67·0*	2·3	6·5	1·4	100·0
13. Meghalaya	34·7	34·9	22·4	0·4	57·7	12·3	7·7	(—)12·4	100·0
14. Nagaland	32·6	35·2	9·5	10·8	55·5	4·6	22·5	(—)15·2	100·0
15. Orissa	17·9	41·4	12·4	..	53·8	9·1	11·6	7·6	100·0
16. Punjab	15·0	7·6	22·1	11·5	63·4*	8·4	6·1	7·1	100·0
17. Rajasthan	15·4	30·8	19·8	7·2	57·8	7·8	11·9	7·1	100·0
18. Sikkim	16·3	33·5	..	..	97·8*	5·9	10·6	(—)30·6	100·0
19. Tamil Nadu	9·6	21·7	11·9	2·5	36·1	26·2	3·2	24·9	100·0
20. Tripura	32·5	24·6	12·0	..	36·6	5·3	13·5	12·1	100·0
21. Uttar Pradesh	15·3	30·6	18·3	2·6	51·5	6·3	7·5	19·4	100·0
22. West Bengal	9·8	20·0	38·0	12·1	70·1	14·4	3·8	1·9	100·0
TOTAL (ALL STATES)	**11·8**	**29·5**	**19·8**	**4·5**	**55·8***	**9·2**	**8·3**	**14·9**	**100·0**

*Breakup of loans under Plan and Non-Plan categories is not available. Therefore, in such cases and for all States' total, the percentages under column of Plan, Non-Plan and Ways and Means Advances do not add up to those under total loans from the Centre.

Source : Reserve Bank of India—Bulletins, various issues.

ANNEXURE X.23

STATEWISE OUTSTANDING LOANS FROM THE CENTRE AND DEBT RELIEF AS PER 6TH, 7TH AND 8TH FINANCE COMMISSIONS' RECOMMENDATIONS

(Rs. Crores)

Sl. No.	States	Central Loan Outstanding as on 31st March			Debt Servicing Relief Provided by		
		1974	1979	1984	Sixth Finance Commission 1974—79	Seventh Finance Commission 1979—84	Eighth Finance Commission 1984—89
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	692	1,051	1,860	191	136	205
2.	Assam	392	597	1,306	163	112	205
3.	Bihar	721	1,187	2,612	133	183	331
4.	Gujarat	349	521	1,419	36	108	18
5.	Haryana	234	304	635	33	38	32
6.	Himachal Pradesh	140	150	215	35	30	16
7.	Jammu & Kashmir	330	612	913	134	134	213
8.	Karnataka	452	677	1,077	127	39	48
9.	Kerala	366	535	859	110	115	54
10.	Mahdya Pradesh	417	712	1,643	87	147	144
11.	Maharashtra	687	978	2,545	67	161	28
12.	Manipur	44	57	124	15	12	11
13.	Meghalaya	19	24	45	7	6	6
14.	Nagaland	25	41	52	6	19	8
15.	Orissa	515	706	1,215	157	96	196
16.	Punjab	242	380	682	15	61	39
17.	Rajasthan	762	967	1,803	258	138	239
18.	Sikkim	..	6	16	..	1	3
19.	Tamil Nadu	426	754	1,399	87	50	28
20.	Tripura	38	40	69	15	10	2
21.	Uttar Pradesh	916	1,824	3,532	151	368	338
22.	West Bengal	811	1,342	3,038	143	192	121
	TOTAL	**8,578**	**13,465**	**27,059**	**1,970 (23%)**	**2,156 (16·0%)**	**2,285* (8·4%)**

Sources : For 1894—Report of the *Eighth Finance Commission*, p. 265, p. 268.
For 1979—Report of the ————*Finance Commission*, 1978, p. 263, p. 116.
For 1974— (i) Ministry of Finance, Deptt. of Economic Affairs, Budget Division, Finance Commission Cell '*Consolidation of Loans and Debt-Relief to States*'.
(ii) ————————Report of the Finance Commission, 1973, P.95.

*Excluding relief of Rs. 117·08 crores in the repayment on Small Saving Loans in 1984-85.

ANNEXURE X.24

PERCENTAGE OF DEBT-RELIEF PROVIDED BY THE SIXTH, SEVENTH AND THE EIGHTH FINANCE COMMISSIONS TO THE OUTSTANDING CENTRAL LOANS IMMEDIATELY PRIOR TO THE RESPECTIVE PERIOD OF THE COMMISSIONS AND TO THE ASSESSED NON-PLAN CAPITAL GAP

STATE	Debt-relief as percent of outstanding Central loans			Debt-relief as percent of assessed non-plan capital gap during the period covered by the Commission		
	6th F.C.	7th F.C.	8th F.C.	6th F.C.	7th F.C.	8th F.C.
1	2	3	4	5	6	7
Andhra Pradesh	27·6	12·9	11·0	85·1	50·0	53·2
Assam	41·6	18·8	15·7	93·0	74·4	75·0
Bihar	18·4	15·4	12·7	89·5	56·0	75·0
Gujarat	10·3	20·7	1·3	161·1	76·1	21·8
Haryana	14·1	12·5	5·0	61·3	43·5	33·9
Himachal Pradesh	25·0	20·0	7·4	87·1	85·5	85·0
Jammu & Kashmir	40·6	22·0	23·3	94·2	73·8	85·0
Karnataka	28·1	5·8	4·4	96·2	27·1	27.3
Kerala	30·1	21·5	6·3	87·6	73·2	49·9
Madhya Pradesh	20·9	20·6	8·8	116·7	60·0	48·8
Maharashtra	9·8	16·5	1·1	146·1	98·7	33·8
Manipur	34·1	21·1	8·9	98·0	81·5	85·1
Meghalaya	36·8	25·0	13·3	90·8	85·6	84·8
Nagaland	24·0	46·3	15·4	104·5	118·8	84·8
Orissa	30·5	13·6	16·1	91·3	54·7	75·0
Punjab	6·2	16·1	5·7	81·0	44·1	32·6
Rajasthan	33·9	14·3	13·3	89·0	49·3	75·0
Sikkim	..	16·7	18·8	..	128·2	84·6
Tamil Nadu	20·4	0·7	2·0	95·7	34·2	29·5
Tripura	39·5	25·0	2·9	105·3	122·1	84·3
Uttar Pradesh	16·5	20·2	9·6	87·6	62·0	51·7
West Bengal	17·6	14·3	4·0	93·3	84·5	75·0
ALL STATES	23·0	16·0	8·4	98·8	61·4	59·3

Source : Reports of the *Sixth* (1973), *Seventh* (1978) *and Eighth Finance Commission* (1984).
Note : F.C.=Finance Commission.

ANNEXURE X.25

NET MARKET BORROWINGS OF UNION AND STATE GOVERNMENTS

(Rs. Crores)

YEAR	Union Government	State Governments	Total (2+3)	Percentage share of States in Total
1	2	3	4	5
1961—62	62·63	74·17	136·80	54·2
1966—67	79·89	96·77	176·66	54·8
1969—70	139·31	81·28	220·59	36·8
1974—75	494·06	211·51	705·57	30·0
1968—79	1,653·63	185·95	1,839·58	10·1
1979—80	1,951·24	187·14	2,148·38	8·7
1980—81	2,603·43	201·07	2,804·50	7·2
1981—82	2,903·91	333·90	3,237·81	10·3
1982—83	3,800·13	398·26	4,198·39	9·5
1983—84	4,001·26	587·54	4,588·80	12·8
1984—85	4,100·01	772·45	4,872·46	15·9

Source : Ministry of Finance—*Indian Economic Statistics (Part II—Public Finance)*, December, 1985.

ANNEXURE X. 26

AGGREGATE OF STATE GOVERNMENT'S MINIMUM BALANCES AND LIMITS FOR ADVANCE FROM THE RESERVE BANK OF INDIA.

(Rs. Crores)

Effective from	Minimum balance	Limits for normal or 'clean' ways and means advance	Limits for special or secured ways and means advance	Additional special ways and meang advance
1	2	3	4	5
1.4.1938	1.85	1.85	ad-hoc	--
1.4.1953	3.94	7.88 (Twice the minimum balance)	2 corores for each state	
1.3.1967	6.25	18.75 (3 times)	37.50 (6 times)	On merits
1.5.1972	6.50	78.00 (12 times)	39.00 (6 times)	*Ad-hoc*
1.5.1976	13.00	130.00 (10 times)	130.00 (10 times)	On exceptional occasions
1.10.1978	13.00	260.00 (20 times)	130.00 (10 times)	-
1.7.1982	13.00	520.00 (40 times)	260.00	-

Source : Reserve Bank of India.

ANNEXURE X. 27

STATES' OUTSTANDING OVERDRAFTS WITH RESERVE BANK OF INDIA, 1975 TO 1984

(Rs. Crores)

	March - end									
	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Major States										
Andhra Pradesh	-	-	-	-	-	-	-	-	-	13.00
Assam	-	-	-	-	-	-	33.05	115.43	9.83	60.48
Bihar	96.49	86.53	79.46	69.01	-	-	-	180.14	204.14	112.40
Gujarat	2.81	-	14.88	-	-	-	17.59	53.60	-	-
Haryana	10.09	11.27	12.49	-	-	1.95	36.01	66.79	48.87	12.63
Karnataka	-	-	-	-	-	-	14.37	-	4.84	37.26
Kerala	5.26	19.66	31.21	4.62		-	-	75.93	-	45.05
Madhya Pradesh	8.47	-	-	49.60	-	1.27	97.93	130.88	20.27	35.43
Mahara shtra	-	-	-	-	-	-	-	36.40	-	-
Orissa	5.83	8.36	14.36	0.98	-	-	-	6.43	20.98	-
Punjab	22.93	29.87	38.11	56.36	-	9.53	64.01	79.35	-	47.34
Rajasthan	11.54	4.13	1.48	8.89	-	22.10	143.27	271.46	2.07	-
Tamil Nadu	-	-	-	-	-	-	-	-	-	-
Uttar Pradesh	99.55	135.13	86.21	145.68	-	-	-	-	2.00	36.61
West Bengal	-	8.07	46.58	91.40	-	41.16	97.08	316.96	38.69	62.90
Other States										
Himachal Pradesh	7.39	5.87	4.14	-	-	-	-	32.85	3.30	14.70
Manipur	0.91	3.83	7.86	3.45	6.59	11.06	22.49	64.29	13.58	12.71
Meghalaya	-	0.77	-	-	-	-	-	14.11	0.18	2.59
Nagaland	-	7.69	11.07	7.80	1.94	6.81	0.64	19.96	14.94	33.59
Tripura		5.66	4.03	0.38	-	2.66	9.46	28.72	1.13	4.57
Total	271.27	326.84	351.88	438.17	8.53	96.54	535.00	1493.00	304.92	531.26

Scource : Centre for Monitoring Indian Economy, Basic Statistics (1984).

ANNEXURE X. 28

LOANS GIVEN TO STATES FOR CLEARANCE OF THEIR DEFICITS / OVERDRAFTS

(Rs. Crores)

STATES	DURING					
	1972-73	1978-79	1980-81	1982-83	1983-84	1984-85
1	2	3	4	5	6	7
1.Andhra Pradesh	60.23	-	-	18.85	-	-
2. Assam	22.45	-	-	127.43	-	-
3. Bihar	18.75	79.26	-	197.39	169.29	-
4. Gujarat	-	4.17**	-	74.60	-	-
5. Haryana	22.73	-	-	75.79	19.93	-
6. Madhya Pradesh	-	-	-	36.91	-	-
7. Jammu & Kashmir	8.15	-	-	-	-	10.00
8. Karnataka	53.17	-	-	-	4.84	-
9. Kerala	42.47	12.20	-	93.93	42.26	-
10. Madhya Pradesh		65.60	-	154.88	20.27	-
11 Maharashtra	-	-	-	81.40	-	-
12. Manipur	-	4.45	13.06	66.29	-	-
13. Meghalay a	-	-	-	16.41	-	-
14. Nagaland	-	8.80	8.81	21.96	-	-
15. Orissa	4.92	12.98	-	24.43	41.00	-
16. Punjab	-	68.36	-	97.35	21.32	290.25
17. Rajastahan	78.89	14.89	-	283.46	48.71	52.18
18. Tamil Nadu	54.69	-	-	-	55.78	-
19. Tripura	-	1.38	-	30.72	-	-
20. Uttar Pradesh	17.81	175.18	-	0.85	2.00	-
21. West Bengal	35.99	105.10	-	340.71	73.72	-
Total	**420.55**	**255.37**	**21.87***	**1743.46**	**499.12**	**352.43**

* Converted later into long term loans.

** Released during 1979-80.

Source : Ministry of Finance - Department of Expenditure, Plan Finance Division.

ANNEXURE X. 29

STATE WISE MEDIUM TERM AND LONG TERM CREDIT LIMITS AND UTILISATION IN 1982-83 TO 1984-85 - NABARD TO STATE CO-OPERATIVE BANKS AND FOR SHARE CAPITAL OF CO-OPERATIVE CREDIT INSTITUTIONS

(Rs. Crores)

Sl. No.	State	Medium term credit for "approved" Agricultural Purposes by RBI/NABARD to State Co-operative Banks out of National Rural Credit (Long term operations) Fund					
		1982		1983		1984	
		Limits Sanctioned	Outstanding at the end of December	Limits Sanctioned	Outstanding at the end of December	Limits Sanctioned	Outstanding at the end of December
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	3.76	2.64	3.88	3.49	3.27	3.7
2.	Assam	..	..	..	..	..	..
3.	Bihar	0.05	Neg.	0.05	Neg.	..	..
4.	Gujarat	1.50	1.00	1.80	1.42	0.88	1.13
5.	Haryana	1.58	1.99	2.04	2.14	1.49	2.30
6.	Himachal Pradesh	..	..	0.10	0.10	0.06	0.16
7.	Jammu & Kashmir	0.29	0.35	0.20	0.52	..	0.35
8.	Karnataka	1.44	2.15	1.89	2.65	2.00	3.00
9.	Kerala	1.19	2.80	0.96	2.03	1.02	1.59
10.	Madhya Pradesh	2.5	3.52	2.36	4.01	1.95	3.86
11.	Maharashtra	0.99	1.49	2.46	2.31	2.28	3.16
12.	Manipur	..	..	..	..	..	..
13.	Meghalaya	..	..	..	..	..	..
14.	Nagaland	..	..	..	..	..	..
15.	Orissa	1.06	2.83	1.21	1.76	..	0.79
16.	Punjab	0.13	..	..	..	..	..
17.	Rajasthan	5.74	9.69	6.07	10.07	4.33	9.38
18.	Tamil Nadu	1.40	1.75	1.21	1.69	1.77	2.54
19.	Tripura	0.10	0.12	0.10	0.11	..	0.08
20.	Uttar Pradesh	7.04	6.00	7.03	5.10	5.86	6.04
21.	West Bengal	..	..	..	..	0.06	..
	Total	28.32	36.33	31.36	37.40	24.97	38.08

ANNEXURE X.29 (*Concld*)

(Rs. Crores)

State	Long term credit to State Governments out of NAC/NRC Fund for contribution to the share capital of Co-operation Credit Institutions					
	1982—83		1983—84		1984—85	
	Limits Sanctioned	Outstanding at the end of March	Limits Sanctioned	Outstanding at the end of March	Limits Sanctioned	Outstanding at the end of March
1 2	9	10	11	12	13	14
1. Andhra Pradesh	0.49	11.72	0.40	8.74	0.40	7.97
2. Assam	..	0.21	..	0.15	..	0.13
3. Bihar	0.91	3.91	0.80	3.90	..	3.08
4. Gujarat	0.35	4.62	0.31	3.81	0.21	3.29
5. Haryana	1.46	9.16	1.25	8.46	0.92	8.34
6. Himachal Pradesh	0.01	0.24	0.02	0.26	..	0.23
7. Jammu & Kashmir	0.12	0.34	0.45	0.75	0.02	0.75
8. Karnataka	0.76	7.36	0.24	6.49	0.27	6.75
9. Kerala	0.88	6.68	0.56	6.42	0.10	5.86
10. Madhya Pradesh	..	10.18	1.02	7.55	0.67	6.95
11. Maharashtra	0.21	1.94	0.82	1.51	..	2.27
12. Manipur	0.02	0.08	0.06	0.07	..	0.07
13. Meghalaya	0.13	0.31	..	0.26	..	0.26
14. Nagaland	..	0.01	..	0.01	..	..
15. Orissa	1.44	11.25	0.72	10.36	0.68	9.83
16. Punjab	0.73	7.31	1.30	7.17	1.00	7.40
17. Rajasthan	2.27	14.29	1.16	13.83	1.10	13.20
18. Tamil Nadu	0.32	10.39	0.28	9.06	0.34	6.49
19. Tripura	0.10	0.70	0.10	0.72	0.15	0.76
20. Uttar Pradesh	2.09	15.91	1.48	15.40	1.47	16.75
21. West Bengal	0.41	11.48	0.21	10.36	0.16	9.13
Total	12.70	128.08	11.18	115.28	7.49	109.51

Source : NABARD —Bulletin on Operations on Short, Medium Term Credit Limit Sanctioned by NABARD to State Co-operative Banks -1982-83 to 1984-85.

ANNEXURE X.30

CREDIT LIMITS SANCTIONED, MAXIMUM AMOUNT OUTSTANDING AND PERCENTAGE UTILISATIONS IN 1982-83, 1983-84 AND 1984-85 — NABARD

FOR SEASONAL AGRICULTURAL OPERATIONS

(Rs. Crores)

States	1982—83			1983—84			1984—85		
	Limits sanctioned	Max. outstanding	Percentage of utilisation	Limits sanctioned	Max. outstanding	Percentage of utilisation	Limits sanctioned	Max. outstanding	Percentage of utilisation
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	122.95	104.49	85.0	137.80	105.54	76.6	149.20	124.51	83.5
2. Assam	..	..	..	..	..	..	..	..	..
3. Bihar	18.65	13.34	72.0	16.05	15.09	94.0	29.58	24.30	82.1
4. Gujarat	87.80	80.04	91.2	95.85	79.86	83.3	98.70	88.50	89.7
5. Haryana	93.00	91.20	98.1	112.18	96.66	86.2	102.80	87.18	84.8
6. Himachal Pradesh	..	..	..	0.57	0.57	100.00	0.16	0.16@	100.00
7. Jammu & Kashmir	3.15	3.01	95.4	4.05	3.85	95.1	3.90	3.73	95.7
8. Karnataka	51.75	47.38	91.6	67.20	51.52	76.7	67.20	43.44	64.6
9. Kerala	39.75	38.05	95.7	41.20	35.20	85.4	42.70	38.25	89.6
10. Madhya Pradesh	112.40	87.59	77.9	123.02	95.12	77.3	124.60	105.83	84.9
11. Maharashtra	98.20	68.13	69.4	126.45	60.77	48.1	75.50	..	..
12. Manipur	0.80	0.67	82.5	0.80	0.66	82.9	..	0.66	..
13. Meghalaya	..	..	..	0.50	..	..	0.50	..	..
14. Nagaland	0.40	0.28	70.0	0.40	0.40	100.00	0.40	0.40	100.00
15. Orissa	58.10	54.30	93.5	61.55	50.28	81.7	63.40	56.61	89.3
16. Punjab	126.70	112.16	88.5	136.15	106.44	78.2	144.20	118.76	82.4
17. Rajasthan	78.25	67.97	86.8	85.40	62.68	73.4	84.15	77.36	91.9
18. Tamil Nadu	42.40	37.22	87.8	48.20	39.79	82.6	62.95	54.43	86.5
19. Tripura	0.40	0.40	10.00	0.40	0.30	75.0	0.40	0.30	75.0
20. Uttar Pradesh	146.81	117.58	80.1	166.08	126.03	75.9	150.71	121.42	80.6
21. West Bengal	38.30	14.56	38.0	20.50	11.37	55.5	30.65	3.63	11.8
22. Union Territories	0.52	0.47	154.0	0.52	0.51	189.8	0.82	0.80	184.2
All India	**1120.33**	**857.84**	**76.6**	**1244.87**	**942.63£** (802.63)	**75.7** (64.5)	**1232.52**	**950.27** (867.71)	**77.1** (70.4)

@ Rs. 0.57- only to September 1984 outstanding on last year

£ All India maximum outstanding.

Source : As in Annexure X.29

ANNEXURE X.31

STATEWISE TERM CREDIT MOBILISED

DURING 1980—85 (SIXTH FIVE YEAR PLAN) UNDER I. R. D. P.

(Rs. Crores)

State	Term Credit Mobilised in 1980—85						Per Capita Term Credit (In Rs.)
	Total	Percentage to the total	By Co-operative Banks	Percentage to the Total	By Commercial Banks	Percentage to the Total	
1	2	3	4	5	6	7	8
1. Andhra Pradesh	243.96	7.9	52.06	8.3	175.62	8.3	2,012
2. Assam	61.09	2.0	15.85	2.5	36.02	1.7	1,992
3. Bihar	300.12	9.8	26.81	4.3	250.67	11.9	1,561
4. Gujarat	130.04	4.2	14.80	2.3	110.83	5.2	1,731
5. Haryana	48.30	1.6	5.78	0.9	40.83	1.9	1,004
6. Himachal Pradesh	28.62	0.9	0.39	0.1	28.21	1.3	1,330
7. Jammu & Kashmir	23.24	0.7	3.06	0.5	13.10	0.6	1,437
8. Karantaka	149.36	4.8	22.53	3.6	126.83	6.0	2,088
9. Kerala	114.89	3.7	10.54	1.7	45.03	2.1	2,160
10. Madhya Pradesh	335.79	11.0	52.35	8.3	214.20	10.1	32,55
11. Maharashtra	225.39	7.3	48.85	7.8	128.60	6.1	2,342
12. Manipur.	0.21	0.0	0.03	0.0	0.18	0.0	48
13. Meghalaya	..	..	..	..	..	..	..
14. Nagaland	NA	NA	..	..	..	..	NA
15. Orissa	129.52	4.2	49.62	7.9	75.32	3.6	1,405
16. Punjab	74.00	2.4	2.05	0.3	59.36	2.8	1,870
17. Rajasthan	134.10	4.4	42.00	6.7	59.05	2.8	1,890
18. Sikkim	1.11	0.0	0.06	0.0	1.05	0.0	1,115
19. Tamil Nadu	257.27	8.4	69.09	11.0	180.87	8.6	1,843
20. Tripura	5.70	0.3	1.50	0.2	8.20	0.4	2,059
21. Uttar Pradesh	730.50	23.8	206.13	32.8	500.61	23.8	2,128
22. West Bengal	68.25	2.2	4.91	0.7	48.17	2.3	1,172
Total States	3065.46	99.6	628.41	99.9	2102.75	99.5	1,881
23. Union Territories	12.88	0.4	0.59	0.1	10.27	0.5	1,014
	3078.34*	100.00	629.00	100.0	2113.02	100.0	1,875

* Of the total term credit, the bankwise classification of the term credit is available for Rs. 2742 crores as some of the States and Union Territories have not furnished the complete break-up.

Source : Ministry of Agriculture & Rural Development —*Sixth plan Review of IRDP by Department of Rural Development.*

ANNEXURE X.32

STATEWISE ASSISTANCE* SANCTIONED AND DISBURSED BY IDBI IN 1980—85

(Rs. Crores)

Sl. No.	State	Sanctioned		Disbursed		Percentage utilisation (Col.5 as percentage of Col. 3)
		Amount	Percentage to Total	Amount	Percentage to Total	
1	2	3	4	5	6	7
1.	Andhra Pradesh	1028.9	9.5	655.2	8.4	63.7
2.	Assam	85.3	0.8	59.7	0.8	70.0
3.	Bihar	269.5	2.5	611.2	2.0	59.8
4.	Gujarat	1203.0	11.1	877.7	11.3	73.0
5.	Haryana	347.5	3.2	265.3	3.4	76.3
6.	Himachal Pradesh	149.6	1.4	100.4	1.3	67.1
7.	Jammu & Kashmir	127.1	1.2	83.7	1.2	65.9
8.	Karnataka	753.6	7.0	652.4	8.4	86.6
9.	Kerala	294.4	2.7	251.9	3.2	85.6
10.	Madhya Pradesh	519.0	4.8	363.6	4.6	70.1
11.	Maharashtra	1444.5	13.4	1068.6	13.7	74.0
12.	Manipur	4.3	0.0	5.8	0.1	134.9
13.	Meghalaya	12.4	0.1	11.8	0.2	95.2
14.	Nagaland	6.9	0.1	6.5	0.1	94.2
15.	Orissa	530.3	4.9	355.8	4.5	67.1
16.	Punjab	353.6	3.3	263.3	3.3	74.5
17.	Rajasthan	496.1	4.6	398.9	5.1	80.4
18.	Sikkim	4.8	0.0	2.0	0.0	41.7
19.	Tamil Nadu	1074.7	9.9	911.1	11.7	84.8
20.	Tripura	6.4	0.1	7.1	0.1	118.9
21.	Uttar Pradesh	1239.7	11.5	637.4	8.2	51.4
22.	West Bengal	529.1	4.9	380.0	4.9	71.8
23.	Union Territories	325.2	3.0	273.0	3.5	83.3
	Total	**10805.9**	**100.0**	**7792.4**	**100.0**	**72.1**

Source : Industrial Development Bank of India—*Operational Statistics of* 1984—85 (pages 16 and 17)

*Includes direct assistance (Project loans, underwriting gaurantees, soft loan, TDF loans equipment finance), refinance and bills rediscounting assistance and excludes subscription to shares and bonds of financial institutions and Seed Capital Assistance.

ANNEXURE X.33

STATEWISE ASSISTANCE

SANCTIONED AND DISBURSED UNDER REFINANCE SCHEME TO SMALL SECTOR IN 1980—85

(Rs. Crores)

Sl. No.	State	Sanctioned Amount	Percentage to total	Disbursed Amount	Percentage to total	Percentage Utilisation (Col. 5 as percent of Col.3)
1	2	3	4	5	6	7
1.	Andhra Pradesh	276.4	9.62	213.4	9.03	77.21
2.	Assam	28.3	0.98	26.6	1.12	93.92
3.	Bihar	126.8	4.41	66.5	2.81	52.52
4.	Gujarat	236.0	8.21	208.9	8.84	88.52
5.	Haryana	95.3	3.32	84.0	3.55	83.14
6.	Himachal Pradesh	48.8	1.70	34.5	1.46	70.70
7.	Jammu & Kashmir	56 .1	1.95	46.6	1.97	83.01
8.	Karnataka	234.6	8.16	193.7	8.21	82.57
9.	Kerala	91.6	3.19	87.9	3.72	95.96
10.	Madhya Pradesh	121.4	4.22	107.0	4.53	88.14
11.	Maharashtra	357.6	12.44	273.1	11.57	76.37
12.	Manipur	1.8	0.06	3.8	0.16	211.11
13.	Meghalaya	7.7	0.27	8.0	0.34	103.90
14.	Nagaland	4.2	0.15	5.1	0.22	121.42
15.	Orissa	141.7	4.93	84.4	3.57	59.56
16.	Punjab	104.9	3.65	75.6	3.20	72.07
17.	Rajasthan	144.6	5.03	145.6	6.16	100.69
18.	Sikkim	1.4	0.05	0.4	0.02	28.57
19.	Tamil Nadu	295.3	10.28	261.5	11.10	88.55
20.	Tripura	5.2	0.18	5.7	0.24	109.62
21.	Uttar Pradesh	263.9	9.19	226.5	9.56	85.83
22.	West Bengal	94.2	3.28	80.2	3.39	85.14
23.	Union Territories	135.9	4.73	123.4	5.23	90.80
	Total	2873.7	100.00	2362.4	100.00	82.22

Source : Industrial Development Bank of India — *Operational Statistics of* 1984-85 (page 125)

Note : 14 States have been classified as industrially backward. These are : Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jammu and Kashmir, Madhya Pradesh, Manipur, Meghalaya, Nagaland, Orissa, Rajasthan, Sikkim, Tripura and Uttar Pradesh.

ANNEXURE X.34

STATEWISE TREND IN ASSISTANCE

SANCTIONED AND DISBURSED BY THE END OF MARCH 1985 BY ALL FINANCIAL INSTITUTIONS*

(Rs. Crores)

Sl. No.	State	Cumulative by the end of March 1985				Percentage Utilisation (Col. 5 as percent of Col. 3)
		Amount sanctioned	Percentage to Total	Amount disbursed	Percentage to Total	
1	2	3	4	5	6	7
1.	Andhra Pradesh	2135.04	8.3	1418.34	7.69	66.43
2.	Assam	230.69	0.9	163.73	0.89	72.77
3.	Bihar	808.99	3.2	525.10	2.85	64.90
4.	Gujarat	3155.76	12.3	2146.26	11.63	68.00
5.	Haryana	692.36	2.7	528.83	2.87	76.38
6.	Himachal Pradesh	218.61	0.9	155.25	0.84	71.02
7.	Jammu & Kashmir	213.61	0.8	159.86	0.87	74.84
8.	Karnataka	1906.73	7.5	1468.48	7.97	77.02
9.	Kerala	736.39	2.9	551.15	2.97	74.84
10.	Madhya Pradesh	1060.62	4.2	711.12	3.85	66.55
11.	Maharashtra	4452.34	17.4	3410.70	18.48	76.60
12.	Manipur	3.54	Neg.	3.54	0.02	100.00
13.	Meghalaya	22.86	0.1	21.93	0.12	95.93
14.	Nagaland	15.41	0.1	11.02	0.07	71.51
15.	Orissa	919.84	3.6	507.60	2.75	55.18
16.	Punjab	789.88	3.1	636.90	3.43	80.62
17.	Rajasthan	1107.25	4.3	848.05	4.60	76.59
18.	Sikkim	9.07	Neg	4.07	0.02	44.97
19.	Tamil Nadu	2404.34	9.4	1867.81	10.12	77.68
20.	Tripura	12.13	Neg	10.56	0.05	87.06
21.	Uttar Pradesh	2289.74	9.0	1245.11	7.72	62.24
22.	West Bengal	1680.45	6.6	1894.39	6.96	76.44
23.	Union Territories	712.46	2.7	593.13	3.21	83.25
	Total	25586.48[a]	100.00	18453.41[b]	100.00	72.12

Source : Industrial Development Bank of India — *Operational Statistics of* 1984-85 (pages 168 and 169)

Notes : States classified as industrially backward are : Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jammu& Kashmir, Madhya Pradesh, Manipur, Meghalaya, Nagaland, Orissa, Rajasthan, Sikkim, Tripura and Uttar Pradesh.

* Includes IDBI, IFCI, ICICI, LIC, UTI, GIC, IRBI, SFC, and SIDC.

a Includes assistance of Rs. 37 lakhs sanctioned for Bhutan.

b Includes Rs. 29 lakhs disbursed to Bhutan.

ANNEXURE X.35

STATE-WISE PROJECT FINANCE ASSISTANCE SANCTIONED TO SPECIFIED BACKWARD AREAS DURING JULY 1970—JUNE 1985

(Rs. Crores)

Sl. No.	State	Total Assistance	Assistance to backward areas	Percentage to Total	Percentage of (4) to (3)
1	2	3	4	5	6
1.	Andhra Pradesh	521.3	349.5	11.1	67.0
2.	Assam	54.3	54.3	1.7	100.0
3.	Bihar	75.8	21.5	0.7	28.4
4.	Gujarat	713.7	533.3(201.8)	16.9(9.6)	74.2
5.	Haryana	77.3	56.7	1.8	73.4
6.	Himachal Pradesh	31.2	81.2	1.0	100.0
7.	Jammu & Kashmir	37.7	87.7	1.2	100.0
8.	Karnataka	350.8	215.7(134.1)	6.8(8.7)	61.5
9.	Kerala	156.5	71.2	2.3	45.5
10.	Madhya Pradesh	165.0	153.0(93.5)	4.8(4.4)	92.7
11.	Maharashtra	424.7	240.6(197.5)	7.6(9.4)	56.7
12.	Manipur	0.5	0.5	Neg.	100.0
13.	Meghalaya	3.0	3.0	0.1	100.0
14.	Nagaland	0.5	0.5	Neg	100.0
15.	Orissa.	266.9	92.3	2.9	34.6
16.	Punjab	163.1	94.5	3.0	57.9
17.	Rajasthan	209.6	159.0	5.0	75.9
18.	Sikkim	2.4	2.4	0.1	100.0
19.	Tamil Nadu	369.4	241.2(95.6)	7.6(4.5)	65.3
20.	Tripura	1.9	1.9	0.1	100.0
21.	Uttar Pradesh	787.0	658.5(219.0)	20.8(10.3)	83.7
22.	West Bengal	205.9	100.3	3.2	48.7
23.	Union Territories	79.9	40.7	1.3	50.9
	Total	4708.1	3159.5(2108.6)		67.2

Source : Industrial Development Bank of India—*Operational Statistics of* 1984-85

Note : Figures in brackets are exclusive of projects sanctioned assistance of more than Rs. 30 crores each.

ANNEXURE X.36

STATE-WISE ASSISTANCE* SANCTIONED TO SPECIFIED BACKWARD AREAS DURING JULY 1970—JUNE 1985

(Rs. Crores)

Sl. No.	State	Total assistance	Percentage to total	Assistance to backward Areas	Percentage to total
1	2	3	4	5	6
1.	Andhra Pradesh	1305.1	8.5	669.1	9.9
2.	Assam	133.4	0.9	106.8	1.6
3.	Bihar	415.6	2.7	156.5	2.3
4.	Gujarat	1968.8	12.8	876.5(545.0)	13.0(9.6)
5.	Haryana	470.6	3.0	133.6	2.0
6.	Himachal Pradesh	176.1	1.1	153.6	2.3
7.	Jammu & Kashmir	167.1	1.1	166.4	2.5
8.	Karnataka	1119.3	7.3	551.6(520.0)	8.2(9.1)
9.	Kerala	489.4	3.2	191.0	2.8
10.	Madhya Pradesh	638.8	4.1	367.9(308.4)	5.5(5.4)
11.	Maharashtra	2212.1	14.4	492.0(448.9)	7.3(7.9)
12.	Manipur	6.1	Neg.	6.1	0.1
13.	Meghalaya	18.2	0.1	15.6	0.2
14.	Nagaland	9.1	0.1	8.2	0.1
15.	Orissa	634.6	4.1	185.9	2.7
16.	Punjab	488.3	3.2	181.2	2.7
17.	Rajasthan	670.8	4.4	381.3	5.6
18.	Sikkim	5.1	Neg.	5.1	0.1
19.	Tamil Nadu	1540.3	10.0	622.5(176.9)	9.2(8.4)
20.	Tripura	9.5	0.1	9.5	0.1
21.	Uttar Pradesh	1604.1	10.4	912.5(473.0)	1305.(8.3)
22.	West Bengal	819.1	5.3	282.5	4.2
23.	Union Territories	497.9	3.2	273.4	4.1
	Total	15399.8**		6748.8(5697.9)	

* Comprising direct finance, refinance and bills rediscounting assistance sanctioned during July 1964—June 1985.

** Including assistance of Rs. 0.4 crore sanctioned to Bhutan.

Note : Figures in brackets are exclusive of 8 projects sanctioned project finance assistance of more than Rs. 30 crores each.

Source : Industrial Development Bank of India—*Operational Statistics of* 1984-85, pp. 16 to 18.

CHAPTER XI

ECONOMIC AND SOCIAL PLANNING

CONTENTS

47—325/87

LIST OF ANNEXURES

CHAPTER XI

ECONOMIC AND SOCIAL PLANNING

1. *INTRODUCTION*

11.1.01 Planning in our country has emerged as a comprehensive area of governmental functions. The Directive Principles of State Policy lay down that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice social economic and political, shall inform all the institutions of national life. The achievement of these goals calls for planned development of the country based on a national consensus in the formulation of policies and shared action. Planning, by its very rationale and nature, postulates a cooperative and coordinated approach to development. In a large and diverse country like ours, with a dual polity and administration, it involves a continuous and wide ranging interaction between different constituents.

11.1.02 The importance of planned development as a means of raising the standard of living was recognised as early as in 1938 when the National Planning Committee was constituted by the Indian National Congress but its work was interrupted by the Second World War. A separate department of Planning and Development was established in 1944 with a view to assisting post-War reconstruction. In 1946, the Interim Government of India appointed an Advisory Planning Board. The decade preceding the preparation of the Constitution witnessed considerable public discussion and official deliberation on planning. These attempts clearly brought out the need for planning at the national level to evolve a coordinated approach to the whole problem of socio-economic development of the country.

The Problems

11.1.03 In the evidence before us, no one has questioned the need for national planning. An elaborate system of planning has been developed in the country. Planning i.e. *inter alia* a political process. Inveitably. certain problems in Union-State relations have been thrown up in regard to the institutional arrangements and processes in planning. The major issues which are listed below have been dealt with in detail in Sections 5 to 8 :

(i) The States are not involved sufficiently in national planning.

(ii) Planning Commission has functioned more as a limb of the Union Government in exercising sway over the State Governments, rather than as a truly federal institution restricting itself to advise on technical matters of planning.

(iii) The role of the National Development Council, as an institution to provide guidance in national planning, has not been effective and has been characterised by mere formal approval of the plans prepared by the Planning Commission.

(iv) There are three important factors which adversely affect States' initiative in planning in their constitutionally defined spheres :

(a) There is too detailed a scrutiny by the Planning Commission and other Central Organisations of States' Plan proposals.

(b) The Centrally Sponsored Schemes have made deep in-roads into States' sphere of activity and have affected their initiative and priorities.

(c) States' crucial dependence on Central assistance for the Plan and the mechanism of earmarking of outlays has restricted their manoeuvrability to allocate resources among the development heads.

(v) Although a multi-level planning framework is desirable in our context, the State Planning Boards and sub-State level planning have not become effective so far.

11.1.04 Before undertaking an examination of the above-mentioned issues, if would be desirable to review briefly the Constitutional provisions and the present institutional arrangements and processes of planning involving the Union and the State Governments. These are discussed in the next two Sections of this Chapter. Section 4 deals with the dynamics of the economy having bearing on Union-State relationship in the sphere of planning. Finally, the various issues and suggestions are considered in Sections 6 to 8.

2. *CONSTITUTIONAL PROVISIONS*

11.2.01 Entry 20 of List III relates to "Economic and social planning". Planning being a matter of common interest to the Union and the States, the Entry relating to it has been appropriately placed in the Concurrent List. However, the Constitution does not specify and mechanism like the Planning Commission for advising on planned development. This is in contrast to the provision for constitution of a Finance Commission in the Constitution itself to make recommendtions in regard to distribution of financial resources.

11.2.02 Although the Constitution does not contain explicit provision for a Planning Commission, it carries, nonetheless, ample justification for planning. The very Preamble of the Constitution specifies the resolve, *inter alia*, to secure to all the citizens "JUSTICE, social, economic and political'. The Directive Principles of State Policy enunciated in Part IV of

the Constitution further spell out directions and principles for the State to secure a social order for the promotion of welfare of the people. In particular, Articles 38 to 42, 43A, and 45 to 48A enumerate responsibilities of the State for discharging which planning constitutes a pre-requisite. These roles cannot be performed by the States or the Union government in isolation from each other. This is the rationale for placing 'Economic and social planning' in the Concurrent List.

11.2.03 There are a number of subjects in the three Lists which have relevance for planning (Annexure XI.1). Planning is a multi-faceted subject. It spans or touches upon the socio-economic aspects of several matters in the three Lists. Such matters in List I include, among others, Union control—regulation and development of certain declared industries (Entry 52); Regulation of mines and mineral Development (Entry 54); Regulation and development of inter-State rivers and river-valleys (Entry 56); National Highways (Entry 23); Institutions for scientific and technical education, financed wholly or in part by the Government of India declared as of national importance (Entry 64); Union agencies and institutions for professional, vocational or technical training, special studies or research, etc. (Entry 65); and Coordination and determination of standards in institutions for higher education and scientific and technical institutions (Entry 66). These subjects in List I have an interface with several subjects included in List II or List III. The executive power of the Union with respect to such matters is coextensive with its legislative power. Under most of these Entries in List I, Parliament has enacted legislations which regulate the exercise of the executive power also in regard to such matters.

11.2.04 Taking an overall view from the conceptual, institutional and functional aspects, planning both at the formulation and execution stages has to be a co-operative process of shared action between the Union and the States. The Planning Commission is expected to prepare the blue-print in consultation with the States and in accordance with the broad guidelines and policy indicated by the National Development Council (NDC) on which both the Union and the State Governments are represented. After the Draft Five Year Plan is approved by the NDC and finalised by the Union Government, it has to be implemented to a substantial extent through the State machinery. In the absence of any legislation pursuant to Entry 20 of the Concurrent List, the relationship between the two levels of government is to be understood in terms of their executive jurisdictions prescribed by or under the Constitution. It is made operational through the budgets of the Union and the State Governments. Its implementation is largely the responsibility of the States in regard to matters enumerated in Lists II and III. With regard to matters falling exclusively within List I, planning may be carried into execution either wholly by the administrative agencies of the Union or through cooperative action of the agencies of the Union and the States. However, even in regard to matters falling within the executive jurisdiction of the Union, the President may with the consent of the Government of a State, entrust, either conditionally or unconditionally, to that Government or its officers, executive functions falling within the jurisdiction of the Union (Article 258(1). Similarly, the States may with the consent of the Union Government entrust, conditionally or unconditionally, to that Government or its officers, its executive functions for implementation of a plan in relation to a matter in List II or List III (Article 258A).

11.2.05 Indeed, from a broad perspective, the main problem is how to reconcile the need for centralised macro-level planning with the constitutional imperatives of divided and concurrent powers, under the modern world conditions. In other words, how best the Union can pursue the national goals of socio-economic planning without excessive or needless involvement in the areas demarcated by the Constitution for the exclusive or concurrent jurisdiction of the States and without evoking an adversarial reaction. It is a multi-faceted problem. It has constitutional, fiscal, functional and political implications, which under-score the imperative necesssity of acting in consultation with the States at all crucial stages of the planning process.

3. *ARRANGEMENTS AND MECHANISMS FOR PLANNING*

11.3.01 The arrangements and mechanisms of planning may be, for the sake of convenience, discussed in terms of—

(a) institutions and planning machinery, and

(b) process of planning.

Planning Commission

11.3.02 The constitution of the Planning Commission in March, 1950, with the Prime Minister as its Chairman, was a major event that ushered in systematic planning in our country. It was set up by an executive order of the Government of India as an advisory body to make recommendations to the Union Cabinet. The relevant Government Resolution, which sets out the objectives, functions and role of Planning Commisson is reproduced in Annexure XI. 2. The responsibility for taking decisions and implementing the same rests with the Union and the State governments. The Resolution, after tracing the important links of the planning system in evolution, emphasised the need felt for 'adequate coordination' between the development schemes initiated by the Union and the States and for comprehensive planning based on a careful appraisal of resources and essential conditions of progress. Para 6 of the Resolution further stated that in framing its recommendations, the Planning Commission will act in close understanding and consultation with the Ministries of the Central Government and the Governments of the States. It has also referred to the Fundamental Rights and Diective Principles of State Policy as providing the rationale and direction for the tasks to be organized by the Planning Commission.

11.3.03 The broad functions of the Planning Commission, as enumerated in paragraph 4 of the Resolution include ; assessment of material, capital and human resources; formulation of a plan for their most effective and balanced utilisation; determination of priorities and allocation of resources for completing

each stage of the Plan; determination of machinery for securing successful implementation of the Plan; appraisal of progress and recommending adjustments in policies and measures, during the execution of the Plan, and making of interim and ancillary recommendations on current development policies, measures, etc.

11.3.04 While setting up the Planning Commission, it was emphasised that, keeping in view the nature of the responsibilities entrusted to it, it should be kept free from the burden of day-to-day administration but should remain 'in constant touch' with the Government at the highest policy level. "The Prime Minister of India has been from the beginning the Chairman of the Planning Commission and has participated in and given direction to the thinking on all major issues of policy. The Commission has a Deputy Chairman and a few full time Members. At times, the Deputy Chairman is also Minister for Planning. or is assisted by a Minister of State for Planning. From an early stage, the Minister of Finance has been a Member of the Commission".[1] At the time of formulation of the Seventh Five Year Plan, Union Ministers of Defence and Agriculture, Cooperation and Rural Development were also Members of the Planning Commission. A large secretariat has been established over the years to assist the Planning Commission in its work.

11.3.05 Besides some 'housekeeping' and general administrative wings, the organisation of Planning Commission's secretariat may be divided into 'General' and 'Sectoral or Subject-matter' Divisions. In addition, there have been some associated Committees like Indo-Japan Committee, Research Programme Committee, Western Ghats Secretariat, etc. A Programme Evaluation Organisation is also attached to the Planning Commission Secretariat.

Advisers (State Plan)

11.3.06 Planning Commission has Advisers (State Plan) who perform a very important role vis-a-vis the States. On the one hand, they assist the Planning Commission in finalising the State Plans and, on the other, in monitoring the progress of various development programmes in the States. They also interact with the State Governments and assist them in resolving their problems in implementation of the Plan. They are thus expected to function as an active link between the Planning Commission and the State Governments.

National Development Council

11.3.07 Setting up of the National Development Council (NDC) as early as in August, 1952, on suggestion of Planning Commission itself, may be regarded as the most significant step for promoting understanding and consultation between the Union and the State Governments on planning and common economic policies. It was assigned the three important functions of reviewing the working of the National Plan from time to time; to consider important questions of social and economic policy affecting national development, and to recommend measures for the achievement of the aims and targets of the National Plan. Initially, the Council comprised the Prime Minister of India as its Chairman, the Chief Ministers of all States and the Members of the Planning Commission. Some Union Ministers and experts were also invited to the meetings. It was required to make recommendations to the Union and the State Governments.

11.3.08 In October, 1967, on consideration of the recommendations of the Administrative Reforms Commission, the membership of the Council was enlarged. The Resolution revising the composition and functions of the NDC may be seen at Annexure XI.3. Since then the NDC includes, in addition, all Ministers of the Union Cabinet, Chief Ministers of Union Territories, Lt. Governor and Chief Executive Councillor of Delhi and Administrators of other Union Territories. Other Union Ministers and State Ministers may also be invited to the meetings of the Council. Secretary of the Planning Commission acts as Secretary to the Council. The Resolution also laid down that the Council may appoint, from time to time sub-committees or panels. An important function added to the Council was "to prescribe guidelines for the formulation of the National Plan, including the assessment of resources for the Plan". The Resolution requires that the Council would meet "as often as may be necessary and at least twice in each year".

11.3.09 Although the NDC is not a statutory body, its very composition gives it a unique character and its recommendations are treated with deference by the Union and the State Governments. It imparts a national character to the entire process of Planning.

Other Union Departments/Agencies

11.3.10 Union Ministries and Departments, have their own Planning Cells/Units for preparing detailed plans. The Plan Finance Division of the Union Finance Ministry is closely associated with the Planning process. Some of the other Ministries dealing with economic and social development sectors participate in the process of planning of State Plan Schemes. The recently created Ministry of Programme Implementation is intended to perform a significant role in monitoring. Besides the government departments, the Reserve Bank of India, L.I.C., and a number of financial, research and assistance channelising agencies under the overall control of Government of India, participate in regard to specific aspects of Planning. The Central Statistical Organisation and the National Sample Survey Organisation, as part of Ministry of Planning, among others, provide statistical input to the national Plan.

Planning Machinery at State Level

11.3.11 Strengthening of planning capabilities at the State level has been considered desirable for quite some time now. As early as in 1971, following recommendations of the Administrative Reforms Commission, the Planning Commission advised the State Governments to set up Planning Boards at the State level and strengthen their planning machinery. District level planning units were also suggested. In order

1. Government of India, Planning Commission—"*The Planning Process*" (1976), p. 61.

to bring about a professional approach to the work of planning in State Governments they were subsequently advised to set up the following units:

(i) Perspective Planning Unit;

(ii) Monitoring, Plan Formulation and Evaluation Unit;

(iii) Project Formulation Unit;

(iv) Regional/District Planning Unit ; and

(v) Plan Coordination Unit.

11.3.12 Under a Centrally Sponsored Scheme since 1972-73, two-thirds of the expenditure incurred by the States on setting up of the above-mentioned units is being met by the Union Government. Since 1982-83, half of the expenditure on strengthening planning machinery in the districts is also being shared by the Union Government. Planning capabilities of the States have by and large improved over the years.

11.3.13 State Planning Boards/Planning Commissions have been set up in all the States, except Sikkim. Some of the States have also set up District Planning Units. In the States, besides the Planning Departments and Boards, other development departments and some other agencies also participate in the work of planning. These include Directorates of Economics and Statistics, research institutions and Universities, Finance Corporations and voluntary agencies.

The Planning Process

11.3.14 The planning process consists of a series of formal and informal consultations both at the Union and the State levels and between them.

11.3.15 The process of formulation of a Five Year plan is spread over a period of two to three years and involves a good deal of horizontal and vertical interaction. This process, may be divided into the following stages :

(i) Background studies, analysis of constraints on development and evolution of perspective.

(ii) Preparation of Approach Paper, Setting up of Working Groups/Study Groups both at the Centre and in the States for sectoral and other studies.

(iii) Issuing of guidelines by Planning Commission based on the approved Approach Paper, both to the Union Ministries/Departments and to the State Governments for preparation of detailed Plans including assessment of financial resources.

(iv) Detailed estimation of financial resources.

(v) Preparation of detailed sectoral plans, and formulation of the Draft Five Year Plan.

(vi) Consideration of the Draft Five Year Plan at various forums, academic institutions and expert groups. Planning Commission also organises special meetings with leaders of political parties, academicians, representatives of industry and agriculture, trade union leaders and the like.

(vii) Approval of the Draft Plan by the NDC.

Annual Plan

11.3.16 The process of formulation of the Annual Plan begins in the Planning Commission sometimes in the month of August or September when, after a preliminary review of various developments and likely availability of resources guidelines are issued to the States. The attention of the State Governments is drawn to the special problems and developments and formats for submitting schemes, resources forecasts, etc. are suggested. Estimates of financial resources and scrutiny of the schemes proposed by the States are undertaken in the months of October to December in consultation with the officers of the State Governments. Representatives of Ministries/Departments of the Government of India as well as representatives of Reserve Bank of India participate in discussions. As in the case of the formulation of the Five Year Plan, the Advisers (State Plans) consolidate the recommendations of the Working Groups and prepare a report. This report is discussed in a meeting between the Deputy Chairman of Planning Commission with the Chief Minister. Since the plan frame for five years is available, the process of formulation of the Annual Plan is simpler than that of the Five Year Plan and lays emphasis on reviewing progress of implementation and inter-sectoral balances.

Financing of the Plan

11.3.17 Plan resources are assessed separately for the public and private sector plans based on estimates of quantum and structure of savings and consumption in the community. Making a broad judgement about the extent of resource mobilisation for the plan is an important aspect of national planning. Only a broad estimate of investment is made for the private sector. However, for the public sector a detailed exercise is undertaken. The resource estimates for the national Plan are categorised between external and internal—the latter including budgetary surpluses at current rates of taxation, estimates of additional resource mobilisation, market borrowings, deficit financing, etc. For the States' Plans, central Plan assistance and their 'own resources' are correspondingly estimated.

Central Assistance and earmarking of outlays

11.3.18 Central assistance for State Plans, to begin with, was in the form of assistance to specific projects and programmes. Since the Fourth Five Year Plan, in place of different schematic patterns, Central assistance is given in the form of block loans (70 per cent) and block grants (30 per cent). Liberal patterns with 90 per cent grant and 10 per cent loan are being applied to Central assistance to the special category States namely, Arunachal Pradesh, Himachal Pradesh Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura and to the special Central Assistance for the sub-plans for Hill and Tribal Areas and Component Plan for Scheduled Castes, etc.

11.3.19 Central assistance constitutes on an average about 37 per cent of the States' plan finance in the Seventh Plan. This proportion is significantly higher for the special category and other backward States with smaller financial base. The total quantum

of Central assistance is determined by the Planning Commission in consultation with the Ministry of Finance, keeping in view, the overall availability of resources. Out of the total amount available, the provisions for the externally aided projects, special Central assistance for sub-plans and for the special category States are first set aside and the balance is distributed on the basis of a formula (popularly called the Modified G dgil Formula) which become operative since 1980 after approval by the NDC. As noted in the previous Chapter, the Modified Gadgil Formula consists of the following criteria and weights for allocation of the overall amount :

(i) Population (60 per cent).

(ii) Per capita State Domestic Product below the national average (20 per cent).

(iii) Per capita tax efforts of the State (10 per cent).

(iv) Special problems (10 per cent).

11.3.20 The Statewise allocations of special Central assistance for Hill and Tribal areas sub-plans also follow predetermined objective criteria approved by NDC.

11.3.21 Central assistance is not merely a source of plan finance to the States, it has also been used as an instrument to sustain plan priorities. This became necessary after the introduction of block-assistance. In order to ensure that the agreed outlays are spent in aggregate and on programmes and sectors which are accorded priority, since 1969 such outlays are being "earmarked"on annual basis. Any shortfall in plan expenditure or on the individually specified priority sectors/heads/schemes in relation to the approved outlays would entail a proportionate cut in central assistance. The earmarked sectors/programmes at present include : Agriculture and Allied Services, Rural Development, Minor Irrigation, command Area Development specified Major and Medium Irrigation Project/Schemes, specified Power Projects/Schemes and all the individual schemes of the National Programme of Minimum Needs. On an average, about two-third of the State plan outlay is tied by the system of earmarking. However, the system is not entirely rigid as revision of outlays on earmarked sectors, with the approval of Planning Commission, is permitted for the on going annual Plan.

Sub-Plans and special plans

11.3.22 Since the middle of 1970s, some special plans, viz., Sub-plans for Hill and Tribal areas, North Eastern Council (NEC) and Western Ghats Programme, came into being in recognition of the advantages of areas planning approach, for the identified backward regions. Formulation of the Sub-plans takes into consideration the totality of the resources, comprising devolutions from State Plans, Special Central Assistance, Institutional finance and Central Sector investment in the Sub-Plan area and includes programmes specifically benefiting the area and the target-groups. These Plans have resulted in increased flow of resources to the States. Similarly, Special Component Plans with sets of schemes for the Scheduled Castes are prepared and integrated in the State Plans. Special Working Groups are constituted to consider and scrutinise these special Plans.

Centrally sponsored schemes

11.3.23 The Centrally Sponsored Schemes are initiated at the instance of the Union Government and implemented by the States for which Central assistance is provided by the former. Simultaneously. guidelines regarding the contents coverage expenditure pattern staffing etc. are issued.

4. *PLANNING—A DYNAMIC PROCESS*

11.4.01 We have so far considered the constitutional provisions and the institutional arrangements which have been evolved over the past thirty-seven years of planned development. Before considering the various issues raised it would be advantageous to review briefly the achievements and short comings of planned development during this period and consider the issues in the light of the same.

11.4.02 At the commencement of planned development, India presented a classical example of a poor country unable to embark on rapid socio-economic development due to serious shortage of capital. The rate of savings was low, resulting in low capital formation which in turn, prevented adequate investment so essential for growth. Since then the rate of savings has gone up from 5.5. per cent in 1950-51 to about 22 per cent in 1985-86 and is, indeed, one of the highest among the developing countries now. It is also significant that the external assistance has been relatively small and ranged from 7.7. to 12.9 per cent since the Fourth Five year Plan.

11.4.03 Planning has brought about several achievements. The breakthrough on the agricultural front can be counted as one of the major successes. We have been able to overcome the dependence on imported food-grains to meet the consumption needs and reached a point of substantial surpluses. This has enabled the country to take in its stride adverse seasonal conditions to which a fairly large part of the country is prone. Significant progress has been made on the industrial front over a very wide range both in terms of production and adoption of new technology.

11.4.04 It is also necessary to look at the failures or shortcomings to get a balanced picture. The long term growth rate of the economy has been around 3.5 per cent, but it has reached higher levels at some points of time. It is somewhat paradoxical that inspite of a high rate of saving, the economy has not been able to achieve correspondingly high rates of growth consistently. This has been attributed by some to the steady increase in capital-output ratio and inefficient management which merely restate the problem in a different manner. Another area of concern is the fact that the fruits of development have not percolated significantly to the poorest sections of the community. This has brought into sharp focus the need for a direct attack on poverty. Even though considerable progress has been made both in agriculture and in industry, it has often been confined to a few areas and has not been sufficiently dispersed. Regional disparities continue to be glaring. Yet another area of concern is the high rate of growth of population. Persistent

high level of unemployment particularly among the educated youth and under employment, have given rise to social tensions and problems.

11.4.05 Tackling the above problems requires comprehensive strategies and changes in economic policies involving participation of both the Union and the State Governments. Measures of population control, strategies for gainful employment and increasing the incomes of the poor and raising their share in total consumption have constituted challenging tasks. Poverty alleviation and special area development programmes have been taken up to mitigate both class and regional disparities. In all these programmes, the efforts of the Union and the State Governments have been jointly commissioned. A vast network of public distribution system has been built up both to contain prices of essential commodities and support the consumption by the poor. While the States have provided the administrative support to this system, the Union Government's responsibility in subsidising and coordinating the activities of the various Union agencies and departments has been heavy and critical.

11.4.06 The performance of public sector enterprises of both the Union and the State Governments has also been an area of serious concern in terms of production and returns on the massive capital employed and in generating surpluses for future investment. Union Government's pricing policies of basic inputs affect cost-structure of States' enterprises also. This is an issue often raised. It is also now being felt that the States may find it difficult in future to finance large irrigation and power projects using the latest technology.

11.4.07 There is growing monetisation in the economy. The transformation from subsistence agriculture to market oriented one and from that to a growing mobility in trade has postulated both problems and opportunities for financial management. The nationalisation of the bigger banks and the growth of deposits in them and the non-nationalised banks on a massive scale, has forced the banking sector to seek new lines of remunerative employment of funds and in providing development banking. The banking habit is spreading and a surge in domestic savings is visible in the monetary sector. The capital now available for both private and public sectors has to be supported by suitable infrastructure and institution-building and development. The proper proportioning of the demands of the private and public programmes and priorities in the use of the resources which, though quite large, are still insufficient in relation to the needs, has to be constantly appraised and the Plans adjusted. The States want to have a say in all this as it vitally affects their development plans. There is conflicting demand for capital resources from the public and the private sectors. This necessitates a controlling role for the Union which alone can assess the situation from a national angle.

11.4.08 The mix of fiscal, monetary and other economic policies has a crucial supporting role in realising the plan objectives. This involves both macro-aspects of promoting savings, investment and growth, price stability and resource mobilisation as also structural aspects concerning equity and social justice. The volume and sophistication in fiscal and monetary management has increased perceptibly; a variety of regulatory and incentive measures have also come in vogue.

11.4.09 The strategies adopted in the coming years will have to reckon with the need to raise production and productivity in every sector. Substantial investments have been made by both the Union and the State Governments in a large number of projects, e.g., irrigation, power, transport and industries. Unless these investments yield adequate returns and generate sufficient surpluses, the economy cannot go forward. Higher production and greater returns from the assets already created would have to be given the highest priority. Higher productivity will have to be brought about with the help of improvement in technology.

11.4.10 We have mentioned all these aspects to underline the basic fact that planning has to be a co-operative endeavour. There has to be a reaffirmation of faith in planned development which automatically implies a reiteration of the will to adhere to the discipline involved. The strategy of development involves identification and mobilisation of resources, drawing up of priorities for their allocation and devising the necessary instrumentalities in a policy framework to ensure that the resources get deployed in the priority sector efficiently and economically. These three elements can be achieved only through a commitment at the national level to the objectives and policies of the national plan.

11.4.11 Planned development over the past decades has brought about a familiarity with procedures of planning on the part of government departments, institutions and functional groups. Such maturing influence also constitutes a precondition for a broad-based, meaningful public participation. It is essential to guard against ritualising the functions and throwing out the substance. It is equally necessary that the institutional arrangements are reviewed and reformed periodically to be adequate for the tasks ahead

5. *SCRUTINY OF STATE PLANS*

11.5.01 In para 11.1.03, we have noticed the broad contours of the criticism of the present planning system. In this section we consider the specific complaints and suggestions in regard to the working of Union-State relations in the sphere of planning.

11.5.02 A general complaint of the State Governments is that they are required to adhere to unduly rigid and detailed Union directives mainly because of their dependence on the Union Government for plan funds. The perceptions on these matters, however, vary. The views of the State Governments may be summed up as under :

(i) Most of the States have maintained that they are not given due opportunity to participate in national planning. The present process of consultation involving the States, commences after the broad features of the Five Year Plan are already cast.

(ii) While most of the State Governments agree that the Planning Commission should lay down broad national priorities and targets, they

have urged that the States should have greater freedom and flexibility in formulating the details of the schemes concerning their spheres. They complain, that their initiative in this regard is restricted by (a) the procedures of detailed scrutiny and finalisation of State Plans; (b) the mechanism of Central assistance and earmarking of outlays, and (c) the control exercised by the Union Ministries through the Centrally Sponsored Schemes.

(iii) Some states have categorically stated that while national priorities may be incorporated in the State Plans, they should emerge as consensus among the Union and the States and for this purpose the status and structure of the NDC and the Planning Commission should be suitably changed. One State Government has, however, expresed an apprehension that incorporation of national priorities in State Plans will give greater scope to the Planning Commission to interfere with the States' autonomy.

11.5.03 We have had the benefit of the views of several experts and knowledgeable persons also. They are unanimously of the view that the national plan should be drawn up by the Planning Commission and approved by the National Development Council. Most of them are also of the view that the States should have greater initiative and freedom in formulating schemes in thier own spheres within the broad parameters of the national plan. Further, the need for greater involvement of the States in the process of plan formulation has been emphasised. It has also been suggested that the National Development Council should be made more effective through appropriate changes in its status and procedures. Suggestions have also been made separating the spheres of planning of the Union and the States, minimising the component of the Centrally Sponsored Schemes and doing away with the component for 'Social Problems' in the Modified Gadgil Formula (10 per cent) which is considered to be a discretionary element, in the allocation of Central assistance among the States.

11.5.04 In the late Sixties, the Administrative Reforms Commission had considered the administrative aspects of Union-State relations in the sphere of planning and development. It had aslo noted both excessive involvement of the Centre in the plans of the States and inadequate consultation between the two levels in planning. Accordingly, the dministrative Reforms Commission had recommended, among other things[2] :

(i) Strengthening of State Planning Boards :

(ii) Limited scrutiny of State plan schemes by the Planning Commission;

(iii) allowing greater freedom to the States to formulate details of thier plans within the broad guidelines given by the Planning Commission and approved by the National Development Council ;

(iv) restructuring of the Working Groups and representation of States' on them ;

(v) a more effective role for the National Development Council as a forum for arriving at consensus and in guiding economic policies, and

(vi) putting of limits on the Centrally Sponsored Schemes.

States Participation in National Planning

11.5.05 We begin by considering the States' complaints of inadequate opportunity to participate in national planning.

11.5.06 The process of plan formulation begins with the appointment of various working Groups and preparation of an Approach paper enunciating the objectives and strategies. Studies by Working Groups/Task Forces on sectoral problems and preparation of the Approach Document is a crucial stage of national planning in which the rationale and features of plan policy—objectives, priorities and strategies—get crystallised. In 1968, in its report on 'Machinery for Planning', the Administrative reforms Commission had obseved : "The National Plan will assuredly be executed with greater enthusiasm and energy if those who are charged with the task of implementing them also participate in thier formulation.....Also there has been very little representation of non-Official experts and experts from the States. It is necessary that Groups should be broad based. There is need to bring in experts from the States as well as from outside the Government." (para 41, Pp. 13-14). The Administrative Reforms Commission had recommended, among other things, that the Working Groups dealing with State List subjects should also have some specialists from tateS Planning Boards and State Governments.

11.5.07 At present the allocation of studies and constitution of Central Working Groups is done by Planning Commission. We have been informed by the Planning Commission that in the Working Groups set up in connection with the Seventh Five-Year Plan, the members were drawn from the Planning Commission, Union Ministries/Departments, other institutions, State Governments and experts in the field. An analysis of the Composition of these Working Groups (126 in all) indicates that out of about 40 dealing with subjects in the State List, officers from the States were represented on 38 Working Groups. On these, as well as some others, non-official experts and office-bearers of concerned corporations/institutions located in the States were also represented. It is, however, found that on a number of Working Groups where States' participation could have been very useful, thier representation was lacking, *e.g.*, Working Groups/Study Groups on 'The Study of Financial Resources', 'Major and Medium Irrigation Programmes', 'Command Area Development Programme', 'Flood Control', 'Power', 'Consumer Durables and Light Engineering Industries', 'Environment', 'Monitoring and Evaluation', 'Employment Strategy', 'Identification of Technical Manpower Shortage', 'Civil Supplies', 'Industries' and the Study Group on 'Concepts and Estimation of Powerty Line'.

(2) Government of India, Administrative Reforms Commission—*Report on Machinery for Planning*, 1968.

11.5.08 We would like to clarify that in our opinion the desirability of States' representation on the Working Groups should not be considered from the standpoint of any balancing of Union *vis-a-vis* States' interests, but mainly to involve suitable experts who are dealing with the development programmes in the field and possess special knowledge of the Problems and latest developments.

11.5.09 A State Government has drawn our attention to the fact that even on some Central Plan sectors like coal, steel, cement, petro-chemicals, railways, major ports, airways, tele-communications, etc., the States should be consulted as these sectors are vital to their progress. This is a matter which should be kept in view while setting up the Working Groups.

11.5.10 We recommend that on the Working Groups set up to study sectoral programmes in the context of formulation of Five Year Plan concerning State subjects, the Deputy Chairman, Planning Commission appoints member of a State Planning Board as Chairman, and the Secretary of the concerned Union Ministry as Vice-Chairman and an officer of the Planning Commission as Member-Secretary.

11.5.11 Planning Commission has informed us that it had suggested to the State Governments to set up their own Working Groups and also take steps to formulate thier own approaches to the Five Year Plan. The Administrative Reforms Commission had noted in 1968 that the desired communication between the Central and the State Working Groups was lacking. The Planning Commission recenly informed us on this subject as follows :

"Methodology for taking preliminary steps by the States is not uniform or Standardised. It differs from State to State depending upon their planning capabilities and other factors. Some States had set up Working Groups as was done by the Planning Commission, others got this work done by their Deprartment/Planning Board and so on."

11.5.12 We recommend that coordinated action between the Central and State Working Groups should be ensured. For this, the Central Working Groups themselves should take the initiative in establishing contact with thier counterparts in the States at an early stage.

Approach Paper

11.5.13 In the context of States' involvement in the preliminary stage of the preparation of the Five Year Plan, the Planning Commission has attached significance to the fact that the views of the States are invited in preparing the Approach Paper and that this document and the reports of the Central Working Groups are circulated to all the States. Further, the Approach Paper is discussed and approved in the meeting of the National Development Council, which has representation of all the States.

11.5.14 So far as the circulation of the Working Group reports to the States is concerned, the desirability of this action is obvious, but in our view, not enough. However, in the consideration and approval of the Approach Paper by the States and the NDC, the following deficiencies are noticed :

(i) The States are not sufficiently associated with the evolution of the Approach Paper as the technical and background studies are undertaken by the Planning Commission as an 'in-house' exercise.

(ii) A set of alternatives from among which the NDC could make a choice is not placed before it.

(iii) The time allowed to the State Governments to participate in the process (*e.g.*, 12 days to consider Seventh Plan Approach Paper) is not sufficient.

(iv) The conferencing procedures generally followed by the NDC are not adequate for meaningful discussions, thus precluding any significant modifications in the proposals.

11.5.15 In view of the above, it would appear that the role of the States at the crucial stage of formulation of the approach to the Five Year Plan, is more in the nature of being informed, or, at best, a formal association rather than of active participation. Translation of the Approach into concrete targets and other quantitative magnitudes in the form of the Draft Plan usually follows the para-meters evolved by the Working Groups.

11.5.16 In our view, while the Planning Commission ha a crucial role in initiating the approach to the national plan, a more active involvement of the States in evolving Plan objectives, priorities and strategy will go a long way in making planning result-oriented. It will substitute commitment for mere consent to the national plan.

11.5.17 Indeed, the starting point of the whole process of plan formulation is the mandate given through the NDC to the Planning Commission, setting out the contours and objectives within which the Plan would be formulated.

11.5.18 It has been brought to our notice that the States' initiative in this regard is also somewhat lacking. We believe that this is partly due to inadequate development of planning capabillties in some States. Partly, this may also be attributed to the fact that the present practices do not permit or encourag the eaningful participation of the States in evolvir basic basic features of the national plan.

11.5.19 The selection of studies should invariably be done under the guidance of the Standing Committee of the National Economic and Development Council, later proposed by us.

11.5.20 It would be necessary for a thorough consideration of the Approach Paper that it is made available to the States at least two months prior to its discussion in the NDC alongwith the relevant data and options considered by the Planning Commission in preparing it. We have subsequently drawn attention to the need for strengthening the planning machinery and formation of effective Planning

Boards as the apex planning body at the State level with the Chief Minister as Chairman and a full time Deputy Chairman. The Deputy Chairman and Members should be experts in various disciplines relevant to the State Plan.

11.5.21 In our view, a meeting of the Deputy Chairman/Secretaries of all State Planning Boards should be convened by the Planning Commission at least two weeks before the NDC meeting to consider the Approach Paper or Draft Five Year Plan. This should be of the nature of a "preparatory meeting" at official level for helping the meeting at the Minister level, especially for identifying the main options and preparing brief agenda notes on points requiring decision by the NDC.

11.5.22 We are of the views that close and fullest involvement of the States at all stages of Plan formulation is very essential for the successful implementation of the same. We recommend :

(a) NEDC[3] should be involved in the formulation of the Plans right from the beginning. Selection of studies and setting up of various Working Groups should be done under the guidance of the Standing Committee of the NEDC.

(b) The draft Approach Paper should be circulated to the States at least two months in advance of the meeting of the NEDC to consider the same. It should contain all relevant data, alternate strategies, etc.

(c) A preparatory meeting should be held by the Planning Commission, with all Deputy Chairmen and/or Secretaries of the State Development Boards two weeks prior to the NEDC to consider the Approach Paper/Draft Five Year Plan for identifying the main issues and firming up the agenda for the meeting of the NEDC.

(d) Deliberations in the NEDC should be so structured as to facilitate meaningful discussion on each item of the agenda. Sufficient time should be available for the same, so that, after the general statement by the Prime Minister and Chief Ministers, there is enough time for discussing individual items of the agenda. It will help provide more time for discussion, if prepared general statements of Chief Ministers are circulated beforehand and the Chief Ministers read out only a brief summary.

(e) Minutes of the discussion in the NEDC should be recorded itemwise.

Formulation, Scrutiny and Finalisation of State Plans—Guidelines

11.5.23 We now consider the allegation about Planning Commission's dominance in the formulation, scrutiny and finalisation of the State Plans. In Section 3 of this Chapter we have stated in detail the procedure followed in this regard. The first stage here is the issue of 'guidelines' by the Planning Commission to the States. These guidelines draw attention to the Plan objectives and the needed thrust in different sectors and lay down formats for preparing information on physical and financial proposals for consideration in the Planning Commission. As such these guidelines do not carry any element of compulsion. They also do not suggest any proporation of outlay to be allocated to major sectors and leave the State Governments free to formulate schemes as per their needs. The common format facilitates subsequent processing and compilation of information. In the context of the Seventh Five Year Plan, more than two months time was given to the States for preparaing and sending thier proposals. This cannot be said to be inadequate, as the broad schedule of planning is well known to them and sufficient ground-work is already done by their departments. In view of the above and as no complaints with respect to the 'guidelines' have come to our notice, we do not consider it necessary to suggest any change in this regard.

Assessment of Resources

11.5.24 States' estimates of financial resources and proposals in regard to sectoral programmes are considered separately. Forecasts of financial resources for the plan period are called from the State Governments on standardised formats including annual projection of receipts and expenditure. These are examined in a Working Group consisting of officers from the Planning Commission, Ministry of Finance and officers of the State Governement concerned, representatives of the Reserve Bank of India and of some other financial institutions. The scrutiny of the forecasts involves reference to the allocations and norms adopted by the Finance Commission on non-plan side to estimate availability of budgetary surpluses for the Plan. Estimate is made thereafter of additional resources mobilisation considered feasible. Market borrowings and negotiated loans are added to these as also the share in Central plan assistance to arrive at an estimate of the Plan size.

11.5.25 We would like to emphasise here that the assessment of resources of the States undertaken by the Working Group perhaps constitutes the only opportunity in an annual setting when a review of States' finances in some detail is undertaken subsequent to the report of the Finance Commission. It is, therefore, of considerable significance. The discussions in the Financial resources Working Groups should be taken as an opportunity to emphasise the need for adhering to the regimen given by the Finance Commission and for prudence in fiscal management.

Scrutiny of Schemes

11.5.26 After the estimation of the States' Plan size, a detailed scrutiny of the States' sectoral plan proposals is undertaken. For this purpose, a number of Working Groups (about twenty) are set up in the Planning Commission. It has been alleged by a number of State Governments that this stage of scrutiny of the State Plan schemes often strays into too much detail. There is a strong opinion

3 National Economic and Development Council, viz., reconstituted NDC proposed by us subsequently. (See paragraph 11.7.43).

that once the broad objectives, priorities and strategy are approved, the States should be allowed freedom to formulate schemes suiting thier circumstances.

11.5.27 Indeed, during the scrutiny, details of individual schemes proposed by the State Governments are gone into. In this respect, the time-element is also important. The Administrative Reforms Commission had noted that the Working Groups often received the proposals quite late and do not get sufficient time to study and analyse them properly[4]. On the other hand, the Planning Commission has informed us that generally the plan proposals are now received about a week before the scheduled date of discussion and the members of the Working Group get sufficient time to analyse and scrutinise them.

11.5.28 In practice, the details of the schemes are worked out by the States themselves. The examination in the Working Groups[5] includes both ascertaining progress of the on-going programmes, which constitute a large proportion of the total plan, especially in the context of the Annual Plans, and enquiring about the physical progress and financial requirements. In the Working Groups, the schemes formulated by the States are examined in consultation with them with a view to ensuring that they correspond to the accepted national priorities and can be accommodated within the resources available for the Plan.

11.5.29 The States' plan proposals generally aggregate to much more than the estimates of financial resources available for the plan. The Working Groups inspite of their concern for adequate outlay for their respective sectors, find it necessary to recommend modifications in the outlays keeping in view the sectoral priorities and, in particular, financial resources likely to be available. The Advisers (State Plans) have to perform the unenviable task of suggesting further cuts in the outlays, generally with a view to bringing them closer to the resources estimated for the Plan.

11.5.30 It is only after the meeting of the State Chief Minister with Deputy Chairman, Planning Commission that some of the recommended cuts are restored. These often result from assurances given by the Chief Minister for 'additional resource mobilisation' and/or for better performance of their public enterprises, etc., and/or scope for additional market borrowings. It may be pointed out that at the time of formulation of the Sixth and Seventh Five Year Plans very few States were able to communicate the forecasts of additional resource mobilisation. Similarly, the exact quantum of Central assistance and market borrowings also became known quite late. These resources, however, were taken into account when the Five Year Plan was finalised in the meetings between Deputy Chairman, Planning Commission and State Chief Ministers. The resources position as made known subsequently corresponds to the finally agreed plan outlays (Annexure XI.4). Annexure XI.4 A, B and C show the aggregate outlays proposed by the State Governments, recommended by the Working Groups and Adviser (State Plans) and as finally agreed between the State Chief Ministers and the Deputy Chairman, Planning Commission. The information relates to the Annual Plan (1984-85), Seventh Five Year Plan (1985-90) and Annual Plan (1985-86), respectively. The following important points emerge :

(i) The outlays proposed by the State Governments are generally much higher than the finally agreed amounts, even though the latter have already stretched the resources to the full.

(ii) The Working Groups generally reduce the outlays proposed by the States, but, at times, increase the outlays also under departmental pressure.

(iii) Advisers (State Plans) generally further prune the recommendations of the Working Groups. These are brought closer to the quantum of plan resources originally assessed by the Resources Working Group.

(iv) The finally agreed plan-sizes in most cases are higher—in several cases considerably higher—than the outlays recommended by Advisers (SP). This is because sizeable resources are 'found' at the time of discussion between the Deputy Chairman, Planning Commission and the State Chief Ministers. Obviously, no scrutiny of these proposals for additional resources is possible at this late stage before accepting them.

Weaknesses in Examination of State Plans

11.5.31 We note certain deficiencies in the present system in the scrutiny of State Plans and would like to suggest the following improvements. Firstly, it should not be necessary for the Planning Commission to scrutinise in detail all the individual schemes. It should concentrate on important ones involving large outlays, foreign exchange component, inter-State aspects and those relating to the core-sector Plan.

11.5.32 Secondly, the present practice of States submitting plan proposals whose financial implications are far higher than the estimated resources, must be firmly discouraged. This takes place partly because the States boost up plan outlays taking the previous years anticipated plan expenditure as the base without taking a realistic view of their own resources and partly because they wish to make out a case for a higher order of financial assistance from the Union. Such an approach is against the very rationale of planning. Therefore, after the estimation of financial resources, proposals of sectoral outlays making a significant departure from them should not be entertained by Planning Commission. This in itself will act as a restraining influence on inclusion of low priority schemes in the Plan.

11.5.33 Thirdly, as firm resource estimates are not arrived at in the Resources Working Group, additional allocations are made in the meeting with the Chief Minister, frequently without the benefit of detailed scrutiny by the Working Group or Advisers (State plans). This often results in a situation where for

4. Government of India, Administrative Reforms Commission—*Report on Machinery for Planning*, p. 21.

5. These Working Groups are different from the Study Groups/Working Groups mentioned in paragraphs 11.5.06 and 11.5.07.

want of resources, high priority projects and programmes particularly those nearing completion, are inadequately funded and the newly found resources are sought to be applied to new starts, which is a negation of planning.

11.5.34 Emergence of a more or less final plan-size at the stage of the Resources Working Group would require prior decision on the quantum of Central assistance and market borrowings which should not, in our opinion, pose a serious problem. Estimation of a firm plan-size in the beginning will have several advantages. Firstly, a more rational formulation of the Plans by the States, with due attention to inter-sectoral priorities and balancing of claims of on-going and new programmes, will take place. Secondly, the concern of the sectoral Working Groups will shift from protecting outlays of their respective sectors in the face of anticipated across-the-board pruning because of lower availability of overall resources, to the qualitative aspects of schemes (viz., feasibility, phasing, inter-sectoral linakges, impact on area development, employment implications, impact on poverty, implications for medium and long-term development strategy, and the like). These aspects at present, do not get sufficient attention. Finally, knowledge of a more or less final plan size from the beginning and corresponding magnitude of outlay proposed, will minimise seemingly *ad hoc* cuts or restoration of cuts in outlays at stages subsequent to the examination by the sectoral Working Groups. Besides causing irritation to the State Governments, often giving an impression of overbearance on the part of Planning Commission, such cuts irreparably disturb the inter-sectoral matrix of development on which the very success of the Plan is crucially dependent.

11.5.35 Finally, the time given to the members of the Working Groups, viz., generally a week, as stated by Planning Commission, is too inadequate to allow them to pay due attention to the type of qualitative aspects mentioned in the previous paragraph. A more realistic time-schedule needs to be prescribed and adhered to. The Working Groups both on resources and sectoral programmes, must receive the forecasts/proposals at least three weeks in advance to organise adequate internal examination and consultations prior to the meeting with the State officers. The outcome of the deliberations in the Resources Working Group should be known to the States at least a month in advance so that they may bring corresponding plan proposals to Planning Commission.

Recommendations for improving the Procedures of State Plans

11.5.36 Considering all the facts, we are of the view that the alleged overbearing approach by Planning Commission, in the process of formulation, scrutiny and finanlisation of State Plans, is more apparent than real.

11.5.37 We recommend as under :

(i) In the Financial Resources Working Group, the estimation of plan resources should be realistic. Estimates of additional resources to be mobilised by States, as approved by the Chief Minister, should be available to the Financial Resources Working Group.

(ii) Planning Commission should not try to scrutinise in detail all the individual sectoral schemes in the States' plans, but concentrate on the key ones involving large outlays, foreign exchange component, inter-sectoral aspects. Most of these belong to the core-sector plan and have their outlays earmarked. Financial provision for these should be ensured.

(iii) The practice of States submitting plan proposals aggregating to much higher plan-size than that warranted by resources estimated by the Resources Working Group, should be firmly discouraged by the Planning Commission. Every effort should be made to consider all resources likely to be available at the stage of discussions in the Resources Working Group itself.

(iv) The meeting between the Deputy Chairman, Planning Commission and State Chief Ministers should concentrate on evaluating the progress made, identification of bottle-necks, review of deviations from plan priorities and the implementation of the programmes for the ensuing year. Substantial changes in the size and content of the plan and allocation of outlays should not generally take place in this meeting.

(v) If the plan-size of a State is agreed to be substantially enhanced at the meeting between Deputy Chairman, Planning Commission and the State Chief Minister on the promise of 'new' resources, this should be regarded as 'provisional' and the feasibility of the same and the priority of allocation of the additional amount should be subsequently gone into by the Adviser (State Plans) in consultation with the subject-Divisions in the Planning Commission.

Technical approval of irrigation and power projects

11.5.38 The irrigation to the States in respect of technical approval of Irrigation and Power Projects is caused mainly on account of the delay involved in the supply of information to the central organisations and protracted negotiations. A related problem has been that because of substantial cost-escalation and the low financial limit obtaining for a long time, increasingly large number of projects, some with much smaller physical dimensions, become liable to prior technical scrutiny. Several State Governments have drawn our attention to this problem and have suggested that in view of the development of adequate technical expertise with them, only very large projects and those having inter-State dimensions should need prior technical scrutiny before inclusion as plan schemes.

11.5.39 Till 1958 a large number of schemes/projects required the approval of the Union Government. However, a measure of decentralisation was effected subsequently in many sectors. The limit of the cost of the power projects which need to be cleared by the Central Electricity Authority and the concerned departments of the Union Government before inclusion in the plan, was raised in 1985 from Rs. 1 crore to Rs.

5 crores. This was effected on the representations made by several State Governments highlighting significant cost-escalation on account of price rise.

11.5.40 So far as irrigation projects are concerned the major projects and those involving inter-State aspects, are required to be cleared by the various Directorates of Central Water Commission, Daprtment of Environment and Ministry of Irrigation before submission to the Central Advisory Committee of the Planning Commission for acceptance. The medium irrigation projects are scrutinised by the Technical Examination Directorate of the Central Water Commission after going through the information supplied on the prescribed proforma. Till 1978, the major and medium irrigation schemes were defined in terms of financial costs. As the cost escalation was a continuous phenomenon, the classification of the irrigation projects between major and medium was subjected to frequent changes. To get over this problem, physical norms were introduced in 1978. Now, the major irrigation projects are defined as those which have Cultural Command Area (CCA) of more than 10,000 hectares and medium irrigation schemes are those which have a CCA between 2,000 and 10,000 hectares.

11.5.41 There is a complaint that the technical scrutiny mentioned above is quite time-consuming. In case of the irrigation projects, the Central Water Commission has informed us that the average length of time in clearing the projects by it had come down from about 42 months in 1978-79 to about 28 months in 1980-81, which itself is much too long. Many a time, however, the State governments themselves are responsible for the delay, because of inadequate investigations, unrealistic cost-estimates, incomplete data and inadequate appraisal of the inter-State aspects.

11.5.42 By their very nature, major irrigation and power projects involve complex inter-State aspects and substantial outlays, including large foreign exchange component. For these very reasons the Central scrutiny of these projects has been conceded by many. We have earlier suggested greater freedom to States in the formulation of schemes for their plans. However, such decentralisation should be contingent on development of adequate planning and technical capabilities in the States.

11.5.43 Having regard to the need for greater decentralisation, we recommend that the norms and conditions for prior approval of projects/schemes by the Union Government, Planning Commission and Central Electricity Authority should be reviewed every fifth year or earlier, if need be, and got approved by the National Economic and Development Council.

11.5.44 It has been noted that the State Governments and the Union Ministries, in their eagerness to formulate a large plan have sometimes included a number of schemes, which are not matched by available resources. Several such schemes are of low priority. As a result, scarce resources get thinly dispersed over a large number of projects. This is yet another factor which causes abnormal delays in completion of projects and achieving the targetted benefits. Annexure XI.5 provides an illustration of irrigation schemes which have been continuing for long periods accompanied by manifold cost-escalation. One of the reasons for projects continuing from one plan to subsequent ones is their inadequate funding. Since these projects take a long time for completion, it is necessary that these are planned in such a manner as to yield benefits as the construction goes on.

6. *CENTRAL ASSISTANCE, EARMARKING OF OUTLAYS AND CENTRALLY SPONSORED SCHEMES*

Central Assistance

11.6.01 The allocation and the pattern of Central assistance has been criticised by several States. Their views in this respect are summarised below :

(i) There are sharp differences among the States regarding the criteria for allocation. Some have expressed satisfaction with the present set of criteria while others have suggested some modifications suiting their own situations. Some of the less-developed States have pleaded for introducing greater progressivity in the allocation criteria.

(ii) Almost all the State Governments have emphasised revision of the present pattern of Central assistance. They favour a larger grant component on the ground that the plan investment does not result in commensurate financial returns to them. There are, however, variations in the specific patterns suggested by them.

(iii) Another criticism is that the formula-assistance allocated on the basis of 'special problems' (10 per cent) carries an element of discretion.

(iv) Several States have criticised the terms of channelising the component of Central assistance for the externally aided projects, viz., non-transference of the full amount and charging higher interest than paid to the international lenders.

11.6.02 In the Chapter on Financial Relations, we have dealt with the controversy regarding plan transfers being made outside the purview of the Finance Commission. We consider here, the allocation of Central assistance and the issue that dependence of States on Central plan assistance to implement their plans curbs their freedom and flexibility.

11.6.03 It would be pertinent, while considering the merits of the criteria for allocation of Central assistance among the States, to take note of the fact that the total quantum of Central assistance flowing to State plans has several components. An idea of these components in the Sixth and Seventh Five Year Plans can be had from the following table :

Sl. No.	Central assistance for	Sixth Plan amount		Seventh Plan amount	
		(Rs. crores)	(Percentage)	(Rs. crores)	(Percentage)
(1)	(2)	(3)	(4)	(5)	(6)
(i)	Hill Areas .	560	3.6	870	2.9
(ii)	Tribal Areas .	470	3.1	756	2.5

(1)	(2)	(3)	(4)	(5)	(6)
(iii)	North Eastern Council	325	2.1	575	1.9
(iv)	Border Areas Development programme .	*	*	200	0.7
(v)	Other Programmes	..	..	58	0.2
(vi)	Externally Aided Projects . . .	1,450	9.5	3,800	12.8
(vii)	8 Special Category States . .	3,245	21.1	7,102	23.9
(viii)	Formula assistance under Modified Gadgil Formula .	7,700	50.2	16,525	55.6
(ix)	I.A.T.P.**Formula	1,600	10.4	..	..
(x)	Less Adjustment for advance plan assistance given for relief works . .	..	..	(—)149	(—) 0.5
	TOTAL .	15,350	100.0	29,737	100.0

*Not separately indicated.

**Income Adjusted Total Population.

11.6.04 It would be seen from the above table that about 55 per cent of the total Central assistance is passed on to the States under the Modified Gadgil formula. In this, the dominant factor is population (60 per cent), which is a scale factor. However, progressivity is contributed by two criteria—'Per Capita income below national average' (20 per cent) and 'Special Problems' (10 per cent). Earmarking of funds for special category States and for special areas serves the purpose of channelising Plan investment into the more backward areas. The requirements of the relatively weaker States is taken care of through need-based allocation considered individually and/or application of a special liberal pattern wherein 90 per cent of the assistance is given by way of grant. On the other hand, additional assistance on account of externally aided projects has helped the advanced States as they are better situated to formulate and expeditiously execute these projects. But this reduces progressivity. The pattern evolved over the years is a complex mosaic, providing, *inter alia*, for the needs of weaker States, specially backward areas.

11.6.05 It will also be relevant here to point out that allocations under some of the components of Central assistance outside the Modified Gadgil Formula, are also based on pre-determined criteria. For example, Special Central Assistance for the Tribal Sub-plans is done on the basis of a three-factos formula, viz., total Scheduled Tribes population in the State (50 per cent weightage); area occupied by Scheduled Tribes population (30 per cent weightage), and inverse proportion of State Domestic Product (20 per cent weightage).[6]

Similarly, special Central assistance for Sub-plans of hill areas (of Assam, Uttar Pradesh, West Bengal and Tamil Nadu) is distributed among the concerned States on the basis of hill-area and population with equal weightage. In the Western Ghats region (in Maharashtra, Karnataka, Kerala, Tamil Nadu and Goa), the Special Central assistance is allocated with 75 per cent weightage to area and 25 per cent to population.[7]

11.6.06 In individual segments, the allocation of Central assistance among the States will appear to be based on relevant considerations. But, given differential fiscal capabilities of the States, their impact on plan requirements needs to be examined in its totality. Several State Governments have represented to us that Central assistance flowing to them does not correspond to the criteria suiting their circumstances.

11.6.07 Any change in the allocation criteria of Central Plan Assistance should be preceded by a comprehensive examination. As the differett components of Central assistance for the State Plans got incorporated at different points of time, we are of the view that such a review is over-due. In view of acute overall constraint of resources, a system will have to be evolved which, while ensuring a measure of equity, would at the same time encourage efficiency in the mobilisation and use of resources.

11.6.08 Ours is a vast and diverse country. It is a Union of States, both large and small. It is well-nigh impossible to evolve a single formula which would satisfy all the States, for the simple reason that States have very different resource endowments and levels of development. Each State has its own peculiar problems. There are less-developed regions even within advanced States. We have to view the existing arrangements in the above context. Indeed, in making overall allocations a reasonable balance has to be struck so that while providing for sufficient progressivity to the relatively backward States the pace of development of the more advanced State is not significantly restricted. Discontent in richer States can be no less troublesome than that in poorer States. We are of the view that the NEDC is the most appropriate forum where such matters should be discussed and national consensus arrived at.

11.6.09 The suggestion made in the Chapter on Financial Relations that richer (or advanced) States, which are better equipped to service loan funds should be encouraged to take loans and thereby release more grants for enabling the poor (or backward) States to build up the necessary infra-structure, needs to be given special attention. We may also reiterate here the principle that Plan loans from the Union and, indeed, other borrowings by the States also, should be, as far as possible, utilised for such schemes which will yield sufficient returns within a reasonable time to enable the States to service loans.

11.6.10 We are of the view that a time has come to review the two-fold loan-grant pattern of Central assistance, 70 : 30 and 10 : 90, and replace it by suitable three or four-fold patterns, such as 70:30, 50:50 and 20:80, or 90:10, 60:40, 40:60 and 10:90, respectively, taking into account loan servicing capacity of the States and their per capita State Domestic Product. A decision may be taken by the NEDC on

6. Government of India, Ministry of Home Affairs—*Report of the Working Group on Tribal Development during the Sixth Plan* (1980) p.24.

7. Government of India, Planning Commission—*Seventh Five Year Plan* 1985-90, *Vol. II*, p. 338.

this after expert examination by Planning Commission and consideration of various options. The revision of the pattern of Central assistance favouring a higher grant component will reduce the need for extensive debt-rescheduling by Finance Commissions.

11.6.11 The ten per cent allocation made towards the 'Special problems' of the States within the Modified Gadgil Formula, is often criticised as a discretionary element. It may be pointed out that although no prior data-based criteria are used to determine this allocation, there are reasonable bases for the same. Till the Fifth Five Year Plan, the special problems were generally reckoned in terms of needs of hill and tribal areas, desert areas, poor infrastructural and social overhead facilities, etc. Many of these are now included in the Minimum Needs Programme and in the Sub-plans and special programmes. The 'Special Problems' component of Central assistance is reported to be increasingly utilised to make up for the shortfall in plan-resources.[8] Along with other components, the ten per cent allocation is also fixed for the Five Year Plan period and does not permit any changes year to year. While we are not suggesting any *inter se* change in the set of criteria, which requires detailed exercises with a number of options, it may be noted that the real extent of discretion, which is complained of, is in practice, much less than 10 per cent in view of a number of other conditions prescribed. Flexibility to this small extent, in our view is not only inevitable but desirable to cope with unforeseen contingencies.

11.6.12. A view has been expressed that there is no rationale for the size of the Central assistance for the Plan. This has been followed by a suggestion that the National Development Council should determine the size of Central assistance. At present, in the context of the Five-Year Plan, the basic exercise about the size of Central assistance is done by the Planning Commission in consultation with the Ministry of Finance. The same is approved by the National Development Council along with the pattern of financing of the Five Year Plan. For the Annual plans, however the size or Central assistance is left to be determined by the Planning Commission in consultation with the Ministry of Finance in the light of the approved Five Year Plan. For the five-year period, the Central Plans assistance actually given is observed to be more than what was initially approved by the National Development Council. We have already noted that the NEDC should discuss in detail the strategies to be adopted in the Five-Year Plan as also the sectoral allocations and the split between the Union and State Plans. Based on the decisions of the NEDC in regard to the above, the quantum of Central assistance for State plans can be determined by the Planning Commission, after taking into account the resources of the States. Central assistance is to be reckoned as a part of overall resource exercise for the Plan. The determination of its overall size, etc. will be sound if the States' own resources are estimated realistically. These are the matters which may be periodically reviewed by the NEDC during the course of a Five Year Plan. We, therefore, do not consider it desirable that the NEDC should as such concern itself with the determination of the size of Central Plan assistance.

[8]. Lakdawala, D.T.—'Plan Finance in a Federal Economy' *Yojana*, May 16, 1979, p. 9.

11.6.13 It has been complained by a number of States that Central assistance for the externally aided projects is not transferred to them in full and that the Union Government charges a much higher rate of interest (over 8·75 per cent now) on it, than it itself pays to the foreign lenders. It is understood that channelling of external aid to the States is done as part of the integrated financial management of Union Government's debts. The amount received by the Union Government is treated as part of it own finances out of which the aid is provided to the States. Union Government has pointed out that while its present weighted average rate of interest on external borrowings is 2·5 per cent, the weighted average in regard to all borrowed funds is 9·9 per cent as against average interest rate of about 8·75 per cent charged to the States on Central Loans. If the States in which foreign aided projects are located, pay 2·5 per cent, other States will have to pay much more than 8·75 per cent. This will not be equitable, specially because bulk of the States with foreign aided projects are generally more advanced than others. We would, therefore, emphasise that a segmented approach in this regard should not be followed. It is, however, desirable that the entire rationale and procedure should be explained or clarified for a better understanding to the NEDC.

Earmarking of Outlays

11.6.14 In Section 3 of this Chapter we had noted the rationale and coverage of the mechanism of earmarking of outlays. Some of the States have complained that the system of earmarking reduces their freedom and flexibility in utilising resources in accordance with their priorities. They have also drawn attention to the fact that a very large part—60 per cent—of the total outlay is earmarked. On the other hand, Planning Commission has pointed out that it is only for the very important segments of the plan that resources are earmarked, e.g., irrigation and power projects. Even when a sector is earmarked, within the sector there is considerable flexibility. For example, outlay in regard to Agriculture is in totality earmarked, but within this sector for programmes like minor irrigation, soil conservation, etc., it is not earmarked individually. Further, they have also drawn attention to the procedure which permits reasonable changes in the earmarked outlays if proposals for the same are sent to the Planning Commission before a stipulated period (upto November) each year.

11.6.15 In a developing economy with resource constraint, it is only rational to ensure purposive utilisation of funds. There can be no two opinions that diversion of resources from high priority purposes should be strictly discouraged. We note that the system of block assistance to the States was evolved at the beginning of the Fourth Plan in order to give the States a greater flexibility in the utilisation of resources. Earmarking of as much as two-thirds of the total outlay, it has been alleged, erodes the flexibility given to the States. We note that earmarking of outlays is done in regard to sectors of high national priority like irrigation and power. We are of the view that the system of earmarking is essential to ensure that plan priorities are observed in the overall national interest. But there should be judicious selection of

projects and programmes for earmarking. Once selected, the earmarking should be strictly enforced as otherwise it would be a meaningless exercise.

11.6.16. We recommend that a periodic review of the system of earmarking of outlays is desirable and should be discussed and approved by the NEDC along with other aspects of the Central assistance mechanism before the beginning of each Five Year Plan.

Centrally Sponsored Schemes

11.6.17 The Union Government incurs substantial expenditure on subjects included in the State List, mainly in the form of Centrally Sponsored Schemes. Annexure-XI.6 gives the break-up of the Sixth Plan outlay for Union, States' and Union Territories' Plans by heads of development. It may be seen that while agriculture and rural development are mostly State subjects, about 43 per cent of outlay on them has been in the Central Sector Plan. Under Rural Development, the programmes of Integrated Rural Development and National Rural Employment Programme account for the bulk of the Union's plan outlay. Even in the sphere of village and small industries, the Union's plan outlay accounts for about 52 per cent of the total outlay. Under Health (including medical), Housing, Urban Development and Water Supply which are exclusively in the State List, the outlays in the Central Sector Plan are quite sizeable.

11.6.18 It would appear from the above that the Union Government has assumed responsibility, generally through the Centrally Sponsored Schemes, to support development efforts in several subjects which essentially belong to the States. These schemes have grown considerably over the years. The proliferation of Centrally Sponsored Schemes was noted by the A.R.C. in 1967. For a long time this has been a matter of serious concern to the States, especially because most of the schemes belong to their constitutionally defined spheres and many of them are staged to be well within their competence. With a view to containing them, the National Development Council laid down a set of criteria in 1971 and also recommended limiting Central assistance on them to 1/6th or 1/7th of that for the State Plans.[9] In 1979, on N.D.C.'s recommendation it was decided to transfer 72 schemes to the State Sector and retain only 75 schemes, of which 60 schemes were to be shared on 50 : 50 basis and 15 schemes were to be financed entirely by Centre.[10] But during the Sixth Plan period, these schemes have again multiplied from 75 in 1980-81 to 201 in 1984-85. The outlay on them has increased from Rs. 1,238 crores in 1980-81 to Rs. 3,004 crores in 1984-85.[11] In the Seventh Five Year Plan, a total of 262 Centrally Sponsored Schemes (including 24 of autonomous bodies) have been included with a Central Sector outlay of Rs. 15,757 crores.

11.6.19 During the Sixth Plan, out of 200 Centrally Sponsored Schemes, 53 were under Ministries of Agriculture and Rural Development. The total assistance for the Centrally Sponsored Schemes accounted for Rs. 9313 crores compared to the Central assistance for State Sector plan of about Rs. 20,000 crores.[12]

11.6.20 The States have, by and large, criticised the Centrally Sponsored Schemes on the following grounds :

(a) Lack of consultation with them before they are introduced.

(b) Arbitrariness or discretion introduced in the transfer of resources on this account.

(c) Examination of even the minutest detail by the Union Government instead of leaving the detailed formulation to the States within broad guidelines.

(d) Distortions introduced in the State Plans on account of the matching principles. The lure of 50 per cent of Central assistance induces the States to accept some of the schemes even though they themselves do not give high priority to them.

(e) Union Ministries build their own empires supported by the concerned Departments of the State Governments, in opposition to those responsible for coordination of planning and finding resources for the accepted plan.

(f) The uniform approach and contents generally followed in the case of Centrally Sponsored Schemes do not take into account the wide diversity in the local situations.

11.6.21 An overall policy with respect to Centrally Sponsored Schemes does not exist. There is overlapping of coverage in the schemes sponsored by different Union Ministries. At State level also, the consultations are made directly with concerned departments and such schemes are not well integrated with the States' Plans from the beginning. The discontinuation or modification of such schemes in some cases is also alleged to have been wasteful in terms of infrastructure developed for them.

11.6.22 There are, however, no reservations about the need for Centrally Sponsored Schemes in the spheres of survey, research, pilot projects and programmes of inter-State relevance. The States are quite sensitive when programmes within their own spheres and competence, are brought under the Centrally Sponsored Schemes, and as has been alleged, without sufficient prior consultation with them and with rigid conditionality. States have also been critical of inclusion of programmes involving large outlays ostensibly in fulfilment of important national objectives.

11.6.23 This matter has been examined recently by a Committee set up by the Planning Commission under the Chairmanship of Shri K. Ramamurti. The Committee has suggested that Centrally Sponsored Schemes should form an integral part of the

[9]. Government of India, Planning Commission—*Report of the Expert Committee on the Role of Centrally Sponsored Schemes in Seventh Plan* (1985) (Chairman : K. Ramamurti), (Mimeographed), p. 23.

[10]. *Op. cit.*, p. 16.

[11]. *Op. cit*, p. 5.

[12]. *Op. cit.*, p. 16.

National Plan. A Centrally Sponsored Scheme should satisfy one of the following criteria for being taken up as Centrally Sponsored Scheme :

(a) It should relate to demonstration, pilot projects, survey and research;

(b) It should have a regional or inter-State character;

(c) It should aim at building up institutional framework for the country as a whole or a region; and

(d) It should be in the nature of pacesetter with a definite time-frame within which the objectives outlined are sought to be realised.

In evolving the above criteria, the Ramamurti Committee sought to identify the areas in which the Union Government's initiative was justified. The Committee also took into consideration the set of four criteria evolved by the NDC earlier and tried to remove ambiguity with respect to them.

11.6.24 Earlier in 1967, the Administrative Reforms Commission had also recommended that the number of Centrally Sponsored Schemes should be kept to the minimum and the criteria laid down for determining which projects should be Centrally Sponsored should be strictly applied.

11.6.25 We are in full agreement with the views of the NDC that the number of Centrally Sponsored Schemes should be kept to the minimum. We endorse the criteria laid down by the Ramamurti Committee. We note that some of the current Centrally Sponsored Schemes involved very small outlays and could as well be implemented by the States. The Ramamurti Committee had recommended that except the pilot projects no schemes with an All-India coverage and with an outlay less than Rs. 25 crores should be selected as Centrally Sponsored one. In case of schemes applicable to selected States this limit should be Rs. 10 crores. We endorse this approach subject to quinquennial review of the increase in costs of the schemes. The need for the Union Government initiating pilot projects even in regard to subjects in the States' sphere, having an inter-State, regional or overall countrywide significance but carrying high national priority, is recognised. But these should be formulated in prior consultation with the States. Once a programme has passed the pilot stage and accepted as desirable for implementation on a larger scale, it should appropriately form part of the State-Plans.

11.6.26 It is of utmost importance that Central assistance for these schemes, which is intended to be a selective involvement of the Union in States' subjects, should be kept to a minimum in relation to the Central assistance for the State Plans. We recommend that the ratio of these recommended by the NEDC from time to time, should be adhered to.

11.6.27 We recommend that the Centrally Sponsored Schemes should not be normally started during the middle of a Five Year Plan, as they put unforeseen burden on the finances of the States by requiring them to provide for the matching funds. Should it become necessary to initiate any Centrally Sponsored Scheme during the course of a Five Year Plan, its approval by the Standing Committee of the NEDC should be obtained. The entire expenditure on such a scheme, atleast till the expiry of that Five Year Plan, should be borne by the Union Government.

11.6.28 We consider it very important that the State Governments should be fully involved in determining the contents and coverage of the Centrally Sponsored Schemes so that local variations and likely difficulties in their implementation are taken care of. Even after formulation of the Scheme, sufficient flexibility should be allowed to the States in adapting them to local conditions. The Centrally Sponsored Schemes should be discussed with the States, individually, alongwith their Five Year Plans and again during the Annual Plan discussions.

11.6.29 It is understood that on important Centrally Sponsored Schemes like IRDP, NREP and RLEGP[13], conferences of the representatives of the State Governments have been organised by the Department of Rural Development. These conferences are found useful in conducting a sort of concurrent evaluation and in exchanging experience in implementation. We have been informed by the Ministry of Agriculture, Cooperation and Rural Development that for some schemes State Level Sanctioning Committees have been set up which decide the contents of the schemes within the broad guidelines provided by the Union Government. With respect to schemes of rural development, criteria of allocation and procedure for release of assistance are also reportedly decided in consultation with the States. In case of a few schemes in the agricultural sector, inter-scheme transfer of funds for the approved projects has been allowed to the State Governments.

11.6.30 It is necessary that an overall review of the Centrally Sponsored Schemes should also be made periodically. This could be done by the NEDC. We note that in November, 1985, the NDC constituted a Committee (Chairman : Shri P. V. Narasimha Rao) to review the various aspects of the Centrally Sponsored Schemes. This is a step in the right direction.

11.6.31 We strongly recommend that the process of decentralisation in respect of formulation and evaluation of Centrlly Sponsored Schemes should be pursued further and differences in local conditions given proper weightage, specially with reference to agriculture and poverty alleviation programmes like IRDP, NREP and RLEGP.

7 *INSTITUTIONAL ISSUES*

Planning Commission—Criticism and Suggestions for Improvement, the Evidence

11.7.01 The main criticism voiced by several State Governments and experts is that over the years the Planning Commission has come to function as a limb of the Union Government, a far cry from the original concept of an expert advisory body serving both the Union and the States "free from the burden of day-to-day administration". This criticism is

[13]. IRDP=Integrated Rural Development Programme
NREP=National Rural Employment Programme
RLEGP=Rural Landless Employment Gurantee Programm

based on the silent or vocal premise that the Union Government has assumed too dominant a role in the formulation of Plans, even in areas which are very much a part of States' responsibilities. Some of the knowledgeable persons have pointed out that many a time the Planning Commission is by-passed or is not given due opportunity to examine and render independent advice on the development policies and programmes. It has also been alleged that sometimes the Union Ministries and Departments seek to use the Planning Commission as an instrument to get the States to fall in line with their own thinking. Frequent changes in the composition of the Planning Commission and insecurity of tenure of its members is seen to be attempts by the Union Government at securing conformity.

11.7.02 Most State Governments are of the view that the Planning Commission should not only work independently, without being influenced or dictated to by the Union Government, but should also be seen to be so functioning as an impartial body on objective principles. These perceptions have led the State Governments and experts to suggest a variety of remedial measures. At one end of the spectrum are several State Governments and many experts who in their publications, or in their submissions to us, have suggested that the Planning Commission should be converted into a statutory institution so that it becomes more of a professional and expert body, less prone to political influence. The point which is sought to be made out is that a body like the Planning Commission should not only work independently without being influenced or dictated to by the Union Government, but should also be seen to be so functioning as an impartial body on objective principles. The proponents think that this object can be effectively achieved only by converting the Commission into a statutory body subservient to the NDC, manned wholly by distinguished experts with assured tenure. This step, it is believed, will insulate it against political pressures. Another objective of making it statutory, the proponents think, is that it would become obligatory for the Union Government as well as the State Governments to seek its advice and pay it due regard.

11.7.03 At the other end of the spectrum are many State Governments and experts who, while arguing strongly for making the Planning Commission an independent body consisting of expert, functioning and rendering advice, free from political pressures, point out that making the Planning Commission a statutory body would introduce avoidable rigidity in its functioning. One of them has stated that it would be impractical to adopt the view that the Planning Commission should be made independent of both the Union and the State Governments. This State Government is also of the view that the Planning Commission must necessarily continue to remain an arm of the Union Government but discharge its functions in a federal spirit and has suggested restructuring of the Planning Commission with professional experts and also giving representation to the Chief Ministers on a zonal basis. Another State Government has observed : "A legal framework is usually not suitable for dealing with rapidly changing situations through a multitude of implementing agencies". Yet another State Government has pointed out that in making the Planning Commission an autonomous body under the NDC for over-seeing Plan investment and decision making at the national level, there are advantages as well as disadvantages. According to it, it would make the Planning Commission acquire more independence and objectivity. On the other hand, the disadvantage will be that keeping in view the federal structure of the country and the changes that may take place in the complexion of the State Governments from time to time, the coherence and directions of planning may suffer. They are of the view that on the balance, the structure of the Planning Commission as presently constituted could continue although it is important that it is the shortcomings are removed.

11.7.04 It has been suggested by one State Government that the responsibility of the Planning Commission may be limited to the Central sector of the economy, the preparation of the State sector plans being left entirely to the respective State Planning Boards. The Planning Commission should cease to perform a coordinating role with regard to State Sector Plans and there would be no need for Resources Working Group discussions with the States for their Plans.

11.7.05 Regarding the composition of Planning Commission also the views differ. A few States, as also experts, have suggested formal representation of the States on the Planning Commission, e.g., by including two Chief Ministers as Members for a year or two on rotation basis. But most of the suggestions favour that the Planning Commission should have the character of a high-level technical and advisory body with experts in the fields of economics, management, science and technology, etc.

11.7.06 A few State Governments and others have suggested that the Planning Commission and the Finance Commission should be merged.

11.7.07 It is felt by most of the State Governments and some experts that monitoring and evaluation systems are weak both at the Centre and in the States. Setting up of adequate machinery to improve them and to evolve suitable techniques of monitoring have been suggested in most of the replies.

Role of Planning Commission

11.7.08 In order to examine the validity of the above criticism, it is necessary to recapitulate the role of the Planning Commission. We have noted in paragraph 11.3.03 that one of its important functions is the assessment of the material, capital and human resources of the country. In performing this function, it also estimates the amount of Central assistance which should be transferred to the States towards their plans. It also estimates, alongwith the Ministry of Finance and the Reserve Bank of India, capital resources that are likely to be available and the extent to which these can be utilised for the Public Sector. It renders advice in regard to priorities to be followed. The approval of the Planning Commission is necessary in regard to major irrigation and power projects before they are taken up for execution by the States. Planning Commission also gives advice to the Union Government in regard to investments in the public sector projects and programmes. It participates in the appraisal of the projects of the Union Government.

11.7.09 Planning Commission also monitors the overall progress of the Plan implementation of both the Union and the States and helps in indentifying bottlenecks and remedial measures.

11.7.10 The charter of the Planning Commission envisages certain functions to be entrusted to it by the Union. In practice, it performs, *inter alia*, the following functions :

(i) The Project Appraisal Division undertakes appraisal of all projects and programmes above a certain level of investment.

(ii) Any new Plan programme or project has to be vetted by the Planning Commission before it goes to the Finance Ministry for acceptance of the financial provisions.

(iii) The Working Groups dealing with the Central Ministries, are presided over by either the Member or the Secretary of the Planning Commission. The relevent technical Division in the Planning Commission examines the details with the officers of the Ministry before the Working Group meets.

These functions are essentially advisory in nature. One should not lose sight of the fact that the national Plan consists of the Plans of the Union and the States and is implemented by the Union and State Governments. There are several advantages in the Planning Commission carrying out these functions because it helps in the allocation of the limited funds according to accepted priorities and in observing inter-sectoral balances. It helps to develop national infrastructure to support the State Plans.

11.7.11 We have considered the various views placed before us carefully. Economic and social planning does not merely depend on the professional advice of experts. It is also a matter of political consideration and decision. Divorced from the latter, the Planning Commission will lose its momentum. It is the association of the highest political executive, which is the motive force behind the planning process. This propelling force and leadership comes from the Prime Minister and other Union Ministers. The fact that the Planning Commission is headed by the Prime Minister and includes the Union Finance Minister, not only gives it stature, but also ensures at a very early stage of plan formulation the ,commitment of the Union to the policies, programmes and financial outlays, including levels of central assistance. If the Planning Commission is reconstituted by a statute giving it an autonomous status, divorced from the political executive of the Union, its working will be stymied by legalisms, rigidities and technicalities, which are inherent in inflexible statutes. If the statute—as is suggested by one State Government—sharply compartmentalises its functions in regard to Union and State Plans, the planning process will be marred by conflict and discord rather than coordination and harmony. Such a statutory system of planning will be antithetical to the basic principles of cooperative federalism which its proponents claim to aspouse. Further, a statutory status for the Planning Commission, if it dissociates its working from the Prime Minister or the Union Government, will make it lose its mobility and momentum. There can be little doubt that for promotion of socio-economic development an activist institution propelled along dynamic course towards its goal by the united will of the nation would be more efficient to deliver practical results than a statutory body hamstrung by technicalities and possible discord.

11.7.12 As pointed out earlier, 'Economic and social planning' has an interface with matters in all the three Lists of the Seventh Schedule. The very fact that the item 'Economic and social planning' has been placed in the Concurrent List postulates that the Union is competent to lay down a national policy ensuring uniformity in its main principles. It must be remembered that the Five Year Plans deal with many matters within the exclusive competence of the Union. Control over monetary policy, banking, foreign aid and loans, foreign exchange, foreign trade and other financial subjects which are crucial to economic planning, vests in the Union. Many other subjects having an inter-face with planning such as mines and minerals, important industries, railways, shipping in inter-State rivers, inter-State transport, inter-State communication, radio and television, etc., are under the control of the Union. These apart, the bulk of the development finance for the States which is the life-blood of planning, comes from the Union. The concept of planning involves a coordinated development of social and economic activities of the nation. Another, but no less important, purpose of planning is removal of regional disparities. Planning, therefore, is best undertaken in a national perspective under Central leadership.

11.7.13 For the reasons given in the preceding paragraphs, we do not support the suggestion for converting the Planning Commission into a statutory body. We have suggested in the succeeding paragraphs, certain procedural reforms. Indeed, if these are not fully and effectively implemented, the pressure from the States on the Union for defining the role of the Planning Commission and the NDC by a statute will go on increasing till it becomes irresistible and leaves the Union no alternative but to submit to it against its better judgement.

11.7.14 Planning in our country involves channelisation of development efforts in the context of interdependent economic situation and processes. The National Plan is not only a plan for the Central Sector but also a coordinated plan of the States. As pointed out earlier, a close coordination between the Union and the States in the planning process is essential. The Planning Commission has been performing a dual role as, besides advising and participating in the planning functions of the Union Ministries, it has also been advising the States and coordinating their plans. Its tasks are overseen by the NDC. This arrangement has well-answered our planning needs. In view of these reasons, we cannot support the suggestion that the Planning Commission's role may be limited to the Central Sector of the economy and that the preparation of the State Sector Plans should be exclusively left to the State Planning Boards.

11.7.15 The Union and the States have become familiar with the working of the Planning Commission and the NDC during recent decades and have become

well aware of their merits, utility, deficiencies and limitations. The remedy, therefore, lies in reforming these institutions and their working, assuring at the same time full and effective consultation with the States at all stages of the planning process so that they feel that their role in it is not that of a supplicant, but of an equal participant.

11.7.16 Conventions have a great role to play in this connection. If healthy conventions are estbalished in regard to consultation with the Planning Commission and due weight is given to its recommendations, then all apprehensions in regard to domination by the Union and Planning Commission being a limb of the Union Government would disappear. It is pertinent to note that while the Planning Commission functions as an advisory body, it is the NDC that takes all the final decisions. The size and contents of the Plan, the objectives and strategies are all decided by the NDC, which is the highest political body at the national level. We have made several suggestions later to make its functioning more effective.

11.7.17 Indeed, perceptions regarding by-passing of Planning Commission in taking major investment decisions have led to the demand for making it a statutoty body. We recommend that the Planning Commission must be consulted in taking all major investment decisions.

11.7.18 Some of the apprehensions expressed in regard to the capacity of the Planning Commission to act objectively, seem to arise out of the frequent changes made in its composition. Doubts about its credibility also arise if a politician is appointed as its Deputy Chairman. It is pointed out that the Fifth Plan and the Commission which had prepared it, were terminated ahead of the normal schedule. The Sixth Plan was drafted in 1978 by a new Planning Commission with the change of the party ruling at the Centre. A similar treatment to the panel of the Commission was again meted out in 1980. Even when the same ruling party continued in power, there were frequent changes in the composition of the Planning Commission.

11.7.19 We recommend that to remove these misgivings about its capacity to act objectively, experts with established reputation for professional integrity and calibre should be appointed to its panel for specified terms.

11.7.20 We further recommend that the Deputy Chairman should invariably be an eminent expert, who can command the respect of the Union as well as the State Governments, by his objectivity and stature and should not be seen as a political appointee.

11.7.21 No planning process can be successful unless both the Union and the States have and display total commitment to it and observe the necessary discipline. We note that the State Plans are suffering from the fact that their Planning Boards are not in a position to perform a corresponding role at the State level. If only the State Planning Boards were enabled to function in the same manner as the National Planning Commission, there would have been greater adherence to Plan priorities, better maintenance of inter-sectoral balance and less of departmentalisation. An effective State level body would greatly help the Planning Commission at the national level in assessing States' resources and making inter-sectoral allocations in a more realistic manner. In fact, the Planning Commission would then be able to limit its scrutiny to the core sector plan of the States, leaving the rest to be determined by the State level body within the broad parameters of the accepted national plan.

11.7.22 We now consider the suggestion that the States should be represented on the Planning Commission in some form or another. The NDC is the political forum for taking decisions at the national level. We have recommended subsequently that the NDC should be reconstituted under Article 263 to give it a 'Constitutional' status and authority and to provide closer and fuller participation by the States in the entire process of planned development. The planning Commission should operate under its guidance. If this recommendation is accepted, it will be neither necessary nor desirable to provide representation to the States on the Planning Commission.

11.7.23 The next question for consideration is whether there are any deficiencies in the existing charter of the Planning Commission which in any way inhibit its functioning. We note that the areas of responsibility now set out are comprehensive and do not require any amendment. However, we would like to draw attention to some aspects of its role which have not received the attention necessary and are important for bringing about qualitative improvements in planning as well as for promoting better understanding in Union-State relationship in this regard.

Annual Review of Finances

11.7.24 So far as the respective roles of Central tranfers to the States on the recommendations of the Finance Commission and the Planning Commission are concerned, we have already commented on the issue in the Chapter on Financial Relations. Here we would like to emphasise that after the report of the Finance Commission, the occasion for a review of the Union and States' finances arises in the context of resource exercise for the Annaual and Five Year Plans. It is of utmost importance that the complement of non-plan financas of the States is looked into in detail by the Resource Working Group of the Planning Commission. Detailed analysis of any aberrations and significant deviations from the norms of the Finance Commission should be made. Besides emphasising the need for optimum mobilisation and utilisation of resources at the official level, such aberrations and deviations should be discussed, among other thirgs, in the meeting between the Deputy Chairman and the Chief Minister of the concerned State.

Monitoring and Evaluation

11.7 .25Qualitative evaluation of the Plan programme and concurrent monitoring in some priority sectors constitute essential inputs for planning. The importance of monitoring for optimum utilisation of resources, adherence to priorities and ensuring intersectoral balance, cannot be over-emphasised. Similarly, comprehensive evaluation of programmes

is essential for proper assessment of the impact of Plan programmes. We have been informed by the Planning Commission that it has recently decided to monitor (a) the progress of expenditure against approved plan outlays in all the sectors of the State Plan on a quarterly basis, and (b) progress of achivements in physical terms against targets fixed in the case of all programmes/projects in the earmarked sectors. Besides, the Planning Commission, the Union Ministries also monitor schemes for poverty alleviation, those for the Scheduled Castes and Scheduled Tribes, Power projects and the various items of the 20-Point Programme.

11.7.26 In our opinion, Planning Commission should pay special attention to the efficiacy of the monitoring systems in the government by advising on techniques and formats. At the same time, it may continue monitoring of specific programmes and keep itself abreast with the progress in the core and priority sectors. This is also necessary to check diversion of Plan resources. One of the suggestions made to us in this regard, and which merits attention, is the revival of the system of Project Completion Report in the Government.

Quinquennial Review

11.7.27 We further recommend that besides the general reviews contained in the Annual Plan and the Mid-term Appraisal, a comprehensive quinquennial review should be brought out by the Plannng Commission, which should be taken advantage of in finalising the next Five Year Plan. Such a review, among other things, should compare the progress made and the qualitative impact of the programmes with the long-term and medium-term objectives of planning.

Core Sector Plan—Role of Advisers (State Plans)

11.7.28 Regarding scrutiny of State Plan schemes, we have already observed that it should not be too comprehensive in coverage. However, greater attention should be devoted to the core sector. A qualitative improvement in the involvement of the Planning Commission in the formulation, implementation and monitoring of State Plans is imperatively called for. In this regard, the role of Advisers (State Plans) becomes crucial. We have been informed that at present there are six Advisers(State Plans) with more or less Zone-wise allocations of States/Union Territories among them. This is a useful arrangement. According to the information supplied to us by the Planning Commission, they visit the States in their charge 'at least once a year, if not more often'. We are of the view that these Advisers must visit the States more frequently. They could be permanent invitees to the meetings of the State Planning Boards. This will help in transmitting to the States the concerns and priorities of the Planning Commission on the one hand and help in solving the problems of the States and effective monitoring of the progress of their Plans, on the other.

11.7.29 A State Government has alleged that the high turn-over of the senior officers in the Planning Commission, particularly from administrative services, adversely affects the planning efficiency. The Administrative Reforms Commission had also noted that the stay-period of Programme Advisers now called Advisers (State Plans)—was about two years, on an average during 1951-68 and their postings were often in the nature of 'stop-gap arrangements'. According to the information supplied to us by the Planning Commission, the stay of Advisers (State Plans) "has generally been for three years on an average during the Sixth Plan period". It is obvious that in order to build expertise in the Planning Commission, the officers in senior posts should not only have the desired specialisation and competence, but should also serve in the organisation for sufficiently long periods. Serious attention to this aspect will have to be given by the Planning Commission itself.

Role of Middle Level Officers of the Planning Commission

11.7.30 The role of middle level officers, *viz.*, Research Officers to Deputy Advisers, in the Planning Commission in scrutinising State Plans and in analysing issues, is crucial. It is found that although they are drawn from different disciplines and cadres, most of them do not have adequate exposure to field situations. We recommend that as part of a Staff Exchange Programme, officers from the Planning Commission and the State Governments at middle echelons should serve at each other's place for reasonably sufficient periods and suitable incentives and facilities made available to them.

National Development Council

11.7.31 As noted earlier, National Development Council was expected to be an apex institution for arriving at a consensus among the Union and the States on various matters relating to planning and socio-economic development. However, in the actual working of the Council, certain weaknesses have been noted. As early as in 1967, the Study Team of the Administrative Reforms Commission had found the measure of consultation and examination of issues by the Council "inadequate" inasmuch as aspects of perspective-Planning and possible alternatives were not placed before the Council in sufficient detail. It had also highlighted the shortcomings in its conferencing procedures, *viz.*, short duration of meetings, delays in the circulation of agenda-papers, use of this Council as "a forum for the ventilation of individual grievances rather than for collective discussion of principles and policy", etc. The Study Team recommended a more systematic and in-depth involvement of the Council in all basic questions of planning policy, particulrarly those pertaining to goals and objectives, and in evolving national consensus.[14]

11.7.32 It also recommended a Standing Advisory Committee of official advisers from each State and the Central Government to assist the Council.

Criticism and Deficiencies in Working

11.7.33 There has not been any marked improvement in the Council's functioning, even after its reconstitution in 1967. Some of the deficiencies which have been highlighted are enumerated below :

(i) The NDC meets only at the initiative of the planning Commission which determines its agenda.

---

[14]. Government of India—Administrative Reforms Commission—*Report of the Study Team on Centre-State Relationship* (1967), Vol. I, p. 102.

(ii) The Council has been approving the Approach Paper and the Draft Plans but has not been keeping track of the progress of the Plan. Consideration of other policy questions affecting national development which is one of its stated functions, has been infrequent and insufficient.

(iii) The frequency and duration of its meetings are very inadequate. Only 39 meetings have been held since 1952; the 37th meeting was held after a gap of two years and four months whereas the Resolution constituting it specifies that the Council will meet atleast twice each year.

(iv) The Planning Commission does not always put before the Council alternative sets of perspectives, strategies and targets alongwith the assumptions made to enable it to decide among the choices available.

(v) The conferencing procedure consists of set speeches made by Chief Ministers with very little of mutual discussion.

(vi) The summing up of deliberations often does not reflect the variety of views.

(vii) The time given to States for crystallising their views is often insufficient.

(viii) The Standing Committees and the Special Committees are not formed or convened on a regular basis for indepth analysis and consideration of issues.

11.7.34 As a result of the above deficiencies, formalism rather than systematic and effective participation in forging consensus and commitment to national policies is observed to have been the dominant feature of National Development Council's working. It has not been able to guide the Planning Commission in identifying the feasible alternatives so that a choice can be made from among them and has not made critical appraisal of the working of the plan and of the policies, affecting national development. This has also given rise to such complaints, as made by a Chief Minister, that Plan strategies and policies have not been put to sufficient national debate and informed consideration, and have been rather hurriedly put through.

Suggestions in the Evidence

11.7.35 In the evidence before the Commission, the need to make the NDC more effective in performing its role was emphasised. It has been suggested by many that constitutional recognition or statutory status should be conferred on this body. The different views conveyed to us in respect of the role, composition and functioning of the NDC are summarised below :

(a) The NDC should exercise greater control over the Planning Commission. It should have a say in determining the composition of Planning Commission also.

(b) Some have favoured representation of experts on this body whereas a view has been expressed that the experts should be on the Planning Commission and the role of the NDC should be political decision making and laying down national guidelines on planning.

(c) Some have suggested that the NDC should express its opinion on all matters of national development and may be actively involved in evolving policies of industrial development, trade and commerce, prices, etc.

(d) A State Government has suggested that the NDC should approve the guidelines for preparation of the Plans, the approach to the Five-Year Plan, and the quantum and allocation of Central assistance for State Plans.

11.7.36 One State has observed that in order to reactivate National Planning as a joint endeavour of the Union and the States, the NDC should be restructured so that it becomes the focal point for national debate on planning and has urged that it should be streamlined and its membership reduced. Some of the States are of the view that the present deficiencies noticed can be cured if NDC is made a statutory body.

11.7.37 Some experts have suggested that it may not be necessary to make the NDC a statutory body and that its present role can be improved through more frequent consultations and better conferencing procedures. An apprehension has also been expressed that a statutory status to NDC would create a 'parallel power centre', which would come into conflict with the authority of the Union Cabinet and promote groupism at that forum. It should, therefore, remain an advisory body.

11.7.38 A suggestion has been made that the NDC should be reconstituted under Article 263 of the Constitution and should be conferred wider powers. One State has suggested that it should meet frequently or have a standing Committee which should meet frequently. Another State Government has gone much further and has suggested that all economic matters of common interest to the States, including proposals of Constitutional amendments and reviews of Union-State finances prepared by the Finance Commission's permanent secretariat proposed by it (viz., a wing in the Planning Commission), should be brought before the NDC whose annual reports should be presented to Parliament and State legislatures.

11.7.39 A State Government has expressed the opinion that planning and coordination should be the responsibility of the Union which should be carried out in a democratic manner through an inter-State Committee, in which the States should have equal representation alongwith the Union, and whose executive organs should be the NDC and the Planning Commission.

11.7.40 A State Government has suggested that a new organisation, called the National Development Organisation (NDO), may be set up to service the NDC. The NDO may include planning and development experts supported by a complement of research and ministerial staff. It may function under the administrative control of a Committee appointed by the NDC. The NDO may be made responsible for

preparing documents with respect to the national economy corresponding to the Plan prepared by the Planning Commission and the State Planning Boards. The cost of maintaining the NDO may be apportioned between the Union and the States in an agreed manner. The role of the NDO will be limited to giving its comments on the plans prepared and highlighting the departures from the guidelines. While these comments will be given due consideration by the Planning Organisations concerned, its actions on these will be entirely its own. Agreed views on the Plan document will be thrashed out to the extent feasible by the Planning Commission and the NDC and the remaining differences considered by the NDC itself.

Our Approach

11.7.41 We have carefully considered the various views and suggestions with regard to the status and role of the NDC. In the Chapter on Inter-Governmental Council, we have drawn attention to the imperative need for cooperative action between the Union and the States in the formulation of policies and their implementation. We have also pointed out that with economic growth, technological development and socio-economic changes, many new areas of national concern are emerging. The very concept of planning postulates cooperative endeavour in the service of the common man. In a large and diverse country like ours, planned development is critically dependent on consensus and commitment at all levels to the objectives and strategies of the Plans formulated and implemented from time to time. There is unanimity of views that the NDC should be made to function more effectively and emerge as the highest political level Inter-governmental body for giving directions and thrust to planned development of the country.

11.7.42 We think that casting such an institution in the tight mould of a statute would make it operationally rigid, whereas flexibility and ability to respond quickly to changing circumstances is the essence of the matter. But at the same time, NDC as at present constituted is unable to impart the necessary dynamism to planned development.

11.7.43 We are, therefore, of the view that being the supreme inter-governmental body for all matters related to socio-economic development, it is necessary that NDC should be renamed and reconstituted as National Economic and Development Council (NEDC) by Presidential Order under the provisions of Article 263 so as to have direct moorings in the Constitution. The provisions of the clauses (b) and (c) of Article 263 are wide enough to encompass the functions of the NDC. The NEDC thus constituted will, while retaining adequate flexibility, have a measure of authority with formalised status having the constitutional sanction of Article 263.

11.7.44 While we do not suggest any major change in its composition and broad charter of work, the suggested change in name to "National Economic and Development Council" will help make explicit what is already implicit in the present charter of the NDC that along with developmental issues it has to consider and advise on relevant economic issues also. Unfortunately, this latter role has been neglected in the past but is not sufficiently operated upon. In our opinion, in the interest of healthier Union-State relations, it is necessary that this should be made explicit and the NEDC or its Standing Committees should meet regularly to consider important economic issues of national significance in addition to the usual developmental issues.

11.7.45 The role of the NEDC will be advisory, but we hope that healthy conventions will develop to the effect that the advice given and decisions taken at this forum will be respected. Indeed, the very representation by Union Ministers and States' Chief Ministers with Prime Minister as the Chairman, on this forum, given constitutional status under Article 263, should be a sufficient guarantee for commitment to its decisions. It need not have technical experts as its members. But it may obtain technical expert advice from the Union and the State Governments and also from other sources whenever necessary. It should formulate its own procedure to enable it to discharge its responsibilities.

11.7.46 The Secretary to the Planning Commission shall act as Secretary to the National Economic and Development Council and the Planning Commission shall furnish such administrative or other assistance for the work of the Council as may be needed. We cannot support the suggestion made by a State Government, mentioned in para 11.7.40 above, that a separate organisation called the National Development Organisation, may be set up to service the NEDC. It will create avoidable problems and controversies if a separate organisation of experts is created to service the NEDC. The Planning Commission contains both the necessary expertise and the information to service the NEDC and is also functionally linked to it.

11.7.47 A major problem besetting effective functioning of the NDC has been that it is too large a body which has not been able to pay collective attention to the details of the matters. To meet this problem, it should have a Standing Committee, as mentioned earlier. In fact, the Standing Committee of Chief Ministers set up in late fifties and early sixties was found to have been useful in terms of indepth consideration of issues. It is regrettable that this Committee was later discontinued.

11.7.48 We recommend that a Standing Committee of the NEDC should be constituted consisting of the Prime Minister, Finance Minister, three other Union Ministers nominated by the Prime Minister, Deputy Chairman of the Planning Commission and Governor, Reserve Bank of India and six Chief Ministers, one from each zone selected by rotation or consensus. This Standing Committee should also be constituted under Article 263 alongwith NEDC. It should devise its own procedures for effective functioning. All matters concerning the NEDC will also be considered by the Standing Committee which may decide the agenda for its meeting. The NEDC may, however, set up other Committees or Sub-Committees (like the one on financial matters recommended by us in the Chapter on Financial Relations) to advise it or the Standing Committee on special issues.

Planning Machinery at State Level

11.7.49 We have considered in the preceding paragraphs the criticism that the States are not adequately invloved in the formulation of the national Plan and

that there is far too rigid a control over State Plans. We have made several suggestions for improving the existing system but any long term improvement is critically dependent on the States improving their own planning capabilities. There is need for certain amount of introspection by the States in this regard. The desirability of an expert State level planning body is obvious. Such a body should be charged with the duty of assessing the resources of the State—material, human and financial; assist and advise the State Government in the formulation of the Plan perspective, Five Year as well as Annual. It should lay down guidelines for the formulation of Plans, schemes, programmes and projects and act as the coordinating agency at the State level for all planning functions. It should undertake on a systematic basis monitoring and evaluation of the progress of the Plan schemes, programmes and projects.

11.7.50 The Administrative Reforms Commission in its Report on Machinery for Planning recommended that the State Planning Boards should be entrusted with the following functions :

(i) To make an assessment of the State's resources and formulate plans for the most effective and balanced utilisation of those resources;

(ii) To determine plan priorities of the State within the frame-work of the priorities of the National Plan:

(iii) To assist district authorities in formulating their development plans within the spheres in which such planning is considered useful and feasible and to coordinate these Plan with the State plan;

(iv) To identify factors which tend to retard economic and social development of the State and determine conditions to be established for successful execution of the Plans ; and

(v) To review the progress of implementation of the Plan programmes and recommend such adjustments in policies and measures as the review may indicate.

11.7.51 A State Government has observed that all aspects of planning with respect to the State Sector may be the responsibility of the State Planning Boards. In order to suitably upgrade their powers to become worthy agencies for State level planning, these may be broadly patterned after the Planning Commission. According to this State Government, among other things, the State Planning Boards may communicate directly with the National Development Council and the Planning Commission. It may be involved in dertermining the size and the allocation of sectoral outlays.

11.7.52 The above mentioned State Government has also enumerated the following as the main reasons for the State Planning Boards remaining operationally ineffective and the State Planning Departments continuing to function as the real coordinating agency for planning at the State level : (i) The Finance Departments monopolise all financial planning; (ii) the planning Board is more a Committee of Ministers and Secretaries than a specialised body; (iii) other departments have a better equation with the Planning Department and prefer to deal with it; (iv) the Planning Commission also communicates with the Planning Department; (v) the administrators 'cold-shoulder' the non-official members of the Planning Boards; (vi) in the process of Plan preparation, the State Planning Board is brought into the picture late; (vii) the Board is often entrusted with some technical studies and is weaned out from actual planning work, and (viii) the generality of Ministers do not take kindly to the Planning Board as planning culture has not yet percolated adequately to the State level. The main reasons due to which State Planning Boards have not emerged as specialised agencies, according to this State Government are : (a) State Plans have tended to become mere aggregation of public sector projects/programmes, (b) the financial planning ramains but an adjust of normal budget process, (c) the inter-departmental and inter-project allocation of funds corresponds to the political weight and seniority of Ministers and bureaucrats, (d) the Finance Departments generally adopt a rigid attitude in sanctioning additional funds, (e) little attention is paid to evolving realistic and internally consistent development policy framework, (f) the conceptual framework and methodology of planning leaves much to be desired, (g) the data-base for planning is poor, and (h) the technical and professional personnel in State planning agencies are denied opportunity to contribute to the improvements in the plan implementation systems. The experiences in the individual States however, differ and in some of them considerable expertise has been built in the State Planning Boards.

11.7.53 It has been observed that although State Planning Boards have been created in all the States except Sikkim, they have not been drawn into the real planning work. The State Planning Departments continue to discharge this responsibility and only assign some technical studies, etc. to their Planning Boards. There seems to be some reluctance and also mistrust in making the Board *de facto* pivot of planning at the State level. The Planning Commission has informed us about the present deficiencies in this regard as follows :

(a) The Planning Machinery has not been sufficiently strengthened in many States on the lines indicated by the Planning Commission. While some States have strengthened their planning machinery at the State level in a fairly substantial manner, in many other States, the State Planning Machinery does not have necessary technical expertise to provide effective support to the apex planning body.

(b) While a number of States have appointed full-time Deputy Chairmen, in several other States, there is no full-time Deputy Chairman incharge of the State Planning Board. Moreover, the composition of the State Planning Boards also shows that there are only a few States where there are full-time members of the State Planning Boards; in most other States, the members of the State Planning Boards are only part-time.

(c) It appears that a proper relationship between the State Planning Board and the State Planning Department has not yet been established in some States.

11.7.54 Decentralisation of planning decisions to State level obviously would require strengthening of State Planning Boards with technical competence to enable them to undertake the necessary planning responsibilities at the State level, comprising : assessment of resources, spelling out Plan priorities, allocation of resources among sectors, perspective planning, formulation and coordination of the Plan, evaluation and advise on economic policies, monitoring, evaluation and appraisal of plan programmes, etc. They should also participate in the Working Groups set up by the National Planning Commission.

11.7.55 We recommend, as has also been suggested by a State Government (reference para 11.7.51) that the State Planning Boards should perform functions for the State Governments as the Planning Commission does at the national level. The State Planning Department's role will be similar to that of the Union Ministry of Planning and limited to Legislative Assembly work and some executive functions. The Chief Minister should be Chairman of the State Planning Board as his active support and involvement will be essential for the success of the State level planning. We are confident that if an effective machinery is set up at the State level, it would enable the States to participate more meaning fully in the formulation of the national Plan and reduce the need for a detailed scrutiny by the Planning Commission, besides lending quality to the tasks of planning at the State level.

11.7.56 At present the State Planning Boards do not command due status and authority within the State Government. One way of strengthening the position of the State Planning Boards would be to prescribe that in any negotiation and discussion with the Planning Commission, the Deputy Chairman or some Member or senior officer of the State Planning Board should invariably represent the State Government, except where participation of the Chief Minister is considered necessary.

11.7.57 Appropriate procedures should be evolved to bring district planning within the schedule of the preparation of States' Five Year/Annual Plans. In order to get over the problem of uncertainty about the resources for the District Plan, the previous year's level could provide a basis on which an appropriate increase could be assumed till the position about resources becomes clear. It is of essence that a shelf of projects fitting into the long-term and medium-term development profile of the district is kept ready to be drawn upon if more resources for the plan become available. While we are not recommending this as the precise methodology, this is being mentioned to illustrate that the problem about the uncertainty of resources is not insurmountable. Consultation with District Planning Boards should be made obligatory for formulating plans at higher levels. We have further dealt with district planning in the context of decentralisation in the next Section.

8. *DECENTRALISATION IN PLANNING*

11.8.01 The *raison d'etre* of decentralised planning is the better perception of the needs and resources of local areas, facilitating more informed decisions to be taken. It gives local people a greater say in decision-making about their own development and welfare, resulting in better coordination and integration of the various programmes at the local level, greater mobilisation of the resources of the community and at the same time inculcates the spirit of self-reliance in the local people. Involvement at the local levels leads to fuller exploitation of the growth potential of the area, improved productivity and increased production. Assets created are also maintained more efficiently.

11.8.02 In reply to our questionnaire, several State governments and experts, have stated that decentralised planning would help in promoting the spirit of 'cooperative federalism'.

11.8.03 The Balwanray Mehta Committee (1959) had recommended setting up of a three-tier structure of Panchayati Raj Institutions for effective decentralisation. It is now accepted that planning has suffered both for want of activisation of socio-political forces and planning capabilities at the grassroot level. The Asoka Mehta Committee on Panchayati Raj Institutions (1978) has also comprehensively considered these matters. It emphasised that "the psychic dividends of the association of the rural people with the planning and development process are ..... crux of the matter"[15]. Further, the ultimate objective should be to help develop the capabilities of the Panchayati Raj institutions "to plan for themselves within given resources and those that they can raise by themselves". The National Committee on Backward Areas Development had also noted that in the wake of the large number of development programmes being implemented at the local level, there have been "too many parallel and vertical lines of control without any horizontal linkage resulting in high degree of centralisation at the head office".

11.8.04 It is, therefore, important that a system of participation by people's representatives in the process of planning and supporting administrative machinery is provided at local levels. This would also ensure accountability on the part of these institutions for the utilisation of vast development finance which is now flowing to the rural areas.

11.8.05 The progress in the sphere of decentralised planning at sub-State level, was reviewed in a study in the Planning Commission.[16] According to this study only a few States have made noteworthy advance in this regard. The main weaknesses noticed in some of the experiments were reported as under :

(i) The State-level politicians continue to exercise sway in district planning bodies by becoming their Chairmen, relegating elected representatives on these bodies to the background.

(ii) Even in a State which had taken a lead in district planning, the divisible outlay has been shrinking from 40 per cent, as originally envisaged, to 26 per cent in 1981-82. Simultaneously, emergence of a new trend of State

[15]. Government of India—*Report of the Committee on Panchayati Raj Institutions* (1978), p. 78.

[16]. See Sundaram, K. V. : *Decentralisation of Planning to Sub-national Levels—Rhetoric and Reality (Mimeographed)*, 1984.

Sponsored District Level Schemes, parallel to the Centrally Sponsored Schemes, is noted.

(iii) The local planning bodies do not have much financial autonomy as they are in the unenviable position of being the guardian of funds which are already pre-empted for various departmental programmes.

(iv) In another State, the district planning bodies are headed by Government officials instead of peoples' representatives.

(v) The Planning functions have been entrusted to other newly created bodies like "District Planning and Development Council" in Gujarat instead of Zila Parishad. The President of the Zila Parishad is only an ordinary member of such a body.

11.8.06 In some of the States, district level budgeting of plan outlays has been initiated as a step in this direction. According to the Report of the Working Group on District Planning,[17] the decentralisation could be achieved progressively over a long period of time only. It has recommended that decentralisation would be covered in three stages; Stage-I will be the phase of 'Initiation'. At this stage, the pre-requisites for District Planning will be introduced, as for instance, strengthening planning capabilities and building up a data base. The plan funds available for the districts would also be identified. Stage-II will be one of 'Limited Decentralisation'—when certain sectors of activity, like Agriculture and allied sectors, Minimum Needs Programmes and beneficiary oriented anti-poverty programmes will be brought under the purview of district plans and Stage-III will represent 'Final' stage, when local decision making will encompass all levels of district activity. It was envisaged by the Working Group that all districts in the country will reach stage III by 2000 A.D.

11.8.07 The Working Group on District Planning set up by the Planning Commission during the Sixth Five Year Plan, had reviewed the patterns and problems in decentralised planning. The basic conclusion that emerges on a review of the approaches is that inspite of the formal acceptance of the rationale of district planning and creation of formal institutional structures in several cases, the real decentralised planning is still a far cry. As the success of planning process depends considerably on the involvement of the people at district level, the institutions like *Zila Parishads* and elected municipal corporations do have a vital role to play. These institutions need to be significantly strengthened—both financially and functionally. It will be relevant here to take note of the Karnataka Zila Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983.

11.8.08 Even if the planning bodies get created at the State and sub-State levels, these cannot represent the aspirations of the people so long as the elected bodies are by-passed. It is commonly known that elections to Zila Parishads and Municipalities are not regularly held. We are of the firm view that regular elections and sessions of these institutions is a must, and means for ensuring the same in all the States uniformly should be evolved by the Union Government in consulation with National Economic and Development Council. For this purpose a legislation, analogous to Articles 172 and 174 of the Constitution, should be undertaken as suggested by us at para 21.2.09 of Chapter XXI.

11.8.09 A State Government has observed : "District plans may cover, to being with, the development activities of the Panchayati Raj institutions". Further, the Panchayati Raj institutions at all levels may be enabled to have adequate own resources for their respective plans. The District Plan should be an aggregate of the plans of the Zila Parishad, Block Samitis and the Panchayats. It should also include the Plans of Municipal Corporations and Committees. The State Government has also suggested that District Planning Boards and the Panchayat Planning Committees may be constituted. We are in broad agreement with the above approach of the State Government. The need for District level planning is accepted by all, but its contents differ widely from State to State. Not only should elections be held periodically, these elected institutions should be given adequate responsibility in regard to development functions. Unless adequate finances are provided to these bodies, they would remain dormant. They should not only get resources from the State Government, but also be encouraged to raise their own resources. There is often considerable disparity in development of the various regions within the State. It is, therefore, necessary to evolve a mechanism like the Finance Commission at the State level to enable the State Government take an objective view of resources to be devolved or transferred to the Districts. We are of the view that the State Planning Boards can conveniently and with advantage be entrusted with this function. This body could then be designated as the State Planning and Finance Board.

11.8.10 It would also be helpful if these Planning and Finance Boards are entrusted with the responsibility of identifying and making special provisions for very backward areas within the States. For this purpose, they should commission from time to time objective studies somewhat on the lines of the recent 'Report of the Fact Finding Committee on Regional Imbalances in Maharashtra'[18] which we have found to be quite revealing and useful.

9. *RECOMMENDATIONS*

11.9.01 Taking an over-all view from the conceptual, institutional and functional aspects, planning both at the formulation and execution stages has to be a cooperative process of shared action between the Union and the States.

(a) NEDC should be involved in the formulation of the Plans right from the beginning. Selection of studies and setting up of various

[17]. Government of India, Planning Commission—*Report of the Working Group on District Level Planning*, 1984.

[18]. Government of Maharashtra—*Report of the Fact Finding Committee on Regional Imbalances in Maharashtra*, 1984. (Chairman : Dr. V. M. Dandekar).

Working Groups should be done under the guidance of the Standing Committee of the NEDC.

(b) The draft Approach Paper should be circulated to the States at least two months in advance of the meeting of the NEDC to consider the same. It should contain all relevant data, alternate strategies, etc.

(c) A preparatory meeting should be held by the Planning Commission, with all Deputy Chairmen and/or Secretaries of the State Development Boards two weeks prior to the NEDC to consider the Approach Paper/Draft Five Year Plan for identifying the main issues and firming up the agenda for the meeting of the NEDC.

(d) Deliberation in the NEDC should be so structured as to facilitate meaningful discussions on each item of the agenda. Sufficient time should be available for the same, so that, after the general statement by the Prime Minister and Chief Ministers, there is enough time for discussing individual items of the agenda. Minutes of the discussion in the NEDC should be recorded itemwise. It will help provide more time for discussion, if prepared general statements of Chief Ministers are circulated before-hand and the Chief Ministers read out only a brief summary.

(Paras 11.2.04 and 11.5.22)

11.9.02 Close and fullest involvement of the States at all stages of plan formulation is very essential for the successful implementation of the same.

(a) On the Working Groups set up to study sectoral problems in the context of formulation of the Five Year Plan, concerning State subjects, the Deputy Chairman, Planning Commission should appoint a member of a State Planning Board as Chairman and the Secretary of the concerned Union Ministry as Vice-Chairman and an officer of the Planning Commission as Member-Secretary.

(b) Coordinated action between the Central and State Working Groups should be ensured. For this, the Central Working Groups themselves should take the initiative in establishing contact with their counterparts in the States at an early stage.

(c) The draft Approach paper should be circulated to the States at least two months in advance of the meeting of the NEDC to consider the same. It should contain all relevant data, alternate strategies, etc.

(Paras 11.5.10, 11.5.12 & 11.5.22)

11.9.03 For improving the procedures of State Plan, the following are essential :

(i) In the Financial Resources Working Group, the estimation of Plan resources should be realistic. Estimates of additional resources to be mobilised by a State, as approved by the Chief Minister, should be available to the Financial Resources Working Group.

(ii) Planning Commission should not try to scrutinise in detail all the individual sectoral schemes in the States' Plans, but concentrate on key ones involving large outlays, foreign exchange component, and intersectoral aspects. Most of these belong to the core-sector plan and have their outlays earmarked. Financial provision for these should be ensured.

(iii) The practice of States submitting plan proposals aggregating to much higher plan-size than that warranted by resources estimated by the Resources working Group, should be firmly discouraged by the Planning Commission. Every effort should be made to consider all resources likely to be available at the stage of discussions in the Resources Working Group itself.

(iv) The meeting between the Deputy Chairman, Planning Commission and State Chief Ministers should concentrate on evaluating the progress made, identification of bottlenecks, review of deviations from plan priorities and the implementation of the programme for the ensuing year. Substantial changes in the size and content of the Plan and allocation of outlays should not generally take place in this meeting.

(v) If the Plan-size of a State is agreed to be substantially enhanced at the meeting between Deputy Chairman, Planning Commission and the State Chief Minister on the promise of 'new' resources, this should be regarded as 'provisional' and the feasibility of the same and the priority of allocation of the additional amount should be subsequently gone into by the Adviser (State Plans) in consultation with the subject-Divisions in the Planning Commission.

(Para 11.5.37)

11.9.04 The norms and conditions for prior approval of projects/schemes by the Union Government, Planning Commission and Central Electricity authority should be reviewed every fifth year of earlier, if need be, and got approved by the National Economic and Development Council.

(Para 11.5.43)

11.9.05 As the different components of central assistance for the State plans got incorporated at different points of time, a review is over-due. In view of acute overall constraint of resources, a system will have to be evolved which, while ensuring a measure of equity, would at the same time encourage efficiency in the mobilisation and use of resources. The NEDC is the most appropriate forum where such matters should be discussed and national consensus arrived at.

(Paras 11.6.07 and 11.6.08)

11.9.06 A time has come to review the two-fold loan grant pattern of Central assistance, 70:30 and 10:90, and replace it by a suitable three or four fold pattern, such as 70:30, 50:50 and 20:80 or 90:10

60:40, 40:60 and 10:90 respectively, taking into account loan servicing capacity of the States and their per capita State Domestic Product. A decision may be taken by the NEDC on this after expert examination by Planning Commission and consideration of various options.

(Para 11.6.10)

11.9.07 A segmented approach in respect of the channeling of Central assistance for externally aided projects should not be followed. However, it will be desirable that the entire rationale and procedure is explained or clarified for a better understanding to the NEDC

(Para 11.6.13)

11.9.08 A periodic review of the system of earmarking of outlays is desirable and should be discussed and approved by the NEDC alongwith other aspects of the Central assistance mechanism before the beginning of each Five Year Plan.

(Para 11.6.16)

11.9.09 The number of Centrally Sponsored Schemes should be kept to the minimum. In this regard, the criteria laid down by the Ramamurti Committee should be adhered to. The need for the Union Government initiating pilot projects even in regard to subjects in the States' sphere, having an inter-State, regional or over-all countrywide significance but carrying high national priority, is recognised. But these should be formulated in prior consultation with the States. Once a programme has passed the pilot stage and has been accepted as desirable for implementation on a larger scale, it should appropriately form part of the State Plan.

(Para 11.6.25)

11.9.10 The Central assistance towards the Centrally Sponsored Schemes should be kept to a minimum in relation to the Central assistance for the State Plans. The ratio of these recommended by the NEDC, from time to time, should be adhered to.

(Para 11.6.26)

11.9.11 The Centrally Sponsored Schemes should not be normally started during the middle of Five Year Plan, Should it become necessary to initiate any Centrally Sponsored Scheme during the course of Five Year Plan, its approval by the Standing Committee of the NEDC should be obtained. The entire expenditure on such a scheme, at least till the expiry of that Five Year Plan should be borne by the Union Government.

(Para 11.6.27)

11.9.12 The State Governments should be fully involved in determining the contents and coverage of the Centrally Sponsored Schemes so that local variations and likely difficulties in their implementation are taken care of. Even after formulation of the schemes, sufficient flexibility should be allowed to the States in adapting them to local conditions. The Centrally Sponsored Schemes should be discussed with the States, individually, along with their Five Year Plans and again during the Annual Plan discussions.

(Para 11.6.28)

11.9.13 An overall comprehensive review of Centrally Sponsored Schemes should be made periodically by the Planning Commission and it should be placed before the NEDC for consideration.

(Para 11.6.30)

11.9.14 The process of decentralisation, in respect of formulation and evaluation of Centrally Sponsored Schemes should be pursued further and differences in local conditions given proper weightage specially with reference to agriculture and poverty alleviation programmes, like IRDP NREP and RLEGP.

(Para 11.6.31)

11.9.15 If the Planning Commission is re-constituted by a statute giving it an autonomous status, divorced from the political executive of the Union, its working will be stymied by legalism, rigidities and technicalities which are inherent in inflexible statutes. The task of Planning Commission are now overseen by the NDC. This arrangement has well answered out planning needs. ....The remedy, therefore, lies in reforming these institutions and their working, assuring at the same time full and effective consultation with the States at all stages of the planning process so that they feel that their role in it is not that of a supplicant, but of an equal participant.... ... If healthy conventions are established in regard to consultation with the Planning Commission and due weight is given to its recommendations, than all apprehensions in regard to domination by the Union and Planning Commission being a limb of the Union Government would disappear. The Planning Commission must be consulted in taking all major investment decisions.

(Paras 11.7.11, 11.7.14, 11.7.15, 11.7.16 and 11.7.17)

11.9.16 To remove any misqgivings about Planing Commission's capacity to act objectively, experts with established reputation for professional integrity and calibre should be appointed to its panel for specified term.

(Para 11.7.19)

11.9.17 The Deputy Chairman should invariably be an eminent expert, who can command the respect of the Union, as well as the State Governments, by his objectivity and stature and should not be seen as a political appointee.

(Para 11.7.20)

11.9.18 After the Report of the Finance Commission, the occasion for a review of the Union and States' finances arises in the context of resource exercise for the Annual and Five-Year Plans. It is of utmost importance than the complement of non-plan finances of the States is looked into in detail by the Resource Working Group of the Planning Commission. Detailed analysis of any aberrations and significant deviations from the norms of the Fianance Commission should be made.

(Para 11.7.24)

11.9.19 Planning Commission should pay special attention to the efficacy of the monitoring systems in the Government by advising on techniques and

formates. At the same time, it may continue monitoring of specific programmes and keep itself abreast with the progress in the core and priority sectors.

(Para 11.7.26)

11.9.20 Besides the general reviews contained in the Annual Plan and the mid-term appraisal, a comprehensive quinquennial review should be brought out by the Planning Commission, which should be taken advantage of in finalising the next five-Year Plan.

(Para 11.7.27)

11.9.21 The Advisers (State Plans) must visit the States more frequently as they have a key role in bringing about a close relationship between the States and the Planning Commission. They could be permanent invitees to the meetings of the State Planning Boards.

(Para 11.7.28)

11.9.22 In order to build expertise in the Planning Commission, the officers in senior posts should not only have the desired specialisation and competence, but should also serve in the organisation for sufficiently long periods. Serious attention to this aspect will have to be given by the Planning Commission itself.

(Para 11.7.29)

11.9.23 As part of a Staff Exchange Programme, Officers from the Planning Commission and the State Governments at middle echelons should serve at each other's place for reasonably sufficient periods and suitable incentives and facilities amde available to them.

(Para 11.7.30)

11.9.24 The very concept of planning postulates cooperative endeavour in the service of the common man. In a large and diverse country like ours, planned development is critically dependent on consensus and commitment at all levels to the objectives and strategies of the Plans formulated and implemented from time to time. The NDC should be made to function more effectively and emerge as the highest political level Inter-governmental body for giving a direction and thrust to planned development of the country. Being the supreme inter-governmental body for all matters related to socio-economic development, it is necessary that NDC should be renamed and re-constituted as National Economic and Development Council (NEDC) by Presidential Order the provisions of Article on 263 so as to have moorings in the Constitution.

(Paras 11.7.41 to 11.7.43)

11.9.25 The NEDC or its Standing Committees should meet regularly to consider important economic issues of national significance in addition to the usual developmental issues.

(Para 11.7.44)

11.9.26 NEDC should formulate its own procedures to enable it to discharge its responsibilities.

(Para 11.7.45)

11.9.27 The Secretary of the Planning Commission shall act as Secretary to the National Economic and Development Council and the Planning Commission shall provide such administrative or other assistance for the work of the Council as may be needed.

(Para 11.7.46)

11.9.28 A Standing Committee of the NEDC should be constituted consisting of the Prime Minister, Finance Minister, three other Union Ministers nominated by the Prime Minister, Deputy Chairman of the Planning Commission and Governor, Reserve Bank of India and six Chief Ministers, one from each zone selected by rotation or consensus. This standing Committee should also be constituted under Article 263 alongwith NEDC. The NEDC may, however, set up other Committees or Sub-Committees to advice it or the Standing Committee on special issues.

(Para 11.7.48)

11.9.29 The State Planning Boards should perform similar functions for the State Governments as the Planning Commission does at the national level. .....The Chief Minister should be Chairman of the State Planning Board as his active support and involvement will be essential for the success of the State level planning.

(Para 11.7.55)

11.9.30 In any negotiation and discussion with the Planning Commission, the Deputy Chairman or some Member or senior officer of the State Planning Board should invariably represent the State Governmemt, cept where participation of the Chief Minister considered necessary.

(Para 11.7.56)

11.9.31 Consulation with District Planning Boards should be made obligatory for formulating plans at higher levels.

(Para 11.7.57)

11.9.32 The institutions like Zila Parishads and elected municipal corporations need to be significantly strengthened-both financially and functionally. Regular elections and sessions of these institutions is a must, and means for ensuring the same in all the States uniformly should be evolved by the Union Government in consultation with National Economic and Development Council. For this purpose, a legislation, analogous to Articles 172 and 174 of the Constitution, should be undertaken as suggested at para 21.2.09.

(Paras 11.8.07 and 11.8.08)

11.9.33 It is necessary to evolve a mechanism like Finance Commission at the State level to enable the State Government take an objective view of resources to be devolved or transferred tothe Districts. The State Planning Boards can conveniently and with advantage be entrusted with this function. This body could then be designated as State Planning and Finance Board.

(Para 11.8.09)

ANNEXURE XI-I

ILLUSTRATIVE LIST OF DEVELOPMENTAL SUBJECTS (OTHER THAN FINANCIAL SUBJECTS) INCLUDED IN UNION LIST, STATE LIST AND CONCURRENT LIST AS PER SEVENTH SCHEDULE OF THE CONSTITUTION

(A) Union List

S. No.	Entry No.	Subject
1.	6	Atomic energy and mineral resources necessary for its production.
2.	22	Railways.
3.	23	Highways declared by or under law made by Parliament to be national highways.
4.	24	Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels the rule of the road on such waterways.
5.	25	Maritime shipping and navigation, including shipping and navigation on tidal waters provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
6.	26	Lighthouses, including lightships, becons and other provision for the safety of shipping and aircraft.
7.	27	Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
8.	28	Port quarantine, including hospitals connected therewith seamen's and marine hospitals.
9.	29	Airways aircraft and air navigation provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
10.	30	Carriage of passengers and goods by railways, sea or air, or by national waterways in mechanically propelled vessels.
11.	31	Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.
12.	41	Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
13.	42	Inter-State trade and commerce.
14.	52	Industries, the control of which by the Union is declared by parliament by law to be expedient in the public interest.
15.	53	Regulation and development of oilfields and minerals oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
16.	54	Regulation of mines and mineral development to the extent which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
17.	56	Regulation and development of inter-State rivers and river valleys 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.
18.	57	Fishing and fisheries beyond territorial waters.
19.	65	Union agencies and institutions for— (a) professional, vocational or technical training including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.
20.	66	Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
21.	68	Survey of India, the geological, botanical, zoological and anthropological surveys of India, meteorological organisations.

(B) State List		Subject
S. No.	Entry No.	
1.	5	Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.
2.	6	Public and sanitation; hospitals and dispensaries.
3.	9	Relief of the disabled and unemployable.
4.	13	Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
5.	14	Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
6.	15	Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
7.	17	Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
8.	18	Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
9.	21	Fisheries.
10.	23	Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
11.	24	Industries subjects to the provisions of entries 7 and 52 of List I.
12.	25	Gas and gas-works.
13.	26	Trade and commerce within the State subjects to the provisions of entry 33 of List III.
14.	27	Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
15.	32	Co-operative societies.
16.	35	Works, lands and buildings vested in or in the possession of the State.
(C) Concurrent List		
1.	17A	Forests.
2.	20	Economic and social planning.
3.	20A	Population control and family planning.
4.	23	Social security and social insurance; employment and unemployment.
5.	25	Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.
6.	27	Relief and rehabilitation of persons displaced from their original place of residence by reasons of the setting up of the Dominions of India and Pakistan.
7.	31	Ports other than those declared by or under law made by Parliament or existing law to be major ports.
8.	32	Shipping and navigation and inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with regard to national waterways.
9.	33	Trade and commerce in, and the production, supply and distribution of,—
	(a)	the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
	(b)	food suffs, including edible oilseeds and oils;
	(c)	cattle fodder, including oilcakes and other concentrates;
	(d)	raw cotton, whether ginned or unginned and cotton seed and
	(e)	raw jute.
10.	36	Factories,
11.	37	Boilers.
12.	38	Electricity.

ANNEXURE XI.2

TEXT OF THE RESOLUTION DATED 15TH MARCH 1950—CONSTITUTING THE PLANNING COMMISSION

New Delhi, the 15th March, 1950 No. I-P(C)/50. For some years past, the people of India have been conscious of the importance of Planned development as a means of raising the country's standard of living. This consciousness found expression in the appointment in 1938 of the National Planning Committee by the Indian National Congress. The work of the Committee was, however, interrupted by political and other developments in the beginning of the war, although much useful material has since been published. In 1944, the Government of India established a separate department of Planning and Development and, as its instance, the Central as well as the Provincial Governments prepared a number of development schemes to be undertaken after the war. Problems of planning were reviewed towards the end of 1946 by the Advisory Planning Board which was appointed by the Interim Government of India, an important recommendation of the Board being the appointment of the Planning Commission to devote continuous attention to the whole field of development so far as the Central Government was concerned with it.

2. During the last three years, the Centre as well as the Provinces have initiated schemes of development but experience has shown that progress has been hampered by the absence of adequate coordination and of sufficiently precise information about the availability of resources. With the integration of the former Indian States with the rest of the country and the emergence of new geographical and economic facts, afresh assessment of conditions of progress has now become necessary. Moreover, inflationary pressures inherited from the war, balance of payments difficulties, the influx into India of several million persons displaced from their homes and occupations, deficiencies in the country's food supply aggravated by partition and a succession of indifferent harvests, and the dislocation of supplies of certain essential raw materials have placed the economy under a severe strain. The need for comprehensive planning based on a careful appraisal of resources and on an objective analysis of all the relevant economic factors has become imperative. These purposes can best be achieved through an organisation free from the burden of the day to day administration but in constant touch with the Government at the highest policy level. Accordingly, as announced by the Honourable Finance Minister in his Budget Speech on the 28th February, 1950, the Government of India have decided to set up a Planning Commission.

3. The Constitution of India has guaranteed certain Fundamental Rights to the citizens of India and enunciates certain Directive Principles of State Policy, in particular, that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order, in which justice, social, economic and political, shall inform all the institutions of the national life, and shall direct its policy towards securing, among other things.

(a) that the citizens, men and women equally have the right to an adequate means of livelihood, (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

4. Having regard to these rights and in furtherence of these principles as well as of the declared objective of the government to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production, and offering employment opportunities to all in the service of the community.

The Planning Commission will :

(1) make an assessment of the material, capital and human resources of the country, including technical personnel, and investigate the possibilities of augmenting such of these resources as are found to be deficient in relation to the nation's requirements;

(2) formulate a Plan for the most effective and balanced utilisation of the country's resources;

(3) on a determination of priorities, 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) 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) 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) 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 show to be necessary; and

(7) make such interim or ancillary recommendations as appear to it to be appropriate either for facilitating the discharge of the duties assigned to it; or on a consideration of the prevailing economic programmes; or on examination of such specific problems as may be referred to it for advice by Central or State Governments.

5. The Planning Commission will be composed of the following :

Chairman	— Shri Jawahar Lal Nehru
Deputy Chairman	— Shri Gulzarilal Nanda
Members	— Shri V. T. Krishnamachari
	— Shri Chintaman Deshmukh
	— Shri G. L. Mehta
	— Shri R. K. Patil
Secretary	— Shri N. R. Pillai
Deputy Secretary	— Shri Tarlok Singh.

6. The Planning Commission will make recommendations to the Cabinet. In framing its recommendations, the Commission will act in close understanding and consultation with the Ministries of the Central Government and Governments of the States. The responsibility for taking and implementing decisions will rest with the Central and the State Governments. The Government of India feel confident that the States will give the fullest measure of help to the Commission, so as to ensure the maximum coordination in policy and unity in effort.

7. The work of the Planning Commission will affect decisively the future welfare of the people in every sphere of national life. Its success will depend on the extent to which it enlists the association and cooperation of the people at all levels. The Government of India, therefore, earnestly hope that in carrying out its task the Commission will receive the maximum support and goodwill from all interests and, in particular, from industry and labour.

8. The headquarters of the Commission will be at New Delhi.

ANNEXURE XI.3

COPY OF RESOLUTION RECONSTITUTING AND REDEFINING THE FUNCTIONS OF THE NATIONAL DEVELOPMENT COUNCIL

CABINET SECRETARIAT

(Department of Cabinet Affairs)

R E S O L U T I O N

(National Development Council)

New Delhi, the 7th October, 1967

No. 65/15/CF-67. The National Development Council was set up in August 1952 to strengthen and mobilise the effort and resources of the nation in support of the Five Year Plans, to promote economic policies in all vital spheres and to ensure the balanced and rapid development of all parts of the country. The Council is presently composed of the Prime Minister of India, the Chief Ministers of all States and the Members of the Planning Commission, and it makes its recommendations to the Central and State Governments.

2. The Administrative Reforms Commission, in its recent Report on the machinery for Planning, dealt with the role and functions of the National Development Council. Government have considered the recommendations of the Commissions and have decided to reconstitute the National Development Council and redefine its functions.

3. The functions of the National Development Council will be :

(i) To prescribe guidelines for the formulation of the National Plan, including the assessment of resources for the plan;

(ii) to consider the National Plan as formulated by the Planning Commission;

(iii) to consider important questions of social and economic policy affecting national development;

(iv) to review the working of the Plan from time to time and to recommend such measures as are necessary for achieving the aims and targets set out in the National Plan, including measures to secure the active participation and co-operation of the people, improve the efficiency of the administrative services, ensure the fullest development of the less advanced regions and sections of the community and, through sacrifice borne equally by all citizens, build up resources for national development.

4. The National Development Council will make its recommendations to the Central and State Governments and will comprise of the Prime Minister, all Union Cabinet Ministers, Chief Ministers of all States and Union Territories and the Members of the Planning Commission. Delhi Administration will be represented in the Council by the Lt. Governor and the Chief Executive Councillor, and the remaining Union Territories by their respective Administrators. Other Union Ministers and State Ministers may also be invited to participate in the deliberations of the Council.

The Council may appoint, from time to time, suitable sub-committees or panels.

5. The Council shall meet as often as may be necessary and at least twice in each year.

6. The Secretary of the Planning Commission shall act as Secretary to the National Development Council and the Planning Commission shall furnish such administrative or other assistance for the work of the Council as may be needed.

Sd.
(D. S. Joshi)
Cabinet Secretary

No. 65/15/CF-67 *New Delhi, the 7th October*, 1967

ORDER

Ordered that a copy of the Resolution may be communicated to the State Governments, Union Territories, all Ministers and Departments of the Government of India, the Prime Minister's Secretariat, the Secretary to the President, the Secretary to the Vice-President, and Heads of all India Missions abroad, etc., etc.

Ordered also that the Resolution be published in the Gazette of India for general information.

Sd
(D. S. Joshi)
Cabinet Secretary

ANNEXURE XI.4

ESTIMATE OF RESOURCES FOR THE ANNUAL PLANS 1984-85, 1985-86 AND SEVENTH FIVE YEAR PLAN 1985-90

(Rs. crores)

States	1984-85			1985-86			1985-90		
	State's own Resources	Central Assistance	Total	State's own Resources	Central Assistance	Total	State's own Resources	Central Assistance	Total
1. Andhra Pradesh	677.16	241.15	918.31	461.57	348.43	810.00	3579.68	1620.32	5200.00
2. Assam	—11.21	371.21	360.00	7.38	402.62	410.00	34.92	2065.08	2100.00
3. Bihar	389.37	361.63	751.00	301.15	549.85	851.00	2810.04	2289.96	5100.00
4. Gujarat	781.02	153.98	935.00	599.46	204.54	804.00	4948.33	1051.67	6000.00
5. Haryana	356.00	74.00	430.00	347.70	132.30	480.00	2511.01	388.99	2900.00
6. Himachal Pradesh	52.89	115.28	168.17	5.79	171.21	177.00	196.98	863.02	1050.00
7. Jammu & Kashmir	—25.92	260.92	235.00	—66.72	326.72	260.00	—438.68	1838.68	1400.00
8. Karnataka	502.05	147.95	650.00	460.35	190.65	651.00	2626.27	873.73	3500.00
9. Kerala	243.73	111.27	355.00	70.68	384.32	355.00	963.09	1136.91	2100.00
10. Madhya Pradesh	785.86	274.14	1060.00	830.06	339.94	1170.00	5120.94	1879.06	7000.00
11. Maharashtra	1382.43	267.57	1650.00	1360.37	319.63	1700.00	8723.32	1776.68	10500.00
12. Manipur	—15.88	76.88	61.00	—28.92	98.92	70.00	—115.00	545.00	430.00
13. Meghalaya	4.92	60.08	65.00	10.63	64.37	75.00	—1.28	441.28	440.00
14. Nagaland	—27.80	83.90	56.10	—58.31	123.31	65.00	—266.88	666.88	400.00
15. Orissa	277.71	172.29	400.00	229.37	220.63	450.00	1556.24	1143.76	2700.00
16. Punjab	260.51	83.81	344.32[1]	302.86	197.14	500.00	2818.07	466.93	3285.00
17. Rajasthan	86.26	170.00	256.26[2]	214.35	215.65	430.00	1860.23	1139.77	3000.00
18. Sikkim	4.02	31.06	35.08	—3.88	44.88	41.00	—17.62	247.62	230.00
19. Tamil Nadu	736.31	190.69	927.00	649.26	310.74	960.00	4312.14	1437.86	5750.00
20. Tripura	—15.57	78.89	63.32[3]	—1.19	87.19	86.00	—101.21	541.21	440.00
21. Uttar Pradesh	936.42	566.02	1502.45	987.62	654.38	1642.00	6839.45	3607.55	10447.00
22. West Bengal	377.56	33.76	411.32	168.89	206.11	675.00	2911.11	1213.89	4125.00
Total	7707.85	3926.48	11654.33	7168.47	5493.53	12662.00	50861.15	27235.85	78097.00

1. Gap of Rs. 95.68 crores was originally envisaged for the Plan Outlay of Rs. 440.00 crores.
2. Gap of Rs. 130.74 crores was originally envisaged for the Plan Outlay of Rs. 387.00 crores.
3. Gap of Rs. 4.68 crores was originally envisaged for the Plan Outlay of Rs. 68.00 crores.

Source : Government of India, Planning Commission.

ANNEXURE XI.4A

STATEMENT SHOWING 1984-85 OUTLAYS STATES/UNION TERRITORIES

(Rs. crores)

States	Proposed by the State Government	Annual Plan 1984-85 Outlays Recommended by		
		Working Group	Adviser (SP)	As finally agreed
1	2	3	4	5
States :				
Andhra Pradesh	931.87	885.59	865.20	918.31
Assam	435.87	362.78	NR	360.00
Bihar	775.25	744.47	NR	751.00
Gujarat	986.58	1046.86	NR	935.00
Haryana	457.25	449.55	400.00	430.00
Himachal Pradesh	183.00	194.73	158.00	168.17
Jammu & Kashmir	275.41	266.08	225.96	235.00
Karnataka	684.74	637.98	NR	650.00
Kerala	446.74	395.34	NR	355.00
Madhya Pradesh	1126.07	1130.74	1010.43	1060.00
Maharashtra	1635.29	1636.23	1555.52	1650.00
Manipur	118.16	75.78	55.40	61.00
Meghalaya	72.51	69.08	58.22	65.00
Nagaland	75.76	60.43	51.65	56.10
Orissa	491.36	439.03	350.00	400.00
Punjab	488.00	497.08	434.00	440.00
Rajasthan	808.97	605.65	NR	387.00
Sikkim	40.36	40.16	31.80	35.08
Tamil Nadu	952.80	919.54	845.80	927.90
Tripura	115.94	81.54	NR	68.00
Uttar Pradesh	1665.00	1674.81	NR	1502.45
West Bengal	800.00	747.55	NR	411.32
Tatal States	**13566.83**	**12961.00**	..	**11865.43**
Union Territories :				
A & N Islands	37.88	28.90	28.90	28.90
Arunachal Pradesh	98.07	69.23	56.79	63.00
Chandigarh	34.22	31.41	31.41	31.41
Dadar & Nagar Haveli	9.94	7.60	7.60	7.60
Delhi	342.58	297.52	275.00	290.00
Goa, Daman & Diu	88.00	63.25	53.18	60.00
Lakshadweep	12.05	6.66	6.66	6.66
Mizoram	59.66	45.52	36.29	40.00
Pondicherry	31.49	26.13	26.13	30.00
Total UTs	**713.89**	**576.22**	..	**557.57**
Total States/UTs	**14280.72**	**13537.22**	..	**12423.57**

NR : Not recommended by Adviser (SP).

Source : Government of India, Planning Commission.

ANNEXURE XI.4B

SEVENTH PLAN (1985-90) OUTLAYS STATES/UNION TERRITORIES

(Rs. crores)

States	Seventh Plan (1985-90) Outlays Recommended by			
	Proposed by the States	Working Group	Adviser (SP)	As finally agreed
1	2	3	4	5
States :				
Andhra Pradesh	7500.00	6596.13	*	5200.00
Assam	3550.00	2464.60	*	2100.00
Bihar	7002.00	5493.54	3250.00	5100.00
Gujarat	8982.88	8939.43	4500.00	6000.00
Haryana	3200.00	3057.75	2570.00	2900.00
Himachal Pradesh	1339.00	1248.30	920.00	1050.00
Jammu & Kashmir	2206.00	1842.28	1200.00	1400.00
Karnataka	5500.00	4620.74	*	3500.00
Kerala	3300.00	2831.32	*	2100.00
Madhya Pradesh	7013.98	8778.36	*	7000.00
Maharashtra	15200.00	13696.07	9000.00	10500.00
Manipur	1093.39	506.04	*	430.00
Meghalaya	680.55	564.13	*	440.00
Nagaland	892.99	540.93	*	400.00
Orissa	5088.71	3444.08	1900.00	2700.00
Punjab	4500.00	4423.19	2200.00	3285.00
Rajasthan	6549.40	4970.38	*	3000.00
Sikkim	302.50	289.04	200.00	230.00
Tamil Nadu	7000.00	5854.40	*	5750.00
Tripura	1235.54	590.76	*	440.00
Uttar Pradesh	16842.60	15265.82	*	10447.00
West Bengal	6646.50	5982.51	4000.00	4125.00
Total States	**115626.04**	**101999.80**		**78097.00**
Union Territories :				
A & N Islands	527.58	305.09	273.55	285.00
Arunachal Pradesh	931.04	532.96	370.00	400.00
Chandigarh	281.32	187.27	203.09	203.09
Dadar & Nagar Haveli	99.11	46.58	46.29	46.29
Delhi	2463.14	1903.90	*	2000.00
Goa, Daman & Diu	410.00	368.57	347.32	360.00
Lakshadweep	95.41	52.45	43.90	43.90
Mizoram	886.13	465.69	240.00	260.00
Pondicherry	285.53	181.89	141.77	170.00
Total (UTs)	**6029.31**	**4044.40**		**3768.28**
Total (States and UTs)	**121655.31**	**106044.20**		**81865.28**

*Not recommended by Adviser (SP).

Source . Government of India, Planning Commission.

ANNEXURE XI.4C

ANNUAL PLAN 1985-86 OUTLAYS STATES/UTs

(Rs.crores)

States	Annual Plan 1985-86 Outlays Recommended by			
	Proposed by State Governments	Working Group	Adviser (SP)	As finally agreed
1	2	3	4	5
States				
Andhra Pradesh	1176.30	1099.03	*	810.00
Assam	550.00	432.22	*	410.00
Bihar	1200.01	1067.05	547.00	851.00
Gujarat	1191.32	1369.56	600.00	804.00
Haryana	482.46	550.67	410.00	430.00
Himachal Pradesh	200.00	202.76	168.00	177.00
Jammu & Kashmir	366.53	334.91	235.00	260.00
Karnataka	850.00	832.32	*	651.00
Kerala	549.00	513.51	*	355.00
Madhya Pradesh	1062.60	1414.53	*	1170.00
Maharashtra	2126.81	2063.54	1500.00	1170.00
Manipur	193.48	95.96	*	70.00
Meghalaya	135.81	107.78	*	75.00
Nagaland	181.41	104.76	*	65.00
Orissa	650.62	537.14	380.00	450.00
Punjab	600.00	735.44	440.00	500.00
Rajasthan	840.68	743.72	*	430.00
Sikkim	50.11	45.37	36.00	41.00
Tamil Nadu	1002.61	980.38	*	960.00
Tripura	202.86	104.79	*	86.00
Uttar Pradesh	2633.42	2456.58	*	1642.00
West Bengal	1149.20	977.77	650.00	675.00
Total States	**17395.23**	**16819.79**		**12662.00**
Union Territories :				
A & N Islands	30.66	39.13	33.50	33.50
Arunachal Pradesh	157.65	100.11	73.00	73.00
Chandigarh	57.32	39.82	38.76	38.76
Dadar & Nagar Haveli	22.75	10.31	8.65	8.65
Delhi	493.52	342.15	*	335.00
Goa, Daman & Diu	79.74	74.39	72.10	64.00
Lakshadweep	14.23	9.11	7.65	7.65
Mizoram	149.10	85.26	48.00	48.00
Pondicherry	60.73	36.07	27.00	33.00
Total UTs	**1115.70**	**736.35**		**641.56**
Total States (UTs)	**13510.93**	**17556.14**		**13303.56**

*Not recommended by Adviser (SP)

Source : Government of India, Planning Commission.

ANNEXURE XI·5

MAJOR/MEDIUM IRRIGATION PROJECTS CONTINUING FROM PREVIOUS PLANS AND PRIOR TO 1974, ALONG WITH ORIGINAL COST, COST REVISED IN 1983 AND AS ESTIMATED IN 1985

(Rs. crores)

Sl. No.	Name of the Project	Estimated cost of Projects		
		Original	Revised Cost in 1983	Latest Revised in 1985
1	2	3	4	5
1.	**Andhra Pradesh :**			
	Category A .			
	(1) Godavari Barrage	26·59	66·00	86·01
	(2) Vamsadhra Stage I	8·78	37·57	51·15
	(3) Somasila Phase I	17·20	59·86	147·00
	(4) Tungabadra HLC Stage II	11·95	48·00	111·70
	Category B .			
	(1) Nagarjunsagar	91·12	537·00	849·63
	(2) Sriram Sagar	40·10	368·00	651·00
2.	**Bihar :**			
	Category A .			
	(1) Western Kosi Canal	13·49	161·80	282·21
	Category B .			
	(1) Bagmati	5·78	75·51	197·83
3.	**Gujarat :**			
	Category A .			
	(1) Panam	10·67*	41·36	56·54
	(2) Damanganga	24·40@	108·84	132·26
	(3) Mahi Bajaj Sagar	24·61	41·22	46·70
4.	**Haryana :**			
	Category A .			
	(1) Western Jammu Canal (Remodelling).	5·57	12·49	12·49
	(2) Gurgoan Canal	5·27	15·00	16·83
	(3) Loharu Lift (Stage I only)	4·13	30·00	34·62
5.	**Jammu & Kashmir**			
	Category A.			
	(1) Ravi Canal	29·84	52·70	71·66
6.	**Karnataka :**			
	Category A .			
	(1) Tungabhadra Right Bank & Left Bank Canals (First Plan)	23·00	60·00	97·23
	(2) Tungabhadra High Level Canal	2·61	10·80	15·00
	Category B .			
	(1) Upper Krishna (Stage I only)	58·20	400·00	1039·71
	(2) Malaprabha	19·91	192·00	259·64
7.	**Kerala :**			
	Category A .			
	(1) Periyar Valley	3·48	39·71	57·49
	(2) Pamba	3·83	43·00	52·00
	(3) Kuttiad	4·96	39·70	50·00
	(4) Chittarpuzha	0·99	12·80	17·85
	(5) Kanhira Puzha	3·65	32·00	44·56
	(6) Pazhassi	4·42	42·00	49·12
	(7) Kallada	13·28	176·00	220·00
8.	**Madhya Pradesh :**			
	Category A .			
	(1) Sindh Phase I	4·95	16·00	22·71
	(2) Pairi	4·97	13·66	19·66
	(3) Jonk	4·14	8·30	14·89
	(4) Rangwan H. L. C.	1·86	4·40	6·93
9.	**Maharashtra :**			
	Category A .			
	(1) Krishna	27·66	114·96	155·00
	(2) Pench Irrigation	40·69	89·62	143·20
	(3) Upper Tapi Stage I (Pati)	13·11	73·63	102·13

(ANNEXURE XI · 5 *contd.*

(Rs. crores)

Sl. No.	Name of the Project	Estimated cost of Project		
		Original	Revised cost in 1983	Latest Revised in 1985
1	2	3	4	5
	Category B .			
	(i) Warna	31·09	201·84	316·31
	(ii) Kukadi	17·90	240·60	269·00
	(iii) Bhima	42·58	184·52	305·12
	(iv) Khadakwasla	11·61	111·20	175·31
10.	**Manipur :**			
	Category A .			
	(1) Loktak Lift Irrigation	4·62	16·86	23·53
11.	**Orissa :**			
	Category A .			
	(1) Rangalidam	10·66	24·73	31·92
12.	**Punjab :**			
	Category A.			
	(1) Exten. of non-perennial Irrigation in UBDC Tract	N.A.	N.A.	9.52
	(2) Utilisation of Surplus Ravi Beas Waters . .	N.A.	N.A.	18·38
13.	**Rajasthan :**			
	Category A .			
	(1) Rajasthan Canal Stage I	66·47	228·20	228·29£
	(2) Jakkam	2·33	31·84	31·84£
	(3) Mahi Bajaj Sagar (Unit I)	13·70	31·78	31·78£
	(4) Gurgaon Canal	2·38	9·48	9·48£
	Category B .			
	(1) Rajasthan Canal Stage II	89·12£	286·00	286·00£
14.	**Uttar Pradesh :**			
	Category A .			
	(1) Sarda Sahayak	64·84	378·00	610·00
	(2) Gandak Canal	15·47	85·58	35·33
	(3) Kosi Irrigation	2·93	12·64	19·10
	(4) Increasing Capacity of Narainpur Pump Canal	9·96	15·00	28·10
	(5) Sone Pump Canal	5·64	13·00	31·00
	Category B .			
	(1) Tehri Dam	40·00	N.A.	250·80
15.	**West Bengal :**			
	Category A .			
	(1) Mayurakshi	7·23	20·46	150·00
	(2) Kangsabati	25·26	84·00	100·00
	Union Territories :			
1.	**Goa, Daman & Diu**			
	Category A .			
	(1) Salauli	N.A.	N.A.	42·64
	(2) Damanganga	N.A.	N.A.	7·16
2.	**Dadar and Nagar Heveli :**			
	Category A .			
	(1) Daman ganga	N.A.	N.A.	126·50

NOTE :

Category A : Relates to Projects started before 1974 and are likely to be completed in the Seventh Plan.

Category B : Major ongoing Projects of VII Plan started before 1-4-1974 which are likely to spill over into Eighth Plan.

SOURCE : Working Group Reports of each State as obtained from I & CAD Division of Planning Commission

* Includes cost of water supply also.

@ Includes cost for the Dadra & Nagar Heveli and Goa, Daman & Diu for irrigation water supply and power sectors.

£ Public Accounts Committee, 141st Report, 1983.

ANNEXURE XI.6

PERCENTAGE DISTRIBUTION OF SIXTH AND SEVENTH FIVE YEAR PLAN OUTLAYS AMONG CENTRE, STATE AND UNION TERRITORIES BY HEADS OF DEVELOPMENT

Head of Development	List/Entry in the Seventh Schedule to which it corresponds	Percentage of Centre, States' and U.T.'s Share in					
		Sixth Five Year Plan			Seventh Five Year Plan		
		Centre	State	U.T.	Centre	State	U.T.
1	2	3	4	5	6	7	8
I. Agriculture		**43·0**	**54·8**	**2·2**	**38·4**	**59·1**	**2·5**
i. Agricultural Research & Education	SL(14)	63·2	36·8	**	60·3	39·3	0·4
ii. Crop Husbandry	SL(14)	23·7	73·5	2·8	39·4	58·8	1·8
iii. Soil and Water Conservation	SL(17)*	20·8	74·5	4·7	14·9	80·7	4·4
iv. Animal Husbandry and Dairying	SL(15)	46·2	50·8	3·0	38·1	57·8	4·1
v. Fisheries	SL(21)	46·8	49·8	3·4	34·1	61·2	4·7
vi. Forestry and Wild Life	CL(17 a&b)	15·2	80·8	4·0	24·0	72·1	3·9
vii. Land Reforms	SL(18)	9·9	89·5	0·6	9·3	89·4	1·3
viii. Management of Natural Disasters	UL(97)	100·0	..	100·0	47·4	52·6	..
ix. Agricultural Marketing and Rural Godowns	CL(28) & CL(33b)	48·5	50·5	1·0	40·2	57·8	2·0
x. Food, Storage and Warehousing, Food Processing	CL(33b)	87·1	11·4	1·5	89·6	10·1	0·3
xi. Investment in Agricultural Financial Institutions	UL(45)	80·9	19·1	..	55·2	44·8	0·3
xii. Plantations	SL(14) & CL(17a)	..	..	..	100·0	..	..
II. Rural Development		**43·1**	**56·3**	**0·6**	**54·0**	**45·7**	**0·3**
i. Integrated Rural Development and related Programmes	SL(5) (6)(14) (15) (18), etc.	28·6	..	..	53·7	46·3	..
ii. National Rural Employment Programme	CL(23)	28·1	43·3	..	50·3	49·7	..
iii. Community Development and Panchayat Institutions	SL(5)	2·0	95·2	2·8	..	95·2	4·8
iv. Cooperation	SL(32)	36·1	61·8	2·0	35·7	62·1	2·2
v. Special Employment	CL (23)	..	100·0	..	..	100·0	..
vi. Rural Landless Employment Guarantee Scheme	CL (23)	..	..	..	100·0	..	..
vii. Integrated Rural Energy Programmes	CL(38)	..	..	..	12·4	77·8	9·8
III. Special Area Programmes		..	**100·0**	..	..	**100·0**	..
i. Hill Areas	CL(20)	..	100·0	..	..	100·0	..
ii. Tribal Areas		..	100·0	..	..	100·0	..
iii. North Eastern Council		..	100·0	..	..	100·0	..
iv. Development of Backward Areas		..	100·0	..	..	100·0	..
v. Border Area Development Programme	CL(20)	..	..	..	..	100·0	..
vi. Western Ghat Development Programme		..	..	..	..	100·0	..
vii. Other Area	CL(20)	..	..	..	..	100·0	..
IV. Irrigation and Flood Control		**5·2**	**92·8**	**2·0**	**4·9**	**93·9**	**1·2**
i. Major and Medium Irrigation	SL(17)*	1·1	98·3	0·6	0·4	99·1	0·5
ii. Major Irrigation	SL(17)	3·9	94·5	1·6	4·8	93·3	1·9
iii. Command Area Development	SL(17)*	35·0	64·9	0·1	29·9	69·6	0·5
iv. Flood Control including Anti-Sea Erosion	SL(17)	16·1	79·2	4·1	15·8	76·7	7·5

ANNEXURE XI·6—*Contd.*

Head of Development	List/Entry in the Seventh Schedule to which it corresponds	Percentage of Centre, States' and U.T.'s Shares in					
		Sixth Five Year Plan			Seventh Five Year Plan		
		Centre	State	U.T.	Centre	State	U.T.
1	2	3	4	5	6	7	8
V. Energy		**45·2**	**53·9**	**0·9**	**57·5**	**41·6**	**0·9**
i. Power	CL(38)	24·5	74·2	1·3	32·2	66·2	1·6
ii. New and Renewable Sources of Energy	CL(38)	100·0	..	..	79·4	19·1	1·5
iii. Petroleum	UL(53)	100·0	..	..	100·0	..	..
iv. Coal	SL(23) & UL(54)	100·0	..	..	100·0	..	..
VI. Industry and Minerals		**85·0**	**14·6**	**0·4**	**82·6**	**16·9**	**0·5**
i. Village and Small Scale	SL(24)*	51·9	45·8	2·3	46·7	50·1	3·2
ii. Large and Medium Industry	SL(24)*	89·5	10·4	0·1	87·6	12·2	0·2
VII. Transport		**67·8**	**29·9**	**2·3**	**71·7**	**25·1**	**3·2**
i. Railways	UL(22)	100·0	..	..	100·0	..	..
ii. Roads	SL(13)* & UL(23)	24·1	69·8	6·1	19·6	70·5	9·9
iii. Road Transport	SL(13)	5·9	93·0	1·1	10·2	87·7	2·1
iv. Ports	UL(27) & CL(31)	40·6	4·5	3·2	90·0	7·7	2·3
v. Light Houses	CL(26)	0·8					
vi. Shipping	UL(25) & CL(32)	50·9			83·9	0·8	15·3
vii. Inland Water Transport	SL(13) & CL(32)	62·8	34·0	3·2	58·7	29·8	1·
viii. Civil Aviation	UL(29)	98·9	0·7	0·4	96·3	3·3	0·4
ix. Meteorology	UL(68)	..	..	..	N.A.	N.A.	N.A.
x. Tourism	UL(97)	38·4	54·7	6·9	42·5	50·4	7·1
xi. Farakka Barrage	UL(24)	100·0	..	..	100·0	..	..
xii. INSAT—Space Segment	UL(31)	100·0	..	..	N.A.	N.A.	N.A.
VIII. Communications and Information & Broadcasting		**99·0**	**0·9**	**0·1**	**98·4**	**1·5**	**0·1**
i. Posts	UL(31)	..	..	..	100·0	..	..
ii. Communication	UL(31)	100·0	..	..	99·8	0·2	..
iii. INSAT-Space Segment	UL(31)	100·0	..	..	100·0	..	..
iv. Broadcasting	UL(31)	100·0	..	..	100·0	..	..
v. Doordarshan	UL(31)	..	..	..	100·0	..	..
vi. Information and Publicity	UL(31)	48·4	45·9	5·7	23·5	71·5	5·5
vii. Films	UL(31)	..	..	..	100·0	..	..
IX. Science and Technology		**98·0**	**2·0**	..	**93·4**	**6·4**	**0·2**
i. Atomic Energy	UL(6)	100·0	..	..	100·0	..	..
ii. Space	UL(66)	110·0	..	..	100·0	..	..
iii. Scientific Research (including INSAT-Space Segment)	UL(66)	94·7	5·3	..	84·4	15·0	0·6
iv. Ecology and Environment/Prevention and Control of Air and Water pollution and Ganga Action Plan	UL(97)	100·0	..	..	81·8	17·7	0·5

ANNEXURE XI.6—*Contd.*

Head of Development	List/Entry in the Seventh Schedule to which it corresponds	Percentage of Centre, States' and U.T's Shares in					
		Sixth Five Year Plan			Seventh Five Year Plan		
		Centre	State	U.Ts.	Centre	State	U.Ts.
1	2	3	4	5	6	7	8
v. National Tex Houses	CL(39)	100·0	..	..	..	..	..
vi. Ocean Development	UL(27)	..	..	..	100·0	..	..
vii. Forensic Science Labs. and Police Wireless	UL(65)	..	..	..	100·0	..	..
viii. Scientific and Industrial Research	UL(66)	..	..	..	100·0	..	..
X. Social Services		**31·7**	**62·9**	**5·4**	**35·3**	**58·5**	**6·2**
i. Education Culture & Sports	CL(25)						
(a) General Education	CL(25)	23·9	69·0	7·1			
(b) Art & Culture	CL(25)	60·8	37·9	1·3	27·4	54·7	7·9
(c) Technical Education	CL(25)	60·5	35·7	3·8			
ii. Health including Medical	SL(6)	33·0	59·9	7·1	26·5	66·0	7·5
iii. Family Planning	CL(20(A)	100·0	..	..	100·0	..	..
iv. Housing	SL(35)	20·1	71·5	8·4			
v. Urban Development	SL(35)	11·0	78·3	10·7	10·8	77·0	12·2
vi. Water Supply and Sanitation	SL(6)	15·7	79·6	4·7	19·0	74·3	6·7
vii. Welfare of Scheduled Castes, Scheduled Tribes and Other Backward Classes	CL(20)	25·0	73·8	1·2	18·5	8·2	1·3
viii. Special Central Assistance for Scheduled Castes Component Plans	CL(20)	100·0	..	..	100·0	..	..
ix. Social and Women's Welfare	CL(20)	55·1	40·4	4·5	79·0	19·0	2·0
x. Nutrition	CL(20)	6·3	90·1	3·6	0·4	97·3	2·3
xi. Labour and Labour Welfare	CL(23)	39·3	56·1	4·6	28·6	65·8	5·6
XI. Others		**32·6**	**65·2**	**2·2**	**12·8**	**84·7**	**2·5**
i. Statistics	CL(20)	72·2	25·7	2·1	43·8	51·9	4·3
ii. Rehabilitation of Displaced Persons	CL(27)	100·0	..	..	99·9	..	0·1
iii. Planning Machinery	CL(20)	100·0	..	..	10·8	85·5	3·7
iv. Stationery and Printing	CL(3[illegible])	30·3	65·9	3·8	9·7	80·7	9·6
v. District Planning	CL(20)	..	..	..	..	99·2	0·8
vi. Public Distribution System		..	..	..	5·4	88·6	6·0
vii. Official Language—Hindi	CL(25)	..	..	..	100·0	..	..
viii. Public Works	SL(35)	..	97·5	2·5	..	96·7	3·3
ix. Training for Development	CL(25)	100·0	..	..	29·3	53·5	17·3
x. Other classified Services	UL(97)	1·3	95·3	3·2	..	89·3	10·7
xi. Unallocated		..	..	..	12·0	88·0	..
Grand Total		**48·5**	**49·8**	**1·7**	**53·1**	**44·8**	**2·1**

* Subject to provision of some Entry in the Union List.

** Included under Crop Husbandry.

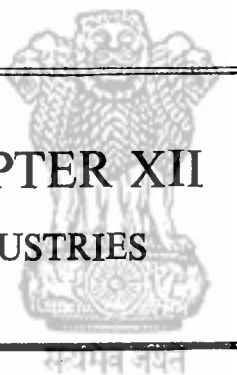
Source : Government of India, Planning Commission—Seventh Five Year Plan, 1985—90.

Notes : (i) UL : Union List.

(ii) SL : State List.

(iii) CL : Concurrent List.

(iv) Numbers in the brackets refer to the Entry in the relevant List.



CHAPTER XII

INDUSTRIES

CONTENTS

LIST OF ANNEXURES

CHAPTER XII

INDUSTRIES

1. *INTRODUCTION*

12.1.01 'Industry' forms a vital sector in the planned development of the country. Need for protection to indigenous industry as well as control over key industries was recognised even before Independence. The Industrial Policy Resolution, 1948 is a land-mark in the industrial development of the country. It recognised the importance of rapid industrial development as an essential ingredient of the strategy for economic development. Certain areas, e.g., arms and ammunition, atomic energy and railway transport were to be monopolies of the Union. In basic industries like iron and steel, coal, ship-building, manufacture of telephone, telegraph and wireless apparatus (excluding radio receiving sets), the State would be exclusively responsible for the establishment of new units. The rest of the field was normally open to private enterprise, subject to progressive participation by the State.

12.1.02 A revised Industrial Policy Resolution was adopted by Parliament in 1956, keeping in view the need for rapid planned development and consistently with the objective of a socialistic pattern of society that it had approved a little earlier. This Resolution has remained the corner-stone of Industrial Policy ever since. The Second Five Year Plan stated : "Essentially, this (Socialistic Pattern of Society) means that the basic criterion for determining the lines of advance must not be private profit but social gain....."[1]

12.1.03 The Industrial Policy Resolution, 1956 envisaged that the State would assume direct responsibility over a wider area in the future development of industry. All industries of basic and strategic importance, as well as industries in the nature of public utilities, were reserved for development by the State. Other industries which required heavy investment were also reserved for public sector. Industries were classified into three categories. Firstly, there were those exclusively reserved for the public sector, e.g., Iron and Steel, Atomic energy, Coal and lignite, Mineral oils, Air transport, Railway transport, Ship-building and Generation and distribution of electricity. In the second category were those industries which would be progressively State-owned and in which, the State would generally take initiative in setting up new undertakings, e.g., Machine tools, Fertilisers and Anti-biotic and other essential drugs. However, the private sector also was expected to supplement the efforts of the State in this category. Thirdly development of all the remaining industries was left open to the initiative of the private sector but subject to social control.

12.1.04 The Industrial Policy Resolution, 1956 also contemplated that the disparities in levels of development between different regions should be progressively reduced and emphasised the need for building up of necessary infra-structure in the industrially less developed areas.

12.1.05 Another important step was the passing of the Monopolies and Restrictive Trade Practices Act in 1969, but this applied only to very big industries and did not raise any Union-State issue.

2. *CONSTITUTIONAL PROVISIONS*

12.2.01 The subject 'Industries' has been enumerated as Entry 24 in List II. However, it is expressly subject to Entries 7 and 52 of List I. With respect to 'industry', which is a legislative head enumerated in List II, the States can be denied competance only to the extent Parliament by law makes the requisite declaration under Entry 7 and or Entry 52 of List I.

12.2.02 Entry 7 of List I refers to 'Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.' Once such a declaration is made by Parliament, it would be entitled to legislate in respect of that industry to the exclusion of the competence of State legislatures.

12.2.03 Again, Parliament may, by law, declare Union control of any industry to be expedient in the public interest vide Entry 52 of List I. This Entry does not as such, confer on Parliament unfettered legislative competence. But once the requisite declaration is made by Parliament, it acquires such competence with respect to that industry.

12.2.04 However, under Entry 7 and/or Entry 52 of List I a declaration in abstract is not sufficient. Parliament must by the law incorporating the declaration, specify the industry and indicated the nature and extent of the Union control over it. If this is done, to the extent covered by the declaration and the concomitant legislation, the legislative competence of the States. With respect to that industry, is abstracted out of the States' legislative field. This was clarified by the Supreme Court in *Ishwari Khaitan Sugar Mills (P) Ltd.*, vs., *The State of U.P. and others*,[2] as follows :—

> "the State Legislature can be denied legislative power under Entry 24 of List II to the extent Parliament makes declaration under Entry 52 and by such declaration Parliament acquires

[1]Government of India, Planning Commission : *Second Five Year Plan* (1956), p. 22.

[2]AIR 1980 (SC 1955).

53—325/87

power to legislate only in respect of those industries in respect of which declaration, is made and to the extent as manifested *by legislation incorporating the declaration and no more*".[3]

3. *INDUSTRIES (DEVELOPMENT & REGULATION) ACT, 1951*

12.3.01 The Industrial Policy Resolution, 1948 was followed by a comprehensive enactment, namely, the Industries (Development & Regulation) Act, 1951 (IDR Act). The Act has so far been amended on ten occasions. This Act provided the necessary frawework for implementing the policy outlined earlier. It enabled the Union Government to direct investment into desired channels of industrial activity in keeping with national development objectives and goals—through the mechanism of licensing. It also gave powers to the Union Government to secure a more balanced regional development through regulation of location of industries.

12.3.02 This Act brought under Union's control the development and regulation of a number of important industries, regulation of which was deemed expedient in 'public interest'. Section 2 of this Act declares that it is expedient in public interest that the Union should take under its control the industries specified and these are placed in the First Schedule of the Act. After the announcement of the Industrial Policy Resolution, 1956, by an Amending Act (1957), passed under Entry 52, List I, the First Schedule of the IDR Act was replaced by a more comprehensive one.

12.3.03 The Act provides for the constitution of Advisory and Development Councils to advise the Government of India on matters concerning the development and regulation of the Scheduled industries. It also provides for registration, licensing and investigation of the Scheduled industries. It envisages regulation of production, distribution and prices of any articles or class of articles produced by the industrial undertaking, including prohibition or reducing the production of any particular article or class of articles. It also enables the Union to levy and collect a cess on the Scheduled industries. Management of any undertaking can also be taken over. These, among the more important of the various provisions of this Act, show clearly that the Act is comprehensive and deals with practically all aspects of the industries included in the First Schedule to the Act.

4. *CRITICISM*

12.4.01 Except three State Governments, none of the political parties or States, has criticised the structural aspects of Entry 52 of List I. One of them has observed that the expression 'in public interest' is very wide and can bring any and every industry within the scope of Entry 52. On this premise, it has suggested that Entry 52 be modified and limited to only core industries of crucial importance for national development and these should be specified in the Entry itself. On the same lines, another State Government has suggested that only 'key, basic and strategic industries' of 16 types named by it be specified and retained in Entry 52 of List I. Yet, a third State Government has suggested that the expression 'in the public interest' should be clearly defined to circumscribe its scope.

12.4.02 Many State Governments and political parties have criticised the action of the Union Government in bringing into the First Schedule of the IDR Act a very large number of industries, thereby denuding the States of legislative competence available to them under Entry 24 of List II. There has been an allegation that as a consequence 'Industry' has got converted into a Union subject. They have also drawn attention to assumption of control over itmes like bicycles, razor-blades, pressure cookers, hurricane lanterns, and the like, as examples of excessive and widespread control. It has also been pointed out that even when the need was felt for regulating only a particular aspect of an industry, by its inclusion in the First Schedule of IDR Act, the Union acquired control over it in all its aspects. While none of the States has questioned the need for the Union to be clothed with sufficient powers to control any specified industry when considered expedient in public interest, it is the excessive occupation of the field of Industry that is being criticised severely as being against the spirit of the Constitution.

5. *EXAMINATION OF ISSUES*

12.5.01 An eminent American expert, while dealing with Federal legislative power in the United States of America, has observed : "Of course, no one expects Congress to obliterate the States, at least in one fell swoop. If there is any danger, it lies in the tyranny of small decisions—in the prospect that Congress will nibble away at State sovereignty bit by bit, until essentially nothing is left but a gutted shell".[4] The *vires* of individual actions may not

---

[3]After examining the position the Supreme Court further held as follows :—

"The declaration made in S. 2 of the Industries (Development and Regulation) Act, 1951 is a declaration made in an Act enacted to provide for development and regulation of certain Industries. The declaration for assuming control is to be found in the same Act which provides for the limit of control. The deducible inference is that Parliament made the declaration for assuming control in respect of declared industries set out in the Schedule to the Act to the extent mentioned in the Act. It is difficult to accept the submission that S.2 has to be read *de-hors* the Act and not forming part of the Act. This would be doing violence to the art of legislative draftsmanship. The Industries (Development and Regulation) Act, 1951 prescribes the extent of control and specifies it. As the declaration trenches upon the State leagislative power it has to be construed strictly. Therefore, even though the Act enacted under Entry 54 which is to some extent *pari materia* with Entry 52 and is a parallel and cognate statute while making the declaration the Parliament did use the further expression "to the extent herein provided" while assuming control, the absence of such words in the declaration in S. 2 would not lead to the conclusion, that the control assumed was to be something in abstract, total and unfettered and not as per various provisions of the IDR Act. The lacuna, if any, is made good by hedging the power of making declaration to be made by law. Legislative intention has to be gathered from the Act as a whole and not by piecemeal examination of its provisions. It would, therefore, be reasonable to hold that to the extent Union acquired control by virtue of declaration in S. 2 of the IDR Act as amended from time to time, the power of the State Legislature under Entry 24, List II to enact any legislation in respect of declared industry so as to encroach upon the field of control occupied by IDR Act would be taken away."

[4]Tribe, Lawrence H. *American Constitutional Law*, (1976), p. 302.

be in doubt, but taking all the decisions in their totality, there is cause for concern if the legislative and executive competence of States in regard to industries is reduced to a vanishing point, notwithstanding the fact that the Constitution enumerates 'Industries' in the State List. It is, therefore, necessary to evaluate the criticism and the various suggestions in the above perspective.

Constitutional Aspects

12.5.02 In the Chapter on Legislative Relations we have dealt with the suggestion that core industries of crucial importance should be enumerated in Entry 52 of List I itself. The need for the Union to have sufficient powers to control specific important industries is conceded. As regards the suggestion to modify Entry 52 of List I, we have noted in the Chapter on Legislative Relations that in the dynamic situation that obtains, the control of any industry considered expedient in public interest at a given point of time may not always remain so. In course of time, it may become necessary to bring under Union's control new industries and delete or modify existing items in the First Schedule. If the suggestion to modify Entry 52 of List I is accepted, it would make the system too rigid, calling for amendment of the Constitution every time a deletion, modification or addition becomes necessary, in the public interest.

12.5.03 'Public interest' is not easy to define. Obviously, an expression of widest amplitude has been used to enable the Union to assume control of any industry so as to subserve the accepted socio-economic policies. The concept of 'public interest', if it is to retain its dynamism, has to be adapted and attuned from time to time to the changing socio-economic conditions. This apart, it is not feasible to divide industries into water-tight compartments between the Union and the States on the inconstant criteria of 'public interest'. For the above and other reasons mentioned in Chapter II, we are unable to support the proposed modification of Entry 52.

Use of IDR Act

12.5.04 We now consider the allegation made by some State Governments that the IDR Act has been used by the Union in a manner so as to acquire near total control over the industrial sector. The First Schedule of the IDR Act, contained 37 items in 1951. In 1953, certain items were added to it. In 1957, substitution of an altogether new Schedule brought about a major change through an elaborate and detailed reclassification of industries. Further additions to the First Schedule were made in 1962, 1973 and 1979. At present the industries included in the Schedule are divided into 38 major heads comprising 171 items. The items now included cover a very wide range of industries. Many on the items listed are prefixed by the expression 'such as' and suffixed by 'and the like'.

12.5.05 Increase in the scope and extent of Union control over industries has been attributed by the Union Government to the needs arising out of planned economic development and the concept of mixed economy adopted by the country. Further, with the growth of industrial and technological base, it became possible to produce many more complex and sophisticated items within the country. According to it, it became increasingly necessary to secure that industrial investments were not left to be regulated by market forces alone as this could result in a bias in favour of areas of high profitability but of low national priority. Small inustries also needed to be protected against competition from medium and big industries from social consideration.

12.5.06 The Union Government has informed us that one of the most important reasons for enlarging the scope of licensing controls, is the responsibility of the Union to ensure balanced regional development. For example, for the development of backward areas, industrial licensing policy may have to be used purposively in their favour, in addition to subsidies and tax advantages. Similarly, preference may have to be given for the protection and development of small industries also. Setting up of new units or exapansion of existing ones is not normally permitted within the standard urban area limit of a large metropolitan city having a population of more than 10 lakhs and within the municipal limits of a city having population of more than 5 lakhs to prevent concentration of industries in already developed areas and to save densely populated areas from adverse effects of pollution arising out of industrial development. This also helps in industrialisation of less developed areas.

12.5.07 The question, however, arises whether this is the right way of achieving these objectives. Must the Union Government take blanket powers under the IDR Act to deny the State completely the powers that the Constitution primarily gives them? Further, must this denial be for all time to come or there should be some time-limit to it? Should not there be some meaningful and effective review in consultation with the States at prescribed intervals?

12.5.08 A suggestion has been made that where only a limited aspect of an industry needs to be controlled by the Union, it is not necessary to include it under the IDR Act. A large number of industries were added to the First Schedule on the ground that it was necessary to protect small scale industries. As a result the Union has assumed full control over them. This action has been criticised by the State Governments. They have suggested that instead of including such industries in the Schedule to the IDR Act, a separate legislation limiting itself to the said objective, would have been sufficient. We find merit in this suggestion.

12.5.09 Entry 52 of List I requires that Parliament should declare, by law, that it is expedient in the public interest for the Union to control a particular industry to a particular extent for a particular purpose. If Union control of a specific aspect of an industry is considered expedient in the public interest, it would be advisable that the IDR Act is suitably amended to facilitate the Union Government's regulation of that aspect only. Parliament may have to pass a separate law under Entry 52 of List I. It will be then able to examine thoroughly the pros and cons, which could not be done for the items included in a blanket manner in the present IDR Act. If such new legislation presents any serious difficulty, an alternative may be to replace

the present First Schedule of the IDR Act by several Schedules, each of which would specify the purpose for which a particular control was imposed on an industry so that all other areas of Entry 24 of List II remain unoccupied by the Union. We recommend that the Planning Commission, in consultation with the Ministries of Industry and Law and Justice, should prepare a paper on this subject for the consideration of the NEDC at an early date.

12.5.10 We strongly recommend that as a mandatory legal requirement, there should be a periodical review, say, every three years, to determine whether in respect of any of the industries the Union's control should be continued or relaxed or lifted. Such a review may be undertaken by a Committee of Experts on which the State Governments should be represented on a zonal basis. The purpose of the review will be two-fold. First, it will help ascertain the reasons for keeping or including any industry in the First Schedule or for deleting any industry therefrom. Secondly, it will bring out in a specific manner the respective aspects in which the Union and the State Governments will have to play their respective roles in developing and regulating big, medium and small industries. This will, in turn, help foster the needed coordination and consensus between the two levels of Governments. The result of the review may also be placed before the NEDC.

12.5.11 The Union Government has constituted a Central Adisory Council for advising it on all matters concerning the development and regulation of industries. It would be desirable to have the representatives of the State Governments also on this council. We have been informed that very recently the Union Government has provided for observers from the State on the Central Advisory Council on a zonal basis. This is a step in the right direction. But there is a case for raising the status of such representation of the States from that of Observers to Members.

6. *INDUSTRIAL LICENSING AND APPROVALS*

12.6.01 Industrial licensing, alongwith other modes of industrial approval, constitutes a powerful tool of regulation available to the Union Government. Alongwith the license, a prospective enterpreneur may have to obtain one or more of the following approvals in which case a letter of intent has to first issue:

(i) Capital goods import add sanction of foreign exchange.

(ii) Approval of foreign collaboration terms.

(iii) Approval under the MRTP Act.

(iv) Issue of capital for corporate bodies under the Capital Issues (Control) Act.

(v) Approval under the Companies Act for Corporate Bodies.

12.6.02 The system of industrial approvals was streamlined in 1973 with the setting up of a centralised Secretariat for Industrial Approvals (SIA) in the Ministry of Industry. A Project Approval Board (PAB), a high power Committee of the Government, was set up to provide overall supervision and guidance, to review pending cases every quarter and to effect composite clearance of applications. Under the existing procedures, since 1980, letters of intent, foreign collaboration approvals and capital goods clearance are to be issued within 60 days of the receipt of applications and for the MRTP cases within 90 days. However, in actual practice, the industrial approvals are known to have taken much more time.

12.6.03 It appears that if there is even one inefficient link or agency among the several that are usually involved in the decision-making process, the prescribed time-limit breaks down. A useful corrective may be to appoint an 'Empowered Committee' for taking a final decision, subject to a sort of 'sunset' rule that if any link or agency does not give its comment by the due date, the Committee will take a decision without waiting for it.

12.6.04 The State Governments, while criticising the present centralisation of powers in the Union Government, have suggested that powers may be delegated to them or some specified agency of the State Government, in the manner found necessary, for licensing of industries, import of capital goods, foreign collaboration, etc. Where this cannot be done, agencies of the Union Government itself may be established in all State capitals (and even two or three other towns in the big States, if necessary) with adequate powers for these purposes. Yet another suggestion is that States may be represented on a Zonal or selective basis in the licensing committees so that their views are available to the Union Government before decisions are taken. It is also urged that States may be delegated powers to shift units, for example, from one "no industry district" to other such areas within a State.

12.6.05 The demand for delegation of licensing powers stems from the fact that often there are considerable delays in giving various approvals. It has been alleged that inspite of various attempts to streamline the procedures for grant of licences, etc., even now approvals are required from a large number of agencies of the Union Government and from financial institutions and this entails considerable delays. Many witnesses have complained that over the years, rules, regulations, procedures, etc., for industrial licensing have become unduly complicated and time-consuming. Unless an enterpreneur is located near Delhi or has a good lobbyist there, it is impossible for him to get a licence within a reasonble time.

12.6.06 Big industrialists often make use of this complicated procedure and their own lobbying power to shut out potential competition. Medium and small enterepreneurs are at great disadvantage, especially if they are located within outlying States or in outlying regions in a big State. There is a view that the relatively slow growth rate of industries in recent decades is partly due to the complicated procedures and centralisation that has taken place over the years.

12.6.07 The Department of Industrial Development, Government of India, has stated that in case powers are delegated to the States, the national perspective which is possible only at the Union's level may be lost sight of since each State Government would be having its own priorities. Further,

the objective of achieving balanced regional development may receive a set back. Industries set up without proper coordination at the national level may lead to infructuous investments also. Further, it is important to ensure enivronmental safeguards and left to the States the possibility of environmental interests being over-looked is high.

12.6.08 State Governments have on the other hand, pointed out that even where an industry is included in the First Schedule of the IDR Act, there are many areas in which the Union can delegate powers and functions to them. It would be a situation somewhat analogous to the Mines and Minerals (Regulation and Development) Act, 1957. The MMRD Act has occupied the entire field on the subject, but for implementation of its policy and provisions it makes considerable delegation to the States. Section 25 of the IDR Act also provides for delegation of certain powers to the State Governments. However, it appears that so far no power has been delegated thereunder by the Union Government to the States.

12.6.09 We have considered carefully the various views placed before us and are of the view that the real solution does not lie in delegation of blanket powers to the States as such but in the Union exercising greater degree of restraint in occupying the industrial field. Once an industry is brought within the purview of Union's control in public interest, it is necessary that it is dealt with at the national level.

12.6.10 We find merit in the suggestion that delegation of powers, to the extent permissible under Section 25 of IDR Act, to the State Governments, would lead to convenience and efficiency in the implementation of the Act, the full enforcement of which, in any case, has to be secured with the cooperation of the machinery of the States. Where delegation of powers to States may not be desirable, greater decentralisation through the Union's own agencies should be considered.

12.6.11 So far as granting of industrial licenses proper is concerned, the function continues to be centralised. This has been justified by the Union Government on the ground that the Ministry of Industry has to consult continuously and frequently other Union Ministries concerned. However, the problem of entrepreneurs in distant areas are real. Resolution of these problems and difficulties will be in the interest of balanced industrial development of the country. We are of the view that in a number of cases, not involving large investments, it will be conducive to public convenience, quick disposal and efficiency in administration, if licences are issued to the entrepreneurs from offices located in the States. With computerisation and recourse to advanced communication technology, a streamlined system of regional clearance of licences can be evolved and coordinated with other types of industrial approvals.

12.6.12 We recommend that the Union Government may consider opening licensing offices not only in four or five metropolitan cities but also in all State capitals and two or three other important towns in big States and vest them with adequate powers.

12.6.13 We now consider the suggestion that offices should be opened by the Union Government and its agencies for other industrial approvals in each State in order that relatively smaller matters can be speedily disposed of at these places. We have been informed that offices of regional Controller of Imports and Exports have been opened in the metropolitan cities. Similarly, some regional branches have been opened by the Director General of Technical Development. Limited powers have been given to these regional offices. National financing institutions like IDBI and IFCI have also opened regional offices with certain amount of delegation to approve both direct and re-finance applications. But this is not enough. We are of the view that considerable hardship to the entrepreneurs can be avoided and objections of States met if the recommendation made by us in para 12.6.12 is implemented.

12.6.14 We would caution that it will not help in any way if these agencies located in the States are not given adequate powers and are made to act only as "post offices" as it were. That will only add to the delay, inefficiency and resentment.

7. *LOCATION OF PUBLIC SECTOR PROJECTS*

12.7.01 Location of public sector projects has been a matter of concern to the States right from the beginning as they are expected to bring in their wake gains in terms of development of infrastructure, expansion of employment opportunities and development of ancillary industries. Some studies have, however, highlighted that several of the large public sector projects, because of the nature of their technology, did not generate strong inter-industrial linkages and spread-effect to benefit the local economics.

12.7.02 The views of the States in regard to location of Central public sector projects are broadly as follows :

(a) There is a general agreement that location of projects should be based on sound techno-economic criteria.

(b) A few States have expressed doubts whether, in practice, techno-economic considerations are being applied in all cases to determine best locations. They have cited cases alleging arbitrary deviation from objective considerations and changing of locations to other States even after decisions had been taken and communicated to them.

(c) Some of the less developed States have suggested preferential treatment to backward areas in the location of Central Projects.

(d) Several State Governments have complained that they are not adequately consulted in the matter of determining location within the States.

(e) A State Government has complained that inspite of the instructions issued by the Ministry of Industry, the Union Ministries continue to rest various concessions from them for locating their projects.

12.7.03 State-wise distribution of value of gross block and employment in Central Public Sector projects as in 1984-85 is furnished in Annexure XII.3. It signifies a fairly dispersed investment among the States. Some of the States have no doubt received in the past, large shares in investment because of location of raw materials and minerals supporting some basic and heavy industries. In terms of employment also, some States have relatively larger shares especially due to concentration of coal mines which is an employment-intensive sector. But this was in national interest. The distribution of Seventh Plan outlay on public sector projects among States classified by sectors and departmental allocations (Annexure XII.4) indicates, however, a more dispersed investment pattern.

12.7.04 There is now evidence of a greater preference in favour of the industrially backward States.

12.7.05 We have been informed that it is, indeed, the policy of the Government of India that techno-economic considerations should form the basis for determining the location of Central public sector projects. Even the consideration shown to the industrially backward States is stated to be subject to satisfaction of these criteria.

12.7.06 In 1972, the procedure for consideration of investment proposals was streamlined. We are informed that at present, projects involving investment of Rs. 10 crores and above, come under its purview. Investments between Rs. 10 to 20 crores are scrutinised first by the various agencies of the Government viz. Planning Commission, Bureau of Public Enterprises, Department of Economic Affairs, Plan Finance Division of Ministry of Finance, Director General of Technical Development (D.G.T.D.), Department of Environment and the others concerned. After the Public Investment Board (PIB) clearance, the project is submitted to the Union Cabinet for approval. In case of projects involving investment of Rs. 20 Crores and more, provision of a two-stage clearance has been laid down. First, the proposal is cleared for preparing a Feasibility Report by a Committee of the PIB comprising Secretary (Expenditure), Secretary of Planning Commission and Secretary of the administrative Ministry concerned. Thereafter the same procedure as for other projects is followed. It is clear that a fairly detailed drill has been laid down for ensuring proper consideration of investment proposals. Nonetheless, there have been complaints from States in regard to location of Central Public Sector Units. A credibility gap appears to exist.

12.7.07 We now consider the suggestion that States should be represented on the Public Investment Board. PIB's function is techno-economic examination which may even require consideration of alternative locations between two or more States. States' representation on it may take lobbying to this level also besides making it unduly large a body. However, once the locational decision is taken, it will only be advantageous to consult the concerned State Government regarding alternative locations and the complementary provisions which the State will be required to make in its own Plan.

12.7.08 In order to reduce the possibility of any misunderstanding on locational decisions we recommend that a comprehensive paper be prepared every year for discussion at the NEDC giving, *inter alia*, information separately for new large scale (i) 'foot loose' and (ii) 'non-foot loose' industries in (a) public and (b) private sectors on some key aspects, e.g., location, investment, raw-material source, output, employment, assistance expected from local governments and date of start and completion. The NEDC will also be an appropriate forum to sort out any breach of discipline in matters like alleged 'bargaining' by some Union Ministries or entrepreneurs for undue concessions from States for locating projects.

8. *FREIGHT EQUALISATION POLICY*

12.8.01 A specific issue represented to us by a State Government is that the Freight Equalisation Policy followed with respect to basic commodities like Iron and Steel, Cement and Fertilizer (Nitrogenous), produced in that State, has operated to its disadvantage as similar freight equalis. tion has not been done in respect of other important raw materials, such as cotton. We understand that such representations have several times received attention of expert committees in the Union Government. On the recommendations of the Pande Committee and the Inter-Ministerial Group on Freight Equalisation of Commodities[5], while considering it not desirable to extend the Freight Equalisation Scheme to raw materials like raw cotton, the Union Government initially decided to phase out the scheme in respect of industrial commodities like cement and steel also. We understand that in view of representations received subsequently from some State Governments, the Union Government has reviewed its earlier decision and now decided to refer the matter to the National Development Council for a final decision. This is as it ought to be. In view of this situation, we refrain from making any recommendation in this regard.

9. *SMALL SCALE INDUSTRIES*

12.9.01 Except for reservation of items, small-scale industries have been kept out of the purview of licensing and other regulations by the Union Government. Their development thus remains the responsibility of the State Governments under Entry 24 of the State List of the Seventh Schedule. However, to advise the governments on policies and programmes of small-scale industries and to effect necessary coordination at the Union Government's level, the Government of India set up the Small Industries Development Organisation (SIDO) in 1954. For specialised purposes, All-India Handloom and Handicraft Boards, Coir Board, Central Silk Board and Khadi and Village Industries Commission have also been set up. Whereas these agencies may coordinate policies regarding supply of raw material, credit, modernisation, imports, skill development, marketing support, etc., other crucial aspects of development in the field are to be dealt with by the States.

[5]Government of India, Planning Commission : (i) *Report of the Inter-Ministrial Group on Freight Equalisation*, 1977 (Chairman : S.S. Marathe), (*ii*) *Report of the National Transport Policy Committee*, 1980 (Chairman : B.D. Pande).

12.9.02 On the issue of their role in developing small-scale, Khadi and Village Industries, the views of the States may be broadly categorised as under:

(i) Backward States are finding it difficult to support small-scale industries. A specific suggestion made is that State Trading Corporation, Minerals and Metals Trading Corporation, and National Small Industries Corporation should open their branches in all the States with powers to assist local Small Industries Services Institutes. District Industries Centres need to be developed further as coordinating agencies.

(ii) For the supply of raw materials and import of machinery the State Governments have to depend on Union Government and its agencies, where difficulties are often experienced.

(iii) A specific suggestion made is that flow of foreign technology should be routed through a single institution.

12.9.03 The role of small-scale, Khadi and village industries in our industrial development and providing large and broadbased employment cannot be over-emphasised. The problems highlighted by the State Governments to us, as mentioned above, are administrative and sectoral in nature and will have to be solved with innovative adjustments within the type of institutional structure that has come into being. We understand that the Union Government is seized of these matters. We would like to draw attention to the comprehensive examination of such problems in the three reports of the National Committees on the Development of Backward Areas, viz., on Industrial Dispersal (October, 1980), Industrial Organisation (March, 1981) and Village and Cottage Industries (March, 1981) and urge that its suggestions received the full attention of the Union and State Governments.

12.9.04 In the Note on New Industrial Policy prepared by the Planning Commission, it has been recognised that reservations do not provide sufficient conditions for the growth of small industries, and that improved local planning, infra-structure and policies of technology-support, constitute prerequisites[6] for healthy development of small scale industries.[6] We fully endorse this perception.

12.9.05 A point that needs examination is that many of the economics of large-scale production can be brought to the small-scale industries, even as defined now, and under the jurisdiction of the States, if these industries are planned in such a way that each unit specialieses in the production of only one or two components while assembly is done in a separate plant. But this will be feasible only if very stringent standards regarding design, quality-control and transport are laid down in a systematic manner and enforced.

10. *DEVELOPMENT OF BACKWARD AREAS*

12.10.01 Promoting balanced regional development is recognised as one of the objectives of industrial policy. In its licensing policy and determination of location of Industrial projects, the Union Government has consciously given a preferential treatment to the industrially backward States and districts.

12.10.02 Since the Fourth Five Year Plan, following the recommendations of Pande and Wanchoo Working Groups appointed by the Planning Commission, a set of fiscal and financial incentives are being provided to the industrial units in the identified industrially backward areas. These incentives include Central Investment Subsidy, concessional finance by term-lending financial institutions like IDBI, IFCI and ICICI, and Central Transport Subsidy. In 1983, following the recommendations made by the National Committee on Backward Areas, the industrially backward districts were renotified and classified into following categories :

Category 'A' (Comprising 93 No-industry Districts and 38 Special Region districts)

—eligible for 25 per cent Central Investment Subsidy subject to a maximum of Rs. 25 lakhs.

Category 'B' (Comprising 55 districts/equivalent areas)

—eligible for 15 per cent Central Investment Subsidy subject to a maximum of Rs. 15 lakhs.

Category 'C' (Comprising 113 districts/equivalent areas)

—eligible for 10 per cent Central Investment Subsidy subject to a maximum of Rs. 10 lakhs.

(excluding MRTP/FERA Companies).

The term-lending financial institutions make available a range of concessions to the industrial units located in the 299 identified backward districts/areas. In the specified backward States/regions, in view of their remoteness and difficult terrain, the industrial units are eligible for 50 per cent subsidy on transportation costs of their finished products and raw materials from specified rail heads/ports. In addition, State Governments are offering their own incentives for promotion of industries in the backward areas identified by them, some of which are besides those identified by the Union Government.

12.10.03 In the context of the approach to backward areas development several State Governments have expressed satisfaction with the set of incentives being provided by the Union Government. However, a few State Governments have expressed dissatisfaction with the criteria followed as a result of which, some of the known backward areas could not qualify to get included in Category 'A'. A State Government has also alleged that it was not consulted at the time of notifying the backward areas in April 1983. Some States have also suggested alternative criteria and periodical review of categorywise subsidy levels. It has also been suggested that on a selection basis units below the district-level should also be provided assistance—as industrially backward areas.

12.10.04 We have been given to understand by the Ministry of Industry that in the reclassification of the backward areas, the approach recommended by the National Committee on Backward Areas was followed, and that on the suggestion of State Governments, the list of No-industry District was

[6]Government of India, Planning Commission—Note on New Industrial Policy, para 38.

enlarged from 83 to 93. Subsequently, in April 1985 the State Government were asked to communicate the names of districts created before 31-3-83 which had no large/medium scale industry for inclusion in the 'No-industry District' category but no names were received. In our opinion adequacy or otherwise of criteria in special cases and suggestions for units below district level, etc. are matters for consideration by the Union Government to which the State Governments can make recommendations. We understand that some adjustments on similar lines were made in the past also. But it will be useful if the subject is included in the agenda of NEDC, at least once every three years.

12.10.05 While industrial units in a large number of districts have become eligible for concessional finance and other capital incentives we note that the actual utilisation of these concessions and incentives continue to vary widely among the States. The National Committee on the Development of Backward Areas also drew attention to this fact. The States will have to take effective steps, in cooperation with other agencies, to develop in areas which are lagging behind, capabilities of local entrepreneurs to avail of the incentives that are being provided.

12.10.06 The monitoring of the utilisation of incentives for intended uses is very necessary. We note that the Ministry of Industry has recently started collecting unit-wise information on Central Investment Subsidy and shall be computerising it. Appropriate follow up action, down to the field level, needs now to be taken.

12.10.07 We understand that the concept of Growth Centres for promoting industrial development and development of backward areas is being made concrete and operational. This would necessitate detailed planning and monitoring. The Planning Commission has suggested—creation of a Cell in the Ministry of Industry to coordinate the preparation of detailed plans of growth-centres and monitoring their implementation. This cell is also proposed to be assisted by an inter-Ministerial group involving officers from the State Governments also.[7] This is a step in the right direction. We cannot agree more with the Planning Commissions' approach in this regard which emphasises that "location is not just a matter of licensing but involves active promotional policies on the part of both the Central and more importantly the State Governments. State Governments have to be encouraged to formulate location policies of their own and it should be the responsibility of the Centre to ensure that these blend harmoniously with national priorities.[8]

11. *RECOMMENDATIONS*

12.11.01 If Union control of a *specific aspect* of an industry is considered expedient in the public interest, it would be advisable that the IDR Act is suitably amended to facilitate the Union Government's regulation of that aspect only. Parliament may have to pass a separate law under Entry 52 of List I.... If such new legislation presents any serious difficulty, an alternative may be to replace the present First Schedule of the IDR Act by several Schedules, each of such would specify the purpose for which a particular control was imposed on an industry so that all other areas of Entry 24 of List II remain unoccupied by the Union. The Planning Commission, in consultation with the Ministries of Industry and Law and Justice, should prepare a paper on this subject for the consideration of the NEDC at an early date.

(Para 12.5.09)

12.11.02 As a mandatory legal requirement, there should be a periodical review, say, every three years, to determine whether in respect of any of the industries the Union's control should be continued or relaxed or lifted. Such a review may be undertaken by a Committee of Experts on which the State Governments should be represented on a Zonal basis. The result of the review may also be placed before the NEDC.

(Para 12.5.10)

12.11.03 It would be desirable to have the representives of the State Governments on the Central Advisory Council. Recently, the Union Government has provided for observers from the States on the Central Advisory Council on a zonal basis. This is a step in the right direction. But there is a case for raising the status of such representation of the States from that of Observers to Members.

(Para 12.5.11)

12.11.04 In the context of undue delays in industrial approvals, a useful corrective may be to appoint an 'Empowered Committee' for taking a final decision, subject to a sort of "sun-set" rule that if any link or agency does not give its comments by the due date, the Committee will take a decision without waiting for it.

(Para 12.6.03)

12.11.05 Delegation of powers, to the extent permissible under Section 25 of IDR Act, to the State Governments, would lead to convenience and efficiency in the implementation of the Act, the full enforcement of which, in any case, has to be secured with the cooperation of the machinery of the States. Where delegation of powers to States may not be desirable, greater decentralisation through the Union's own agencies should be considered.

(Para 12.6.10)

12.11.06 In a number of cases, not involving large investments, it will be conducive to public convenience, quick disposal and efficiency in administration, if licences are issued to the entrepreneurs from offices located in the States. The Union Government may consider opening licensing offices not only in four or five metropolitan cities but also in all State capitals and two or three other important towns in big States and vest them with adequate powers.

(Paras 12.6.11 and 12.6.12)

---

[7]Government of India, Planning Commission—*Note on New Industrial Policy, May 1987*, para 20.

[8]*Op. cit.*, para 21.

12.11.07 In order to reduce the possibility of any misunderstanding on locational decisions, a comprehensive paper be prepared every year for discussion at the NEDC, giving, *inter alia*, information separately for new large-scale (i) 'foot-loose' and (ii) 'non-foot loose' industries in (a) public and (b) private sectors on some key-aspects, e.g., location, investment, raw-material source, output, employment, assistance expected from local governments and date of start and completion.

(Para 12.7.08)

12.11.08 A comprehensive examination of the problems of small-scale, cottage and village industries was carried out in the three reports of the National Committee on the Development of Backward Areas, viz., on Industrial dispersal, Industrial Organisation and Village and Cottage Industries. Its suggestions should receive the full attention of the Union and State Governments.

(Para 12.9.03)

12.11.09 Adequacy or otherwise of criteria for identifying industrially backward areas and suggestions for units below district level, etc. are matters for consideration by the Union Government to which the State Governments can make recommendations. It will be useful if the subject is included in the agenda of the NEDC at least once every three years.

(Para 12.10.04)

12.11.10 The States will have to take effective steps, in cooperation with other agencies, to develop in areas which are lagging behind, capabilities of local entrepreneurs to avail of the incentives that are being provided. The monitoring of the utilisation of incentives for intended uses is very necessary. The Ministry of Industry has recently started collecting unit-wise information on Central Investment Subsidy and shall be computerising it. Appropriate follow-up action, down to the field level, needs now to be taken.

(Paras 12.10.05 and 12.10.06)

ANNEXURE XII.1

Extracts from the Original Industries (Development and Regulation) Act, 1951

"2. **Declaration as to expediency of control by the Union.**—It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.".

"3. (i) "Scheduled industry" means any of the industries specified in the First Schedule."

"THE FIRST SCHEDULE

[See sections 2 and 3 (i)]

Any industry engaged in the manufacture or production of any of the following, namely :

(1) Aircraft.
(2) Arms and ammunition.
(3) Coal, including coke and other derivatives.
(4) Iron and steel.
(5) Mathematical and Scientific instruments.
(6) Motor and aviation fuel, kerosene, crude oils and synthetic oils.
(7) Ships and other vessels propelled by the agency of steam, or by electricity or other mechanical power.
(8) Sugar.
(9) Telephones, Telegraph apparatus and wireless communication apparatus.
(10) Textiles made wholly or in part of cotton or jute.
(11) Automobiles, including tractors.
(12) Cement.
(13) Electric lamps and fans.
(14) Electric motors.
(15) Heavy chemicals including fertilizers.
(16) Heavy machinery used in industry including ball and roller bearing and gear wheels and parts thereof, boilers and steam generating equipment.
(17) Locomotives and rolling stock.
(18) Machine tools.
(19) Machinery and equipment for the generation, transmission and distribution of electric energy.
(20) Non-ferrous metals including alloys.
(21) Paper including newsprint and paper board.
(22) Pharmaceuticals and drugs.
(23) Power and industrial alcohol.
(24) Rubber goods.
(25) Leather and leather goods.
(26) Textiles made of wool.
(27) Vanaspati and vegetable oils.
(28) Agricultural implements.
(29) Batteries, dry cells and storage.
(30) Bicycles and parts thereof.
(31) Hurricane lanterns.
(32) Internal combustion engines.
(33) Power-driven pumps.
(34) Radio-receivers.
(35) Sewing and Knitting machines.
(36) Small and hand tools.
(37) Glass and ceramics.

ANNEXURE XII.2

The First Schedule [1] of Industries (Development & Regulation) Act, 1951

Any industry engaged in the manufacture of production of any of the articles mentioned under each of the following headings or sub-headings, namely :

1. Metallurgical Industries

A. Ferrous

(1) Iron and Steel (metal)
(2) Ferro-alloys
(3) Iron and steel castings and forgings
(4) Iron and steel structurals
(5) Iron and steel pipes
(6) Special steels
(7) Other products of iron and steel.

B. Non-ferrous

(1) [2] Precious metals, including gold and silver, and their alloys

(1A) Other non-ferrous metals and their alloys

(2) Semi manufactures and manufactures

2. Fuels

(1) Coal, lignite, coke and their derivatives

(2) Mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like

(3) Fuel gases—(Coal gas, natural gas and the like).

3. Boilers and steam generating plants

4. Prime Movers other than Electrical Generators

(1) Steam engines and turbines
(2) Internal combustion engines

5. Electrical Equipment

(1) Equipment for generation, transmission and distribution of electricity including transformers
(2) Electrical motors
(3) Electrical fans
(4) Electrical lamps
(5) Electrical furnaces
(6) Electrical cables and wires
(7) X-ray equipment
(8) Electronic equipment

(1) Subs. by Act 71 of 1956, s. 7, for the original First Schedule (w.e.f. 1-3-1957)

(2) Subs. by Act 37 of 1962, s. 2, for item (1)

(9) Household appliances such as electric irons,heaters and the like
(10) Storage batteries
(11) Dry cells

Telecommunications
(1) Telephones
(2) Telegraph equipment
(3) Wireless communication apparatus
(4) Radio receivers, including amplifying and public address equipment
(5) Television sets
(6) Teleprinters

Transportation
(1) Aircraft
(2) Ships and other vessels drawn by power
(3) Railway locomotives
(4) Railway rolling stock
(5) Automobiles (motor cars, buses, trucks, motor cycles, scooters and the like)
(6) Bicycles
(7) Others, such as fork lift trucks and the like.

Industrial Machinery

Major items of specialised equipment used in specific industries
(1) Textile machinery (such as spinning frames, carding machines, powerlooms and the like) including textile accessories
(2) Jute machinery
(3) Rayon machinery
(4) Sugar machinery
(5) Tea machinery
(6) Mining machinery
(7) Metallurgical machinery
(8) Cement machinery
(9) Chemical machinery
(10) Pharmaceuticals machinery
(11) Paper machinery

General items of machinery used in several industries, such as the equipment required for various "unit processes"
(1) Size reduction equipment — crushers, ball mills and the like
(2) Conveying equipment — bucket elevators, skip hoists, cranes, derricks and the like
(3) Size separation units — screens, classifiers and the like.
(4) Mixers and reactors — kneading mills, turbo mixers and the like
(5) Filteration equipment — filter presses, rotary filters and the like.
(6) Centrifugal machines
(7) Evaporators
(8) Distillation equipment
(9) Crystallisers
(10) Driers
(11) Power driven pumps — reciprocating, centrifugal and the like
(12) Air and gas compressors and vacuum pipes (excluding electrical furnaces)
(13) Refrigeration plants for industrial use
(14) Fire fighting equipment and appliances including fire engines

Other items of Industrial Machinery
(1) Ball, roller and tapered bearings
(2) Speed reduction units
(3) Grinding wheels and abrasives

9. Machine Tools
(1) Machine tools

10. Agricultural Machinery
(1) Tractors, harvestors and the like
(2) Agricultural implements

11. Earth-Moving Machinery
(1) Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket wheel excavators, road rollers and the like

12. Miscellaneous Mechanical and Engineering Industries
(1) Plastic moulded goods
(2) Hand tools, small tools and the like
(3) Razor blades
(4) Pressure Cookers
(5) Cutlery
(6) Steel furniture

Added *vide* I (D&R) Amendment Act, 1979 (i) of 1979 w.e.f. 30-12-78

13. Commercial, Office and Household Equipment
(1) Typewriters
(2) Calculating machines
(3) Air conditioners and refrigerators
(4) Vacuum cleaners
(5) Sewing and knitting machines
(6) Hurricane lanterns

14. Medical and Surgical Appliances
(1) Surgical instruments — sterilisers, incubators and the like

15. Industrial Instruments
(1) Water meters, steam meters, electricity meters and the like.
(2) Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights, levels and the like
(3) Weighing machines

16. Scientific Instruments
(1) Scientific instruments

17. Mathematical, Surveying and Drawing Instruments
(1) Mathematical, surveying and drawing instruments

18. Fertilisers
(1) Inorganic fertilisers
(2) Organic fertilisers
(3) Mixed fertilisers

19. Chemicals (other than Fertilisers)
(1) Inorganic heavy chemicals
(2) Organic heavy chemicals
(3) Fine chemicals including photograph chemicals
(4) Synthetic resins and plastics
(5) Paints, varnishes and enamels
(6) Synthetic rubbers
(7) Man-made fibres including regenerated cellulose-rayon, nylon and the like.
(8) Coke oven by-products
(9) Coal tar distillation products like naphthalene, anthracene and the like.
(10) Explosives including gun powder and safety fuses
(11) Insecticides, fungicides, weedicides and the like
(12) Textile auxiliaries
(13) Sizing materials including starch
(14) Miscellaneous chemicals

20. Photographic Raw Film and Paper
(1) Cinema film
(2) Photographic amateur film
(3) Photographic printing paper

21. Dye-stuffs
    (1) Dye-stuffs

22. Drugs and Pharmaceuticals
    (1) Drugs and Pharmaceuticals

23. Textiles (including those dyed, printed or otherwise processed) :
    (1) made wholly or in part of cotton, including cotton yarn, hosiery and rope.
    (2) made wholly or in part of jute, including jute, twine and rope
    (3) made wholly or in part of wool, including wool tops, woolen yarn, hosiery, carpets and druggets
    (4) made wholly or in part of silk, including silk yarn and hosiery
    (5) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres.

24. Paper and Pulp including Paper Products
    (1) Paper-writing, printing and wrapping
    (2) Newsprint
    (3) Paper board and straw board
    (4) Paper for packaging (corrugated paper, craft paper, paper bags, paper containers and the like)
    (5) Pulp — wood pulp, mechanical, chemicals, including dissolving pulp

25. Sugar
    (1) Sugar

26. Fermentation Industries
    (1) Alcohol
    (2) Other products of fermentation industries

27. Food Processing Industries
    (1) Canned fruits and fruit products
    (2) Milk foods
    (3) Malted foods
    (4) Flour
    (5) Other processed foods

28. Vegetable Oils and Vanaspathi
    (1) Vegetable oils, including solvent extracted oils
    (2) Vanaspathi

29. Soaps, Cosmetics and Toilet Preparations
    (1) Soaps
    (2) Glycerine
    (3) Cosmetics
    (4) Perfumery
    (5) Toilet preparations

30. Rubber Goods
    (1) Tyres and tubes
    (2) Surgical and medical products including prophylactics
    (3) Footwear
    (4) Other rubber goods

31. Leather, Leather Goods and Pickers
    (1) Leather, leather goods and pickers

32. Glue and Gelatin
    (1) Glue and gelatin

33. Glass
    (1) Hollow ware
    (2) Sheet and plate glass
    (3) Optical galss
    (4) Glass wool
    (5) Laboratory ware
    (6) Miscellaneous ware

34. Ceramics
    (1) Fire bricks
    (2) Refractories
    (3) Furnace lining bricks—acidic, basic and neutral
    (4) China ware and pottery
    (5) Sanitary ware
    (6) Insulators
    (7) Tiles
    (8) Graphite Ceramics (from 33-1-78 Amendment Act, 17 of 1979)

35. Cement and Gypsum Products
    (1) Portland cement
    (2) Asbestos cement
    (3) Insulating boards
    (4) Gypsum boards, wall boards and the like

36. Timber Products
    (1) Plywood
    (2) Hardboard, including fibre-board, chip-board and the like
    (3) Matches
    (4) Miscellaneous (furniture components, bobbins, shuttles and the like)

37. Defence Industries
    (1) Arms and ammunition

38. Miscellaneous Industries
    (1) Cigarettees [1]
    (2) Linoleum, whether felt based or Jutebased[2] } by 17 of 1979 from 30-12-78
    (3) Zip fasteners
    (4) Oil Stoves
    (5) Printing, including litho printing industry

Explanation 1.—The articles specified under each of the headings Nos. 3, 4, 5, 6, 7, 8,10, 11 and 13 shall include their component parts and accessories.

Explanation 2.—The articles specified under each of the headings No 18, 19, 21 and 22 shall include the intermediates required for their manufacture.

---

(1) Renumbered by Act 67 of 1973, s. 4 (w.e.f. 7-2-1974).
(2) Ins. by s. 4, *ibid* (w.e.f. 7-2-1974).

ANNEXURE XII.3

Distribution of Gross Block and Manpower in Central Public Sector Projects 1984-85

Name of State/Union Territory	GROSS BLOCK		EMPLOYMENT (including casual employees)	
	Rs. Crores	As percentage to total	Lakhs	As percentage to total
1	2	3	4	5
1. Andhra Pradesh	3983.12	8.42	0.92	4.22
2. Assam	2451.15	5.18	0.54	2.48
3. Bihar	5833.77	12.33	4.55	20.86
4. Gujarat	1771.77	3.74	0.51	2.34
5. Haryana	411.80	0.87	0.15	0.69
6. Himachal Pradesh	211.05	0.45	0.04	0.20
7. Jammu & Kashmir	48.28	0.01	0.04	0.20
8. Karnataka	1327.53	2.80	1.19	5.46
9. Kerala	831.22	1.76	0.31	1.42
10. Madhya Pradesh	5396.12	11.40	2.85	13.07
11. Maharashtra	7601.81	16.06	1.72	7.89
12. Manipur	131.32	0.28	0.03	0.14
13. Meghalaya	1.89	Negl.	0.01	0.05
14. Nagaland	72.98	0.15	0.01	0.05
15. Orissa	2997.74	6.33	0.70	3.21
16. Punjab	563.62	1.20	0.24	1.10
17. Rajasthan	647.62	1.37	0.35	1.60
18. Tamil Nadu	2548.86	5.39	0.82	3.76
19. Tripura	93.38	0.20	0.01	0.05
20. Uttar Pradesh	2532.77	5.35	1.13	5.18
21. West Bengal	3345.37	7.07	4.20	19.28
22. Andaman & Nicobar	6.21	0.01	0.02	0.09
23. Chandigarh	3.52	0.01	0.01	0.05
24. Delhi	1238.83	2.62	1.01	4.63
25. Goa	17.79	0.04	0.03	0.14
26. Pondicherry	7.66	0.01	0.03	0.14
27. Others and Unallocated	3246.09	6.86	0.39	1.79
Total	**47,323.27**	**100.00**	**21.81**	**100.00**

Source : Government of India, Ministry of Industry, Bureau of Public Enterprises —*Public Enterprises Survey*, 1984-85, *Vol. 1* (pp. 360-61)

ANNEXURE XII.4

Statewise Outlay on Central Industrial and Mineral Projects (Excluding Coal, Petroleum and Power) By Major Sectors during the Seventh Plan (1985—90)

(Rs. in Crores)

Sl. No.	State/Sectors/Ministries	Steel	Mines	Petroleum and Natural Gas	Fertilizers
1	2	3	4	5	6
1.	Andhra Pradesh	2531.80	40.00	16.72	36.00
2.	Assam	..	..	105.00	93.54
3.	Bihar	885.49	74.94	..	203.60
4.	Gujarat	..	..	..	2.95
5.	Haryana	..	3.00	..	71.13
6.	Himachal Pradesh	..	..	..	..
7.	Jammu & Kashmir	..	..	..	..
8.	Karnataka	87.14	19.10	..	..
9.	Kerala	..	..	57.53	225.00
10.	Madhya Pradesh	1067.83	327.05	2.55	563.84
11.	Maharashtra	14.00	..	29.33	213.00
12.	Nagaland	..	..	..	..
13.	Orissa	679.20	1200.72	..	342.00
14.	Punjab	..	..	..	110.53
15.	Rajasthan	..	130.18	..	3.15
16.	Tamil Nadu	16.06	..	28.59	25.00
17.	Uttar Pradesh	..	..	28.23	39.86
18.	West Bengal	933.91	..	18.71	85.68
	Union Territories				
19.	Delhi	..	..	0.56	1.47
20.	Goa	0.60	..	..	..
	Total (excluding unallocated)	**6216.03**	**1794.99**	**287.22**	**2016.75**
	Unallocated Outlays	204.10	255.01	20.48	9.00
	Grand Total	**6420.13**	**2050.00**	**307.70**	**2025.75**

Sl. No.	State/Sectors/Ministries	Agriculture and Cooperation	Chemicals and Petrochemicals	Public Enterprises	Industrial Development	Surface Transport	Electronics
1	2	7	8	9	10	11	12
1.	Andhra Pradesh	..	15.60	277.97	..	51. 00	62.00
2.	Assam	..	..	151.39	..	..	..
3.	Bihar	..	..	62.00	..	..	..
4.	Gujarat	132.71	432.22	2.50	..	..	..
5.	Haryana	..	0.80	162.28	..	..	..
6.	Himachal Pradesh	..	..	2.23	..	..	..
7.	Jammu & Kashmir	..	..	3.75	..	..	..
8.	Karnataka	..	..	96.18	10.00	..	7.00
9.	Kerala	..	32.00	15.00	..	45.00	..
10.	Madhya Pradesh	..	2.02	272.81	..	..	2.00
11.	Maharashtra	..	189.26	22.67	10.00	8.00	58.00
12.	Nagaland	..	..	3.52	..	..	45.00
13.	Orissa	..	2.04	0.50	..	..	..
14.	Punjab	..	..	8.88	..	..	45.00
15.	Rajasthan	..	0.01	42.45	..	..	..
16.	Tamil Nadu	..	0.44	119.03	..	..	..
17.	Uttar Pradesh	502.29	12.71	100.83	..	..	..
18.	West Bengal	..	11.00	179.52	..	21.00	..
	Union Territories						
19.	Delhi	..	4.70	9.00	..	..	39.00
20.	Goa	..	..	..	..	..	..
	Total (excluding unallocated)	**635.00**	**702.80**	**1532.51**	**20.00**	**125.00**	**213.00**
	Unallocated Outlays	..	3.75	122.29	315.20	5.00	258.00
	Grand Total	**635.00**	**706.55**	**1654.80**	**335.20**	**130.00**	**471.00**

ANNEXURE XII.4—*Concld.*

(Rs. in Crores)

State/Sectors/Ministries	Atomic Energy	Finance	Other Schemes of Ministries*	Total Outlays (1985—90)	Percentage to total excluding unallocated
1 2	13	14	15	16	17
1. Andhra Pradesh	539.56	8.52	..	3579.17	23.8
2. Assam	..	..	..	349.93	2.3
3. Bihar	89.60	..	12.00	1327.63	8.8
4. Gujarat	124.58	..	..	694.96	4.6
5. Haryana	..	..	..	237.21	1.6
6. Himachal Pradesh	..	..	..	2.23	Negli.
7. Jammu & Kashmir	..	..	..	3.75	Negli.
8. Karnataka	..	..	..	219.42	1.5
9. Kerala	13.50	..	20.76	408.79	2.7
10. Madhya Pradesh	4.55	46.22	..	2288.87	15.2
11. Maharashtra	118.45	190.24	22.88	875.83	5.8
12. Nagaland	..	..	..	3.52	Negli.
13. Orissa.	20.43	..	..	2244.89	14.9
14. Punjab	..	..	13.00	177.41	1.2
15. Rajasthan	6.66	..	..	182.45	1.2
16. Tamil Nadu	156.87	..	6.79	352.78	2.4
17. Uttar Pradesh	0.75	11.00	61.48	757.15	5.1
18. West Bengal	..	5.44	26.64	1281.90	8.5
Union Territories					
19. Delhi	0.05	..	3.05	57.83	0.4
20. Goa	..	..	..	0.60	Negli.
Total (excluding unallocated)	**1075.00**	**261.42**	**166.60**	**15,046.32**	**100.0**
Unallocated Outlays	..	865.58	163.40	2221.81	
Grand Total	**1075.00**	**1127.00**	**330.00**	**17,268.13**	

Source : Planning Commission, I & R Division.

Note : *Includes Ministry of Civil Supplies, Commerce, Textiles, Dept. of Science & Industrial Research, Supply & Ocean Development.

ANNEXURE XII.5

Statewise Direct Assistance Sanctioned by Public Sector Financial Institutions 1982-83

(Rs. in Crores)

State	I.D.B.I. Amount	Percentage to total	I.F.C.I. Amount	Percentage to total	I.C.I.C.I Amount	Percentage to total
1	2	3	4	5	6	7
1. Andhra Pradesh .	44.3	8.3	29.31	13.4	147.18	5.9
2. Assam . .	7.3	1.4	0.87	0.4	14.13	0.6
3. Bihar . . .	9.8	1.8	5.67	2.6	98.61	4.0
4. Gujarat . . .	97.4	18.1	21.49	9.8	344.25	13.9
5. Haryana . . .	15.9	3.0	2.09	1.0	62.63	2.5
6. Himachal Pradesh .	1.5	0.3	4.26	1.9	..	..
7. Jammu & Kashmir .	0.5	0.1	0.45	0.2	..	..
8. Karnataka . .	36.0	6.7	20.39	9.3	184.33	7.5
9. Kerala . .	16.9	3.1	6.16	2.8	39.83	1.6
10. Madhya Pradesh .	7.7	1.4	8.95	4.1	83.08	3.4
11. Maharashtra . .	76.5	14.3	34.83	15.9	657.69	26.6
12. Manipur . . .	..	..	..	..	..	..
13. Meghalaya . .	..	..	..	..	..	..
14. Nagaland . . .	..	..	..	..	..	..
15. Orissa . . .	22.9	4.3	8.59	3.9	52.52	2.1
16. Punjab . . .	24.5	4.6	12.99	5.9	65.95	2.7
17. Rajasthan . . .	51.3	9.6	18.76	8.5	109.13	4.4
18. Sikkim . . .	..	..	..	..	..	..
19. Tamil Nadu . .	42.4	7.9	9.55	4.3	236.96	9.6
20. Tripura . . .	..	..	0.11	0.1	..	..
21. Uttar Pradesh . .	33.7	6.3	22.40	10.2	145.37	5.9
22. West Bengal . .	36.8	6.9	4.25	1.9	139.21	5.6
23. Union Territories .	10.2	1.9	8.38	3.8	92.22	3.7
Total . . .	535.6	100.0	219.50	100.0	2473.09	100.0

Source : Annual Reports : 1982-83 of IDBI, I.F.C.I and I.C.I.C.I.

CHAPTER XIII

MINES AND MINERALS

CONTENTS

CHAPTER XIII
MINES AND MINERALS

1. *INTRODUCTION*

13.1.01 Industrialisation has brought in its wake an ever increasing demand for mineral resources. These resources are non-replenishable and mostly scarce. Proper control over regulation and development of mines and minerals is, therefore, a matter of national concern.

2. *CONSTITUTIONAL PROVISIONS*

13.2.01 Entry 23 of the State List relates to "Regulation of mines and mineral development". However, it is expressly subject to the provisions of the Union List with respect to regulation and development under the control of the Union. Entry 54 of the Union List provides for "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". It is significant that Entry 23 of List II has not been made subject to any specific Entry of List I. This means that apart from Entry 54, there are other Entries in List I which may, to an extent, overlap and control, the field of Entry 23 of List II.

13.2.02 The Constitutional arrangements regarding the regulation of Mines and Mineral Development are generally on the lines of Government of India Act, 1935, except that the Entry relating to "Oil fields" has been dealt within a separate Entry, of the Union List in the Constitution. (Entry 53 List I).

13.2.03 Parliament has enacted the Mines and Minerals (Regulation and Development) Act, 1957 (MMRD Act) to "provide for regulation of mines and the development of minerals under the control of the Union" in public interest.

13.2.04 Conflicts do arise as to how much of the field of Entry 23 of List II has been taken over by Parliament by enacting the MMRD Act, 1957 by virtue of Entry 54 of List I. Conflicts can also arise when States impose taxes under Entries 18, 49 and 50 of List II. The Constitutional position with regard to Entries on regulation of mines and minerals development and the related Entries in List I and II, therefore, needs to be examined. The Supreme Court has considered these points in a number of reported cases, the salient features of which are given in the Annexure XIII.1.

13.2.05 The power of the State legislature under Entry 23 has been made subject to the provisions of List I with respect to regulation and development under the control of the Union. Parliament enacted the MMRD Act. A question arose in regard to the extent of the legislative power of the State following an enactment under Entry 54 of List I.[1] It was held by the Supreme Court :

> "The jurisdiction of the State legislature under Entry 23 is subject to the limitations imposed by the latter part of the Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if such declaration covers the field occupied by the impugned Act, the impugned Act, will be *ultra vires* not because of any repugnance between the two statutes but because the State legislature has no jurisdiction to pass a law. The limitations imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself"[2].

The findings in this case have been followed in other cases. In a subsequent case, the Supreme Court held :

> "Subject to the provisions of List I, the power of the State to enact Legislation on the topic of "mines and minerals development" is plenary. To the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" under Entry 54 of List I so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 of List II and legislation of the State which had rested on the existence of power under that Entry would, to the extent of the "control", be superseded or be rendered ineffective; for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make under Entry 54 of List I and has made. The Central Act 67 of 1957 covered the entire field of minerals development, that being the "extent" to which Parliament had declared by law that it was expedient that the Union should assume control"[3].

13.2.06 The result, therefore, of Parliament having occupied the entire field is that the State legislature thereafter lacks legislative competence and

---

1 "54. Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expendient in the public interest."

2. Hingir Rampur Coal Company *Vs.* States of Orissa 1961(2) (SCR 537).

3. States of Orissa *Vs.* M.A. Tulloch and Company (AIR 1964 SC 1284).

consequentially, executive authority in regard to regulation and development of mines and minerals. Therefore, where a law is attributable in pith and substance to Entry 23 of List II, it would not be valid in as much as Parliament has occupied the entire field.[4]

13.2.07 States have legislative competence with respect to land and connected matters under Entry 18 of List II and regarding taxes on lands and buildings under Entry 49 of List II. Conflicts have arisen in the matter of levies under Entries 18, 49 and 50 of List II on the ground that they impinge upon Entry 54 of List I. These Entries should also be read with Entry 54 of List I. The State Legislatures' competence is not taken away unless it is shown that in pith and substance the enactment relates to Entry 23 of List II. Dealing with the validity of demand for payment of land cess under Sections 78 and 79 of the Madras District Boards Act (1920), the Supreme Court held that these Sections had nothing to do with the development of mines and mineral or their regulation because the proceeds of the land cess were to be used for providing amenities to the people of the area like education, health, etc. It was also observed that the land cess was not a tax or mineral right but was in pith and substance a tax on lands under entry 49 of List II.[5]

13.2.08 Entry 50 of List II relates to taxes on mineral rights. However, this has been made expressly subject to any limitations imposed by Parliament, by law, relating to mineral development. Taxes under Entry 50 of List II do not include royalty and cess.

3. *GENERAL FRAMEWORK OF THE MMRD ACT*

13.3.01 The MMRD Act, 1957 mainly deals with general restrictions on prospecting and mining operations and the rules and procedures for regulating grants of prospecting licences and mining leases. Section 2 of the Act makes a declaration that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the said Act. In Section 3, the words "Minerals", "Mineral Oils", "Minor Minerals" have been separately defined. State Governments are competent to give licences for prospecting and for granting mining leases. The Act specifically provides that in the case of minerals included in the First Schedule to the Act, the State Governments shall not grant or renew, prospecting licences or mining leases without the prior permission of the Union Government. Sections 4 to 12 of the Act deal with the conditions and procedures and other allied matters regarding the prospecting or mining operations under licence or lease. Sections 13 and 13A deal with the rule making power of the Central Government.

13.3.02 It is, however, significant that Section 14 provides that Sections 4 to 13 of the Act shall not apply to minor minerals. Further, Section 15 provides that the State Governments may by notification in the Official Gazette make rules for regulating grant of quarry-lease, mining-lease or other mineral concessions in respect of minor minerals and for the purposes connected therewith. A combined reading of Sections 4 to 13 and Section 14, 15 and 18 show that while Praliament's enactment (viz., the MMRD Act) has occupied the entire field, it has specifically exempted minor minerals from the application of Sections 4 to 12 and has also empowered the State Governments in respect of minor minerals.

4. *THE ISSUES*

13.4.01 None of the State Governments, excepting one, has suggested any change in the scheme of distribution of legislative powers with respect to this subject. This State Government has suggested that Entries, 53, 54 and 55 in List I should be transferred to the Concurrent List. However, no corresponding change has been suggested with regard to Entry 23 in List II. Two State Governments have complained that in respect of regulation of mines and mineral development, legislative jurisdiction of the States has been completely taken over by the Union. Mostly the criticism is directed against the operation of the MMRD Act, 1957. Complaints against the operations of the MMRD Act relate to the method of fixation of royalty in the mineral development. One State Government has questioned the desirability of retaining Section 30 of the Act dealing with Union Government's power to hear revision petitions against orders of State Governments.

13.4.02 Government of India (Department of Mines) has pointed out the adverse effects on mineral development, and the difficulties arising out of the imposition of different levies by the States. It has drawn attention to the fact that while the Union Government can revise the royalty rates once in four years only and such rates are uniform throughout the country, concept of stability and uniformity in imposts is defeated when State Governments impose taxes at very different rates and change them frequently.

5. *EXAMINATION OF ISSUES*

13.5.01 We have considered the suggestion that Entries 53, 54 and 55 should be transferred to the Concurrent List in our Chapter on Legislative Relations. We have pointed out therein that the regulation and development of oil fields, is a matter of national importance. The State Government, referred to above, has not indicated the precise aspects for which it desires to have legislative competence. Regulation of labour and safety in mines, etc. is also related to Entries 53 and 54. For the reasons stated therein we are unable to agree to this suggestion.

13.5.02 The remaining issues relating to mines and minerals are :

(i) Manner of fixation of royalty and need for revising the same.

(ii) Cesses and other charges on mines and minerals levied by the States under Entries 49 and 50 of List II.

(iii) Review of provisions relating to hearing of revision petitions under Section 30 of the MMRD Act.

4. Baijnath Kedya *Vs.* State of Bihar & Rest (AIR 1970 SC 1436)

5. H.R.S. Murthy *Vs.* Collector of Chittoor and others (AIR 1965 SC 177).

13.5.03 Section 9 of the MMRD Act deals with royalty. It states that the holders of mining leases shall pay royalty in respect of any mineral removed or consumed by them from the leased area at a rate for the time being specified in the Second Schedule of the MMRD Act. Proviso to Section 9 states that the Union Government shall not enhance the rate of royalty in respect of any mineral "more than once during any period of four years". Any amendment to the Second Schedule enhancing or reducing the rate of royalty is required to be published in the Official Gazette.

13.5.04 A Study Group set up by the Government of India in 1966 recommended that for administrative convenience clearly defined rates on tonnage basis will be desirable for fixation of royalty of coal. Consequently assessment on tonnage basis was introduced with effect from 1968. Another Study Group appointed by the Mineral Advisory Board came to the conclusion that fixation of royalty on *ad valorem* basis was "administratively clumsy."[6] Recently, another Study Group has gone into this question. The Study Groups included representatives of State Governments besides others. Therefore, the Union Government have acted in consultation with State Governments in respect of the method of fixation of royalty, though no such requirement is enjoined on the Union Government under the Act.

13.5.05 Royalty from minerals is an important source of revenue for States. The total revenue under "royalty on minerals and mineral concession fees" for 1986-87 (BE) is Rs. 643.68 crores[7]. The concerned States have mostly complained that the rates of royalty do not reflect the rising value of the minerals. They feel that they are deprived of additional revenue and are in favour of fixation of royalty on *ad valorem* basis which will automatically adjust the royalty rates according to the value of minerals.

13.5.06 The MMRD Act earlier restrained the Union Government from enhancing the rates of royalty, more than once in any period of four years. Following an amendment of the Act in 1986, this period has been reduced to three years[8]. Initially, there was a four-year restriction under the Petroleum Products (Regulation and Development) Act, 1948, on enhancing the royalty rates of petroleum products. This period has also been reduced to three years since 1984 by an amendment of the relevant Act[9].

13.5.07 The State Governments contend that while there is no restriction on increase of prices of minerals, the restrictions imposed on enhancement of royalty under the MMRD Act is against the interests of the States. The Union Government has, on the other hand, pointed out that the royalty is a form of rent and hence there should be some restrictions on it.

13.5.08 We agree that royalty rates should remain constant for a reasonable period of time and frequent changes would not be in the interests of the economy. However, there should also be some proximate relationship between price increase and royalty rates. This can be illustrated by considering the case of royalty on coal. Coal prices have been adjusted four times between 1982 and 1986 and total increase has been approximately Rupees 100 per tonne. But the royalty paid has remained unchanged around Rs. 5 per tonne. We find much substance in the States' argument that if the economy can bear an increase of Rupees 100 per tonne, then a marginal increase due to enhancement of royalty is not going to hurt it. We understand a Study Group was set up in 1984 by the Department of Mines in regard to revision of royalties amongst other things. A decision on its report (submitted in 1985) was taken in March, 1987. MMRD Act now contemplates revision of royalty rates once every three years. There is no restriction on Parliament even now in changing the royalty rates at more frequent intervals. We are of the view that the period should be reduced to 2 years.

13.5.09 The next issue for consideration is the imposition of cesses, surcharges and other charges by State Governments by virtue of their powers under Entries 49 and 50 in List II of the 7th Schedule. which directly or indirectly affects the prices of minerals. The Department of Mines in its memorandum to us has pointed out that in addition to cesses, surcharges have been levied under Entry 49 List II. Levy of various cesses, surcharges at different rates, it is alleged, has an adverse impact on the development of minerals. This affects uniformity and introduces uncertainty in mineral prices, some of whom may have to compete not only in the national market but also in international market. Cesses are usually levied as a percentage of royalty. and, therefore, when levied at different rates in different States they distort the uniformity in royalty rates.

13.5.10 So far as Entry 50 in List II is concerned, States' rights are subject to any limitation imposed by Parliamentary law relating to mineral development. As far as we have been able to ascertain no such limitation has been imposed. We are informed by the Government of India that one State has levied mineral rights tax, approximately 300 percent of royalty on coal and lime-stone and 100 percent of royalty on other minerals. The Union Government, while conceding the States' rights under Entries 49 and 50 (subject to such limitation as may be imposed by Parliament), has pointed out the need for the States to exercise restraint on imposition of such levies, so as not to affect uniformity or competitiveness. Recently, a State Government levied a cess not exceeding 20 percent of the annual value of all lands used for carrying on business for the purpose of obtaining industrial crude oil and petroleum. This action of the concerned State Government is under challenge in the Supreme Court. Nevertheless, the fact remains that such imposts adversely affect the prices of petroleum products.

13.5.11 Here we have a situation where the States are complaining about the inadequacy of royalty rates as they do not reflect the increasing prices

6. Government of India, Ministry of Steel and Mines—*Report of the Study Group on Revision of Royalty Rates of Major Minerals*, August, 1979, p. 5

7. *Reserve Bank of India Bulletin*, November 1986, p. 775.

8. *The Mines and Minerals (Regulation and Development) Amendment Act*, 1986 (No. 37 of 1986), Section 9.

9. *The Oilfields (Regulation and Development) Amendment Act*, 1984 (No. 20 of 1984), Sec. 2.

of minerals. On the other hand, the Union Government has complained against the imposts levied by the States under Entries 49 and 50 as they directly and indirectly affect the prices of minerals. Neither the Union nor the States have questioned the competence of one another. The dispute is only regarding the manner in which these powers should be utilised.

13.5.12 The controversy, is therefore, not of legal interpretation of their respective jurisdiction, but one of evolving an understanding in regard to the extent to which these sources of revenue can be exploited keeping in view the overall national interest. Such issues can best be sorted out through consultation and consensus. We are of the view that the NEDC proposed by us will be the best forum for this purpose. It is, however, quite clear that the issues are inter-linked. Mutual trust and confidence can be built up only if, on the one hand, the Union Government promptly revises royalty rates at reasonable intervals and on the other, the States abstain from arbitrary action in levy of cesses, etc.[10]. Parochial considerations must yield to the larger interests of the nation in such matters.

13.5.13 The third issue relates to hearing of revisions by the Union against orders of the States under Section 30 of the MMRD Act. The Department of Mines has designated a panel of two officers one from Mines Department and another from Law Department to hear the revision petitions. The number of revision petitions is large. According to the concerned Department, nearly 1,300 revision applications were received in the period from April to December 1982[11].

13.5.14 Under the MMRD Act, 1957, certain powers have been given to State Governments subject to the overall superintendence and control of the Union Government. Viewed in that context, the arrangements envisaged in the MMRD Act under Section 30 are consistent with objectives of the Act. However, the number of revision petitions before the Mines Department show that such a procedure has overburdened the system. Determination of the issues in a revision petition under this Act is intrinsically a quasi-judicial function. We would, therefore, suggest that Section 30 should be amended so that the present arrangement is substituted by a judicial Tribunal for hearing the revision petitions under this Act.

13.5.15 Exploitation of mineral resources will continue to increase. There is general agreement that minerals are national resources and they should be exploited and developed for the benefit of the country as a whole. Only Union legislation can ensure such regulation and development of minerals. The States have been given an unrestricted field in respect of 'minor minerals' which have little all-India implications. There is, however, need for periodic review of the First Schedule to the MMRD Act, in consultation with the States, say after every three years, as there is a possibility that a particlar mineral, not included in the Schedule, may become a matter of national concern or *vice versa*. Any amendment of the Act should normally be preceded by consultation in the NEDC.

10. It is understood that the Study Group set up by the Department of Mines in 1984 has stated that the States would reduce on abolish altogether the cess on royalty/surcharge on mineral rights tax, though they have the authority to impose such levies. This is a step in the right direction.

11. Government of India—*Annual Report of Department of Mines*, 1983-84—Chapter IV, para 4.8, page 50.

6. *REGULATION OF MINES AND MINERAL DEVELOPMENT IN NAGALAND*

Views of the State Government

13.6.01 The Government of Nagaland has pointed out that all laws made by Parliament in respect of the four matters enumerated in sub-clause (a) of Article 371A(1), irrespective of whether the laws were made before or after the Article came into force, viz., December 1, 1963, do not apply to the State of Nagaland unless the Legislative Assembly of the State so decides. According to the State Government, if the State Assembly decides that a particular Parliamentary law in respect of any of the four matters should not apply to the State of Nagaland, such a matter will fall within the legislative competence of the State Assembly. Also, the State Government will then have full executive power in respect of that matter. The State Government has also pointed out that, while no difficulty was experienced in regard to matters referred to in (i) to (iii) of the sub-clause, item (iv), viz., "ownership and transfer of land and its resources" posed certain problems. According to the State Government, the limitation on the power of a State Legislature in terms of Entry 23 of List II does not apply to the State of Nagaland, so long as the Nagaland Legislative Assembly does not decide that any of the Parliamentary laws relating to Entries 53 and 54 of List I should apply to the State. The State, therefore, is empowered to legislate on mines and minerals, including mineral oil, as these are resources of land. This legislative power stands untrammelled by Entries 53 and 54 of List I. The State Government has suggested that these conclusions, which are at present implicit in Article 371A (1)(a), should be explicitly provided for by amending that Article.

Constitutional Provision

13.6.02 Sub-clause (a) of Article 371A(1) reads as follows :—

> **"371A(1).** Notwithstanding anything in this Constitution,—
>
> (a) no Act of Parliament in respect of—
>
> (i) religious or social practices of the Nagas,
>
> (ii) Naga customary law and procedure,
>
> (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
>
> (iv) ownership and transfer of land and its resources,
>
> shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides".

13.6.03 The above sub-clause was intended to give effect to Clause 7 of the "Sixteen Point Agreement" between the Government of India and the leaders of the Naga People's Convention. (The Agreement led to the Naga Hills—Tuensang Area, a Part 'B' tribal

area within the State of Assam, being constituted as a separate State of Nagaland and to the incorporation of Article 371A in the Constitution).

History of Sub-Clause (a) of Article 371A(1)

13.6.04 The Sixteen Point Agreement purported to set forth agreed conclusions on demands which were placed by the delegates of the Naga People's Convention before the then Prime Minister, Pandit Jawaharlal Nehru, on July 26, 1960, and which were finally recast by the Delegation in the light of discussion on 27th and 28th July, 1960 with the Foreign Secretary to the Government of India. The Agreement was signed by the President, Naga People's Convention, on 29th July, 1960. Point 7 of the Agreement provided as follows :—

"No Act or law passed by the Union Parliament affecting the following provisions shall have legal force in the Nagaland unless specifically applied to it by a majority vote of the Naga Legislative Assembly.

(1) .....

(2) .....

(3) .....

(4) The ownership and transfer of land and its resources."

13.6.05 Besides listing the sixteen points, the Agreement gave, point-wise, an agreed record of the discussions which took place on July 27 and 28, 1960 between the Delegation and the Foreign Secretary to the Government of India. An excerpt from the said record of discussion of Clause (4) of point 7 is reproduced below :—

"There was a discussion on the question of resources. It was explained to the Delegation that while there is no intention to disturb the ownership of the underground resources, Parliament must retain the power to regulate and develop such resources in accordance with Entries 53 and 54 of List I—Union List in the Seventh Schedule of the Constitution. The attention of the delegation was also drawn to Entry 23 in List II—State List—in the Seventh Schedule."

13.6.06 The Constitution (Thirteenth Amendment) Act, 1962 inserted Article 371A in the Constitution to give effect to the Agreement.

The Constitutional Issues

13.6.07 Several constitutional questions have been raised. These are :—

(i) Whether the implication of the expression "no Act of Parliament" in the opening part of sub-clause (a) of Article 371A(1) is that no Act of Parliament in respect of matters referred to in that sub-clause, whether passed before or after 1st December, 1963, shall apply to the State of Nagaland unless the Legislative Assembly of that State by a resolution so decides.

(ii) Whether the expression "its resources" used in conjunction with "land" within the contemplation of Article 371A(1)(a)(iv) includes mines, minerals and mineral oil found below the surface of land.

(iii) Whether the ambit of sub-clause (a) (iv) of Article 371A(1) is confined to "ownership and transfer" of land and its resources.

(iv) If the answer to the preceding questions be in the affirmative, whether the Mines and Minerals (Development and Regulation) Act, 1957, is an Act relating to "ownership and transfer of land and its resources" and, as such, would not apply to Nagaland, unless the State Legislative Assembly by a resolution so decides.

(v) Whether the Legislative Assembly of Nagaland has plenary power to legislate with respect to matters in Entries 18, 23 and 50 of State List without being subject to any control exercisable by Parliament by law.

A Practical View

13.6.08 As the constitutional issues involved are highly complex, the conventional method of resolving them, say, by reference to the Supreme Court under Article 143 or by instituting a suit in that Court under Article 131, will mean that the detailed arguments to be put forward by the Union Government, the Government of Nagaland and any other State Government will have to be heard by the Court after due notice to the parties concerned. Needless to say, this process will be unduly protracted.

13.6.09 Apart from this, strictly legal answers to issues such as these may give rise to practical difficulties for both the Union Government and the State Government. In the present case, for instance, two types of such difficulties are likely to be encountered.

13.6.10 In Nagaland, each tribe is confined to a well-demarcated territory within which villages have well-defined, permanent boundaries, Broadly, the house-sites, places of public worship and forest land constitute the "common village land" which is managed by the Village Council.[12] If minerals and mineral oil resources are to be developed, regulated and properly exploited, the willing cooperation of the village communities in whose territory mining, drilling etc. are to be carried out, will be essential for this. Adequate compensation may have to be paid to them. Thus, assuming the State Government to be competent to legislate on matters covered by Entries 53 and 54 of List I, it would have to contend with problems of ownership and transfer of land and its resources, peculiar to Nagaland.

13.6.11 Secondly, development of major minerals and mineral oil resources, and their exploitation require financial investments, technical know-how, technical manpower, etc. of an order which is clearly beyond the reach of an individual State Government. The Government of Nagaland, even if it were to be made exclusively responsible for all these matters, would face insurmountable problems of implementation, unless very large financial, technical and other assistance were to be provided by the Union Government over a length of time.

12. Report of the Working Group on Administration of Justice in North-Eastern India (Planning Commission, May 1984), Annexure X, 6.

Need for Co-operation & Concerted Action

13.6.12 It is, therefore, clear that no mutually beneficial arrangement for the regulation and development of mines and minerals, including mineral oil resources, can be evolved, unless the Union Government and the Government of Nagaland adopt an approach of cooperation and concerted action. We would emphasise that a mere legalistic approach to these sensitive problems may not lead to solutions; rather, it may exacerbate suspicion and mistrust. It is, therefore, advisable not to take a rigid stand on technicalities or legalities but to find out, through dialogue and discussions between the Union Government and the Government of Nagaland, the modifications and exceptions, if any, that would be necessary in the Acts of Parliament relating to Mines and Minerals, Coalfields, Oilfields and Land Acquisition, so as to make them acceptable to the State Government and its Legislative Assembly, in the peculiar conditions relating to ownership and transfer of land prevailing in that State. We would also urge that such dialogue and discussions should be carried out in a spirit of give and take and trust, as symbolised by the Sixteen Point Agreement between the Government of India and the Naga People's Convention in 1960. The needs of the State and national interest would be best served by adopting a pragmatic approach to the whole issue.

7. *RECOMMENDATIONS*

13.7.01 Proviso to Section 9 of the MMRD Act should be amended to reduce the period specified therein for revision of royalty rates from four years to two years.

(Paragraph 13.5.08)

13.7.02 There should be periodic dialogue between the Union and the States in respect of revision of royalty rates under MMRD Act and impost under Entries 49 and 50 of List II.

(Paragraph 13.5.12)

13.7.03 A Judicial Tribunal should replace the existing administrative body under Section 30 of the MMRD Act for hearing the revision petitions, etc.

(Paragraph 13.5.14)

13.7.04 There should be periodic review of the First Schedule of the MMRD Act, in consultation with the States, every three years.

(Paragraph 13.5.15)

13.7.05 Any amendment to the MMRD Act should normally be preceded by consultation in NEDC.

(Paragraph 13.5.15)

13.7.06 With reference to the issue raised by Government of Nagaland concerning sub-clause (a) (iv) of Article 371A(1), dialogue and discussions should be carried out between the Union and the State Government in a spirit of give and take and trust, as symbolised by the Sixteen Point Agreement between the Government of India and the Naga People's Convention in 1960. The needs of the State and national interest would be best served by adopting a pragmatic approach to the whole issue.

(Paragraph 13.6.12)

ANNEXURE .III– 1

A BRIEF REVIEW OF IMPORTANT CASES RELATING TO ENTRY 54 OF LIST I AND ENTRY 23 OF LIST II AND OTHER RELATED MATTERS, 1961(2) SCR 537

1. HINGIR-RAMPUR COAL CO. Vs. STATE OF ORISSA

In December 1952, the Legislature of the State of Orissa passed the Orissa Mining Areas Development Fund Act. The Act received assen. of the Governor. Rules were also duly notified under the Act.

The Administrative Officer concerned with the enforcement of the Act called upon the petitioners to submit the monthly returns for the assessment of the cess. Subsequently, a warning was issued for non-submission of the returns and threatening prosecution under Section 9 of the Act. The petitioners, therefore, filed a petition challenging, *inter alia*, the validity of the Act.

The validity of the Act was challenged on several grounds. One of the grounds was that the State Legislature had no jurisdiction under Entry 23 of List II of the Seventh Schedule of the Constitution since that Entry is subject to provisions of List I with respect to Regulation and Development under the control of the Union; that is Entry 54 of List I. The Court held that a combined reading of Entry 54 of List I and Entry 23 of List II had the following effect :

> The jurisdiction of the State Legislature under Entry 23 is subject to the limitations imposed by the latter part of the Entry. If Parliament by its law has declared that regulation and development of mines should, in public interest, be under the control of the Union, to the extent of such declaration, the jurisdiction of the State Legislature is excluded. In other words, if a Central act has been passed which contains a declaration by Parliament as required by Entry 54, and if such declaration covers the field occupied by the impugned act, the impugned act will be *ultra vires* not because of any repugnance between the two statues but because the State Legislature has no jurisdiction to pass a law. The limitations imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself.

2. STATE OF ORISSA Vs. M. A. TULLOCH & CO. (AIR 1964 SC 1284)

The above Company, incorporated under the Indian Companies Act, was working in the Manganese Mine in the State of Orissa under the lease granted by that State under the provision of Mines and Minerals (Development & Regulation) Act, 1948, i.e., Central Act 53 of 1948 and the Rules framed therefrom. While so, the Legislature of State of Orissa passed an act called the Orissa Mining Areas Development Fund Act, 1952 [the same Act was under challenge in Hingir—Rampur Coal Co. Vs. State of Orissa 1961 (2 ACR 537]. The fee under this Act which became due between July 1951 and March 1952 became the subject matter of litigation. A demand was made from the Company. The Company filed a petition before the High Court impugning the legality of the demand and claimed certain assets. The writ petition was allowed by the High Court.

The question arose whether the Mines and Minerals (Development & Regulations) Act, 1948 which is a Central Act has rendered the Orissa Act ineffective. The Supreme Court held as follows :

> "Subject to the provisions of List I, the power of the State to enact Legislation on the topic of "mines and mineral development" is plenary. To the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" under Entry 54 of List I so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 of List II and legislation of the State which had rested on the existence of power under that Entry would, to the extent of that "control", be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make under Entry 54 of List I and has made. The Central Act 67 of 1957 covered the entire field of mineral development, that being the "extent" to which Parliament had declared by law that it was expedient that the Union should assume control".

Relaying on the provisions of Sec. 18(1) which cast a duty upon Union Government "to take all such steps as may be necessary for the conservation and development of minerals in India" and "for that purpose the Central Government may, by notification, make such rules as it may deem fit", it was contended that the entire field of mineral development including the provision of amenities to workmen employed in the mines, vested with the Union Government. The Court was inclined to agree to this contention but held that this position has been concluded by its decision in Hingir-Rampur Coal Co. Vs. State of Orissa (1961 (2) SCR 537).

3. H.R.S. MURTHY Vs. COLLECTOR OF CHITTOOR AND OTHERS (AIR 1965 SC 177)

The appellant's father had obtained a mining lease from the Government of Madras. He was permitted to work on the mines and mine the ore in the leased property. It is material to point out that under the lease, the lessee was bound to pay certain rent per year if he used the land for the extraction of iron ore and higher amount if he used the land for other purpose. Besides, he also bound himself to pay certain royalty per ton of iron ore if the ore was used for extraction or if the iron ore was used for any other purpose for sale at the rate of Re. 1 per ton (or a higher amount). In addition, there was a stipulation that there was a payment for surface rent.

To raise finance for carrying out local administration in the District Board, several taxes are leviable. Among them, Section 78 of the Madras Distribution Act of 1920 imposes a land cess on lands in the State.

After his father's death, two notices were issued on the appellant demanding payment of the land cess by the District Board for the years 1952-54 and 1955-57 and threatening action in the event of non-payment. The appellant challenged the validity of the notices in the High Court of Andhra Pradesh. The Petition was dismissed. The matter came in appeal before the Supreme Court. One of the contentions was that with the passing of Mines and Minerals (Development and Regulation) Act, 1957, the land cess that could be levied under the District Board Act must be exclusive of royalty under the mining lease.

It was held that there was no connection between regulations and development of mines and minerals dealt with in the Central Act of 1957 and the levy and collection of land cess for which the provision was made by Sections 78 and 79 of the District Boards Act. Therefore, there was no scope at all for the argument that there was anything common in between the District Board's Act and Central Act of 1957 so as to require a detailed examination of these enactments for discovering whether there was any overlapping.

It was further held that land cess imposed by the Madras District Board Act was in truth a tax on land as per Entsy 49 of State List and not a tax on minerals under Entry 50 of State List.

The Court also relied on its earlier decisions AIR 1961 SC 459 (Hingir-Rampur Coal Co. Vs. State of Orissa and AIR 1964 SC 1284—State of Orissa Vs. M. A. Tullock and Company).

4. **BAIJNATH KEDYA Vs. STATE OF BIHAR AND REST (AIR 1970 SC 1436)**

The appellant was the transferee of a lease-hold right, the lessor being one Babu Bijan Kumar Pande. The rent accruing on the lease was deposited upto September 1965.

On coming into force of the Bihar Land Reforms Act, 1950, the lessor Babu Bijan Kumar Pande ceased to have any interest from the date of vesting of the property in the State of Bihar because as per provisions of that Act, the State of Bihar was deemed to be the new lessor.

In its capacity as the new lessor, the rent and royalty, etc. in respect of mining and minerals irrespective of the date on which the lease was granted were to be paid by all categories of lessees to the State of Bihar according to the rates given in the rules framed under Bihar Act referred to above. A demand was made according to these rules which became the subject matter of controversy.

The main question that came up for consideration before the Supreme Court was the effect of the combined reading of Entry 54 of the Union List and Entry 23 of the State List of the Seventh Schedule to the Constitution. The Court held—

"....it is open to Parliament to declare that it is expedient in the public interest that the control should rest in the Central Government. To what extent such a declaration can go is for the Parliament to determine and this must be commensurate with the public interest. Once this declaration is made and extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature".

The Court also relied upon its own decisions in Hingir-Rampur Coal Company Vs. State of Orissa (AIR 1961 SC 459) and State of Orissa Vs. M. A. Tulloch & Co. (AIR 1964 SC 1284). The Court further held : "these two cases binding and apply here. Since the Bihar Legislature amended the land reforms Act after coming into force of Act 67 of 1957, the declaration in the latter Act would carve out a field to the extent provided in that Act and to that extent Entry 23 would stand cut down. To sustain the amendment, the State must show that the matter is not covered by the Central Act. The other side must of course, show that the matter is already covered and there is no room for legislation".

CHAPTER XIV

AGRICULTURE

CONTENTS

LIST OF ANNEXURES

CHAPTER XIV

AGRICULTURE

1. *INTRODUCTION*

14.1.01 Agriculture is not only the largest sector of our economy but is also a multi-dimensional subject. A very large part of our population, as is well known, is eithher directly or indirectly dependent on it. Much of our industrial growth also depends upon the development of the agricultural sector. Thus, the rapid development of this sector on sound lines is of utmost concern both to the Union and the States.

2. *THE ISSUES*

14.2.01 In the Constitution, 'Agriculture' has been placed as Entry 14 in the State List along with several ancillary matters, while some agriculture-related items have been included in the Union List and the Cuncurrent List. Many States have complained that notwithstanding Entry 14 of State List, the Union Government has made undue inroads in the sphere of agriculture, which according to them should remain an area of exclusive State jurisdiction.

14.2.02 All the States have emphasised that agriculture is primarily the responsibility of States but most of them have recognised the role of the Union Government in regard to many matters affecting the agricultural sector.

14.2.03 The problems highlighted by the States in Union-State relationship in the sphere of agriculture are broadly as follows :

(i) A State Government has observed : "Agriculture, including animal husbandry, forestry and fisheries should be exclusively a State subject and, therefore, the present entries in the Union and Concurrent Lists constricting this jurisdiction, should be dropped". This State Government has also elsewhere asked for transfer of all Entries in the Concurrent List to the State List. So far as List I is concerned, it has neither mentioned any Entries relating to agriculture which should be deleted nor demonstrated how the related Entries in the two Lists have created problems for the States. Another State Government has observed that in the interests of equal treatment of States and for checking the 'unbridled substantive activity and sanction of the various schemes involving substantial financial commitment and assistance from the Centre', the scope of Entry 33 of the Concurrent List should be restricted. Indeed, according to it, Entries 33 and 34 should be transferred to the State List.

(ii) The Union Government has made deep inroads in the States' sphere of activity by introducing a number of Centrally Sponsored Schemes in agriculture and allied sectors. The matching contribution for these schemes on the part of the States reportedly puts heavy burden on their finances and distorts their plan priorities.

(iii) The uniform support prices of agricultural items fixed by the Union Government on the recommendations of the Agricutural Costs and Prices Commission do not adequately cover the costs and regional variations in them. Some specific suggestions made in this regard are as follows :

(a) The States should be consulted by the Union Government before deciding support prices.

(b) The States should be compensated for the subsidisation of power and water inputs by them.

(c) Procurement price should be higher. At present it is the same as the support price and does not fully cover costs of storage, transportation and other charges.

(iv) In the case of critical in puts, like fertilizers, it has been suggested that fertilizers be allocated, as far as possible, from the plants situated within the State or in the neighbouring States. Further, the States should be empowered to amend the Fertilizer (Control) Order, 1957 insofar as it relates to its application within that State.

(v) In case of agricultural research and education, some States have suggested larger coverage and role and increased coordination with State level agencies to be able to pay attention to the specific situations. According to a State Government, in the Indian Council for Agricultural Research there is need for more representation on its governing-body for the Southern States where the climatic conditions are quite different.

(vi) Some less developed States have suggested a more liberal approach and flow of larger agricultural credit to them from NABARD and other financial institutions.

3. *CONSTITUTIONAL PROVISIONS*

14.3.01 Agriculture is a multi-faceted activity and, therefore, the framers of the Constitution distributed the various subjects of legislation in respect of agriculture and related matters between the Union and the States on a threefold pattern. Agriculture and most matters ancillary to or directly connected with it, were placed within the exclusive legislative and executive competence of the States. Accordingly, agricultural education and research, protection against

57—325/87

pests and prevention of plant diseases; preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass; land, rights in or over land, land tenures including the relation of landlord and tenant; collection of rents; transfer and alienation of agricultural land; land improvement, agricultural loans; colonization; fisheries; markets and fairs; money-lending and money-lenders; relief of agricultural indebtedness; cooperative societies; land revenue; maintenance of land records taxes on agricultural income; duties in respect of succession to agricultural land and estate duty in respect of agricultural land, have all been made exclusive responsibility of the States (vide Entries 14, 15, 16, 18, 21, 28, 30, 32, 45, 46, 47 and 48 of the State List). A List of various Entries relating to Agriculture in the State List may be seen in Annexure XIV.1.

14.3.02 Organisation of production, supply and distribution of essential inputs like fertilizers, seeds, pesticides, utilisation of waters of inter-State rivers are matters which cannot be of exclusive State concerns. Matters of common interest to the Union and the States have been placed in the Concurrent List. In certain other cases, the relevant Entries in the State List have been made subject to certain other Entries in List I and List III.

14.3.03 The matters of Concurrent jurisdiction of the Union and the States relating to agriculture are : 'Prevention of the extension from one State to another of infectious or contagious diseases or pests of affecting men, animals or plants' (Entry 29); Trade and commerce in, and the production, supply and distribution of products of any industry (including one having a nexus with agriculture) controlled by the Union by virtue of a law made by Parliament under Entry 52, List I, or of food-stuffs, cattle fodder, raw cotton and raw jute (Entry 33); and 'Price control' including that of agricultural products and agricultural inputs (Entry 34). Apart from the above, 'Economic and social planning' in Entry 20 of the Concurrent List is comprehensive enough to include planning and development of agriculture and related activities.

14.3.04 Certain matters related to 'agriculture' in the State List have been made expressly subject to List I or List III. Examples of these matters are to be found in Entries 17, 24, 26 and 27 of the State List. Thus, water, water supplies irrigation and canals, drainage and embankments, water storage, and water power in Entry 17, List II are expressely subject to Entry 56, List I, under which regulation and development of inter-State rivers and river valleys 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, is the responsibility of the Union Government. Similarly, 'industries' (including Agro-industries) in Entry 24, List II are expressly subject to the control of the Union when such control is declared by Parliament by law under Entry 52, List I, to be expedient in the public interest. 'Trade and commerce within the State's (Entry 26, List II) and 'Production, supply and distribution of goods' (Entry 27, List II) are expressly subject to Entry 33 of List III.

14.3.05 Most aspects of agriculture and related activities are of significance to the nation as a whole. The National Commission on Agriculture had aptly observed : "Therefore, from the point of view of agricultural development, what is more important is the increasing inter-dependance of Central and State interests and the realisation that there is hardly any problem of agricultural development that cannot be solved with mutual co-operation and commitment between the Centre and the States. Centre and States are to be regarded as parts of a single system in which the right relationship between the two is to be guided by the criteria of efficiency and economic necessity and ensured through understanding and adjustment".[1]

14.3.06 The functions directly undertaken by the Union Government for agriculture have been ably summed up as under:

"(i) The overall planning and co-ordination of agricultural development in the country; co-ordinating State agricultural plans; assuring the efficient implementation of development plans; their evaluation;

(ii) Providing financial assistance to the States for their agricultural plans through grants and loans ;

(iii) Providing technical assistance to States in planning and executing agricultural programmes;

(iv) Assisting States in securing their requirements of agricultural inputs such as pure seeds, improved implements, fertilizers, pesticides in adequate quantities and in time;

(v) Providing credit; assisting States in organising marketing, storage and transport facilities ;

(vi) Price stabilisation; enforcing in cooperation with the States minimum and maximum prices for agricultural produce; regulating interstate trade and movement of commodities;

(vii) Laying down import and export policies in respect of agricultural requisites and products;

(viii) Providing in co-operation with the State extension services to farmers;

(ix) Co-ordinating programmes of land use and development. soil conservation, and the utilization of water resources;

(x) Fundamental and applied research in agriculture, veterinary science, agricultural economics, fisheries, etc., home science and nutritional problems;

(xi) Maintaining the standards of higher education in all the agricultural sciences ; and

(xii) The administration of external assistance."[2]

1. Government of India : *Report of the National Commission on Agriculture* (1976), *Part II "Policy and Strategy"*, p. 97

2. Please refer, in this regard to Srinivasan, N.—*"Centre-State Relations in the Field of Agricultural Development"*, in Jain, S.N. *et. al.*, (Ed.)—*The Union and States* (1972). p. 114.

4. *ANALYSIS—CONSTITUTIONAL ISSUES*

14.4.01 We may first consider the issue relating to changes in the present Constitutional provisions in respect of agriculture. It has been suggested by a State Government that the existing Entries in the Union and Concurrent List constricting the jurisdiction of States in respect of agricutlture should be deleted. While it has elsewhere suggested transfer of the entire field of Concurrent subjects to the State List, no specific Entry in the Union List has been cited for deletion. We have, therefore, considered the issue with reference to the rationale for Union's functions and responsibilities in the agricultural sector, as noted in paragraph 14.3.06 above. Another State Government has suggested that "Entries 33 and 34 of the Concurrent List may be transferred to the State List as it is not likely to cause any prejudice to national or public interest".

14.4.02 Planning and coordination of agricultural development is a matter of common concern to the Union and the States. Obviously, this aspect cannot be wholly left to the individual States. Indeed, it requires a cooperative endeavour between the two levels of government

14.4.03 The Union is responsible for ensuring availability of foodgrains and other agricultural products and also provision of critical inputs like fertilizers, water, finance, etc. for their production. This role involves, among others, operation of Entry 33 of List III and Entry 52 of List I.

14.4.04 By virtue of Entry 33 of List III, Parliament has enacted the Essential Commodities Act, 1955. The Act gives powers to the Union Government to control production, supply, distribution, trade and commerce in essential commodities. The definition 'essential commodity' in Section 2 of the Act includes, *inter alia*, Sugarcane, Foodstuffs, Edible Oil-Seeds and Oil, Raw Cotton, and Raw Jute.

14.4.05 Agro-Industries, e.g., those concerning manufacture of Sugar, Fertilizers, Insecticides, Fungicides, Weedicides, Vegetable Oils, Agricultural Machinery and Implements, Tractors or Processed Foodstuffs, etc., are covered by the First Schedule to the Industries (Development and Regulation) Act, 1951 enacted under Entry 52, List I.

14.4.06 The Union Government has an important role to play in securing not only increased production of the items covered by Entry 33 but also in ensuring a purposive distribution and supply of the same. It is well-known that some parts of the country are surplus in foodstuffs and many others are deficient. Similar is the case with oilseeds and cattle fodder. Raw cotton and raw jute, also covered by this Entry, are basic raw materials for industry and are grown in large areas of some States. They involve reconciling the interests of farmers, industry and trade through price-support, ensuring smooth supply across the States and maintaining their demand. Obviously, such matters provide scope both for action by the Union and the States, and primacy to that of the former wherever national and inter-State aspects are involved.

14.4.07 Entry 34 of List III, "Price control," is functionally related to Entry 33 of that List and has, indeed, a much wider coverage. Price control is a basic issue in national economic policy and has special relevance in our planned development and mixed economy. This function can best be performed through a concerted action of the Union and the State Governments. The former has to evolve policy parameters and coordinate the overall aspects impinging on prices and the latter has to attend to the details of implementation. Hence, the evident justification for Entry 34 in List III.

14.4.08 The States have jurisdiction *vide* Entry 17 of List II in respect of water-supply, irrigation and canals, drainage and embankments, water storage, etc. It has been observed : "For though the waters of an inter-State river pass through the territories of all the States taken together, such waters are not located in any one State; they are in a state of flow and on well-settled principles of International and Federal Law relating to the waters of an inter-State river, no State can claim exclusive ownership of such waters so as to deprive the other States of their equitable share."[3] It is only the Union which can effectively regulate and develop inter-States rivers and river valleys. Entry 56 of List I provides for regulation and development of inter-State rivers and river valleys 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 public interest.

14.4.09 Entries 57 and 59 of List I[4] involves sensitive and extra-territorial aspects also and, in our view, rightly belong to the Union's sphere.

14.4.10 It may be seen from Annexure XIV.2 that there are a large number of Entries in the Union List which have relevance for both agircultural and and non-agricultural sectors.

14.4.11 Similarly, in the Concurrent List, subjects of Economic and social planning; Employment and unemployment; Vocational training ; Price control; Electricity; and the like, relate to both agricultural and non-agricultural spheres. By their very nature, they include scope for both Union and State action and an overriding role for the former wherever national and inter-State interests are involved.

14.4.12 In view of the above, we are unable to support the contention that the Entries in the Union and the Concurrent Lists relating to 'agriculture' should be deleted as such or transferred to the State List.

5. *CENTRALLY SPONSORED SCHEMES*

14.5.01. The next issue for consideration is the complaint of large inroads made into the sphere of 'Agriculture' by the Union Government through the Centrally Sponsored Schemes. A list of Centrally Sponsored Schemes in the field of agriculture and allied sectors during the Sixth Plan period is given in Annexure XIV.3.

---

3. Seeravai, H.M.—Constitutional Law of India, Vol. I, para 31, p. 1009.

4. *Entry* 57, *List* I : "Fishing and fisheries beyond territorial waters".
   Entry 59, *List* I : "Cultivation, manufacture, and sale for export, of opium".

14.5.02. The Centrally Sponsored Schemes in agriculture and allied sectors are mostly in areas of propagation of improved technology, research and statistics, combating ecological hazards, support to production in specific areas (e.g., pulses, cotton, jute, cashewnut, oilseeds and pilot project for increasing rice production in eastern States), disease control, credit support, externally aided projects, poverty alleviation, and the like.

14.5.03. The Ministry of Agriculture, Cooperation and Rural Development has informed us that "the Central and Centrally Sponsored Schemes are related to national priorities in many ways. They may aim at removing the regional imbalance in development, or provide essential supplementary effort that would be normally beyond the means of an individual State (e.g. Central and Eradication of pests and Diseases of Agricultural Importance including Weed Control in Endemic Areas). Then there is the need for protecting national priorities and ensuring that the core sectors of development are allotted resources on an ear-marked basis."

14.5.04. We have pointed out in the Chapter on Economic and Social Planning that Centrally Sponsored Schemes have grown steadily. The National Development Council took note of this and recommended a set of criteria for selection of such schemes and limited the overall outlay on them. The Ramamurti Committee[5] also recommended certain criteria for selection of such schemes.[6] We have endorsed the views of the Ramamurti Committee.

14.5.05. A glance at the list of schemes in Annexure XIV.3 would show that judged by these criteria many of them would not qualify for being included in the category of Centrally Sponsered Schemes. For example, the Ramamurti Committee recommended a minimum limit of Rs. 25 crores for projects in general and Rs. 10 crores for projects in selected States for this category. It may be seen from Annexure XIV.3 that several schemes included in the Sixth Five year Plan had outlays much lower than these limits.

14.5.06 It is a matter of concern that in an area which is primarily the responsibility of the States, the number of Centrally Sponsored Schemes keeps on increasing unduly and along with it the concomitant Union direction and control. We have dealt with the various issues relating to Centrally Sponsored Schemes in the Chapter on Economic and Social Planning. We reiterate the recommendation made therein that only those Schemes which satisfy the criteria laid down by the Ramamurti Committee, and have inter-State, regional or overall national significance, should be included as Centrally Sponsored Schemes.

14.5.07 We next consider the allgegation of indequate consultation with the States prior to formulation of the schemes and level of flexibliity in the implementation of the approved schemes. The Union Government (Ministry of Agriculture, Cooperation and Rural Development) has informed us as follows in this respect:

> "As regards the Centrally Sponsored Schemes, the views of the State Governmets are sought on feasibility, programme content, funding pattern and the economic benefits, before these are formulated. The views of the State Governments are also brought to bear upon these programmes through Advisory Boards, Councils and Standing Committees. The Central Sector Schemes, it is true are formulated by the concerned central Ministry and finalised by the Planning Commission after mutual consultation. But there cannot be any objection to consulting the State Governments while formulating these schemes through the Central Working Groups or through advisory bodies and other such forums".

14.5.08. It has also been brought to our notice by the Union Ministry of Agirculture, Cooperation and Rural Development that a number of Centrally Sponsored Schemes transferred to the State Sector in 1979-80 were either given up or have languished for want of funds, e.g., the schemes of Integrated Dryland Farming, Tobacco, Sugarcane, Spices, Horticulture and Animal Husbandry. This has reportedly made an adverse effect on the concerned production programmes.

14.5.09 We have emphasised earlier the imperative need for greater coopertation and coordinated action in all matters relating to agriculture. Such cooperation and close coordination can be secured through Joint Working Groups, as was recommended by the National Commission on Agriculture. Detailed prior consultation with States is an essential steps. The fact that Centrally Sponsored Schemes were dropped by the States on being transferred to the State Plan sector shows that the States attached priority to these schemes only because of the financial assistance which went with it or are unable to fund them (as in the case of the backward States). This only under-scores the need for formulation of schemes in consultation with the States, so that they get included not because of the financial tag attached to them but due to common appreciation by both the Union and the States that these are areas of high priority within the framework of the national plan. We recommend that due attention should be paid to this aspect.

6. *PRICING OF AGRICULTURAL ITEMS*

14.6.01 Pricing of agricultural items is a complex subject. Several interests—often conflicting in nature —are sought to be reconciled in this regard. Advice on such matters obviously necessitates consideration by an expert body, free from the pressures of interest groups. The Agricultural Prices Commission (since March 1985 notified as Commission of Agricultural Costs and Prices) was set up in January 1965 following the recommendations of the Jha Committee on Foodgrains Prices. Its terms of reference are contained in the Resolution reproduced in Annexure XIV.4.

---

5. Government of India, Planning Commission— *Report of the Expert Committee on the Role of Centrally Sponsored Schemes in Seventh Plan*, (Mimeographed), 1985.

6. (a) It should relate to demonstration, pilot project, survey and research or ;

   (b) It should have a regional or inter-State character or ;

   (c) It should aim at building up institutional framework for the country as a whole or for a region or ;

   (d) It should be in the nature of a pace setter with a definite time frame within which the objectives outlined are sought to be realised.

14.6.02. The minimum agricultural prices announced by the Government of India on the recommendations of the Commission for Agricultural Costs and Prices form the basis for procurement operations. The principal grievance of the States is that they do not have adequate say in the fixation of support prices. It is argued that the uniform support prices which are in vogue do not sufficiently account for the regional variations in the cost of production. It has been suggested by some of them that there should be different regional prices.

14.6.03. We have been informed that the Commission for Agricultural Costs and Prices collects detailed information and obtains the views from the State Governments on a comprehensive Questionnaire. It ascertains subsidies on agricultural inputs provided by the States and the Union Government. Discussions are held with the State Governments and experts during the Commission's visits to the States. Organisations of farmers, traders and other interest groups are also consulted. The Commission also generates its own cost-data on the basis of returns obtained from Agro-Economic Research Centres run by the Universities.

14.6.04. The Ministry of Agriculture, Cooperation and Rural Development has stated that after the Commission for Agricultural Costs and Prices submits its report, the Union Government circulates it to the State Governments. They get sufficient opportunity to give their views on fixation of garicultural prices, viz., in reply to the Questionnaire of the Commission for Agricultural Costs and Prices, during discussions with it and finally on its report to the Government.

14.6.05. We are concerned with the question whether adequate or reasonable working arrangements are obtaining for dealing with the widely differing views of the States. We are of the view that the issues like levels of prices and uniformity or otherwise of minimum prices, should best be left for consideration by an expert body like the Commission for Agricultural Costs and Prices. Any question of principle in regard to national policy in the area of fixation of prices could appropriately be considered thereafter by the National Economic and Development Council, if necessary.

14.6.06. A State Government has argued that as 'price control' is subject in the Concurrent List, it would be desirable to associate the representatives of the States with the Agricultural Costs and Prices Commission, at least in an advisory capacity. It has further suggested that advisory panels may be set up for each commodity or group of commodites on which the major producing and consuming States might be represented. We have noted above that the Commission for Agricultural Costs and Prices seeks the views of the State Governments and also holds discussions with them on minimum prices of the commodities under its purview. The Union Government also invites comments of the States on the prices recommended by the Commission before taking a decision. The State Governments are, therefore, already being consulted individually. The Resolution setting up the Commission provides for it to determine its own procedures and seek such information and hold discussions with official and non-official bodies as it may find relevant for its purposes. The association of the States in the form of advisory panels, unless desired by the Commisson at some time, may introduce political pressures in the working of an expert body. As appropriate flexibility and consultative arrangement already exist in the present working of the Commission, we do not think that the above proposal of the State Government will lead to an improvement.

7. *INPUT SUPPLY*

14.7.01. Adequate and timely supply of goods quality inputs—fertilizers, seeds, insecticides, pesticides, etc.—is crucial for agricultural development. This requires efficient management, involving both the Union and the State agencies, corresponding to the production plan. With increasing application of non-traditional and improved variety of inputs, the pressure on input delivery is on the increase and has, indeed, been recognised in a recent expert study as a constraints in the less developed areas.

14.7.02. The State Governments have generally recognised the role and initiative of the Union in the allotment and supply of inputs like fertilizers. However, a few of them have highlighted certain problems in this regard. A few others have asked for more powers in the distribution of fertilizers.

14.7.03. In the delivery of inputs, coordination between the two levels of grovernments and their institutions is of crucial significance. The responsibility for forward planning of supplies covering aspects of assessment of needs, production, imports, stockes movement, allocation, etc., rests with the Union Ministry of Agriculture, and its concerned agencies. States Farms Corporations, Seeds Corporations, Warehousing Corporations, etc. have to play a crucial role in coordinating with the central agencies on the one hand, and in organising input delivery systems within the States, on the other.

14.7.04. A plan for the supply and distribution of fertilizers has to be centrally prepared to tie up indigenous production, imports, storage, quality, credit-support, price policy, etc. Fertilizer as an industry is under the control of the Union Government (being in the First Schedule of the IDR Act) vide Entry 52 of List I and also Entry 33 of List III. The Fertilizer (Control) Order, 1957 has been in force under the provisions of the Essential Commodities Act, to ensure quality and regulate prices of fertilizers. The Union Government has been financing the cost of delivery of fertilizers upto Block headquarters and has also been fixing uniform prices of all the commonly used varieties. The subsidy on fertilizer distribution amounted to about Rs. 2000 crores in 1985-86.

14.7.05. The allocation of fertilizers to the States is made after taking into account the agro-climatic conditions and other relevant factors. Consultations with the States are held in this respect through Conferences, held twice a year—before the *rabi* and the *Kharif* seasons. We have been informed by the Union Government that in order to save on transportation costs, the States are already required to draw their quota from the plants situated within the respective States or from the ones as close as possible. Further, problems arise at times under conditions of sudden

scarcity when the States tend to draw more than their allotments and refuse to share the shortage with neighbouring States. In the last few years, however, no serious problems and complaints have reportedly arisen.

14.7.06. General bottlenecks in fertilizer application in the states are reported to be lack of credit facilities, weakness in the extension machinery and lack of trained manpower to handle the fertilizer distribution programme. Giving the States powers in the distribution of fertilizers within their respective areas should be done as part of the overall scheme of fertilizer allocations.

14.7.07. We are of the view that there should be an active involvement of the States in planning of fertilizer distribution.

14.7.08. In their memoranda and replies, the State Governments have not raised many issues with respect to supplies of other inputs like seeds, insecticides, pesticides, etc. We have been informated by the Union Ministry of Agriculture, Cooperation and Rural Development that in each of the four Inputs Divisions in that Ministry, Co-ordination Cells exist to over-see input delivery programmes. The legislative framework has been set up by the Union Government under the Central Seeds Act, 1966, and the Insecticides Act, 1968. However, operationally, co-ordination is vital between central and State-level agencies, Agricultural Universities, Co-operatives, etc.

14.7.09. We emphasise that through constant monitoring, it needs to be ensured that the input delivery systems perform well.

8. *CREDIT SUPPLY*

14.8.01. Some of the State Governments have drawn attention to the fact that a greater part of the credit made available by the National Bank for Agriculture and Rural Development (NABARD) is utilised by the more advanced States. There is, therefore, a demand that States should have representation on the Board of Directors of NABARD.

14.8.02. Availability of credit is basic to sustaining production and spread of improved technology in agriculture and has particular relevance for the backward areas and the weaker sections. The cooperative structure is an important channel of credit delivery. The NABARD was set up in 1982 by an Act of Parliament as the apex organisation overseeing development, policy planning and financial support for agriculture and rural development. It channelises credit through co-operative and commercial banks, regional rural banks and other financial institutions.

14.8.03. One of the important considerations in the flow of agricultural credit is the ability of the organisation in the State to absorb the credit. The Union Government has made the following observations to us in this regard :

> "The State Governments have not shown the political will to tackle the problem of mounting overdues, the main reason for chocking the line of credit, and have been found to be generally reluctant to take coercive action against wilful defaulters."

14.8.04. In the Chapter of Financial Relations we have noted that very substantial institutional credit is flowing to the States, including that for agricultural and rural sectors. Those with a well developed cooperative and organisational structure, especially the more developed States, are in an advantageous position in this regard. Inspite of some schemes Specially designed for the backward states by NABARD in totality these States continue to get relatively much smaller shares in institutional credit.

14.8.05. We are of the view that it is not the enlargement of representation on NABARD that will secure flow of adequate credit to the States, but building up of an efficient organisation to enable the farmers and others to avail of institutional credit. The ground-work in this regard will have to be done by States themselves. We find that adequate fora in the form of advisory Council at the national level, Regional Advisory Committees for technical schemes and District Consultative Committees exist wherein the States can represent their view-point and sort out operational difficulties, if any. We, therefore do not consider it necessary that States' representation on the Board of Directors of NABARD needs to be enlarged beyond what it is today.

14.8.06. The Committee to Review Arrangements for Rural Credit for Agricultural and Rural Development (CRAFICARD) appointed by the Reserve Bank in 1981, had drawn attention to the fact that politicisation, malfunctioning of elected bodies and lack of professional competence in management, is paralysing the co-operative credit system in some States. Recently, the Committee on Agricultural Productivity in Eastern India (RBI, 1984) has also observed that the cooperative credit structure in that region is choked with heavy overdues. Populist considerations have prompted some State Governments to write-off over-dues. Credit is a delicate plant which is difficult to grow but easy to destroy. If any State Government wishes to provide special relief to some really deserving farmers. It should do it through the grants and not through condoning wilful loan-default.

14.8.07 We recommend that the National Economic and Development Council should review periodically the working of the cooperative credit system in detail and enforce discipline in this regard.

9. *AGRICULTURAL RESEARCH*

14.9.01. Agricultural education and research is a State subject (Entry 14, List II). Entry 64, List I partains to "Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance". Entry 66, List I relates to "Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

14.9.02 Many State Governments have established Agricultural Universities and Institutions for carrying on research. They have also recognised the Union initiative in organising agricultural research in a variety of fields. Some of the less developed States have suggested that the Indian Council of Agricultural Research should undertake projects to solve local problems

and felt-needs in the region in the matter of research. A State Government has, however, pointed out that the recommendations made by the ICAR institutions are often at variance with those of the State level agencies, leaving the farmers confused. Another State Government has suggested representation of Southern States on its Governing Body and that the States Directors of Animal Husbandry and Agriculture should be coopted as Members of the Indian Council of Agricultural Research.

14.9.03 The Imperial Council of Agricultural Research (1929), renamed as the Indian Council of Agricultural Research (ICAR) in 1947, has been a premier research institution for promoting, guiding and coordinating agricultural research throughout the country. It provides aid to a very large number of crop and animal research institutions. Agricultural Universities and other institutions. The All-India Coordinated Research Projects conceived by the Council have been found very useful in propagating new technology. The All-India Coordinated Research Projects deal with improvement of agricultural crops and animals as also investigations in the field of agronomy, soil science and agricultural engineering. They operate on a countrywide basis under the direct supervision and technical guidance of the ICAR. The principle of their functioning is to provide scope and opportunity for wider evaluation of the proven results of applied research. These projects have provided scope for cooperation between scientists in the States and at the Centre.

14.9.04. The organisational structure of the ICAR comprises the General Body of the ICAR Society, the Governing Body, eight Regional Committees and the Management Committees of the Institutes. On the General Body of the ICAR Society Ministers of Agriculture, Animal Husbandry and Fisheries of all the States are represented, besides four Vice-Chancellors of Agricultural Universities and eight farmers representing agro-climatic regions and four representatives of rural interest. In the Governing Body three Members of Parliament and three Vice-Chancellors of Agricultural Universities and three representatives of farmers are nominated by the President of the ICAR (Union Minister of Agriculture). In the Regional Committees States are represented by Directors of Agriculture, Animal Husbandry, Fisheries, Horticulture, Chief Engineer of Irrigation, Chief Conservator of Forests and Vice-Chancellors of Agricultural Universities.

14.9.05 In view of underdeveloped state of agricultural research in several States, we feel that the Union Government should continue guiding the States in this regard and helping them organise their own research network. There is also need to further strengthen the coordination between the field institutions of the ICAR and the State's agencies so that the latter may draw upon their experties. Staff exchange programmes between the two may also be encouraged to share experience and expertise.

14.9.06 We have considered the suggestions of the State Governments in the light of the above facts. The first suggestion relating to need for ICAR undertaking research in backward areas in an administrative matter to be decided by Government. We have no comments on the same. In regard to the allegation that the recommendations of ICAR are often at variance with those of the local institutions, it underscores the need for greater consultation and cooperation between the Union Government's institutions/agencies and States' organisations.

14.9.07 We have already noted in paragraph14.9.04 that the States are well represented at verious levels of the ICAR organisation. The present structure should, by and large, be able to take care of providing necessary orientation of research-work corresponding to special local situations and needs. As regards the suggestion for representation on the Governing Body of the ICAR for Southern States, besides the adequacy of the present representation of States, we are unable to support the same, for the reason that representation on such a body should be on the basis of professional ability and contribution in the field of research rather than merely on any regional basis as such.

10. *RECOMMENDATIONS*

14.10.01 Only those schemes which satisfy the criteria laid down by the Ramamurti Committee and have inter-State, regional or national significance, should be included as Centrally Sponsored Schemes.

(Para 14.5.06)

14.10.02 The Centrally Sponsored Schemes should be formulated in consultation with the States, so that they get included not because of the financial tag attached to them but due to common appreciation by both the Union and the States that these are areas of high priority within the framework of the national Plan.

(Para 14.5.09)

14.10.03 The issues like levels of prices and uniformity or otherwise of minimum prices, should best be left for consideration by an export body like the Commission for Agricultural Costs and Prices. Any problem in regard to national policy in the area of fixation of prices could appropriately be considered thereafter by the National Economic and Development Council, if necessary.

(Para 14.6.05)

14.10.04 There should be an active involvement of the States in planning of fertilizer distribution.

(Para 14.7.07)

14.10.05 It is not the enlargement of representation on NABARD that will secure flow of adequate credit to the States, but building up of an efficient organisation to enable the farmers and others to avail of institutional credit. The ground-work in this regard will have to be done by States themselves. Adequate fora in the form of Advisory Council at the national level, Advisory Committees for technical schemes and District Consultative Committees exist wherein the States can represent their view-point and sort out operational difficulties, if any. States' representation on the Board of Directors of NABARD need not be enlarged beyond what it is today.

(Para 14.8.05)

14.10.06 Various committees have drawn attention to the fact that politicisation, mal-functioning of elected bodies and lack of professional competence in management, is paralysing the cooperative credit system in some States. Attention has also been drawn to chocking of the cooperative system due to heavy arrears. The working of cooperative credit system should be reviewed periodically by the NEDC in detail and discipline enforced in this regard.

(Paras 14.8.06 and 14.8.07)

14.10.07 In view of underdeveloped state of agricultural research in several States, the Union Government should continue guiding the States in this regard and helping them organise their own research network. There is also need to strengthen thecoordination between the field institutions of the ICAR and the States' agencies so that the latter may draw upon their expertise. Staff exchange programmes between the two may also be encouraged to share experience and expertise.

(Para 14.9.05)

ANNEXURE XIV.1

SUBJECTS RELATING TO AGRICULTURE IN THE STATE LIST OF THE SEVENTH SCHEDULE TO THE CONSTITUTION

Entry No.	*List II—State List*
14.	Agriculture, including agricultural education and research, protection against pests and prevention of Plant diseases.
15.	Preservation, protection and improvement of stock and prevention of animal diseases ; veterinary training and practice.
16.	Pounds and the prevention of cattle trespass.
17.	Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
18.	Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land ; land improvement and agricultural loans ; colonization.
21.	Fisheries.
26.	Trade and commerce within the State subject to the provisions of entry 33 of List III.
27.	Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
28.	Markets and fairs.
30.	Money-lending and money-lenders ; relief of agricultural indebtedness.
32.	Incorporation, regulation and winding up of corporations other than those specified in List I, and universities; unicorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.
45.	Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
46.	Taxes on agricultural income.
47.	Duties in respect of succession to agricultural land.
48.	Estate Duty in respect of agricultural land.
50.	Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
52.	Taxes on the entry of goods into a local area for consumption, use or sale therein.
53.	Taxes on the consumption or sale of electricity.
54.	Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List I.
58.	Taxes on animals and boats.
59.	Tolls.
60.	Taxes on professions, trades, callings and employments.
63.	Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

ANNEXURE XIV.2

SUBJECTS HAVING BEARING ON AGRICULTURE IN THE UNION AND CONCURRENT LISTS OF THE SEVENTH SCHEDULE TO THE CONSTITUTION

Entry No.	*List I—Union List*
28.	Port quarantine, including hospitals connected therewith ; seamen's and marine hospitals.
42.	Inter-State trade and commerce.
43.	Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.
44.	Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
45.	Banking.
47.	Insurance.
51.	Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52.	Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
56.	Regulation and development of inter-State rivers and and river valleys 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.
57.	Fishing and fisheries beyond territorial waters.
59.	Cultivation, manufacture, and sale for export, of opium.
63.	The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371E; any other institution declared by Parliament by law to be an institution of national importance.
64.	Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65.	Union agencies and institutions for— (a) professional, vocational or technical training, including the training of police officers ; or (b) the promotion of special studies or research ; or (c) scientific or technical assistance in the investigation or detection of crime.
66.	Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

58—325/87 (II)

ANNEXUREXIV.2—*Contd.*

Entry No.	*List I—Union List*
69.	Census.
81.	Inter State migration ; inter State quarantine.
82.	Taxes on income than agricultural income.
97.	Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists.
	List III—Concurrent List
9.	Bankruptcy and insolvency.
17.	Prevention of cruelty to animals.
17A.	Forests.
17B.	Protection of Wild animals and birds.
18.	Adulteration of foodstuffs and other goods.
20.	Economic and social planning.
23.	Social security and social insurance ; employment and unemployment.
25.	Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I ; vocational and technical training of labour.

Entry No.	*List I—Uni on List*
29.	Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
30.	Vital statistics including registration of births and deaths.
33.	Trade and commerce in, and the production, supply and distribution of,—
	(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products ;
	(b) foodstuffs, including edible oilseeds and oils;
	(c) cattle fooder, including oilcakes and other concentrates ;
	(d) raw cotton, whether ginned or unginned, and cotton seed ; and
	(e) raw jute.
34.	Price control.
38.	Electricity.
45.	Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

ANNEXURE XIV.3

List of Centrally sponsored Schemes, Pattern of Central Assistance and Central Assistance Provided in the Sixth Plan (1980—85)—*Agriculture and Allied Sectors*

Sl. No.	Ministry/Department/ Sector	Name of the Scheme	Pattern of Central Assistance	Amount of Central Assistance (Actuals for1980—8· and B.E. for (1984—1985) (Rs. crores)
1	2	3	4	5
1	Agriculture . . .	1. Scheme for distribution of Minikits of rice, Millets, Pulses and wheat	100%	20·06
		2. Distribution of Gram Minikits in replacement of Khesari Dal	"	0·50
		3. Soil conservation in the catchment of River Valley Projects	"	73·49
		4. Integrated Water Shed Management in the catchment of Flood Rivers of Gangetic Besin	"	30·52
		5. Development of Spices in Union Territories . .	"	0·24
		6. Establishment of elite Progeny Orchards . . .	"	1·18
		7. Improvement of Irrigation Statistics	"	0·82
		8. Crop estimation surveys on fruits, vegetable and minor crops	"	0·49
		9. Diagnostic Studies	"	0·02
		10. Central Pilot Project for increasing Rice Production in Eastern States	"	5·00
		11. Propagation of water harvesting technology in dry farming areas	"	2.75
		12. Improved Technology for apple production . .	50%	0·45
		13. Intensive Cotton Development Programme . .	"	15·55
		14. Intensive Jute Development Programme . . .	"	3.48
		15. Assisting small and marginal farmers in increasing agricultural production	"	185·00

ANNEXURE XIV.3—*Contd.*

1	2	3	4	5
		16. Establishment of an agency for collection of agricultural statistics	50%	5.38
		17. Establishment of farmers' Agro-Service Centres for custom-Hiring and Popularisation of improved agricultural implements	"	3·01
		18. Popularisation of seed-*cum*-fertilizer drills and inputs	"	1·30
		19. Intensive Oilseeds Development Programme . .	"	93·84
		20. Cashewnut Development	50% States 100% UTs.	4·54
		21. Package Programme on Coconut Development . .	"	1.70
		22. Development of Pulses	50% & 100% according to work component	17·38
		23. Timely reporting of estimates of area and production of principal crops	50% States 100% UTs.	2. 61
		24. Improvement of crop statistics	Do	1·67
		25. Agricultural Credit Stablisation Fund . . .	N.A.	60·39
		26. Control and eradication of pests/diseases of agricultural importance including weed control in endemic areas	N.A.	10·21
		TOTAL .		541·58
	Animal Husbandry & Dairy Development	1. Minikit testing on fodder crops	100%	0·57
		2. Rinder-pest eradication	50%	1·64
		3. Foot & Mouth Diseases Control Programme . .	50%	2·37
		4. Systematic control of livestock diseases of National importance including creation of diseases-free zone	50% 50%	2·49
		5. Assistance to selected Gaushalas for production of high quality indigenous cross-bread heifers	50%	0·81
		6. Sample Surveys on estimation of production of milk, eggs, wool and meat in States	50%	0·47
		7. Integrated Dairy Development Projects in States .	50% in case of Assam & J & K and 100% in Sikkim	5·53
		TOTAL .		13·88
3.	Co-operation . . .	1. Assistance to Co-operative Marketing, processing and Storage Programmes	100%	38·36
		2. Share Capital participation in Co-operative Factories	"	27·44
		3. Participation in the Share Capital of Growers Spinning Mills	"	44.31
		4. IDA : Storage Project (NCDC-I)	N.A.	19·49
		5. IDA : Storage Project (NCDC-II)	N.A.	38·39
		6. EEC : Storage Project	N.A.	15·54
		7. IDA : Cold Storage Project (NCDC-II) . . .	N.A.	16·34
		8. EEC Funded Soyabeen Project	N.A.	13·81
		TOTAL .		213·68
4.	Fisheries . . .	1. Techno-socio-economic survey of fishermen . .	100%	0·18
		2. Construction of Dry Docks	"	0·50
		3. Development of Botanical Garden at Sassoon Dock .	"	0·10
		4. Accident Insurance Scheme for Active Fishermen .	"	0·34
		5. Fish Farmers development Agency	50%	3·80
		6. World Bank-assisted Inland Fisheries Schemes . .	"	4·26
		7. Brackish water fishfarming	50%	2·19
		8. Introduction of Beach Landing Crafts . . .	"	0·50
		9. Landing and berthing facilities at Minor Ports . .	"	17·15
		10. National Programme for Fish Seed Development .	70%	3·42
		TOTAL .		32·44
	Forests	1. Soil, Water and tree conservation in Himalayas . .	100%	26·58
		2. Social Forestry including fuel wood planting . .	50% States 100% UTs.	50·72
		TOTAL .		77.30

ANNEXURE XIV.3—*Concld.*

1	2	3	4	5
6	Rural Development .	1. Rural Landless Employment Guarantee Programme (RLEGP)	100%	599.90
		2. Establishment of Rural Godowns	50%	14·58
		3. Integrated Rural Development Programme (IRDP)	50%	789·16
		4. Development of women and children in rural areas .	"	5·48
		5. Special Live-stock Programme		
		(a) Poultry, piggery & sheep (b) Cross-bred heifers (c) Assistant for Spl. Livestock Programme (Staff component)	50%	28·54
		6. Drought Prone Area Programme	"	169·78
		7. Desert Development Programme	"*	42·16
		8. Promotion of voluntary scheme of Social Action Programme	"	1·68
		9. National Rural Employment Programme (NREP) .	"	1103·01
		10. Establishment/strengthening of regional training Centre for Research and Training	"	1·12
		11. Land Reforms-Assistance to new assignees of land imposition of ceilings on agricultural holdings	"	11·89
		12. National Scheme for training of rural youth for self employment	50%	4·36
		TOTAL		2771·66

*In Seventh Plan 100%

Source : Report of Expert Committee on the Role of Centrally Sponsored Schemes in Seventh Plan (January, 1985).

ANNEXURE XIV.4

GOVERNMENT OF INDIA RESOLUTION ON REVISED TERMS OF REFERENCE OF THE AGRICULTURAL PRICES COMMISSION

No. 14011/2/78-Econ Py.

Government of India (Bharat Sarkar)
Ministry of Agriculture (Krishi Mantralaya)
Department of Agriculture and Cooperation (Krishi our Sahkarita Vibhag)

New Delhi, the 5th March, 1980

RESOLUTION

The Agricultural Prices Commission was set up in January, 1965 to advise on the price policy of agricultural commodities with a view to evolving a balanced and integrated price structure in the perspective of the overall needs of the economy and with due regard to the interests of the producer and the consumer. Over the years, the Commission has helped in the evolution of a stable and positive price policy for agricultural commodities.

The agricultural situation has considerably changed since the setting up of the Commission. The area under irrigation and intensity of cropping are going up steadily. Consumption of fertilisers and pesticides has increased. Investment in Agriculture through institutional and other sources has risen. A number of policy decisions have been taken to give high priority to Agriculture and Rural Development.

Agricultural production has as a result of these steps achieved a reasonable degree of stability and a process of increasing market orientation of the agricultural sector has set in. It has hence considered necessary to modify and expand the terms of reference of the Agricultural Prices Commission.

The terms of reference of the Commission would be as under :

1. To advise on the price policy of paddy, rice, wheat, jowar, bajra, maize, ragi, barley, gram, tur, moong, urad, sugarcane, groundnut, soyabean, sunflowerseed, rapeseed and mustard, cotton, jute, tobacco and such other commodities as the Government may indicate from time to time with a view to evolving a balanced and integrated price structure in the perspective of the overall needs of the economy and with due regard to the interests of the producer and the consumer.

2. While recommending the price policy and the relative price structure, the Commission may keep in view the following :

(i) The need to provide incentive to the producer for adopting improved technology and for developing a production pattern broadly in the light of national requirements.

(ii) The need to ensure rational utilisation of land, water and other production resources.

(iii) The likely effect of the price policy on the rest of the economy, particularly on the cost of living, level of wages, industrial cost structure, etc.

3. The Commission may also suggest such nonprice measures as would facilitate the achievement of the objectives set out in 1 above.

4. To recommend from time to time, in respect of different agricultural commodities, measures necessary to make the price policy effective.

5. To take into account the changes in terms of trade between agricultural and non-agricultural sectors.

(i) The need to provide incentive to the producer for adopting improved technology and for developing a production pattern broadly in the light of national requirements.

CHAPTER XV

FORESTS

CONTENTS

CHAPTER XV

FORESTS

1. *INTRODUCTION*

15.1.01 The National Forest Policy lays down that out of 329 million hectares of geograhical area in India, at least one-third, i.e., about 100 million hectares should be covered by forests. Studies made by the National Remote Sensing Agency have revealed that in three years, 1972-75, forest area actually covered was only 55.5 million hectares (16.9 percent of the geograhical area). The extent of forest-cover declined further and was only 46 million hectares in 1980-82 (14.10 percent of the geographical area). Thus, over a period of 7 years, the reduction in forest area was of the order of 9 million hectares, i.e., about 2.8 percent of the geographical area of the country. This rapid depletion of forest resources is a matter of utmost concern for the nation.

2. *CONSTITUTIONAL ARRANGEMENTS*

15.2.01 The subject 'Forests' was originally enumerated in the State List. The Forty-second Amendment to the Constitution (1976) transferred the subject from the State List to the Concurrent List. (Entry 17A of List III).

15.2.02 The Forest (Conservation), Act 1980 (Annexure XV-1) was enacted by Parliament to prevent further indiscriminate deforestation. Its 'Objects and Reasons' stated, *inter-alia* that "Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it has caused wide-spread concern".

15.2.03 Section 2 of the Act provides : "Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved ;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose".

The Explanation to Section 2 states that for the purposes of that section 'non-forest purpose' means "breaking up or clearing of any forest land or portion thereof for any purpose other than re-afforestation". There is no delegation to the States under the Act and all proposals touching Forests have now to be submitted for approval of the Union Government.

3. *COMPLAINTS OF THE STATES*

15.3.01 The main complaint of the State Governments relates to the restrictions imposed under Section 2 of the Forests (Conservation) Act on the executive powers of State Governments Prior to the Forest (Conservation) Act, 1980, the State Governments were totally free to determine all matters relating to dereservation, but the Act of 1980 resulted in total centralisation. This has provoked a State Government to observe that "in the matter of dealing with forests, we seem to be swinging from one extreme to another". Most of the State Governments have drawn attention to the difficulties faced by them in the execution of vital, urgent development projects like irrigation and power projects owing to delays in approval of deforestation proposals involved in these projects. They point out that even small schemes get delayed as the States have no powers to approve deforestation to any extent.

15.3.02 Except for two State Governments, there has been no criticism in regard to the transfer of the suject 'Forests' to the Concurrent List. One of them has argued that since this change has been made, no big improvement in respect of planting, care, conservation and development of forests has been observed and the steady loss of the forest cover continues to be "a serious national problem". According to this State Government, the real solution lies in creating a strong public awareness about the role of forests in the countries economy and ecology as well as taking effective measures against unauthorised exploitation of forests. According to it, afforestation is eminently suitable for utilisation of voluntary labour and for useful deployment of manpower under the special employment programmes. The other State Government has stated that there is no justification for having this Entry in the Concurrent List. Both the State Governments have suggeted that the subject 'Forests' should be transferred back to the State List by restoring Entry 19 which was deleted by the Forty-second Amendment.

15.3.03 It is an incontrovertible fact that deforestation in India has been going on at an alarming rate. Even one of the State Governments which has asked for the transposition of Entry 17A back to the state List, concedes that the loss of the forest cover continues to be "a serious national problem". It inevitably follows from this admission that conservation of forests or maintenance and adequate development of forest cover is not a matter of exclusive State concern. Therefore, this matter cannot be put back in the State List to remain a matter of exclusive State jurisdiction. It is obviously a matter of common and concurrent interest to the Union and the States.In fact, the Union Legislature has occupied only one aspect of this concurrent field, viz.,"conservation of forests' by enacting the Forest (Conservation) Act, 1980. Except to the extent covered by this Act, the legislative and executive competence with respect to the remaining aspects of the subject 'Forests', remains with the States. The Forests (Conservation) Act leaves the planting, development, extension and care of forests to the States.

Even exploitation of the reserve forests in a scientific manner and appropriation of the income from those forests is with the States. If the States are unwilling or unable to extend the forestation or develop the forests and usefully deploy the manpower under the special employment programmes, that is no argument for transfer of 'forests' back to List II. It rather cuts the other way. We have discussed this issue in detail in the Chapter on 'Legislative Relations'.

15.3.04 Suggestions from the States to overcome the difficulties being faced by them can be summarised as follows :

(i) A measure of delegation to the States. One State has suggested delegation of powers by relaxation of provisions of Section 2 of the Act upto 10 hectares to the State Governments.

(ii) Provision for blanket clearance for projects like construction of power transmission lines where damage to forest areas is minimal.

(iii) Major irrigation and power projects are scrutinised by the various agencies like Central Water Commission, Central Electricity Authority, etc. Thereafter they have to be considered by the concerned Departments and the Planning Commission before final approval is given. Scrutiny of the proposals relating to Forests should be carried out by the Ministry of Environment and Forests for these major projects at the same time, so that once a project has been examined from all aspects, and approved and cleared, the State Government need not approach the Union Government again for clearance under Section 2 of the Act.

15.3.05 The Ministry of Environment, Forests and Wildlife, in their reply, have pointed out that the procedure for approval under Section 2 of the Act has since been streamlined and most of the projects are now cleared expeditiously. They have further asserted that delay in giving clearance under Section 2 is largely due to States' furnishing incomplete information.

15.3.06 The reply from the Ministy of Environment, Forests and Wildlife of the Government of India also mentions that, " a Working Group was constituted to examine and suggest simplification of the procedure under the aforesaid Act.....As recommended by the Working Group. detailed guidelines have again been issued to all States and Union Territories. The cases relating to surveys and investigation, in forest areas, which do not involve cutting of trees are not required to be referred to the Central Government. Further, the procedure for laying of transmission lines or pipes for water supply, which do not involve felling of trees, has been simplified. However, it has been noticed that inspite of clear guidelines, correct and complete proposals are very often not submitted by the States".

4. *ANYLYSIS OF VIEWS*

15.4.01 We have considered the criticism and suggestions of the State Governments in the light of the above. Only two State Governments want that 'Forests' should be transferred back to the State List. We have already noted that the subject 'Forests' was placed in the Concurrent List by the Constitution (Forty-second Amendment) Act, 1976. The Constitution (Forty-fourth Amendment) Act, 1978, which in many respects nullified the effect of the Forty-second Amedment, was introduced after a general agreement had been reached among different political parties. It is pertinent that it did not retransfer 'Forests' from the Concurrent to the State List.

15.4.02 The Ministry of Environment, Forests and Wildlife has drawn attention to the fact that during the period 1951-52 to 1979-80, 4.3 million hectares of forest land was officially diverted to non-forest purposes. During the seven years, 1975-82, about nine million hectares of forests were lost. Obviously, in the period immediately preceding the enforcement of the Forest (Conservation) Act, 1980, large scale denudetion of forests took place. Pressures on forest area due to increasing population are well known. Availability of fire-wood falls for short of the demand. It has been pointed out by the Ministry of Environment, Forests and Wildlife that in 1978, guidelines were issued by Government of India laying down that all proposal involving use of forest land exceeding 10 hectares, should be referred to them for prior concurrence. Unfortunately, it was observed only in breach. The Forest (Conservation) Act, 1980 has enabled the Government of India to drastically reduce the diversion of forest lands to non-forest uses.

15.4.03 Today, there is much greater appreciation of the need for a countrywide approach in regard to forest conservation measures. In many parts of the country the adverse consequences of destruction of forests are already being felt. We are, therefore, of the view that it would be a retrograde step to transfer back the subject of 'Forests' to the State List.

15.4.04 The main complaint of the State Governments, as already noted, is in respect of delay in clearance of projects referred to the Union Government under Section 2 of the Act. Some State Governments have given specific instances of delays. Five of the States have pointed out the difficulties arising out of total centralisation of authority under Section 2 of the Act. Absence of any delegation to the States, according to them, has resulted in a situation where even small works in forest areas, some of which may be urgent in nature, frequently get held up.

15.4.05 On the other hand, according to the Ministry of Environment, Forests and Wildlife of the Government of India, the main reasons for delay are :

(i) Incomplete proposals ;

(ii) Lack of coordination between different Departments of the States/Union Territories and their Forest Department ;

(iii) Absence of monitoring of cases by States/Union Territories; and

(iv) Non-adherence to time-limits by States/Union Territories at their level (2 months for processing and 3 weeks for furnishing clarification/additional information) sought by Union Government.

15.4.06 The Ministry of Environment, Forests and Wildlife has in their reply stated that since the en-

forcement of the Act, a little more than two thousand proposals for diversion of forest land to non-forest purposes were received by the Department upto the end of February, 1986. Of these, only 71 cases are pending, out of which only 13 are pending for more than two months. The information also shows that a large number of cases (871 out of 2068 were treated as 'closed' because of the incomplete information given by the State Governments. There are only four cases pending for more than six months.

15.4.07 There may be several reasons for treating cases referred under Section 2 of the 1980 Act as 'closed'. It could be after full consideration of all the issues involved or it could be due to lack of follow-up action from the States. However, it is important to ensure that no genuine cases of development work are held up.

15.4.08 On the other hand, four State Governments have given us the details of long pending cases (for more than 6 months) under Section 2 of the Forest (Conservation) Act. In one State, the number appears to be unusually large. About 205 cases out of 271 referred to under Section 2 of the Act are stated to be pending. This apart, the practice of disposing off an unusually large number of such cases, not on merits but as 'closed' for want of complete information from the State Governments, is not a desirable course of action. Certainly, it is not conducive to smooth and hermonious working of Union-State relations. We do not intend to go into the merits of these cases. Our purpose in referring to this information is to highlight the point that the expeditious clearance of projects, is being plagued by procedural problems between the Union and State Governments. Mere shifting of responsibility is not going to give results. The sooner these problems are sorted out the better it will be for the country as a whole. It will surely expedite project implementation.

15.4.09 In view a of large number of cases having been 'closed', there is need for reviewing them to identify the reasons. We recommend that a senior officer of the Ministry of Environment, Forests and wildlife should examine all such cases which have been disposed off as 'closed', identify the reasons and inform the States. Cases which are required to be followed up by the States should be reopened and decided on their merit after discussion with the representatives of the concerned State Governments.

15.4.10 We note that the Ministry of Environment, Forests and Wildlife, has issued certain administrative guidelines to the State Governments in regard to the submission of proposals for approval of Government of India under Section 2 of the Act. We have also been informed that certain time-limits have been fixed for expediting disposal of such proposals. States have been asked to process the proposals within two months. Three weeks have been allowed for furnishing clarifications/additional information elicited by the Government of India. These are welcome steps but are not adequate. It would be advantageous if a bi-annual review of pending cases is carried out in consultation with the State Governments. Such a step would eliminate unnecessary correspondance and make for speedy disposal of cases. States could be informed in advance about the documents and information required. Since the review will be bi-annual, the states will get ample time to respond to the queries.

15.4.11 We note that in the existing arrangements, there is no delegation at all to the States in regard to diversion of reserve forest areas to non-forest uses or inter-change of forest and non-forest areas. As a result, a large number of proposals have necessarily to be sent to the Government of India. The question for consideration is whether any delegation is necessary and desirable in this regard. States have expressed unhappiness over the fact that even for every minor schemes like sinking of a well or building a small school in a tribal village involving diversion or interchange of very small piece of reserve forest land to such non-forest purposes, proposals have to travel all the way from the Panchayat/Block level to the Government of India. The adverse impact on local development activities can well be imagined.

15.4.12 We are, therefore, of the view that certain amount of delegation to the States is necessary.

15.4.13 It has been argued that all these years the States were free to de-reserve forest lands and extensive damage has been done and the only way to deal with the situation is for the Union Government to assume all powers in this regard. It is necessary in this connection to distinguish between illicit felling of trees and dereservation or interchange by the States. The former requires to be checked with utmost severity. This calls for a high degree of cooperation and coordination between the Union and the States. The centralisation of powers in regard to dereservation of forests will not yield the desired results in controlling illicit felling. All States are agreed on the need to conserve our forests. Many experts and eminent persons, who appeared before us, also emphasised the need to conserve the forest resources. States have been entrusted with a wide range of functions under the Forest Act, 1927. Indeed, States are responsible for all metters relating to forests and only in regard to diversion of reserved forests, they can not approve any proposal except with the prior consent of the Union Government. States are, however, primarily responsible for the upkeep of forests, prevention of illicit felling and taking of punitive action against the offenders and the like. We have already noted that in 1978, prior to the passing of the Forest (Conservation) Act, States had been requested to send all proposals involving dereservation of 10 hectares and more to the Government of India for clearance.

15.4.14 We recommend that powers should be delegated to the States to divert, to a small extent, say not exceeding 5 hectares of reserved forest lands which are urgently required for specific public purposes.

15.4.15 However, freedom to act should not be interpreted liberally. We have already referred to the depredations in the forests and the massive depletion of forest resources due to dereservation and illegal felling. The Union Government and all the State Governments have spoken unequivocally in favour of conservation of forests. The State Governments should, therefore, exercise utmost caution in the exercise of the powers recommended to be delegated to them. A thorough technical scrutiny of the proposals by the Forest Department of the State Governments

is a must and it should, among other things, ensure that only the minimum area required is permitted to be deforested. A positive approach to the problem is necessary. The States should as a rule arrange for afforestation of an equivalent area. Cases which are not of urgent nature or involve dereservation of an area more than 5 hectares will naturally be processed for clearance of the Department of Environment and Forests as per existing provisions. Our observation about the need to afforest equal area affected by deforestation will apply equally to such cases also. We have already suggested a bi-annual review of cases pending with Government of India to be held jointly. This opportunity should be made use of to review the action taken by the States under the delegated authority and assess to what extent the afforestation of equivalent areas has been effectively carried out.

15.4.16 Conservation and improvement of forest resources is of utmost importance to the nation. The fast growing demand for timber and other forest produce requires a systematic and multi-pronged approach to sustain continuous supply and simultaneously preserve and improve the ecological balance. Many of the required elements of policy already find place in the Social Forestry Policy. It is obvious that a concerted action by both the Union and the States is called for in implementing them. We would like to emphasise that along with the restrictions on indiscriminate felling of trees and use of forest land, the positive aspects involving, *inter alia*, schemes of afforestation and development of substitutes for forest produce are equally important. In this connection, we have taken note of a study on 'Forestry and the law' conducted by Shri Chhatrapati Singh at the Indian Law Institute, New Delhi (December, 1986) which has highlighted that at the field level a more systematic and purposive implementation of forestry policy is called for. For this, the observed incompatibility and anomalies between legislations and orders passed at vrious levels need to be removed. Among other things, the above mentioned study has emphasised that the Acts should rationalise planting and felling of trees on private land; rationalise transit rules wherever necessary, especially in areas away from forests; permit purposive allotments of land, such as, leasing out denuded forest lands to private individuals or groups; a better understanding of the intent of the Forest Conservation Act, 1980 in the guidelines of Government of India, etc.

Without embarking upon an indepth appraisal of these suggestions, on merits, we feel it necessary to point out that since some of them or their aspects directly impinge upon matters in the State List, their successful implementation depends, in no small measure, on adoption of a procedure based on close consensus and cooperation between the Union and the States.

15.4.17 The next suggestion for consideration is that clearances under Section 2 of the Act should be given along with approvals of other agencies in case of major projects. States have cited instances of major projects which though cleared by the Government of India, have yet been held up for want of clearance under Section 2 of the Forest Act. Such situations can be avoided if a comprehensive survey of all collateral aspects and incidental needs and likely affects on the forests and ecology of the site and surroundings of a contemplated project, is made, considered, coordinated and approved at the time of project clearance by the Government of India.

15.4.18 We recommend that clearance under Section 2 of the Forest (Conservation) Act should be given as far as possible simultaneously with the project clearance by the Government of India.

15.4.19 A lot of effort and time would be saved if the Central agencies are associated with the formulation of large projects/schemes involving reserve forests, right from the beginning, so that adequate measures not only to compensate but also to improve forest resources can be built into them, *ab initio*.

5. *RECOMMENDATIONS*

15.5.01 In view of a large number of cases referred under Section 2 of the Forest (Conservation) Act, 1980 having been 'closed' there is need for reviewing them to identify the reasons. A senior officer of the Ministry of Environment, Forests and Wildlife should examine all such cases which have been disposed off as 'closed', identify the reasons and inform the States. Cases which are required to be followed by the States should be reopened and decided on their merits after discussion with the representatives of the concerned State Governments.

(Para 15.4.09)

15.5.02 Powers should be delegated to the States to divert, to a small extent, say not exceeding 5 hectares, of reserved forest lands, which are urgently required for specific public purposes.

(Para 15.4.14)

15.5.03 Conservation and improvement of forest resources is of utmost importance to the nation. A concerted action by both the Union and the States is imperative. At the same time, it is necessary to ensure that development efforts are not hampered. A bi-annual review of pending cases should be carried out in consultation with each State Government concerned. This occasion should also be utilised for reviewing the sanctions by virtue of powers recommended by us, to be delegated to them.

(Paras 15.4.15 and 15.4.16)

15.5.04 In the case of large projects involving significant extent of submersion of reserved forests or their diversion to non-forest uses, clearance under Secton of the 2 Forest (Conservation) Act, 1980 should be given as far as possible simultaneously with the project clearance by the Union Government. Agencies of the Union Government may be associated, right from the beginning, with the formulation of the project so that adequate measures not only to compensate for the loss of reserved forests but also to improve forest resoures, can be built into them *ab initio*.

(Paras 15.4.17 to 15.4.19)

ANNEXURE XV-1

THE FOREST (CONSERVATION) ACT, 1980

No. 69 OF 1980

(27th December, 1980)

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

BE it enacted by Parliament in the Thirty-first Year of the Republic of India as follows :

1. **Short title, extent and commencement.**—(1) This Act may be called the Forest (Conservation) Act 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 25th day of October, 1980.

2. **Restriction on the dereservation of forest for non-forest purpose.**—Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation—For the purposes of this section "non-forest purpose" means breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation.

3. **Constitution of Advisory Committee.**—The Central Government may constitute a committee consisting of such number of persons as it may deem fit to advise that Government with regard to—

(i) the grant of approval under Section 2; and

(ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

4. **Power to make rules.**- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. (1) The Forest (Conservation) Ordinance, 1980 **(17 of 1980)** is hereby repealed.

(2) **Repeal and saving**—Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

CHAPTER XVI

FOOD AND CIVIL SUPPLIES

CONTENTS

LIST OF ANNEXURES

CHAPTER XVI

FOOD AND CIVIL SUPPLIES

1. *INTRODUCTION*

16.1.01 Maintaining steady supplies of essential commodities like foodgrains, edible oils, sugar, kerosene, etc. to people in all parts of the country, particularly in times of scarcity and to areas difficult of access, calls for cooperation of a high order between the Union and the States in a country of the size and diversity of India. Availability of most of these commodities often falls short of demand in many parts of the country. Imbalances between supply and demand may be countrywide or regional, perennial or seasonal. In the food and civil supplies sector, the Civl Supplies Organisations of both the Union and the State Governments have the joint responsibility to plan and execute carefully a large number of schemes, controls and other related activities so that uninterrupted availability of such commodities is assured to members of the public.

16.1.02 Coordination by a central authority, viz., the Union Government is particularly important in this sector. At the same time, decentralisation of powers and functions coupled with frequent consultations between different authorities is essential when the activities involved and the authorities undertaking them are numerous as is the case in the food and civil supplies sector.

16.1.03 In this context, our Questionnaire invited views on the following issues :

(i) whether the present arrangements for Union-State consultation are consistent with the actual responsibilities of the State Governments ;

(ii) whether there is scope for improving Union State liaison in the areas of procurement, pricing, storage, movement and distribution of foodgrains and other essential commodities; and

(iii) whether the arrangements for administering the Union regulatory laws, including the Essential Commodities Act, affecting States' areas of responsibilities need to be periodically reviewed, and, if so, what arrangements should be made for that purpose.

(*vide* Questions 10.1 & 10.2)

2. *VIEWS OF STATE GOVERNMENTS*

16.2.01 The State Governments, in their replies, have highlighted many problems arising primarily from over-centralisation of controls. They have pointed out that consultation and coordination between the Union and the States is inadequate. The Union laws, rules and orders relating to essential commodities require periodical review and revision so that operational problems and unnecessary controls get eliminated. Also, there is need for greater delegation of powers to State Governments in order to make their control over essential commodities more meaningful. The specific views that we have received from the State Governments on these important subjects are summarised below.

Union-State Consultation

16.2.02 Some State Governments have expressed the view that the present arrangements for Union-State consultations in regard to food and civil supplies are adequate and consistent with the responsibilities of the State Governments, while some others feel that there is considerable scope for improving such consultations. A few find the present arrangements inadequate in relation to their responsibility for maintaining regular supplies of essential commodities. According to one State Government, though the Constitution envisages food to be a State subject, Union policies in regard to food have left very little initiative and few options to the States. "As a result, the Government of India seems to have powers without responsibilities and the State Governments have responsibility without adequate powers".

Review of Regulatory Laws and Orders

16.2.03 Almost all the State Governments are of the view that the Essential Commodities Act and other related Parliamentary enactments as also orders made thereunder by the Union Government, should be periodically reviewed. As pointed out by one of them, new situations may arise requiring amendment of the relevant enactment or Order. Reviews may be carried out by an agency which need not be statutory. These will help remove irritants and bring about greater coordination and cooperation between the Union and the States.

Need for Delegating Enhanced Powers to State Governments

16.2.04 Many of the control and regulatory orders made by the Union Government under the Essential Commodities and related Acts contain one or more provisions which can be operated upon by a State Government only with the prior approval of the Union Government. More than one State Government has suggested that such prior approval could be dispensed with in the interests of due enforcement of the Orders. The specific areas where this can be done may be decided upon by the Union Government in consultation with the State Governments. It has been pointed out by some State Governments that the Union Government should control only important policy matters, minor matters being left entirely to State Governments to handle. Other views have also been expressed, viz. a State Government should have the power to amend control orders and intimate the amendments to the Union Government. Another view is that a State Government should have the power to make control Orders, without reference to the Union Government.

Other suggestions

16.2.05 We have also received from the State Governments a number of specific suggestions in regard to control over procurement, pricing, storage, movement and distribution of foodgrains and other essential commodities. To avoid repetition, we shall not list the suggestions here. We shall examine them topicwise in the ensuing paras.

16.2.06 Mention may be made here of the suggestion received from one of the State Governments that Entry 33 of the Concurrent List may be deleted and that Entries 26 and 27 of the State List amended so that trade and commerce in essential commodities and their production, supply and distribution fall within the exclusive legislative jurisdiction of the States. We shall be in a position to examine this suggestion after we have reviewed the relevant constitutional and legal provisions.

3. *CONSTITUTIONAL AND LEGAL FRAMEWORK*

Historical

16.3.01 During the Second World War, the Defence of India Rules (DIR) provided for governmental regulation of production, acquisition, storage, movement, distribution, etc. of articles of any description whatsoever. This enabled the Government of India to impose controls on foodgrains, textiles and other commodities. Before the DIRs were due to lapse, the Government of India Act, 1935 was amended by the India (Central Government and Legislature) Act, 1946 so as to empower temporarily the Federal Legislature to legislate in regard to trade and commerce in certain commodities as also production, supply and distribution, of those commodities.

16.3.02 In the exercise of the legislative power so conferred, the Government of India enacted the Essential Supplies (Temporary Powers) Act, 1946 so as to continue the controls imposed by the Defence of India Rules. An attempt was made at decontrol in 1947, but was given up the next year because of an alarming rise in prices and deterioration in the economic situation.

16.3.03 Annexure XVI.1 tabulates the successive changes that have taken place in the list of essential commodities in respect of which trade and commerce as well as production, supply and distribution were made matters of concurrent legislative jurisdiction, initially of the Centre and the Provinces, and, later, of the Union and the States.

16.3.04 Following broadly the provisions of the Government of India Act, 1935 as temporarily amended (*vide* para 16.3.01 above), the framers of the Constitution provided that trade and commerce in, and production, supply and distribution of, important commodities should be a Concurrent subject. This arrangement was to be in force for a period of five years for certain commodities and indefinitely for others.

16.3.05 The Constitution as it finally emerged contained the following provisions :

(i) Article 369 provided that trade and commerce within a State in, and production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned and unginned cotton), cotton seed, paper (including newsprit), foodstuffs (including edible oil-seeds and oil), cattle fodder (including oilcakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica, should be deemed to be matters enumerated in the Concurrent List for a period of five years from the commencement of the Constitution.

(ii) Entry 33 of List III covered trade, commerce, production, etc. relating to products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest.

16.3.06 The provisions of Article 369, enabled the Essential Supplies (Temporary Powers) Act, 1946 to be kept in force for a period of five years from the commencement of the Constitution, *i.e.* till 26th January, 1955. In the meantime, some of the items included in Article 369, viz., cotton and woollen textiles, paper, coal, iron, steel and mica, were included in Schedule I of the Industries (Development and Regulation) Act, 1951. As a result, trade, commerce, production, etc. relating to these items came within the purview of Entry 33 of List III. As public interest required that the remaining commodities mentioned in Article 369 should also come within the purview of this Entry, the Entry was amended by the Constitution (Third Amendment) Act, 1954 which came into effect on 22nd February, 1955.

16.3.07 Entry 33, as amended, reads as follows :

"Trade and commerce in, and the production, supply and distribution of—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and *imported goods of the same kind as such products ;*

(b) foodstuffs, including edible oil seeds and oils;

(c) cattle fodder, including oil cakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) *raw jute.*"

16.3.08 The above Entry brought together the products/commodities mentioned in Article 369 and the unamended Entry 33. It also included the additional items which have been underlined. The reasons for the additions were as follows. To make control over the products of industries in India effective, it was necessary to include imported goods of the same kind. Raw jute was added because of the importance of jute goods as items of export.

16.3.09 To enable essential commodities to be regulated after 26th January, 1955 till such time as a new legislation under Entry 33 of List III was enacted, the Union Government promulgated an Ordinance which provided, firstly, for the regulation of trade and commerce in, and the production, supply and distribution of, commodities which came within the scope of the unamended Entry 33 of List III and secondly, for the regulation of inter-State trade and commerce in wheat, raw cotton and sugar-cane. Certain State Governments promulgated ordinance or took other legal action open to them for continuing controls in respect of such commodities as could not be included in the Union Government's Ordinance.

The latter Ordinance was followed by the Essential Commodities Act of 1955 which came into force on 1st April, 1955.

Essential Commodities Act: Important Features

16.3.10 The Essential Commodities Act, 1955 (ECA) empowers the Union Government to control, in the interests of the general public, the production, supply and distribution of, and trade and commerce in, commodities declared by or under the Act as "essential". The objective of such control is to maintain or increase supplies of an essential commodity, to secure the equitable distribution and availability of essential commodities at fair prices or to secure their supply for the defence of the country or the efficient conduct of military operations. The term "control" means not only regulating but also prohibiting the production, supply, etc. of such commodities. [*vide* Section 3(1) and preamble of the Act].

16.3.11 The commodities mentioned in clauses (b) to (e) and seven commodities falling under clause (a) of Entry 33 of List III (*vide* para 16.3.07 above) find specific mention in Section 2(a) of the ECA as essential commodities. Further, the Union Government is empowered to declare, under Section 2(a)(xi), any other commodity falling under clause (a) of Entry 33 as an essential commodity. 56 such commodities have been so notified.

16.3.12 The ECA lists the measures which the Union Government, through orders, may prescribe for purposes of control, e.g. regulation of production or manufacture through licences, permits or otherwise, control of purchase or sale prices; prescribing stock levels, entry, search or examination of premises and vehicles; seizure of stocks; and so on [Section 3(2)]. The list, though comprehensive, is meant to be only illustrative.

16.3.13 The ECA provides for, *inter alia*, matters like confiscation of an essential commodity seized in pursuance of the Act (Sections 6A to 6E), penalty to be imposed for offences under the Act (Section 7) and summary trial where such trial is considered necessary (Section 12A). Offences punishable under the Act are cognizable (Section 10A). When a person is prosecuted for contravening an order issued under Section 3, the burden of proof that there has been no contravention is on the person accused (Section 14). The Act has been amended from time to time to make its penal provisions more stringent, to ensure quicker and more effective trials of offences and to meet situations arising out of court rulings striking down particular orders made under the Act.

16.3.14 States have also enacted various legislations under Entry 33 of List III to suit local conditions, obtaining, where necessary, President's assent *vide* Article 254(2)[1].

Scheme of Delegation

16.3.15 The ECA empowers the Union Government to direct that the power to make on Order under Section 3, in relation to such matters and subject to such conditions as may be specified in the Order, shall be exercised also by (a) an officer/authority subordinate to the Union Government or (b) a State Government or officer/authority subordinate to that Government (Section 5). Annexure XVI.2 to this Chapter indicates briefly the powers so delegated to State Governments. It will be seen that, in the case of foodstuffs, a State Government has to obtain the prior concurrence of the Union Government before it can make an Order in matters like regulating production or manufacture by licence, permit or otherwise, controlling purchase or sale price, requiring that the whole or a specified portion of the quantity produced or stored should be sold to the Union Government or to the State Government, etc. In regard to the remaining matters, the State Government is empowered to make Orders, subject to the directions of the Union Government on the subject. It may be noted that any delegation of power by the Union Government under Section 5 is concurrent with the responsibility under Section 3 which still remains with the Union Government.

16.3.16 The ECA provides another device for delegating powers. An Order made under Section 3 of the ECA may confer powers and impose duties upon the Union Government or a State Government or an officer/authority under either of them. The Order may also contain directions as to how the powers are to be exercised and the duties to be discharged (Section 4). This provision of the Act has enabled the Union Government to make Control Orders on a variety of commodities. Where it is intended that the State Governments should carry out specified functions, the Order either confers powers and imposes duties on State Governments or officers/authorities under them or provides that the Union or a State Government or a specified authority may confer powers and impose duties on subordinate officers. For example, under the Household Electrical Appliances (Quality Control) Order, 1981, an officer of the rank of Director of Industries or Director of Civil Supplies or an officer of equivalent rank appointed by the State Government is the Appropriate Authority. Under the Cold Storage Order, 1980, the term "licensing officer" signified the Agricultural Marketing Adviser to the Government of India and such officer of specified rank under the Union or a State Government as may be empowered by the Adviser to exercise/discharge all or any of his powers/ functions. It may be noted that, under both Sections 4 and 5, a particular power/ duty may be conferred/imposed either on a State Government or an officer/authority under it but not on both. To give an example, under the Paraffin Wax (Supply, Distribution and Price Fixation) Order, 1972, a State Government has been empowered to fix the declared price of paraffin wax within the State. However, the "competent authority" for a purpose like issue of an allotment order, grant of licence, etc. is the person/authority authorised by the State Government for that purpose.

16.3.17 There is yet another pattern of delegation of powers in the ECA. Certain Sections of the Act straightway empower either a State Government or an officer under it to exercise/perform certain powers/ functions. For instance, if an offender is to be tried summarily, the State Government may specially empower a Judicial Magistrate of the First Class to try the case [Section 12A(2)]. Under Section 6A, in certain circumstances, a Collector or an Additional Collector or an officer authorised by the Collector may order confiscation of an essential commodity that has been seized.

[1]. Chapter V : "Reservation of Bills by Governors for President's consideration"; Para 5.5.02.

16.3.18 Two features are discernible from a study of the Control Orders made by the Union Government under Section 3 of the ECA. While the Union Government may retain with itself one or more powers in regard to regulating production of an essential commodity, fixing its price, laying down stock levels, etc. the powers and duties in regard to enforcement, e.g. entry, search, seizure, examination, inspection of documents, etc. are, as a rule, delegated to State Governments or their authorities. First, this arrangement is in consonance with the Constitution. The executive power of the State extends to the matter specified in Entry 33 of List III, but is subject to, and limited by, the executive power expressly conferred by or under the ECA upon the Union or its authority or on the State or its authority. Second, the powers and functions of the Union Government and a State Government are complementary and the scheme of division between them assumes that the two levels of government will act in concert and with common objectives.

4. *NEED FOR ENTRY 33 OF CONCURRENT LIST*

16.4.01 In para 16.2.06 above, we mentioned the suggestion of one of the State Governments that Entry 33 of List III should be deleted and Entries 26 and 27 of List III amended so that trade and commerce in essential commodities and their production, Supply and distribution become matters of exclusive legislative jurisdiction of the States. The State Government's argument, in so far as it can be discerned from its reply to our Questionnaire, is that there is excessive control of the Union Government in the matters relating to food, which is a State subject. This inhibits a State Government from taking prompt measures in regard to procurement, etc. of essential commodities.

16.4.02 At the same time, the State Government has emphasised that the Union Government has a very important role as it maintains a central pool for foodgrains to help deficit States and that it may confine itself to major policies, inter-State transactions, imports, etc. In the case of roller flour mills, the licensing power should be with the State Government but subject to general guidelines from the Union Government.

16.4.03 It is apparent that the State Government has overlooked the fact that the policy-making and overseeing role proposed by it for the Union Government is underpinned by Entry 33 of the Concurrent List. The proposal thus seems to be inconsistent with the suggestion that the Entry should be deleted.

16.4.04 Entry 33 of the Concurrent List provides the Union Government a means of ensuring that unreasonable restrictions on trade, commerce or intercourse are not imposed and the commercial unity of the nation is not thereby endangered[2]. Further, the Entry enables executive responsibility for the matters specified by it, to be entrusted to the State Governments, subject to specific powers and functions of overall management and control being vested in the Union Government by Parliamentary legislation. The Entry will thus be seen as essential for the efficient management of essential commodities, the production supply and distribution of which have all along problems of national dimension. We are, therefore, unable to support the suggestion that the Entry should be deleted from the Concurrent List. Here we should like to draw attention to paras 2.22.06 to 2.22.11 of Chapter II "Legislative Relations" where we have come to the same conclusion.

[2]. Chapter II "Legislative Relations" : Para 2.40.06.

5. *UNION-STATE CONSULTATION*

Suggestions of State Governments

16.5.01 State Governments have made the following specific suggestions for improving Union-State consultation :

(i) The Union Government should consult State Governments before formulating policies regarding pricing, storage, movement and distribution of foodgrains and other essential commodities. It should avoid unilateral directives unless these are absolutely necessary in the national interest.

(ii) Two standing committees of officials should be set up, one for taking a composite view of matters relating to procurement and distribution of foodgrains and another for other essential commodities. *Ad hoc* consultations which take place now do not serve much purpose.

(iii) An Inter-State Advisory Body should be set up to discuss and advise Union and State agencies dealing with food and civil supplies.

(iv) An Advisory Committee on Food Management, with the Union Minister of Food and Civil Supplies as Chairman and the concerned State Ministers as members, may be set up for reviewing food management policies and institutions.

(v) There should be a high-level consultative forum where the Union and the States can arrive at a consensus on the annual food policy.

(vi) The National Development Council should discuss in the month of August/September every year the national food situation and arrive at an understanding on the policies to be followed during the next twelve months.

(vii) The Inter-State Council should perscribe general guidelines for coordinated activities, while details of operational measures should be worked out by the Union in consultation with the States. The Council should also lay down a framework for price regulation to be followed by State Governments.

(viii) A Trade Advisory Council or a Board of Trade should be set up, which may include representatives of all State Governments, producers, traders and consumers. Besides considering matters relating to trade and commerce, the Board/Council may examine questions relating to enforcement of the Essential Commodities Act and other related enactments, as also questions of taxation, cesses, duties, octroi, etc.

Need for Union-State Consultations

16.5.02 Effective implementation of policies in the areas of food and civil supplies requires the setting up and maintenance of appropriate infrastructural facilities like food storage godowns, larger number of outlets in urban and rural areas for the sale of foodgrains and other essential consumer items, strengthening public distribution systems in the States (e.g.

by providing vans for mobile fair price shops), strengthening State Civil Supplies Corporations (e.g. through loans for the construction of godowns), and so on. These, in turn, call for integrated planning by the Union and the States and formulation of time-bound programmes and schemes. These, it will be observed, are activities relatable to Entry 20 "Economic and social planning" in List III.

16.5.03 It has also been noticed in para 16.4.04 above that efficient management of essential commodities by the Union and the States is made possible by Entry 33 of List III. As explained in Chapter II on "Legislative Relations"[3], Entry 34 "Price Control" in List III enables the Union and the State Governments to curb blackmarketing and other evil trade practices in scarce essential commodities and to secure their equitable distribution at fair prices. These functions can best be performed through concerted and coordinated action by the Union and the States.

16.5.04 The very fact that the three Entries referred to above, viz. 20, 33 and 34, are matters of concurrent jurisdiction, postulates that the system of procurement, storage, distribution, etc. of foodgrains and other essential commodities has to be worked in cooperation by the Union and the States. Periodic and regular consultation between them will be seen to be crucial for the success of their joint efforts. In this context, it is necessary to examine the existing arrangements for consultation between the Union and the States in the areas of food and civil supplies and whether these require further strengthening.

Existing Arrangements for Consultation

16.5.05 There is an Advisory Council on Public Distribution System with the Union Food & Civil Supplies Minister as Chairman and the following as members :

(i) Food and Civil Supplies Ministers of all States and Union Territories ;

(ii) representatives of concerned Union Ministries/Departments, *viz.*, Food, Civil Supplies, Agriculture & Cooperation, Petroleum, Rural Development, Textiles, Coal, Industrial Development, Health, Banking, Planning Commission and Railway Board and representatives of concerned Union agencies like FCI, STC, NCCF, NAFED, NCDC, etc., and

(iii) two Members of Parliament, one each from the Lok Sabha and the Rajya Sabha.

The Council was set up by the Department of Civil Supplies in 1982 and meets once in six months to reveiw the working of the PDS. The Council provides a useful forum for discussion between the Union and the Sate Governments. Follow-up action is taken on the decisions of the Council and progress reported to it.

Proposed Arrangements for Consultation

16.5.06 At present, there is no committee or Council for periodic consultations between the Union and the State Governments on various aspects of foodgrains management like procurement, support and issue prices, building of buffer stock, etc. We recommend that the Advisory Council on PDS may undertake a periodical review of foodgrains management aspects also. For that purpose, it may be re-named as the Advisory Council on Foodgrains Management and Public Disrtibution.

16.5.07 In the field of foodgrains management, the Council may discuss and arrive at a consensus on matters like

— long-range policy on each major aspect of foodgrains management; and

— steps to be taken by the various Governments to implement the above policies.

For the above purpose and also for examining major problems of food management and civil supplies operations, as and when they arise, the Council may set up special Task Forces consisting of official and, where necessary, also non-official experts. While setting up a Task Force for examining problems which concern particular States, the Council should consult those State Governments including their official agencies.

6. PERIODICAL REVIEW OF ECA AND RELATED ENACTMENTS

16.6.01 As mentioned in para 16.2.03 above, State Governments are unanimous in their suggestion that the ECA and other related Acts and Orders should be periodically reviewed. Some State Governments have suggested a quarterly review while, according to some others, a review should be undertaken once in five years by a national committee with representatives of the Union and the State Governments. One of the State Governments feels that a Committee of officials drawn from the Union Government and a few State Governments and a few experts should carry out a review within six months. Thereafter, a Standing Committee should meet once in six months to consider emergent needs and situations. One other suggestion is that an Inter-State Advisory Body may be set up to advise Union and State agencies dealing with food and civil supplies. This body may also periodically review the enforcement and administration of Acts like the Essential Commodities Act and other related Union Acts.

16.6.02 Some of the important Union laws related to the ECA are : First, the Essential Commodities (Special Provisions) Act, 1981 which makes certain special proviosins (e.g. setting up special courts) for dealing more effectively with persons indulging in hoarding, black-marketing and profiteering in essential commodities. (This Act will be in force till August 31, 1992). Another Union Law *viz.*, the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 provides for detention of persons in certain cases for the purpose of prevention of block-marketing and maintenance of supplies of essential commodities. These two enactments together with the ECA provide the legal cover to State Governments and their officers enabling them to enforce the ECA and the various Orders issued thereunder.

16.6.03 There are also other related Union Laws like the Rice Milling Industry (Regulation) Act, 1958, and the Warehousing Corporation Act, 1962, which the State Governments have to enforce within their respective jurisdictions.

3. Para 2.22.14.

16.6.04 We recommend that there should be an indepth review of the working of the ECA and other regulatory Parliamentary enactments in the field of food and Civil supplies and that a high level committee should be set up for the purpose. Besides simplifying the laws in question and the Orders made thereunder, the review shold aim at identifying the areas where a State Government could be given greater freedom of action, so that they would not have to seek the prior approval of the Union Government in every minor case.

16.6.05 Apart from simplifying the Orders, detecting obsolete ones and providing for greater delegation of powers and functions to State Governments and their officers/authorities, the review should enable the Union Government to bring out a single, self-contained and uptodate Order on each essential commodity or a group of them. These reviews may be undertaken immediately and thereafter repeated every 5 years. The review should also enable identification of commodities which need no longer be classified as "essential". This, however, does not mean that during the interregnum between one quinquennial review and another, the ECA or the Orders issued thereunder cannot be changed even to meet the exigencies of an emergent situation. Indeed, problems of supply and demand of certain essential commodities, e.g. foodgrains, often vary from crop to crop. The position regarding them, has to be kept under constant study and review between the Union and the States.

7. *DELEGATION OF ENHANCED POWERS TO STATE GOVERNMENTS*

16.7.01 As mentioned in para 16.2.04 above, many State Governments have argued that they should be delegated larger powers than now under the various Control Orders made under the Essential Commodities Act and related Acts. The following are some instances where the concerned State Governments feel that the powers delegated to them are inadequate :

(i) The Paddy (Export & Import Control) Order made for a certain State under Section 3 of the ECA, allows the export or import of paddy and rice only on the strength of a permit issued by or on behalf of the State Government. But this restriction is not applicable to the Food Corporation of India and certain others. The State Government felt that, in order to utilise the capacity of rice mills in the State, the FCI should not move paddy out of the State. It proposed an amendment to the Control Order deleting the provision which grants exemption to the FCI. However, the Union Government did not agree.

(ii) When pulses are imported from abroad, the dealers who receive these consignments have to be exempted from the operation of the ceilings on stocks of pulses as laid down by the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977. such exemptions from the operation of the ceilings prescribed in clause 4 of the Order are given by the Union Government on the recommendations of the State Government. However, applications for such exemptions are many and it takes considerable time to get the approval of the Union Government in each case. Meanwhile, the enforcement agency of the State Government takes action against such dealers for keeping stocks in excess of prescribed limits. The State Government, therefore, proposed that a higher ceiling should be prescribed for such cases. However, the Union Government did not agree.

The State Government has suggested to us that it could have been empowered to grant the necessary exemptions from ceiling on stocks of pulses. This would have enabled the State Government to clear the heavy backlog of cases and provided relief to the harassed dealers.

(iii) In the interest of effective control over roller flour mills and ensuring proper production and distribution of *maida* and *sooji* to consumers, State Governments should have the power to issue milling licences, subject to general guidelines from the Union Government.

(iv) At present, in enforcing an Order on procurement of levy rice, a State Government can exempt any area or any class of persons from a particular provision of the Order, only with the prior concurrence of the Union Government. As the grant of such exemptions is a comparatively minor matter, a State Government should have full power in this regard.

(v) Adequate powers should be given to State Governments under the Petroleum Products (Supply and Distribution) Order, 1972 to enable them to take action against those dealers in these products who indulge in malpractices.

(vi) Bricks should be declared an essential commodity and State Governments given adequate powers to exercise control over their production, etc.

(vii) As kerosene is an essential commodity needed by the weaker sections of society for cooking and lighting purposes, the State Civil Supplies Corporation and the cooperatives in one of the States make kerosene available to ration-card holders through a large net-work of Fair Price Shops. These shops obtained their supplies of kerosene from wholesale dealers. Wholesale, dealerships is awarded by the Union Governmet, through its oil companies. The State Government finds that more wholesale kerosene depots should be set up so as to facilitate retail disribution. The State Government, has, therefore, suggested that it should have the power to appoint new wholesale dealers. The State Civil Supplies Corporation and Cooperatives in the State can then be permitted to open additional wholesale kerosene depots, particularly at places where private dealers may not find it profitable to do so.

16.7.02 Another instance of lack of adequate delegation of powers is the Fruit Products

Order, 1955 made by the Union Government under Section 3 of the ECA, with a view to regulating manufacture, packing/marking/labelling, sale, etc. of fruit products. As fruit products are manufactured in almost all parts of the country, exercising control over their production, quality standards, marketing, etc. is a function which is eminently fitted for decentralisation. The Union Government cannot, except at enormous cost, set up the large number of inspecting offices, laboratories and other establishments which will be required to ensure that the Fruit Products Order is complied with in every State and Union Territory. Yet, the organisation of the Director, Fruit & Vegetable Preservation in the Union Department of Food, has taken up the task of implementing the Food Products Order entirely by itself. There is a Central Food Products Advisory Committee, but no State Government is represented on it.

16.7.03 We have already discussed the scheme of delegation of powers under the ECA. Even in regard to matters where a State Government has been delegated powers without the condition that the prior concurrence of the Central Government should be obtained, the powers are not untrammelled. There is a general condition that exercise of power is subject to directions if any of the Central Government or that the Order made by the State Government should not be inconsistent with any order made by the Central Governetn. This condition can effectively come in the way of a State Government exercising a delegated power. To take the case at (ii) in para 16.7.01 above, state Government may fix the stocking limits of pulses, edible oil seeds and edible oils by virtue of the delegation in regard to Clause (d) of Section 3(2) of ECA (vide S. No. 4 of Annexure XVI.2). This power may

16.7.04 The examples bject, however, to directions, are only illustrative and Government. Accordingly, Undoubtedly, there woul to comply with the Pulses, where delegation of enblible Oils (Storage Control) ment of a larger number c Central Government, which ments is essential. It shvernments to modify the stosubstantially the numboy the Order except with the which prior concurrence e Central Government.

16.7.04 The examples that we have discussed above are only illustrative and by no means exhaustive. Undoubtedly, there would be many more such cases where delegation of enhanced powers and entrustment of a larger number of functions to State Governments is essential. It should be possible to reduce substantially the number of matters in regard to which prior concurrence of the Union Government is now required.

16.7.05 We recommend that the Union Depart-

16.7.04 The examples that we have discussed above are only illustrative and by no means exhaustive. Undoubtedly, there would be many more such cases where delegation of enhanced powers and entrustment of a larger number of functions to State Governments is essential. It should be possible to reduce substantially the number of matters in regard to which prior concurrence of the Union Government is now required.

8. *PROCUREMENT, PRICING AND RELATED MATTERS*

Views of State Governments On Procurement

16.8.01 The following suggestions have been made by State Governments in regard to the present system of procurement :

(i) Besides the Food Corporation of India (FCI), a State Civil Supplies Corporation should also be the agency for procurement of rice in the State.

(ii) Procurement within a State should be the exclusive responsibility of the State Government. Out of the total quantity of a foodgrain procured by its agencies, a State Government should be required to sell to the FCI only that quantity which is surplus to the requirements of the State.

(iii) Wheat procured by State agencies is taken over by the Food Corporation of India (FCI) generally after considerable delay. Meanwhile, the stocks of wheat deteriorate in quality and, when the FCI eventually takes them over, it imposes heavy "quality cuts" on the price to be paid for them. Further, the stockes rejected by the FCI can be sold by the State Government only with the prior permission of the Union Government. Such permission too gets delayed. Meanwhile, the rejected wheat stocks deteriorate in quality and may become unfit for human consumption. In order to prevent such heavy losses, the State Government should be empowered to dispose of wheat stocks which are not taken over by the FCI within six months of their procurement.

(iv) The State Government should be empowered to fix the levy percentage, i. e. the precentage of the quantity of a particular foodgrain produced, stocked or received, which a grower, miller of trader must compulsorily sell to the procurement agency at the price fixed by the Union Government.

(v) A state Government should be permitted to purchase rice from another State. At present, this requires the prior concurrence of the Union Government which is given only for small quantities and after considerable delay.

16.8.02 Another suggestion is that the Union Government should finalise procurement schemes for the *rabi* and *Kharif* seasons after consulting the States and giving due regard to the varying socio-economic, climatic and other conditions in different States. The Union Government should also prepare a long-term plan for food procurement.

Pricing

16.8.03 In regard to pricing, one State Government has complained that the support price of paddy does not take into account the cost of production in that State. Another State Government has suggested that in fixing support prices for foodgrains, the cost factor prevalent in different regions should be given adequate weightage. Also, the Union Government should have a long-range policy for the pricing of (a) foodgrains and (b) manufactured goods so that

the price difference between the two, viz. (a) and (b), does not exceed a given limit. Further, support prices should be announced before the start of the agricultural season.

16.8.04 One State Government feels that the power to fix procurement prices under the Essential Commodities Act, 1955 for levy rice should be with the State Government and the previous approval of the Central Government should be dispensed with. A second State Government has suggested that it should be delegated the power to fix the price at which levy-free rice is to be sold to the State Civil Supplies Corporation. A third State Government considers that State Governments should be allowed to have their own systems of price administration.

16.8.05 One State Government has complained that the incidental charges to be paid to a State Government for handling foodgrains for the Central pool are fixed by the Union Government arbitrarily without taking into consideration the increasing costs and other factors. It has suggested that the State Government should be empowered to fix these incidentals on the advice of a Committee to be set up by it, on which there should also be a representative of the Food Corporation of India. The incidental charges to be re-imbursed should be comparable to those incurred by the FCI itself for similar operations. Another State Government has suggested that the incidental charges payable to a State Government under the price support scheme should be sanctioned by the Union Government well in advance. Still another State Government would like to be compensated by the Union Government for making available electricity and water at subsidised rates to farmers in the State.

RBI Credit for Procurement

16.8.06 For the procurement of foodgrains, a State Government requires cash credit assistance which is given by the Reserve Bank of India with the approval of the Union Government. The rate of interest charged for cash credit is at a concessional rate. But, if a State Government pays a price higher than the support price fixed by the Union Government as an incentive or bonus to producers, interest is charged at the normal, i.e. commercial rate. One State Government has urged that, so long as a State Government implements the procurement policy laid down by the Union Government, RBI should give the necessary cash credit accommodation to it as matter of course and should not wait for the clearance by the Union Government. Another Government has suggested that funds for the procurement of food grains should be made available to the State Government in advance. Still another Government has complained that even if inter-State purchase of foodgrains is permitted by the Union Government, it is difficult to get authorisation from the RBI for the necessary credit. One of the State Governments wants the RBI to charge the nominal and not the commercial rate of interest for making such purchases.

16.8.07 According to one of the State Governments, the Union Government fixes support prices for coarse grains and leaves it to the State Governments, to procure them to the extent necessary for their public distribution systems. Cash credit from the Reserve Bank of India for the procurement of coarse grains becomes available only after a State Government gets it coarse grain procurement programme approved by the Union Department of Food. The State Government has suggested that, has procurement of coarse grains does not interfere with the national programme for procurement of foodgrains, it should be able to obtain the necessary cash credit for procurement directly from the RBI. The Union Government may not intervene unless such procurement adversely affects another State.

Rationale of Procurement & Pricing

16.8.08 Procurement takes place broadly as follows. On the advice of the Commission for Agricultural Costs and Prices (formerly the Agricultural Prices Commission), the Union Government fixes the prices at which foodgrains are to be procured. The Commission recommends minimum support prices for various agricultural commodities after taking into account the varying factors prevalent in the different parts of the country and after consulting the concerned State Governments. The support prices so fixed both for *rabi* and *Kharif* grains, are announced every year before the commencement of each crop season.

16.8.09 The agency for procurement in a State is either the FCI or an agency of the State Government or both. Under the price support operation, the procurement agencies start procurement as soon as the prices in the market tend to fall below the minimum support prices. Stocks are purchased after ensuring that they fulfill the quality standards prescribed by the Union Government.

16.8.10 Foodgrains may also be procured by a levy on millers and traders. The levy percentages vary from State to State and are fixed by the Union Government after consultation with the State Governments.

16.8.11 The system of procurement for building up a Central Pool operates under certain restrictions. One set of restrictions operates on the Union Government. While fixing support prices and levy percentages, the Union Government has to take care that

(i) the producer gets a fair price for the foodgrains procured from him;

(ii) the targets for procurement can be achieved;

(iii) after procurement, sufficient quantities are left with producers, millers and traders for the normal market forces to operate;

(iv) the prices of the foodgrains in the open market remain at reasonable levels; and

(v) the element of subsidy that has to be borne by the Union Government is the minimum possible.

(i) the producer gets a fair price for the foodgrains procured from him;

(ii) the targets for procurement can be achieved;

(iii) after procurement, sufficient quantities are left with producers, millers and traders for the normal market forces to operate;

(iv) the prices of the foodgrains in the open market remain at reasonable levels; and

(v) the element of subsidy that has to be borne by the Union Government is the minimum possible.

approval of the Union Government in order to prenvent an undue reduction in its availability which in turn could lead to a rise in price;

(iii) A state procurement agency should not offer any incentive or bonus in addition to the support price fixed by the Union Government. Such an incentive or bonus could push up open market prices and lead to higher drawals from the Central Pool than those budgeted for.

(iv) The Union Government, as it coordinates operations and monitors the system, is the final authority to decide on what measures such as those at (i) to (iii) above are to be introduced.

16.8.13 The restrictions mentioned in the preceding paras are in the nature of a discipline imposed by the country on itself, in order that foodgrains may become available at reasonable prices to the people at large and to the vulnerable sections, in particular. The end purpose is to maintain an efficient public distribution system which can ensure steady availability of foodgrains and other key essential items at reasonable prices and also keep their prices in the open market in check. The needs of the people living in the tribal areas covered by the Integrated Tribal Development Projects require special attention. Wheat and rice have to be made available to them at specially subsidised prices. All these objectives make it a matter of national importance that both the Union and the State Governments should conform to the discipline of the system.

16.8.14 It will be seen that the system of procurement, distribution, etc. would be subjected to serious distortions if State Governments were to take unilateral decisions on support prices, incentives for procurement, levy percentages, inter-State movement of foodgrains and purchases by one State Government in the open market in another State or if the RBI were to allow freely whatever cash credit assistance at a concessional rate is asked for by a State Government for procurement and purchases of foodgrains. We are of the view that such restrictions have to be imposed by the Union Government after taking a total view of the economic factors and the constraints inherent in the operation of the system. But this is not to say that the Union Government may take unilateral and *ad hoc* decisions on such matters. It is important that there should be effective Union-State consultations on all such matters. In particular, the mechanism of mutual consultation can help resolve the numerous problems of State Governments like delay on the part of FCI in taking over foodgrains procured by State agencies, heavy "quality cuts" in the price paid by the FCI for these, re-mbursement of only a part instead of in full the incidental expenses incurred by State Governments in handling procurement and other operations, and so on. For this purpose, we have recommended an Advisory Council on Foodgrains Management and Public Distribution *vide* para 16.5.06 and 16.5.07 above.

9. *ALLOCATIONS OF FOODGRAINS, EDIBLE OILS, ETC.*

Views of State Governments

16.9.01 The foodgrains procured by Government Agencies are utilised for :

(i) running the Public Distribution System (PDS) which functions through a network of fair price/ration shops;

(ii) issue of wheat to roller flour mills for conversion into products; and

(iii) building buffer stocks.

The Union Government fixes the issue prices for the foodgrains allocated to the State Governments for the purposes mentioned at (i) and (ii) above.

16.9.02 Many State Governments have observed that the allocations are insufficient to meet the demands of the PDS. One of them has suggested that the allotment should meet the entire requirement of the PDS. Another State Government feels that the quantum of allotment should be related as much to the procurement effort of the State Government as to the quantity required by its PDS. One State Government is of the view that a State which produces cash crops and earns foreign exchange should not be allowed to suffer in the matter of foodgrain supplies.

16.9.03 Another State Government considers that allocations of foodgrains and edible oil by the Union Government are made on an *ad hoc* basis, although factors like availability in the Central Pool, production in the various States, special requirements arising out of drought and other natural calamities, etc. are taken into account. The State Government has suggested that the allocations should be decided on an accepted formula which should take into account a State's population, deficit supply on trade account, etc. After the commencement of a marketing season for a particular commodity, the Union Government should decide the allocations after discussion with the State Governments. In the case of edible oil, an import programme should be drawn up and its availability made known in advance to the States.

16.9.04 One State Government has suggested that it should be permitted to draw the rice required for its public distribution system from the quantities delivered to the Food Corporation of India as levy by millers and that no ceiling should be imposed on these drawals. The State Government has justified this measure on the ground that the present allocations of rice received from the Union Government are not sufficient to meet the demands of the public distribution system, the State Government having committed itself to supplying rice to the vulnerable sections of its people at a price lower than the issue price fixed by the Union Government. Another State Government similarly finds that it is unable to obtain adequate quantities of essential commodities like edible oil, etc. for supply through Fair Price Shops, as the allocations from the Union Government are inadequate. Consequently, it is not possible to control the prices of these commodities, particularly edible oils. To keep prices under check, the State Government has suggested that "a subsidised control of prices should be introduced". The State Government considers this measure as essential for the continuance of the several schemes (e.g. a noon-meal programme for children and aged pensioners) undertaken by it in the fields of education and welfare of the aged and the under-privileged. Another State Government has proposed that, if a State Government requires for consumption within the State, the entire quantity of a foodgrain procured by

its agencies, it should be allowed to retain it and meat the additional requirements of the State by purchases from the FCI at the prescribed issue price.

Rationale of Present System

16.9.05 Foodgrains are allocated to a State primarily for distribution through the PDS to the people, particularly the weaker sections, on the basis of a prescribed quota per person or per family. Any quantities of foodgrains or other essential commodities required by any person in addition to the quota admissible have to be purchased by him in the open market. The basic premise is that the PDS is not intended to meet the entire requirements of foodgrains of a State.

16.9.06 The monthly allocation of a .foodgrain to a State from the Central Pool takes into account :

(i) the off-take in the preceding month;

(ii) overall availability of stocks in the Central Pool;

(iii) the demand placed by the State Government;

(iv) relative needs of the various States; and

(v) availability of the foodgrains and its price in the local market.

16.9.07 Another feature is that the issue price fixed by the Union Government involves a large element of subsidy. That is to say, the issue rate is much less than the economic cost of the foodgrains procured by the FCI for the Central Pool. The difference between the two is re-imbursed to the FCI as subsidy, (For 1984-85, the subsidy for wheat worked out to Rs. 63.46 per quintal while its issue price was Rs. 172 per quintal).

16.9.08 It will be evident that, when national availability of a particular foodgrain is limited, a State Government would not be justified in demanding higher allocations than others on such extraneous grounds as its procurement effort or earnings of foreign exchange. There has to be an equitable sharing of national shortages. To meet demands in excess of the quantities received as allocations, a State Government should explore the possibility of increasing the quantities available in the open market, or persuading the people of the State to consume other foodstuffs more easily available. In any case, the State Government should ensure, through effective enforcement, that the foodgrain received for the PDS does not find its way into the open market and that the total demand placed on the Union Government is not inflated.

16.9.09 As a matter of fact, the demands sent every month by State Governments for allocation of foodgrains are not properly worked out and not do reflect the actual demands. The Union Government has identified the problem as one of inefficient commodity planning by the State Governments. It has been advising them to have a monthly working plan prepared at the apex level by the State Civil Supplies Corporation or the State Consumers Federation, as far as practicable on the basis of the monthly plans prepared at the district/Taluka block levels.

16.9.10 The State Governments can estimate the demands of the Public Distribution System with some accuracy only if they have an effective system of monitoring and planning. Similarly, the Union Government can dispel any impression that allocations are decided on an *ad hoc* basis only if the relative weightages to be given to different factors such as those enumerated in para 16.9.06, are determined in advance and made known to all the State Governments.

Improvement of Monitoring System and Planning Methodology necessary.

16.9.11 We recommend that the Advisory Council on Food Management and Public Distribution recommended in para 16.5.06 above may set up a Task Force for evolving (a) for the use of the States, a prototype of a monitoring system and a methodology for monthly planning and (b) for the use of the Union, a scientific system of planning and allocation. Both the minitoring system and planning methodology should be simple and capable of being understood and worked by the functionaries concerned.

Need for understanding between Union and States on Allocation for Certain Special Schemes.

16.9.12 We also recommend that special schemes which have been undertaken or are proposed to be undertaken by State Governments to make certain essential commodities available to the weaker sections of society at prices lower than for others, should broadly conform to the national policies laid down by the Union Government for the alleviation of poverty and the welfare and development of the weaker sections. There should be an understanding between the Union and the State Governments in regard to the specific schemes for these purposes and the special allocations of foodgrains, etc. to be made available to the concerned State Governments.

10. *ROLE OF THE FOOD CORPORATION OF INDIA.*

16.10.01 In the earlier paras, we have discussed certain suggestions which are based on the premises that procurement and supply of food within a State should be the exclusive responsibility of that State Government. A State Government need sell to the FCI only such quantities of the foodgrains procured as are surplus to the State's own requirements (para 16.8.01). If additional quantities are needed, these should be purchased from the FCI (para 16.9.04). The FCI should promptly take over surplus stocks of State agencies and apply only reasonable "quality cuts", where necessary, in the prices to be paid for them. (para 16.8.01). State agencies should be reimbursed incidental charges on the same scale as those incurred by the FCI itself for similar operations (para 16.8.05). Finally, State agencies should be allowed reasonable credit requirements by the banking system (para 16.8.06). Our conclusions in regard to these suggestions may be seen at paras 16.8.14 and 16.9.08 *ante*.

16.10.02 The particular State Government which has made the above suggestions, views them as part of a reorganisation of "food management operations" in order that State Governments might be more fully associated with the operations then now. The State Government has further suggested that the Food Corporation of India should be made the apex organisation of the food management structure and entrusted with the following functions :—

(i) procurement of foodgrains through State agencies;

(ii) supply of essential commodities to State Governments for distribution through their public distribution system;

(iii) import and export of food;

(iv) maintenance and operation of buffer stocks of food; and

(v) consultation with State agencies for improving food management operations.

A Parliamentary Act should provide the legal framework for the above system.

16.10.03 It would appear that, under the proposed system, the State Government would determine, from time to time, what quantities would have to be procured for consumption within the State, and what would be the surplus to be made available to the FCI, or, alternatively, what additional quantities would have to be obtained from the FCI. This would make the FCI entirely dependent on the State Governments for its stocks of foodgrains. It is doubtful whether the FCI would at all be able to carry out the various functions that it would be responsible for as the apex body under the new system. Also, it appears to have been tacitly assumed that, if adequate quantities of a foodgrain are not made available by the State Governments, the FCI would resort to imports. Clearly, this is not a practicable proposition. We are, therefore, of the view that the reorganisation proposed by the State Government will be unworkable.

11. *PUBLIC DISTRIBUTION SYSTEM*

Absence of suggestions from State Governments

16.11.01 None of the State Governments who have replied to our questionnaire has made any significant observation or suggestion in regard to the working of the Public Distribution System in its State, except to say, as some have done, that they should have all the powers to operate the system and impose such restrictions and controls as they deem essential. Apparently, according to them, efficient running of the PDS is entirely the concern of a State Government and there are no Union-State aspects. However, we find that the Union Government has been repeatedly bringing certain problems relating to the working of the PDS to the notice of State Governments. These are discussed below.

Working of the PDS

16.11.02 As mentioned earlier, the main purpose of the Public Distribution System is to ensure a steady supply of essential commodities to people at reasonable prices, particularly to the weaker sections of the community. An efficient distribution system also enables prices to be kept under check. Achievement of these objectives is as much the concern of the Union Government as it is of the State Governments. An evaluation study of the Essential Supplies Programme by the Programme Evaluation Organisation of the Planning Commission (February 1985) showed that irregular supply and poor quality of the commodities handled were the main reasons why people did not make use of fair price and ration shops. Only a small percentage of the shops covered by the study could supply all the commodities that they were supposed to sell.

16.11.03 For the past many years, the Union Government has been giving instructions and advice to State Governments on the various aspects of the working of the PDS. Some of the more important ones are :

(i) Fair price shops, if they are to sell only the seven key essential items (viz., wheat, rice, sugar, imported edible oil, kersone, soft coke and controlled cloth), would not be able to make any profit. To make them viable, they should be helped to stock and sell as many other items of mass consumption as possible at reasonable prices. The Union Government has arranged with manufactures of consumer items of mass consumption to supply their products at wholesale rates for being sold through the PDS.

(ii) Bank credit to Fair Price Shops has been brought under the priority sector and advances to them carry concessional rates of interest. State Governments could have district plans drawn up for those shops in coordination with lead banks and other banks.

(iii) There is a Plan scheme in the Central sector for providing financial assistance to primary agricultural cooperative societies to enable them to undertake effective distribution activities in rural areas. Also, the National Cooperative Consumers Federation of India is equipped to provide expert management services to consumer cooperatives. The State Governments have been urged to take advantage of these schemes and services.

(iv) There should be a Fair Price Shop for every village or group of villages with a population of 2,000 or more. Mobile fair price shops should be opened for servicing far-flung areas.

(v) The margin between the issue price fixed by the Union Government and the corres ponding retail price fixed by the State Government should be the minimum. State Governments should not add any overheads like sales-tax to the issue price which would defeat the basic idea of the PDS. The heavy subsidy that is built into the issue price is intended to give relief to the common consumer and not to provide a source for the State Governments to increase their revenues.

(vi) Advisory and Vigilance Committees should be set up at various levels in a State to enable representatives of consumers to participate in, and supervise, the working of the PDS.

(vii) A nodal agency at the State level should coordinate with the various Union Government agencies concerned with the production and supply of essential commodities.

(viii) At the apex level in a State, the State Civil Supplies Corporation or the State Consumers Federation should be made responsible for looking after the work of procurement, warehousing and supply of essential commodities under the PDS.

(ix) State Governments should take rigorous enforcement action against unscrupulous

traders, hoarders and other anti-social elements by making use of the powers under the Essential Commodities Act, 1955 and the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. They should check complaints in regard to the PDS on points like quality, incorrect weighment, pilferage, etc. For this purpose a regular police force should be set up exclusively for the PDS.

16.11.04 We recommend that :

(i) The Union Government may get the various measures referred to in para 16.11.03 above, implemented effectively in all Union Territory Administrations. The working of the PDS in these Territories would then serve as a model for State Governments.

(ii) The Department of Civil Supplies of the Government of India should have a well-equipped Research and Intelligence Wing. The Wing should systematically collect data about the good organisational and procedural innovations evolved in the various States and Union Territories and make these details available to all the State and UT Governments. It should also provide expert advice to State Governments and agencies on the various aspects of the working of the PDS. Further, in the case of large States, the Wing should provide technical assistance to the State Governments in installing computerised systems for processing of PDS data for purposes of planning, monitoring, etc.

(iii) The Advisory Council on Food Management and Public Distribution recommended by us should commission studies on problems such as reduction of transportation/distribution costs, subsidising transportation costs for hilly and far-flung areas, forecasting market trends, etc. for the PDS.

12. *STORAGE*

16.12.01 One of the State Governments has observed that the Union agencies like the Central Warehousing Corporation go in for additional storage capacity without ascertaining the actual storage requirements from the State Governments. Another State Government has pointed out that construction of godowns is essential in hill districts and in areas which remain inaccessible during certain months of a year. It has suggested that additional Plan funds should be made available to the State Governments for the construction of godowns at the district, tehsil and block levels in a phased manner.

16.12.02 We recommend that the Advisory Council on Food Management and Public Distribution may constitute a Committee to examine the problems faced by State Governments in the matter of construction and hiring of warehouses and godowns for storage of foodgrains.

13. *RECOMMENDATIONS*

16.13.01 (i) The existing Advisory Council on Public Distribution System may undertake a periodical review of foodgrains management aspect also. For that purpose, it may be renamed as the Advisory Council on Foodgrains Management and Public Distribution.

(ii) In the field of foodgrains management, the Advisory Council proposed above may discuss and arrive at a consensus on matters like

—long-range policy on each major aspect of foodgrains management; and

—steps to be taken by the various Governments to implement the above policies.

(iii) For the above purpose and also for examining major problems of food management and civil supplies operations, as and when they arise, the Council may set up special Task Forces consisting of official and, where necessary, also non-official experts. While setting up a Task Force for examining problems which concern particular States, the Council should consult those State Governments including their official agencies.

(Paras 16.5.06 & 16.5.07)

16.13.02 (i) There should be an indepth review of the working of the Essential Commodities Act and other regulatory Parliamentary Acts in the field of food and civil supplies and a high level committee should be set up for the purpose. Apart from simplifying the laws in question and the orders made thereunder, the review should aim at identifying the areas where a State Government could be given greater freedom of action, so that they would not have to seek the prior approval of the Union Government in every minor case.

(Para 16.6.04)

(ii) Apart from simplifying the orders, detecting obsolete ones and providing for greater delegation of powers and functions to State Governments and their officers/authorities, the review should enable the Union Government to bring out a single, self-contained and uptodate order on each essential commodity or a group of them. This review may be undertaken immediately and thereafter repeated every 5 years. The review should also enable identification of commodities which need no longer be classified as "essential".

(Para 16.6.05)

(iii) During the interregnum between one quinquennial review and another, changes may continue to be made in the ECA or the Orders issued thereunder in order to meet the exigencies of an emergent situation. For that purpose, the position in regard to supply and demand of essential commodities may be kept under constant study and review between the Union and the States.

(Para 16.6.05)

16.13.03 (i) The Union Departments of Food & Civil Supplies may urgently examine in consultation with the State Governments the possibility of enhancing the powers delegated to them. It should be possible to complete this work to the satisfaction of the State Governments within a period of 6 months or so.

(ii) In future, a Control Order may be issued after consulting State Governments whenever feasible,

so that the practical difficulties that they might encounter in implementing the Order can be taken into account.

(Para 16.7.05)

16.13.04 (i) The Advisory Council on Food Management and Public Distribution recommended in Para 16.13.01 above may set up a Task Force for evolving (a) for the use of the States, a prototype of a monitoring system and methodology for monthly planning, and (b) for the use of the Union, a scientific system of planning and allocation. Both the monitoring system and planning methodology should be simple and capable of being understood and worked by the functionaries concerned.

(Para 16.9.11)

(ii) Special schemes which have been undertaken or are proposed to be undertaken by State Governments to make certain essential commodities availble to the weaker sections of society at prices lower than for others, should broadly conform to the national policies laid down by the Union Government for the alleviation of poverty and the welfare development of the weaker sections. There should be an understanding between the Union and the State Governments in regard to the specific schemes for these purposes and the special allocations of foodgrains, etc. to be made available to the concerned State Governments.

(Para 16.9.12)

16.13.05 (i) The Union Government may get the measures for improving the working of the Public Distribution System (*vide* para 16.11.03) implemented effectively in all Union Territory Administrations. The working of the PDS in these Territories would then serve as a model for State Governments.

(ii) The Union Department of Civil Supplies should have a well-equipped Research and Intelligence Wing. The Wing should systematically collect data-about the good organisational and procedural innovations evolved in the various States and Union Territories and make these details available to all the State and UT Governments. It should also provide expert advice to State Governments and agencies on the various aspects of the working of the PDS. Further, in the case of large States, the Wing should provide technical assistance to the State Governments in installing computerised systems for purposes of planning, monitoring, etc.

(iii) The Advisory Council on Food Management and PDS recommended in Para 16.13.01 above should commission studies on problems such as reduction of transportation/distribution costs, subsidising transportation costs for hilly and far-flung areas, forecasting market trends, etc. for the PDS.

(Para 16.11.04)

16.13.06 The Advisory Council on Food Management and Public Distribution may constitute a Committee to examine the problems faced by State Governments in the matter of construction and hiring of warehouses and godowns for storage of Foodgrains.

(Para 16.12.02)

ANNEXURE XVI. 1

COMMODITIES IN RESPECT OF WHICH TRADE & COMMERCE AND PRODUCTION, SUPPLY AND DISTRIBUTION ARE MATTERS OF CONCURRENT LEGISLATIVE JURISDICTION—SUCCESSIVE CHANGES SINCE INDEPENDENCE

Government of India Act, 1935 as amended by India (Central Government and (Legislature) Act, 1946	Constitution of India	
	From 26-1-50 to 25-1-55	From 22-2-55 onward
(1)	(2)	(3)
1. Foodstuffs (including edible oilseeds and oils) ..	I. 1. Foodstuffs (including edible oil-seeds and Oils)	I. 1. Foodstuffs, including edible oil-seeds and oils.
	2. Cattle Fodder (including oilcakes and other concentrates)	2. Cattle fooder, including oilcakes and other concentrates.
	3. Raw Cotton (including ginned cotton and unginned cotton or *kapas*) and cotton seed.	3. Raw cotton, whether ginned or cotton seed.
2. Cotton and woollen textiles . .	4. Cotton and woollen textiles	..
3. Paper (including newsprint) . . .	5. Paper (including newsprint)	..
4. Coal	6. Coal (including coke and derivl-tives of coal)	..
5. Iron	7. Iron	..
6. Steel	8. Steel	..
7. Mica	9. Mica (Article 369(a))	4. Raw Jute (Clauses (b), (c), (d) and (e) of Entry 33 of List III)
8. Petroleum and petroleum products*	..	..
9. Spare parts of mechanically propelled@ vehicles.	II. Products of industries the control of which by the Union is declared by parliament by law to be expedient in the public interest. (Entry 33 of List III)	II. Products of any industry the control of which by the Union is declared by Parliament by law to be expedient in the public interest and *imported goods of the same kind as such products* (Clause (a) of Entry 33 of List III)

NOTE : *(i) Petrol and petroleum products are included in Entry 53 of List I of the Constitution.
@(ii) Mechanically propelled vehicles are included in Entry 35 of List III of the Constitution.

ANNEXURE XVI. 2

POWERS OF STATE GOVERNMENTS TO ISSUE ORDERS ON MATTERS SPECIFIED IN SECTION 3(2) OF ESSENTIAL COMMODITIES ACT, 1955—DELEGATIONS BY CENTRAL GOVERNMENT UNDER SECTION 5 OF ACT

Clause of Section 3(2)	Broad subject matter of clause	Conditions governing power to issue an order in regard to	
		Foodstuffs	Essential commodities *rother than* foodstuffs and fetilisers
(1)	(2)	(3)	(4)
1. (a)	Regulating by licence, permit or otherwise, production or manufacture.	Subject to directions, if any, and to the prior concurrence of the Central Government.	No power delegated.
2. (b)	Bringing under cultivation waste or arable land for growing of foodcrops and for otherwise maintaning or increasing cultivation of foodcrops.	Full powers, subject to directions, if any, of the Central Government.	Clause (b) not applicable.
3. (c)	Controlling the price of purchase or sale.	Subject to directions, if any, and to the prior concurrence, of the Central Government.	(i) No power if the price is controlled by or under any other law. (ii) Where the price is not so contr olled, power may be exercised. (A) On the basis of such wholesale prices or retail prices or both as may have been fixed by manufacturers or producers with the approval of the Central G overnment, but without being inconsistent with any order of the Central Government under the Act, and (B) in a case not covered by (A), with the prior concurrence of the Central Government.
4. (d)	Regulating by licence, permit or otherwise, storage, transport, distribution, disposal, acquisition, use, or consumption.	(i) Subject to directions, if any, and to the prior concurrence, of the Central Government where power is exercised in regard to (A) distribution or disposal of foodstuffs to places outside the State; or (B) regulation of transport of foodstuffs. (ii) Full powers in other cases, subject to directions, if any, of the Central Government.	(i) No power in regard to inter-State transport or distribution. (ii) In other cases, power to be so exercised that (A) inter-State transport or distribution in pursuance of any order of the Central Government is not prejudicially affected and (B) Order issued is not inconsistent with any order of the Central Government under the Act.
5 (e)	Prohibiting the withholding from sale of an essential commodity ordinarily kept for sale.	Full powers, subject to directions, if any, of the Central Government.	Full power, provided Order issued is not inconsistent with any Order of the Central Government under the Act.
6 (f)	Requiring that the whole or a specified portion of the quantity held in stock or the quantity produced/received or to be produced/received shall be sold to the Central or to a State Government or to any authority under either Government or to a specified person or class of persons.	Subject to directions, if any, and to prior concurrence of the Central Government.	Subject to the prior concurrence of the Central Government and to the condition that Order issued is not inconsistent with any Order of the Central Government under the Act.

ANNEXURE XVI.2—(*contd.*)

Clause of Section 3(2)	Broad subject matter of clause	Conditions governing power to issue and order in regard to	
		Foodstuffs	Essential commodities *other than* foodstuffs and fertilisers
(1)	(2)	(3)	(4)
		Foodstuffs	*Cotton textiles :*
7 (g)	Regulating or prohibiting any class of commercial or financial transactions relating to —foodstuffs or —cotton textiles	No power delegated	Full powers, subject to the condition that Order issued is not inconsistent with any Order of the Central Government under the Act.
8 (h)	Collecting information or statistics for regulating or prohibiting a matter referred to in clause (a) to (g).	Full powers, subject to directions if any, of the Central Government.	Full powers, subject to the condition that Order issued is not inconsistent with any Order of the Central Government under the Act.
9 (i)	Requiring persons engaged in production, supply or distribution of, or trade and commerce in, an essential commodity, to maintain and produce for inspection books/accounts records and to furnish information.	Full powers, subject to directions, if any, of the Central Government.	Full powers, subject to the condition that Order issued is not inconsistent with any Order of the Central Government under the Act.
10 (ii)	Charging of fees, requiring deposit of sum as security, for grant of licence/permit forfeiting the full or part of security deposit and adjudication of forfeiture of security deposit.	Full powers, subject to directions, if any of the Central Government.	Full powers, subject to the condition that Order issued is not inconsistent with any Order of the Central Government under the Act.
11 (j)	Incidental and supplementary matters including entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals and seizure by authorised person of articles, conveyances, books of accounts etc.	Full powers, provided that only an officer of the State Government is authorised, by an Order under this clause, to carry out entry, search or seizure. The Order will be subject to directions, if any, of the Central Government.	Full powers, provided that only an officer of the State Government shall be authorised, by an Order under this clause, to carry out entry, search or seizure. The Order shall not be inconsistent with any Order of the Central Government under this Act.

CHAPTER XVII

INTER-STATE RIVER WATER DISPUTES

CONTENTS

CHAPTER XVII

INTER-STATE RIVER WATER DISPUTES

1. *THE PROBLEM*

17.1.01 In India there are many inter-State rivers. The regulation and development of the waters of these rivers and river valleys continues to be a source of inter-State friction. Article 262(1) of the Constitution lays down that "Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river, or river valley". Parliament has enacted the Inter-State River Water Disputes Act, 1956. It provides for reference of such a dispute to Tribunals on receipt of an application from a State, when the Union Government is satisfied that the dispute "cannot be settled by negotiations". This dependence of the right of the States to have a dispute referred to a Tribunal, if the Union Government is satisfied that the matter "cannot be settled by negotiations" has been adversely commented upon. Most of the disputes refer to sharing of waters of inter-State rivers. Disputes also arise in regard to the interpretation of the terms of an agreement or the implementation of the same.

The main points of criticism against the existing arrangements are : (a) They involve inordinate delay in securing settlement of such disputes, (b) There is no provision for an adequate machinery to enforce the award of the Tribunal.

2. *CONSTITUTIONAL PROVISIONS*

17.2.01 In the Constitution, "Water, that is to say, water supplies, irrigation, and canals, drainage and embankments, water storage and water power" is a matter comprised in Entry 17 of List II. This Entry is subject to the provisions of Entry 56 of List I. In the words of an eminent jurist, the reasons for including regulation and development of inter-State river and river valleys in Entry 56 of List I are : "In respect of the waters of an inter-State river, no State can effectively legislate for the beneficial use of such waters, first, because its legislative power does not extend beyond the territories of the State; secondly, because the quantum of water available to each of the States is dependent upon the equitable share of the other States, and thirdly, a dispute about the waters of an inter-State river can arise from any actual or proposed legislation of a State"[1]. It is for these reasons that the States cannot legislate on use of waters of Inter-State rivers and river valleys beyond their State boundaries. Moreover, efficient use of such waters depends on their equitable apportionment involving more than one State, which. in itself can be a subject-matter of dispute and hence its regulation and control cannot be provided for in any State legislation. For the same reason, the determination of disputes relating to such river waters is provided for in Article 262.

17.2.02 It is noteworthy that unlike Entry 56, List I, the expression 'water' in Entry 17, List II, is not qualified by the prefix 'inter-State'. Normally, therefore, the State Legislatures have full powers to legislate on all matters mentioned in Entry 17, List II, including their regulation and development even if the source of the water is an inter-State river or river valley within the territory of a State. However, Parliament may, by making the requisite declaration in public interest in terms of Entry 56 of List I, enact a law for the regulation and development of such inter-State rivers, and river valleys under the control of the Union. The Parliamentary law would, to the extent of its operation, have the effect of ousting the power of the State Legislature under Entry 17 of List II.[2]

17.2.03 The Constitution contains specific provisions regarding resolution of water disputes. Under Article 262(1), "Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley". Under Article 262(2), "Notwithstanding anything in the Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)".

17.2.04 It is noteworthy that the Constitution does not itself provide for a machinery for adjudication of water disputes. It leaves it to Parliament, by law, to make such provisions as it thinks fit, for adjudication of such disputes and complaints. The Constitution further empowers Parliament to decide and provide by law whether the jurisdiction of courts is to be barred. In contrast, the Government of India Act, 1935, itself provided that if a Province (or a State) felt that it was likely to be adversely affected due to distribution or control of water from any natural source, it could complain to the Governor General (Section 130). Except for complaints of trivial nature, the Governor-General was required to refer any such complaints to a Commission for investigation and report (Section 131). He had no option in the matter unless he considered that the nature of the complaint was not serious enough. Moreover, the 1935 Act itself barred the jurisdiction of Courts in regard to such disputes (Section 134).

There is also no Entry in the Federal List of the 1935 Act corresponding to Entry 56 of List I of the Constitution. Section 19, of the Government of India Act, 1935 provided : "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power". It was, however, recognised that use of inter-State river waters could lead to disputes. Provisions of Sections 130 and 131 under the 1935 Act were, therefore, made for adjudication of such disputes.

(1) Seervai, H.M.—*Constitutional Law of India*, Vol. I, p. 1009.

(2) For a detailed discussion on the Entries in List I and List III which impinge on several Entries in List II, please see Chapter II on 'Legislative Relations'.

36--325/87

3. *EXISTING ARRANGEMENTS*

17.3.01 Parliament has enacted the River Boards Act, 1956, under Entry 56 of List I, to promote integrated and optimum development of the waters of inter-State rivers and river valleys. This Act contemplated the appointment of River Boards by the Central Government in consultation with the State Governments for advising on integrated development of waters of inter-State rivers and river valleys. It was expected that these Boards would help in coordinated and optimum utilisation of the river waters and promote development of irrigation, drainage, water supply, flood-control and hydroelectric power. However, the provisions of this Act have not been put to use all these years and the Act has remained a dead letter.

17.3.02 Parliament has enacted the Inter-State River Water Disputes Act, 1956, for settlement of disputes. Section 2(c) of the Act defines 'water dispute' as "any dispute or difference between two or more State Governments with respect to—

(i) the use, distribution or control of the water of, or in, any inter-State river or river valley; or

(ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or

(iii) the levy of any water rate in contravention of the prohibition contained in Section 7."

17.3.03 Section 3 of the Act reads : "If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State; or

(b) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or

(c) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters;

the State Government may in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication".

The Rules framed under the Act provide, *inter alia*, that a State Government, while sending an application under Section 3 of the Act, should inform the Union Government, of "the efforts, if any, made by the parties themselves to settle the dispute".

17.3.04 Section 4(1) of the Act provides that on receipt of an application under Section 3 from any State Government, the Central Government shall, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute if it "is of opinion that the water dispute cannot be settled by negotiations".

4. *EXAMINATION OF ISSUES*

17.4.01 Most State Governments have not criticised the structure of Entry 56 of List I. Only one State Government has suggested that water should be a Union subject. Another State Government has suggested the Union Government should have a greater role in regulation and development of inter-State rivers and river valleys, including powers of diversion (through Parliamentary legislation, if necessary) of inter-State river waters to any part of India and apportion it amongst the States. On the other hand, a State Government has argued that Entry 56 confers a vast and unfettered power on the Union, which, in conjunction with its large resources, enables it to encroach upon an area which is within the jurisdiction of the States. According to it, this Entry needs to be removed from List I and the expression "subject to the provisions of Entry 56 of List I" in Entry 17 of List II also correspondingly deleted. There has been no criticism of the structure of Article 262. Only in regard to the provisions of the Inter-State River Water Disputes Act, 1956, the State Governments have drawn attention to some deficiencies. It has been pointed out that in terms of the present enactment a reference to a Tribunal need be made only when the Union Government is satisfied that no settlement by negotiations is possible. It has been alleged that this has resulted in avoidable delays. Another major lacuna is that there is no machinery for implementing an award given by a Tribunal.

17.4.02. We may first examine the suggestions regarding Entry 56 of List I. We have already noted that in the Constitution, matters of national concern have been placed in the Union List and those of purely local concern in the State List. The scheme of the Constitution envisages that certain subjects of legislation which in the first instance belong exclusively to the States, become the subject of exclusive Parliamentary legislation if a declaration is made as provided in the relevant Entries. Entry 56 of List I is one such case. The legislative power of the State with respect to Entry 17 of List II is subject to Entry 56 of List I. Clearly, the framers of the Constitution recognised the need for Union control over waters of inter-State rivers and river valleys for regulation and development. The Constitution did not place regulation and development of waters of inter-State rivers and river valleys in List I, but only provided that Parliament may declare by law that control of waters of inter-State rivers on river valleys is expedient in public interest for such regulation and development. This arrangement is in consonance with the principle underlying the Constitutional scheme of distribution of powers. According to this scheme, matters of local concern, e.g., 'land', are assigned to the States. States have exclusive powers in respect of waters which are not part of inter-State rivers and are located within the territory of a State. But waters of inter-State rivers are not *located* in any one State. They only *flow* through their territories. No State, therefore, can lay claim to the exclusive use of such river-waters and deprive other States of their just share.[3] Since the jurisdiction of a State by virtue of Article 245 is territorially limited, only Parliament can effectively regulate, by law the beneficial use and distribution of such waters among

(3) Seervai, H. M.—*Constitutional Law of India*, Vol. I, Page 1009.

the States. That is why, by virtue of Entry 56, List I, Parliament has been enabled, by making the requisite declaration of public interest, to take over the field of Entry 17 of List II to the extent covered by such declaration and law. Management of water resources for the benefit of people of a State is a matter of vital concern to that State. The present situation is more a case of non-use of a given power by the Union than one of want of the same. We are, therefore, of the view that the existing arrangements which allow the States competence in regard to matters in Entry 17, List II—subject, however, to Union's intervention when found necessary in public interest only in inter-State river and river valleys—is the best possible method of distributing power between the Union and the States with respect to this highly sensitive and difficult subject. We are, therefore, unable to support the suggestion that 'Water' should be made a 'Union subject'.

17.4.03 It may be noted, firstly, that Entry 56 of the Union List does not give Parliament untrammeled power to legislate even with respect to the regulation and development of the waters of inter-State rivers and river valleys. Before Parliament acquires jurisdiction to legislate with respect to this matter it must comply with a condition precedent. This condition is that Parliament must declare by law the extent to which regulation and development of the inter-State river and river valley under the control of the Union, is in the public interest. Secondly, the amplitude of Entry 56, List I is limited to the development and regulation of inter-State rivers and river valleys, while Entry 17, List II comprehends within its scope even those waters whose sources are other than inter-State rivers and river-valleys. The position is that even by making the requisite declaration under Entry 56, List I, Parliament is not competent to legislate with respect to the regulation and development of waters within a State, other than those from inter-State rivers and river valleys. Therefore, it is not correct to say that Entry 56, List I gives "a vast and unfettered power" to the Union which enables it to "encroach upon" the entire field of Entry 17, List II. Regulation of optimum utilization and distribution of waters of inter-State rivers and river valleys between two or more States is a continuous process which throws up recurrent day-to-day probelms having inter-State dimensions. None of the beneficiary States by itself can regulate effectively the inter-State distribution of such waters and cope with the recurring problems which partly or wholly occur outside its territory, by the exercise of its legislative or executive power for the simple reason that its writ cannot run beyond its territorial limits. These problems if not obviated or resolved in time, may cause bitterness and tension in inter-State relations. In these changing circumstances, regulation and development of such inter-State river waters under the control of the Union may become expedient in the public interest. The determination of such expediency has been left by the Constitution to the sole judgement of the elected representatives of the Nation in Parliament. This is the rationale of Entry 56, List I which enables the Union to take initiative in this respect in the public interest (which includes national interest) on the authority of a law passed in accordance therewith. In paragraphs 17.2.01 and 17.4.02 we have discussed at length the basic principles underlying this Entry. For all the reasons aforesaid we are unable to support the suggestion that Entry 56, List I should be deleted.

17.4.04 The next issue relates to the manner in which the Inter-State River Water Disputes Act has been administered . The main thrust of the complaint is the inordinate delay that occurs at every stage and the inability of the States to have a dispute referred to a Tribunal unless the Union Government is satisfied that no negotiated settlement is possible. Delay occurs at three stages :

(a) In setting up Tribunal;

(b) after announcement of award; and

(c) in implementation of the award.

Inter-State Tribunals

17.4.05 So far, the Union Govrnment has set up the following three Tribunals under the Act :

(i) The Narmada Tribunal;

(ii) The Krishna Tribunal; and

(iii) The Godavari Tribunal.

It will be useful to recount briefly the circumstances leading to the constitution of each of these Tribunals and the time frame connected with them.

17.4.06 (i) The Narmada Tribunal was constituted on 6th October 1969 after a complaint by Gujarat under Section 3 of the Act in July 1968. On 16th October, 1969 the Government of India made another reference under Section 5(1) of the Act with respect to certain issues raised by Rajasthan. The concerned States were Gujarat, Maharashtra, Madhya Paradesh and Rajasthan. The Tribunal gave its Award in August, 1978 which was published in the Official Gazette in December, 1979.

Attempts to settle the dispute which dated back to November 1963, were made at the instance of the then Union Minister of Irrigation and Power. An agreement (Bhopal Agreement) was arrived at between Madhya Pradesh and Gujarat. Madhya Pradesh, however, subsequently did not ratify the agreement. In order to overcome the bottle-neck following Madhya Pradesh's rejection of Bhopal agreement, the Narmada Water Resources Development Committee (Khosla Committee) was set up in September, 1964. It gave its report in September, 1965. In the meantime, Madhya Pradesh and Maharashtra entered into the 'Jalsindhi Agreement', contemplating the joint construction of the Jalasindhi Dam. Khosla Committee Report was not acceptable to Madhya Pradesh and Maharashtra. On the other hand, Gujarat objected, *inter alia*, to the Jalsindhi agreement. Another set of meetings was arranged between the Chief Ministers of Madhya Pradesh, Rajasthan, Maharashtra and Gujarat in 1966 and 1967. The Tribunal was finally constituted after six years of fruitless efforts for an amicable settlement. In July 1972, the four States (Madhya Pradesh, Rajasthan, Gujarat and Maharashtra) prayed for adjournment of proceedings of the Tribunals, as the Chief Ministers of those States had entered into an agreement to settle the dispute with the mediation of the Prime Minister of India. The States arrived at a limited agreement in July, 1974 in respect of fourteen of the issues and requested the

Tribunal to decide the remaining issues in the light of the agreement. After hearing the parties, the Tribunal gave its award in August, 1978 based on that agreement.[4]

(ii) In the Krishna case, the parties to the dispute were Karnataka, Maharashtra, Andhra Pradesh, Madya Pradesh & Orissa. Mysore filed an application under Section 3 of the Act in January 1962. Maharashtra filed an application under Section 3 in July, 1963. Andhra Pradesh lodged complaints under Section 3 in April, 1968. Fresh applications were filed by Mysore and Maharashtra in 1968. Andhra Pradesh also applied for the constitution of a Tribunal in 1969. The Tribunal was constituted on April, 1969. The Tribunals' Award was given in December 1973 and was published in the Gazette in May, 1976.

The facts leading to the constitution of the Tribunal, in brief, were that in July 1951, an inter-State conference was held at New Delhi. A memorandum of agreement, valid for 25 years, was signed by the four riparian States. However, Mysore refused to ratify the agreement. The 1951 agreement, therefore, ceased to be effective. Thereafter, there were extensive territorial changes, first under the Andhra State Act, 1953, and then under the States Reorganisation Act, 1956. Between 1951 and 1960 several important projects were taken up (e.g., Nagarjunasagar, Tungabhadra High Level Canals, etc.). More schemes were being prepared in excess of the supplies of the Krishna. 'As the pressure on available supplies increased, disputes on sharing of river waters became more bitter'. Madhya Pradesh and Orissa were made parties as they were interested in diversion of Godavari waters to Krishna.[5].

(iii) The background of the Godavari dispute was more or less the same as that of the Krishna dispute. The parties to the dispute were Karnataka, Maharashtra, Andhra Pradsh, Madhya Pradesh and Orissa. The facts leading to the dispute, in brief, are as follows :

In July 1951, the Planning Commission held a conferrence with the Governments of Bombay, Madras, Hyderabad, Madhya Pradesh and Mysore to discuss the utilisation of supplies in the Krishna and Govadari river basins. The State of Orissa which was a coriparian State in case of Godavari, was not invited to the Conference. A memorandum of agreement, valid for 25 years, was drawn up allocating the flows of Godavari river basin. Orissa was not a party to the agreement. Subsequently, there were significant territorial changes in the States covered by the Godavari Basin, first due to the Andhra State Act, 1953 and then the States Reorganisation Act of 1956. States of Bombay, Madhya Pradesh and Andhra Pradesh became the new riparian States. Orissa continued to be a coriparian State as before. A scheme for reallocation of Gadavari waters was drawn up by the Central Water and Power Commission, in view of the territorial changes. But this was not acceptable to the States. No settlement could be reached at the inter-State conference held in September, 1960. In January, 1962, Mysore applied under Section 3 of the Act to refer the dispute to a Tribunal. In March 1963, the Union Minister for Irrigation and Power made a statement before Lok Sabha that the 1951 agreement was legally, wholly ineffective and unenforceable. The Union Government made several attempts to settle the dispute through negotiations. However, the efforts were not successful and fresh applications for reference of the dispute to a Tribunal under the Act were made by Maharashtra, Mysore, Orissa and Madhya Pradesh in 1968. The Award of the Tribunal was submitted in November, 1979 and published in the Gazette in July, 1980.[6]

17.4.07. The dates of application under Section 3 of the Act and the dates of setting up of Tribunals do not necessarily indicate the actual time-span of disputes. In two cases the disputes have been lingering since 1956 (Krishna and Godavari), and in one case, the dispute had been continuing for six years before constitution of the Tribunal in 1969 (Narmada)

17.4.08. It is seen clearly from the above that in the three cases where Tribunals were set up, the entire process took an unduly long time. Development of irrigation and power must not wait till such matters are decided after protracted correspondence and time-consuming negotiations. Further, though certain agreements were arrived at, the validity of these agreements was questioned later. Meanwhile, based on the agreements, projects were approved and taken up for execution setting in motion an irreversible process. Thus there is considerable risk attached to these arrangements since there is no guarantee that the final outcome will be in accordance with the assumptions made in the interim arrangements. Once irrigation is developed and subsequently the Tribunal finds, with a gap or several years that some States are using more water than what can be equitably given to them as their share, it will be practically impossible to revert to the position existing prior to such development. Development of irrigation and power sources in the interregnum could create a situation akin to *factum valet* of a minor's marriage by consummation. Delays only complicate matters. There is a rush to start work on as many projects as possible so as to establish their rights by 'premeptive' action. This leads to wasteful use of scarce resources. The loss to the States and to the nation as a whole, is irreparable.

17.4.09 Section 3 of the Act permits the concerned States to apply to the Union Government for appointment of a Tribunal for referring the matter. The Rules framed under the Act require a State, which desires to refer a disputes under Section 3, to communicate, *inter alia,* information on 'the efforts, if any, made by the parties themselves to settle the disputes'. (7) Section 4 of the Act requires the Union Government to set up a Tribunal *only when satisfied* that the dispute cannot be settled by negotiations. The Union Government can, therefore, withhold the decision to set up a Tribunal, indefinitely. It is this absolute discretion allowed to the Union Government in the Act which has been stated to be one of the main reasons for delay.

(4) See Report of the Narmada Water Disputes Tribunal Volume-1, Chapters I & II.

(5) The Report of the Krishna Water Disputes Tribunal Volume-1, Chatpters I, II, & III.

(6) The Report of the Godavari Water Disputes Tribunal— Volume I, Chapters I & II.

(7) Vide Rule 3(2) of the Inter-State Water Dispute Rules, 1959.

17.4.10 No one can dispute the merit of a negotiated settlement. However, protracted negotiations may beeome counter-productive. We note that there is no bar to continued negotiations even after a Tribunal has been set up. Indeed, in the case of Krishna and Godavari Tribunals, ultimately it was a negotiated settlement that became the basis of the decision on the main issue framed by the Tribunal, i.e., "On what basis should the available waters be determined?"(8) We have already mentioned that in the Government of India Act, 1935, no discretion was available to the Governor-General in regard to setting up of a Commission once a reference was made by a Province, unless he was of the opinion that the issues involved were not of sufficient importance. The Administrative Reforms Commission's Study Team on Centre-State Relationship suggested that there should be a limit of three years to conclude the negotiations; thereafter reference to a Tribunal by the Union Government should be compulsory. (9)

17.4.11 We recommend that in order to cut short delays, it is necessary to prescribe a time-limit for the setting up of a Tribunal. Once an application under Section 3 of the Inter-State River Disputes Act is received from a State, it should be mandatory on the Union Government to constitute a Tribunal within a period not exceeding one year from the date of the receipt of the application from any of the disputant States. The Act may be suitably amended for this purpose.

17.4.12 There may be instances where States are not willing to apply to the Union Government for constitution of a Tribunal. As an instance, our attention has been drawn to the Cauvery dispute. This dispute had been lingering for the past many years and only on 6th July, 1986 Tamil Nadu applied under Section 3 of the Act for referring the matter to a Tribunal. Under the existing provisions of the Act, the Union Government cannot do anything to appoint a Tribunal on its own motion, even if it is aware of the existance of a dispute in respect of an inter-State river or river valley.

17.4.13 Recently, in 1986, the Act (33 of 1956) has been amended empowering the Union to set up a Tribunal known as "Ravi Beas Water Tribunal", *suo motu*, or on the request of concerned State Government [Section 14(1) and Section 14(3) of the Act (33 of 1956)]. This amendment applies specifically to one particular inter-State river water disputes.

17.4.14 We recommend an amendment of the Central Act 33 of 1956 for general application, empowering the Union Government to appoint a Tribunal *suo motu*, if necessary, when it is satisfied that such a dispute exists in fact.

17.4.15 The next important cause of the delay is the inordinate time taken by Tribunals in making their awards. We find that in three cases, the Tribunals had taken, on the average, about 10 years for making the awards. One of the main reasons for *pendente lite* delay before a Tribunal, is that the requisite data for adjudication is not readily or adequately supplied by or made available from the States. At present, the Central Water Commission has a number of data collection Centres. But these are inadequate for the purpose of data collection. The Tribunals want up-to-date information on river flows, etc. States may not be willing to cooperate and the Union does not have any authority to compel the States to supply the necessary data. Streamlining the system of data collection will no doubt expedite the work of Tribunals. The National Water Resources Council in its meeting in October 1985, has recognised the need for the establishment of a Data Bank and an information system at the national level. We fully endorse the need for such a Data Bank and information system and recommend that adequate machinery should be set up for this purpose at the earliest.

17.4.16 We also recommend that there should be a provision in the Act that States shall be required to give necessary data for which purpose the Tribunal shall be vested with powers of a Court.

17.4.17 In paragraph 17.4.15 we have noted that one of the reasons for delays in settling disputes over inter-State river waters is the time taken by Tribunals to give their awards. The Act should, therefore, be amended to ensure that the award of a Tribunal becomes effective within five years from the date of constitution of a Tribunal. If, however, for some reason, a Tribunal feels that the five-year period has to be extended, the Union Government may on a reference made by the Tribunal, extend its term.

17.4.18 Once an award becomes effective, the question of enforcement arises. Section 6 of the Act provides that the Union Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them. However, if any State refuses to give effect to the award fully or even partially, the Union Government does not have any means to enforcing the award.

17.4.19 The Act was amended in 1980 and Section 6A was inserted. This Section provides for framing a scheme for giving effect to a Tribunal's award. The scheme, *inter alia*, provides for the establishment of the authority. its term of office and other conditions of service., etc. But the mere creation of such an agency will not be able to ensure implementation of a Tribunal's award. Any agency set up under Section 6A cannot really function without the cooperation of the States concerned. Further, to make a Tribunal's award binding and effectively enforceable, it should have the same force and sanction behind it as an order or decree of the Supreme Court. We recommend that the Act should be suitably amended for this purpose.

(8) *The Report of the Krishna Water Disputes Tribunal*, Volume-I, Chapter 9, Page 73. *The Report of the Godavari Water Disputes Tribunal*, Volume I, Chapter 5, Page 35.

(9) Administrative Reforms Commission—*Report of the Study Team on Centre-State Relationships* (1967), Para 16.23, p. 234.

5. *OPTIMUM UTILISATION OF WATER RESOURCES AND NEED FOR COMPREHENSIVE PLANNING*

17.5.01 Water is a precious natural resource and no nation can afford to ignore the imperative need for comprehensive planning to secure optimum utilisation of its water resources. The Irrigation Commission had recommended the establishment of a National Water Resources Council, as a policy making apex body with adequate technical support. [10] It was hoped that this Council would help develop a national outlook in relation to water resources and infuse a spirit of mutual accommodation in inter-State relationship and create a favourable atmosphere for the settlement of inter-State water disputes. The National Commission on Agriculture observed that "in view of the inadequacy of water resources to meet the future agricultural and other requirements in many parts of the country, it becomes a matter of great national importance to conserve and utilise them most judiciously and economically". [11] Comprehensive plans for the inter-State rivers covering irrigation, drainage, drinking water, inland waterways and hydroelectric power generation should be prepared. Preparation of such plans requires proper evaluation of all existing water resources. This reinforces the need for proper institutional infrastructure for this purpose. No plan, howsoever comprehensive, and no institution howsoever strong, will be able to ensure proper and agreed utilisation of water resources of inter-State rivers and river valleys without the cooperation of the States. The National Commission on Agriculture also observed : "A river basin, and in the case of large rivers a sub-basin, is a natural unit for such a plan, as it has a defined watershed boundary and within it there is an inter-relationship between the surface and ground water resources. The river basin plan should present a comprehensive outline of the development possibilities of the land and water resources of the basin, establish priorities in respect of water use for various purposes, indicate the need for earmarking water for any specific purpose and indicate *inter se* priority of projects". [12]

17.5.02 We note that the National Water Resources Council, which was constituted in 1983, met for the first time in October 1985. In this meeting, the Council was unanimous that water should be treated as a precious scarce national resource and dealt with as such, and that there was urgent need for formulation of a national water policy with a view to ensuring optimum use of available water resources, both surface and ground, in national interest. In its second meeting held on September 9, 1987, the Council adopted a National Water Policy. This policy emphasises, among other things, that planning and development of water resources, also including inter-basin transfer of water, should be governed by a national perspective. This is a welcome step.

17.5.03 The inherent limitations of settling water disputes through a system of Tribunals are obvious and do not require any elaborate comment. It is only through willing cooperation of all concerned that the very complex issues involved in the development of water resources and sharing of the benefits can be satisfactorily resolved. The Helsinki Conference (1966) of the International Law Association observed : "Although certain disputes about international rivers and international river basin may land themselves to third party adjudication under established international law, the maximum utilisation of an international drainage basin can more effectively be secured through joint planning. The great number of variables involved, the possibility of future changes in the conditions of the water-ways, the necessity of providing affirmative conduct of the water-ways, the necessity of providing affirmative conduct of the basin States, and the enormous complexity of a river basin make co-operative management of the basin greatly preferable to adjudication of each source of friction between the basin States[13]". These observations are equally valid in the context of resolution of river water disputes in our country.

17.5.4 We hope that with more frequent meetings of the National Water Resources Council in future, the points of difference between the States will be resolved through accommodation. Even in the past, more disputes have been resolved through negotiations than otherwise. The fact that in some cases, Tribunals were set up, cannot be allowed to overshadow or detract from the success achieved through negotiations. Often there is a political factor also. The ruling party in a State is seldom willing to run the political risk of becoming a party to an agreement which could be questioned and become an explosive emotional issue. In such a situation, intervention by the Union Government and consideration of the various issues in the national perspective would help to clear the way for fruitful negotiations and resolution.

6. *RECOMMENDATIONS*

17.6.01 Once an application under Section 3 of the Inter-State River Water Disputes Act (33 of 1956) is received from a State, it should be mandatory on the Union Government to constitute a Tribunal within a period not exceeding one year from the date of receipt of the application of any disputant State. The Inter-State River Water Disputes Act may be suitably amended for this purpose.

(Para 17.4.11)

17.6.02 The Inter-State Water Disputes Act should be amended to empower the Union Government to appoint a Tribunal, *suo motu*, if necessary, when it is satisfied that such a dispute exists in fact.

(Para 17.4.14)

17.6.03 There should be a Data Bank and information system at the national level and adequate machinery should be set up for this purpose at the earliest. There should also be a provision in the Inter-State Water Disputes Act that States shall be required to give necessary data for which purpose the Tribunal may be vested with powers of a Court.

(Para 17.4.15 and 17.4.16)

(10) The Report of the Irrigation Commission Vol. I 1972, Chapter 15, Para 15.51, p. 354.

(11) Government of India—*Report of the National Commission on Agriculture*, 1976, Part V, para 15.61, p. 24.

(12) *op. cit*,, para 15.61, p. 24.

[13] Article 30 of the Helsinki Rules (1966) as quoted in '*Inter-State Water Dispute in India*', by S.N .Jain, Alice Jacob, Subhah C. Jain, 1971, (Indian Law Institute).

17.6.04 The Inter-State Water Disputes Act should be amended to ensure that the award of a Tribunal becomes effective within five years from the date of constitution of a Tribunal. If, however, for some reasons, a Tribunal feels that the five years' period has to be extended, the Union Government may on a reference made by the Tribunal extend its term.

(Para 17.4.17)

17.6.05 The Inter-State Water Disputes Act 1956 should be amended so that a Tribunal's award has the same force and sanction behind it as an order or decree of the Supreme Court to make a Tribunal's award really binding.

(Para 17.4.19)

CHAPTER XVIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

CONTENTS

CHAPTER XVIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

INTRODUCTION

Object of Protecting freedom of trade in a two-tier Polity

18.1.01 Free flow of trade, commerce and intercourse within and across inter-State borders is an important pre-requisite for ensuring economic unity, stability and prosperity of a country having a two-tier polity. Most federal constitutions contain special provisions to protect this freedom. The Indian Constitution also contains provisions guaranteeing freedom of commerce, trade and intercourse throughout the territory of India. However , no freedom can be absolute. Limitations for the common good are inherent in such freedom, lest it should degenerate into a self-defeating licence. That is why, legitimate regulatory measures are not considered to constitute restrictions on this freedom.

2. *CONSTITUTIONAL PROVISIONS*

Article 19(1)(g) and Article 301

18.2.01 Article 19(1) (g) in Part III guarantees to every Indian citizen a fundamental right to carry on trade and business, subject to such reasonable restrictions as may be imposed in the interests of the general public. Apart from this and the Legislative Entries relating to trade and commerce, the other provisions relating to trade, commerce and intercourse within the territory of India are found in articles 301 to 307 o f Part XIII of the Constitution. Article 301 guarantees that trade, commerce and intercourse shall be free throughout the territory of India. It imposes a general limitation on the exercise of legislative power, whether of the Union or of the States, to secure unobstructed flow of trade, commerce and intercourse from one part of the territory of India to another.

Limitations on Power of Parliament—Article 303 (1) and (2)

18.2.02 This guarantee of freedom is expressly subject to the other provisions of Part XIII (Articles 302 to 305) of the Constitution. Article 302 enables Parliament to impose restrictions, by law, on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India as may be required *in public interest*. But, this power to place restrictions cannot be used by Parliament to make any law which discriminates between one State and another or gives preference to one State over another, "by virtue of any Entry in the Seventh Schedule relating to trade and commerce" [Article 303(1]. Clause (2) of the Article engrafts an exception to the limitation contained in clause (1), in as much as it permits Parliament to make a law giving preference, or making discrimination between one State and another, if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Article 303(1) imposes limitation on State Legislatures also Article 304 two exceptions in favour of State Legislatures

18.2.03 Limitations imposed by Article 303(1) on the legislative power of Parliament apply to that of the State Legislatures, also. But, the State Legislatures do not have the exceptional power to enact discriminatory laws, which is available to Parliament by virtue of Article 303(2). Article 304 carves out two exceptions in favour of the State Legislatures, to the freedom guaranteed under Article 301 :

(a) A State legislature may by law impose on goods imported from other States or the Union Territories, any tax to which similar goods manufactured or produced in that State are subject, however, not so as to *discriminate* between goods so imported and goods so manufactured or produced. [Clause (a) of Article 30]4.

(b) The legislature of a State may by law impose such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the *public interest* [Clause (b) of Article 304]. But, the exercise of this power is subject to the proviso that no Bill or amendment for the purposes of Article 304(b) shall be introduced or moved in the State Legislature without obtaining the previous sanction of the President.[1]

Scope of Articles 301 to 304, whether cover : (A) Intra-State Trade

18.2.04 Section 92 of the Australian Constitution guarantees that trade, commerce and intercourse among the States shall be absolutely free. Possibly influenced by the phraseology of this Australian provision, the Draft Constitution of October, 1947, envisaged that subject to the provisions of any federal law, trade, commerce and intercourse among the units shall be free. But, in the course of discussions, the Constitution-framers replaced the words "among the units" by the phrase "throughout the territory of India". The use of this phrase in Article 301 puts it beyond doubt that, unlike the Australian Constitution, the freedom guaranteed in Article 301 of our Constitution, is not confined to inter-State trade, commerce and intercourse, but also extends to intra-State trade, commerce and inter-course. Article 302 to 305 which admit of various exceptions to this freedom, also cover trade, commerce and intercourse within a State even if it does not involve movement beyond the State borders.

1. Absence of prior sanction would not invalidate the Bill if it is reserved for President's consideration and receives his assent subsequently. (Article 255).

(B) Taxing Laws

18.2.05 Any law which *directly* and *immediately* impedes or restricts the free flow or movement of trade would infringe the guarantee in Article 301. The Supreme Court has held that taxing laws have not been excluded from the application of this principle.

(C) Regulatory Measures and Compensatory Taxes

18.2.06 Measures which impose compensatory taxes, or, are purely regulatory, do not come within the purview of 'restrictions' contemplated in Article 301 because they facilitate flow of trade, rather than hampering it. Such measures, therefore, need not comply with the requirement of the provisions of Article 304(b). Thus, a State law imposing a tax, per vehicle, on the owners of motor vehicles does not directly affect the freedom of trade or commerce even though it indirectly imposes a burden on the movement of passengers and goods within the territory of the taxing State.[2]

(D) Sales-Tax

18.2.07 Normally, a tax on intra-State sale or inter-State sale of goods does not *directly* impede or restrict the free flow of trade in those goods, and therefore, cannot offend Article 301, whatever be the indirect effect of such tax on the trade.

(E) Trade injurious to Society

18.2.08 It is well settled that in proper cases, such as where the trade is injurious to society, 'reasonable restriction' within the contemplation of Article 302 or 034(b) may inclde prohibition or suppression of that trade altogether.[3]

18.2.09 Part XIII contains a further provision (Article 307) enabling Parliament to appoint by law such authority as it considers appropriate for carrying out the purposes of Articles 301, 302, 303 and 304 and confer on that authority such powers and such duties as it thinks necessary. This provision has not been resorted to so far.

3. *CRITICISM AND SUGGESTIONS*

18.3.01 Two State Governments have criticised the existing constitutional arrangements relating to trade, commerce and intercourse. One of them suggests that Article 302 which empowers Parliament to impose restrictions by law in the public interest, both in respect of inter-State and intra-State trade, should be so amended as to take away the powers of the Union to interfere with *intra*-State trade. This suggestion has been made "to ensure that the State Governments are treated on par with the Union in so far as trade and commerce is concerned". It has also suggested that the expression 'reasonable' should be added before the word "restriction" appearing in Article 302. in order to being about parity between the powers of Parliament and the State Legislatures in this matter. The State Government has further suggested deletion of the Proviso to Clause (b) of Article 304. The other State Government has also proposed that trade and commerce *within* a State should be in the exclusive jurisdiction of the State. with an exception in regard to inputs of War and Defence industries. This State Government has further suggested that the Proviso to Article 304(b) may be omitted as it imposes an unjustifiable restriction on the legislative autonomy of the States. It has observed that Article 304(b) itself provides that such a restriction should be reasonable and required in public interest. If the State legislature enacts a law which does not satisfy these two requirements, it will be open to the courts to set it aside as unconstitutional.

Omission of 'Reasonable' from artical 302, effect of'

18.3.02 We will first take up the demand for insertion of the word 'reasonable' as a pre-fix to the expression 'restriction' in Article 302. The suggestion postulates that the omission to qualify the expression 'restriction' by the word 'reasonable' in Article 302 not only amounts to denial of parity of powers to Parliament and the State Legislatures in regard to trade and commerce, but also enables Parliament to negate the freedom guaranteed under Article 301 and the fundamental right guaranteed under Article 19(1)(g) by imposing unreasonable restrictions thereon. This proposition is not based on an empirical analysis of any laws affecting freedom of trade, passed by Parliament under Article 302. No instance of any such law made under Article 302, which tends to nullify Article 301, or which under colour of 'public interest', makes unreasonable incursion into the exclusive State field has been brought to our notice. In *Atiabari Case*, *ibid*, there is an obiter by one of the learned Judges[4] that "where Parliament exercises its power under Article 302 and passes a law imposing restrictions on the freedom of trade in public interest, whether or not the given law is in the public interest, may not be justiciable". As against this, another learned Judge[5] in *Automobile Transport Case*, *ibid*, observed that "it is impossible that the freedom granted in Article 301 was to be mocked at by making unreasonable restrictions permissible at the hands of Parliament. Normally, Parliament is the best judge of the 'public interest'..... But if a question arises whether Part liqment under has colour of Article 302 encroached upon Article 301, the matter may in exceptionable circumstances be justiciable". The word 'required' in Article 302 limits the restrictions to the necessities of the situation so that the Article may not be liberally construed as a free Charter.

2. Automobile Transport (Rajasthan) Ltd., Vs. State of Rajasthan AIR 1962 SC 1406 — (1963) 1 SCR 491, Clarifying *Atiabari Tea Co.'s case* AIR 1961 SC 232, G. K. Krishna v. State of Tamil Nadu AIR 1975 SC 583 : (Tax on contract carriage); Jayaram Vs. Union of India AIR 1983 SC 1003.

3. Narendra Kumar Vs. Union AIR 1960 SC 430; Coovejee Bharucha Vs. Ex. Com. AIR 1954 SC 220 Krishen Kumar Vs. J & K AIR 1967 SC 1368; Koteswar Vs. K.R.B. Co. AIR SC 504 (prohibition of forward contracts relating to certain class of goods); State of Mysore Vs. Sanjeeviah AIR 1967 SC 1190.

4. Mr. Justice Gajendragadkar in AIR 1961 SC 232, page 254, para (53).

5. Mr. Justice Hidayatullah in AIR 1962 SC 1406, page 1453, para (102).

18.3.03 Again, in a later case[6], it was observed by the Supreme Court : "Although Article 302 does not speak of reasonable restrictions yet it is evident that the restrictions contemplated by it must bear a reasonable nexus with the need to serve public interest". In several recent decisions[7] where the constitutional validity of a law imposing restrictions under Article 302 was challenged, the Supreme Court did apply the test of reasonableness to uphold the validity of those 'restrictions'.

18.3.04 Dr. D. D. Basu is of the view "that, on principle, the omission of the word reasonable' in Article 302 should not be regarded as conclusive, for, it is difficult to imagine that public interest would be served by a law which would impose arbitrary or unreasonable restrictions upon the public themselves.[8] We agree with the learned author that notwithstanding the fact that the word 'reasonable' is not used in Article 302, a law imposing restrictions under Article 302, would be open to judicial review on the ground that it has no reasonable nexus with the public interest alleged.

18.3.05 Be that as it may, the point is merely of academic significance. From a practical stand-point, the non-qualification of the 'restriction' by 'reasonable' in the text of Article 302 has lost much of its importance, for, almost in every case wherein the Constitutional validity of such law is questioned on the ground of Article 301, the challenge is buttressed by additional grounds of Articles 14 and 19(1)(g) and the question of reasonableness of the restriction always arises under these additional grounds. The proposal for insertion of the word 'reasonable' before the word 'restriction' in Article 302 is thus merely of theoretical significance and we cannot support it.

Whether inclusion of Inter-State Trade in Article 302 justifiable

18.3.06 This takes us to the broader question whether the inclusion of trade, commerce and intercourse *within* a State (in addition to inter-State trade) in Article 302 and the requirement of previous sanction of the President in the Proviso to Article 304(b) is against the basic principles of federalism and amounts to "unjustifiable restriction on the legislative autonomy of the States".

Historical Background of the Provisions in Part XIII

18.3.07 In order to appreciate all aspects of the question in the right perspective it is necessary to have a look into the background of the provisions in Part XIII. It is well-known that before Independence, in 1947, nearly one-third of the territory of India consisted of numerous 'Native States', governed by Indian Princes. Many of these States claimed varying degrees of sovereign rights subject to limitations imposed by the paramount power. These States in exercise of their power imposed taxes and erected tariff barriers impeding the flow of trade, commerce and intercourse between themselves and the rest of India. In this matter, British India was governed by the provisons of Section 297 of the Government of India Act, 1935. Between 1947 and 1950, the process of the merger and integration of the erstwhile Princely States with the rest of the country was accomplished. With this knowledge of the trade barriers and tariff walls which had been erected by the erstwhile Princely States, the imperative need for ensuring free flow of trade, commerce and intercourse throughout the territory of India became deeply impressed on the mind of the Constitution makers.

Primary Object and Aim of Part XIII—Atiabari Case

18.3.08 The Supreme Court has, after a brief survey of this political and Constitutional background, in *Atiabari Case, ibid.*— nearly brought out the main objects and reasons which weighed with the Constitution-makers in formulating the scheme and content of the Articles in Part XIIII, as follows :

"In drafting the relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union and that may conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the State legislatures to adopt remedial measures intended solely for the protection of regional interests without due regard to their effect on the economy of the nation as a whole. The object of Part XIII was to avoid such a possibility. Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country. The provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a directive principle of State policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. In appreciating the significance of these general considerations we may profitably refer to the observations made by, Cardozo J. in *Charles H. Baldwin* v. *G. A. F. Seeling* (1934) 294 US 511 at p. 523 : 79 Law Ed 1032 at p. 1033 while he was dealing with the commerce clause contained in Article 1, 5. 8, cl. 3 of the American Constitution. "This part of the Constitution", observed Cardozo J., "was framed under the dominion of a political philosophy less

(6) *Prag Ice Mills* Vs. *Union of India* (AIR 1978 SC 1296)—see observation of H.M. Beg. CJ, Para (9).

(7) Manick Chand Paul *Vs.* VOI (AIR 1984 SC 1249) and Bishamber *Vs.* State of U.P. (AIR 1962 SC 33).

(8) Basu, D.D.—Comparative Federalism, (1978), page 449.

parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together and that in the long run prosperity and salvation are in union and not division".[9]

18.3.09 Further elucidating the objectives and importance of these provisions for the economic integrity of the Nation, the Supreme Court in *Automobile Transport Case, ibid,* observed :

"There were differences of language, religion, etc. some of the Provinces were economically more developed than the others. Even inside the same province threre were under-developed, developed, and highly developed areas from the point of view of industries, communications, etc. The problem of economic integration with which the Constitution-makers were faced was a prob'em with many facets. Two questions, however, stood out: one question was how to achieve a federal, economic and fiscal integration, so that economic policies affecting the interests of India as a whole could be carried out without putting an ever-increasing strain on the unity of India, particularly in the context of a developing economy. The second question was how to foster the development of areas which were under-developed without creating too many preferential or discriminative barriers".[10]

18.3.10 The provisions contained in Part XIII have to be considered together, in order to gather the true extent of the freedom and the limitations on it. At first sight it would appear that there is a mix up of exceptions upon exception in these provisions. The pertinent observations of the Supreme Court in this connection are : "In evolving an integrated policy on this subject our Consitution-makers seem to have kept in mind three main considerations which may be broadly stated thus : first, in the larger interests of India there must be free flow of trade, commerce and intercourse, both inter-State and intra-State; second, the regional interests must not be ignored altogether; and third, there must be a power of intervention by the Union in any case of crisis to deal with particular problems that may arise in any part of India".[11]

18.3.11 In the same case, analysing the words "shall be free" Subba Rao J. posed three questions. Firstly, 'what is free,' secondly, 'free from what', and thirdly, 'where is it free'. Dealing with the question 'Where is it free', the learned Judge observed that the Expression 'throughout the territory of India' demarcates the extensive field of operation of the said freedom. The use of the words 'territory of India', instead of 'among the several States' found in the American Constitution or 'among the States' found in the Australian Consitution, removes all inter-State or intra-State barriers and brings out the idea that for the purpose of the freedom declared, the whole country is one unit. Trade cannot be free throughout India if barriers can be erected in any part of India, be it inter-State or intra-State. Thus, Article 301 guarantees freedom of trade, commerce and intercourse throughout the territory of India.

18.3.12 The freedom guaranteed in Article 301 has been made expressly subject to the other provisions of Part XIII. As noticed above in Para 18.2.02, these provisions contain a two-fold principle. Firstly, Parliament may impose such restrictions as may be required in public interest, on the freedom of trade, commerce or intercourse between one State or another or within any part of the territory of India. Secondly, the power to impose reasonablee restrictions by States is made subject to obtaining the sanction of the President before a Bill in this regard can be introduced or moved. Thus Parliament may itself impose restrictions and the Union may also prevent a State from placing restrictions if they are against national interest.

18.3.13 The need for empowering parliment to place restrictions on trade and commerce even within a State is obvious. Ours is a vast country with varying economic potentiality and considerable deferences in regard to existing levels of development. The Union's responsibility in respect of certain matters may, therefore, entail regulating Trade and Commerce even within a State for achieving national objectives. For example, there is the need to protect the interests of the weaker sections of our community like the tribal people, etc. Indiscriminate exploitation of natural resources in one State, for example, denudation of forests, may have far-reaching implications for other States which may be effected by Floods, silting up of reservoirs, etc. Such situations may require imposition of restrictions on trade even within the State. The importance of Parliamentary control over intra-State trade is also significant where centres of production of certain commodities are situated entirely within a State but the centres of consumption are located outside the State.

18.3.14 We have observed in the Chapter on "legislative Relations" that intra-State trading activites often have a close and substantial relation to inter-State trade and commerce. State laws though purporting to regulate intera-State trade, may have implications for inter-State trade and commerce. These may impose discriminatory taxes or unreasonable restrictions, impeding the freedom of inter-State trade and commerce. If caluse (b) of Article 304 is deleted, the commercial and economic unity of the country may be broken up by State laws setting up barriers to free flow of trade and intercourse through parochial or discriminatory use of thier powers. The suggestion of the State Govrenment is not workable even from a functional standpoint.

18.3.15 From a broad conceptual angle, the suggestion for excluding *intera*-State trade and commerce from the purview of Article 302 and for deletion of the Proviso to Article 304(b) does not stand close scrutiny. It is not in consonance with the prevailing concept of federalism. It presumbly draws inspiration from the antiquated and obsolete theory of federalism, according to which, two levels of government were supposed to function in water-tight compartments in isolation from each other. Such a "dual" federalism is nowhere a functional reality in the modern world. Even in the co-called classical federation of the United States of America

(9) Atiabari Tea Co. Ltd. Vs. State of Assam AIR 1961 SC 232, p. 247, para (34).

(10) Automobile Transport (Rajasthan) Ltd. Vs. State of Rajasthan (AIR 1962 SC 1415).

(11) *op. cit,* p. 1416.

federalism is now a dynamic process of government, a system of shared responsibilities and cooperative action between the three tiers of government. The Constitution-framers were conscious of this reality. Indeed, the very scheme of Articles 301 to 304 which imposes limitations on the legislative powers of the Union and of the States, both with respect to inter-State and intra-State commerce and intercourse, is expected to be worked in cooperation by the Union and the States. The mere fact that Article 303(2) gives an exclusive power to Parliament to make a discriminatory law for dealing with a situation of scarcity of goods, or that the Proviso to Article 304(b) gives a supervisory power to the President (*i.e.* Union Council of Ministers) over a State legislation seeking to impose restrictions on inter-State or intra-State trade, is not a good enough argument to hold that these are anti-federal features making unjustifiable encroachment on the autonomy of the States. No doubt, these features give due weightage to the Union. But the scheme of the Articles in Part XIII considered as a whole, is well-balanced. It reconciles the imperative of economic unity of the Nation with interests of State autonomy by carving out in clauses (a) and (b) of Article 304, two exceptions in favour of State legislatures to the freedom guaranteed under Article 301.

For the foregoing reasons, including those which we have set out in the Chapter on "Legislative Relations," we cannot support these suggestions of the State Governments.

4. *NEED FOR AN AUTHORITY UNDER ARTICLE* 307

18.4.01 Several State Governments are in favour of setting up an authority contemplated in Aricle 307. Some of them consider that such an 'authority' may be useful in the context of enforcement of laws relating to essential commodities and settling questions of taxation, cesses, duties, octroi rates, etc. One of them has also referred to the need for continuous appraisal of the various fiscal laws as well as executive decisions and measures which the Union and the States took from time to time and which impinge on unfettered trade, commerce and intercourse within the country. The Chambers of Commerce interviewed by us have also emphasised the need for setting up of an authority contemplated by Article 307, specially for recommending measures to rationalise or modify restrictions imposed by the different States.

18.4.02 Two States have suggested that the Inter-State Council proposed by them under Article 263, can perform the functions of the 'authority' contemplated in Article 307, and, therefore, there is no need for setting up a separate authority for this purpose.

18.4.03 The Government of India does not consider it necessary to set up such an authority. The Department of Civil Supplies has expressed its view as follows :

> "Since the situations keep on changing from time to time in the country, the Ministries at the Centre should be able to respond to such situations more promptly and appropriately because they have the readily available advice with them of experts, legal opinion, information from various parts of the country and views of the producing and consuming States, etc. The establishment of an authority under Article 307, would only cause delays, conflicts and controversies among the various States/regions. Moreover, the authority if established, can only be a data collecting, deliberative and advisory body but not a decision making authority which still shall have to rest with the Central Government. The Department, therefore, does not consider the necessity of setting up of an authority under Article 307 of the Constitution to settle issues among the various States."

18.4.04 The whole field of freedom of trade, commerce and intercourse bristles with complex questions not only in regard to Constitutional aspects but also in respect of the working arrangements on account of impact of legislation of the Union on the powers of the States and the effect of legislation of both the Union and the States on free conduct of trade, commerce and intercourse. Trade, Commerce and intercourse cover a multitude of activities. Actions of the Union and State Governments have wide-ranging impact on them. Legislative and executive actions in the field of licencing, tariffs, taxation, marketing regulations, price controls, procurement of essential goods, channelisation of trade, and controls over supply and distribution, all have a direct and immediate bearing on trade and commerce. Innumerable laws and executive orders occupy the field today. This has led to an immensely complex structure. Many issues of conflict of interests arise everyday. It is not inconceivable that measures instituted at a given point of time to meet specific situations continue to hold the field notwithstanding the fact that either the need for them has disappeared, making them redundant, or changed circumstances call for drastic modifications.

18.4.05 We are, therefore, of the view that it would be advantageous to constitute an authority under Article 307. It should be an expert body. Being removed from the pressures of day to day administration it would be able to formulate objective views, taking into account the long term perspective, in regard to various intricate problems relating to trade, commerce and intercourse. Being an expert consitutional body it would also inspire confidence among the various States and other interests. Such an expert body would be eminently suited to strike a proper balance between freedom of trade and the need for restrictions in order to foster development with social justice.

18.4.06 The next point for consideration is whether this function can be discharged by the Inter-Governmental Council (IGC) and National Economic and Development Council constituted under Article 263. The Inter-Govermental Council or the National Economic and Development Council recommended by us is the highest level political body for considering various issues of national importance in the economic sphere. The need in the present context is, however, not for consideration at the highest political level but for expert examination of various complex issues in an objective manner to enable the political executive to take appropriate decisions. We are unable to agree to the suggestion

that the duties and functions of the authority contempated in Article 307, may be entrusted to the Inter-Governmental Council or National Economic and Development Council.

18.4.07 Considering the intricate nature and the need for objective examination of the wide-ranging issues connected with the freedom of trade, commerce and intercourse, we recommend that an expert authority should be constituted under Article 307. Among other things, such an authority may be enabled to :

(a) survey and bring out periodically a report on the restrictions imposed on intra-State and inter-State trade and commerce by different governments and their agencies ;

(b) recommend measures to rationalise or modify the restrictions imposed to facilitate free trade and commerce ;

(c) examine complaints from the public and the trade in this regard; and

(d) suggest reforms in the matter of imposition, levying and sharing of taxes for purposes of Part XIII of the Constitution.

18.4.08 The ambit of Article 307 is wide enough to bring all matters relevant to freedom and regulation of trade, commerce and intercourse within the purview of such an authority 'for carrying out the purposes of Article 301, 302, 303 and 304'. It is entirely left to the judgment of Parliament to clothe the 'authority' under Article 307 with such powers and duties as may be considered necessary. Such an 'authority' may have both an advisory and executive role with decision-making powers. We are of the view that to begin with, such a statutory authority may be assigned an advisory role only. In course of time, in the light of experience gained, such additional powers, as may be found necessary, can be conferred on it to make it an effective body for promoting and maintaining the commercial and economic unity of India.

5. *RECOMMENDATIONS*

18.5.01 Free flow of trade, commerce and intercourse within and across inter-State borders is an important pre-requisite for ensuring economic unity, stability and prosperity of a country having a two-tier polity. Limitations for the common good are inherent in such freedom, least it should de-generate into a self-defeating licence.

(Para 18.1.01)

18.5.02 Notwithstanding the fact that the word 'reasonable' is not used in Article 302, al aw imposing restrictions under Article 302, would be open to judicial review on the ground that it has no reasonable nexus with the public interest alleged. The proposal for insertion of the word 'reasonable' before the word 'restriction' in Article 302 is thus merely of theoretical significance and cannot be supported.

(Paras 18.3.03, 18.3.04 and 18.3.05)

18.5.03 Intra-State trading activities often have a close and substantial relation to inter-State trade and commerce. State laws though purporting to regulate intra-State trade may have implications for inter-State trade and commerce. These may impose discriminatory taxes or unreasonable restrictions impeding the freedom of inter-State trade and commerce. If clause (b) of Article 304 is deleted, the commercial and economic unity of the country may be broken up by State laws setting up barriers to free flow of trade and intercourse through parochial or discriminatory use of their powers.

(Para 18.3.13)

18.5.04 The scheme of the Articles in Part XIII, considered as a whole, is well-balanced. It reconciles the imperative of economic unity of the Nation with interests of State autonomy by carving out in clauses (a) and (b) of Article 304, two exceptions in favour of State legislatures to the freedom guaranteed under Article 301.

(Para 18.3.14)

18.5.05 The whole field of freedom of trade, commerce and intercourse bristles with complex questions not only in regard to constitutional aspects but also in respect of the working of the arrangements on account of impact of legislation of the Union on the powers of the States and the effect of legislation of both the Union and the States on free conduct of trade, commerce and intercourse. Considering the intricate nature and the need for objective examination of the wide-ranging issue connected with the freedom of trade, commerce and intercourse, it is recommended, that an expert authority should be constituted under Article 307. Among ohter things, such an authority may be enabled to :

(a) survey and bring out periodically a repor on the restrictions imposed on intra-State and inter-State trade and commerce by different governments and their agencies ;

(b) recommend measures to rationalise or modify the restrictions imposed to facilitate free trade and commerce ;

(c) examine complaints from the public and the trade in this regard ; and

(d) suggest reforms in the matter of imposition, levying and sharing of taxes for purposes of Part XIII of the Constitution.

The ambit of Article 307 is wide enough to bring all matters relevant to freedom and regulation of trade, commerce and intercourse within the purview of such an authority 'for carrying out the purposes of Articles 301, 302, 303 and 304'. It is entirely left to the judgement of Parliament to clothe the 'authority' under Article 307 with such powers and duties as may be considered necessary. Such an 'authority' may have both an advisory and executive, role with decision-making powers. To begin with such an authority may be assigned an advisory role. In course of time in the light of experience gained, such additional powers as may be found necessary, can be conferred on it.

(Paras 18.4.04, 18.4.07 and 18.4.08)

CHAPTER - XIX

MASS MEDIA

CONTENTS

LIST OF ANNEXURES

CHAPTER XIX

MASS MEDIA

1. *INTRODUCTION*

19.1.01 Radio and Television are two powerful systems of mass communication generally denoted as Mass Media. These systems fall within the scope of the words "wireless, broadcasting and other like forms of communication" in Entry 31 of the Union List in the Seventh Schedule to the Constitution. The legislative and executive powers with respect to these subjects, therefore, vest exclusively in the Union. Both these systems are controlled and owned by the Union.

19.1.02 In this Chapter, we will consider the various issues relating to the Radio and Television broadcasting systems.

2. *COMPLAINTS AND SUGGESTIONS*

19.2.01 Most State Governments have not proposed any change in the existing constitutional arrangements. However, some of them have suggested that broadcasting should be transferred to the Concurrent List. One of them has stated that since States are responsible for a substantial chunk of development activity and have in most cases been reorganised on linguistic lines. They should have adequate access to radio and television facilities to propagate their language, culture, values, development programmes and different view points with regard to their special problems and opportunities. It is alleged that the States, particularly those governed by parties other than the one ruling at the Centre, do not get reasonable access to these media on these premises, it is urged that 'Broadcasting and Television' should be shifted to the Concurrent List. One State Government wants it to be transferred to the State List. The general tenor of the replies from the intelligentsia is that the two systems must be run in such a way that they have substantial autonomy in the type of information or entertainment disseminated. They also desire that direct interference in either the content or the quality of dissemination should be minimised. It is implied that there is too much interference from the bureaucratic system at present.

19.2.02 While a large number of State Governments have not questioned the placement of Broadcasting in List I, there is in the replies a general complaint of over-centralisation in both these systems. It is alleged that this over-centralisation has led to the denial to the States, the legitimate use of these media for putting across their views to the public. For instance, one State Government has said that "Central control over such powerful and expanding media has endangered political controversy in the past and could conceivably do so in the future". Several suggestions have been made by the State Governments in this context to secure access to these media for themselves. One State Government has suggested that "a law be made, or the present law be amended, to enable State Governments, wherever feasible, to set up their broadcasting stations, subject to such conditions or restrictions as necessary in the national interest". Yet another State has suggested that "in a country with India's size, diversity and complexity of problems, it is important that the State Governments are allowed parallel jurisdiction over radio and television and the Constitution may be amended accordingly." One State Government has suggested a special channel in the existing systems to be placed at the disposal of States so that the listeners of radio and viewers of television may have a choice and come to their own conclusions. Two State Governments have urged autonomy for the AIR and the Doordarshan.

19.2.03 We will first examine the suggestion for constitutional amendment to transfer Broadcasting from the Union to the State or the Concurrent List in the Seventh Schedule. A radio transmission system or a television transmission system works on an energy wave which carries the message across to the receiver system working synchronously on the same wave length. As energy waves do not observe any boundaries except the boundary of dissipation of its energy, national or linguistic boundaries are no bar to the reception as long as the energy can carry the message across. If Radio or TV transmission in two nations or two linguistic areas work on the same wave length, there is quite a chance of the two systems interfering with each other. When there is stress between two nations or two linguistic areas, such interference can lead to greater stress. Therefore, the international community has agreed to control the wave lengths and bands on which each country can work. Every country has to honour this agreement. Transmission in each country has to be kept within the agreed frequencies. This control over frequencies is exercised by the International Telecommunications Union. There is no criticism on the working of this international agreement in the replies received by us. What the States seek is control over the message or the entertainment dissemination by the system and freedom to air their views through the system.

19.2.04 In a country where a substantial part of the citizenry is illiterate or semi-literate and the population, particularly in the rural areas, is not very mobile, and they have few opportunities to get information of men and affairs in the other parts of the country, the Radio and the TV are powerful media for influencing thinking, attitudes and options of the citizenry. Hence every political party seeks to have access to the media in the interest of the party, In the more educated and enlightened countries, with several systems of mass communication to which people have access, the citizen has some means of comparing notes and differentiating between propaganda and fact. In this country where, as we have emphasised elsewhere, parochialism, chauvinism, casteism and communalism are pervasive and are actively made use of by powerful groups, if uncontrolled use of these media is allowed, it may promote centrifugal tendencies endangering the unity and integrity of the nation. In the context of the demand of some

States to have their own broadcasting stations, it will be pertinent to quote the views of the Verghese Committee :[1]

> "The propagation of a national approach to India's problems, creating in every citizen an interest in the affairs, achievements and culture of other regions and helping them to develop a national consensus on issues which concern the country as a whole, is of such supreme importance that any structure which inhibits this cannot be accepted".

We agree with these views. Further, the message of unity and integrity and the basic cultural links of the various parts of the country has to be carried to all, especially to the backward areas of the country so that the impact becomes effective. From a purely economic angle, if other reasons are not conclusive, a devolution to the States to have their own broadcasting and control will help largely the richer States. The poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces. The Verghese Committee has also drawn attention to these difficulties. If autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult. The telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union. For all these reasons and particularly the need to control centrifugal tendencies, we cannot support the demand for either a concurrent or an exclusive power to the States with respect to broadcasting.

19.2.05 Nevertheless, it cannot be forgotten that it is a political party which controls the Union Executive. Lest there be a temptation to use these powerful media wrongly in the party interest and not necessarily in the national interest, 'Ground Rules' of behaviour have to be established and observed meticulously. The need for a watch-dog for both the Union and the States becomes obvious. We shall deal with these aspects in the next section.

3. *DEMAND FOR AUTONOMY*

19.3.01 Two States have pleaded for autonomy for the Broadcasting system. A number of intellectuals also feel that the systems should have autonomy. The Verghese Committee was also of the view that the Broadcasting system should be put under a Trust, nationally owned and responsible to Parliament and given full autonomy except to the extent that the Union Government may give directives to refrain from broadcasting any matter relating to national security, preservation of public order or any other matter of grave public importance. It may also in the case of any national, regional or local emergency direct the Trust to broadcast any announcement.

19.3.02 We have given careful consideration to these suggestions. These powerful media have to be used in our country in the public interest to further the cause of development with social justice and strengthen the impulses of modernisation. These audio-visual media are of tremendous value in leaping over the barriers of illiteracy and educating the people. Their immense potential should be exploited to foster national unity and integrity, and to fight effectively the fissiparous tendencies. Keeping in view these objectives and their enormous potential for making India a strong modern nation (or harming it, if improperly used), we are of the view that there can be no total autonomy for such powerful media. They must continue to be under the control of the Union Government, which will be responsible for their proper functioning to Parliament. We have no hesitation in saying that, till national integrity and unity become more firmly rooted than what is obtaining today and the pulls of regionalism, parochialism, casteism and communalism are substantially reduced, it will be premature to consider the grant of uncontrolled functional freedom to these powerful media. We do recognise the need for reasonable decentralisation and freedom in the day-to-day operations of these media in a vast country like ours so rich in diversity. To play an effective role these systems must, in their working, constantly strive for a harmonious adjustment between the imperatives of national interest and the varied needs and aspirations of the States and their inhabitants. We have made certain suggestions in this regard in the later parts of this Chapter.

4. *OBJECTIVES OF MASS MEDIA*

19.4.01 The purpose of Radio and Television is to entertain, inform and educate. It is possible to divide this role into five basic functions even though there will be grey areas of interplay. These five roles are accepted by all generally. These are :—

1. Entertainment
2. Dissemination of news promptly of important national and State happenings.
3. Specific programmes aimed at national integration, emphasising the basic cultural unity of the country and the close links in the socio-economic structure overriding chauvinistic considerations of caste, community, region and religion.
4. Communication of the policies of the Union and the State Governments.
5. Allowing political parties an access to put across their political philosophies.

19.4.02 It has to be recognised that the bulk of the transmission has to be for entertainment. The system can draw its clientele, who have to invest in the receiving system, only by first tempting them with substantial entertainment to their liking, before they can be made to listen to polemics. Polemics alone, however important, cannot hold the audience. Even street meetings of political parties have to start entertaining before getting a crowd of receptive audience.

19.4.03 It is imperative that the language of the transmission either of Radio or TV is the regional language. Very few citizens in the country are bilingual, let alone trilingual. Whether for entertainment or communication of ideas, unless the language used is one that the listener understands, the transmission does not achieve its objective. In Radio where the communication is audio, this is absolutely vital. In TV, following the example of the "Film World" in the

(1) Report of the Working Group on Autonomy for Akashvani and Doordarshan Vol. para.14 (page 31).

country, programmes where action predominates and very little understanding of language is required to enjoy the entertainment, the language barrier can possibly be overcome. But even in TV, if a specific oral message has to be conveyed, action component alone cannot make up for the ignorance of the language spoken. The message will not reach the listener. Theoretically, nobody can contest this basic requirement of the use of regional language in broadcasts. How far have the two systems achieved this objective?

19.4.04 There is another aspect of language which so far has not been appreciated. One common criticism is that, though vast areas are demarcated as Hindi-speaking in the country, the areas have a large number of dialects, such as, *Braja Bhasha, Maithili, Avadhi, Bhojpuri, Khadiboli*, etc.—which may not be understood by people speaking one or the other Hindi dialects. Some observers have pointed out that both Radio and TV, by following a certain uniformity in the Hindi they use in broadcasts, have passed on this colloquial uniformity to all the Hindi-speaking areas thereby creating a uniform language understood by the vast array of listener and viewers. This capacity of the Radio and TV to create a uniform language over vast areas has not been exploited in creating the Hindi that the Constitution-makers contemplated. Similarly, in the non-Hindi speaking States, where each language zone really comprises several dialects, a uniform acceptable version is desirable to avoid dialect chauvinism. The potential of the media to develop such a language has not been explored. Of late, provision has been made for simultaneous translation of the proceedings of major conferences of international agencies.

19.4.05 Article 351 of the Constitution reads as follows :—

> "351. **Directive for development of the Hindi language**—It shall be the duty of the Union to promote the spread of the Hindi Language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

It is clear that both the Radio and TV transmission systems in the country have a duty to promote actively the expressed intention of this Article. We recommend that the directive of this Article should be pursued with imagination, vision and tact by the Union Government. Enrichment of the Hindi broadcasts over the media should be sought, on high priority basis, by assimilating common words from Hindustani and the other languages referred to in this Article, so that all people get used gradually to a uniform vocubulary at least for certain common terms all over the country.

19.4.06 To understand the nature of the complaints and assess how far the friction can be eased, it is necessary to examine the present status of the media and the controls exercised in the interest of fairness between the Union and the States and the objectives of national unity and integrity.

19.4.07 Both the media are owned by the Union and run directly through expert technical staff with separate directorates for Radio and Television. Both are subordinate offices of the Ministry of Information and Broadcasting. The Radio system is known as the All India Radio or Akashvani. In Tamil Nadu alone it is known as "Vanoli" and not "Akashvani". The T.V. system is known as Doordarshan. As the status of the 'Art' and the controls in the two systems are very different, it is desirable to consider each system separately.

5. *ALL INDIA RADIO*

19.5.01 Every region has its own radio transmission station where programmes are developed and transmitted. The bulk of the transmission is on the Medium Wave and can reach all places in the region and beyond, depending on atmospheric conditions and strength of the receiving set. Transmission in each region is generally in the local language and there are programmes in English and other languages which are prevalent in the region. As radio receiving sets can be tuned to various wave lengths, the listener has the option of listening to the programme he likes. He has only to own a set of the requisits strength, to have a wide choice of language and quality. Thus the language problem is not acute in the radio system.

19.5.02 National programmes and National news broadcasts from Delhi are given specific channels and times in the regional stations for relay of the broadcast to the region. National programmes have both educational and entertainment value. Subjects are of interest to the nation. National news broadcasts cover both international and national news of general interest. It has both English and Hindi versions, except in Tamil Nadu where, instead of Hindi, there is a Tamil news broadcast. This latter is deemed necessary since, in Tamil Nadu, not many follow Hindi. The news is to be understood by as large a population as possible.

19.5.03 As each linguistic region has its own broadcasts on its separate wave length, and sometimes on more than one wave length for separate programmes at the same time, there cannot be much complaint of language difficulty. Each region has its own news broadcasts to satisfy local interest. The listener has a choice of programmes, if he is prepared to invest in a radio set of sufficient strength. The complaint in Radio Broadcast is in regard to the coverage available to the State Governments for communication of their policies and in allowing political parties adequate access to put across their political philosophy. We shall deal with these later.

19.5.04 All the States including small States and Union Territories, excepting the Union Territories of Lakshadweep, Daman and Diu, and Dadra and Nagar Haveli, have independent radio stations. There are 91 radio stations in the entire network. Some stations have more than one transmitting facility of varying strengths. The Proposals of the Ministry of Information and Broadcasting for inter-linking all radio stations through the INSAT link may be

seen at Annexure XIX.1. As the All India Radio has an integrated administration, it will have the competence to select programmes from any station and broadcast them to other stations through INSAT when the chain becomes complete. Thus the planning for the future is fully in accordance with what the country needs. It is necessary that the system becomes fully linked as quickly as possible.

6. *TELEVISION*

19.6.01 The Television system in the country has many limitations. The transmission is limited to about seven hours a day on week days and 16 hours on Sundays, except when events like cricket, tennis and fooball matches of international importance are broadcast sometimes, for the entire period of their duration. Creation of the software for even these limited hours of broadcast is an expensive and highly technical problem. So much so, that some of the time is occupied by showing cinematographic films sometimes as old as thirty years Out of the daily seven hours the period from 8.40 pm to 11.15 pm is known as prime time when it is expected that viewers will be in maximum numbers. Every interest wants to occupy this prime time. There is a lot of controversy on the occupation of prime time by the National Programme and allocations for State programmes in this period. The language controversy is quite acute so far as Television is concerned.

19.6.02 We pointed out to the Ministry of Information and Broadcasting that, basically, Hindi and English are the only principal languages used in the National Programme at present. Since, in many of the States in the South, the people do not understand Hindi and the large rural masses throughout India do not understand English, the Ministry was asked to indicate how the national programme is able to serve the purpose of national unity and integration. The Ministry was also asked whether it was not possible to think in terms of programmes in the regional broadcast in the local languages of the region.

19.6.03 In its response, the Ministry of Information and Broadcasting has observed that Hindi and English are used in the spoken-word related items included in the National Programme because these are undoubtedly the most widely understood languages among the TV viewing population in the country. The Ministry has also stated that the objective of promoting national integration and unity is sought to be achieved through the National Programme by including in it items produced by various regional centres reflecting regional culture, folk art, music, dance, crafts, well known institutions, etc. The developmental activities in different parts of the country are also projected through appropriate items in the National Programme. The reply does not answer the basic criticism that programmes in languages other than the local, fail to convey effectively the message sought to be communicated. It is also pertinent to note that the National Programme occupies 155 minutes out of a total of 345 minutes of prime time viewing. We are of the view that the purpose of promoting national integration can only be served through programmes of national importance conveyed in the local language.

19.6.04 The Ministry of Information and Broadcasting has further stated that schemes have been included in the Seventh Five Year Plan to introduce a three-tier service. It is envisaged that each major State in the country will have its own primary service in the language of the State, originating from the Doordarshan Kendra at the capital and available throughout the State. It will carry programmes of interest to various sections of the population. A Programme Production Centre at the State capital, linked to transmitters in the State through microwave circuits or satellites, is essential for this purpose. They hope that by the end of the seventh Plan, all States and Union Territories (excluding Lakshadweep, Daman and Diu, and Dadra and Nagar Haveli) will have a Programme Production Centre at the respective capitals. Provision has also been made in the Seventh Plan of Doordarshan for satellite uplinks and additional dedicated microwave links to connect the transmitters in individual States with the Programme Production Centre at the respective capitals of major States. It would thus be seen that efforts are already under way to introduce programme services in respective languages in major States.

No doubt, these efforts have a long way to go, but the direction, in our view, is correct.

19.6.05 Many areas in the country today receive only the programmes broadcast from Delhi. In the non-Hindi speaking areas these programmes in Hindi and English are not understood by the masses who are unlettered. In the Hindi-speaking areas, though programmes in English may pose a difficulty, there is a greater chance of the Hindi Programmes being understood particularly if the Hindi used is of the type commonly understood. We would suggest that, in order to get the maximum benefit in as short a time possible, those areas which suffer from the maximum handicap in following Hindi and English broadcasts should be accorded the highest priority in linking them with the regional broadcasts.

19.6.06 The information received from the Ministry of Information and Broadcasting shows that out of sixteen Production Centres, only eight produce programmes in their respective regional languages for a duration of about three hours daily. The remaining eight have, even now, to depend upon the Delhi transmission. Creation of software is apparently proving a problem. In the matter of entertainment this does not appear to have created much difficulty, if sale of TV sets in the country is taken as an indication of viewer participation. The National Programme, at present, occupies the period from 8.40 PM to 11.15 PM. This is in Hindi and English. This contains both entertainment and information. As the information programme is only in Hindi and English, our comment about the language broadcast for national integration becomes specially relevant.

19.6.07 The objective should be to see that every production centre produces sufficient software in the language or languages of the region to occupy all but the time required or accepted as reasonable for English and Hindi broadcast. Propagation of ideas of national integrity and unity will have to be in the regional language if they are to be understood by the targeted audience. National news will have to be translated into the local languages and broadcast simultaneously, if it is our objective to reach the largest number of population. This translation system has yet to evolve. We recommend that early attention

be paid to the setting up of arrangements for simultaneous transmission or dubbing of the broadcasts into regional languages.

19.6.08 The main complaint of the States is about the near monopoly of the Ntaional Programme from 8.40 to 11.15 pm which is considered to be the prime time of all transmission. Over and above this, the National Programme is made use by those stations where their own material has not come up to the amount of time available on the transmission. It will be neither correct nor enough to say that the Production Centres will not be able to produce sufficient software in the local or prevailing language of the area for a substantial part of the broadcasting time. If there is any difficulty, this should be solved first. The entire National Programme of nearly 3 hours of broadcast which is mainly in Hindi and English is not of much use to the viewers in the non-Hindi region except, may be, in any entertainment which does not need much of language sensibility. Particularly, news in English or Hindi as we have already pointed out, does not carry much message to a large part of the illiterate and semi-literate population in the non-Hindi speaking States. The plea that the national programmes promote national integration loses its validity if the programme is not in the language which is understood, by the intended viewers.

19.6.09 We recommend that the language of transmission for purposes of national integrity and news dissemination should be the language of the region.

16.6.10 We further recommend that there need not be uniformly rigid earmarking of a particular time period for the national programme in English or Hindi. It should be left to the Stations to decide whether a national or other programme which is locally preferred and understood should be transmitted during the prime time. Such an arrangement will enable local stations to take care of the fact that prime time for urban and rural parts are different and prime time may also vary from region to region. This will answrer the various complaints voiced before us about "time-sharing".

19.6.11 In 1984, a Working Group of the Ministry of Information and Broadcasting (Joshi Committee) had drawn attention to the fact that a substantial part of the news coverage was urban-biased. As a result, matters of rural interest and rural development were not particularly brought before the viewers. It is an agreed policy that importance should be given to general development of the country including rural development in news coverage. From the explanation given by the Ministry of Information and Broadcasting, it is seen that, in the Seventh plan, this gap is proposed to be filled by utilising the mobile field units to transmit from the field to the broadcasting stations materials for the general broadcast. It may be examined whether extended use should not be made of this mode of news coverage, particularly when more time will be available for local broadcasting, if our recommendations are accepted. Incidentally, on the Radio, there has been local news broadcasting for the rural areas for quite a long time now. In this context, the fact that the prime time for rural areas is quite different from that in urban areas needs to be kept in view.

7. *CODES AND CONTROLS*

19.7.01 The main criticism of State Governments in the use of the media by the Union is over-centralisation and lack of facilities for themselves to put across their views. Communication of the policies of the Union and the State Governments is an important aspect of the role of the media. This communication is usually made by the Prime Minister or an important Minister of the Union Government and the Chief Minister or an important Minister of a State Government. A few examples of friction in the matter of State Chief Minister or State Ministers getting access to the media have been brought to our notice. In order to ensure that the media are not used for disruptive purposes, certain Ground Rules have been laid down for observance by All India Radio and the Doordarshan *vide* Annexure XIX.2.

19.7.02 We reproduce in Annexure XIX.3 the AIR Code, which is also being used by Doordarshan. Whether the user is an individual or a Minister, the nine items specified in the AIR Code are not permissible in the broadcast. This proposition, in our view, seems to be correct. The authority to censor any such broadcast has been delegated to the Station Directors and properly so. As Ministers would like to have prompt access to the media, any delay in approval of the broadcast through a reference to a higher authority, is undesirable. At the same time, the human factor being what it is, the Station Director's authority should not ordinarily be questioned, except where it is palpably incorrect. All concerned should understand the constraints of the situation and help in ensuirng that the media is not used against the larger national interest. The cases as quoted to us are few whereas the broadcasts allowed to individuals and Ministers without objection, have been large in number. We do not think that there is any need to amend the existing rules.

19.7.03 Political parties seek the medium of broadcasting to put across their views to the people. They are equally bound by the Ground Rules of Broadcasting prescribed for individuals. They are given specific time on the broadcasting system only at the time of elections. (We have reproduced these Ground Rules in Annexure XIX.2). There have been no complaints about these Ground Rules before us. If necessary, the Inter-Governmental Council (recommended[2] by us for being established under Article 263) can consider whether any relaxation of the existing 'Ground Rules' for use of the broadcasting system for political purposes should be allowed, and if so, under what conditions.

19.7.04 Some States have asked for a Joint Advisory Council and greater say in the working of the existing system. Programme Advisory Committees are attached to those All India Radio Stations which originate programmes for a duration of not less than 5½ hours every day. There are such Committees in 60 of the 91 stations now broadcasting.

19.7.05 We recommend that all broadcasting stations should have their own Programme Advisory Committees.

2. Chapter IX "Inter-Governmental Council—Article 263"; Paras 9.3.05 and 9.3.06.

19.7.06 Rules relating to the constitution and duties of the Programme Advisory Committees in AIR Stations are given in Annexure XIX.4. Non-Official Members predominate and a quorum requires at least one-third of the non-official members to be present. We have not received any complaints about the composition of the Programme Advisory Committees.

19.7.07 But there will be an advantage if a non-political and competent non-official is made Chairman and the Station Director is made Deputy Chairman of these Committees.

19.7.08 We recommend that a specific rule may be introduced that the State Governments concerned should be consulted about the selection of non-official members and Chairman of the Programme Advisory Committees in their States. Such a provision exists in the Instructions on Doordarshan Committees. These Committees have the right to discuss the programmes and suggest suitable alterations. If any State has got any serious complaints about the use of the media, an approach to the Inter-Governmental Council would be the solution.

19.7.09 There are Programme Advisory Committees attached also to full-fledged Doordarshan Kendras, which originate programmes. (The present instructions are reproduced in Annexure XIX.5). No particular complaint has been voiced before us in regard to the constitution or the working of these Committees. It is a good thing that non-officials predominate in these Committees. But it would be desirable if the system that we have proposed for AIR, is followed in Doordarshan also.

8. *RECOMMENDATIONS*

19.8.01 (a) De-centralisation to a reasonable extent in the day-to-day operations of Radio and Television is necessary.

(b) The two mass media should constantly strive for a harmonious adjustment between the imperatives of national interest and the varied needs and aspirations of the States and their inhabitants.

(Para 19.3.02)

19.8.02 The directive contained in Article 351 should be pursued with imagination, vision and tact by the Union Government. The Hindi language used in broadcasts over the media should be enriched by assimilating common words from Hindustani and the other languages referred to in the Article, so that all people gradually get used to a uniform vocabulary at least for certain common terms all over the country. Steps towards such enrichment of Hindi should be taken on a high priority basis.

(Para 19.4.05

19.8.03 The purpose of promoting national integration can only be served through programmes of national importance conveyed in the local languages.

(Paras 19.6.03 & 19.6.09)

19.8.04 In each region, radio programmes are transmitted by the All India Radio in the local language as also in English and in the other languages of the rgegion. The proposed inter-linking of all radio stations through the INSAT link will enable. All India Radio to broadcast programmes of one station to other stations. It is necessary that such linking of radio stations should be made fully operational as quickly as possible.

(Paras 19.5.01 & 19.5.04)

19.8.05 During the Seventh Five Year Plan, Doordarshan proposes to set up, in each State capital, a Programme Production Centre and to link the Centre to the transmitters in the State through microwave circuits or satellites. While implementing this scheme, the highest priority may be accorded to setting up such Centres and linking regional broadcasts from each State capital with those areas in the State which suffer from the maximum handicap in understanding Hindi and English broadcasts.

(Paras 19.6.04 & 19.6.05)

19.8.06 (a) Every Programme Production Centre should produce sufficient software in the language of the region so as to occupy all the time except that which may be reasonably required for English and Hindi broadcasts. Software development should give special attention to propagation in regional languages of ideas of national integrity and unity.

(b) Early arrangements may be made for the translation of national news boradcasts into regional languages or for the dubbing of such news in regional languages, as may be appropriate, and for simultaneous translation/dubbing and transmission.

(Para 19.6.07)

19.8.07 Earmarking of a particular time period for the national programme in English or Hindi should not be uniformly rigid. It should be left to each Station/Kendra to take into account the prime times for the urban and the rural areas falling within its broadcasting range and to decide which programmes should be transmitted and at what time.

(Para 19.6.10)

19.8.08 It has been proposed that during the Seventh Five Year Plan mobile field units should transmit to broadcasting stations the material required for general broadcasts. This mode of coverage should be extended to news of interest to rural viewers including news on rural development.

(Para 19.6.11)

19.8.09 The existing restrictions on the broadcasts to be made over the All India Radio and the authority given to the Station Directors to ensure that a proposed broadcast does not contain prohibited items are essential in the larger national interest and should therefore continue.

(Para 19.7.02)

19.8.10 The Inter-Governmental Council recommended to be established under Article 263, may consider whether any relaxation of the existing Ground Rules for political use of the broadcasting system should be allowed, and, if so, under what conditions.

(Para 19.7.03)

19.8.11 If a State Government has serious complaints about the use of the media, it can approach the Inter-Governmental Council proposed in Chapter IX.

(Para 19.7.08)

19.8.12 (a) A Programme Advisory Committee is attached to each All India Radio Station or a Doordarshan Kendra which originates programmes for a duration of not less than five and a half hours every day. A non-political competent non-official may be made Chairman and the Director in charge of the Station or Kendra may be made Deputy Chairman of such a Committee.

(b) All broadcasting stations should have their own Programme Advisory Committees.

(c) A specific rule may be introduced that the State Government concerned should be consulted in the selection of non-official members and Chairman of the Programme Advisory Committees in the State.

(Paras 19.7.04 to 19.7.09)

ANNEXURE XIX.1

Proposals of Ministry of Information and Broadcasting for Inter-Linking of AIR Stations through INSAT

The INSAT system is being used for re-broadcast of Radio programmes sent via the uplinks from Delhi, Bombay, Calcutta and Madras by the other Radio Stations in the network. This has resulted in a substantial improvement in the quality of the relayed programmes in comparison to the traditional mode of programme re-distribution and relay like picking up from short wave transmissions and Department of Telecommunication's Physical Long-naul Telephone Circuits.

2. Under the present system, programmes can be sent for being beamed via INSAT only through the uplinks provided at four Centres, namely, Delhi, Bombay, Calcutta and Madras. It is a felt need that All India Radio stations within a State should be able to carry programmes originating from the Radio Stations at the State capitals. Naturally these programmes will be in the principal lauguage of the State. With this end in view, AIR proposes to set up uplinking facilities at 12 other State capitals co-located with the respective Programmes Production Centres of AIR.

3. There is a growing emphasis on the coverage and transmission of field-based programmes. This is very relevant for programmes meant for farmers and on items of development and social relevance. To get this requirement it is necessary to acquire "Transportable Communication Terminals". These Terminals will be mobile and can be moved quickly from place to place. AIR proposes to acquire initially four such Terminals. This will enable recording of programmes in remote areas which can be directly beamed to the Satellite for reception and re-broadcast by all the transmitters in the network.

ANNEXURE XIX.2

MASS COMMUNICATIONS

(GROUND RULES)

Scheme of Broadcast over Akashvani and Doordarshan by Recognised Political Parties during Elections to the Lok Sabha/State Assemblies

1. Facilities of broadcast on Akashvani and Doordarshan may be given to political parties recognised as 'National' parties and 'State' parties by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968.

2. (a) In the case of elections to the Lok Sabha, 'National' and 'State' parties may be given facilities for broadcasting from the principal Akashvani Station and Doordarshan Kendra (where there is one) in every State in which general election to the Lok Sabha is to be held.

(b) Broadcast from the principal station in the state will be radiated from all other Akashvani Stations in the State.

(c) In addition, 'National' parties may be given facilities to have central broadcasts from All India Radio, Delhi and Delhi Doordarshan Kendra which will be relayed from all AIR Stations/Doordarshan Kendra.

(d) In the States where a general election to the Legislative Assembly of the State is held simultaneously with the general election to Lok Sabha, there may not be any need for giving separate time for braodcast/telecast for such Assembly Election.

3. In case a 'State' party recognised by the Election Commission in one or more States under the Election Symbols (Reservation and Allotment) Order 1968, fields a sizeable number of candidates for election in a State in which it is not so recognised, a gist of the election broadcast made by the said 'State' party in any one of the States will be covered in the regional news bulletins of the Radio Stations in that States.

4. Broadcast on Akashvani may be of 30 minutes duration (in two broadcasts of 15 minutes each). Telecast from Doordarshan may be of 15 minutes duration.

5. The dates of radio abrodcasts /telecasts will be predetermined in consultation with the Chief Election Commissioner or his representative, in the case of Central and National Broadcasts/ telecasts from Delhi, and the Chief Electoral Officer of the State, in the case of broadcasts/telecasts from the principal Akashvani Stations and Doordarshan Kendras.

6. The order in which and the dates on which the various recognised political parties may broadcast/telecast from Akashvani and Doordarshan will be determined by draw of matching lots by the authorities concerned as mentioned in item 5 above.

7. The time for radio broadcasts and telecasts at the National level will be as follows :—

Broadcasts	Between	9.15 p.m. and 9.45 p.m.
Telecasts	Between	9.20 p.m. and 9.35 p.m.

The time for the radio broadcasts and telecasts at the State level will be between 7.00 p.m. and 9.00 p.m.

8. The actual persons participating in the broadcasts may be chosen by the 'National' or the 'State' parties, as the case may be.

9. The broadcasts on Akashvani/Doordarshan will not permit :

(i) criticism of friendly countries;

(ii) attack on religions or communities;

(iii) anything obscene or defamatory;

(iv) incitement to violence;

(v) anything amounting to contempt of court;

(vi) aspersions against the integrity of the President and judiciary;

(vii) anything affecting the unity and integrity of the nation;

(viii) any criticism by name of any person;

(ix) exhibition of films on or after the date of issue of notification under section 30 of the R.P. Act, 1951 and the date(s) of poll projecting the image of cine actors and actresses who have joined politics;

(x) Sponsored programmes by political parties to telecast/broadcast during election period;

(xi) telecast/broadcast of programmes of Prime Minister/ Chief Ministers/Ministers having a direct relation or bearing on elections. However, telecast/broadcast of programmes on official activities of the Prime Minister/ Chief Ministers/Ministers will be permitted.

Note : 'The parties or their representatives shall submit the script of their broadcast in advance.'

10. The 'party' broadcasts will be in addition to any panel discussions or other programmes of political education organised in the course of the ordinary functioning of the boradcasting media.

11. The 'party' broadcasts will be made after the notification calling for elections is issued and will be concluded forty eight hours before the end of the first polling date.

12. No 'party' will be allotted time either on Radio or Doordarshan on Sundays.

ANNEXURE XIX. 3

Mass Communication

A.I.R. CODE

Broadcasts on All India Radio by individuals will not permit :

(1) Criticism of friendly countries;

(2) Attack on religion or communities;

(3) Anything obscene or defamatory;

(4) Incitement to violence or anything against maintenance of law and order;

(5) Anything amounting to contempt of Court;

(6) Aspersions against the integrity of the President, Governors, and Judiciary;

(7) Attack on a political party by name;

(8) Hostile criticism of any State or the Centre;

(9) Anything showing disrespect to the Constitution or advocating change in the Constitution by violence, but advocating changes in a constitutional way should not be debarred.

FOOT NOTE :

(i) If a Station Director finds that the above Code has not been respected in any particular or particulars by an intending broadcaster, he will draw the latter's attention to the passages objected to. If intending broadcaster refuses to accept the Station Director's suggestions and modify his script accordingly, the Station Director will be justified in refusing his or her broadcast.

(ii) Cases of unresolved differences of opinion between a Minister of a State Govt. and the Station Director about the interpretation of the code with respect to a talk to be broadcast by the former will be referred to the Minister of Information and Broadcasting, Govt. of India, who will decide finally whether or not any change in the text of the talk was necessary in order to avoid violation of the code.

Authoritative interpretation of the Code issued in February, 1968.

"This code applies to criticism in the nature of Personal tirade either or a friendly Government or of a political party or of the Central Government or any State Government. But it does not debar reference to and/or dispassionate discussion of policies pursued by any of them."

ANNEXURE XIX. 4

Rules Relating to the Constitution of the Programme Advisory Committees Attached to All India Radio Stations.

1. There shall be one Programme Advisory Committee attached to each All India Radio Station.

Composition

The Committee will have a Chairman and official and non-official members as indicated below :—

A—Chairman

The Station Director of the Station.

B—Members (non-official)

The number of Non-official members shall ordinarily not exceed fifteen. The members shall be representative of Cultural, Linguistic and Social interests of the listening area which the Station covers. Members of State Legislature and Members of Parliament shall be eligible for membership in their personal capacity.

C-Ex-Official Members

(a) Director General, All India Radio or his representative.

(b) The Station Engineer of the AIR Station to which the Committee is attached.

(c) The Director of Information/Publicity of the State/Union Territory concerned.

(d) The News Editor/Asstt. News Editor of the AIR Station to which the Committee is attached.

Secretary

The Assistant Station Director of the AIR Station to which Committee is attached.

2. *Tenure*

The non-official members whose tenure will be two years will be nominated by the Minister of Information and Broadcasting.

3. The Committee will meet twice a year but in addition the Chairman may call a meeting at any time considered necessary.

4. The meetings of the Committee will be presided by the Chairman and in his absence by a nominee of the Directorate General, All India Radio.

5. The agenda for each item will be prepared by the Secretary of the Committee and submitted to the Chairman for approval. Before preparing the agenda, the Secretary will also invite suggestions from members. After approval by the Chairman, the agenda along with intimation of the date of meeting will be communicated to members at least 14 days in advance.

6. One third of the effective strength of the non-official membes of the Committee will form the quorum. If there is no quorum at any time, it will be treated as an informal meeting and such items of agenda as may be considered necessary will be informally discussed by members present.

7. The Committee will review the programme broadcast since the last meeting and discuss the programme plans for the ensuing period. The Committee will also make suggestions for the improvement of programmes and advise on such other matters concerning the planning and presentation of programmes of the Station as are referred to the Committee.

ANNEXURE XIX.4 (*concld*).

8. Questions relating to individual members of the staff or individual artists or other matters concerning personnel or of purely administrative nature will not be discussed by the Committee.

9. For attending meetings of the Committee, non-official members will be entitled to travelling allowance admissible under the normal rules.

10. The non-official members will, in addition to the travelling allowance admissible under the normal rules, be entitled to a fee of Rs. 65/- each per diem as consultation fee for attending meetings of the Committees.

Names of AIR Stations to which Programme Advisory Committees are attached.

Sl. No.	Name of Station	Sl. No.	Name of Station
1.	Agartala	10.	Calcutta
2.	Ahmedabad	11.	Coimbatore
3.	Auranganad	12.	Delhi
4.	Allahabad	13.	Dibrugarh
5.	Aizwal	14.	Dharwad
6.	Bangalore	15.	Gauhati
7.	Bombay	16.	Hyderabad
8.	Cuttack	17.	Indore
9.	Calicut	18.	Imphal
19.	Jaipur	40.	Simla
20.	Jullundur	41.	Tiruchirapally
21.	Jalgaon	42.	Trivandrum
22.	Jagdalpur	43.	Trichur
23.	Jeypore	44.	Vijayawada
24.	Kurseong	45.	Visakhapatnam
25.	Lucknow	46.	Ambikapur
26.	Madras	47.	Bhopal
27.	Mathura	48.	Bhuj
28.	Mangalore	49.	Chhatarpur
29.	Nagpur	50.	Gorakhpur
30.	Najibabad.	51.	Jammu
31.	Patna	52.	Kohima
32.	Pondicherry	53.	Leh
33.	Panaji	54.	Pune
34.	Rewa	55.	Port Blair
35.	Ratnagiri	56.	Rampur
36.	Ranchi	57.	Rajkot
37.	Rohtak	58.	Shillong
38.	Raipur	59.	Srinagar
39.	Silchar	60.	Udaipur.

ANNEXURE XIX. 5

Rules Relating to the Constitution of the Programme Advisory Committee Attached to Doordarshan/Upgraha Doordarshan Kendras

I. *General*

There shall be one Programme Advisory Committee attached to each Doordarshan Kendra, other than INSAT Kendras.

II. *Composition*

The Committee will have a Chairman and official and non-official members as given below :

(a) *Chairman* : Director of the Kendra concerned.

(b) *Members* : (i) *Non-Officials*:—The number of non-official members will be restricted to 15. These Members will be atleast one each from the following disciplines/interest groups.

(a) dance (b) folk art and culture (c) Women's and Children's welfare (d) youth welfare (e) Social Welfare (f) science (g) humour (h) film/theatre (i) sports (j) literature (k) scheduled caste/tribe (l) linguistic minorities (with reference to language of programme production by the Kendras.)

The members of the state legislature and Members of Parliament shall be eligible for Membership in their personal capacity.

(ii) *Ex-Officio Members* :

(a) Senior-most ASD/PEX of the Kendra will be Secretary to the Programme Advisory Committee.

(b) Engineering Head of the Doordarshan Kendra/ Upgraha Doordarshan Kendra to which the Committee is attached.

(c) The Director of Information/Publicity of the State/ Union Territory concerned.

III. *Procedure for nomination of Non-official Members* :

(i) The Director of the concerned Doordarshan Kendras will propose atleast 3 names of non-official members for each of the above disciplines/interest groups as mentioned in para II(b) above. The State Government concerned will also be consulted through its information & Publicity Wing to give a list of non-official members. In case no list is received within one month, it will be presumed that State Government have no views on this subject. The non-officials should be selected from within the coverage zone of the Kendra in the State in which it is located.

(ii) The recommendations of the officers in this regard will be forwarded by Directorate General, Doordarshan to the Ministry with clear recommendations in respect of upto 15 non-officials. Separate proposals should be sent in respect of each Kendra.

(iii) The non-official members will be nominated by the Ministry of Information & Broadcasting.

(iv) The Orders for the Constitution of the Committee will be issued by the Directorate General, Doordarshan.

IV. *Tenure* :

The nomination of non-official members on the Programme Advisory Committee will be valid for 2 years from the date of issue of the orders for the constitution of the Committee.

V. *Meeting* :

(i) The meeting of the Committee will be held atleast once in 6 months. However, the Chairman may call a meeting at any time, if considered necessary, in addition to this.

(ii) The meeting of the Committee will be presided over by the Chairman and in his absence, by a nominee of the Directorate General, Doordarshan.

(iii) One third of the effective strength of the non-official members of the Committee will form the quorum. If there is no quorum at any time, it will be treated as an informal meeting and such items of agenda as may be considered necessary will be informally discussed by the members present.

VI. *Functions of the Committee* :

(i) The agenda for each item will be prepared by the Secretary of the Committee. Secretary will also invite suggestions from members before preparing the agenda. Any member wishing to raise a point should intimate to the Secretary 3 weeks in advance of meeting. The agenda will be approved by the Chairman and will be circulated atleast 15 days in advance.

(ii) The Committee will revew the programmes broadcast since the last meeting and discuss the programme plans for the ensuing period. The Committee will also make suggestions for the improvement of programmes and advise on such matters concerning the planning and presentation of the programmes of the Kendra to which it is attached.

(iii) No question relating to individual members of the staff or individual staff artists or other matters concerning personnel or purely administrative matters shall form a part of the agenda.

VII. *Travelling Allowance/Dearness Allowance/Fee* :

(i) Non-official members will be entitled to Travelling Allowance admissible under normal rules.

(ii) The non-official members, in addition to the Travelling Allowance admissible under the normal rules, will be entitled to a fee of Rs. 65/- each per diem as consultation fee for agenda meeting of the Committee.

VIII. Directorate General, Doordarshan shall ensure that the meetings of the Programme Advisory Committees are held in time. Report to this effect should be included in annual report of Doordarsan.

CHAPTER XX

MISCELLANEOUS MATTERS—

1. LANGUAGE
2. UNION TERRITORIES
3. HIGH COURT JUDGES

CONTENTS

LANGUAGE

LIST OF ANNEXURES

UNION TERRITORIES

HIGH COURT JUDGES

CHAPTER XX

MISCELLANEOUS MATTERS

LANGUAGE

Introduction

20.1.01 An important issue which has given rise to considerable controversy and bitterness between the Union and some States is the question of language.

20.1.02 Language can be a powerful unifying as well as a divisive force depending on how it is handled. After an intensive debate in the Constituent Assembly, a compromise formula was arrived at and the present Part XVII (Official Language) of the Constitution was adopted. Being a compromise draft it did not, by its very nature, fully satisfy those who demanded Hindi to be the only official language and others who were opposed to it. Part XVII represented a delicate balance which needed to be maintained with care if national integrity was to be preserved. But some of the over-zealous proponents of the rival schools tried to tamper with the balance no sooner than it was adopted. This led to unfortunate consequences.

20.1.03 Friction in Union-State relations in the sphere of language arises out of an apprehension that imposition of the language of one section of the population on others who have different mother tongues, is but a precursor to economic and social domination. Service under the Government is one of the major avenues of prestigious employment. Any feeling that owing to adoption of the mother tongue of one section of the people as official language the chances of those citizens whose mother tongue is different and who are not equally proficient in that language, would be detrimentally affected gives rise to considerable resistance and scope for fissiparous forces to exploit the sentiment. It is noteworthy that when a foreign language like Persian or English, in which all sections of the people had near equal disadvantage, was the official language, this kind of apprehension was less. As one State Government has pointed out, as late as the first half of the nineteenth century under Maharaja Ranjit Singh, the official language of the Lahore Darbar was Persian and not Punjabi in Gurmukhi script and his domain was anything but a nation-state.

20.1.04 This apart, the use of only one particular language as official or State language and for education in bilingual or multi-lingual areas has also been a frequent sources of conflict.

Constitutional Provisions Regarding Hindi

20.1.05 Part XVII of the Constitution deals with 'Official Language'. Chapter I of this Part deals with 'Language of the Union'. In Article 343 it is declared that the official language of the Union shall be Hindi in Devenagari Script.

20.1.06 Article 343 of the Constitution, *inter alia*, provides for the continued use of English for all official purposes of the Union for a period of fifteen years from the commencement of the Constitution. Clause (3) of Article 343 further empowers Parliament to provide for the use of the English language for any specified purposes even after the expiry of this period of fifteen years.

20.1.07 Article 351 of the Constitution casts a duty on the Union "to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages".

Historical Background

20.1.08 Towards the end of the period of fifteen years indicated in Article 343, the Official Language Act, 1963 was enacted by Parliament which provided for the continued use of English in addition to Hindi. An assurance was given at that time by Pandit Jawaharlal Nehru that English would continue as an alternative language for as long as the people required it. The decision in this regard was left not to the Hindi-knowing people but to the non-Hindi knowing people.

20.1.09 Subsequently, a violent anti-Hindi agitation erupted in some areas when attempts were made to accelerate the process of introducing Hindi to the exclusion of English. The Official Language Act, 1963 was amended in 1967, to give statutory recognition to the assurance held out in 1963. The Official Language (Amendment) Act, 1968 which became effective from January 8, 1968 provides that "Notwithstanding the expiration of the period of fifteen years from the commencement of the Constitution..... the English language shall be used for purposes of communication between the Union and a State which has not adopted Hindi as its Official Language", and that this position "shall remain in force until resolutions for the discontinuance of the use of the English language for the purposes mentioned therein have been passed by the Legislatures of all the States which have not adopted Hindi as their official language and until after considering the resolutions aforesaid, a resolution for such discontinuance has been passed by each House of Parliament". It may be noted that no timelimit was laid down for the use of English as an alternate official language.

Criticism

20.1.10 One State Government has stated that India is a country of multi-linguism and one language of a region even if it consists of two or more States cannot and should not be given dominance over other

languages of the country. It has observed that though English has also been permitted to be used statutorily under the Official Language Act, for certain purposes specified in that Act, the Constitution does not recognise English as the Official Language, nor does English find a place in the Eighth Schedule to the Constitution and that all the Languages in the Eighth Schedule to the Constitution should be declared the official languages (They have also stated that till then the assurance of Nehru that English shall be continued as the official language so long as the non-Hindi speaking people did not desire a change, should be given a constitutional guarantee and for this purpose a suitable provision should be incorporated in the Constitution itself by means of an amendment. Another State Government has expressed apprehension about zealous Hindi-Hindu- Hind chauvinists, who want to impose their domination over the whole country, riding rough-shod over the urges and aspirations of other sections of the nation.

20.1.11 The Eighth Schedule to the Constitution enumerates fifteen Indian languages, including Hindi. It does not include English. Article 344(1) envisages that the Commission to be set up (at the expiration of five years from the commencement of the Constitution and thereafter at the expiration of ten years from such commencement) shall consists of a Chairman and 'such other members representing the different languages specified in the Eighth Schedule as the President may appoint'. Again, Article 351 dealing with the directive for development of the Hindi language contemplates enrichment of Hindi by assimilating the forms, style and expressions used in the languages specified in the Eighth Schedule. If this were all, mere enumeration in the Eighth Schedule would not be of any great significance. But its real import appears to have been psychological and to assure the regional languages their due place in the new India[1].

20.1.12 Recently, two States have adopted English as one of the State languages. This has lent support to the demand that English should be included in the Eighth Schedule.

20.1.13 The unique place which English occupies today in India is unquestionable. Most languages of India have over the years assimilated a large number of words and expressions from this language. The continued use of English as the associate Official Language of the Union does not turn on its inclusion in the Eighth Schedule.

20.1.14 We are of the view that, inasmuch as the Official Language Act has been amended in 1967 to give effect to the assurance held out in 1963 by Jawaharlal Nehru and the decision in regard to continuance of English is now left not to the legislatures of Hindi-speaking States but to the legislatures of other States which have not adopted Hindi as their official language, there is not need for this purpose to amend the Constituion.

20.1.15 We now consider the other demand that all the languages of the Eighth Schedule as also English should be declared the official languages of the Union. A moment's reflection would show that to have all the sixteen languages (including English) as the official languages of the Union is a manifestly untenable proposition.

Development of the Official Language

20.1.16 The command of Article 351 is that in the process of developing Hindi, it is neither desirable nor necessary to replace commonly understood terms by difficult Sanskritised words. Undoubtedly, Sanskrit is to be the source and the ultimate resort when there is no word expressing that idea in common usage either in Hindustani or in the other langauages of India. But the purpose behind this Article is clear, that for Hindi to become an effective "medium of expression for all the elements of the composite culture of India", it should liberally take from all the scheduled languages of the country as well as Hindustani.

20.1.17 The expression 'Hindustani' has not been defined in the Constitution or in the General Clauses Act. But in the popular sense it means the language spoken by a very large majority of the people, particularly in the North. Interestingly, this simple and popular language, also advocated by Mahatma Gandhi and experimented upon in the Azad Hind Government by Netaji Subhas Chandra Bose, is quite rich in its vocabulary because it has assimilated words from other Indian languages as well as foreign languages like English, French, Portuguese, Persian and Arabic, after making necessary adaptations. Hindustani is essentially a mixed language and was not born in colleges or Akademies. It was the common man in the bazaar that made the greatest contribution to the development of Hindustani. Its special characteristic is that it now has a wealth of expressions and terms, which through long usage have become part of most of the languages spoken in different areas of this vast country.

20.1.18 The development of the Official Language as envisaged in Article 351, would be best served by realising that it has to be the language of the common man and not of an elitist coterie. It would be against the mandate of the Constitution if in the process of developing the Official Language the forms, styles and expressions of the various regional languages of India, including English, which have become assimilated in Hindustani are sought to be discarded. Indeed such a misguided attempt may only retard the growth of a common language. We are of the view that growth of the Official Language can best be fostered by following the command of Article 351 both in letter and in spirit.

Employment Under Government

20.1.19 As observed earlier, service under the Union and State Governments is an important avenue for employment for the educated classes in India. Often, considerable prestige is attached to it. Further, possible domination of the services by one language group is seen as a prelude to economic or political domination. The apprehension cannot be removed unless convincing measures are taken to ensure that language is not used as a factor to create difficulties for persons belonging to other language groups either in recruitment or subsequent career in services. The Union and the State Governments have th right to demand that the person selected for employment under it should *later* acquire adequate

(1) *See* Austin G.—The Indian Constitution-Cornerstone of a Nation, Page 297-298.

knowledge of a language which is necessary for him to discharge his duties satisfactorily. A person selected for a job usually acquires requisite knowledge of the language in the course of his work. In this he can be assisted by imparting suitable instruction and in service training. Even now, officers of the All India Services, allotted to a State where the local language is not their mother tongue, are enabled to acquire adequate knowledge of that language and are expected to pass different tests in the same. This arrangement, coming from the pre-Independence period, is a very constructive approach to the entire problem. Much of the apprehension regarding economic or political domination prevailing in the non-Hindi speaking States would be removed if this constructive approach is followed in regard to all government employment. It is significant that Article 344(3) requires that the Commission constituted under Clause (1) shall in making their recommendations have due regard to the "interests of persons belonging to the non-Hindi speaking areas in regard to the public services".

Use of Local Language

20.1.20 The work of the Government, which involves or affects the local people, obviously must be carried on in the local language. This is even more important in a welfare State. It is necessary that all the forms, applications, letters, bills, notices, etc, are available in the local language as well as the official language. This is of particular relevance to the various departments of the Union Government as often this important aspect is lost sight of in a bid to bring about a mindless uniformity. It is equally relevant in the case of State Governments also. In many of the States sizeable linguistic minorities are concentrated in certain areas. Unfortunately, overzealous action like painting road signs or issuing public notices only in Hindi or in State language, issuing municipal bills (even in the national capital) only in Hindi and retaliatory action in local language in some State capitals, increased bitterness.

Three Language Formula

20.1.21 The States Reorganisation Commission has *inter alia* recommended that the Government of India should, in consultation with State Governments, lay down a clear policy in regard to instructions in mother tongue at the secondary stage. The All India Council for Secondary Education recommended the adoption of a 'three-language formula' in September, 1956. This formula was also endorsed by the Chief Ministers' Conference 1961 in a simplified form. The National Policy on Education 1968 also laid down that the 'three language formula' should be vigorously implemented. The National Policy on Education 1986 has also laid stress on the implementation of the same. Unfortunately, the 'three-language formula' has been observed more in breach. Some States are following what is virtually a two-language formula. One State is imposing what is virtually a four-language formula on linguistic minorities. We are of the view that effective steps should be taken to implement the 'three-language formula' in its true spirit uniformly in all the States in the interest of the unity and integrity of the country.

Linguistic Minorities

20.1.22 The States Reorganisation Commission had foreseen that none of the States would be totally unilingual and recognised the need of according to the linguistic minorities, sufficient opportunity for development so that they may not suffer from a sense of neglect or discrimination, as also the need to evolve an agency for enforcing the safeguards suggested by them. As a result of the recommendations of the States Reorganisation Commission, certain amendments were made in the Constitution and Articles 350-A and 350-B were incorporated. Article 350-B provides that there shall be a Special Officer for linguistic minorities to be appointed by the President. It is the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President. It also provides that the President shall cause all such reports to be laid before each House of Parliament and sent to the Governments of the States concerned. The first Special Officer (Commissioner) assumed charge in July, 1957.[2]

20.1.23 A Code of Conduct to safeguard the interests of the linguistic minorities was also evolved for giving necessary guidance to the States. A memorandom was circulated by the Ministry of Home Affairs in 1956. It was laid before both Houses of Parliament and commended to the State Governments for implementation. We have been informed by the Union Government that, on the basis of the Constitutional safeguards as well as the other safeguards agreed to at the national level for the linguistic minorities, detailed formula for practical implementation of the safeguards were evolved. A copy of the same is placed at Annexure XX. I.

20.1.24 We note with concern that the post of the Commissioner for Linguistic Minorities has been lying vacant since March, 1978 and the Office of the Commissioner for Linguistic Minorities has suffered neglect in recent years. So far twenty-six reports have been submitted. These reports have not been discussed in Parliament and have received scanty attention from Government. This needs to be rectified.

20.1.25 The agreement at a Chief Ministers' conference that, wherever there are a certain number of students[3] having a common mother tongue in a school, a teacher of that language should be provided, is not being complied with in many places on grounds of non-availability of teachers and financial stringency.

---

2. In pursuance of the provision of Article 350-B of the the Constitution, the Special Officer for Linguistic Minorities was appointed on July 30, 1957. The special Officer was designated as the Commissioner for Linguistic Minorities in India (CLM).

3. The Twenty-Third Report by the Deputy Commissioner for Linguistic Minorities in India for the period July 1982 to June 1982.

Primary Level

".....provided there are not less than 40 pupils speaking that language in a school or 10 such pupils in a classs'.

Secondary Level.

".....a minimum strength of 60 pupils in the last four classes and 15 puplils in each class will be necessary provided that for the first four years after the commencement of provision of the facilities, a strength of 15 in each class will be sufficient".

The Union Government should consider providing financial assistance and/or maintaining a pool of language teachers to alleviate these difficulties. The Finance Commission should, while recommending fiscal assistance, keep this responsibility of the States in view.

Need for Observing Forbearance and Caution

20.1.26 Politicisation of language has often tended to threaten the unity and integrity of the country. One of the most unfortunate results of the re-organisation of States has been that language has come to be regarded, informally (but never formally), as the basis for the formation of a State. Language chauvinists have carried this to such an extreme as to charge, those dealing with the problems of the people in the local language, with treason. Could there be a sadder commentary than this on the current state of affairs ? Various disruptive forces in the country have exploited the language sentiment to further their own cause. The language issue, be it in connection with the extension of the use of the Official Language or in relation to employment in services under the Union and State Governments or in the realm of medium of instruction, requires careful and tactful handling and a constant effort for consensus. We are of the view that there is need for creating appropriate forum at various levels for not only defusing any potentially explosive situation, but also for evolving a positive approach. The Inter-Governmental Council and the Zonal Councils recommended by us, can play a very useful role in this connection.

20.1.27 Experience of the past thirty-seven years has more than amply demonstrated that misplaced zeal to impose the use of Hindi or a particular State language as a medium of instruction on those whose mother tongue is different and to treat the latter not as the first but only a third or even fourth language has invariably proved to be counter-productive. This only shows that, in the area of language, there is need to cultivate forebearance and caution. The safeguard provided for linguistic minorities under Article 347 needs also to be more purposefully implemented.

20.1.28 Unless sorted out in the near future, the language problem may become very explosive in a few years' time. If over-zealous action of some officials to force Hindi, especially the so-called "shudh" Hindi, on the non-Hindi, speaking people without their consent (in contravention of the promise given by successive Prime Ministers), is not resolutely curbed and steps are not taken to implement effectively the directive in Article 351 of the Constitution, serious divisive repercussions are likely to occur. This wise directive is today followed more by the market and private media like films than in official media and it is really this which is promoting Hindi in the country today. On the other hand, tactless action by some enthusiasts has tended to create an unhealthy reaction resulting, in fact, as a curb on the natural spread which Hindi was otherwise already having.

20.1.29 There is a strong case for renaming the "Committee of Parliament on Official Language" and the "Department of Official Language" of the Home Ministry, and the "Directorate General of Hindi" of the Ministry of Human Resource Development as "Committee of Parliament on Official and Scheduled Languages", "Department of Official and Scheduled Languages" and "Directorate General of Three-Language Programme", respectively, with a clear mandate to take measures which would promote enrichment of all these languages. It will be also expedient if the Heads of the above-mentioned bodies are selected, as far as practicable, from people whose mother tongue is not Hindi. This objective would be considerably helped if some popular books of high quality in different scheduled languages are printed in Devanagari (and/or Roman) scripts with the original text on one page and its translation in Hindi (and/or English) on the page facing it. The grammar of the Official Language may be simplified, e.g. having only one gender as in some of the scheduled languages.

20.1.30 The suspicion and resentment that exists in regions where "Shudh" Hindi is not spoken, needs to be allayed tactfully and imaginatively in the interest of unity and integrity of the country. It may be expedient to apply the name "Rashtrabhasha" only to this simpler, easier, mixed Hindi, with potential to develop in to a truly common langauge of the masses as a conciliatory gesture to those whose mother tongue is not Hindi and who have apprehensions about the so-called "pure Hindi" giving special advantage to the elites of only one part of the country.

Recommendations

20.1.31 The command of Article 351 is that, in the process of developing Hindi, it is neither desirable nor necessary to replace commonly understood terms by difficult Sanskritised words. The growth of the Official Language can best be fostered by following the command of Article 351 both in letter and in spirit. It would be against the mandate of the Constitution if, in the process of developing the Official Language, the forms, styles and expressions of the various regional languages of India, including English, which have become assimilated in Hindustani are sought to be discarded.

(Paras 20.1.16, 20.1.17 and 20.1.18)

20.1.32 Service under the Union and State Governments is an important avenue for employment for the educated classes in India. Proficiency in a particular language need not be insisted upon at the time of recruitment to ensure that language is not used as a factor to create difficulties in recruitment or subsequent career in services. A person selected for a job usually acquires requisite knowledge of the language in the course of his work. In this, he can be assisted by imparting suitable instruction and inservice training.

(Para 20.1.19)

20.1.33 The work of the Government, both Union and States, which involves or affects the local people must be carried on in the local language. This is even more important in a welfare State. It is necessary that all forms, applications, letters, bills, notices, etc. are available in the local language as well as the official language. This is of equal relevance to State Governments which have sizeable linguistic minorities concentrated in certain areas.

(Para 20.1.20)

20.1.34 Effective steps should be taken to implement the 'three language formula' in its true spirit uniformly in all States in the interests of unity and integrity of the country.

(Para 20.1.21)

20.1.35 The code of conduct evolved to safeguard the interests of linguistic minorities must be strictly implemented. It is a matter of concern that the post of the Commissioner for Linguistic Minorities has been allowed to remain vacant for a long time. This situation needs to be rectified.

(Paras 20.1.23 and 20.1.24)

20.1.36 The agreement at a Chief Ministers' conference that, wherever there are a certain number of students having a common mother tongue in a school, a teacher of that language should be provided, is not being complied with in many places on grounds of non-availability of teachers and financial stringency. The Union Government should consider providing financial assistance and/or maintaining a pool of language teachers to alleviate these difficulties. The Finance Commission should, while recommending fiscal assistance, keep this responsibility of the States in view.

(Para 20.1.25)

20.1.37 Politicisation of language has often tended to threaten the unity and integrity of the country. There is need for creating appropriate forum at various levels not only to defuse any potentially explosive situation but also for evolving a positive approach. The Inter-Governmental Council and the Zonal Councils can play a very useful role in this connection.

(Para 20.1.26)

20.1.38 (i) There is a strong case for renaming the "Committee of Parliament on Official Language" and the "Department of Official Language" of the Home Ministry, and the "Directorate General of Hindi" of the Ministry of Human Resource Development as "Committee of Parliament on Official and Scheduled Languages", "Department of Official and Scheduled Languages" and "Directorate General of Three-Language Programme", respectively, with a clear mandate to take measures which would promote enrichment of all these languages.

(ii) The objective of enrichment of all the languages would be considerably helped if some popular books of high quality in different scheduled languages are printed in Devanagari (and/or Roman) scripts with the original text on one page and its translation in Hindi (and/or English) on the page facing it.

(Para 20.1.29)

ANNEXURE XX-1.

DETAILED SCHEME OF SAFEGUARDS

On the basis of the Constitutional safeguards as well as the other safeguards agreed to at the national level for the linguistic monorities, detailed formulae for practical implementation of the safeguards are indicated below subject-wise.

I. EDUCATION

(i) Provision of teaching at primary stage through the mother-tongue by appointing at least one teacher provided there are not less than 40 pupils speaking in that language in a school or 10 such pupils in a class.

(ii) The modern Indian Languages mentioned in the Eighth Schedule of the Constitution, as well as English, should be used as media of instruction at the secondary stage. Other languages may also be used in the hill districts of Assam and the district of Darjeeling in West Bengal. For the purpose of providing instruction at the secondary stage in mother-tongue of linguistic minorities, a minimum strength of 60 pupils in the last four classes and 15 pupils in each class will be necessary, provided that for the first four years a strength of 15 in each class will be sufficient.

(iii) Non-diminuation of pupil strength and school facilities including teachers for linguistic minorities as it existed on 1-11-56 (for Telugu pupils in Tamil Nadu and Tamil pupils in Andhra Pradesh—1-10-53) without specific sanction of the concerned Government.

(iv) Advance registration of applications from pupils desirous to have instruction through the minor languages for a period of three months ending a fortnight, before the commencement of school year.

(v) To make inter-school adjustment so that no applicant is refused facility of instruction through a minority language on the ground that the number of such applicants is not sufficient for opening a new section/class.

(vi) The Central Government should prepare model text-books both for the primary and secondary stages and the State Governments should undertake publication of these text-books instead of leaving it to private enterprises.

II. USE OF MINORITY LANGUAGES FOR OFFICIAL PURPOSE

(i) At district level and below, like municipality, Tehsil etc. where a lingustic minority constitutes 15—20 per cent of population, important Government notices, rules and other publications are to be published in minority languages also.

(ii) District lelvel—where 60 per cent of the population in a district use a language other than the official, that language may be recognised as an additional official language for that district—Recognition for this purpose is to be given ordinarily to the major language mentioned in the Eighth Schedule.

(iii) At the State headquarters, a Translation Bureau may be set up where arrangements may be made for translation of the substance of important laws, rules, regulations etc. into minority languages for publication.

(iv) In correspondence with the public, petitions and representations received in other languages are to be replied, wherever possible, in the languages of the petition/representation.

III. RECRUITMENT TO STATE SERVICES

Language-knowledge of State Official language should not be a pre-requisite for recruitment to State services and option of using English or Hindi as a medium of examination should be allowed. A test of proficiency in the State Official Language should be held during the period of probation.

IV. MACHINERY FOR IMPLEMENTATION OF SAFEGUARDS

(i) State Level—The responsibility for the coordination of work relating to national integration (including safeguards for linguistic minorities) should be assumed by the Chief Minister who may be assisted in this task by the Chief Secretary. In addition, there should be a special officer in each State who will work under the direction of the Chief Secretary, and this officer should prepare a note periodically reviewing (1) the progress of implementation of the safeguards for linguistic minorities; (2) pending correspondence if any, on linguistic minorities with the Government of India, the Commissioner for Linguistic Minorities and other State Governments; (3) visits, if any, of the Linguistic Minorities Commissioner; and (4) other matters relating to national intergation.

(ii) District Level—At the district level, the responsibility for coordination of work relating to safeguards for linguistic minorities and national integration should vest in the district officer.

UNION TERRITORIES

Introduction

20.2.01 During the post-Independence period, a number of Union Territories (UTs) evolved into self-governing units. In each of them, the Parliamentary system of government was introduced, on the analogy of the one obtaining in the States and in the Union. Each of them acquired a Legislative Assembly and, to aid and advise the Administrator of the UT, a Council of Ministers responsible to the Assembly. However, the responsibility for the administration of a Union territory has continued to rest with the Union Government and Parliament. Except as otherwise provided by parliament by law, the president of India administers a UT, acting to such extent as he thinks fit, through an Administrator appointed by him. (Art. 239).

20.2.02 All the UTs with Legislature, except pondicherry were eventually declared as States, thereby terminating their status as territories for the administration of which the Union Government and parliament had undivided responsibility. The historical developments in this connection are briefly described below.

Historical Developments

20.2.03 At the time the Constitution came into force, the Centrally administered areas were:—

(i) Andaman & Nicobar Islands, Coorg, North-East Frontier Tract and Naga Tribal Area. These areas were preponderantly tribal and had to be administered according to special laws.

(ii) Ajmer which had originally proved to be very difficult of administration by any province.

(iii) The Capital region, viz. Delhi which could not be placed under the administrative control of a State Government.

(iv) Bhopal, Bilaspur, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh, the erstwhile princely States or groups of such States which, for strategic or other reasons, were not merged with adjoining provinces.

20.2.04 The areas mentioned at (ii), (iii) & (iv) above as also Coorg were categorised as Part C States in the Constitution. Later, on the recommendations of the States Reorganisation Commission (1955), the categorisation of States into Parts A, B, and C was removed with effect from November 1, 1956 and some of the then existing Part C States were merged with the adjoining States. The remaining Part C States (viz. Delhi, Himachal Pradesh, Manipur and Tripura), the newly formed State of Laccadiv, Minicoy & Amindivi Islands, and the territory of Andaman & Nicobar Islands, were termed as Union territories in the Constitution.

20.2.05 After their liberation in 1961, the territories comprised in Goa, Daman and Diu were integrated with the Union by the Constitution (Tenth Amendment) Act as a Union territory. An assurance was given at that time by the Union Government that Goa would be kept a separate entity in direct connection with the Union Government and that its special features would be maintained till the people of Goa themselves desired a change.

20.2.06 In 1962, Pondicherry also was *de jure* made a part of the Indian Union and constituted as a Union territory. The Treaty between India and France for the cession of the French possessions of Pondicherry, Karikal Mahe and Yanam provided *inter alia* that any constitutional change in the special administrative status of the territory which was in force prior to 1st November 1954 (the date on which the *de facto* possession of the territory was transferred to the Indian Government), would be made after ascertaining the wishes of the people of the territory.

20.2.07 In 1956, the Territorial Councils Act was enacted providing for a measure of local self-government in the Union territories of Himachal Pradesh, Manipur and Tripura. Territorial Councils were created with powers over local affairs and powers to levy certain taxes.

20.2.08 In 1963, the above arrangement was radically changed. Legislative Assemblies and Councils of Ministers were introduced in Himachal Pradesh, Manipur, Tripura, Goa, Daman & Diu, and Pondicherry. For that purpose, Article 239A was incorporated in the Constitution and the Government of Union Territories Act, 1963 was enacted under that Article. This was a historic step. It meant a reversal of the earlier policy of the Union Government which was based on the recommendations of the States Reorganisation Commission that these UTs would not be able to subsist as separate administrative units without excessive dependence on the Union and that, with the exception of Delhi and the Andaman and Nicobar Islands, the remaining UTs would eventually have to be merged with the adjoining States. The new policy also recognised the fact that equipping these UTs with Legislative Assemblies and Councils of Ministers would arouse hopes and ultimately lead to demands for full statehood, even though some of them would not be financially viable.

20.2.09 Himachal Pradesh became a State on January 25, 1971, and Manipur and Tripura on January 21, 1972. On January 21, 1972, the Mizo district of Assam and the North-East Frontier Agency were formed as the Union Territories of Mizoram and Arunachal Pradesh, respectively. On February 20, 1987, the two UTs became States. On May 30, 1987, Goa became a State, with Daman & Diu continuing as a Union Territory.

20.2.10 It is necessary to note that in the UTs, which do not have Legislatures, institutional arrangements have been progressively introduced for associating public opinion with their administrations. Delhi has an Executive Council responsible to a larger Metropolitan Council. The remaining UTs have each an Advisory Committee associated with the Union Home Minister and another Advisory Committee associated with the Administrator. In Dadra and Nagar Haveli, the Vanchayat, an indirectly elected body, functions, as the Advisory Committee associated with the Administrator.

Views of Union Territory Administrations

20.2.11 Among the Union Territories, those of Goa, Daman & Diu (prior to becoming a State), Pondicherry and Andaman and Nicobar Islands presented their memoranda to us. The Goa Administration highlighted the legislative, administrative and financial limitations on its working and suggested that it should be made a full-fledged State. The Pondicherry Administration observed that, in regard to such matters as are decided by the Administrator on the aid and advice of the Council of Ministers, the powers of the latter would *prima facie* appear to be the same as those exercised by the Council of Ministers in a full-fledged State, particularly with regard to State List subjects. However, in reality, the Union Territory Administration has only limited financial and administrative powers, particularly in matters like purchases, contracts, etc. The Andaman and Nicobar Islands Administraton did not mention any specific difficulty faced by it.

20.2.12 As already mentioned in para 20.2.09 above, the demand of the Goa Administration has been met with the grant of Statehood to it. However, the difficulties that it faced as a Union territory and those faced by the Pondicherry Administration seem to be worth examining and are summarised below.

20.2.13 As in every State, a UT Administration with Legislature has a Council of Ministers responsible to a Legislative Assembly to aid and advise the Lieutenant-Governor. However, unlike a State, it is subject to severe administrative and financial limitations, particularly on the developmental side.

20.2.14 Under the Rules of Business, the UT Administration has to obtain the prior approval of the Government of India before introducing any legislation relating to any subject in the Concurrent List or specified in the Second Proviso to Section 25 of the Government of Union Territories Act. In regard to the inclusion of various items in the annual budget, the approval of the concerned Ministries/ Departments of the Government of India has to be obtained. Also, the prior clearance of Government of India is essential before any scheme costing more than Rs. 50 lakhs can be executed. The power to purchase various items are severely limited if the items are borne on the list of the Directorate General of Supplies & Disposal.

20.2.15 Thus, the Administration has been made dependant on the Union Government in many matters, which get settled only after protracted correspondence and long delays. If Statehood cannot be conferred, it is imperative that powers analogous to those of a State Government in all matters including legislative, financial and administrative matters should be delegated.

Views of Union Government

20.2.16 We have obtained the views of the Union Government on the above suggestions. The Union Government has observed that Union territories do not stand on the same constitutional footing as the States. The Union Government is responsible for the proper administration in Union territories. It has been constantly reviewing delegation of powers to their Administrations and has delegated increased powers to them from time to time. The Union Government does not agree that financial and administrative powers delegated to the UT Administrations are inadequate or that these have inhibited development.

Need for Maximum Delegation of Powers

20.2.17 We do not propose to deal with the question whether Pondicherry may be granted statehood. However, we cannot lose sight of the many similarities in the political and administrative arrangements in that UT with those in a full-fledged State. We consider it important that the programmes and aspirations of the people in the UT, as reflected by its Legislative Assembly and Council of Ministers, should be fully met, consistently however with its accountability to the Union Government and Parliament as also the constitutional responsibility of the latter for its proper administration. A suitable mechanism should be adopted by which the problems of the Administration can be resolved with the utmost expedition.

Proposed Standing Committee for Union Territories

20.2.18 We feel that there is considerable force in the plea that a UT Administration with Legislature should have larger powers in the legislative, financial and administrative fields to cut delays and help in development. In order that adequate powers are delegated as soon as the need for them arises and various pending matters are dealt with expeditiously, it seems essential that there should be a forum where the Lt. Governor and the Chief Minister of a Union territory Administration with Legislature can discuss these matters with the Union Home Minister and concerned Union Ministers.

20.2.19 We recommend that all matters which need to be sorted out between the Union Government and a Union Territory Administration may be discussed by a Standing Committee for the Union territory. The Committee may have the Union Home Minister as Chairman and the Lt. Governor and the Chief Minister of Union territory with Legislature as members. When a matter concerning a Union Ministry other than the Ministry of Home Affairs comes up before the Committee, the Union Minister concerned may be coopted.

20.2.20 In the Chapter on "Inter-Governmental Council—Article 263", we have recommended that the five Zonal Councils constituted under the States Re-organisation Act, 1956 should be constituted afresh under Article 263. The Union territory with Legislature will then continue to be a member of one of the Zonal Councils. The UT will also continue to be represented on the National Development Council which, we have recommended, should be re-named as the National Economic and Development Council. In these circumstances, the Standing Committee for the Union Territory may not deal with matters which can appropriately be discussed either in the Zonal Council or in the National Economic and Development Council.

Recommendations

20.2.21 All matters which need to be sorted out between the Union Government and a Union territory with Legislature may be discussed by a Standing Committee for the Union Territory. The Committee may have the Union Home Minister as Chairman and the Lt. Governor and the Chief Minister of the Union territory as members. When a matter concerning a Union Ministry other than the Ministry of Home Affairs comes up before the Committee, the Union Minister concerned may be co-opted.

(Para 20.2.19)

20.2.22 The Standing Committee for the Union Territory may not deal with matters which can appropriately be discussed either in the Zonal Council or in the National Economic and Development Council

(Para 20.2.20)

3. HIGH COURT JUDGES

Introduction

20.3.01 The Constitution envisages a democratic republic with two levels of responsible government, each deriving its demarcated powers from the Constitution itself. In such a two-tier system, the legislative, executive and judicial powers of each Government are limited and disputes as to excess or lack of jurisdiction are inevitable. In deference to the basic principle, that the dispute-resolving authority should be independent of the contestants, the Constitution entrusts, in the main, their adjudication to the judiciary. The *final* power to interpret the Constitution and nullify an action on the part of any of the three branches of the Union or State Governments, which transgresses the Constitutional limits of its jurisdiction, vests in the Supreme Court which stands at the apex of the judicial hierarchy.[1] The Constitution empowers the judiciary to decide issues between citizens *inter-se*, citizen and Government,[2] and between one Government and another. The Supreme Court is not only the final court of appeal in civil and criminal matters, but also a court of original jurisdiction to decide disputes between—(a) the Government of India and one or more States, (b) the Government of India and any State or States on one side and one or more States on the other; (c) two or more States. It also exercises extraordinary original jurisdiction to issue writs for enforcement of fundamental rights.

20.3.02 One of the major concerns of Constitution—makers was to insulate the selection and appointment of Judges, particularly of the higher courts, from political pressures and extraneous influence and thereby ensure that only persons of professional competence and integrity were chosen to fill these high judicial offices.

Constitutional Provisions

20.3.03 The Constitution and organisation of the High Courts is a Union subject (Entry 78, List I). Since the Forty-second Amendment, the 'administration of Justice' is a Concurrent subject (Entry 11A, List III) Judges of the High Courts are appointed by the President (in effect the Union Council of Ministers) after consultation with the Chief Justice of India, the Governor and in effect, the Chief Minister and the Chief Justice of the High Court (Article 217). Transfer of a Judge from one High Court to another is made by the President after consultation with the Chief Justice of India (Article 222). There is no Constitutional obligation to consult the State Government in the matter. However, as a matter of courtesy, the views of the Chief Ministers of the concerned States are often ascertained before effecting the transfer. Thus, problems relating to the appointments and transfers of High Court Judges fall within the area of Union-State administrative relations.

20.3.04 Our attention has been drawn by a State Government to the main problems in the area of appointment and transfer of Judges of High Courts. The Chief Minister conveyed his views to us in regard to these problems in the form of a brochure. A few State Governments and some retired High Court Judges have also communicated their views in this matter. We have also gathered or taken cognizance of relevant data from published literature or reports referring to authentic sources. Two issues stand out—*First*, there have been endemic delays in filling up vacancies of Judges in the High Courts and this is one of the major factors contributing to the accumulation of arrears of cases in these courts. The *second* is that transfer of Judges against their consent from one High Court to another has a demoralising effect on the higher judiciary, and compromises their capacity to administer justice without fear or favour.

20.3.05 While delays in the appointment of Judges continue, the arrears in the High Courts are piling up at an alarming rate. According to one report,[3] at the end of 1986, "there were 1,53,000 cases pending in the Supreme Court of which more than a fourth were for regular hearing mainly because the institution of new cases far exceeds the rate of disposals". Similarly, in the High Courts, the institutions are far out-stripping disposals. At the end of 1985, the combined total of arrears in the High Courts numbered 14 lakhs. This figure has gone up considerably since then.

20.3.06 At the end of 1986, in all the High Courts there were 62 vacancies consisting of 47 permanent and 15 Additional Judges. The problem is chronic. As on January 1, 1987 out of the full strength of 26 Supreme Court Judges, only 14 were in position. In the High Courts, out of a total strength of 440 sanctioned posts (409 permanent and 31 additional posts), as many as 57 posts consisting of 40 permanent and 17 Additional Judges were vacant. It was stated in the Lok Sabha that posts of 25 permanent and 65 Additional High Court Judges are to be created. If these figures are added to the existing vacancies, there would be a short-fall of 65 permanent and 82 Additional Judges in all the High Courts in the country.

20.3.07 These problems have been the subject of study and deliberation in various forums. The Law Commission of India dealt with these problems in its Fourteenth, Seventy-nineth and Eightieth Report. In its Seventyninth Report the Law Commission after an empirical survey observed :".....though the sanctioned Judge strength of the High Courts in the country during the year 1977 was 352, only 287 Judges on an average were in position.

1. Articles 13 and 32 expressly provide for judicial review.

2. Article 226 empowers the High Courts to issue writs for enforcement of any right conferred by part III and for any other purpose to any person or authority, including any Government.

3. "The Statement" dated June, 1, 1987—Delhi Edition.

Likewise, in the year 1976 even though the sanctioned strength was 351, only 292 judges were in position.....This disparity between the sanctioned strength, and the number of Judges in position was apparently due to the fact that vacancies in the posts were not filled in as soon as they occurred. It is our considered opinion that delay in filling in the vacancies is one of the major contributory factors responsible for the accumulation of arrears." Consistently with its earlier report, the Law Commission in its Eightieth Report (1979) recommended that the Chief Justice of the High Court should initiate action for filling an anticipated vacancy, at least 6 months before the date on which it is expected to occur, and that the State Government should complete the processing of the Chief Justice's recommendation within an outside limit of six months. It emphasises the need to avoid delay in subsequent stages also.

20.3.08 The Estimates Committees of Parliament also considered the question of delays in the appointment of Judges of the High Courts and noted that as on 1-1-1986 there were sixty vacancies and on an average it took one to two years to fill the vacancies. The Committee noted with regret "that in spite of the specific recommendations of the Law Commission made as early as 1979, the position had been allowed to worsen further in as much as the vacancies in Supreme Court/High Courts have not been filled up for as long as two to four years." In their Thirty-first Report (1985-86) to the Eighth Lok Sabha the Estimates Committee recommended that "the matter be considered at the appropriate highest level (viz., Chief Justice of India, Chief Justice of High Courts, Chief Ministers and Law Ministers) in order to simplify the procedural formalities. The procedure be so streamlined that the selection and the appointment of the Supreme Court/High Court Judges is synchronised with the actual occurrence of the vacancies" (Recommendation No. 7, para 4.12)."

20.3.09 We enquired from the Union Government as to how far they had accepted and implemented the recommendations in the Eightieth Report of the Law Commission for streamlining the procedure to eliminate delays in this matter. The Union Government has informed us : "The main reasons of the delay in filling up the posts of Judges in High Courts is the unusually long time taken by the Chief Ministers to send their recommendations (in consultation with the concerned Governors) to the Government of India on proposals received by them from the Chief Justice of the High Courts. While it is appreciated that the State Government has to make appropriate enquiry about the persons proposed for appointment as Judges and come to a conclusion regarding their suitability or otherwise, there would seem to be no good cause for inordinate delay in sending their views to the Government of India. In the case of a few States, it has happened that the State authorities have sought to "Kill" the proposals made by the Chief Justice by simply not sending their recommendations to the Government of India in spite of several reminders from Union Law Minister. This aspect of "Killing" the proposal has been adversely commented upon by the former Chief Justice of India who was of the opinion that such practice was "unconstitutional".

20.3.10 The Union Government has affirmed that in this matter, they have noted the recommendations in the Eightieth Report of the Law Commission. They have further stated that the Law Minister again reiterated (in November 1985) in his D.O. letter addressed to the Chief Ministers of States (with copies to the Chief Justices of the High Courts) that a proposal for filling a vacancy in the office of a Judge should be initiated and the recommendation forwarded to the Chief Minister by the Chief Justice six months in advance of the anticipated occurrence of the vacancy. The Chief Minister, in turn, should finalise his recommendation in consultation with the Governor within a month of the receipt of the Chief Justice's communication and send it to the Union Minister of Law and Justice. The Union Government has further observed that while Chief Justices do initiate a proposal usually in advance of the expected occurrence of a vacancy, the Chief Ministers take considerably longer time than one month to send their recommendations in consultation with the Governors. By another D.O. letter, the Law Minister has informed the Chief Ministers that the Government of India have decided that if the Chief Minister of a State does not give his views in consultation with the Governor on the proposal made by the Chief Justice within one month of its receipt it would be presumed that the Chief Minister and the Governor have no views to express and further action to process the proposal in accordance with Article 217(1) would be taken.

20.3.11 One State Government has, however, pointed out that the names sent by them, unanimously approved by the Chief Justice, the Governor and the Chief Minister, were not approved for over two years. Be that as it may, the Report of the Estimates Committee clearly shows that inordinate delays, sometimes extending to 4 years in filling vacancies of Judges have taken place. This is a matter of serious concern. Obviously, there have been delays not only at the State level, but also in some subsequent stages.

20.3.12 The Departmental instructions in the matter of appointment of Judges of High Courts conveyed to the States by the Government of India are in broad conformity with the recommendations in the Seventyninth and Eightieth Reports of the Law Commission. These instructions lay down a specific time-schedule within which the Constitutional functionaries having a consultative role in the appointment of High Court Judges, are required to complete their part of processing the proposal. To recapitulate briefly, the Chief Justice of the High Court has to initiate and forward his recommendation for filling an anticipated vacancy in that court, to the Chief Miniter at least six months before the date on which it is excepted to occur. The Chief Minister, in turn, has to finalise his recommendation in consultation with the Governor within a month of the receipt of Chief Justice's communication and send it to the Union Minister of Law and Justice. If the Chief Minister does not give his view in consultation with the Governor on the proposal made by the Chief Justice within one month of its receipt it would be presumed that the Chief Minister and the

Governor have no views to express and further action to process the proposal in accordance with Article 217 will be taken.

20.3.13 The inordinate delays that are taking place in the appointments of Judges, are demonstrative proof of the fact that these instructions issued by the Government of India and the time-schedule prescribed thereunder for completing the processing of a proposal initiated by the Chief Justice of the High Court, are being honoured more in breach rather than in observance. Thus, the problem narrows down into the issue as to how strict compliance with these instructions and adherence to the time-schedule prescribed thereunder, is to be ensured? The question further resolves itself into the query why these instructions are not being strictly obeyed or respected by the functionaries concerned? Clearly, the answer is that having no binding force, these instructions are being treated as more pious declarations to be observed or ignored at will. We are of the firm view that the only way of ensuring effective observance of these departmental instructions and the time-schedule specified thereunder, is to give them a binding force with the sanction of a Constitutional provision. The only appropriate manner in which this can be done is by inserting in Article 217, itself, a clause on these lines :

> **1A.** The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause (1) of the Article, and in order to ensure that vacancies in the posts of Judges in the High Courts are promptly filled in, these rules may prescribe a time-schedule within which the various functionaries having consultative role in the appointment of Judges under this Article, shall complete their part of the process.

Transfer of Judges

20.3.14 This takes us to the second issue relating to the transfer of Judges from one High Court to another. The Union Government has informed us that the recommendation of the Law Commission of having a convention according to which one-third Judges in each High Court should be from outside, has been accepted and this decision is to be implemented gradually either by making initial appointments from outside the State or by effecting transfers.

20.3.15 The Supreme Court has held that Article 222 cannot be construed to mean that for transfer of a Judge to another High Court, it is necessary to obtain his consent *as a matter of Constitutional obligation*. Even so, the Court significantly suggested :

> "By healthy convention normally the consent of the Judge concerned should be taken, not so much as a Constitutional necessity, but as a matter of courtesy.....where the Judge does not consent and the public interest compels, the power under Article 222 can be exercised."[4]

While holding that Article 222 postulates that the transfer of a Judge can only be made in public interest and after consultation with the Chief Justice of India, the Court enunciated "that the Chief Justice owes a corresponding duty both to the President and to the Judge who is proposed to be transferred, that he shall consider every relevant fact..... Indeed, it is his duty whenever necessary to elicit and ascertain further facts either directly from the Judge concerned or from other reliable sources. The executive cannot and ought not to establish rapport with the Judges which is the function and privilege of the Chief Justice."[4]

20.3.16 The judgement in Sankalchand[4] was affirmed by a larger Bench of the Supreme Court in *S. P. Gupta* v. *Union of India and others* (1982).[5] Notwithstanding the legal position that under Article 222 a Judge can be transferred without his consent, a very large section of the enlightened public holds the view that as a matter of salutary convention and propriety, no Judge should be transferred without his consent. It is pointed out that such a convention was strictly observed for the first 25 years of the adoption of the Constitution. Even the Government of India had agreed to abide by this principle, in practice. This is evident from the following assurance given in the Lok Sabha on April 30, 1963 by the Hon'ble Law Minister of India :

> ".....We had accepted it as a principle that so far as High Court Judges were concerned, they should not be transferred excepting by consent. This convention has worked without fail during the last twelve years and all transfers have been made not only with the consent of the transferee, but also in consultation with the Chief Justice of India."

We recommend that the observance of this healthy convention should continue.

20.3.17 Indeed, the Union Government has communicated that a Judge proposed to be transferred is informed by the Chief Justice of India to give his reaction to the proposal and also mention his personal difficulties, if any, in this regard. These are considered by the Chief Justice of India and intimated by him to the Government alongwith his own views on the proposal for transfer of the Judges.

We recommend that the advice given by the Chief Justice of India regarding a proposal to transfer a Judge, after taking into account the latter's reaction and the difficulties, if any, should, as a rule of prudence, be invariably accepted by the President and seldom departed from.

We further recommend that as a matter of healthy practice, the Chief Justice of India should, before formulating an opinion in his individual judgement as to the proposed transfer of a Judge from one High Court to another, take into confidence two senior Judges of the Supreme Court and ascertain their views.

4. Union of India *v.* Sankalchand AIR 1977 SC 2328 dt. 19-9-1977.

5. 1982 (2) SCR 365.

Recommendations

20.3.18 Article 217 may be amended by inserting in it a clause as under :

"**1A.** The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause (1) of the Article, and in order to ensure that vacancies in the posts of Judges in the High Courts are promptly filled in, these rules may prescribe a time-schedule within which the various functionaries having consultative role in the appointment of Judges under this Article, shall complete their part of the process."

(Para 20.3.13)

20.3.19 The healthy convention that as a principle High Court Judges are not transferred excepting with their consent should continue to be observed.

(Para 20.3.16)

20.3.20 Advice given by the Chief Justice of India regarding a proposal to transfer a Judge, after taking into account the latters reaction and the difficulties, if any, should, as a rule of prudence, be invariably accepted by the President and seldom departed from.

20.3.21 As a matter of healthy practice, the Chief Justice of India should before formulating an opinion in his individual judgement as to the proposed transfer of a Judge from one High Court to another, take into confidence two senior Judges of the Supreme Court and ascertain their views.

(Para 20.3.17)

CHAPTER XXI
GENERAL OBSERVATIONS

CONTENTS

CHAPTER XXI

GENERAL OBSERVATIONS

INTRODUCTION

21.1.01 In the preceding chapters we have examined in some detail the legislative, administrative and financial provisions of the Constitution, having a bearing on Union-State relations. We have also considered how they have performed in practice over the last thirty-seven years.

21.1.02 Adhering strictly to our Terms of Reference, we have confined the earlier Chapters of our Report essentially to those issues which have a *direct* impact on the working of the Union-State relations. But in the political system which is organically a whole, there are many peripheral matters which cast their shadow on Union-State relations. We will be failing in our duty if we do not take note even of the most important of them.

DECENTRALISATION

Importance of Decentralisation of Power

21.2.01 In India, because of the diversities in religion, language, caste, race, etc. there are a large number of groups, seeking to establish their identity and promote their sectional interests.

21.2.02 The issue of devolution of powers and responsibilities between the top two tiers of Government, Union and States, needs, therefore, to be considered in the context of the broader issue of decentralisation between these and other tiers of government on the one hand, and the functional agencies within each of these tiers, on the other. The interests and aspirations of most people are concentrated in the localities in which they live and carry on their avocations of life. Normally, they would be content to compete at the level of the local self-governing bodies, making way for persons interested in larger issues of regional or national significance, to opt for higher elective forums. Decentralisation of real power to these local institutions would thus help defuse the threat of centrifugal forces, increase popular involvement all along the line, broaden the base of our democratic polity, promote administrative efficiency and improve the health and stability of inter-governmental relations.

21.2.03 Unfortunately, there was not only inadequate territorial and functional decentralisation in India when the country became independent, but there has also been a pervasive trend towards greater centralisation of powers over the years, *inter alia*, due to the pressure of powerful socio-economic forces.

21.2.04 The Indian Constitution creates two tiers of Government, one at the level of the Union and the other at the level of the States. At the sub-State level, also, there are tiers which are the creatures of the States. These are : Zilla Parishad (or District) Panchayat Samiti (or Sub-Division in some States); and Panchayat (or Thana, Mandal or Block in some States). It is noteworthy that the Constitution casts a duty on the State to take steps to organise Village Panchayats and endow them with powers and authority to enable them to function as units of self-Government (Article 40). In this system, the District, in particular, holds a central position.

21.2.05 The importance of developing adequate sub-State level political institutions cannot be overemphasised. It is only by providing opportunity to the people that they can be trained to shoulder responsibilities in a system of self-government. In 1959, a major experiment in decentralisation of power was launched based upon the findings of the Balwant Rai Mehta Committee on Panchayati Raj. "The people are not merely to be consulted but effective power is to be entrusted to them", observed Jawaharlal Nehru while inaugurating Panchayati Raj in Rajasthan. For a variety of reasons, this bold experiment has not proved a success. These institutions have been allowed to stagnate. Elections to these bodies have not been regularly held and often they remain superseded for long periods.

21.2.06 While there is considerable reluctance to decentralise powers to the Districts, there has been even greater reluctance in most States to decentralise powers to the lower levels like Municipalities, Panchayat Samities and Panchayats, in spite of the explicit directive in Article 40 of the Constitution.

Inefficiency of undue centralisation

21.2.07 Since, for reasons explained elsewhere in this report, there is a general tendency towards greater centralisation of powers, there is special need in a country like India for a conscious and purposive effort to counter it all the time. There is considerable truth in the saying that undue centralisation leads to blood pressure at the Centre and anaemia at the periphery. The inevitable result is morbidity and inefficiency. Indeed, centralisation does not solve but aggrevates the problems of the people.

21.2.08 We have drawn attention in the Chapter on Economic and Social Planning to the need for decentralisation of the Planning process. The objectives of decentralised Planning cannot be achieved unless the Panchayati Raj and other local bodies are allowed full scope to play their role. We are of the view that for this purpose, it is necessary that elections are held regularly and adequate finances are devolved on these institutions.

70—325/87

21.2.09 To rectify this dysfunctioning of the local self-governing bodies it is necessary to ensure, by legal provisions analogous to those in Articles 172 and 174 of the Constitution, that elections to and sessions of Zilla Parishads and Municipal Corporations are held regularly and these institutions do not remain superseded for long periods. The power of enacting such a law vests under Entry 5, List II exclusively in the State Legislatures. Nevertheless, uniformity in these aspects of the law throughout the territory of India, is essential. This uniformity can be secured by adopting, in the following order of preference, any of the alternatives given below :—

(i) By laws with respect to this matter made by *all* the State Legislatures in accordance with a model Bill prepared on the basis of consensus at the forum of the Inter-State Council (Inter-Governmental Council, recommended by us to be established under Article 263).

(ii) By a law on this subject made by Parliament under Article 252(1) with the consent of the Legislatures of all the States.

(iii) By a Parliamentary law uniformly applicable throughout India containing provisions analogous to Articles 172 and 174 of the Constitution.

Adoption of alternative (i) or (ii) will not require any amendment of the Constitution. However, as a condition precedent for adopting alternative (iii), those aspects of the matter which are analogous to Articles 172 and 174, will have to be carved out of the ambit of Entry 5, List II and transposed as a separate item to List III.

We recommend that in order to ensure that elections to sessions of Zilla Parishads and Municipal Corporations are held regularly and these institutions do not remain superseded for long periods, any one of the alternatives, (i), (ii) and (iii) be pursued in the order set out above. Recourse to alternative (iii) may be had only as a last resort when attempts to follow alternatives (i) and (ii) fail, or are otherwise found infeasible.

CITIZEN PARTICIPATION

21.3.01 Effective participation by citizens is an integral part of democracy. Large parts of the programmes, projects and services initiated by the Union are executed in the States. Many of the programmes undertaken by the States also have wider implications for the Union as well as local Governments. There is at present no forum where a citizen can present his views on all these matters. No doubt, various issues of national importance would be discussed by the Inter-Governmental Council recommended by us. But it will necessarily be in camera.

21.3.02 We feel that the I.G.C. should set up an Advisory Committee of experts which may look into specific inter-governmental problems requiring special knowledge of the subject, such as law, economics, sociology etc. The proceedings of this Committee should be unfettered by the formal positions taken by the various Governments, and may permit public hearings. This will enhance the acceptability of the programmes and solutions suggested by the I.G.C. and ensure efficiency in their implementation.

21.3.03 In view of the relatively communal nature of some "majorities" and "minorities" of different hues (of religion, caste, language, race, etc.) at different governmental levels of our country, it is most important that democracy is seen as Government by "compromise" between the majority and the minority, and not an authoritarian use by the former of its voting power riding roughshod over the latter. In this context, the sense of "realism", spirit of "moderation" and reluctance to push issues to the "extreme" that is usually shown by "majorities", say, in a country like the U.K., in contrast with supposedly more "logical" and less "moderate" use of voting power by "majorities" in some other democracies have much greater relevance for us. If the power of vote that democracy gives us is used thoughtlessly, or fanatically along communal lines, it may eventually sound the death-knell of secular democracy itself, in our heterogeneous society. And this is where sound codes of conduct and conventions play a crucial role.

21.3.04 It will be useful if the I.G.C. arranges, through its Advisory Committee or otherwise, for a periodical review of the deviations from desirable codes of conduct and conventions and considers appropriate corrective action well before the situation takes an unhealthy turn.

WORKING OF THE CONSTITUTION

Constitution Basically Sound

21.4.01 The working of the Constitution in the last 37 years, has demonstrated that its fundamental scheme and provisions have withstood reasonably well the inevitable stresses and strains of the movement of a heterogenous society towards its development goals. The Constitution has been amended a number of times to adjust its working to the changes in the environment. In our view, it is neither advisable nor necessary to make any drastic changes in the basic character of the Constitution.

21.4.02 But there is certainly scope for improvement and reform in a number of aspects, as indicated by us. The actual working of the Constitution leaves much to be desired.

21.4.03 A Constitution by its very nature, cannot be too exhaustive, providing for all possible contingencies. If it tried to do so, its labyrinthine complexity and Procrustean rigidity would soon render it unworkable in a changing world.

21.4.04 As a matter of fact, there is a view that the Indian Constitution is already one of the most detailed in the world. The Constitutions of many major countries are much shorter, less detailed and leave larger scope for judicial interpretation, codes of conduct and conventions to balance the claims of stability and adaptability in tune with the current needs of a dynamic society.

importance of Conventions

21.4.05 Notwithstanding the fact that ours is a detailed Constitution, the Constitution-framers left certain matters to be governed by conventions, thereby giving to the holders of constitutional offices some degree of discretion in respect of such matters. Conventions lubricate the room left at the joints in the constitutional structure and protect them against ossification. "Conventions", as John Stuart Mill put it, "are unwritten maxims of the Constitution by which the conduct of political authorities is in fact regulated.....without which the Constitution would soon lose its stability". The main purpose of the Constitutional conventions is to ensure that the legal framework of the Constitution retains its flexibility to operate in tune with the prevailing constitutional values of the period. Although conventions are not legally enforceable and the sanction behind them is moral and political, yet some conventions of the Constitution which set norms of behaviour of those in power or which regulate the working of the various parts of the Constitution and their relations to one another, may be as important, if not of greater significance, as the written word of the Constitution itself. This is particularly true of the role of 'conventions' in a system of Parliamentary democracy having a Constitutional disbtribution of powers between two or more levels of Government. The archetypical convention which requires the Governor to appoint only that person as the Chief Minister who can head a Council of Ministers commanding an absolute majority in the Legislative Assembly, is the essence of the Cabinet system of Parliamentary democracy, although a breach of this convention is immune from challenge in a court of law.

21.4.06 One unfortunate fact of the Indian situation is that enough attention has not been paid to the evolution and observance of the right codes of conduct and conventions. Even the codes and conventions evolved in the earlier years have been broken too lightly in the later years. Expediency has sometimes been given precedence over widsom and short-term advantages over long-term benefits. Narrow personal or parochial interests have been given priority over larger national interests. One unwise action has provoked an equally unwise reaction and triggered off a whole chain of adversary relationships. There is an increasing tendency to resort to violence and extra-Constitutional methods to force settlement of political or economic issues—imagined or real.

21.4.07 This would be a cause for concern even in a small homogeneous country. In India, a heterogeneous country of huge dimentions, this cannot be a matter of grave anxiety.

21.4.08 A natural reaction of some people has been that all the loopholes in the Constitution which have permitted aberrant developments, should be plugged. It is urged that, if conventions do not work, appropriate constitutional safeguards should be provided. If appropriate conventions are not followed and the discretion provided under certain circumstances is misused, the entire system may collapse. In order that appropriate conventions and codes of conduct get evolved, it is essential that incumbents of constitutional offices and other sentinels of the polity are selected from among persons of admitted competence and integrity and provided with reasonable security of tenure.

21.4.09 The Constitutional amendments having a bearing on Union-state relations, suggested by us, though significant, are not many. These pertain to Article 155 (appointment of Governor); Article 217 (empowering the President to Frame Rules); Article 248 read with Entry 97, List I (residuary powers regarding non-tax matters); Article 252(2) (regarding amendment of an Act passed under Clause (1)); Article 269(1)(f) and Entry 92, List I (enlargement of their scope); insertion of a provision regarding sharing of Corporation tax, analogous to Article 272; Article 276(2) (for raising the tax-ceiling on professions, trades, etc.); Article 356 (to ensure its proper and efficacious use) and shifting a part of Entry 5 of List II to List III (for ensuring regular elections to and working of local bodies by an all-India statute).

21.4.10 But the changes we have proposed in the functional aspects of Union-State arrangements, are far more substantial. The more important of these relate to the role of Governor; reservation of State Bills for consideration of the President; use of the extraordinary powers under Articles 256, 257 and 356; establishment of a standing Inter-Governmental Council with a comprehensive charter; National Economic and Development Council having a nexus with the Planning Commission formalised under Article 263; limitation on Centrally Sponsored Schemes regarding subjects in the exclusive State field; State Finance and Planning Boards; role of Zilla Parishads and Municipal Corporations regarding socio-economic planning and development; restraint on excessive occupation by the Union of the Concurrent field; periodic review of the Industries (Development and Regulation) Act, 1951; decentralisation of powers assumed by law under Entry 52, List I; Loans of States and Municipalities etc.

21.4.11 Given mutual trust, confidence and understanding between the two tiers of the polity, our recommendations—it is hoped—, if implemented, will go a long way to ensure smooth and harmonious working of the Union-State arrangements on principles of cooperative federalism. But, it is not claimed that they foreclose the need for a country-wide debate in political, academic and other forums as to their merits, utility and viability.

APPENDICES

CONTENTS

APPENDIX-I

COMMISSION ON CENTRE-STATE RELATIONS

PUBLIC NOTICE

Government of India have, vide notification No. IV. 11017/1/83-CSR, dated the 9th June, 1983 set up a commission to "examine and review the working of the existing arrangements between the Union and State in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate".

The Commission's assignment being comprehensive in character and of nation-wide interest, it is but appropriate at the very outset, to collect some basic information. The Commission, therefore, hereby solicits from all interested individuals, organisations and other sources such information (including published or written views) and factual data as may be relevant to any aspect of the aforesaid arrangements between the Union and the States, including the legislative, administrative, fiscal, economic and other spheres. An analytical study of such data would facilitate the identification of the problems, issues and difficulties experienced in the working of these arrangements during the last 33 years. This would also render facile the preliminary task of preparing working papers and questionnaires for ascertaining by the Commission the views thereon of eminent experts or groups in the specified spheres.

The Commission trusts that all concerned will extend their fullest co-operation and assistance to it and furnish the required information at their earliest to the Secretary to the Commission, Lok Nayak Bhavan, 4th Floor, Khan Market, New Delhi-110003.

BY ORDER OF THE
COMMISSION ON CENTRE-STATE
RELATIONS

Sd/—

(K. A. RAMASUBRAMANIAM
SECRETARY

APPENDIX-II

Composition of Commission's Secretariat

Name and Designation	Period
Secretary	
1. Shri K. A. Ramasubramaniam	23-3-83 to 31-7-84
2. Shri G. V. Ramkrishana	1-8-84 to 13-2-85
3. Shri D. Sankaraguruswamy	3-4-85 —to date
Joint Secretary	
1. Shri M. K. Moitra	19-10-83—30-9-86
2. Shri A. K. Varma	18-2-87—to date
Directors	
1. Shri B. P. Sinha	20-10-83—to date
2. Shri B. M. Rao	4-1-84 — to date
3. Shri A. Neelakantan	21-2-84—to date
4. Dr. Vivek Bhattacharya	15-3-84—29-3-87
Honorary Constitutional Advisor	
1. Shri Lalnarayan Sinha	10-10-83—30-4-87
Part Time Consultants	
1. Shri J. Srininvasa	7-9-83—todate
2. Shri P. P. Singh	8-11-83—30-6-84
3. Dr. N. M. Khilani	16-8-84—28-2-85

Name & Designation	Period
Senior Research Officer	
1. Shri Ramesh Sharma	30-6-83(AN)—to date
2. Shri T. S. Rangamannar	1-9-83—to date
3. Shri P. C. Kannan	15-12-83—28-7-86
4. Shri R. R. Mittal	19-4-84—to date
5. Shri K. B. Lall	30-8-85—23-9-87
6. Smt. Tahera Ajmal	25-8-86—30-4-87
Research Officers	
1. Shri R. D. Sharma	3-8-83—to date
2. Shri Niranjan Singh	11-8-83—21-7-87
3. Shri L. Yegnanarayanan	14-11-83—to date
4. Dr. Sanjay Singh	21-11-83—to date
5. Smt. Tahera Ajmal	25-11-83—24-8-86
6. Shri A. N. Wadhwa	28-11-83—3-1-86
7. Shri K. K. Sharma	7-12-83—30-4-87
8. Dr. S. K. Sharma	16-2-84—to date
9. Dr. Raja J. Singh	6-1-86—1-8-86
Administrative Officer	
1. Shri Diwan Chand	1-7-83—30-8-85
2. Shri S. Jayasankar	9-12-85—to date
Section Officer	
1. Shri S. S. Sikka	19-8-83—to date

11— 325/87

APPENDIX-III

Statement Showing Categorywise Replies Received in Response to the Commissions Questionnaire

S. No.	Category	No. of Replies received
1.	Serving and former presidents/Vice-Presidents/ Prime Ministers/Speakers of Lok Sabha/Chief Justices of India	..
2.	Serving & Former Union Ministers	7
3.	Union Ministers/Departments of Government of India	23
4.	State Governments/Union Territories	25(States 22 UTs.3)
5.	Serving & Former Governors & Lt. Governors of State and Union Territories	7
6.	Serving & Former Chief Ministers of States & Union Territories	12
7.	Finance Ministers and other former Ministers of State	4
8.	Members of Constituent Assembly	11
9.	Serving & Former Speakers/Chairman and Members of State Legislatures	9
10.	Presidents/General Secretaries of all the National, State/Regional and Registered Political Parties as per lists maintained by the Chief Election Commissioner of India	36
11.	Other Political Parties & Groups	20
12.	Serving & Former Members of Parliament	6
13.	Serving & former Chief Justices and Judges of Supreme Court & High Court	13
14.	Serving & former Auditor General of India	1
15.	Serving & former Attorneys/Solicitors General of India and Advocates General of the States	1
16.	Presidents/Secretaries of Bar Council of India and of States and Bar Associations of Supreme Court and High Court	3
17.	Eminent Jurists & Advocates	24
18.	Former Chairman/Members & Secretaries of Finance Commissions	2
19.	Serving and former Governors/Deputy Governors of Reserve Bank of India	2
20.	Serving & former Chief Election Commissioners of India	1
21.	Eminent Economists/Political Scientists, Universities and Research Institutes	79
22.	Editors of Important Dailies/Periodicals and distinguished Journalists & Correspondents	7
23.	Financial Institutions and Chembers of Commerce & Industry	8
24.	Trade Unions, Service Associations, Farmer's Bodies & Employer's Associations, etc.	19
25.	Mayors/Administrators of Municipal Bodies, etc.	3
26.	Miscellaneous (including individuals)	82
	TOTAL	405

Note.—In all, more than 6,800 copies of Questionnaire in English, and 500 copies in Hindi were canvassed.

APPENDIX-IV

Dates and Subjects of Supplementary Questionnaire Issued to Relevant Organisations/Individuals

Sl. No.	Subject	Date of Issue
1.	Industry (for Central Govt.)	September 22, 1984
2.	Industry (for State Govts.)	October 31, 1984
3.	Inter-State River Water Disputes	February 14, 1985
4.	Governor's Discretionary powers under Articles 163 and 200	January 18, 1985
5.	Office of the Governor and President's Rule etc.	March 30, 1985
6.	Article 249 of the Constitution	March 30, 1985
7.	Article 252 of the Constitution	March 30, 1985
8.	Miscellaneous Questions regarding various Articles of the Constitution	March 30, 1985
9.	Article 356 of the Constitution	November 8, 1985
10.	Taxation of Agricultural Income	August 1, 1986

APPENDIX-V

Dates of States visited by the Commission and Meetings Held with the State Governments at New Delhi

Sl. No.	State/Union Territories	Date of Meetings
1.	Kerala (Trivendrum)	June 1-7, 1984
2.	Madhya Pradesh (Bhopal)	August 2-8, 1984
3.	Himachal Pradesh (Shimla)	September 17-19, 1984
4.	West Bengal (Calcutta)	November, 15-21, 84
5.	Tripura (Agartala)	February 19-21, 1985
6.	Assam (Guwahati)	February 23-26,1985
7.	Karnataka (Bangalore)	April 1-12, 1985
8.	Andhra Pradesh (Hyderabad)	June 10-14, 1985
9.	Orissa (Bhubaneshwar)	July 5-6, 1985
10.	Nagaland (Kohima)	September 27-28,1985
11.	Meghalaya (Shillong)	Sept. 30 Oct. 1,1985
12.	Maharashtra (Bombay)	Nov. 16-22, 1985
13.	Goa (Punaji)	Nov. 23-25, 1985
14.	Bihar (Patna)	Dec. 18-20, 1985
15.	Tamil Nadu (Madras)	Dec. 26-31, 1985
16.	Pondicherry	January 1-2, 1986
17.	Uttar Pradesh (Lucknow)	January, 20-22 1986
	Meetings held with Government Representatives at New Delhi	
18.	Haryana	March, 12, 1986
19.	Gujarat	November 20, 1986
20.	Jammu & Kashmir	February 16, 1987
21.	Manipur	February 20, 1987
22.	Rajasthan	March 19, 1987

Note.—Sardar Surjit Singh Barnala, former Chief Minister of Punjab, who had submitted the State Government's Memorandum, as Chief Minister of April 24, 1987, met the Commission at New Delhi on July 14, 1987.

APPENDIX-VI

List of Individuals/Bodies who made Submissions in the form of Memoranda/Replies to the Questionnaire etc.

ANDHRA PRADESH

1. Government of Andhra Pradesh.
2. Shri Gopal Rao Ekbote,
   Ex-Chief Justice, Andhra Pradesh,
   Hyderabad.
3. Shri K. V. Vema Reddy,
   Former Speaker,
   A. P. Legislative Assembly,
   Anantapur.
4. Shri M. V. Subrahmanya Sastry,
   Shri A. Subba Rao,
   Shri K. Hanumantha Rao,
   Shri Mollakalapalli Koleshwar Rao,
   Shri P. J. Mallikharijuna Rao and
   Shri B. V. Raghava Rao,
   Paidipadu.
5. Shri Mendu Venkata Rao,
   General Secretary,
   All India Telephone Traffic Employees' Association,
   Vijayawada.
6. Shri Vavilala Gopala Krishnayya,
   Former MLA,
   Andhra Pradesh Legislative Assembly,
   Sattenapalli.
7. Waltair School of Economics,
   Andhra University—Represented by
   Prof. G. Parthasarathy
   Prof. M. Jagadeswar Rao and
   Prof. Ch. A. Krishna Rao.
8. Hony. Secretary,
   Prakasam Institute of
   Development Studies,
   Hyderabad.
9. Shri Avva Satyanarayana Rao,
   Advocate,
   Hyderabad.
10. Shri S. Radhakrishna,
    Editor, The Andhra Patrika,
    Vijayawada.
11. Shri C. V. Raghavulu,
    Prof. & Head of Political
    Science & Public Administration
    Nagarjuna University,
    Nagarjunasagar.
12. Shri Pandrangi Rajeshwara Rao,
    Advocate & Journalist,
    Agraharam.
13. Shri V. B. Raju,
    Former Minister, Andhra Pradesh,
    Hyderabad
14. Prof. N. A. Muttalib,
    Director, Regional Centre for Urban and
    Enrvionmental Studies,
    Osmania University,
    Hyderabad.
15. Dr. V. Bhaskara Rao,
    Prof., Kakatiya University,
    Warangal.
16. Dr. D. Ramchandram,
    Lecturer in Public Administration,
    Secunderabad.
17. Shri Vijay Kumar Adwant,
    Lecturer in Economics,
    Vivek Vardhini College,
    Hyderabad.
18. Justice Alladi Kuppuswamy,
    Chief Justice, Andhra Pradesh (Retd.)
    Hyderabad.
19. Dr. C. P. Kasaiah,
    Reader in Economitrics,
    S.V. University College of Arts & Science,
    Tirupati.
20. President,
    Telugi Jatti Vimukthi Sangam,
    Hyderabad.
21. Shri N. V. Rao,
    I.F.S. (Retd.),
    Hyderabad.
22. Shri K. Brahmananda Reddi,
    Former Chief Minister,
    Former Union Home Minister,
    Former President, Indian National Congress,
    Hyderabad.
23. Shri M. Ramakrishnayya,
    I.A.S. (Retd.), Former Dy. Governor of RBI,
    Hyderabad.
24. Shri Akbar Ali Khan,
    Ex-Governor, Andhra Pradesh,
    Hyderabad.
25. Shri N. Laxminarayan,
    Ex-Mayor, Ex. M.L.A.,
    Hyderabad.
26. Shri M. Baga Reddy,
    Leader of the Opposition,
    AP Legislative Assembly,
    Hyderabad.
27. Shri R. Srihari Rao,
    Social Worker,
    Nampally, Hyderabad.
28. Shri N. Poornachandra Rao,
    Nehru Nagar.
    Guntur.
29. General Secretary,
    Forum for Right to work,
    Hyderabad.
30. President,
    Weavers Welfare Society,
    Kakinada.

ASSAM

31. Government of Assam.
32. General Secretary,
    Asom Jatiyatabadi Dol,
    Guwahati.

APPENDIX VI—*Contd.*

33. Shri Deveswar Sarmah,
Senior Advocate and
Ex.-MP, Ex-Minister of Assam,
Jorhat.

34. General Secretary,
Assam State Employees,
Federation,
Guwahati.

35. Chairman,
Action Committee of
North East Regional Parties,
Guwahati.

36. Shri Satis C. Kakati
Guwahati.

BIHAR

37. Government of Bihar.

38. Dr. Jagannath Mishra
Ex-Chief Minister, Bihar,
Patna.

39. Dr. Kedar Nath Kumar
Reader,
Magadh University,
Bodh-Gaya.

40. Shri Barfi Dev Wafa,
Panasayan.

41. Prof. Madan Mohan Sharma,
Deptt. of Political Science,
University of Bihar,
Muzaffarpur.

42. Dr. P. K. Jha
Deptt. of Economics,
L. N. Mithila University,
Darbhanga.

43. Director,
Jagjivan Ram Institute of
Parliamentary Studies &
Political Research,
Patna.

44. Dr. A. D. Roy Choudhuri
Head of Department of Law,
Patna University,
Patna.

45. Shri K. P. Verma
Advocate,
Purnea.

46. Shri Saryu Roy
Convener, J. P. Vichar Manch,
Patna.

47. Shri Pradhan H. Prasad
Prof. of Economics,
A. N. Sinha Institute of Social Studies,
Patna.

48. Dr. J. N. Tewari,
Deptt. of Economics,
Patna University,
Patna.

49. Bihar State Bar Council
Patna.

50. Shri Kedar Nath Singh
Daryapur,
Distt. Saran (Chappra).

51. Dr. Shaibal Gupta
Lecturer in Economics,
A.N. Sinha of Institute Social Studies,
Patna.

52. President,
Jharkhand Mukti Morcha,
Dhanbad.

53. Prof. Durganand Sinha
A.N. Sinha Institute of Social Studies,
Patna.

54. Prof. Dibakar Jha
Retired Professor of Economics,
Patna University,
Patna.

55. Shri Ram Shobha Singh
& Other fourteen teachers of RDS College,
Muzaffarpur.

GUJARAT

56. Government of Gujarat.

57. Shri Rafiuddin Shaikh
Mayor of Ahmedabad & Chairman,
All India Council of Mayors,
Ahmedabad.

58. Shri Babubhai J. Patel
Ex-Chief Minister of Gujarat,
Gandhinagar.

59. Dr. I. G. Patel,
Former Governor, R.B.I.
Director, Indian Institute of Management,
Ahmedabad.

60. Prof. D. N. Pathak
Peace Research Centre,
Gujarat Vidyapith,
Ahmedabad.

61. Prof. H. C. Dholakia
Dean, Faculty of Law,
MS University of Baroda,
Baroda.

62. Shri Chimanbhai S. Patel
Editor "Sandesh",
Ahmedabad.

63. Dr. Himmat Patel
Reader in Economics,
Department of Economics,
Sardar Patel University,
Vallabh Vidyanagar.

HARYANA

64. Government of Haryana.

65. Dr. Himmat Singh Sinha
Deptt. of Philosophy,
Kurukshetra University,
Kurukshetra.

66. Registrar,
Maharshi Dayanand University,
Rohtak.

67. Dr. Vishnoo Bhagwan
Principal, Pt. J.L.N. Govt. College,
Faridabad.

68. Registrar,
Haryana Agriculture University,
Hissar.

APPENDIX VI—*Contd.*

HIMACHAL PRADESH

69. Government of Himachal Pradesh.

70. Justice D. K. Mahajan
Ex-Chief Justice,
Punjab & Haryana High Court,
Bhadwar.

71. Justice T.V.R. Tatachari
Ex-Chief Justice,
Delhi High Court,
Lok Ayukta, Himachal Pradesh,
Shimla.

72. Shri Hokisha Sema
Governor,
Himachal Pradesh,
Shimla.

73. Dr. I. P. Massey
Prof. & Head, Deptt. of Law
&
Shri A. R. Chauhan,
Registrar,
H. P. University,
Shimla.

74. President,
Democratic Socialist Party,
Himachal Pradesh.
Shimla.

75. Dr. Ranbir Sharma,
Prof. & Head Department of Political Science,
H.P. University,
Shimla.

JAMMU & KASHMIR

76. Government of Jammu & Kashmir.

77. Dr. Arun K. Gupta
Director,
Model Institute of Education & Research,
Jammu.

78. Dr. Farooq Abdullah
Ex-Chief Minister,
Jammu & Kashmir.
(Forwarding a copy of Statement released by opposition parties after Srinagar Conclave.

KARNATAKA

79. Government of Karnataka.

80. Shri G. S. Sampat, IRS (Retd.),
Bangalore.

81. Shri Kadidal Manjappa
Ex-Chief Minister of Karnataka,
Bangalore.

82. Shri B. S. Sambasiva Iyer,
Retd. Under Secretary,
Government of Karnataka,
Bangalore.

83. Shri K.N. Seshadri
Reader,
Post Graduate, Deptt. of Law,
Karnataka University.

84. Smt. N.R. Ahalya
Bangalore.

85. Dr. K. Raghavendra Rao
Deptt. of Political Science,
Karnataka University, Dharwad.

86. Dr. R. S. Narayan
Advocate, Bangalore.

87. Shri N.K. Ganapaiah
Secretary General,
The Farmers' Federation of India,
Saklaspur.

88. Dr. (Mrs.) Hemalata Rao
Associate Professor,
Economic Unit, Institute for
Social & Economic Change,
Bangalore.

89. Dr. G. Thimmaiah
Director,
Institute for Social & Economic Change,
Bangalore.

90. Shri T. Devidas
Reader and
Shri P. Ishwar Bhat
Lecturer,
Deptt. of Post Graduate,
Studies & Research in Law,
University of Mysore.

91. Shri P. S. Appu, IAS (Retd.)
Bangalore.

92 Shri R.B. Nadiger
Kuppagadde,
Shimoga Distt.

93. Registrar,
Karnataka Un iversity,
Dharwad.

94. Shri B. V. Naik
Member of Parliament,
Gonehalli,
Via Madanageri.

95. Shri K.V. Sadashiviah
Jayanagar, Bangalore.

96. Dr. B. K. Chandrashekhar,
Prof. of Law,
Indian Institute of Management,
Bangalore.

97. Shri L. Srikantiah,
Advocate, MLC (Retd.)
Mysore.

98. Shri S. Subramaniam
Former Director,
Administrative Intelligence,
Bangalore.

99. President,
Karnataka Rationalist Association,
Bangalore.

100. Shri K. S. Narayan
Advocate,
Bangalore.

101. Secretary
Karnataka State Council of CPI,
Bangalore.

102. Dr. M. C. Kodli
Bangalore.

APPENDIX VI—*Contd.*

103. Shri M. Y. Ghorpade,
Former State Finance Minister,
Sandur.

104. President,
The Karnataka State Government,
Employees Association,
Bangalore.

105. Shri S. Sivappa
Former Chairman,
Karnataka Legislative Council,
Bangalore.

106. Shri D. R. Venkataramanan
N.R. Colony,
Bangalore.

107. Dr. N. V. Ratnam
Indian Institute of Management,
Bangalore.

108. Shri P. K. Srinivasan
Assistant Editor Deccan Herald,
Bangalore.

109. President.
Federation of Karnataka Chamber of
Commerce & Industry,
Bangalore.

110. Dr. N. S. Ramaswamy
Director,
Indian Institute of Management,
Bangalore.

111. Shri K. H. Patil
President,
Karnataka Pradesh Congress
Committee (I)
Bangalore.

112. Shri N. Santosh Hegde
Advocate General, Karnataka,
Bangalore.

113. Shri Michael B. Fernandes
Ex-MLC, Legislative Assembly,
Bangalore.

114. Shri B. T. Parthasarthy
Advocate,
Bangalore.

115. President,
Republican Party of India(K),
Bhimshakthi,
Belgaum.

116. Secretariat-Member,
Communist Party of India (Marxist),
Karnataka State Committee,
Bangalore.

KERALA

117. Government of Kerala.

118. Shri M. V. Krishnan Nair
Keecherry, Pappinisserri P.O.,
Cannanore.

119. Dr. C. N. Purushothaman Nair
Prof. & Head, Department of
Commerce & Management Studies,
University of Calicut,
Calicut.

120. Dr. N. Chendersekharan Pillai
School of Management Studies
and
Prof. Dr. K.C. Sankaranarayanan
Head of Department, Applied Economics,
University of Cochin,
Cochin.

121. Shri G. Ramanathan
Retd. Principal of Training Colleges,
Trivandrum.

122. Shri P.P .Pillai
Reader and Head of Deptt. of Economics,
Dr. John Mathai Centre,
P.O. Aranattukara,
Trichur.

123. Dr. K. Parameswaran
Prefessor,
Centre for Advanced Legal Studies and
Research, Trivendram.

124. Shri P. S. Habeeb Mohamed
Vice-Chancellor,
University of Kerala,
Trivandrum.

125. Dr. I. S. Gulati
Centre for Development Studies,
Trivandrum and
Dr. K. K. George
School of Management Studies,
University of Cochin,
Cochin.

126. Prof. A. Vaidyanathan
Centre for Development Studies,
Trivandrum.

127. Prof. Dr. M. V. Pylee
Director General (AIDE)
Former Vice Chancellor,
University of Cochin,
Cochin.

128. Shri T. Madhava Menon,
Vice-Chancellor,
Kerala Agricultural University,
Trichur.

129. Commissioner
Corporation of Cochin,
Ernakulam (Cochin).

130. Shri C. K. Kochukoshy, IAS (Retd.)
Former Member, Board of Revenue and
Chairman, Kerala State Electricity Board,
Trivandrum.

131. Justice V. R. Krishna Iyer
Former Judge of Supreme Court,
Ernakulam.

132. Member-Secretatiat
Communist Party of India (Marxist),
Kerala State Committee,
Trivandrum.

133. President,
Kerala Pradesh Congress Committee (I),
Trivandrum.

134. President
Janata Party, Kerala,
Trivandrum.

APPENDIX VI—*Contd.*

135. General Secretary,
Kerala Congress (J),
Trivandrum.

136. General Secretary,
Indian National Congress Party,
Kerala Unit,
Trivandrum.

137. Chairman,
Kerala Congress (Mani Group),
Trivandrum.

138. General Secretary,
Praja Socialist Party,
Trivandrum.

139. General Secretary
Malayalee Desheeya Munnani,
Cochin.

140. General Secretary
Revolutionary Socialist Party,
Kerala Committee,
Trivandrum.

141. Secretary,
State Committee of the Peasants & Workers Party of India (Kerala Unit),
Trivandrum.

142. Vice-President,
Kerala Pradesh Congress (Socialist) Committee,
Ernakulam.

143. Shri N. A. Mammuhaji, MLA,
(On behalf of Muslim League State Committee),
Trivandrum.

144. General Secretary,
Federation of State Employees & Teachers' Organisations,
Kerala,
Trivandrum.

145. Shri E. K. Nayanar,
Leader of Opposition,
Kerala Legislative Assembly,
Trivandrum.

MADHYA PRADESH

146. Government of Madhya Pradesh.

147. Shri B. D. Sharma,
Former Chief Minister Haryana and Governor of M.P.,
Bhopal.

148. President,
Mahakoshal Chamber of Commerce & Industry,
Jabalpur.

149. Dr. R. C. Shukla,
Vice-Chancellor,
Bhopal University,
Bhopal.

150. Justice P.K. Tare,
Ex-Chief Justice, M.P.,
Chairman,
M.P. Law Commission,
Bhopal.

151. Shri A.N. Saxena,
President, MP Electricity,
Inspectorate Engineer's Association,
Bhopal.

152. Shri Ram Sahai Tiwari,
Member Constituent Assembly and Ex. M.P.,
Chhattarpur.

153. Shri Ram Sahai,
Member Constituent Assembly and Ex.-M.P.,
Vidisha.

154. Shri M. G. Malegaonker,
Secretary,
Congress Committee (I),
Jabalpur.

155. Shri P. N. Sanaddar,
Shastri Nagar,
Gwalior.

156. Secretary,
Communist Party of India (Marxist),
Madhya Pradesh State Committee.
Bhopal.

157. General Secretary.
Madhya Pradesh Congress Committee (I),
Bhopal.

MAHARASHTRA

158. Government of Maharashtra.

159. Shri Dilip Shantaram Dahanukar,
Industrial Assurance Building,
Churchgate, Bombay.

160. Shri V. S. Murti,
Professor & Head of Deptt., of Public Admn.,
Nagpur University,
Nagpur.

161. Deputy General Manager,
Industrial Development Bank of India,
Bombay.

162. Secretary,
Bombay Chamber of Commerce and Industry,
Bombay.

163. Shri S. Subbiah,
Malad (West),
Bombay.

164. The Registrar,
Marathwada University,
Aurangabad.

165. Shri D. R. Mandke,
Editor Ajanta Express,
Purna.

166. Shri Nani A. Palkhivala,
Senior Advocate, Supreme Court,
Bombay.

167. Shri M. R. Masani,
Member constitutent Assembly,
Bombay.

168. Dr. N. R. Inamdar,
Professor & Head of Deptt. of Political Science and Public Admn., University of Poona,
Pune.

169. Shri Mohan Dharia,
Ex-Union Minister,
Pune.

170. Shri M. G. Bhasin,
Professor & Head of Deptt. of Geography,
DBF Dayanand College of Arts & Science,
Solapur.

APPENDIX VI—*Contd.*

171. Prof. S. R. Ozarkar,
Principal,
Rajaram College,
Kolhapur.

172. Vice-Chancellor,
Marathawada Agriculture University,
Parbhani.

173. Dr. Ankush B. Sawant,
Convener,
Indian Centre for Democratic Socialism
Aurangabad.

174. Shri D. R. Pendse,
Economic Advisor,
Tata Industries,
Bombay.

175. Shri A. G. Noorani,
Nepean Sea Road,
Bombay.

176. Acting Secretary,
The Employers' Federation of India,
Bombay.

177. Shri H. M. Seervai,
Senior Advocate, Supreme Court,
Bombay.

178. Shri Mohammad Rashid,
Baramati, Pune.

179. Shri K. K. Shah,
Former Union Member and
Ex-Governor,
Bombay.

180. Mr. B. C. Kamble,
Ex-M.P. & Leader,
Republican Party of India (Kambl
Bombay.

181. Dr. H. K. Paranjape,
Professor,
Indian Institute of Public Administration
Research Fellow,
Indian Council of Social Science Research,
Pune.

182. Shri Sudhir Joshi,
Ex-Mayor,
Bombay.

183. Shri Shivraj Nakade,
Principal,
Dayanand College of Law,
Latur.

184. Shri V. G. Rajadhyaksha,
Member, Planning Commission,
Chairman,
High Level Committee on Power.

185. Dr. (Mrs.) Krishnabai Nimbkar,
Pune.

MANIPUR

186. Government of Manipur.

MEGHALAYA

187. Government of Meghalaya.

188. Shri B. B. Lyngdoh,
Leader of the Oppsition,
Ex-Chief Minister of Meghalaya,
Shillong.

189. Chief Executive Member,
Khasi Hills Autonomous,
District Council,
Shillong.

190. Shri R. Dutta,
Planning Advisor,
North Eastern Council Sectt.,
Shillong.

NAGALAND

191. Government of Nagaland.

192. President,
Nagaland People Party,
Kohima.

193. Shri Nihovi Sema,
Ex-Minister,
Chairman,
Nagaland Ex-Parliamentarian Association,
Mokokchung.

ORISSA

194. Government of Orissa.

195. Dr. Harekrushna Mehtab,
Ex-Chief Minister, Orissa,
Bhubaneswar.

196. Shri Nityanand Acharya,
Agragami Karyalaya,
Bolangir.

197. Dr. B. B. Jena,
Prof. & Head of the Deptt. of Political Science,
Berhampur University,
Berhampur.

198. Shri R. K. Mishra, IAS,
Orissa.

199. Shri S. K. Chattopadhyaya,
Retd. Professor of Philosophy,
Cuttuck.

200. Shri Tankadhan Mahapatra,
Advocate,
Dhenkanal.

201. Shri K. Ramamurthi,
Vice-Chancellor,
Orissa University of Agriculture &
Technology,
Bhubaneswar.

PUNJAB

202. Shri Fateh Singh Bagga,
Jandiala Guru,
Amritsar.

203. Prof. Dr. R. R. Sharma,
Prof. & Head Deptt. of Biophysics,
Postgraduate Institute of
Medical Education & Research,
Chandigarh.

204. Shri S. A. Johl,
Vice-Chancellor,
Punjab University,
Patiala.

205. Shri Ajit Singh Sarhadi,
Sr. Advocate,
Chandigarh.

APPENDIX VI—*Contd.*

206. Shri Gian Chand,
Sector 8-C,
Chandigarh.

207. Shri Brij Bhushan Mehra,
Ex-Speaker,
Punjab Vidhan Sabha,
Chandigarh.

208. Deptt. of Public Administration,
Punjabi University,
Patiala.

209. Shri K.T.S. Tulsi,
Advocate,
Chandigarh.

210. Shri Sham Singh Harikay,
Advisor,
Punjab Pradesh Congress Kisan Dal (I),
Ludhiana.

RAJASTHAN

211. Government of Rajasthan.

212. Shri Agam Singh and
Shri Sukh Lal Sharma,
Jaipur.

213. Shri B. L. Panagariya,
Member, Senate, University of Rajasthan
Jaipur.

214. Dr. M.C. Jain Kagzi,
Professor,
University Studies in Law,
University of Rajasthan,
Jaipur.

215. Shri Gokulbhai Bhatt,
Member Constituent Assembly,
Jaipur.

SIKKIM

216. Government of Sikkim.

217. Shri Nar Bahadur Bhandari,
President,
Sikkim Sangram Parishad,
Gangtok.

TAMIL NADU

218. Government of Tamil Nadu.

219. Mrs. Vijayavalli,
Srivilliputtur.

220. Shri V. V. Sundaresan,
Freedom Fighter,
Velappadi, Vellore.

221. Shri R. R. Dalavai,
Convener,
Civil Liberties Council,
Madras.

222. Dr. K. P. Krishna Shetty,
Advocate,
Former Reader in Constitutional Law
University of Madras,
Madras.

223. Registrar,
Department of Economic Studies,
Sociology and Political Science,
Madurai Kamaraj University,
Madurai.

224. Shri M. S. Vedanayagam,
Former Senior Supervisor,
Madras Telephones,
Madras.

225. Shri K. S. Anandhan,
Advocate, Gobichettipalayam,
Distt. Periyar.

226. Shri N. T. Vanamamalai,
Senior Advocate,
High Court of Madras,
Madras.

227. Secretary,
Bar Council of Tamil Nadu,
Madras.

228. Secretary,
Hindustan Chamber of Commerce,
Madras.

229. Shri B. Robert Gananamuthu,
Political Advisor,
Pattiveeranpatti,
Madurai.

230. Shri G. Paramananthan,
Jr. Assistant,
Directorate of Medical Education,
Madras.

231. General Secretary,
Tamil Nadu Government Employees' Association,
Madras.

232. Justice M.M. Ismail,
Former Chief Justice,
Madras High Court,
Madras.

233. Shri D. Vaseekaran,
President,
All India Christian Party,
Madras.

234. Shri M. Ramasamy,
President,
Annamandram,
Madurai.

235. Shri M. P. Sivagnanam,
President,
Tamil Arasu Kazhagam,
Madras.

236. Shri R. K. Balasubramanian,
Chief Executive,
Bureau for Parliamentary Work,
Madras.

237. Shri M. Karunanidhi,
President,
Dravida Munnetra Kazhagam,
Madras.

238. Shri Sathyalaya P. Ramakrishnan,
General Secretary.
"Sathyalaya", Madras.

239. Shri R. Sankaran,
Sivaprasad Industries,
Coimbatore.

240. Shri B. R. Guruswamy,
Nehru Illam,
Tiruchirapalli.

APPENDIX VI—*Contd.*

241. Dr. M. Naganathan,
Reader, Deptt. of Economics,
University of Madras.
Madras.

242. Smt. Jothi Yencatachellum,
Ex-Governor of Kerala,
Cuddalore.

243. Shri R. S. Narayanaswamy,
Retd. News Editor,
The Indian Express,
Madras.

244. Dr. Satyanarayana Moturi,
Member Constituent Assembly,
Madras.

245. President,
Tamil Nadu Kamaraj Congress,
Mylapore, Madras.

246. Shri O. V. Alagesan,
Member Constituent Assembly &
Former Union Minister,
Madras.

247. General Secretary,
Namadhu Kazhagam,
Madras.

248. Shri P.C. Mathew, ICS (Retd.),
Madras,

TRIPURA

249. Government of Tripura.

250. General Secretary,
Tripura Government Employees'
Federation,
Agartala.

UTTAR PRADESH

251. Government of Uttar Pradesh.

252. Dr. P. Sharan,
Retd. Principal,
and
Shri S.P. Dwivedi,
Lecturer, Meerut College,
Meerut.

253. Dr. C. M. Jariwala,
Reader in Law,
Banaras Hindu University,
Varanasi.

254. Dr. P.C. Mathur,
Prof. of Economics (Retd.),
L.B.S. National Academy of Administration,
Mussoorie.

255. General Secretary,
All India Vaishya Federation,
Jwalapur, Distt. Saharanpur.

256. Shri Shyam Dhar Misra,
Former Union Minister,
Varanasi.

257. Shri L.D. Thakur,
Head of Deptt. of Political Science,
Lucknow University,
Lucknow.

258. Dr. Shailendra Singh,
Reader in Economics,
Deptt. of Economics,
Lucknow University,
Lucknow.

259. Dr. Anirudh Prashad,
Reader,
Deptt. of Law,
University of Gorakhpur,
Gorakhpur.

260. Shri Sunder Lal Bahuguna,
Chipko Information Centre,
Tehri Garhwal.

261. Hony. Secretary,
Institute for Constitutional and
Parliamentary Studies,
U.P. Regional Branch,
Lucknow.

WEST BENGAL

262. Government of West Bengal.

263. Shri Dilip Suraana,
Advocate,
Calcutta High Court,
Calcutta.

264. Shri Prafulla Chandra Sen,
Former Chief Minister,
West Bengal, Calcutta.

265. Shri Balai Chandra Ray,
Senior Advocate,
Calcutta High Court,
Calcutta.

266. Justice S.A. Masud (Retd.)
Hony. Treasurer,
Viswa Bharati,
Calcutta.

267. Shri Somendra Chandra Bose,
Sr. Advocate & President,
Bar Association, High Court,
Calcutta.

268. General Secretary,
Bank Employees' Federation,
West Bengal, Calcutta.

269. Shri S. P. Sen Verma,
Former Chief Election Commissioner of India,
Calcutta.

270. Shri Suhas Chattopadhyay,
Economic Research Unit,
Indian Statistical Institute,
Calcutta.

271. Prof. Bhabatosh Datta,
Emeritus Professor of Economics,
Presidency College,
Calcutta,
and
Former Member, Fourth Finance Commission.

272. Secretary,
The Bengal Chamber of Commerce and Industry,
Calcutta.

273. Shri Upendranath Barman,
Member Constituent Assembly,
Jalpaiguri.

APPENDIX VI—*Contd.*

274. Shri Prabhudayal Himatsingka,
Member Constituent Assembly,
Calcutta.

275. President,
Calcutta Chamber of Commerce,
Calcutta.

276. Shri Annada Sankar Ray,
I.C.S. (Retd.),
Calcutta.

277. Smt. Renuka Ray,
Member Constituent Assembly,
Calcutta.

278. General Secretary,
Revolutionary Socialist Party,
Central Secretariat,
Calcutta.

279. Shri Nakuleswar Banerjee,
Advocate,
Calcutta High Court,
Calcutta.

280. Shri Atulya Ghosh,
Calcutta.

281. Smt. Manjusri Mondal,
Calcutta.

282. Shri Saroj Mukherjee,
Secretary,
West Bengal State Committee,
Communist Party of India (Marxist),
Calcutta.

283. President,
Indian Association,
Calcutta.

284. Shri S. R. Chakrabarti,
Secretary (Retd.),
Bengal National Chamber of
Commerce and Industry,
Calcutta.

285. President,
West Bengal Headmasters' Association,
Calcutta.

286. Dr. A. Sanyal (Vettadhish),
Viswa Sanskrit Mission,
Calcutta.

287. Shri Sanat Kumar Chakrabarty,
Asstt. Teacher,
Masat A. M. High School,
Masat, Distt. Hooghly.

288. Secretary,
Revolutionary Communist Party of India,
West Bengal State Committee,
Calcutta.

289. Shri Chittaranjan Bag,
Advocate, Lecturer,
Calcutta University,
College of Law,
Calcutta.

290. Dr. Bipkab Dasgupta,
Professor,
University of Calcutta and Executive
Vice-Chairman,
West Bengal Comprehensive Area Development
Corporation,
Calcutta.

291. President,
Bhartiya Janata Party, West Bengal,
Calcutta.

292. General Secretary,
Socialist Unity Centre of India,
Central Committee,
Calcutta.

293. Shri Amit Jyoti Sen,
Indian Institute of Management,
Calcutta.

294. Secretary,
Communist Party of India,
West Bengal State Council,
Calcutta.

295. Convener,
Vritti Vikas,
Calcutta.

UNION TERRITORIES
DELHI

296. Shri Dharma Vira, I.C.S. (Retd.),
Former Governor.

297. Shri E.M.S. Namboodiripad,
Former Chief Minister (Kerala).

298. Justice H. R. Khanna,
Former Judge of the Supreme Court.

299. Hony. General Secretary,
New Delhi Traders Association.

300. Executive Secretary,
All India Panchayat Parishad.

301. Prof. Sher Singh,
Former Union Minister of State.

302. Shri H. N. Bahuguna,
Former Union Minister,
President,
Democratic Socialist Party.

303. Vice-Chairman,
Deendayal Research Institute.

304. Dr. B. R. Kharlukhi,
Member of Parliament.

305. Shri Vimal Dave,
Advocate, Supreme Court.

306. Smt. Tarkeshwari Sinha,
General Secretary,
Democratic Socialist Party.

307. Shri K. L. Moza,
Editor,
Bhartiya Post.

308. Shri P. Ramaswamy,
Special Correspondent.

309. Dr. Nagendra Singh,
Judge of the International Court of Justice,
&
Member of Constituent Assembly.

310. Prof. Ajit Kumar Sharma,
Member of Parliament,
(Rajya Sabha).

311. General Secretary,
Communist Party of India (Marxist),
Central Committee.

APPENDIX VI—*Contd.*

312. Shri Tarlok Singh,
Former Member,
Planning Commission.

313. Secretary,
Centre of India Trade Unions.

314. Shri G. Narsimha Reddy,
Member of Parliament,
(Lok Sabha)

315. Shri D. D. Malhotra,
Reader, C.U.S.,
Indian Institute of Public Administration.

316. Secretary (Econ.),
Federation of Indian Chambers
of Commerce and Industry.

317. General Secretary,
All India Forward Bloc.

318. Shri Govind Narain, ICS (Retd.),
Former Governor.

319. General Secretary,
Communist Party of India,
Central Office.

320. Secretary,
All India Organisation of Employers.

321. Dr. Sushila Nayar,
Former Union Minister.

322. Shri M. L. Dwivedi and
Chaudhari Ranbir Singh,
Members of Constituent Assembly.

323. Justice R. S. Narula,
Retd. Chief Justice,
Punjab & Haryana High Court.

324. Shri P. R. Dubhashi, IAS,
Director,
Indian Institute of Public Administration.

325. Shri Anil K. Nauriya.
Advocate,
Supreme Court.

326. General Secretary,
All India State Government,
Employees' Federation.

327. Shri S. Bhoothalingam,
ICS (Retd.).

328. Justice S. Rangarajan,
Sr. Advocate and Former Judge of the Delhi High Court

329. Shri R.C.S. Sarkar,
Former Chairman, UPSC,
Government of India.

330. Secretary General,
Indian Sugar Mills Association.

331. Prof. P. B. Desai,
Professor,
Institute of Economic Growth.

332. Justice Jaswant Singh,
Former Judge,
Supreme Court.

333. Shri Soli J. Sorabjee,
Sr. Advocate, Supreme Court.

334. President
Janata Party.

335. Shri S. N. Manda,
Director,
Ambedkar Institute of Social
Research & Training.

336. Smt. K. Rukmini Menon,
Former Ambassador.

337. President,
Bhartiya Janata Party.

338. General Secretary,
Lok Dal.

339. Prof. Dr. Raj Krishna,
Former Member, Planning Commission
&
Former Member, Seventh Finance Commission.

340. Dr. Karan Singh,
Former Union Minister.

341. General Secretary,
All India Congress Committee (I).

342. Dr. S. R. Maheshwari,
Professor of Political Science
and Public Administration,
Indian Institute of Public Administration.

343. Shri K. S. Sastry,
Director of Audit,
Office of the Comptroller & Auditor General of India

344. Shri Raghukul Tilak,
Former Governor.

345. General Secretary,
All India Congress Committee (Socialist).

346. Secretary,
Indian Administrative Service Association,
New Delhi.

347. General Secretary,
Indian Forest Service Association,
New Delhi.

GOA, DAMAN & DIU

348. Government of Goa, Daman & Diu.

349. Miss Kastura Ravlu Naik,
Thana Cortalim.

350. General Secretary,
United Goans,
Panjim.

351. President,
Yuva Janata (Goa Unit),
Panjim.

352. General Secretary,
United Goans Party,
Panjim.

353. General Secretary,
Bharatiya Janata Yuva Morcha,
(Goa, Daman & Diu).

354. Convener,
Konkani Projecho Avaz,
Panaji.

APPENDIX VI—*Contd.*

355. President,
All Goa Youth Federation,
Panaji.

356. President,
Gomantak Bahujan Samaj Sanghatana,
Panaji.

357. General Secretary,
Konkani Lekhak Sangh,
Panaji.

358. President,
Maharashtrawadi Gomantak,
Panaji.

359. General Secretary,
Gomant Lok Pokx,
Panjim.

PONDICHERRY

360. Government of Pondicherry.

361. Shri S. Ramassamy,
Former Chief Minister of Pondicherry,
Pondicherry.

362. Shri M.O.H. Farook,
Speaker, Legislative Assembly,
Pondicherry.

363. Shri V. Narayanasamy,
Member of Parliament.

364. Shri D. Ramachandran,
Ex-Chief Minister,
Pondicherry.

ANDAMAN & NICOBAR

365. Government of Andaman & Nicobar.

MISCELLANEOUS

366. Shri Rajeev Dhavan,
Department of Law,
Brunel University,
Uxbridge, Middlesex,
United Kingdom.

367. Col. Viron Jain.
Commander, H.Q.
66, Mobile Depot,
C/o 99 APO.

368. Dr. Max Frenkel,
Executive Director,
Stiftung fur eidgenassische
Zussammendrbeit, Hanptgasse 70,
Switzerland.

369. Dr. M.A. Fazal,
Principal Lecturer in Law,
Trent Polytechnic,
Nottingham, U.K.

UNION OF INDIA

370. Ministry of Agriculture

371. Ministry of Chemicals and Fertilizers

372. Ministry of Tourism & Civil Aviation (Department of Civil Aviation).

373. Ministry of Communication.

374. Department of Electronics.

375. Ministry of Energy
(Department of Power)

376. Ministry of Finance
(Department of Revenue).

377. Ministry of Food and Civil Supplies.

378. Ministry of Health and Family Welfare.

379. Ministry of Home Affairs.

380. Ministry of Human Resource Development
(Department of Education).

381. Ministry of Industry.

382. Ministry of Information and Broadcasting.

383. Ministry of Labour.

384. Department of Ocean Development.

385. Ministry of Personnel, Public Grievances and Pensions.

386. Ministry of Planning.
(Department of Statistics).

387. Planning Commission.

388. Ministry of Railways.

389. Ministry of Shipping and Transport.

390. Ministry of Social Welfare.

391. Ministry of Urban Development.

392. Ministry of Water Resources.

Supplementary List

393. President,
Andhra Pradesh Congress Committee (I),
Hyderabad.

394. Secretariat Member,
Communist Party of India (Marxist),
Andhra Pradesh State Committee.

395. The Karnataka United Urban Citizen.
Federation (Regd.),
Bangalore.

396. Mr. Justice G. K. Govinda Bhat,
Former Chief Justice, Karnataka.

397. Shri H. Srikantiah, M.L.C. (Retd.)
Bangalore.

398. Government of Punjab.

399. General Secretary,
Shiromani Akali Dal,
Shri Amritsar.

400. Citizenship Front in India,
Delhi.

401. Chairman,
All India Tribes and Minorities Federation,
Shimla.

402. Shri Amar Singh Ambalvi,
Advocate,
Chandigarh.

403. 21st February Celebration Committee,
Calcutta.

404. Shri J. Sarma Sarkar,
Judge (Retd.), High Court,
Calcutta.

405. President,
Gandhi Kamraj National Congress,
Madras.

APPENDIX VII– List of Individuals/Bodies who Met the Commission

ANDHRA PRADESH (Hyderabad)

Government of Andhra Pradesh–
represented by

1. Shri N. T. Rama Rao,
   Chief Minister.
2. Shri Shravan Kumar,
   Chief Secretary.
3. Shri S. Santhanam,
   Secretary, GAD & Officer on Special Duty.
4. Dr. Y. Venugopala Reddy,
   Secretary (Planning).
5. Shri K. Kosalram,
   Secretary (Finance).
6. Shri Sushil Kumar,
   Secretary (Industry, Commerce & Power)
7. Shri U. B. Raghavendra Rao,
   Secretary to Chief Minister.
8. Shri T.R. Prasad,
   Secretary (Irrigation).
9. Shri M. L. Sastry,
   Consultant, Finance.
10. Shri K. Obayya,
    Secretary (Political), GAD.
11. Shri G. V. Narasimha Reddy,
    Director, Information & Public Relations.
12. Shri P. V. Ramakrishna,
    Special Secretary to the Chief Minister.
13. Shri V. B. Raju,
    Former Minister, A.P. &
    Ex-Member Rajya Sabha.

Prakasam Institute of Development Studies–
represented by

14. Shri M. Ramakrishnaya,
    Former Dy. Governor, RBI.
15. Shri H. S. Guru Raja Rao.
16. Dr. T. Surayanarayana Rao
17. Shri P. Purna Chandra Rao
18. Shri M. Parthasarathy
19. Shri P.S.R. Anjaneyulu
20. Shri Sadiq Ali,
    Former Governor,
    Maharashtra & Tamil Nadu.
21. Shri B. P. R. Vithal,
    IAS (Retd.) Former Secretary, Finance
    Government of Andhra Pradesh.
22. Shri K. Ramachandra Reddy,
    Ex-Director General of Police, A.P.
23. Justice Alladi Kuppuswamy,
    Former Chief Justice, A.P.
24. Shri Vavilala Gopala Krishnayya,
    Former MLA, MLC. A.P.
25. Shri Akbar Ali Khan,
    Ex-Governor, U.P & Orissa.
26. Prof. M.A. Muttalib,
    Director, Regional Centre for Urban &
    Environmental Studies,
    Osmania University.
27. Shri K. Subramanya Reddy,
    Advocate General, A.P.
28. Shri M. Bagga Reddy,
    Leader of the Opposition.
29. Shri K. Brahmananda Reddy,
    Former Union Home Minister,
    Former President AICC,
    Ex-Chief Minister, A.P.
30. Shri Vijay Kumar Adwant,
    Lecturer in Economics,
    Vivek Vardhini College.
31. Shri Gurukula Mitra,
    President, Telugu National Liberation.
32. Shri D. Manuswamy,
    Secretary APCC.
33. Shri A. Veerappa,
    Former Minister, A.P.
34. Shri P. Narsa Reddy,
    Former President, APCC.
35. Shri N. Raghava Reddy,
    MLA, CPI (M)
36. Dr. C.P. Kasaiah,
    Reader in Econometrics,
    S. V. University, Tirupati.
37. Justice Gopal Rao Ekbote,
    Former Chief Justice, A.P.
38. Shri S. B. Nakade,
    Principal, Daya Nand College of Law, Latur (MS).
39. Shri E. Ayyapu Reddy, M.P.,
    Leader, Telugu Desam Party.

A.P. Non-Gazetted Officers Association–
represented by

40. Shri G. M. Kasi Viswanadham,
    President.
41. Shri E. Rama Rao,
    Associate President with eighteen members.
42. Shri M. V. Narayana Rao,
    Former Director General of Police, A.P.
43. Shri S.P.V. Reddy,
    Convener, Democratic Socialist Forum.
44. Shri V. Narsimha Rao,
    MLA.
45. Dr. (Mrs.) Shamim Aleem,
    Reader in Public Administration,
    Osmania University.
46. Dr. D. Ramachandram,
    Lecturer in Public Administration,
    Secunderabad.
47. Shri Avva Satyanarayana Rao,
    Advocate.
48. Justice C. Kondaiah,
    Former Chief Justice, A.P

APPENDIX VII—*Contd.*

Jana Sabha (Telangana)—
represented by

49. Shri Vandemataram Ramachandra Rao
50. Shri B. Kishan Lal
51. Shri Pratap Kishore
52. Shri G. Srinivas Reddy

Assam (Guwahati)

Government of Assam—
represented by

53. Shri H. Saikia,
Chief Minister.
54. Shri D.R. Rangpi,
Minister, Food & Civil Supplies.
55. Shri B. Barman,
Minister, Health & Family Welfare.
56. Shri G. Rajbangshi,
Minister, Agriculture.
57. Shri K. Gogai,
Minister, Industries.
58. Shri T. Gogai,
Minister, P. & C.D.
59. Shri J. Sinha,
Minister, Transport.
60. Shri U.C. Das,
Minister, Co-operation.
61. Shri M. Sharma,
Minister, Education.
62. Shri J. Chaudhury,
Minister, P.H.S.
63. Shri Sadhan Sarkar,
Minister, Veterinary.
64. Shri A.K. Palit,
Chief Secretary.
65. Shri J. Hazarika,
Commissioner, Home.
66. Shri H.N. Das,
Commissioner, P. & D.
67. Shri A. Bhattacharya,
Commissioner, A.R. & Training.
68. Shri B. Barua,
Agriculture Production Commissioner.
69. Shri P. Bora,
Finance Commissioner.
70. Shri J. Changkokoti,
Special Secretary, Hill Areas.
71. Shri T.K. Kamilla,
Commissioner, Hills & Dev. Commissioner.
72. Shri P. Sengupta,
Commissioner & Special Secretary, Transport.
73. Shri K.D. Lahkar,
Commissioner, PWD.
74. Shri A.P. Singh,
Secretary, Industries.
75. Shri K.C. Majumdar,
Secretary, P. & C.D.
76. Shri U.C. Sarania,
Special Secretary, W.P.T. & B.C.
77. Shri R. Dutta,
Special Secretary, Revenue.
78. Shri Md. Sadullah,
Secretary, Legislative.
79. Shri B.C. Medhi,
Secretary, Flood Control.
80. Shri J.P. Rajkhowa,
Secretary, Public Enterprises.
81. Shri B.C. Thahuria,
Secretary, Power (Electricity).
82. Shri A. Chowdhury,
Secretary, Irrigation.
83. Shri B. Gogoi,
Secretary, PWD.
84. Shri A. Rahman Mandal,
Joint Secretary, Law.
85. Shri B.K. Barua,
Commissioner of Taxes.
86. Shri S.H. Choudhury,
Joint Commissioner of Taxes.
87. Shri D. Das Gupta,
Deputy Secretary, Finance.
88. Shri S. Dutta,
Officer on Special Duty, Financial.
89. Shri Dinesh Goswami,
Ex-MP representing Asom Jatiyatabadi Dol.
90. Shri Ajit Kumar Sharma,
Ex-Member of Parliament.
91. Shri Bipan Pal Das,
Chairman,
Committee on 20-Point Programme.
92. Shri R.C. Choudhury,
President, High Court Bar Association.
93. Shri Anup Kr. Das,
Joint Secretary,
High Court Bar Association
94. Justice B.N. Barma
Retd. Judge, Guwahati High Court.
95. Shri Gauri Shankar Bhattacharya,
Ex-MLA, Assam.

Bihar (Patna)

Government of Bihar—
represented by

96. Shri Bindeshwari Dubey,
Chief Minister.
97. Shri Lahthan Choudhary,
Minister of Agriculture.
98. Shri Dinesh Kumar Singh,
Minister of Food.
99. Smt. Uma Pandey,
Minister of Education.
100. Shri Harihar Mahto,
Minister of Transport.
101. Shri Ram Ashray Pal Singh,
Minister of Industries.

APPENDIX VII—*Contd.*

102. Prof. Sidheshwar Prasad,
Minister of Energy.

103. Shri Mahabir Chaudhry,
Minister of Urban Development.

104. Shri K.K. Srivastava,
Chief Secretary.

105. Shri Bhaskar Banerjee,
Secretary, Cabinet Coordination.

106. Shri H. Subramaniam,
Private Secretary to Chief Minister.

107. Shri Arun Pathak,
Finance Commissioner.

108. Shri H. K. Sinha,
Joint Secretary, Finance.

109. Shri Raghuraj Singh,
Joint Secretary, Civil Supplies.

110. Shri Pancham Lal,
Special Secretary, Food & Civil Supplies.

111. Shri S.V. Saran,
Industrial Dev. Commissioner.

112. Shri P. Mittal,
Director, Industries.

113. Shri K.K. Sah,
Additional Director, Industries.

114. Shri R.P. Sandwar,
Special Secretary, Education.

115. Shri K. Vaidyanathan,
Development Commissioner.

116. Shri Nishikant Sinha,
Secretary, Agriculture.

117. Dr. Kedar Nath Kumar,
Reader, Magadh University.

118. Dr. A.D. Roy Chowdhary,
Head of Deptt. of Law, Patna University.

119. Shri Durga Nand Sinha,
Director, A.N. Institute of Social Studies.

120. Shri V.P. Verma,
Director, Jagjivan Ram Institute of Parliamentary Studies & Political Research.

121. Dr. Jagan Nath Mishra,
Ex-Chief Minister of Bihar.

122. Prof. J.N. Tiwari,
Head of Department of Economics,
Patna University, Patna.

123. Shri Ram Balak Mahto,
Advocate General, Bihar.

124. Prof. M.M. Sharma,
Department of Political Science,
University of Bihar, Muzaffarpur.

125. Dr. P.K. Jha,
Head of Department of Economics,
L.N. Mithila University, Darbhanga.

126. Shri Karpoori Thakur,
Leader of Opposition,
Ex-Chief Minister of Bihar.

127. Shri K.P. Varma,
Advocate, Purnia.

128. Shri K.N. Sahay,
Mayor, Patna.

Gujarat (At Delhi)

Government of Gujarat—
represented by

129. Shri Amar Sinh Chaudhary,
Chief Minister.

130. Shri Arvindbhai Sanghavi,
Minister for Finance and Law.

131. Shri Nalinbhai Patel,
Minister of State for Forest, Environment and Energy.

132. Shri R.V. Chandramouli,
Chief Secretary.

133. Shri B.T. Trivedi,
Additional Chief Secretary,
Finance Department.

134. Shri P.M. Chauhan,
Secretary, Legal Department.

135. Shri Arun Sinha,
Resident Commissioner,
Government of Gujarat,
New Delhi.

136. Shri S.K. Duggal,
Principal Secretary to Chief Minister.

137. Shri Balwant Singh,
Secretary (Personnel),
General Administration Department.

Haryana (At Delhi)

Government of Haryana—
represented by

138. Shri Bhajan Lal,
Chief Minister.

139. Shri Sagar Ram Gupta,
Finance Minister.

140. Shri P.P. Caprihan,
Chief Secretary.

141. Shri B.S. Ojha,
Principal Secretary to the Chief Minister.

142. Shri M.C. Gupta,
Financial Commissioner & Secretary, Finance Irrigation and Power.

Himachal Pradesh (Shimla)

Government of Himachal Pradesh—
represented by

143. Shri Virbhadra Singh,
Chief Minister.

144. Shri Sukh Ram.
PW Miniser

145. Shri Guman Singh,
Agriculture Minister.

146. Shri Sat Mahajan,
Industries Minister.

147. Shri B.B.L. Khachi,
Planning Minister.

148. Shri Vijendra Singh,
Minister of State (Health).

APPENDIX VII—*Contd.*

149. Smt. Chandresh Kumari,
Minister of State (Tourism).

150. Shri Sagar Chand Nair,
Minister of State (Science & Technology).

151. Shri K.C. Pandeya,
Chief Secretary.

152. Shri B.C. Negi,
Financial Commissioner (Dev.).

153. Shri S.M. Kanwar,
Financial Commissioner (Finance).

154. Shri Attar Singh,
Financial Commissioner (Revenue).

155. Shri R.K. Anand,
Financial Commissioner (Appeal).

156. Shri M.K. Kaw,
Secretary (Education).

157. Shri A.K. Goswami,
Principal Secretary to C.M.

158. Shri Harsh Gupta,
Secretary (PWD).

159. Shri V.P. Bhatnagar,
Secretary (Law).

160. Shri G.S. Chambial,
Special Secretary (GAD).

161. Shri Yogesh Khanna,
Director (HIPA).

162. Shri S.S. Madan,
Deputy Secretary (GAD).

163. Shri S.K. Bedi,
Press Secretary to CM.

164. Shri B.B. Tandon,
Secretary (Planning).

165. Shri Shanta Kumar,
Ex-Chief Minister,
Leader of Opposition, H.P.

166. Shri D.R. Duggal,
representing Lok Dal Party, H.P.

167. Shri J.C. Malhotra,
Chairman, H.P. Public Service Commission.

168. Shri P.N. Nag,
Advocate General, HP.

169. Shri Durga Chand, representing Democratic Socialist Party, HP.

170. Shri N.C. Pal,
representing Bhartiya Janata Party, H.P.

171. Shri Bhawani Singh,
Chairman, Bar Council, HP.

172. Shri K.S. Patyal,
President,
High Court Bar Association (HP).

173. Dr. G.C. Negi,
Vice-Chancellor,
Agriculture University, HP.

174. Shri A.R. Chauhan,
Registrar, HP University.

175. Dr. I.P. Massey,
Dean, Faculty of Law,
H.P. University.

176. Dr. R.D. Sharma,
Associate Professor,
Public Administration, HP University.

177. Dr. Chander Pal,
Associate Professor of Law,
H.P. University.

178. Shri T.V.R. Tatachari,
Former Chief Justice, Delhi High Court,
Lokayukt, H.P.

Jammu and Kashmir (At Delhi)

Government of Jammu and Kashmir—
represented by

179. Shri Abdul Ahad Vikil,
Law and Revenue Minister.

180. Shri Altaf Ahmad,
Advocate General.

181. Shri Mohd. Yaseen Kawoosa,
Law Secretary.

Karnataka (Bangalore)

Government of Karnataka—
represented by

182. Shri Ramkrishna Hegde,
Chief Minister.

183. Shri S.R. Bommai,
Minister of Revenue, Planning & Institutional Finance.

184. Shri T.R. Satish Chandran,
Chief Secretary.

185. Dr. D.M. Nanjundappa,
Commissioner & Secretary to the State Government,
Deptt. of Planning, Institutional Finance & Statistics.

186. Shri M. Sankaranarayanan,
Finance Commissioner.

187. Shri R.K. Chamayya,
Secretary, Deptt. of Law & Parliamentary Affairs.

188. Shri N. Gokul Rao,
Joint Secretary to Chief Minister.

189. Shri G.S. Sampath,
I.R.S. (Retd.),
Bangalore.

190. Smt. N.R. Ahalya,
Educationist, Bangalore.

191. Shri K.V. Sadashiviah,
Retd. Defence Officer, Bangalore.

192. Shri B.T. Parthasarathy,
Advocate, Bangalore.

193. Shri Shrikantiah,
Advocate, Mysore.

194. Shri V. Krishnamurthy,
Advocate, Bangalore.

195. Shri N. Santosh Hegde,
Advocate General, Karnataka.

APPENDIX VII—*Contd.*

Advocate Association Bangalore—
represented by

196. Shri H.K. Vasudev Reddy,
President.

197. Shri Padma Raj,
Secretary.

Janata Party State Unit—
represented by

198. Shri H.D. Deva Gowda,
President.

199. Shri Shrikanthamurthy,
Secretary.

Bhartiya Janata Party State Unit—
represented by

200. Shri B.B. Shivappa,
President,

201. Shri Karambath Sanjeeva Setty,
Secretary.

202. Shri Vasanta Kumar,
Advocate & BJP Leader.

203. Shri S.B. Swetadri,
Advocate & BJP Leader.

204. Shri S. Mallikarjuniah,
Vice-President, BJP & MLC.

205. Shri Yadiyurappa,
MLA, BJP.

Karnataka State Council, Communist Party of India—
represented by

206. Shri M.S. Krishnan,
MLA, Secretary.

207. Shri P. Raman,
Asstt. Secretary.

208. Shri M.C. Venkataraman,
Member of Sectt., CPI State Unit.

209. Shri M. C. Narasimhan,
Member of Sectt., CPI State Unit.

210. Shri K.B. Shanappa, MLA,
Member of Sectt., CPI State Unit.

211. Shri H. V. Anantha Subba Rao,
Member, of Sectt., CPI State Unit.

Communist Party of India (Marxist)—
represented by

212. Shri S. Suryanarayana Rao,
Sectt. Member (CPI M) State Unit.

213. Shri G. N. Nagaraja,
Secretary Legislature Party,
Communist Party (Marxist).

214. Shri M. Y. Ghorpade,
Former Finance & Industries Minister,
Karantaka.

Karnataka Pradesh Congress(I) Unit—
represented by

215. Shri K. N. Patil, President.

216. Shri N. K. Ganapaiah,
General Secretary Farmers' Federation of India
(Saklaspur).

217. Shri Kadidal Manjappa,
Former Chief Minister.

218. Dr. K. S. Krishnaswamy,
Former Dy. Governor, RBI.

219. Shri T. Devidas,
Reader, Deptt. of Post-Graduate Studies and
Research in Law, Mysore University.

220. Shri Ishwar Bhatt,
Lecturer, Mysore University.

221. Prof. K. H. Cheluva Raja,
Deptt. of Political Science, Bangalore University.

222. Dr. N. S. Ramaswamy,
Director,
Indian Institute of Management,
Bangalore.

223. Prof. VK. R. V. Rao,
Former Union Minister,
Former Member, Planning Commission & Academician.

224. Shri N. Lakshman Rau,
President, Karnataka United Urban Citizens' Federation.

225. Prof. M. D. Nanjundaswamy,
President, Board of Directors,
Principal, College of Law, Socio-Legal Services
& Research Centre, Bangalore.

226. Shri Michael Fernandez,
Former MLA, Bangalore.

227. Shri P. S. Appu, IAS (Retd.)
Former Director, Lal Bahadur Shastri Institute of
Administration, Mussoorie.

Karanataka State Employees Federation—
represented by

228. Shri K. A. Keshavamurthy, President.

229. Shri P. M. Puttaswamy, Vice-President.

230. Shri T. V. Raghavan, Joint Secretary.

231. Shri S. M. Gurulingasamy, Joint Secretary.

232. Shri M. T. Krishnappa, Joint Secretary.

233. Shri Syed Basheer Ahmad, Treasurer.

234. Shri H. N. Sesha Gowda, Organising Secretary.

235. Shri Chaluva Raju, Auditor.

236. Shri H. Manumanthappa, Cultural Secretary.

237. Dr. G. Thimmaiah,
Director, Institute for Social & Economic Change,
Bangalore.

238. Dr. (Mrs.) Hemalata Rao,
Associate Professor, Institute for Social & Economic
Change, Bangalore.

239. Dr. Amal Ray,
Associate Professor,
Institute for Social & Economic Change, Bangalore.

240. Dr. V. M. Rao,
Associate Professor,
Institute for Social & Economic Change, Bangalore.

241. Shri B. V. Naik, *Ex*-M.P.

242. Shri Thallam Nanjunda Shetty,
President,
Karnataka Chamber of Commerce & Industry.

243. Shri S. Sivappa,
Former Chairman,
Karnataka Legislative Council.

244. Shri H. Srikantiah, *Ex*-MLC.

245. Shri N. V. Rathnam,
Indian Institute of Management, Bangalore.

APPENDIX VII—*Contd.*

246. Shri Basavalingappa
Former Minister Karnataka, Bangalore.

247. Shri G. R. Suryanarayana,
President, Karnataka Unaided Schools Management Association.

248. Dr. G. V. K. Rao, IAS (Retd.)
Former Chief Secretary & Former Member of Planning Commission.

249. Justice G. K. Govinda Bhat,
Former Chief Justice, Karnataka.

250. Shri C. M. Poonacha,
Former Governor and Member of Constituent Assembly.

251. Shri B. S. Sambasiva Iyer,
Retd. Under Secretary

252. Shri P. K. Srinivasan,
Asstt. Editor, Deccan Herald.

253. Shri N. Srinivasa Rau,
Retd. Chief Justice, Karnataka.

254. Shri B. V. Krishnamurthy,
Economist, Bangalore.

255. Dr. K. Raghavendra Rao,
Head of Department of Political Science, Karnataka University, Dharwad.

256. Shri B. D. Jatti,
Former Vice-President of India.

KERALA (Trivandrum)

Government of Kerala—
represented by

257. Shri K. Karunakaran,
Chief Minister.

258. Shri K. M. Mani,
Minister for Finance & Law.

259. Shri M. P. Gangadharan,
Minister for Irrigation.

260. Shri K. Sivadasan,
Minister of Labour.

261. Smt. M. Kamalam,
Minister for Co-operation.

262. Shri C. M. Sundaram,
Minister for Local Administration.

263. Shri N. Sreenivasan,
Minister for Excise.

264. Shri T. M. Jacob,
Minister for Education.

265. Shri N. Sundaram Nadar,
Minister for Transport.

266. Shri K. Avakadakutty Naha,
Dy. Chief Minister.

267. Shri R. Gopalaswamy,
Chief Secretary.

268. Shri V. Ramachandran,
Economic Development Commissioner.

269. Shri M. Dandapani,
Commissioner & Secretary, GAD.

270. Shri K. Sreedharan, Law Secretary.

271. Shri K. V. Rabindran Nair,
Finance Secretary.

Kerala State Planning Board—
represented by

272. Shri Sathyapal,
Vice-Chairman, Planning Board.

273. Dr. P. K. Gopalakrishnan,
Member, Planning Board.

274. Shri V. R. Pilai,
Member, Planning Board

275. Dr. O. P. Warrier,
Member, Planning Board.

276. Shri S. Vardhachary,
Member, Planning Board.

277. Shri E. K. Nayanar,
Ex-Chief Minister & Leader of the Opposition.

278. Dr. I. S. Gulati,
Former Member, Finance Commission,
Senior Fellow,
Centre for Development Studies, Trivandrum.

279. Dr. K. K. George,
Institute for Management Studies.
Cochin University.

280. Dr. K. G. Adiyodi,
Chairman, PSC, Kerala.

281. Shri G. Ramanathan,
Retd. Principal, Training College,
Trivandrum.

282. Shri K. P. Madhavan Nair,
Former President,
Kerala Pradesh Congress Committee.

283. Dr. M. V. Pylee,
Director General (AIDE)
Former VC, Cochin University.

284. Shri C. K. Kochukoshy, IAS Retd.
Former Member, Board of Revenue & Chairman Kerala State Electricity Board.

285. Dr. K. Paramaswaran,
Professor, Centre for Advanced
Legal Studies & Research, Trivandrum.

286. Prof. A. Vaidyanathan,
Centre for Development Studies,
Trivandrum.

287. Shri V. P. Gopalan Nambiar,
Retd. Chief Justice of Kerala.

All India Muslim League—
represented by

288. Shri M. A. Hammu Haji,

Revolutionary Socialist Party—
represented by

289. Shri Baby John.

290. Shri K. Pankajakshan.

Communist Party of India (State Unit)—
represented by

291. Shri P. S. Srinivasan.

292. Shri K. V. Surendranath.

Communist Party of India (Marxist) (State Unit)—
represented by

293. Shri Ramachandra Pillai.

APPENDIX—VII *Contd.*

Congress(I) (State Unit)—
represented by

294. Shri M. M. Jacob,
Joint Secretary, MP

295. Shri C. B. Padmarajan, President.

296. Dr. Gopalakrishna, Adviser,
Economic Committee.

297. Shri Ganga Dharan,
General Secretary, SRP.
National Democratic Party—
represented by

298. Shri T. N. Upendranathan.

299. Shri Raghuvira Pillai,
Praja Socialist Party—
represented by

300. Shri Madhavan Nair, General Secretary.

301. Shri G. Ashok Pillai, General Secretary.

302. Shri Peroorkada Sasi, STUC Secy.

303. Shri A. Kochukarapan, Harijan Sabha.

304. Shri J. Rajendran, Secy. Harijan Sabha,
Kerala Congress (Socialist)—
represented by

305. Shri K. K. Madhavan, Vice-President.

306. Shri K. S. Sankaranarayana, General Secretary.

307. Shri A. K. Basheendran.
Janata Party, Kerala—
represented by

308. Shri P. Viswambharan, MLA President.

309. K. C. Chandrasekharan, MLA,
Indian National Congress—
represented by

310. Shri Amaravila Krishnan Nair,
Malayalee Desheeya Munnani—
represented by

311. Shri J. F. Kuriyan, General Secretary.

312. Shri N. Vikraman Nair, Jt. Secretary.

313. Shri T. Rajan V. Nath.

314. Shri N. Neelakantan Nair.
Federation of State Employees & Teachers Organisation—
represented by

315. Shri K. V. Devadas.

316. Shri P. Venugopalan Nair.

317. Shri P. Anandan.

318. Shri K. Prabhakaran.

319. Shri P. K. Gopinathan Nair.

320. Shri G. Somasekharan Nair,
Kerala Congress(J)—
represented by

321. Shri T. M. Jacob, Minister for Education.

322. Shri T. S. John, MLA, General Secretary.

323. Prof. Joseph Skariah.

324. Shri S. Surendran Pillai, MLA.

325. Shri M. S. Madhusudan,
Editor, Kerala Kaumudi.

326. Dr. Habeed Mohd., VC, Kerala University.

327. Dr. Madhavan Menon Nair,
VC., Kerala Agriculture University.

328. Dr. K. T. Chandy, Former Chairman
State Planning Board, Kerala.

329. Smt. Leela Damodra Menon, Formber M.P.

MADHYA PRADESH (Bhopal)

Government of Madhya Pradesh—
represented by

330. Shri Arjun Singh, Chief Minister.

331. Shri Shiva Bhanu Solanki, Dy. Chief Minister.

332. Shri Krishnpal Singh, Law Minister.

333. Shri Jhunuklal Bhendia, Finance Minister.

334. Dr. Rajendra Jain, Minister for Industries.

335. Shri Digvijay Singh,
Minister for Major and Medium Irrigation.

336. Shri Motilal Vora,
Minister for Higher Education.

337. Capt. Jaipal Singh, Dy. Minister GAD.

338. Shri Brahma Swarup, Chief Secretaty.

339. Shri M. S. Singh Deo, Additional Chief Secretary.

340. Shri M. R. Sivaraman, Finance Secretary.

341. Shri R. C. Jain, Secretary Agriculture.

342. Shri V. C. Nigam, Secretary, GAD.

343. Shri S. C. Gupta, Secretary, GAD.

344. Shri A. C. Qureshi, Law Secretary.

345. Shri Ashok Vajpeyi, Secretary Education.

346. Shri Manish Behl,
Secretary, Commerce & Industries.

347. Shri L. N. Meena, Special Secretary, GAD.

348. Shri K. B. Sharma, Home Secretary.

349. Shri N. R. Krishnan, Secretary to CM.

350. Smt. M. V. Garde,
Secretary Food & Civil Supplies.

351. Shri A. D. Mohile,
Deputy Secretary, Commerce & Industries.

352. Shri N. B. Lohani, Secretary Tribal Welfare.

353. Shri Sandip Banerjee,
Special Secretary, Publicity.

354. Shri Kailash Joshi, *Ex*-Chief Minister,
Madhya Pradesh.

355. Shri Ram Sahay Tiwari,
Member, Constituent Assembly.

356. Shri Kalu Ram Virulakar,
Member, Constituent Assembly,
Ex-MLA, Advocate.

357. Justice P. K. Tare,
Ex-Chief Justice, MP.

358. Shri M. B. Malhotra,
Vice-Chancellor, Sagar University.

359. Dr. K. K. Tiwari, Vice-Chancellor,
Jiwaji University, Gwalior.

360. Shri D. R. Sharma,
Vice-Chancellor,
Vikram University, Ujjain.

361. Shri S. C. Behar, Vice-Chancellor,
Guru Ghasi Ram University, Bilaspur.

APPENDIX VII—*Contd.*

362. Shri S. B. Arya, Vice-Chancellor, Jawahar Lal Nehru University, Jabalpur.

363. Shri R. C. Shukla, Vice-Chancellor, Bhopal University.

364. Shri B. K. Srivastava, Vice-Chancellor, Ravi Shankar University, Raipur.

M.P. Congress Committee(I)— *represented by*

365. Shri Lalit Srivastava, General Secretary.

Communist Party of India, M.P. Unit— *represented by*

366. Shri Homi Daji, Secretary,

Communist Party of India (M), MP— *represented by*

367. Shri Moti Lal Sharma, Secretary.

368. Shri Shailendra Shailly, Secretary,

MP Electricity Inspectorate Engineer Association— *represented by*

369. Shri A. N. Saxena, President.

MAHARASHTRA (Bombay)

Government of Maharashtra— *represented by*

370. Shri Shivajirao Patil Nilangekar, Chief Minister.

371. Shri Jawaharlal Darda, Minister for Energy, Cultural Affairs, Prohibition & Excise.

372. Shri Shivajirao Deshmukh, Minister for Irrigation and Food and Civil Supplies.

373. Shri Vijayasinh Mohite Patil Minister for Agriculture, CADA, Rehabilitation, Sports, Youth Welfare.

374. Shri Sudhakarrao Naik, Minister for Industries, Revenue & Social Welfare.

375. Shri Sushil Kumar Shinde, Minister for Finance, Planning & Environment.

376. Dr. V. Subramanyan, Repairs & Reconstruction.

377. Shri Narendra Tidke, Minister for Co-operation, Labour and Legislative Affairs.

378. Shri Ramachandra Rao Patil, Minister of State for Law & Judiciary, Technical Education, Employment, Energy, Prohibition and Excise.

379. Shri B. G. Deshmukh, Chief Secretary.

380. Shri B. K. Halve, Additional Chief Secretary.

381. Shri B.K. Chougule, Additional Chief Secretary.

382. Shri S.G. Kale, Secretary to Chief Minister.

383. Shri P.V. Nayak, Secretary (Personnel) GAD.

384. Shri N.R. Ranganathan, Secretary (Law & Order), H.D.

385. Shri N. Raghunathan, Secretary (I) F.D.

386. Shri K.G. Paranjape, Secretary (P.D.)

387. Shri V.T. Chari, Secretary R & F.D.

388. Shri V.B. Chavan, Secretary, Law & Judiciary Deptt., R.L.A.

389. Shri K. Rajan, Secretary, (Coop.) A. & C.D.

390. Shri Ashok Basak, Secretary, (Coop.), A & C.D.

391. Shri D.K. Afzulpurkar, Secretary, Housing.

392. Shri M.R. Kolhatkar, Secretary (Education), Edn1. & Empl. Department.

393. Shri R.T. Atre, Secretary P.W. Deptt.

394. Shri N.A. Palkhivala, Senior Advocate, Supreme Court.

395. Shri A.G. Noorani, Senior Advocate, Supreme Court.

396. Shri H.M. Seervai, Senior Advocate, Supreme Court.

397. Dr. P.R. Brahmananda, Prof. of Economics, University of Bombay, Bombay.

398. Shri Mohan Dharia, Ex-Union Minister, Poona.

Employers' Federation of India— *represented by*

399. Shri Naval Tata, President Emeritus.

400. Shri Pratap Bhogilal, Vice-President.

401. Shri N. Ahmed, Adviser.

402. Shri V. B. Mahatme, Ag. Secretary.

Bombay Chamber of Commerce and Industry (BCCI)— *represented by*

403. Shri Ashok B. Garware, Preseident.

404. Shri N. M. Desai, Vice-President.

405. Shri D. P. Mehta.

406. Shri T. Pooran.

407. Prof. Gangadhar Gadgil.

408. Shri N.C. Mehta.

409. Shri B. P. Gunaji, Secretary.

410. Shri S.M. Billimoria, Asstt. Secretary.

APPENDIX VII—*Contd.*

Republican Party of India (Kamble)—
represented by

411. Shri B.C. Kamble,
Ex-Member of Lok Sabha.

412. Dr. H.K. Paranjape,
Economist & Ex-Member MRTP, Pune.

413. Shri Dilip S. Dahanukar,
Engineer & Author in Planning, Bombay.

414. Prof. S.R. Ozarkar,
Academician & Economist, Principal,
Raja Ram College, Kolhapur.

415. Shri V. G. Rajadhyaksha,
Economist & Former Member, Planning Commission.

Industrial Development Bank of India (IDBI)—Bombay—
represented by

416. Dr. S.A. Dave,
Executive Director.

417. Shri R.H. Patil,
General Manager.

418. Shri A.L. Dias,
Ex-Governor,
West Bengal, Bombay.

419. Shri K.K. Shah,
Ex-Governor,
Tamil Nadu, Bombay.

420. Shri M.R. Masani,
Member, Constituent Assembly, Bombay.

421. Shri Morarji Desai,
Former Prime Minister of India, Bombay.

MANIPUR (At Delhi)

Government of Manipur—
represented by

422. Shri Rishang Keishing
Chief Minister.

423. Shri D.N. Barua,
Chief Secretary.

MEGHALAYA (Shillong)

Government of Meghalaya—
represented by

424. Shri W.A. Sangma,
Chief Minister.

425. Shri D.D. Labeng,
Home Minister.

426. Shri R. Lyngdoh,
P.W.D. Minister.

427. Shri R.C. Laloo,
Education Minister.

428. Shri S.K. Marak,
Health Minister.

429. Shri O. Lyngdoh,
Agriculture Minister.

430. Shri J.C. Nampui,
Chief Secretary.

431. Shri R.V. Lyngdoh,
Additional Chief Secretary.

432. Shri Dilip Singh,
Financial Commissioner.

433. Shri R.V. Pillai,
Development Commissioner.

434. Shri K.K. Sinha,
Special Secretary Political

435. Shri S.N. Phukan,
A.J.S., Law.

436. Shri M.I.S. Iyer,
Inspector General of Police.

437. Shri N. Goswami,
Chief Conservator of Forests.

438. Shri B.B. Lyngdoh,
M.L.A.,
Leader of Opposition and Former Chief Minister.

North Eastern Council—
represented by

439. Shri P.H. Trivedi,
Secretary.

440. Shri R. Datta,
Planning Adviser.

Khasi Hills Autonomous District Council (KHADC)
represented by

441. Shri H.S. Lyngdoh,
Chief Executive Member.

442. Shri B.R. Giri,
Secretary,
Executive Committee.

Meghalaya Pradesh Congress Committee—
represented by

443. Dr. B.B. Dutta,
General Secretary.

444. Shri U. Kharbuli,
General Secretary

East Khasi Hills District Congress Committee—
represented by

445. Shri Mohan Singh,
President.

Shillong City Congress Committee—
represented by

446. Shri R.T. Rymbai,
President.

NAGALAND (Kohima)

Government of Nagaland—
represented by

447. Shri S.C. Jamir,
Chief Minister.

448. Dr. H.V. Sakhrie,
Minister (Medical).

449. Shri Kariba,
AO Minister (Forest).

450. Shri K.L. Chishi,
Minister (Education).

451. Shri N.I. Namir,
Minister (Planning).

452. Shri Chongshen,
Minister (PHE).

453. Shri Rethrong,
Minister (Transport).

454. Shri Puse,
Minister (I&P)

455. Shri J. Khenoto Sema,
Minister (Agriculture).

APPENDIX VII—*Contd.*

456. Sh. Shikiho,
Minister (Rural Development).

457. Shri T.A. Ngullie.
Minister (Finance).

458. Shri Tiameran,
Minister (Industry).

459. Shri I. Long Kumer,
Chief Secretary.

460. Shri S.S. Ahluwalia,
Finance Commissioner.

461. Shri L. Colney,
Commissioner & Secretary (AH & Vet.).

462. Shri Abong Imllong,
Commissioner Secretary (Medical).

463. Shri T.C.K. Lotha,
Development Commissioner & Secretary (Plg.).

464. Shri R.S. Pandey,
Secretary (Industry).

465. Shri Daniel Kent,
Home Commissioner.

466. Shri V. Zao,
Commissioner & Secretary (Home)

467. Shri R. Ezung,
Commissioner & Secretary (Soil Conservation).

468. Shri S.B. Chetri,
Secretary (Education).

469. Miss I. Chubala,
Secretary (Social Welfare).

470. Shri C.N. Ngullie,
Commissioner & Secretary (Agriculture).

471. Shri Imkongmar Aier,
Secretary (Supply).

472. Shri Lalhuma,
Additional Secretary (Forest).

473. Shri Anil Kumar,
Additional Secretary (Education).

474. Shri Talitemjen,
Additional Secretary (Geology & Mining).

475. Shri J.P. Imchen,
Additional Secretary (Transport).

476. Shri A.K. Biswas,
Additional Secretary (Home).

477. Shri Darshan Singh,
O.S.D. (Law).

478. Shri R.S. Bedi,
Joint Secretary (Law).

479. Shri Imtikunzuk,
Joint Secretary, (P & AR).

480. Shri Vizol,
Former Chief Minister, Nagaland.

481. Shri Shorhozelie,
Former Minister of Education.

Nagaland Peoples Party—
represented by

482. Shri Kuska Sumi,
Chairman and Former Minister of Agriculture.

483. Shri Neikhotso Liny,
Public Secretary.

484. Shri Kipfelhou Angami,
Member.

485. Shri T.N. Angami,
Former Chief Minister, Nagaland.

486. Shri M. Vero,
Former Member Rajya Sabha.

487. Shri Khyamolotha,
Former Member Rajya Sabha.

ORISSA (Bhubaneswar)

Government of Orissa—
represented by

488. Shri J.B. Patnaik,
Chief Minister.

489. Shri Gian Chand,
Chief Secretary.

490. Shri Gangadhar Mahapatra,
Minister, Finance and Law.

491. Shri L.I. Parija,
Addl. Chief Secretary.

492. Shri A.K. Ray,
Addl. Dev. Commissioner & Secretary, Plg. & Coord.

493. Shri R.N. Das,
Secretary, Home.

494. Shri R.K. Bhujabal,
Secretary, Finance.

495. Shri S.B. Mishra,
Secretary, Industry.

496. Shri B.C. Kanungo,
Secretary, Law.

497. Dr. Chakradhar Mishra,
Special Secretary, Plg. & Coord.

498. Smt. C. Narayanaswamy,
Special Secretary, G.A.D.

499. Shri A.R. Nanda,
Secretary to Chief Minister.

500. Shri Devdas Chhotray,
Addl. Secretary, Home.

501. Smt. Nandini Sathpathi,
Former Chief Minister, Orissa.

502. Shri Biju Patnaik,
Former Chief Minister, Orissa.

503. Shri Hare Krushna Mehtab,
Former Chief Minister, Orissa.

504. Shri K. Ramamurthy,
Vice-Chancellor,
Agriculture University, Orissa.

RAJASTHAN (At Delhi)

Government of Rajasthan—
represented by

505. Shri Harideo Joshi,
Chief Minister.

APPENDIX VII—*Contd.*

506. Shri V.B.L. Mathur,
Chief Secretary.

507. Shri T.V. Ramanan,
Secretary (Finance).

508. Shri Rajinder Jain,
Secretary (Irrigation)

509. Shri H.R. Bhansani,
Secretary (Law).

510. Shri D.R. Mehta,
Secretary to Chief Minister.

511. Shri D.C. Samant,
Special Secretary (Planning)

TAMIL NADU (Madras)

Government of Tamil Nadu—
represented by

512. Dr. M.G. Ramachandran,
Chief Minister.

513. Dr. V.R. Nedunchezian,
Minister for Finance.

514. Shri S. Ramachandran,
Minister for Electricity.

515. Shri R.M. Veerappan,
Minister for Tourism & Religious Endowments.

516. Shri K. Rajaram,
Minister for Industries.

517. Shri K.A. Krishnasamy,
Minister for Labour.

518. Shri P.U. Shanmugam,
Minister for Local Administration.

519. Shri C. Arranganayagam,
Minister for Education.

520. Dr. K. Kalimuthu,
Minister for Agriculture.

521. Shri C. Ponnaiyan,
Minister for Law.

522. Shri S. Muthusamy,
Minister for Transport.

523. Shri S. Thirunavukkarasu,
Minister for Food.

524. Shri V.V. Swaminathan,
Minister for Excise, Handloom & Textiles.

525. Shri R. Soundararajan,
Minister for Nutritious Meals.

526. Shri T. Veerasamy,
Minister for Commercial Taxes.

527. Shri N. Nallusamy,
Minister for Housing.

528. Shri Ancor P.G. Jagadeesan,
Minister for Rural Industries.

529. Shri T. Ramasamy,
Minister for Rehabilitation & Employment.

530. Shri A. Arunachalam,
Minister for Adi Dravidar Welfare.

531. Shri M.R. Govendhan,
Minister for Backward Class.

532. Smt. Vijayalakshmi Palanisamy,
Minister for Khadi.

533. Smt. Gomati Srinivasan,
Minister for Social Welfare.

534. Shri K.K.S.S.R. Ramachandran,
Minister for Co-operation.

535. Shri T.V. Antony,
Chief Secretary to the Government.

536. Shri U.S. Natarajan,
Commissioner & Secretary to Government.

537. Shri S. Vadivelu,
Commissioner & Secretary to Govt.,
Law Department.

538. Shri Ramachandran,
Commissioner & Secretary to Govt.,
Finance Department.

539. Shri S. Guhan,
Director,
Madras Institute of Development Studies, Madras.

540. Shri M. Bakthavatchalam,
Former Chief Minister, Tamil Nadu.

Tamil Arasu Kazhagam—
represented by

541. Shri M.P. Sivagnanam,
and 2 office bearers.

542. Smt. Jothivenkatachalam,
Former Governor, Kerala.

543. Shri K. Krishnamoorthy,
Advocate General.

544. Justice M.M. Ismail,
Former Chief Justice, Madras High Court.

Namadhu Kazhagam—
represented by

545. Shri S.D. Somasundaram,
& 5 other office bearers.

546. Shri K.S. Anandhan,
Advocate, Gobichettipalayam, Distt. Pariyar.

547. Dr. Satyanarain Motturi,
Member, Constituent Assembly, Madras.

548. Shri O.V. Alagesan,
Former Union Minister and Member of Constituent Assembly.

549. Shri P.C. Mathew,
ICS(Retd.), Madras.

President of All India Christian Party—
represented by

550. Shri D. Vaseekaran.

D.M.K. Party—
represented by

551. Shri Murasoli Maran,
M.P.

552. Shri Sadiq Pasha,
M.L.C.,
Treasurer of D.M.K. Party.

553. Shri K. Manoharan,
M.L.A.

APPENDIX VII—*Contd.*

554. Shri N.V.N. Somu, M.P.

555. Shri Veerasamy, Ex-M.L.A.

556. Shri Dhandapani, Ex-M.P.

557. Shri Kandappan, Ex-M.P.

558. Shri C. Subramaniam, Former Union Minister and Member of the Constituent Assembly.

559. Shri N. T. Vanamamalai, Senior Advocate, Madras High Court.

560. Shri Thanjai V. Ramamurthy, Representing Tamil Nadu Kamraj Congress.

TRIPURA (Agartala)

Government of Tripura— *represented by*

561. Shri Nripan Chakravarti, Chief Minister.

562. Shri Jogesh Chakraborty, Minister for Jail & Rehabilitation.

563. Shri Badal Choudhury, Minister for Agriculture.

564. Shri Arber Rahman, Minister for Forest.

565. Shri Sundhanwa Deb Barma, Minister for Co-operation

566. Shri I. P. Gupta, Chief Secretary.

567. Shri H. Das, Law Secretary.

568. Shri S. R. Sinha, Deputy Secretary (Law).

569. Shri A. K. Deb, Secretary, Education.

570. Shri S. Chattopadhay, Secretary, PWD.

571. Shri K. B. Bhattacharya, Deputy Secretary (Finance).

572. Shri Naresh Chander, Commissioner Tribal Welfare.

573. Shri R. N. Chakrabarty, Commissioner Industry & Labour.

574. Shri C. S. Samal, Commissioner Agriculture, Forest & ICAT.

575. Shri J. L. Roy, Commissioner Local Self Government.

576. Shri D. Roy, Secretary Transport.

State Government, CPI(M)— *represented by*

577. Shri Bhanu Ghosh, Secretary

578. Shri Manik Sarkar

579. Shri Sudarshan Bhattacharji, Representing RSD. State Committee Forward Block— *represented by*

580. Shri Brajo Gopal Roy, Secretary. Pradesh Congress Committee (Tripura)— *represented by*

581. Shri Sudhir Ranjan Majumdar, Secretary. Tripura Government Employees Federation— *represented by*

582. Shri Sibendra Bhattacharjee, General Secretary.

583. Shri Sunil Choudhuri.

584. Shri Pritosh Debbarma

585. Shri Nani Gopal Saha.

586. Shri Amelendu Dey.

587. Smt. Sadhana Sinha.

588. Smt. Santi Biswas.

UTTAR PRADESH (Lucknow)

Government of Uttar Pradesh— *represented by*

589. Shri Veer Bahadur Singh, Chief Minister.

590. Dr. Sanjay Singh, Transport Minister.

591. Shri Sibte Rizvi, Education Minister.

592. Shri J. A. Kalyanakrishan, Chief Secretary.

593. Shri M. Vardarajan, Agriculture Production Commissioner.

594. Shri J. P. Singh, Finance Secretary.

595. Shri B. N. Tiwari, Planning Secretary.

596. Shri Mahesh Prasad, Principal Secretary (Industries).

597. Shri S. A. T. Rizvi, Secretary (Industries).

598. Shri V. K. Dixit, Secretary (Irrigation).

599. Shri K. K. Chaube, Additional Secretary (Law).

600. Shri Shahzad Bahadur, Special Secretary.

601. Shri P. P. Agarwal, Joint Secretary (Finance).

602. Shri Narain Das, Joint Secretary (Law).

603. Shri R.S. Mathur, Secretary to Chief Minister.

604. Shri Chandra Pal, Special Secretary (Education).

605. Shri H. M. Sharan, Joint Secretary (Food).

606. Shri H. C. Gupta, Special Secretary (Personnel).

607. Shri Rajeev Kher, Joint Secretary (Appointment).

608. Dr. Anirudh Prasad, Reader in Law, Gorakhpur University, Gorakhpur.

609. Dr. C. M. Jariwala, Reader in Law, Banaras Hindu University, Varanasi.

610. Shri T. S. Papola, Director, V. V. Giri Institute of Development Studies, Lucknow.

611. Shri D. K. Bhattacharya, Former Chief Secretary, U.P. Varanasi.

612. Shri Shailendra Singh, Reader in Economics, Lucknow University.

613. Dr. L. D. Thakur, Prof. & Head of Department of Political Science, Lucknow University.

614. Shri Sripat Misra, Former Chief Minister, U.P.

615. Shri Vibhava Bhushan, Advocate General, Uttar Pradesh.

WEST BENGAL (Calcutta)

Government of West Bengal— *represented by*

616. Shri Jyoti Basu, Chief

617. Dr. Ashok Mitra, MIC, Finance, Development & Planning.

618. Shri Prasanta Kumar Sur, MIC, Local Government and Urban Development.

APPENDIX VII—*Contd.*

619. Shri Kamal Guha,
MIC, Agriculture.

620. Shri Nani Bhattacharyya,
MIC, Irrigation & Waterways.

621. Shri Nirmal Bose,
MIC, Commerce & Industries.

622. Shri Radhika Ranjan Banerji,
MIC, Food & Supplies.

623. Shri Kanti Biswas,
MIC, Education (School).

624. Shri Sambhu Charan Ghose,
MIC, Education (Higher).

625. Shri S. V. Krishnan,
Chief Secretary.

626. Shri R. Kharlukhi,
Secretary, L.G. & U.D.

627. Shri L. M. Ghosh,
Secretary Judicial.

628. Shri P. K. Banerjee,
Secretary Legislative.

629. Shri P. V. Shenoi,
Secretary Agriculture.

630. Shri S. P. Sen,
Engineer-in-Chief & Ex-Officio Secretary, Irrigation & Waterways.

631. Shri T. S. Broca,
Secretary Commerce & Industries.

632. Shri A. K. Chatterjee,
Secretary Food & Supplies.

633. Shri A. K. Basu,
Secretary Education (School).

634. Shri C. N. Penn-Anthony,
Secretary Education (Higher).

635. Shri P. K. Sarkar,
Secretary Finance.

636. Shri A. K. Banerjee,
Officer on Special Duty & Ex-Officio Secretary Home (P. & A. R.)

637. Shri Annada Sankar Ray,
Intellectual & Writer, Calcutta.

638. Shri S. B. Sen,
Economist, Calcutta.

639. Shri S. K. Acharya,
Advocate General.

640. Dr. Bhabatosh Datta,
Emeritus Professor of Economics and Former Member, Finance Commission.
All India Forward Block (West Bengal Committee)—
represented by

641. Shri Anil Mukharjee.
Forward Bloc (Marxist)—
represented by

642. Shri Ram Chatterjee,
Chairman.

643. Shri R. K. Podd...,
Former Vice-Chancellor, Calcutta University.

644. Prof. Barun De,
Professor of History Centre for Studies in Social Sciences, Calcutta.

645. Shri Atulya Ghosh,
Former Congress President.
West Bengal State Committee (CPI) (M)—
represented by

646. Shri Saroj Mukharjee,
Secretary.
Revolutionary Communist Party—
represented by

647. Shri Bimalananda Mukherjee.
West Bengal Headmasters' Association—
represented by

648. Shri Bishnubrata Bhattacharya,
President, (with 7 other members).

649. Dr. S. K. Bhattacharya,
Vice-Chancellor, Calcutta University.

650. Smt. Renuka Ray,
Member of Constituent Assembly.

651. Shri Sukumar Mullick,
Ex-Chief Minister, West Bengal.

652. Dr. Biplab Das Gupta,
Economist, Calcutta.

653. Shri Somendra Chandra Bose,
President, High Court Bar Association.

654. Shri Mohit Bhattacharya,
Professor of Political Science, Calcutta University.

655. Dr. M. L. Upadhyaya,
Principal & Dean Calcutta University Law College.
Bengal Chamber of Commerce and Industry—
represented by

656. Shri J. D. Sinha,
President.

657. Shri T. K. Ramasubramanyam,
Chairman.

658. Shri P. Das Gupta,
Secretary.

659. Shri R. Ghosh,
Economist.
Bharatiya Janata Party—
represented by

660. Shri Vishnu Kant Shastri,
President, West Bengal, B.J.P.
Revolutionary Socialist Party—
represented by

661. Shri Jatin Chakrabarty,
PWD & Housing Minister,
Govt. of West Bengal.

662. Shri Saurin Bhattacharya.

663. Shri Sunil Sen Gupta.

664. Shri Suniti Chattaraj,
M.L.A. Congress (I), West Bengal.

665. Shri Chittaranjan Bag,
Advocate, Lecturer Calcutta University College of Law.
West Bengal State Committee CPI—
represented by

666. Shri Kanai Bhowmik,
Secretary.

667. Shri Swadhin Guha.

668. Shri Prabhat Das Gupta.

APPENDIX VII—*Contd.*

GOA (Panaji)

669. Sardar Gopal Singh,
Lt. Governor, Goa, Daman & Diu.
Government of Goa, Daman & Diu—
represented by

670. Shri Pratap Singh Raoji Rane,
Chief Minister.

671. Shri Saikh Hassan Haroon,
Minister for Law & Industries.

672. Shri Francisco Caetano Sardinha,
Minister for Agriculture.

673. Shri Harish Narayan Prabhu Zantya,
Minister for Power.

674. Shri Vaikuntha Govind Desai,
Minister for Labour & Employment.

675. Shri K. K. Mathur,
Chief Secretary.

676. Shri M. Raghuchander,
Law Secretary.

677. Shri S. K. Genthe,
Special Secretary (Planning).

678. Shri B. S. Subhanna,
Secretary to Chief Minister.

679. Shri G. G. Kambli,
Under Secretary (G.A.).
Goa Congress—
represented by

680. Dr. Wilfred de Souza,
President.

681. Shri Govind Panvelcar,
General Secretary.

682. Shri Luizimbo Fabiro,
M.L.A., General Secretary.

683. Shri Lyam Sunder Lengi,
Treasurer.

684. Shri R. D. Khalap,
Leader of the Opposition & General Secretary, Maharashtrawadi Gomantak.
Maharashtrawadi Gomantak—
represented by

685. Shri Ravi Naik,
President.
Konkani Lekhak Sangh—
represented by

686. Shri Datta Naik,
General Secretary.
All Goa Youth Federation—
represented by

687. Shri Sushrut A. Martins,
President.

688. Shri Damodar Ghanekar,
Vice-President, All Goa Youth Federation Editor, Sanydi.
Yuva Janata—
represented by

689. Shri Cyril Pacheco,
President.
Konkani Projecho Avaz—
represented by

690. Shri Pundalik N. Naik,
Convenor.

691. Shri Uday Bhembre,
M.L.A.

692. Shri Chander Kant Keni,
Editor, Daily Rashtramet.
Bhartiya Janata Yuva Morcha—
represented by

693. Shri Madhav Manohar Dhond,
General Secretary.
Goment Lok Polox—
represented by

694. Shri Mathanhy Saldanha,
General Secretary.

695. Shri Raju D. Mangushkar,
Joint Secretary.

PONDICHERRY

Pondicherry Government—
represented by

696. Shri M. O. H. Farook,
Chief Minister.

697. Shri P. Kannan,
Health Minister.

698. Shri V. Vaithilingam,
Public Works Minister.

699. Shri V. Govindarajan,
Agriculture Minister.

700. Shri L. Joseph Mariadoss,
Labour & Cooperation Minister.

701. Shri F. Pahnuna,
Chief Secretary.

702. Shri P. M. Nair,
Development Commissioner.

703. Shri A. Chandrasekhara Menon,
Secretary to Government (Law).

704. Shri R. Padmanabhan,
Secretary to Government (Finance).

705. Shri R. S. Chari,
Secretary to Government (L.A.D.).

706. Shri Rakesh Mehta,
Secretary to Government (Education).

707. Shri A. Subbaraya Pillai,
Secretary to Government (Revenue).

708. Shri S. Ramasamy,
Former Chief Minister.
Puduvai Makkal Munnani Party—
represented by

709. Shri Era Cheram,
Secretary.

710. Shri D. Ramachandran,
Former Chief Minister, State D.M.K. Convenor
with

711. Shri R. V. Jankiraman,
M.L.A.,

712. Smt. Ganimaran,
Ex-M.L.A.

713. Shri S. Gomala,
M.L.A.

APPENDIX VII—*Contd.*

714. Dr. S. Anandavelu.

715. Shri Subramanian.

NEW DELHI

716. Shri N. A. Palkhivala,[1]
Senior Advocate, Supreme Court.

717. Dr. Karan Singh,
Former Union Minister.

718. Shri Dharama Vira,
ICS (Retd.), Former Governor.

719. Shri E. M. S. Namboodripad,
Former Chief Minister, Kerala.

720. Shri M. L. Dwivedi,
Member, Constituent Assembly.

721. Prof. N. G. Ranga,
Member Constituent Assembly.

722. Shri R. R. Diwakar,
Member Constituent Assembly

723. Shri Kishori Mohan Tripathi,
Member Constituent Assembly.

724. Shri Satish Chandra,
Member Constituent Assembly.

725. Shri Mohan Singh Mehta,
Member Constituent Assembly.

726. Shri Ram Sahai Tiwari,[2]
Member, Constituent Assembly.

727. Smt. Renuka Ray,[3]
Member, Constituent Assembly.

728. Ch. Ranbir Singh,
Member, Constituent Assembly.

729. Shri R. K. Malviya,
Member, Constituent Assembly.

730. Shri S. Nijalingappa,
Member, Constituent Assembly.

731. Shri K. K. Jain,
Member, Constituent Assembly.

732. D. Raj Krishna,
Economist,
Former, Member, Planning Commission & Former Member, Seventh Finance Commission.

733. Dr. C. H. Hanumantha Rao,
Economist,
Member, Planning Commission.

734. Prof. P. C. Mathur,
Professor Economist (Retd.),
L.B.S. National Academy of Admn., Mussoorie.

735. Shri L P. Singh, ICS (Retd.),
Former Governor.

736. Shri N. K. Mukarji, IAS (Retd.),
Former Cabinet Secretary, Government of India.

737. Shri V. Vishwanathan, ICS (Retd.),
Former Governor.

738. Shri B. G. Verghese, Editor-in-Chief.
The Indian Express.

739. Shri L. K. Jha, ICS (Retd.)
Formerly Chairman,
Economic Admn. Reforms Commission and Chairman Indirect Taxation Enquiry Committee.

740. Shri S. Sahay, Editor,
The Statesman, New Delhi.

741. Shri Raja J. Chelliah,
Former Director,
National Institute of Public Finance and Policy, New Delhi.
Member, Planning Commission.

742. Shri G. K. Reddy,
Spl. Correspondent, The Hindu.

743. Prof. Mrinal Datta Chowdhuri,
Professor, Delhi School of Economics.

744. Dr. (Mrs.) Alice Jacob,
Director, Indian Law Instt.

745. Shri Tarlok Singh,
Former Member Planning Commission.

746. Dr. M. V. Mathur,
Economist, & Educationist, Member IV Pay Commission.

747. Dr. . N. Raj,
Fellow, Centre for Development Studies, Trivandrum & Member Economic Advisory Council, Planning Commission.

748. Dr. Y. K. Alagh,
Former Chairman, Bureau of Industrial Costs & Prices,
Member, Planning Commission.

749. Mr. Inder Malhotra,
Resident Editor, The Times of India, New Delhi.

750. Dr. Ashish Bose,
Professor, Institute of Economic Growth, Delhi.

751. Dr. B. B. Bhattacharya,
Professor, Institute of Economic Growth, Delhi.

752. Justice S. Rangarajan,
Senior Advocate, Supreme Court, Retd. Judge, Delhi High Court.

753. Shri P. R. Dubhashi,
Director, Indian Institute of Public Administration, New Delhi.

754. Shri A. R. Shirali,
Member Secretary, Committee on Change in Financial Year.

Federation of Indian Chambers of Commerce and Industry (FICCI)—
represented by

755. Shri Ram Krishna Bajaj,
President.

756. Shri A. K. Jain,
Ex-President.

757. Shri D. D. Puri,
Committee Member.

758. Dr. Sanjiv Gupta,
Secretary (Eco.).

759. Prof. Verney Douglas,
Senior Fellow, Shastri Indo—Canadian Institute, New Delhi.

---

1 Also met the Commission at Bombay.
2 Also met the Commission at Bhopal.
3 Also met the Commission at Calcutta.

APPENDIX VII—*Contd.*

760. Shri K. F. Rustomji,
Former Director General, Border Security Force and Member, National Police Commission.

761. Dr. S. R. Maheshwari,
Prof. of Political Science & Public Admn.,
Indian Institute of Public Administration.

762. Shri R. C. S. Sarkar, Ex-Law Secretary, and Former Chairman, U.P.S.C.

763. Shri G. Ramachandran, Former Finance Secretary, and Member-Secretary Planning Commission.

764. Shri K. Ganesen, Former Secretary,
Election Commission.

765. Dr. Edward Mc Whinney,
Member of Permanent Court of Arbitration, Canada.

766. Mrs. K. Rukmani Menon,
Former Ambassador to Nigeria, Italy & Denmark.

767. Shri Shyam Dhar Misra,
Former Union Minister.
Janata Party—
represented by

768. Prof. Madhu Dandavate,
Leader of the Janata Party in Lok Sabha.

769 Dr. S. Jaipal Reddy,
Dy. Leader of the Janata Party.
Lok Dal—
represented by

770. Shri Satya Prakash Malviya,
Member of Parliament, General Secretary.

771. Shri J. P. Goyal, Member of Parliament.

772. Shri Mahavir Singh,
Ex-Judge, Allahabad High Court.
Bhartiya Janata Party—
represented by

773. Shri L. K. Advani, President.

774. Shri Ram Jethmalani Vice-President.

775. Shri V. K. Malhotra, Secretary.

776. Shri K. L. Sharma, Secretary.
Communist Party of India, Central Sectt.—
represented by

777. Shri Homi Daji, Secretary,
Central Secretariat.

778. Shri N. Raja Sekhar, Reddy, Member.
A.I.C.C. (Socialist)—
represented by

779. Shri K. P. Unnikrishnan, MP,
General Secretary.

780. Shri .V Kishore S. Deo, MP,
General Secretary.

781. Shri Dharam Bir Sinha,
Former Union Deputy Minister &
Former Minister, Bihar.
A.I.C.C. (I)—
represented by

782. Shri Arjun Singh, Vice-President.

783. Shri P. Shiv Shankar,
Union Minister for External Affairs.

SECRETARIES TO THE GOVERNMENT OF INDIA

784. Shri T. U. Vijayasekharan, Secretary,
Department of Food.

785. Shri M. M. Kohli, Secretary,
Department of Power.
accompanied by

786. Shri M. K. Sambamurti, Chairman, C.E.I.

787. Shri R. K. Sharma, Additional Secretary.

788. Shri J. C. Gupta, Joint Secretary.

789. Shri T. N. Seshan, Secretary,
Department of Forests & Wild Life
(Environment and Forests).

790. Shri R. Ganapati, Secretary,
Department of Expenditure.
accompanied by

791. Shri C. S. Rao, Joint Secretary,

792. Shri Prakash Narain, Chairman, Railway Board,
accompanied by

793. Shri S. R. Chaudhri, Member (Staff).

794. Shri Kuldip Narain,
Advisor, (Industrial Relations).

795. Shri S. P. Banerjee, Director General,
Railway Protection Force.

796. Shri M. B. Kaushal,
Additional Inspector General,
Railway Protection Force.

797. Shri M. P. Srivastava, Director,
Railway Reforms Committee.

798. Shri C. G. Somiah, Secretary,
Planning Commission.
accompanied by

799. Dr. S. P. Gupta, Adviser,
Perspective Planning Division.

800. Dr. P. D. Mukherjee, Advisor,
Financal Resources Division.

801. Shri Badal Roy, Adviser,
Plan Coordination Division.

802. Shri Ramaswamy R. Iyer, Secretary,
(Water Resources),
accompanied by

803. Shri D. W. Telang, Additional Secretary.

804. Shri M. A. Chitale, Chairman,
Central Water Commission.

805. Shri N. K. Sharma, Member (W.R.) C.W.C.

806. Shri G. S. Jakhade, Adviser (P.P.).

807. Shri B. K. Rao, Secretary,
Department of Mines,
accompanied by

808. Shri T. N. Srivastava, Joint Secretary.

809. Shri S. D Srivastava, Secretary,
Department of Industrial Development.
accompanied by

810. Shri P. R. Latey,
Secretary & Director General
Technical Development.

APPENDIX VII—*Concld.*

811. Shri P. Murari, Additional Secretary.

812. Shri R. P. Khanna, Additional Secretary and Development Commissioner, Small Scale Industry.

813. Shri S. K. Lall, Joint Secretary.

814. Shri B. Sahay, Joint Secretary.

815. Shri G. Venkataramanan, Joint Secretary.

816. Shri C. R. Sundararajan, Joint Secretary, Department of Company Affairs.

817. Shri A. M. Chakraborti, Deputy Secretary.

818. Shri R. D. Pradhan, Secretary, Ministry of Home Affairs.
accompanied by

819. Shri S. Balakrishnan, Adviser.

820. Shri Anand Sarup, Secretary, Department of Education.
accompanied by

821 Shri P. K. Patnaik, Joint Secretary (Planning), Department of Education.

822. Shri M. Subramanian, Secretary, Department of Agriculture.

823. Shri G. M. Mehra, Secretary, Information and Broadcasting.

UNION MINISTERS

824 Shri Ajit Kumar Panja, Minister of State for Planning.
accompanied by

825. Dr. P. D. Mukherji, Adviser, Financial Resources Division.

826. Shri K. D. Saksena, Joint Secretary, State Plans Division.

827. Shri G. C. Mathur, Deputy Adviser, Plan Coordination Division.

828. Dr. R. Mandal, P. S. to Minister.

829. Shri G. S. Dhillon, Union Minister of Agriculture, Cooperation and Rural Development.
accompanied by

830. Shri D. Bandyopadhyay, Secretary, Department of Rural Development.

831. Shri K. N. Ardhanareeswaran, Additional Secretary, Department of Agriculture & Cooperation.

832. Smt. Mohsina Kidwai, Union Minister for Health and Family Welfare.
accompanied by

833. Shri S. S. Dhonoa, Secretary,

834. Shri P. K. Umashankar, Addl. Secretary.

835. Shri S. V. Subramaniyan, Joint Secretary.

836. Dr. D. B. Bisht, Director General, Health Services.

837. Shri N. D. Tiwari, Union Minister for Industries.
accompanied by

838. Shri S. D. Srivastava, Secretary, Deptt. of Industrial Development.

839. Shri V. K. Dhar, Secretary, Deptt. of Public Enterprises.

840. Shri C. R. Sundra Rajan, Joint Secretary, C. A.

841. Shri P. K. S. Iyer, Director.

842. Shri A. M. Chakraborty, Deputy Secretary, C. A.

843. Shri P. Shiv Shankar, Union Minister of Commerce.

844. Shri Vishwanath Pratap Singh, Union Minister of Finance,
accompanied by

845. Shri R. Ganapati, Secretary, Deptt. of Expenditure.

846. Shri V. Srinivasan, Officer on Special Duty.

847. Shri S. P. Sharma, P. S. to Secretary.

848. Shri P. V. Narasimbha Rao, Union Minister for Human Resource Development.

849. Shri Buta Singh, Union Minister of Home Affairs.

COMPTROLLER AND AUDITOR GENERAL OF INDIA.

850. Shri T. N. Chaturvedi.
accompanied by

851. Shri Sattu Rama, Deputy Comptroller and Auditor General of India.

Indian Forest Service Association—
represented by

852. Shri Narayan Singh, General Secretary.

853. Shri C. S. Joshi, Treasurer.

854. Shri A. C. Chaubey, Member.
Shiromani Akali Dal— (L)
represented by

855. Sardar Surjit Singh Barnala, President and former Chief Minister, Punjab.

856. Sardar Balwant Singh, Former Finance Minister, Punjab.

857. Sardar Manjit Singh Khaira, General Secretary.

858. Sardar Balwant Singh Ramoowalia, M. P. Secretary General.

859. Dr. K. S. Gill, Vice-Chairman, Punjab State Planning Board.

APPENDIX VIII

SELECT BIBLIOGRAPHY

I. BOOKS

Sl. No.	Author's Name	Title
1.	Aggrawal, P. P.	The System of Grants-in-aid in India, (1959).
2.	Ahluwalia, Isher Judge	Industrial Growth in India : Stagnation since the Mid-Sixties, (1985).
3.	Aiyangar, N. R.	Government of India Act, 1935, with a Commentary, Critical and Explanatory, (1937).
4.	Alagh, Y. K.	Some aspects of Planning Process in India, (1986).
5.	Basu, D. D.	Commentary on the Constitution of India, Volumes A (1982) to L, (1986).
6.	Basu, D. D.	Comparative Constitutional Law, (1985).
7.	Basu, D.D.	Comparative Federalism, (1987).
8.	Basu, D. D.	Constitutional Law of India, (1983).
9.	Basu, D. D.	Introduction to the Constitution of India, (1983).
10.	Basu, D. D.	Shorter Constitution of India, (1984).
11.	Basu, D. D.	World Constitutions.
12.	Basu, N. D.	Indian Penal Code, 1860 (Act 45 of 1860).
13.	Bhagwati, J. N. and Desai, Padma.	India : Planning for Industrialization and Trade Policies Since 1951, (1970).
14.	Bhargava, Madhuri	Inter-Governmental Financial Relations in India Since Independence, 1(1976).
15.	Bhargava, P. K.	Essays on Indian Public Finance, (1982).
16.	Bhargava, P. K.	Centre-State Resource Transfers in India, (1982).
17.	Bhargava, R. N.	The Theory and Working of Union Finances in India, (1956).
8.	Bhatnagar, Sudha	Union-State Financial Relations and Finance Commissions, (1979).
19.	Birla Institute of Scientific Research, New Delhi.	Centre-State Financial Relations in India, (1979).
20.	Chanda, Asoka	Federalism in India : A Study of Union-State Relations, (1965).
21.	Choudhary, Valmiki	President and the Indian Constitution, (1985).
22.	Clarke, M. G.	Modern Political Constitutions (1975).
23.	Corwin, Edward	The President : Office and Powers, (2nd edition).
24.	Coupland, R	Report on Constitutional Problems in India.
25.	Dharm Vira	"The Exercise of Discretion" in "*The Governor—Sage or Saboteur*", (1985).
26.	Dhavan, Rajeev	President's Rule in the States, (The Indian Law Institute), (1979).
27.	Dicey, A. V.	An Introduction to the Study of the Law of Constitution, (1969).
28.	Diwan, Paras	The Union-State Fiscal Relations : An Over-view, (1981).
29.	Doss, Veda	Impact of Planning on Centre-State Financial Relations in India, (1978).
30.	Dua, B. D.	Presidential Rule in India, 1950-84—A Study in Crisis Politics, (1985).
31.	Dubhashi, P. R.	Grammar of Planning (1984).
32.	Fedia, Babulal	State Policy in India, Volume I and II (1984).
33.	Ghelot, N. S.	State Governors in India : Trends and Issues (1985).
34.	Government of India, Publication Division	Jawaharlal Nehru's Speeches, Vol. : 2 (1949-53), Vol. : 3 (1953-57), Vol. : 5 (1963-64).
35.	Govind Narain	"Constitutional Obligations" in "*The Governor—sage or Saboteur*", (1985).
36.	Grewal, B. S.	Centre-State Financial Relations in India, (1975).
37.	Gupta, S. C.	The Law relating to Commissions of Inquiry, (1977).
38.	Hanks, P. J.	Australian Constitution.
39.	Hanson, A. H.	The Process of Planning, (1966).
40.	Hegde, Ramakrishna	Electrical Reforms—Lack of Political Will.
41.	Hegde, Ramakrishna	Judiciary Today—Disturbing Trends and Suggestions for Reforms.
42.	Hegde, Ramakrishna	The Judiciary Today—A plea for a Collegium, (1986).
43.	Hicks, U. and others (Ed).	Federation and Economic Growth in Under developed Countries, (1961).
44.	Hilliard L. Robert	Radio Broadcasting.
45.	Hogg, Peter, W.	Constitutional Law of Canada.
46.	Hussain, Yusuf	Glimpses of Medieval Indian Culture.
47.	Huntington, Samuel, P.	Political Order in Changing Societies, (1968).
48.	Indian Institute of Public Administration	Planning and its Implementation, (1984).
49.	Indian Institute of Public Administration (Editors : Chaturvedi, T. N. and Rao, S. Venugopal).	Selected Articles Police Administration, (1982).
50.	Indian Institute of Public Administration (Editors : Chaturvedi, T. N. and Dutta, Abhijit).	Selected Articles Union-State Relations, (1984).

APPENDIX VIII—*Contd.*

Sl. No.	Author's Name	Title
51.	Indian Law Institute, Indian Institute of Administration, and Institute of Constitution and Parliamentary Studies (Editors : S. N. Jain and others).	The Union and the States.
52.	Indra, M. S. . .	The Role of the Centre and the States in the Improvement of Agriculture, (1963).
53.	Institute for Constitutional and Parliamentary Studies, New Delhi	Federal Financial Relations in India, (1974).
54.	Jacob, Alice . .	Presidential Assent to State Bills—A Case Study, Vol. 12, (1970), No. 1.
55.	Jain, M. P. . .	Indian Constitutional Law, (1987).
56.	Jain, Rajendra . .	State Taxation in India, (1972).
57.	Jain, Rajendra . .	Dilemma of State Finances, (1983).
58.	Jain, S. N.; Jacob, Alice and Jain, Subhash, C.	Inter-State Water Dispute in India.
59.	Jawaharlal Nehru Memorial Fund. (Editor : G. Parthasarthy).	Letters to Chief Ministers, Volume 1, 1947-1949, (1985) and Volume 2, 1950-1952, (1986).
60.	Jha, L.K. . .	Economic Strategy For the 80's : Priorities for the Seventh Plan, (1979).
61.	Jha, L. K. . .	Growth, Inflation and Other Issues, (1985).
62.	Jha, P. K. . . .	Federal Finance in Developing India, (1983).
63.	Jennings, Ivor . .	Cabinet Government, (1959).
64.	Jennings, Ivor . .	The Law and the Constitution, (1976).
65.	Jennings, Ivor . .	The Common Wealth Conference, 1949 : The British Year Book of International Law, (1948).
66.	Johnson, Nevil . .	Government in the Federal Republic of Germany.
67.	Jones, W. H. Morris .	The Government and Politics of India, (1964).
68.	Julian, Hale . .	Radio Power—Propoganda and International Broadcasting.
69.	Kelly and Harbinson .	The American Constitution.
70.	Keith, A. B. . .	A Constitutional History of India (1600-1935), 1961 edition.
71.	Krishnamurthi, M. .	Union State Relations, (1981).
72.	Kumar, Narender .	Taxing Powers and Distribution of Revenue, (1987).
73.	Kurian, K. Mathew and others.	Centre-State Relations, (1981).
74.	Lakdawala, D. T. .	Union-State Financial Relations, (1967).
75.	Laski, H. J. . .	A Grammar of Politics, 1938.
76.	Law Publishers, Allahabad.	Princep's Commentaries on Code of Criminal Procedure, (Volumes I and II, (1984).
77.	Lijphart, Arned . .	Democracies—Patterns of Majoritarial and Consensus Government in Twenty-One Countries, (1984).
78.	Lok Sabha Secretariat	Presidential Ordinances 1950-84, (1985).
79.	Lumb, R. D. and Ryan, K. W.	The Constitution of the Commonwealth of Australia, (1981).
80.	Mahajan, V. S. . .	Planning, Development and Economic Policy in India, (1982).
81.	Majumdar, Datta Roychoudhary.	Advanced History of India.
82.	Marshall, Geoffrey .	Constitutional Conventions—The Rules and Forms of Political Accountability, (1984).
83.	McWiney, Edward .	Comparative Federalism University of Tronto Press, (1962).
84.	Menon, V. P. . .	Montague—Chelmsford Reforms.
85.	Mishra, Jagannath .	India's Economic Development, (1984).
86.	Mishra, Jagannath and Sinha, R. K.	Financing of State Plans, (1984).
87.	Mukherjee, T. B. .	Inter-State Relations in Ancient India, (1967).
88.	Munro, W. B. .	The Governments of Europe, (1947).
89.	Munshi K. M. . .	Indian Constitutional Documents : Vol. I, Pilgrimage to Freedom, (1902-1950).
90.	Murthi, B. V. K. .	Centre-State Economic and Financial Relations, (1958).
91.	Namboodiripad, E. M. S.	The Governor : A spoke in the Federal Wheel in "The Governor—Sage or Saboteur", Published by Roli Books International, (1985).
92.	Nanjundappa, D. M. .	Inter Governmental Financial Relations in India, (1974).
93.	National Institute of Public Finance and Policy.	Trends and Issues in Indian Federal Finance, (1981).
94.	Nelson, W. Polsby .	Congress and the Presidency, (4th Ed.)
95.	Nehru, Jawaharlal .	Discovery of India.
96.	Noorani, A. G. .	Public Law in India, (1982).
97.	Norsiter, T. J. .	Communism in Kerala—A Study, in Political Adoptation, (1982).
98.	Ogg, Frederic Austin .	European Governments and Politics, (1945).
99.	Ojha, P. D. . .	"Centre-State Financial Relations in India" in Sinha, S. L. N. (Ed.) Economic and Social Development. (Essays in honour of Dr. C. D. Deshmukh), (1972).
100.	Pal, Chandra .	Centre-State Relations and Cooperative Federalism.
101.	Pal, Chandra . .	State Autonomy in Indian Federation.
102.	Pal, Chandra . .	Co-operative Federalism in India.

APPENDIX VIII—*Contd.*

Sl. No.	Author's Name	Title
103.	Panigrahi, D. D.	Centre-State Financial Relations in India, (1985).
104.	Planning Commissions	The Planning Process, (1976).
105.	Prasad, Anirudh	Centre-State Relations in India.
106.	Prasad, Anirudh	Centre and State Powers Under Indian Federalism, (1981).
107.	Rakshit, Gangadhar	Planning in India : India's Five Year Plans, (1982).
108.	Randhawa, M. S.	A History of the Indian Council of Agricultural Research, (1979).
109.	Ray, S. K.	Commentaries on Industries (Development and Regulation) Act, 1951, (1985).
110.	Ray, Sunanda K. Datta	Himalayan Caprice in "The Governor—Sage or Saboteur", published by Roli Books International, (1985).
111.	Rao, Hem Lata	Centre State Financial Relations (Criteria of Federal Fiscal Transfers and their Application in India), (1981).
112.	Rao, N. R.	Union-State Financial Relations in India, (1972).
113.	Rau, B. N.	India's Constitution in the Making, (1963).
114.	Reddy, Y. Venugopal	Multi-Level Planning in India, (1978).
115.	Robinson, D. L.	Reforming American Government, (The Bicentennial Papers of CCS), (1985).
116.	Sarkar, R. C. S.	Union State Relations, (1986).
117.	Sarojini, K.	Union-State Relations in the Field of Industrial Development, (1963).
118.	Sastri, K. V. S.	Federal—State Fiscal Relations in India : A Study of the Finance Commission and the Technique of Fiscal Adjustment, (1966).
119.	Sastri, K. V. S.	Centre-State Fiscal Relations in India, (1970).
120.	Santhanam, K.	Union-State Relations in the, (1960).
121.	Saxena, M. C.	Dynamics of Federalism.
122.	Saywell, John	Canada Past and Present.
123.	Schwartz, Bernard	Constitutional Law—A Textbook, (1979).
124.	Schwartz, Bernard	Test Book of US Constitutional Law, 2nd Edition.
125.	Seervai, H. M.	Constitutional Law of India, Volumes I (1983) and II (1984).
126.	Sen, Asoke K.	Role of Governors in the Emerging Pattern of Centre-State Relations in India, (1984).
127.	Setalvad, M. C.	My Life, Law and Other Things, (1970).
128.	Setalvad, M. C.	Union and State Relations under the Indian Constitution (Tagore Law Lectures), (1974).
129.	Sehi, R. B.	Law of Foreigners and Citizenship, (1981).
130.	Sharma, J. N.	The Union and the States : A Study in Fiscal Federalsim, (1974).
131.	Sharma, Sriram	Constitutional History of India, (1949).
132.	Shepiro, Martin and Tresolini.	American Constitutional Law.
133	Shukla, V. N.	Constitution of India, (1982).
134.	Singh, L. P.	"Guide, Philosopher and Friends" in "The Governor—Sage or Saboteur", (1985).
135.	Singh, Shailendra (Ed.)	Union State Financial Relations in India. (With special reference to the underdeveloped States), (1980).
136.	Singh, S. P.	Centre-State Relations in Agricultural Development, (1973).
137.	Singh, Tavleen	"A Tale of Two Governors" in "The Governor—Sage or Saboteur", (1985).
138.	Sinha, R. K.	Centre-State Financial Relations in India, (1986).
139.	Siwach, J. R	The Office of the Governor, (1977).
140.	Sorabjee, Soli J.	"The Constitution and the Governor" in "The Governor—Sage or Saboteur", (1985).
141.	Strong, C. F.	Modern Political Constitutions.
142.	Subrahmanya, K. N.	Taxation and Centre-State Finncial Relations, (1983).
143.	Sundquist, James L.	Constitutional Reforms and Effective Government, (1986).
144.	Thavaraj, M. J. K.	Financial Management of Government, (1978).
145.	Thimmaiah, G.	Federal Fiscal Systems of Australia and India : A Study in Comparative Relevance, (1976).
146.	Thimmaiah, G.	A Critique of the Finance Commissions, (1981).
147.	Thimmaiah, G.	Burden of Union Loans on States, (1977).
148.	Thimmaiah, G.	Burning Issues in Centre-State Financial Relations, (1985).
149.	Thimmaiah, G. and Rao, H.	Finance Commission and Centre-State Financial Relations, (1986).
150.	Titus, Varkey K.	Agricultural Taxation in a Developing Economy : A Case Study of India, (1984).
151.	Tribe, Lawrence H.	American Constitutional Law, (1976).
152.	Tripathi, R. N.	Federal Finance in Developing Economy, (1980).
153.	Upendra, P.	"The Ramlal Episode : A Breach of Democracy" in "The Governor– Sage or Saboteur", (1985).

APPENDIX VIII—*Contd.*

Sl. No.	Author's Name	Title
154.	Veera Ragavachari, S. M.	Union-State Financial Relations in India, (1980).
155.	Venkataraman, K.	State Finances in India : A Perspective Study for the Plan Periods, (1968).
156.	Venkataramanaiah, V. (Ed.).	Essays on Constitutional Law.
157.	Wadhwa, D. C.	Re-promulgation of Ordinances : A Fraud on the Constitution of India, (1983).
158.	Wheare, K. C.	Federal Government (Fourth Edition).
159.	Wiecek	The Guarantee Clause of the United States Constitution.

II. *CONSTITUENT ASSEMBLY DEBATES AND CONSTITUTIONAL DOCUMENTS*

INDIA.

1. Lok Sabha Secretariat—Constituent Assembly Debates, Vols. I to XII (Reprint) and Index.
2. Government of India Act, 1919.
3. Report of the Indian Statutory Commission, Vol. I—Survey, Vol. II—Recommendations, (1930).
4. Report of the Joint Committee on Indian Constitutional Reforms, Session 1932—34 Vol. I, Part I Report and Part II—Proceedings.
5. Government of India Act, 1935.
6. Government of India, Home Department—Proceedings of the Premiers' Conference, October, 1946.
7. Constitution of India.
8. Constitution of Jammu and Kashmir (including certain related Provisions and Rules and Orders issued thereunder), Vol. I, (1970).
9. The Constitution of Jammu and Kashmir, Srinagar, (1984).
10. The Constitution (Amendment) Acts (First to Fifty-seventh), 1951 to 1987.
11. Statements of Objects and Reasons appended to :
    (i) The Constitution (Thirteenth Amendment) Bills, 1962 (72 of 1962), as introduced in Lok Sabha.
    (ii) The State of Nagaland Bill, 1962 (73 of 1962) as introduced in Lok Sabha.
12. Constitution Orders :
    (i) The Andhra Pradesh Regional Committee Order, 1958 (S.R.O. 443-A).
    (ii) The Government of India (Governors' Allowances and Privileges) Order, 1950.
    (iii) The manipur Legislative Assembly (Hill Areas Committee) Order, 1972 [GSR 317 (E)].
    (iv) Orders issued under the Constitution of India, Part I.
    (v) The Punjab Regional Committees Order, 1957 (S.R.O. 3524).
    (vi) The State of Gujarat (Special Responsibility of Governor for Kutch) Order, 1981.
    (vii) The States Reorganisation (Governors' Allowances) Order, 1957.
13. Rao, B. Shiva : The Framing of the India's Constitution : A Study, (1968).

Sl. No.	Author's Name	Title

OTHER COUNTRIES :

14. Constitution of the United States of America (1787).
15. Constitution of the Dominion of Canada, (1867).
16. Constitution of the Commonwealth of Australia, (1900).
17. The Basic Law of the Federal Republic of Germany, (1949).

III. *REPORTS*

Sl. No.	Ministry/Department/ Institution/Body	Title
Government of India :		
1.	Administratve, Reforms Commission	Machinery for Planning, (1968).
2.	Administrative, Reforms Commission	Report on Centre-State Relations, (1969).
3.	Administrative, Reforms Commission	Report on the Machinery of the Government of India and its Procedures of work, (1968).
4.	Administrative, Reforms Commission	Report on Personnel Administration, (1969).
5.	Administrative, Reforms Commission	Report on State Administration, (1969).
6.	Administrative, Reforms Commission	Recommendations and Conclusions, (1970).
7.	Administrative, Reforms Commission, Study Team on Centre-State Relationships	Report on Centre-State Relations, Volumes I to III.
8.	Administrative, Reforms Commission, Study Team on the Machinery of the Government of India and its Procedures of Work	Report on the Machinery of the Government of India and its Procedures of Work, Part II, (Vol. I), (1968).
9.	Administrative, Reforms Commission, Study Team on Administration of Union Territories and NEFA.	Report of the Study Team on Administration of Union Territories and NEFA, (1968).
10.	Administrative, Reforms Commission	Report of the Study Team on Financial Administration, (1968).
11.	Bureau of Police Research and Development	Crime in India, (1975 to 1979).
12.	Bureau of Public Enterprises	Public Enterprises Survey, (1984-85 and 1985-86).
13.	Economic Advisory Council of the Prime Minister	Report on Decentralisation of Development Planning and Implementation Systems in the States, (1983).
14.	Economic Administration Reforms Commission	Reports on Tax Administration, (1981—83).
15	Ministry of Education.	Report of the University Education Commission (Chairman : S. Radhakrishnan).
16.	Ministry of Education	Report of the Committee of Members of Parliament on Higher Education. (1964 (Chairman : P. N. Sapru).

APPENDIX VIII—*Contd.*

17.	Ministry of Education	Challange of Education—A Policy Perspective, (August, 1985).
18.	Ministry of Human Resource Development (Dept. of Education)	National Policy on Education—A Presentation, (1986).
19.	Ministry of External Affairs	Instrument of Ratification of the Treaty of Secession of the French Establishments of Pondicherry, Karaikal, Mahe and Yanam between the President of India and the President of French Republic, (1956).
20.	Ministry of Finance	Reports of the various Finance Commissions.
21.	Ministry of Finance	Direct Taxes Enquiry Committee Report, (1971) (Chairman : K. N. Wanchoo).
22.	Ministry of Finance	Report of the Committee on Taxation of Agricultural Wealth and Income, (1972) (Chariman : K. N. Raj)
23.	Ministry of Finance	Changes in the Accounting Systems of the States and the Roles of Treasuries, (Report by R. Ganapati), (1976).
24.	Ministry of Finance	Report of the Indirect Taxation Enquiry Committee, (1978) (Chairman : L. K. Jha)
25.	Ministry of Finance	Report of the Direct Tax Laws Committee, (1978) (Chairman : C. C. Chokshi)
26.	Ministry of Finance	Report of the Committee on Controls and Subsidies, (1979) (Chairman : Vadilal Dagli)
27.	Ministry of Finance	Report of the Expert Committee on Replacement of Sales Tax on Vanaspati, Drugs & Medicines, Cement, Paper & Paper Board and Petroleum Products by Additional Excise Duties, (1983) (Chairman : Kamalapati Tripathi)
28.	Ministry of Finance	Report of the Committee to Examine Principles of a Possible Shift from Physical to Financial Controls, (1985).
29.	Ministry of Finance	Long Term Fiscal Policy, (1985).
30.	Ministry of Finance	Aspects of the Black Money in India, (1986).
31.	Ministry of Food and Civil Supplies, (Department of Civil Supplies)	Advisory Council on Public Distribution (Summary Records of Third, Fourth, Fifth, Sixth and Seventh Meetings), (1983 to 1985).
32.	Ministry of Home Affairs	Report of the Committee of Governors, (1971).
33.	Ministry of Home Affairs, Department of Personnel and Administrative Reforms	Recommendations of the Administrative Reforms Commission (pertaining to Central Government), Government Decisions thereon and their Implementation Position, (1977).
	Ministry of Home Affairs	Report of the Committee on Union Territories, (1962).
35.	Ministry of Home Affairs	Report of the Committee on Defections, Part I & II, (1968).
36.	Ministry of Home Affairs	Report of the Working Group on Tribal Development during the Sixth Plan, (1980).
37.	Ministry of Information and Broadcasting	Report of the Working Group on Autonomy for Akashwani and Doordarshan, Volumes I & II (Chairman : B. G. Verghese)
38.	Ministry of Information and Broadcasting	Report of the Committee on Broadcasting and Information Media (Chairman : A. K. Chanda)
39.	Ministry of Information and Broadcasting	Report of the Working Group on Software for Doordarshan (Chairman : P. C. Joshi)
40.	Ministry of Industry	Report of the Study Group on Industrial Regulations and Procedures, (1978).
41.	Godavari Water Disputes Tribunal	Report of the Godavari Water Disputes Tribunal, Vol. I, (1980).
42.	Krishna Water Disputes Tribunal	Report of the Krishna Water Disputes Tribunal, Vol. I, (1976).
43.	Linguistic Minorities Commission	Twenty-third and Twenty-fourth Reports by the Deputy Commissioner for Linguistic Minorities in India, (1982-83) and (1983-84).
44.	Narmada Water Disputes Tribunal	Report of the Narmada Water Disputes Tribunal, Vol. I, (1979).
45.	National Commission on Agriculture	Interim and Final Reports of the National Commission on Agriculture, (1976) (Various Volumes).
46.	National Institute of Rural Development, Hyderabad	Workshop on Supply Management of Public Distribution System (at District Level) Jan. 9-10, 1986, sponsored by Ministry of Food and Civil Supplies, (Department of Civil Supplies).
47.	National Irrigation Commission	Report of the National Irrigation Commission, (1972).
48.	National Police Commission	First to Eighth and Concluding Reports, (1979 to 1981).
49.	Planning Commission	Various Five Year Plan Documents.
50.	Planning Commission	Memorandum on Existing Pattern of Central Assistance to States, (1957).
51.	Planning Commission	Report of the Working Group on Identification of Backward Areas, (1969) (Chairman : B. D. Pande)
52.	Planning Commssion	Report of Inter-Ministerial Group on Freight—Equalisation of Commodities, (1977).
53.	Planning Commission	Report of the Working Group on Block Level Planning, (1978).
54.	Planning Commission	National Committee on the Development of Backward Areas, (1980).
55.	Planning Commission	Report of the National Transport Policy Committee, (1980).

APPENDIX VIII—*Contd.*

56.	Planning Commission .	Report of the Working Group on District Planning, (1984).
57.	Planning Commission .	Report of the Expert Committee in connection with the Seventh Plan Formulation on the Question of Provisions for Maintenance of Assets as Plan Outlay, (1984).
58.	Planning Commission .	Report of the Expert Committee on the Role of Centrally Sponsored Schemes in Seventh Plan (Mimeographed), (1985).
59.	Planning Commission .	Report of the Working Group on Administration of Justice in North-Eastern India, (1984).
60.	Planning Commission .	Report of the Working Group to study the Selection and Implementation of Development Programmes with particular reference to Community Participation in the North-Eastern Region, (1985).
61.	Planning Commission .	Report on Development of North-Eastern Region National Committee on the Development of Backward Areas,(1981).
62.	Planning Commission .	Evaluation Report on Essential Supplies Programme, (1985).
63.	Registrar General & Census Commissioner of India	Census of India, 1981—Final Population Totals.
64.	Department of Rural Development, Committee on Panchayati Raj Institutions	Report of the Committee on Panchayati Raj Institutions, (1978) (Chairman : Asoka Mehta).
65.	Department of Rural Development	Report of the Committee to Review the Existing Administrative Arrangements for Rural Development and Poverty Alleviation Programmes (CAARD), (1985).
66.	Ministry of State	White Paper on Indian States, (1950).
67.	States' Reorganisation Commission	Report of the States' Reorganisation Commission, (1955).
68.	Ministry of Steel & Mines	Report of the Study Group on Revision of Royalty Rates of Major Minerals, (1979).
69.	Taxation Enquiry Commission	Report of the Taxation Enquiry Commission, (1953-54).
70.	National Institute of Educational Planning and Administration	Centre-State Relations in Financing Education in India.
71.	University Grants Commission	Report of the Committee to Enquire into the Working of the Central Universities, (1984).
72.	University Grants Commission	Annual Reports of the University Grants Commission, (1959-60, 1972-73 and 1982-83).
73.	Union Public Service Commission	Civil Services Examination, Report of the Committee on Recruitment Policy and Selection Methods, (1976).
74.	Government of Gujarat	Report of the Gujarat Taxation Enquiry Commission, (1980).
75.	Government of Kerala	Report of the Committee on Commodity Taxation, (1976).
76.	Government of Maharashtra	Conclusions and Recommendations of the Fact Finding Committee On Regional Imbalances in Maharashtra, (Published by Centre for Monitoring Indian Economy), (1984).
77.	Government of Tamil Nadu	Report of the Centre-State Relations Inquiry Committee, (1971) (Chairman : P. V. Rajamannar).
78.	Government of Uttar Pradesh	Taxation Enquiry Committee Report, (1980).
79.	Reserve Bank of India	Report of the Committee to Review Arrangements for Institutional Credit for Agriculture and Rural Development (CRAFICARD), (1981).
80.	Reserve Bank of India.	Report of the Committee on Agricultural Productivity in Eastern Indian States, (1985) (Chairman : S. R. Sen).
81.	Reserve Bank of India	Report of the Committee to Review the Working of the Monetary System, (1986) (Chairman : S. Chakravarty).
82.	Reserve Bank of India	Report On Currency and Finance (Various Issues)
83.	Lok Sabha . .	Union State Relations : A Study, (1970).
84.	Lok Sabha . .	Estimates Committee Report On Industrial Licencing, (50th Report, Fifth Lok Sabha), (April, 1974).
85.	Lok Sabha . .	Estimates Committee (Seventh Lok Sabha)—77th Report on the Ministry of Home Affairs, All India Services, (1984).
86.	Lok Sabha . .	Estimates Committee (Eighth Lok Sabha)—13th Report on Action Taken by Government on the Recommendations contained in the 77th Report of Estimates Committee (Seventh Lok Sabha) on the Ministry of Home Affairs—All India Services, (1985).
87.	Lok Sabha . .	Report of the Joint Committee on the Central Industrial Security Force Bill, 1966—Evidence, (1968).
88.	Lok Sabha . .	Report of the Joint Committee of Parliament on the Government of Union Territories Bill, 1963.
89.	Lok Sabha . .	Report of the Joint Committee on the States Reorganisation Bill, 1956.
FOREIGN :		
90.	Government of U.S.A.	The Commission on Inter-Governmental Relations—A Report to the President for transmitting to the Congress, June 1955.
91.	Government of Canada, Minister of Supply and Services.	Report of the Royal Commission on the Economic Union and Development Prospects for Canada, Volumes I to III, August, 1985. (Chairman : Donald S. Macdonald).

APPENDIX VIII – *Contd.*

IV. PERIODICALS

1. Akerlof, George. A. . Centre-State Fiscal Relations in India—*Indian Economic Review*, October, 1969.

2. Ansari, M. M. . . Resource Mobilisation Through Taxation, *Yojana*, September 16—30, 1984.

3. Bagchi, Amaresh . Fiscal Federalism : Problems & Possible Solutions, *Indian Economic Review*, October, 1977.

4. Bagchi, A. . Reform of Direct Taxes, *The Financial Express*, February 26. 1983.

5. Bapat, L. G. . Problem of Centre's Loans to States, *Yojana*, April 12, 1972.

6. Bar Council of India Trust . Journal of the Bar Council of India, Special Number on Three Decades of Constitution, Vol. VIII(3), (1981).

7. Basavarajan, K. B. . Centre-States Financial Relationship Under Indian Constitution, *Parliamentary Affairs*, Vol. I, No. II, March, 1983.

8. Bhambri, C. P. . . Bureaucracy in India ; Challenges in the Eighties, *Indian Journal of Public Administration*, Volume 26.

9. Bhargava, P. K. . Eighth Finance Commission : Practice Falls Short of Precept, *The Business Stanadrd*, April 25, 1985.

10. Bhargava, R. N. . Federalism :A Fiscal Inequity, *The Economic Times*, August 13, 1974.

11. Bhatia, H. L. . Tax Devolution in a Framework of Federal Resource Transfers : The Indian Case, *Indian Economic Journal*, July—September, 1978.

12. Bhatnagar, Subir Kumar. A Federal Aspect of Regulation of Industries in India, *Law Journal*, June 30, 1984.

13. Bhattacharya, J. K. . Development Plans and Impact on Union-State Financial Relations (1950-70), *Journal of Constitutional & Parliamentary Studies*, July—Sept., 1972.

14. Chakrabarti, S. P. . Freight Equalization-I—Lopsidedness of Balanced Growth, and II—Proof of a A Promise in the Keeping, *The Business Standard*, June 28 & 29, 1985.

15. Chakrabarti, S. R. C. . Sales Tax : Is Additional Excise an Adequate Substitute? *The Business Standard*, July 23, 1985.

16. Chattopadhyay, P. . Consignment Tax : Some Considerations, *Commerce*, June 9, 1984.

17. Commerce (Editorial) Consignment Tax : A Bonanza To States, June 9, 1984.

18. Dang, Ajit A. . Market Borrowings by. States, *The Financial Express*, March 20, 1985

19. Dattagupta, Arun K. . Centre-State Financial Relations : What the Controversy is All About? *Capital*, Feb. 28—March 6, 1983.

20. Deshpande, V. S. . The President : His Powers and Their Exercise, *Journal of the Indian Law Institute*, Volume 13, 1971.

21. Economic Times . Octroi and Sales Tax, *The Economic Times Saturday Supplement*, July 16, 1983.

22. Fazal, Mohd. . . Positive Approach to Planning, *Facts for you*, August, 1984.

23. Financial Express . Centre-State Fiscal Relations (A Financial Express Symposium, February 16, 1983).

24. Gadgil, D. R. . . Some Aspects of Centre-State Financial Relations, *Public Affairs*, August, 1970.

25. Gauri Shankar . Tax on Consignment of Goods, *The Economic Times*, June 20, 1983.

26. George, K. K. . . Discretionary Budgetary Transfers : A Review, *Economic & Political Weekly*, Novembr 15, 1986.

27. George, K.K. & Gulati, I. S. Central In-Roads into State Subjects—An Analysis of Economic Service, *Economic & Political Weekly*, April 6, 1986.

28. Ghorpede, M. Y. . States of the Union-I Planning Better Money Management, *The Statesman*, May 5, 1985.

29. Ghosh, Arun . . Decentralisation of Planning, *The Business Standard*, September 5—7, 1985.

30. Gopalakrishnan, P. K.. Centre-State Relations in Financial Planning, *Mainstream*, July 14, 1984.

31. Gopalakrishna, P. S. . Surcharge on Income Tax : Nature & Relevance of the Levy, *The Economic Times*, June 4, 1983.

32. Gopalakrishna, P. S. . Tax on Farm Income : Examination of Pros and Cons, *The Economic Times*, June 14, 1984.

33. Gopalaswamy, R. & Ramaswamy, T. (i) Financial Co-operation between Centre & States.
(ii) Need to correct Imbalance, *The Economic Times*, December 11 & 12, 1968.

34. Guhan, S. . . Centre-State Fiscal Ties : Some Comments, *The Financial Express*, March 4, 1984.

35. Guhan, S. . . Devolution Criteria : From Gamble to Policy, *Economic and Political Weekly*, December 1, 1984.

36. Gulati, I. S. & George, K. K. Inter-State Distribution through Budgetary Transfers, *Economic & Political Weekly*, March 18, 1978.

37. Gulati, I. S. & George, K. K. Inter-State Redistribution through Institutional Finance, *Economic & Political Weekly*, August 5, 1978.

APPENDIX VIII—*Contd.*

38. Gulati, I. S. & Nambiar, K. V. — Centre-State Finances : Stock Taking of Relations, *The Economic Times*, August 25, 1979.

39. Gupta, D. R. — (i) Market Borrowings: Their Role in Financing 5 year Plans.

(ii) Market Borrowings : Criteria for allocation among States, *The Economic Times*, July 14 & 15, 1983.

40. Homes (Jr.), Henry W. — Powers of President : Myth or Reality, *Journal of the Indian Law Institute*, Vol. 12, 1970.

41. Jain, Rajender — Regional Disparities and Federal Finance, *Yojana*, September 1—15, 1983.

42. Jha, Premshankar — Centre-State Finances, *The Times of India*, January 11, 1982.

43. Jha, P. K. — Co-ordination between Finance Commission and Planning Commission, *Journal of Indian Institute of Bankers*, April—June, 1976.

44. Jha, P. K. — Fiscal Autonomy of States in Indian Federation, *Southern Economist*, May 1, 1976.

45. Kabra, K. — It is time to Overhaul this Planning Process, *Yojana*, January 26, 1984.

46. Kahlon, A. S. & Kehal, H. S. — A Critical Study of Centre-State Financial Relations in India, *Indian Journal of Economics*, July, 1971.

47. Kamath, N. J. — Union-State Relations in India's Industrial Administration, *Indian Journal of Public Administration*, July—September, 1970.

48. Karode, P. S. & Chakraborty, T. K. — Trends in Public Debt, *The Financial Express*, December 21, 1983.

49. Khanna, K. C. — Centre State Relations, Dangers for their Devaluation, *The Times of India*, September 8, 1977.

50. Khare, G. P. — Why Decentralize Planning, *Yojana*, July 15, 1985.

51. Khatkhate, D. R. & Bhatt, V. V. — Centre-State Financial Relations in Context of Planned Development, *Economic & Political Weekly*, February 21, 1970.

52. Kumar, Rajiv — State and Economic Growth : I—Coalition, Conflicts & Crisis,

and

II—Power of Subordinates, *The Business Standard*, August 29 & 30, 1985.

53. Lakdawala, D. T. — Some Problems on Indian Federal Finance, *Commerce* December, 1965.

54. Lakdawala, D. T. — Centre-State Relations in Planning, *Indian Journal of Public Administration*, Jan—March, 1970.

55. Lakdawala, D. T. — Evaluation of Union-State Financial Relations, *Commerce Supplement*, August 19, 1972.

56. Lakdawala, D. T. — Review of Centre-State Fiscal Relations, *Yojana*, October 16, 1978.

57. Lakdawala, D. T. — Sixth Finance Commission : Elusive Search for Centre—State Debt Settlement, *Commerce*, February 16, 1974.

58. Lakdawala, D. T. — Plan Finances in Federal Economy, *Yojana*, May 16, 1979.

59. Lakdawala, D. T. — Finance Panel's Role, *The Economic Times*, February 24 & 25, 1983.

60. Lakdawala, D. T. — Centre-State Fiscal Relations, *The Financial Express*, March 24, 1983.

61. Lakdawala, D. T. — Eighth Finance Commission's Recommendations, *Economic & Political Weekly*, September 1, 1984.

62. Machiraju, H. R. — Issues in Inter-Governmental Fiscal Relations in India, *Margin* 11 : 2, January, 1979.

63. Mathur P. C. — Centre-State Relations in Economic Sphere, *The Hindu*, January 17, 1984.

64. Menaria, R. K. — Resource Mobilisation—Potential and Constraints in States, *The Economic Times*, December, 9, 1983.

65. Mitra, Ashok — Planning & Planning Commission, *The Financial Express*, February 4, 1984.

66. Nanjundappa, D. M. & Rao, G. V. K. — Basis of Resource Transfers from Centre to States, *Economic & Political Weekly*, September 15, 1973.

67. Panchmukhi, V. R. — Tax Evasion & Tax Rate, *The Financial Express*, June 8, 1983.

68. Paranjape, H. K. — Machinery for Planned Development, *The Economic Times*, January 2, 1982.

69. Patel, Himat — State's Share in Income Tax Revenue *Indian Journal of Public Administration*, April—June, 1974.

70. Patel, J. F. — Central Taxation Level & Composition in States, *The Economic Times*, November 16, 1983.

71. Patel, J. F. — Central Taxation : Level and Composition In States, *The Economic Times*, November 16, 1983.

72. Pendse, D. R. — State Autonomy, *The Economic Times*, January 30 and 31, 1984.

73. Pillai, G. Karunakaran — Why Should States Overdraw? *Yojana*, September 15 1985.

74. Prasad, Kamta — Planning : Some Basic Issues, *The Financial Express*, January 23—26, 1984.

APPENDIX VII—*Contd.*

75. Puri, S. S. . . . Union-State Relationship in Agricultural Administration, *Indian Journal of Public Administration*, July—September, 1970.

76. Rajamannar, P. V. . Plea for Re-examination of Centre-State Relations, *Commerce*, April 8—15, 1967.

77. Raj, K. N. . . Decentralisation in Perspective Indira Gandhi Development Planning & Centre-State Relations, *Mainstream*, December 22, 1984.

78. Ramachandra, G. . Union-State Relations in Finance and Planning, *Indian Journal of Public Administration*, July—September, 1966.

79. Ramachandra, K. S. . Decentralization of Planning, *The Fincnaial Express*, February 18, 1984.

80. Rao, Hemlata . . Federal Fiscal Transfers in India : Criteria & Their Application, *Artha Vikas*, 20 : 4, December, 1978.

81. Rao, V. K. R. V. . Indian Planning : Some Perspectives, *Main Stream*, January 26, 1985.

82. Rao, V. K. R. V. . Fresh Approach to Planning, *Link*, May 5, 1985.

83. Rao, V. Lakshmana . Special Financial Institutions : Aiding Rich States, *The Business Standard*, January 28, 1984.

84. Reddy, Y. Venugopal State Planning and Regional Development Objectives—Some Issues, *Indian Journal of Regional Science*, Vol. IV, No. 3, 1972.

85. Reserve Bank of India Annual Reports, (1982 to 1985).

86. Reserve Bank of India. Reserve Bank of India, Occasional Papers, Vol. 7, No. 2, December, 1986.

87. Santhanam, K. . . Financial Relations between the Union and the States : Need for Review by a High Level Commission, *Commerce*, November 12, 1966.

88. Santhanam, K. . . Centre-State Finance : An Objectionable Twist, *Eastern Economist*, April 3, 1970.

89. Santhanam, K. . . Centre & States : The Changing Relationship : Financial Mess, *Monthly Commentary on Indian Economic Condition*, 11 : 12, July—August, 1970.

90. Sen, S. R. . . Planning Machinery in India, *Indian Journal of Public Administration*, Vol. VII, July—September, 1961.

91. Sinha, Ramashraya . Centre-State Financial Relations, *Indian Journal of Public Administration*, April—June, 1979.

92. Sinha, R. K. . . E.A.C. Report on Planning, Centralized Decentralization, *The Economic Times*, April 5 & 6, 1984.

93. Siva Kumar, J. . . Union-State Financial Relations, *Indian Journal of Public Administration*, April—June, 1970.

94. Sivaraman, B. . . Agriculture : State-Union Relations, *Indian Journal of Public Administration*, July—September, 1970.

95. Srinivasan, N. . . Union-State Relations in Agriculture Development, *Indian Journal of Public Administration*, July—September, 1966.

96. Thavaraj, M. J. K. . Centre-State Relations : Mobilisation and Transfer of Resources, *Mainstream*, Feb. 11, 1978.

97. Thavaraj, M. J. K. . Centre-State Financial Relations : How to Make them Truly Federal, *The Hindu*, September 4, 1978.

98. Thimmaiah, G. . . Finance Commission Awards and the State's Revenue, *Asian Economic Review*, November, 1965.

99. Thimmaiah, G. . Finance and Plan Panel's Merger : a Re-examination, *The Economic Times*, June 8, 1974.

100. Thaimmaiah, G. . Fiscal Harmonization in Indian Federation, *Indian Economic Journal*, July—September, 1976.

101. Thiammaiah, G. . Market—Borrowings, *The Economic Times*, February 28 & March 1, 1983.

102. Thiammaiah, G. . Finance Commission : Gap Filling Approach Perpetuated, *The Economic Times*, October 12 & 13, 1984.

103. Thimmaiah, G. . Centre's Fiscal Philosophy : An Assessment, *The Economic Times*, June 24, 1986.

V. OTHERS

1. Administrative Staff College of India, Hyderabad. Proceedings of the Second Seminar on Multi-Level Planning (April 23-28, 1984).

2. Advisory Commission on Inter-Governmental Relations, United States of America. Study in Comparative Federalism : Australia, Canada, the United States and West Germany, (1981).

3. Basu, Jyoti . . . Centre-State Relations : Economic & Financial Relations, (Srinagar, 1983).

4. Centre for Monitoring Indian Economy, Bombay. Basic Statistics Relating to Indian Economy (Vols. 1 & 2), (Economic Intelligence Service), (1984).

5. Chelliah, Raja J. . The Theory of a Federal Economy (M.G. Kutty, Memorial Lecture, 1985. Also published in *The Economic Times*, August 2 & 3, 1985).

6. Chelliah, Raja J. and [Sinha, Narain . State Finances in India. Vol. III 'The Measurement of Tax Efforts of State Governments' *World Bank Staff Working Papers*, No. 523, (1982).

APPENDIX VIII—*Contd.*

7. Dubhashi, P.R. .	Foundation Lecture on Centre-State—Local Government Relations, (Regional Centre for Urban & Environmental Studies, Osmania University, Hyderabad), (May 18.1984).
8. Economic Times . .	Special Supplement on Planning Commission, January 2, 1982.
9. George, K.K. . .	Centre-State Financial Flows and Inter-State Disparities in India, (Institute of Management Studies, University of Cochin), (1982) (Mimeographed).
10. Government of Andhra Pradesh	Central Assistance for State Plans (A Monograph), (1979).
11. Government of Andhra Pradesh	Centre-State Financial Relations : Certain Relevant Date, (1979).
12. Government of Andhra Pradesh	Correspondence between the Chief Minister and the Prime Minister and Union Ministers, (1983).
13. Government of Gujarat .	Market Borrowings by State Governments, (1981).
14. Government of India, Ministry of Finance	Union Budget 1959-60 Speech of the Finance Minister.
15. Government of India, Ministry of Finance.	Resolution (No. F.7(5)-(Coord.) 79, dated 29th May 1979 setting up the Expenditure Commission.
16. Government of India, Ministry of Finance.	Economic Survey (for various years)
17. Government of India, Ministry of Home Affairs	White Paper on Punjab Agitation, (New Delhi, July 10, 1984).
18. Government of India, Ministry of Industry.	Incentives for Industries in Backward Areas, (1984).
19. Government of India, Ministry of Law, Justice and Company Affairs.	Manual of Election Law, (1982).
20. Government of India, Ministry of Personnel and Training, Administrative Reforms and Public Grievances.	All India Services Manual (Fifth Edition), Parts I & II.
21. Government of India, Planning Commission.	Summary Records of the Meetings of the National Development Council (Various meetings).
22. Government of Karnataka.	Correspondence between the Chief Minister, Karnataka and the Prime Minister and Union Ministries, Vols. I to VI (1983-85).
23. Government of Karnataka.	White Paper on Prices, (1984).
24. Government of Karnataka.	White Paper on the Office of the Governor-Constitutional Position and Political Perversion, (1983).
25. Government of Kerala .	Note on the Replacement of Sales Tax by Additional Excise Duties, (1984).
26. Government of Kerala .	Report of the Study Group No. II on Union-State Relations (Financial and Development Aspects), (January, 1984).
27. Government of West Bengal.	A Memorandum on Centre-State Relations (including Document on Centre-State Relations adopted by the West Bengal Cabinet at its meeting held on December 1, 1977).
28. Government of West Bengal.	Chief Minister's Letters to the Central Government : A Selection (Vols. I & II), (1981-82).
29. Goyal, S.K. . .	New Industrial Policy : An Empirical Assessment, (Indian Institute of Public Administration, New Delhi, Corporate Studies, Research Programme on Foreign Private Capital in India, Working Paper No. 11), (1982).
30. Goyal, S.K. Chalapati Rao, K.S. & Kumar, Nagesh.	Small Scale Sector and Big Business (Corporate Studies Group, Indian Institute of Public Administration, New Delhi) : Studies in National Development, No. 2, (February, 1984).
31. Hegde, Ramakrishna	Planning Process in India, (1986).
32. Hegde, Ramakrishna .	Freedom of Media (Seventh Bhimsen Sachar Memorial Lecture, December 1, 1985).
33. Hicks, Ursula . .	Federal Finance in a Developing Economy (Lecture delivered by Ursula Hicks at the Indian Institute of Public Administration, New Delhi), (1971).
34. Indian Economic Association	Centre-State Financial Relations (Papers read at the Indian Economic Conference, Bodh Gaya, 1972), (1974).
35. Indian Sugar Mills Association, New Delhi.	Indian Sugar Year Book, 1979-80, Vol. II.
36. Institute for Financial Management and Research, Madras.	Papers and Proceedings of the Seminar on Centre-State Financial Relations, (January 3, 1983).
37. Kerala State Planning Board.	Notes on (a) Centre-State Relationship in Economic and Social Planning, (b) Measures to Strengthen the Planning Process at the State Level, and (c) Decentralization of Planning.
38. Maheshwari, S. . .	Report on All India Services (Study done at the Indian Institute of Public Administration, New Delhi, sponsored by the Commission on Centre-State Relations, (1986), (Mimeographed).
39. Raj Krishna . . .	The Centre and the Periphery : Inter-State Disparities in Economic Development, (G. L. Mehta Memorial Lecture delivered at I.I.T., Bombay), Published by Centre for Monitoring Indian Economy, Bombay, Economic Intelligence Service, (September, 1980).
40. Reserve Bank of India .	Notification on Appointment of a National Finance and Credit Council, (June 2, 1986).
41. Sathyamurthy, T.V.	Centre-State Relations in India : With Special Reference to Kerala, Madras Development Seminar Series Bulletin, (October, 1982).

APPENDIX VIII—*Contd.*

42. Seventh Conference of Chairmen of Public Accounts Committees, September 9, 1986.	Address by Shri T. N. Chaturvedi, Comptroller & Auditor General of India.
43. Shahare, M.L. . .	Constitution and the Public Services, Second Lal Bahadur Shastri Memorial Lecture.
44. Singh, Chhatrapati .	Forestry and The Law : The Reports on Amending the Forest Laws (Indian Law Institute, New Delhi, 1986).
45. Singh, Tarlok . .	(i) Centre-State Financial Relations & Planning—Earlier Experiences, A.I.R. Broadcast, (May 9, 1978). (ii) Centre-State Financial Relations & Planning Future Requirements, AIR Broadcast, (May 16, 1978).
46. Singh, Tarlok . .	The Planning Process and Public Policy : A Reassessment, R.R. Kala Memorial Lecture, 1979, (Gokhale Institute of Politics & Economics, Pune).
47. Singh, V.B. and Bose, Shankar (Ed.)	Elections in India : Data Handbook on Lok Sabha Elections, 1952-80, (1984).
48. State Bank of India, Indian Economic News letter, Vol. II, No. 3.	India's Growing Internal Debt and its Implication, June 1, (1987).
49. Sundaram, K.V. . .	Decentralisation of Planning to Sub-national Levels—Rhetoric & Reality (Mimeographed) (1984).
50. The Australian National University, Centre for Research on Federal Financial Relations.	(i) Intergovernmental Fiscal Relations and Regional Growth in a Federal Context, (Russell Mathews) Reprint Series, No. 42. (ii) Fiscal Equalization through the Local Grant System, (Russell Mathews), Reprint Series, No. 43. (iii) The Commonwealth-State Financial Contract, (Russell Mathews), Reprint Series, No. 46. (iv) Federal-State Fiscal Arrangements in Australia, (Russell Mathews), Reprint Series, No. 57.
51. The Australian National University, Centre for Research on Federal Financial Relations.	(i) Contemporary and Historical Economic Dimensions of Canadian Confederation, (Douglos Al Auld), Occasional Paper, No. 12. (ii) New Directions in Financing Canadian Federation, (George E. Carter), Occasional Paper, No. 13.
52. Wallich, Christine . .	State Finances in India, Vol. II, 'Studies in State Finances'. *World Bank Staff Working Papers, No.* 523. (1982).
53. Wallich, Christine .	State Finances in India, Vol. I, 'Revenue Sharing', *World Bank Staff Working Papers No.* 523. (1982).
54. *Annual Reports of Ministries/Departments*	(i) Ministry of Civil Supplies (1981-82). (ii) Ministry of Food and Civil Supplies (Department of Civil Supplies), (1982-83 to 1985-86). (iii) Ministry of Food and Civil Supplies, (Department of Food), (1982-83 to 1985-86). (iv) Food Corporation of India, (1980-81, 1981-82 and 1984-85). (v) Ministry of Health and Family Welfare, (1982-83 and 1983-84). (vi) Ministry of Home Affairs (1983-84). (vii) Ministry of Information and Broadcasting, (1982-83 to 1984-85). (viii) Ministry of Energy (Department of Power), (1982-83 to 1984-85). (ix) Ministry of Labour. (1985-86), Vols. I and II. (x) Ministry of Personnel, Public Grievances and Pensions, (1985-86.) (xi) Ministry of Railways (Railway Board), (1984-85 and 1985-86). (xii) Ministry of Steel and Mines, Department of Mines (1986-87). (xiii) Ministry of Works and Housing, (1982-83).
55. *Central Acts, Ordinances, Regulations.*	(1) The Administrative Tribunals Act, 1985. (2) The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983. (3) The Armed Forces (Special Powers) Act, 1958. (4) The Assam (Alternation of Boundaries) Act, 1951 (47 of 1951). (5) The Border Security Force Act, 1968. (6) The Border Security Force Rules, 1969. (7) The Central Industrial Security Force Act, 1968. (8) Central Industrial Security Force Rules, 1969. (9) Central Reserve Police Force Act, 1949. (10) The Central Reserve Police Force Rules, 1955. (11) The Chandigarh Disturbed Areas Act, 1983. (12) The Chandigarh Disturbed Areas Ordinance, 1983 (No. 6 of 1983). (13) The Chief Election Commissioner's (Conditions of Service) Rules, 1972. (14) The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971. (15) The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1984 (No. 2 of 1984). (16) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974). (17) The Dadra and Nagar Haveli Act, 1961 (35 of 1961).

APPENDIX VIII—*Contd.*

(18) The Dadra and Nagar Haveli (Laws) Regulation, 1963 (6 of 1963).

(19) Thd Dadra and Nagar Haveli (Civil Courts and Miscellaneous Provisions) Regulation, 1963 (8 of 1963).

(20) The Delhi Administration Act, 1966 (19 of 1966).

(21) The Distrubed Areas (Special Courts) Act, 1976.

(22) The Foreign Exchange Regulation Act, 1973.

(23) The General Clauses Act, 1897 (10 1897).

(24) The Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962).

(25) The Goa, Daman and Diu (Laws) Regulation, 1962 (12 of 1962).

(26) The Government of Part C States Act, 1951 (XLIX of 1951).

(27) The Government of Part C States (Amendment) Act, 1954 (7 of 1954).

(28) The Government of Union Territories Act, 1963 (20 of 1963).

(29) The Governors (Emoluments, Allowances and Privileges) Act, 1982.

(30) The High Court Judges (Conditions of Service) Act, 1954 (28 of 1954).

(31) Index to Unrepealed Central Acts, (1982).

(32) The Judges (Inquiry) Act, 1968.

(33) The Naga Hills Tuensang Area Act, 1957 (42 of 1957).

(34) The North-Eastern Areas (Re-organisation) Act, 1971 (81 of 1971).

(35) The North-Eastern Council Act, 1971 (84 of 1971).

(36) The Police Act, 1861 (1976).

(37) The Pondicherry (Administration) Act, 1962 (49 of 1962).

(38) The Pondicherry (Laws) Regulation, 1963 (7 of 1963).

(39) The President's Emoluments and Pension Act, 1951 (30 of 1951 and 77 of 1985).

(40) The President's Pension (Amendment Act, 1985 (No. 77 of 1985).

(41) The President's Pension Rules, 1962.

(42) The Punjab Disturbed Areas Ordinance, 1983 (No. 5 of 1983).

(43) The Punjab Disturbed Areas Act, 1983.

(44) The Punjab Reorganisation Act, 1966 (31 of 1966)

(45) The State of Arunachal Pradesh Act, 1986 (69 of 1986).

(46) The State of Mizoram Act, 1986 (34 of 1986).

(47) The State of Nagaland Act, 1962 (27 of 1962).

(48) The States Reorganisation Act, 1956 (37 of 1956).

(49) The Supreme Court Judges (Conditions of Service) Act, 1958 (No. 41 of 1958).

(50) The Territorial Councils Act, 1956 (103 of 1956).

(51) The Terrorist Affected Areas (Special Courts) Act, 1984

(52) The Terrorist and Disruptive Activities (Prevention) Act, 1985.

(53) The Terrorist and Disruptive Activities (Prevention) Rules 1986.

(54) The Unlawful Activities (Prevention) Act, 1967.

(55) The Unlawful Activities (Prevention) Amendment Act, 1969.

(56) The Forest (Conservation) Act, 1980, No. 69 of 1980.

(57) The Inter-State Water Disputes Act, 1956 (33 of 1956).

(58) The Oilfields (Regulation and Development) Amendment Act, 1984.

56. State Enactment . .	The Tripura Tribal Areas Autonomous District Council Act, 1979.
57. Statutory Rules, Orders .	(i) The All India Services (Death-cum-Retirement Benefits) Rules, 1958. (ii) Rules of Procedure and Conduct of Business at Joint Meetings of the Zonal Councils.
58. All India Reporter, Nagpur.	A.I.R. Manuals, Civil and Criminal, Vols. 1 to 35.

सत्यमेव जयते

VI. TABLE OF CASES

Supreme Court Judgements

1. A. K. Roy *V* Union of India AIR 1982 SC 710.
2. Andhra Pradesh Road Transport Corporation *V* Union of India, 1964(7) SCR 17.
3. Atiabari Tea Co. Ltd., and Khayerbari Tea Co. Ltd., *V* State of Assam and others, 1961(1) SCR 809.
4. Automobile Transport (Rajasthan) Ltd. *V* State of Rajasthan AIR 1970 SC 1436.
5. Babu Lal Parate *V* State of Bombay, 1960(1) SCR 605.
6. Chandra Mohan *V* State of U.P. AIR 1966 SC 1987.
7. Hargovind Pant *V* Dr. Raghukul Tilak, AIR, 1979 SC 1109.
8. In Re Sea Customs Act, (1964) 3 SCR 787.
9. In Re Coffee Board, 1970(3) SCR 147.
10. Jayantilal Amratlal Shodhan *V* F. N. Rana AIR 1964 SC 648.
11. State of Karnataka *V* Union of India 1978(2) SCR 1.
12. Khazan Chand *V* State of Jammu and Kashmir, (1984), 2 SC 456.
13. Mohd. Maqbool Damnoo *V* The State of Jammu and Kashmir, AIR 1972 SC 963.
14. Mohamad Serajudin *V* State of Orissa, 1975 (Spp.) SCR 169.

APPENDIX VIII—*Contd.*

15. Moti Ram Deka *V* N. E. Frontier Railway, AIR 1964 SC 600.

16. Rai Sahib Ram Jawaya Kapur *V* State of Punjab, (S) AIR 1955 SC 549.

17. Ram Manohar Lohia *V* State of Bihar, AIR 1966 SC 740.

18. Rohtas Industries Ltd. *V* S. D. Agarwal, AIR 1969 SC 707.

19. S. L. Kapoor *V* Jagmohan, AIR 1981 SC 136.

20. Sumsher Singh *V* State of Punjab, AIR 1974 SC 2192.

21. Satya Narain Singh *V* District Engineer, P.W.D. Ballai AIR 1962 SC 1161.

22. State of Punjab *V* Satya Pal Dang, AIR 1969 SC 903.

23. State of Rajasthan *V* Union of India, AIR 1977 SC 1361.

24. State Trading Corporation of India Ltd. *V* The Commercial Tax Officer, AIR 1963 SC 1811.

25. State of West Bengal *V* Union of India, 1964(1) SCR 371.

26. Union of India *V* H. S. Dhillon, 1972(2) SCR 33.

27. U. N. R. Rao *V* Smt. Indira Gandhi, AIR 1971 SC 1002.

28. Bandhua Mukti Morcha *V* State of Tamil Nadu and Others (Writ Petition No. 574/86, with writ Petition No. 633/86—Civil Miscellaneous Petition Nos. 10659/86 and 18377/86, SC.

29. Bandhua Mukti Morcha *V* Union of India and others Writ Petition (Civil/Crl.) No. 2135 of 1986, SC.

30. Osmani University Teachers' Association *V* State of Andhra Pradesh 1983(3) SC 424.

31. Bengal Immunity Co. *V* State of Bihar 1955 (1) SCR 603.

32. Bombay V. F. N. Balsara (1951) SCR 682.

33. Chicago and N. W. Tr. Co. *V* Kalo Brick & Tile, 950 US 311.

34. City Municipal Council, Bellary AIR 1978 SC 1803.

35. Diamond Sugar Mills Ltd., *V* U.P. (1961) AIR 1961 SC 652.

36. G. K. Krishnan *V* State of Tamil Nadu (1975) 2 SCR 715.

37. Gift Tax Officer V. D. H. Nazareth and others AIR 1970 SC 999.

38. Hari Krishna Bhargava *V* Union of India, 1966 (2) SCR 22.

39. Hans Muller *V* Superintendent 1955 (1) SCR 1285.

40. H. Anrai and Others *V* State of Maharashtra, (1984) 2 SCR 440.

41. In re C. P. & Berar Sales of Motor Spirit and Lubricants Taxation Act. 1938, AIR 1939 FC I.

ITO *V* M. K. Mohammad Kunhe (1969), 2 SCR, 69.

Jadab Singh and other *V* Himachal Pradesh Administration (1960) 3 SCR 75.

44. Jupudi Sesharatnam *V* Gift Tax Officer AIR 1960 AP 115.

45. Jaora Sugar Mills *V.* State of M.P. (AIR 1966 SC 416).

46. Licence Cases, 5, How, 504, 538.

47. M/s International Tourist Corporation *V.* State of Haryana 1981 (2) SCR 364 (372).

48. M' Culloch *V.* Marylands (1819) 4 Wheat 316.

49. Mrs. Ghendi W/o Umrao Singh *V.* Union of India and others AIR 1965 Punjab, 65.

50. M. T. Joseph and others *V.* Gift Tax Officer, AIR 1962 Ker. 97.

51. M/s. Satpal & Co. etc. *V.* Lt. Governor of Delhi & others AIR 1979 SC 1550.

52. M/s Sable Wagers & Co. , and others *V.* Union of India (AIR 1975 SC 1172).

53. Re Special Courts Bill, 1978. 1979(2) SCR 476.

54. R.M. D. C. *V.* State of Mysore, AIR 1962 SC 594.

55. Re Delhi Laws Act (1951) SCR 747.

56. Ram Jawaya Kapur *V.* State of Punjab (1955) 2 SCR 225.

57. State of Bombay *V.* Ali Gulshan, 1955 (2) SCR 867.

58. State of Bombay *V.* Chamarbaugwala, 1957 SCR 874.

59. Satya Narain Singh *V.* District Engineer, P.W.D., AIR (1962) SC 1161.

60. State of Bombay *V.* United Motors (India) Ltd., 1953 SCR 1069.

61. S. Dandapani *V.* Addl. Gift Tax Officer AIR 1963 Mad. 419.

62. Shyam Sunder *V.* Gift Tax Officer AIR 1967 All. 19.

63. Shree Vinod Kumar & others *V.* The State of Himachal Pradesh AIR 1959 SC 223.

64. Shetkari Sahakari Shakhar Karkhana *V.* The Collector of Sangli and other (AIR 1979 SC 1972).

65. S. P. Mittal *V.* Union of India, AIR 1983 SC I.

66. Waverly Jute Mills Co. Ltd. and others *V.* Ramon and Co. and the Attorney General of India (AIR 1963 SC 90).

67. Western Coal Fields Ltd. *V.* Special Area Development Authority (1982) 2 SCR I.

68. Baijnath Kedya *V.* State of Bihar & Rest (AIR 1970 SC 1436).

69. Hingir Rampur Coal Company *V.* State of Orissa, 1961 (2), (SCR 537).

70. State of Orissa *V.* M. A. Tulloch and Company (AIR 1964 SC 1284).

71. H.R.S. Murthy *V.* Collector of Chittoor and others (AIR 1965 SC 177).

72. Ishwari Kaitan Sugar Mills (P) Ltd. *V.* The State of U.P. & Others (AIR 1980 SC 1955).

73. The case of Sea Customs Act, 1946 [AIR 1963 SC 1760 (1771)].

APPENDIX VIII— *Contd.*

High Courts' Judgements

74. Bijayananda Patnaik *V.* President of India, AIR 1974 Orissa 52.

75. Dy. Acctt. General, Kerala *V.* State of Kerala, AIR 1970 Kerala 158.

76. Golak Behari *V.* State AIR 1972 Orissa 1.

77. In re K. Jayarama Iyer, AIR 1958 A. P. 643.

78. Jay Engineering Works Ltd. *V.* State of West Bengal, AIR 1968 Calcutta 407.

79. Joti Prasad Upadhya *V.* Kalka Prasad Bhatnager, AIR 1962 Allahabad 128.

80. M. Kiran Babu *V.* The State of Andhra Pradesh AIR 1986 Andhra Pradesh 275.

81. Mahabir Prasad Sharma *V.* Prafulla Chandra Ghose, AIR 1969 Calcutta 198.

82. S.C. Barat *V.* Hari Vinayak : AIR 1962 Madhya Pradesh 73.

83. (i) Judgement of the single judge of the Calcutta High Court in Civil Rules No. 489(W) of 1971 (April, 1972).

(ii) Judgement of Division Court on the appeal against the Judgement at (i) above (July, 1972).
(Vires of the Central Reserve Police Force Act. 1949).

Foreign Courts

84. Gibbons *V.* Ogden, Wheat 1 (US 1824).

85. In Re Eugene Debs, 158 US, 564.

86. Mc-Culloch *V.* Maryland, Wheats 316, 436 (US 1819).

87. [Reference Re Amendment of the Constitution of Canada (Nos. 1, 2 and 3), 125 D. L. R. (3rd) September, 1981.